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# Public Wrongs, Private Rights: African Americans, Private Law, and White Violence during Jim Crow

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# Abstract

This dissertation explores black litigation strategies, black legal culture, and the effect of black litigation on civil law. Not only did African Americans sue white southerners and white-owned companies for white-on-black violence under Jim Crow, they shared their collective legal knowledge through a network of black newspapers and contributed to case law. Guided by specific areas of civil law, they devised strategies to convince all-white juries that their experiences warranted damages, forcing white southerners to reckon with the fact that black lives and black experiences had value. Gendered stories of unprovoked violence, claims of respectability, and appeals to common law proved beneficial in civil cases involving racial violence. The dissertation argues that black newspapers shaped and transported black legal culture, and that black newspapers and the NAACP connected black people to local lawyers and advised victims on which areas of law might be helpful in gaining recourse in civil courts.

## Acknowledgments

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To the University of South Carolina, the History Department, and my newfound friends and colleagues, thank you for making me feel at home as I finished my dissertation while on fellowship. To my colleagues in the department, thank you for encouraging me and welcoming

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# Dedication

*To Momma, Candy, Papa, Uncle Bobby,*
*Command, Big Mama, Meme, Cobie, Pastor Williams, Lisa & Bebe.*

*To all Black people enslaved, lynched, murdered by police, and victimized by a criminal justice system meant to control and oppress Black Americans.*

Table of Contents

Abstract 2

Acknowledgements 4

Dedication 8

List of Tables, Illustrations, Figures or Graphs 10

Introduction 11

Chapter One: Righting Public Wrongs 38

Chapter Two: Litigating in Black and White 84

Chapter Three: Litigants, Liaisons, and Lawyers 126

Chapter Four: Reimagining Tort Law 164

Conclusion 213

References 226

List of Tables, Illustrations, Figures, or Graphs

Figure 1: Southern Distribution of the Chicago Defender 106

Figure 2: Map of Illinois Central R.R. 107

Figure 3: Case Genealogy 209

# Introduction

On April 30th, 1927, E. L. Varner and his friends set out to enjoy their Saturday night. The young men, Varner later testified, "left the barbershop" and "went on out there to the East Side Café and stopped and had a coco-cola and a hamburger."[1] Varner and his friends finished their meal and left the restaurant. While driving home, Varner testified that he "saw two men under the light on the corner and as [he] got up near [he] saw they were police."[2] The officers attempted to stop Varner's car. One of the officers, H. E. Sellers, allegedly shot into the vehicle. Varner sued Sellers and the surety company insuring Sellers for personal injuries and property damage as a public police officer for the city of Laurel, Mississippi. Varner's attorney, Jeff Collins, argued on appeal that "these boys…were good citizens," and the police had attacked them "while they were peaceably returning to their home."[3] According to Varner's counsel, he was not disturbing the peace, a crucial assertion that implied that Officer Sellers' attack was unwarranted and, likely, unlawful. Varner was a 24-year-old farmhand.[4] He and his friends were Black.

In the Jim Crow South, white violence and the threat of white violence were tools of subordination and social control, relegating Black people to second-class citizenship. To make the case against a white police officer, Varner and his attorney had to argue that the young men

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[1] Record in *Sellers v. Varner,* 46, Supreme Court Case Files, Mississippi Department of Archives and History (hereafter, MDAH).
[2] Record in *Sellers v. Varner,* 48, Supreme Court Case Files, MDAH.
[3] Brief for the Appellee, *7,* Record in *Sellers v. Varner*, MDAH. Jeff Collins was a white attorney in Laurel, Mississippi. He had two cases open against Sellers et al. for shooting at black citizens in Laurel at the time. The first incident was from April 2, 1927 and the second case was Varner's case. 1920 United States Federal Census. *Sellers et al. v. Lofton*, 149 Miss. 849 (1928).
[4] Record in *Sellers v. Varner,* 46, Supreme Court Case Files, MDAH.

were respectable, peaceable, and "good citizens."[5] Varner and his attorney had to remind the court that this was one of two pending cases against Sellers and his surety company. Sellers had allegedly assaulted and shot another Black man earlier that month. In 1927, during the height of Jim Crow, an all-white Mississippi jury ruled in Varner's favor, awarding him damages against a white police officer and a white-owned company.

This dissertation recovers the stories and legal maneuvers of people like E.L. Varner by examining Black Americans' civil lawsuits, Black newspapers' coverage of such cases, and the NAACP's role in matching victims to attorneys.[6] How did African Americans know when they had a viable legal claim under civil law, and how did they convince all-white juries to rule in their favor? How did they find attorneys to represent them against companies and white individuals, especially in the South? This dissertation uses these civil cases to explore Black litigation strategies, Black legal culture, and the effect of Black litigation on civil law. Harnessing specific areas of civil law, and mobilizing gender- and class-specific stories of unprovoked violence against respectable citizens, Black Americans, and their lawyers devised strategies to convince all-white juries that their experiences warranted damages, forcing white southerners to reckon with the idea that Black lives and Black experiences had value. As Black plaintiffs exhibited their legal knowledge in court, Black newspapers shaped a Black legal culture from their lawsuits and transported it throughout Black America. Newspapers, along with

[5] Record in *Sellers v. Varner,* 46-48, Supreme Court Case Files, MDAH.

[6] Up until February 1, 2020, I had chosen to use African American to describe people of Americans who descended from enslaved persons. After thinking critically and engaging with others, I have decided to use black Americans. White Americans are described as whites, white Americans, or Americans, but Americans descended from all other races have their Americanness hyphenated. The descendants of slaves who are at the heart of this dissertation are as much American as any person descended from enslavers or incorporated into that group because of their whiteness. I choose to describe my subjects as black rather than African, since America is their nationality and many descendants of slaves, more generally, cannot trace their roots to a specific place in Africa. Additionally, those bloodlines have hundreds of years of ties to the United States of America.

the National Association for the Advancement of Colored People (NAACP), also provided practical support for would-be Black plaintiffs, by connecting them with sympathetic local lawyers and advising victims on which areas of law might help them gain recourse in civil courts.

Black Americans' decision to use tort law for these interracial altercations may not seem revolutionary, but it was. To maintain the racial hierarchy, Jim Crow criminal courts often used sham trials to convict Black Americans for crimes they may not have committed and to acquit white perpetrators of racial violence for crimes they surely committed. Faced with this hostile criminal justice system, a significant number of Black Americans filed civil suits for civil assault, battery, and negligence when an injury occurred on a common carrier or a public road. A number of them won damages. For Black Americans confronting Jim Crow, such suits were one of the few remedies available. By using what were race-neutral principles of tort law, Black victims were able to convince white jurors to side with Black people who had experienced violence at the hands of white people.

Black victims' civil suits not only promised redress for individuals; they were important, too, in resisting Jim Crow as a system. As one historian has put it in reference to cases brought under federal law, "litigation [was] a method of protest that [was] distinct from alternative methods" and "whether or not it succeeded in securing Court victories, litigation may have had educational, organizational, and motivational consequences."[7] There are many reasons why Black plaintiffs might have decided to sue. Some could have seen damages as a way to improve

[7] Michael J. Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (New York: Oxford University Press, 2004), 7.

their financial circumstances, make up for lost wages, or pay for medical expenses. Others might have sued to get back at their white attackers or businesses and government organizations that enabled white people to use force and violence against Blacks. Still, others might have sued in a quest for what felt like justice in the face of Jim Crow. Many probably sued for a combination of these reasons. Whatever their reasons, when they won damages, they had the potential to achieve a level of financial independence, depending on the sum of their damage award. Gaining financial independence and achieving material success was a direct threat to the racial hierarchy because it proved that Black people were capable of investing and stewarding money and wealth. For those who did see their litigation as more than just a means to a financial end, however, civil litigation was a way to challenge white violence and abuse and gain some semblance of justice in the face of what might have, otherwise, felt insurmountable: white supremacy and Jim Crow.

This dissertation argues that Black Americans made conscious decisions to litigate against white-owned companies and white individuals in response to white people's assaults on their dignity and persons. It also argues that these cases forced Jim Crow civil courts to acknowledge that violent attacks upon Blacks were *legally* wrong.[8] This project focuses specifically on wrongful injuries that arose from violent altercations involving white aggressors. As historians Luther Porter Jackson and John Hope Franklin have shown, Black people had always been legally savvy, even under slavery, and they brought their understandings of the

[8] Welke makes a similar argument in her work, arguing that "Southern state supreme courts sternly and uniformly challenged any suggestion that separate-coach laws gave railway or streetcar employees license to assault their passengers" and that "appellate court opinions affirming the right of blacks to freedom from assault at the hands of carrier employees." Barbara Young Welke, *Recasting American Liberty: Gender, Race, Law, and the Railroad Revolution, 1865-1920* (New York: Cambridge University Press, 2001), 359-360, 365. Expanding this argument, chapter 1 argues that Jim Crow civil courts also affirmed the right of blacks to live free from assault at the hands of white police officers and individual whites.

importance of law with them into the Reconstruction and Jim Crow eras.[9] This project examines how Black people figured out whether they had a viable legal claim when they experienced wrongful injuries, particularly violent injuries at the hands of white people. It also examines how Black people, Black newspapers, and organizations like the NAACP helped Black people find lawyers who were willing to help them.

Historians have given little attention to Black people's use of tort law to gain recourse for violence and insults under Jim Crow. Barbara Welke and Kate Masur have investigated Black Americans' use of tort law to combat discrimination during Reconstruction and the post-Reconstruction period. Masur's work examines how African Americans used principles like proper comportment and the common law of common carriers to gain "equal access" to "an array of public and quasi-public places" in Reconstruction Washington, D.C.[10] Similarly, Welke's work on railroads and regulation examines the ways that Black people challenged separate coach

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[9] Luther Porter Jackson, "The Virginia Free Negro Farmer and Property Owner, 1830-1860," *Journal of Negro History* 24, no. 4 (1939): 390-439; John Hope Franklin, *The Free Negro in North Carolina, 1790-1860* (Chapel Hill: University of North Carolina Press, 1995), 150-60. Recent, scholarship has built upon Jackson and Franklin's works. The following citations capture some of the scholarship that has built upon Jackson and Franklin. Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: The University of North Carolina Press, 2009). Ariela J. Gross, *What Blood Won't Tell: A History of Race on Trial in America* (Cambridge, Mass.: Harvard University Press, 2010). Martha Jones, *Birthright Citizens: A History of Race and Rights in Antebellum America* (New York: Cambridge University Press, 2018). Kelly M. Kennington, *In the Shadow of Dred Scott: St. Louis Freedom Suits and the Legal Culture of Slavery in Antebellum America* (Athens: University of Georgia Press, 2017). Kenneth W. Mack, *Representing the Race: The Creation of the Civil Rights Lawyer* (Cambridge, Mass.: Harvard University Press, 2012). Melissa Milewski, *Litigating Across the Color Line: Civil Cases Between Black and White Southerners from the End of Slavery to Civil Rights* (New York: Oxford University Press, 2018), 2-3. Dylan C. Penningroth, *The Claims of Kinfolk: African American Property and Community in the Nineteenth-Century South* (Chapel Hill: University of North Carolina Press, 2003). Mark V. Tushnet, *Making Civil Rights Law: Thurgood Marshall and the Supreme Court, 1936-1961* (New York: Oxford University Press, 1996). Anne Twitty, *Before Dred Scott: Slavery and Legal Culture in the American Confluence, 1787-1857* (New York: Cambridge University Press, 2016). Kimberly M. Welch, *Black Litigants in the Antebellum American South* (Chapel Hill: University of North Carolina Press, 2018).

[10] Kate Masur, *An Example for All the Land: Emancipation and the Struggle Over Equality in Washington, D.C.* (Chapel Hill: University of North Carolina Press, 2010), 111. Kate Masur, "Patronage and Protest in Kate Brown's Washington," *Journal of American History* 99, 4 (2013), 1047-1071.

laws from the 1880s and 1890s. Welke argues that Blacks' challenges to separate coach laws "came within three categories: assault in enforcing the law, inferior accommodations, and failure to keep whites out of Black coaches."[11] Welke examines several cases where Black people sued for violent encounters on trains. She argues that "Southern state supreme courts sternly and uniformly challenged any suggestion that separate-coach laws gave railway or streetcar employees license to assault their passengers."[12] Welke shows that southern courts did hold railroad companies, surety companies, and individual whites accountable for injuries that arose from white men's intentional torts.

Both Masur and Welke offer essential insights into the type of legal claims that African Americans made to gain access to public accommodations and in response to discrimination in public spaces. While Welke's work briefly examines Black people's civil suits for assault on trains, these cases are examined as responses to segregation and discrimination. This dissertation uses the groundwork laid by Welke and Masur to undertake a more in-depth examination of Black people's suits for wrongful injuries that arose after violent encounters with white individuals. It pushes the idea that "[b]y holding the railroad responsible for the action of whites on their trains, courts interpreting statutory Jim Crow… made it possible for African-Americans to challenge the kind of white insult, intimidation, and violence that in other settings went unredressed."[13]

Civil rights and discrimination cases were necessary to dismantle Jim Crow. But civil lawsuits that forced civil courts, white judges and justices, and all-white juries to recognize that

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[11] Barbara Young Welke, *Recasting American Liberty: Gender, Race, Law, and the Railroad Revolution, 1865-1920* (New York: Cambridge University Press, 2001), 359.
[12] Welke, *Recasting American Liberty*, 359.
[13] Welke, *Recasting American Liberty*, 365.

assault, intentional torts, and other wrongful injuries resulting from white violence were legally wrong were also significant. This dissertation challenges the idea that Jim Crow courts were always hostile to Black interests and that Jim Crow courts did not recognize wrongs whites committed against Blacks. It highlights the choices Black Americans made in cases involving interracial altercations. The project also explores how judges and jurors responded to these strategies, analyzes the effect of Black Americans' cases on critical areas of legal doctrine, and traces the development and transmission of a Black American legal culture under Jim Crow.

By bringing claims for personal injury, wrongful ejection, and civil assault and battery before white judges and all-white juries, Black Americans asserted their respectability. They challenged Jim Crow violence using tort law.[14] Under Jim Crow, Black plaintiffs turned civil courtrooms—spaces where whites customarily abused Blacks without legal retribution—into contested spaces. This dissertation explores such contests within courtrooms, the tropes Black Americans used, the arguments attorneys made on behalf of Black plaintiffs, and the responses of all-white juries. During a time when the legal regime stifled Black social, political, economic, and legal agency, Black newspapers realized that these claims had the potential to be so much more than their claims to individual redress.[15] Plaintiffs' causes of action were important, but

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[14] Assault and/or battery: *Aaron Royston v. Illinois Central Railroad Company*, 67 Miss 376 (1889), *Ward v. Yazoo & Mississippi Valley Railroad Com*pany, 79 Miss. 145 (1901), *Yazoo & Mississippi Valley Railroad Company v. Peter Williams*, 87 Miss, 344 (1905), *Illinois Central Railroad Company v. Green*, 130 Miss. 622 (1922), *Woods v. Illinois Central Railroad Company*, 151 Miss. 395 (1928), *Sellers et al. v. Lofton*, 149 Miss. 849 (1928), *Sellers v. Varner*, 151 Miss. 594 (1928), *McCoy v. Key et al.*, 155 Miss 64 (1929); negligence: *Aaron Royston v. Illinois Central Railroad Company*, 67 Miss 376 (1889); personal injury: *Yazoo and Mississippi Railroad Company v. Walls*, 110 Miss. 256 (1915), *Woods v. Illinois Central Railroad Company*, 151 Miss. 395 (1928); unlawful search: *Sellers et al. v. Lofton*, 149 Miss. 849 (1928); and wrongful ejection: *Alabama and Vicksburg Railway Co. v. Lucretia Holmes*, 75 Miss. 371 (1897), *Yazoo and Mississippi Railroad Company v. Walls*, 110 Miss. 256 (1915).

[15] Future research may reveal whether such suits increased into the civil rights movement. If so, they could be considered what Masur calls "upstart claims," since they preceded *Brown* I, *Brown* II, the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968, which dismantled legal Jim Crow.

these claims were statements about some Blacks' unwillingness to accept white violence passively and Blacks' determination to hold whites and companies accountable, even economically, for whites' abuse of Black people.

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Reconstruction was a period of rebirth, transformation, and experimentation in the United States. A country that had enslaved Black Americans for hundreds of years had to grapple with ways to incorporate newly freed slaves into the nation. Blacks, whites, state governments, and federal governments had to negotiate the meaning of federalism and citizenship in the wake of the Civil War. Black Americans pushed for and seized rights that they deserved as free people and citizens. At the same time, white Americans pulled and struggled to maintain the privileges they had always enjoyed and reasserted their position at the top of the racial hierarchy.

During Reconstruction, Congress passed several crucial pieces of legislation and amended the Constitution to protect the rights of Black people after the Civil War. The Civil Rights Act of 1866 guaranteed that citizens of "every race and color," regardless of their "previous condition of slavery or involuntary servitude," would "have the same right to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens."[16] The Fourteenth Amendment promised Black Americans federal protection of their privileges and immunities but did not define what those were. Although states failed to protect Black Americans' other

[16] *An Act to protect all Persons in the United States in their Civil Rights, and furnish the Means of their Vindication*, Chapter XXXI, U.S. Statutes at Large (1866): 27-30, 39th Congress, 1st session. This is also known as the Civil Rights Act of 1866.

constitutional rights, like the right to vote and the right to serve on juries, Black civil suits suggest that southern states, those which seceded from the Union, seemed to have protected Black people's right to sue, present evidence, testify in court, and to make and enforce contracts. The Fourteenth Amendment offered federal protection against state violations of all persons' rights to due process before the law. The tort cases considered in this dissertation were heard under state law.[17]

During the promising years following the Civil War, Blacks and whites set forth very different visions of race, gender, and social and political rights in the South. Some white Southerners asserted their vision through violence, coercion, and murder. Black voting persisted into the 1880s, and the Populist Party picked up steam in the 1890s. Still, from 1895 to 1900, lynching spiked dramatically, with an average of 101 Black Americans lynched per year in the United States. As the number of lynchings rose, Jim Crow laws and segregation percolated "through most spheres of Southern life."[18] The threat of racial violence against Black Americans was real, and white vigilantes did not hesitate to use force to control ambitious, successful, and defiant Black Americans and Black communities.[19]

While Democrats used disfranchisement and legislation to dismantle much of the progress made during Reconstruction, federal judges and Black Americans grappled with the meaning of their citizenship under Jim Crow. Federal courts ruled that segregation was constitutional; Black Americans faced exclusion from juries, disfranchisement, and the

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[17] The Fifteenth Amendment guaranteed American citizens' right to vote regardless of race, color, or previous condition of servitude. Finally, the 1875 Civil Rights Act prohibited jury discrimination. Ideally, these federal regulations would have incorporated black Americans into the body politic, but federal legislation did not always quell white Southerners' resistance.
[18] Klarman, *From Jim Crow to Civil Rights*, 3.
[19] Leon F. Litwack, *Trouble in Mind: Black Southerners in the Age of Jim Crow* (New York: Knopf, 1998).

defunding of Black educational institutions.[20] In the face of an unstable political reality, the reversal of Reconstruction progress, and an increase in violence and intimidation, Blacks in the South and communities across the United States asserted their personhood and challenged attacks upon their physical persons. This dissertation traces how these brave men and women molded discourse around personhood and litigated to assert their right to security of person.[21]

Black plaintiffs' claims asserted their "fundamental rights of personhood."[22] During the time, civil rights were limited, while rights of personhood were more expansive. According to Welke's later work, "personhood…rests most fundamentally on legal recognition and protection of *self*-ownership, that is, of a right to one's person, one's body."[23] One element of personhood that stemmed from the principle of self-ownership was a "right to be free from physical abuse or coercion without due process of law."[24] When Black plaintiffs sued white-owned companies, municipalities, surety companies, and individual whites for incidents that involved physical violence, they asserted their legal personhood as well as their right to be free from physical abuse without due process of the law. Though they did not frame their arguments in terms of legal personhood, their suits demonstrated an understanding of self-ownership and a right to live free from extralegal physical abuse. The "protection of these basic rights of personhood requires, in

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[20] Klarman, *From Jim Crow to Civil Rights*.
[21] In 1947 Du Bois and the NAACP made an appeal to the United Nations "ask that organization in a proper way to take cognizance of a situation which deprives this group of their rights as men and citizens." W. E. B. Du Bois and the National Association for the Advancement of Colored People, *An Appeal to the World!: A Statement on the Denial of Human Rights to Minorities in the Case of Citizens of Negro Descent in the United States of America and an Appeal to the United Nations for Redress* (New York, 1947), 13. https://www.aclu.org/sites/default/files/field_document/appeal_to_the_world.pdf
[22] Barbara Young Welke, *Law and the Borders of Belonging in the Long Nineteenth Century United States* (New York: Cambridge University Press, 2010), 7.
[23] Welke, *Law and the Borders of Belonging in the Long Nineteenth Century United States*, 3. Original emphasis.
[24] Welke, *Law and the Borders of Belonging in the Long Nineteenth Century United States*, 3.

turn, basic civil rights, including the right to sue and be sued."[25] These plaintiffs were able to assert their rights of personhood by suing in court.[26]

Under Jim Crow, "Blacks took the statutes that long had been seen as the source of their oppression and wielded them in pursuit of individual rights. The act of bringing suit alone was an assertion of status."[27] Black plaintiffs did assert status and their rights as citizens when they brought civil suits, but they also challenged the notion that white people could abuse them without repercussions. They asserted the rights of personhood of which Jim Crow sought to strip them: the right to "be free from physical abuse or coercion without due process of law."[28]

This dissertation moves away from the integration-segregation binary by examining state-level civil suits between individuals or individuals and companies rather than federal cases where Black Americans sued the state. Much of the historiography on Black litigation during Jim Crow, including work by Tomiko Brown-Nagin, Risa Goluboff, and Michael Klarman, has focused on civil rights cases, constitutional claims, and the Supreme Court.[29] This dissertation, however, moves away from constitutional and civil rights claims to offer an alternative narrative of Jim Crow. In this project, I pull insights from nineteenth-century legal scholarship forward into the twentieth-century to reexamine litigation during the Jim Crow era. By focusing too heavily on

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[25] Welke, *Law and the Borders of Belonging in the Long Nineteenth Century United States*, 3. There are multiple types of civil rights during this period. My plaintiffs are exercising some of the rights guaranteed under the 1866 Civil Rights Act. Schmidt, "Legal History and the Problem of the Long Civil Rights Movement."

[26] This dissertation is not explicitly about civil rights, but the idea of legal personhood and the need for civil rights to protect the right to self-ownership seems to explain the transition from asserting their rights of self-ownership through civil suits to the claim that one's civil rights might have been violated during a violent encounter with a police officer or bus driver.

[27] Welke, *Recasting American Liberty*, 354, 359.

[28] Welke, *Law and the Borders of Belonging in the Long Nineteenth Century United States*, 3.

[29] Tomiko Brown-Nagin, *Courage to Dissent: Atlanta and the Long History of the Civil Rights Movement* (New York: Oxford University Press, 2011). Klarman, *From Jim Crow to Civil Rights.* Risa Lauren Goluboff, *The Lost Promise of Civil Rights* (Cambridge, Mass.: Harvard University Press, 2007).

cases against the state or constitutional claims, we limit Black American legal culture. Some Black Americans gained legal knowledge that went beyond civil rights and constitutional law, and it is their stories that I want to recover. Civil rights and discrimination cases were necessary for gutting Jim Crow, but so were the lawsuits that slowly forced courts to recognize that racial violence—under certain circumstances—was wrong. Under the guise of tort law, my plaintiffs resisted Jim Crow.

Black newspapers were a forum for protest and activism and a means of relaying and interpreting legal knowledge. By merging activism and legal networking, Black newspapers helped turn what would have been individual suits into a collective Black experience. Black readers who may not have experienced the abuse named in a given suit were able to follow, learn from, and cheer on Black plaintiffs featured in Black newspapers. This collective experience of abuse and resistance through litigation was a precursor to twenty-first-century social media activism as a means of resisting the extrajudicial killing of unarmed Black Americans.

Much of the historiography on the Black press focuses on individual publications, like the *Chicago Defender*, or prominent editors, or the Black press as a collective. The work of historians like Frederick Detweiler, Roland E. Wolseley, Julius E. Thompson, and others is important because it has provided historians with a foundational knowledge of the Black press.[30] These works helped shed light on the Black press's commitment to principles like uplift and racial solidarity, ideas that I argue encouraged the Black press to follow and report on cases, civil

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[30] Frederick German Detweiler, *The Negro Press in the United States* (Chicago, Ill.: University of Chicago Press, 1922). Roland Edgar Wolseley, *The Black Press, U.S.A.* 2nd ed. (Ames: Iowa State University Press, 1990). Julius Eric Thompson, *The Black Press in Mississippi, 1865-1985* (Gainesville: University Press of Florida, 1993). William G. Jordan, *Black Newspapers and America's War for Democracy, 1914-1920* (Chapel Hill: University of North Carolina Press, 2001).

and criminal, involving Black people. Newer scholarship on Black newspapers, like the work of historians Fred Carroll, D'Weston Haywood, and Thomas Aiello, has invited us to think beyond northern and national Black newspapers and to think about southern Black newspaper networks and the cultural impacts of Black newspaper coverage beyond racial uplift and traditional narratives about the Black press.[31] Aiello suggests that Black newspapers constituted a network between Black communities. But not only did these newspapers create a national network, Haywood argues that Black people "could see [themselves] in the Black press."[32] These authors show that the Black press was the heartbeat and reflection of Black America. But these authors do not give an in-depth analysis of a Black legal culture in the Black press or how Black papers covered cases of lynching. In fact, when these newspapers reported on the abuse of Black people, they often did so in the context of legal action and damage suits.

By looking at national and regional Black newspapers, this dissertation examines how Black newspapers covered civil cases resulting from violent interracial altercations where whites were the aggressors. In its coverage of these civil cases, the Black press helped mold Black legal culture and helped connect victims to legal help by tapping into the grapevine or serving as the grapevine. When Black readers read columns like "Defender Legal Helps" or "Legal Proceedings," Black people could see themselves, their personal experiences. When they read articles about Black people suing white people, they could likely envision themselves suing. It is

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[31] Fred Carroll, *Race News: Black Journalists and the Fight for Racial Justice in the Twentieth Century* (Urbana: University of Illinois Press, 2017). D'Weston Haywood, *Let Us Make Men: The Twentieth-century Black Press and a Manly Vision for Racial Advancement* (Chapel Hill: University of North Carolina Press, 2018). Thomas Aiello, *The Grapevine of the Black South: The Scott Newspaper Syndicate in the Generation Before the Civil Rights Movement* (Athens: University of Georgia Press, 2018).
[32] Haywood, *Let Us Make Men,* 3.

possible that Black people even sought out these papers to see how other Black people were using the law to combat Jim Crow and white abuse.

Black newspapers were not the only sources of legal information or hope in the face of Jim Crow; Black Americans also drew upon the resources of racial-justice organizations. Jim Crow gave rise to many organizations intended to help Black Americans fight against racial oppression and discrimination, including the NAACP. Much of NAACP historiography focuses on the NAACP's test cases and civil rights litigation or the NAACP's contribution to the Civil Rights Movement as a whole. Organizational histories of the NAACP have contextualized the Civil Rights Movement and the NAACP's role in the movement.[33] Others have examined the NAACP's efforts to help Black people living under Jim Crow. Much of that work focuses on challenges to segregation, disfranchisement, and peonage, under the Thirteenth and fourteenth amendments.

When I set out to write this project, I imagined that the NAACP had been largely useless to Black Americans who were not at the center of test cases. I found quite the opposite to be true. I began this research by reviewing the branch records from the Jackson, McComb, Meridian, Natchez, Vicksburg, and Yazoo City, Mississippi NAACP Branches, though I did not find many letters from Black Mississippians seeking legal advice from the NAACP.[34] Rather than write

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[33] Patricia Sullivan, *Lift Every Voice: The NAACP and the Making of the Civil Rights Movement* (New York: New Press, 2009). Carle's work traces the organizing roots of the NAACP back to the post-Reconstruction Era. Chapters 11 and 12 highlight the founding of the NAACP as a part of a longer organizing history. Carle argues that the NAACP was born out of a post-Reconstruction Era organizing tradition in a moment that was ripe for an interracial coalition. Susan Carle, *Defining the Struggle: National Organizing for Racial Justice, 1880-1915,* (New York: Oxford University Press, 2013).

[34] I read through 1,095 pages from six Mississippi Branch Files and a General Mississippi File. "McComb, Mississippi Branch Operations, 1944-1955," Papers of the NAACP, Part 26: Selected Branch Files, 1940-1955, Series A: The South, Group II, Series C, Branch Department Files, Geographical File, Folder 001493-014-0418. *ProQuest History Vault's NAACP Papers*. "Vicksburg, Mississippi Branch Operations, 1944-1955," Papers of the

their local branches about the abuse they had suffered at the hands of whites, some Black victims seemed to have written the National Office of the NAACP located in New York City. Strikingly, the National Office responded, often by opening up the NAACP's legal network to letter-writers. This dissertation engages with the work of historians like Kenneth Mack and Mark Tushnet by arguing that the NAACP assisted African Americans in their legal struggles beyond test cases and cause lawyering.[35] The NAACP is known for its civil rights litigation and its fight against segregation. Still, the NAACP also assisted Black people with legal issues unrelated to segregation and discrimination by offering them legal advice, connecting them with sympathetic attorneys, and mediating fraught attorney-client relationships. Sympathetic or cooperating attorneys, as Tushnet coined them, were presumably amenable to Black victims' claims or, at the very least, were willing to take on Black cases despite outside pressure or intimidation from whites.

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NAACP, Part 26: Selected Branch Files, 1940-1955, Series A: The South, Group II, Series C, Branch Department Files, Geographical File, Folder 001493-014-0856. *ProQuest History Vault's NAACP Papers*. "Jackson, Mississippi Branch Operations, 1944-1955," Papers of the NAACP, Part 26: Selected Branch Files, 1940-1955, Series A: The South, Group II, Series C, Branch Department Files, Geographical File, Folder 001493-014-0284. *ProQuest History Vault's NAACP Papers*. "Meridian, Mississippi Branch Operations, 1944-1955," Papers of the NAACP, Part 26: Selected Branch Files, 1940-1955, Series A: The South, Group II, Series C, Branch Department Files, Geographical File, Folder 001493-014-0458. *ProQuest History Vault's NAACP Papers*. "Yazoo City, Mississippi Branch Operations, 1944-1955," Papers of the NAACP, Part 26: Selected Branch Files, 1940-1955, Series A: The South, Group II, Series C, Branch Department Files, Geographical File, Folder 001493-015-0001. *ProQuest History Vault's NAACP Papers*. "Natchez, Mississippi Branch Operations, 1944-1955," Papers of the NAACP, Part 26: Selected Branch Files, 1940-1955, Series A: The South, Group II, Series C, Branch Department Files, Geographical File, Folder 001493-014-0656. *ProQuest History Vault's NAACP Papers*. "Mississippi Branch Operations, 1941-1955," Papers of the NAACP, Part 25: Branch Department Files, Series A: Regional Files and Special Reports, 1941-1955, Group II, Series C, Branch Department Files, Annual Branch Activities Reports, Folder 001489-019-0001. *ProQuest History Vault's NAACP Papers*.

[35] Kenneth Walter Mack, *Representing the Race: The Creation of the Civil Rights Lawyer* (Cambridge, Mass.: Harvard University Press, 2012). Mark V Tushnet, *Making Civil Rights Law: Thurgood Marshall and the Supreme Court, 1936-1961* (New York: Oxford University Press, 1994).

This dissertation also intervenes in the historiography related to the development of tort law by examining the ways that Black Americans' experiences and litigation helped shape tort law. Legal historians like Lawrence Friedman, Morton Horwitz, Christopher Tomlins, and John Witt, have studied the development of law in the nineteenth century, focusing on American law in broad strokes, the intellectual history of American law, and workmen's compensation and accidental injury.[36] Those historians do not consider the impact of people of color on the development of nineteenth-century law and tort law specifically. Black people's experiences of oppression entered the courtroom with them and undergirded their legal claims. Black persecution helped define the contours of tort law.

This dissertation thus builds on an effort by legal scholars to bring critical theory to the law of torts.[37] Work by Martha Chamallas and Jennifer B. Wriggins recognizes that tort law has been a site of equality, but it also explores the ways that race, sex, and gender disadvantage minorities and women in tort litigation.[38] Chamallas and Wriggins also examine the ways that race affects how courts view causation and valuation, which inherently disadvantages minorities.[39] Their work underscores how race, segregation, and slavery changed the ways that courts saw causation in tort cases and assessments of injuries when the courts awarded damages. In their work, Chamallas and Wriggins highlight and expand on theoretical concepts like

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[36] Lawrence Friedman, A History of American Law (New York: Simon & Schuster, 1973); Morton Horwitz, *The Transformation of American Law, 1870-1960: The Crisis of Legal Orthodoxy*, (New York: Oxford University Press, 1992); Christopher L. Tomlins, *Law, Labor, and Ideology in the Early American Republic* (New York: Cambridge University Press, 1993); John Fabian Witt, *The Accidental Republic: Crippled Workingmen, Destitute Widows, and the Remaking of American Law* (Cambridge, M.A.: Harvard University Press, 2006).
[37] Martha Chamallas and Jennifer B. Wriggins, *The Measure of Injury: Race, Gender, and Tort Law* (New York: New York University Press, 2010), 8, 26-27.
[38] Chamallas and Wriggins, *The Measure of Injury*, 3
[39] Chamallas and Wriggins, *The Measure of Injury*, 4, 7.

determining causation and devaluing injury based on race, which helps scholars understand Black Americans' intentional tort cases.

Despite the disadvantages of race and gender, Blacks living under Jim Crow took their chances. Welke's historical groundwork and Chamallas and Wriggins' theoretical frameworks act as guides in investigating Black people's role in shaping tort law. As Welke points out, "Blacks took the statutes that long had been seen as the source of their oppression and wielded them in pursuit of individual right."[40] What did it mean that Black people were using tort and negligence law this way?

### *Terms & Definitions*

Some key terms in this dissertation need to be defined. This dissertation examines "litigation strategies," "Black legal culture," and the relationship between the two. In this dissertation, litigation strategies are the specific legal maneuvers devised, selected, and used by plaintiffs and their lawyers. These strategies include the selection of formal causes of action and specific forms of characterization. One common litigation strategy was to portray white perpetrators as drunken, belligerent, uncivilized, and unreasonable, and Black victims as respectable, as proper, as peaceable, and as deferential citizens and patrons.

I borrow the definition of legal culture from legal scholars David Nelken and Kitty Calavita. According to Nelken, "legal culture, in its most general sense, is one way of describing stable patterns of legally oriented social behaviour and attitudes."[41] He also refers to legal culture

[40]Welke, *Recasting American Liberty*, 358.
[41] David Nelken, "Using the Concept of Legal Culture," *Australian Journal of Legal Philosophy* 29, no. 1, (2004), 1.

as "transfers," which is useful in trying to characterize Black people's transfer of legal information through newspapers and informal "word of mouth" networks.[42] In the newest edition of her *Invitation to Law & Society*, Kitty Calavita engages with the concept of legal culture, using Naomi Mezey's phrase "law as culture as law" to capture the idea. Calavita adopts Stewart Macaulay's definition of culture which posits that "culture is not a tangible thing [but instead] is both ideas in people's head and the stock of symbols and stories recognized by at least some members of a group.'"[43] Therefore, legal culture is how people represent, talk about, remember, and use the law.

Black legal culture, as I have defined it, was black people's collective knowledge and subjective sense of what they could do with law and the accessibility of legal institutions and legal language, a sense that developed from Black Americans' decisions about which legal strategies to use. Black legal culture also encapsulated Black people's efforts to make legal language, legal proceedings, and court processes more accessible to Black Americans across the country. Black newspapers developed and nurtured that legal culture when they reported on and editorialized about Black Americans' civil suits, showing Black Americans that they could bring and win civil suits for racial violence, and exposing Black readers to various litigation strategies. This project analyzes newspapers as both windows into courtrooms and transmitters of Black legal culture. If culture "is both ideas in people's head and the stock of symbols and stories recognized by at least some members of a group," then newspapers picked up the ideas

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[42] Nelken, "Using the Concept of Legal Culture," *Australian Journal of Legal Philosophy* 29: 1, 2004, 4.
[43] Kitty Calavita, *Invitation to Law & Society: An Introduction to the Study of Real Law*, 2nd edition (Chicago, Ill.: University of Chicago Press, 2016), 175, 182.

expressed in courtrooms, interpreted those ideas and the symbolism of those cases, and circulated that information to Blacks around the country.[44]

*Scope, Sources, & Methods*

This dissertation begins as a state study of Mississippi, then expands to include Black America. I focus on Mississippi in chapters one and four in part because of its history of Jim Crow. A culture of white supremacy and Black oppression existed long before Jim Crow laws were formally added to Mississippi statute books. Mississippi was one of the first states to institute Black codes, and the Mississippi Plan was an organized effort to reverse Black people's gains during Reconstruction. The state became the site of brutal vigilante violence and one of the most repressive criminal justice regimes in the South. In addition to the oppressive nature of its criminal justice system, white violence against Blacks usually went unpunished. From a research perspective, Mississippi was useful because its case records have survived relatively intact, and often include published opinions as well as trial transcripts, briefs, exhibits from the trial, and other material not found in case reporters. Mississippi's history of racial oppression and hostile criminal courts combined with a thorough archive made Mississippi the perfect window into the broader phenomenon of Black people challenging Jim Crow violence by suing white companies and white individuals.

This dissertation uses case records from the Mississippi State Supreme Court between 1880 and 1953 – housed in the Mississippi Department of Archives and History in Jackson, Mississippi (MDAH) – to examine Black litigation strategies, and judges and juries' responses to

[44] Kitty Calavita, *Invitation to Law & Society*, 180.

those strategies. These records include briefs written by attorneys, justices' published opinions, complaints filed by the plaintiffs' lawyers, and full transcripts of testimony from the trials.[45] Additionally, Mississippi stenographers made notes about related cases in the case record. This quirk of professional practice allowed me to find three additional cases that fit my criteria. In chapter one, I read these records as a cultural historian, using briefs, trial testimony, and other parts of the case file or record to make my argument. In chapter four, however, I focus on reported opinions and treatises to argue that Black Americans helped shape legal doctrine.

Because Black newspapers, railways, and organizations like the NAACP connected Black communities throughout the United States, this dissertation encompasses Black communities and Black people beyond Mississippi's borders.[46] To explore a broader discourse among Black Americans about suits for incidents involving white-on-Black violence, I use Black newspapers from across the country, including the *Atlanta Daily World*, *Atlanta Constitution*, *Chicago Defender*, *Cleveland Gazette*, *New York Age*, *Plaindealer*, and *Weekly Pelican*. I used digital collections of historical Black newspapers to carry out my newspaper research remotely. Some of those papers were accessed through *Readex*, a division of *Newsbank* that holds a digital

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[45] My preliminary case universe was drawn from the legal database LexisNexis using various search strings. I began by searching for cases between 1890-1920, but I eventually adjusted the parameter to 1880 to 1953. The extended time period yielded more cases, but the periodization also allows me to better track change over time in the frequency of cases and litigation strategies. I eliminated criminal cases and keeping only the civil cases where blacks sued whites, companies, and corporations, and vice versa. From here, I refined my search to capture cases where insults, violence, or false imprisonment were a part of the complaint. The string picks up on different variations of terms used to describe African Americans in order to pick up African American victims where race is mentioned. I also adjusted the search string to pick up assaults, verbal and violent, as well as cases involving lynch mobs. (((assault! OR batter! OR lynch!) and (nigger! OR darkey! OR darkie! OR african! OR negro! OR colored!)) and Date(geq(1880) and leq(1930))). LexisNexis is not always accurate, and search strings miss cases, but I was able to find cases that were not included in MDAH.

[46] I have found it difficult to commit to calling this project a national, state, or local study because it does not fit those categories. I think that it is safe to call it a state study, since the cases will be pulled from Mississippi, but it is more than that. Mississippi does not represent the entire South or all black people everywhere, but newspapers and "mass communication" were not bound by the physical borders of Mississippi. I think that the most accurate description of this project is to call it a story of Mississippi and the black Southern diaspora.

collection of African American Periodicals. Similarly, I used *ProQuest*'s Black Historical Newspapers database. Therefore, the papers and articles represented in this dissertation were those that were digitized during the years that I carried out research for this project.[47]

I used keyword searches of digitized newspapers to locate articles related to my subject matter. I keyword-searched combinations of the words "assault," "battery," "beat," "conductor," "damages," "lynch," "sue," and "tort." After each unique combination of keywords in the keyword search, I viewed each entry that resulted. I discarded articles about crimes and damages caused by natural disasters and focused on articles about damage suits for torts, particularly those involving violence and white defendants. Articles that suggested someone initiate litigation, reported a threat to sue, or reported that a potential litigant was thinking about suing were kept along with articles that covered cases that had already commenced. These papers also yielded advice columns and short funny stories related to tort law and suing.

While Black newspapers represented one kind of network among Black readers, potential litigants, and legal professionals, the NAACP was another. After its founding in 1909, the NAACP mobilized its legal network to help Black people across the country. I began my preliminary research into the NAACP's files by using ProQuest's History Vault, which contains a digitized selection of NAACP materials. Guided by my research on civil suits for interracial

[47] Since I began revising this dissertation for my defense, the MDAH has begun working with the Library of Congress, through "Chronicling America," to digitize its remaining black newspapers. Prior to digitization, these could only be viewed on microfilm in MDAH's reading room or duplicates purchased by the reel (at $45 per reel). As I revise chapter 2 for the book manuscript, I will incorporate those newly digitized newspapers from Mississippi, along with religious journals and more newspapers from South Carolina. For the book I will incorporate primary sources from South Carolina to make the project a comparative study and to potentially make it more representative. Dr. Laura F. Edwards does something similar with North and South Carolina in her work *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). There is, however, a conversation that might be had about what is lost and what is gained in a comparative study. The South Carolina archives are close to my new institution, and they are beckoning me to engage with them for this project.

incidents involving violence, I searched these records for material on lynching, incidents on common carriers, beatings, and other violent situations. In addition to searching for themes related to violence, I also searched for Mississippi Branch Files.

Within these materials, I examined digital materials under the heading "Branch Department, Branch Files, and Youth Departments Files," "Special Subjects," and "Major Campaigns—Legal Department Files."[48] In the branch files collection, I keyword searched Mississippi, to see how Black Mississippians were engaging with the NAACP and its Mississippi branches. From this keyword search, I narrowed the search results to those resources dated before 1954, the year that the United States Supreme Court ruled on *Brown vs. Board of Education of Topeka, Kansas* (1954), and limited the geography to Mississippi.[49] The branch files yielded twenty-eight files, five that were related to Mississippi.[50] Additionally, I searched these files using the title keyword search terms "Mississippi Branch Operations," limiting the files to those created before 1954. This search yielded seven folders of documents from Mississippi Branches of the NAACP, including a folder containing general Mississippi Branch

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[48] ProQuest's library guide for its NAACP Papers holdings can be found at https://proquest.libguides.com/historyvault/NAACP.

[49] The exact date range was from January 1, 1913 to December 31, 1953.

[50] The related files from this search yielded 724 pages of archival material. The relevant files were "Mississippi State Conference, 1946-1953," Papers of the NAACP, Part 26: Selected Branch Files, 1940-1955, Series A: The South, Group II, Series C, Branch Department Files, Geographical File, Folder 001493-015-0300. *ProQuest History Vault's NAACP Papers*. "Southeast Regional Office Background and Establishment, 1949-1953," Papers of the NAACP, Part 25: Branch Department Files, Series A: Regional Files and Special Reports, 1941-1955, Group II, Series C, Branch Department Files, Regional Offices, Folder 001489-001-1953. *ProQuest History Vault's NAACP Papers*. "Southeast Regional Office Reports, 1951," Papers of the NAACP, Part 25: Branch Department Files, Series A: Regional Files and Special Reports, 1941-1955, Group II, Series C, Branch Department Files, Regional Offices, Folder 001489-005-0001. *ProQuest History Vault's NAACP Papers*. "Mississippi Branch Operations, 1941-1955," Papers of the NAACP, Part 25: Branch Department Files, Series A: Regional Files and Special Reports, 1941-1955, Group II, Series C, Branch Department Files, Annual Branch Activities Reports, Folder 001489-019-0001. *ProQuest History Vault's NAACP Papers*. "Youth Council Activities in Mississippi, 1937-1939," Papers of the NAACP, Part 19: Youth File, Series A: 1919-1939, Group I, Series E, Youth File, Folder 001461-004-0688. *ProQuest History Vault's NAACP Papers*.

Operations information and folders from McComb, Natchez, Jackson, Meridian, Vicksburg, and Yazoo City.[51]

To capture documents containing information about attorneys and damage suits in Mississippi, I carried out a separate keyword search of ProQuest History Vault's entire collection of NAACP Papers. For this search, I used the terms Mississippi AND damages AND attorney. I narrowed the results to those between 1909 and December 31, 1953, to fit the dissertation's periodization. This search yielded nine hundred eighty-six results. I looked through the Transportation Complaints and correspondences from National Office leaders. I found some promising material, but not enough to substantiate a historical argument.

In search of African Americans' direct appeals to the NAACP for legal guidance, I sought materials from the complete collection of the NAACP papers housed at the Library of Congress (LOC). The NAACP Papers are a part of the LOC's Manuscript Collection in Washington, D.C. Letters from Black Americans to the NAACP's National Office in New York and the National Office's responses created a web of legal networking with the National Office at the center. This dissertation uses the NAACP Papers from the National Office in New York—in addition to other NAACP files—to trace the transformation of Black legal culture.

I chose to look at cases rejected by the NAACP, or those cases where the NAACP, the Legal Redress Committee, and the Legal Defense Fund did not litigate on behalf of plaintiffs, to avoid material on test cases, or those cases that advanced the NAACP legal agenda. Using Part I, Legal File, Cases Rejected, 1919-1939 of the NAACP Papers, I went through boxes D26 through

[51] These seven files contain 1,116 pages of archival material.

D34, which contained ninety-two folders of archival material.[52] I did not, however, look at the topical files in the "Cases Rejected" collection because I believed that the chronological files would offer a sizeable sample of correspondences between Black potential litigants and the NAACP's National Office.

I leafed through each folder in boxes D26 through D34, only noting materials that dealt with civil matters, offered networking guidance, offered legal advice, and form rejections.[53] Sometimes letter writers send "evidence" of their grievances with their letters. Some of these letters to the NAACP were type-written on professional letterhead, and other times letters were written in pencil on envelopes or scraps of paper. I even came across letters addressed to Thurgood Marshall, who was a cooperating attorney alongside the NAACP in private practice, later a staff attorney for the NAACP, founder of the Legal Defense Fund, and future Supreme Court Justice.

*Limitations*

While I have chosen my research methods for a variety of practical and scholarly reasons, my methodology is not without limitation. By only using cases from the Mississippi State Supreme Court, chapter one may not be representative of Black Americans across the country.

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[52] National Association for the Advancement of Colored People Records, 1842-1999, Library of Congress (hereafter LOC). Part I: Legal File, 1910-1941, Cases Rejected, 1916-1939. The finding aid for this collection can be found at https://hdl.loc.gov/loc.mss/eadmss.ms008007.

[53] I made note of form letters from the NAACP that declined to help letter-writers to have an understanding of the language and tone used in these rejection letters. These form rejections were helpful alongside more personalized rejections and letters offering advice and networking guidance because it became clear that not all of the NAACP's rejections of non-test cases were brush-off letters. Sometimes individuals wished that they could help, but understood that the NAACP did not have the resources to litigate on behalf of a letter-writer. In other cases, the NAACP may have used the form letters to brush off letter-writers, but contrary to the historiographical narrative, the NAACP was not exclusively concerned with its litigation agenda.

Additionally, by only looking at appellate records, rather than using cases from county courts, the case sample is small and only represents exceptional cases.

Furthermore, by looking at newspapers from Black American communities across the country, more than Black papers from Mississippi, I lose Black Mississippians' voices outside of the courtroom. Despite this methodological limitation, the available evidence suggests that Black Americans had a network of information that allowed information to flow in and out of Mississippi. Just because the articles recovered from the archive were not from Black Mississippi newspapers does not mean that the stories did not come from Mississippi or resemble stories and incidents occurring in Mississippi.

Finally, some readers might wonder why the dissertation does not use the papers of state and local chapters of the NAACP. The NAACP Papers Collection at the Library of Congress contains state and local chapter files, but those files rarely include letters about litigation. Members wrote their state and local branches to discuss administrative matters, not legal issues. Despite these limitations, this project pushes our understanding of Black resistance, Black experiences in Jim Crow courts, Black people's role in building on tort case law, and the role that the NAACP played in advancing causes important to individual Black people.

*Chapter Outline*

This dissertation is organized thematically. Chapter One uses complaints, briefs, and trial testimony to explore Blacks' choice to sue. This chapter lays out the various legal strategies Black Americans and their lawyers employed and traces the change in these strategies over time. Black Americans began by using personal injury, negligence, and the common law of common

carriers to make their claims against companies, counties, and individuals. Over time, however, their strategies began to incorporate wrongful death, claims against surety companies, and other causes of action. Additionally, Black American men and women tailored their legal strategy to their respective genders, drawing on the expectations of whites to determine how to perform their intersectional roles as Black men or Black women.

Chapters two and three move out of the courtroom and into the intellectual, social, and political realms of Black American life. Chapter Two provides a brief discussion of the history of Black print culture, particularly in the South. It uses Black newspaper coverage of Black-initiated tort cases to show how the Black press exposed readers to potential litigation strategies and sympathetic lawyers while also encouraging Black Americans to stand up for themselves in the face of racial violence. The chapter argues that Black newspapers were instrumental in shaping and transmitting Black legal culture and Black legal knowledge. Chapter Three contends that the NAACP's National Office acted as a networking agent, connecting victims with local branches and local attorneys, sometimes even assisting in managing the relationships between attorney and client. With the help of the NAACP and its legal network, there was hope for Black victims whose cases did not qualify as test cases.

The final chapter focuses on legal doctrine. It examines how judges and juries interpreted Black American plaintiffs' arguments, considering Mississippi's customary oppression of Black Mississippians from 1880 to 1953, and on how Blacks' litigation shaped case law. The cases examined in this dissertation were affirmative or neutral reference points in 96 Mississippi cases and influenced over 117 cases outside of Mississippi. Black plaintiffs in Mississippi took their local experiences and helped shape judges' interpretation of tort doctrines. On appeal, state and

federal Supreme Court justices sometimes made law in response to litigation initiated by Black plaintiffs. The contours of employer liability were fleshed out in part by cases initiated by Black plaintiffs. In bringing these suits, these plaintiffs, and their experiences, reached beyond their local communities and state appellate courts to influence or, at the very least, contribute to legal decisions across the United States from 1880 to 1953.

The scope of these chapters expands and contracts. The first chapter is about Black people's litigation strategies in Mississippi. Because tort law is state-specific, it was important to focus on one state and the contours of its judicial system, case law, and statutes. Chapter one describes the plaintiffs and their lawyers, general patterns in cases for torts like civil assault and battery, negligence, personal injury, property damage, and wrongful death. The first chapter also introduces the main doctrinal rules and shows how plaintiffs and their lawyers crafted stories of respectability and vulnerability that took advantage of doctrinal rules. The scope of chapters two and three expand outward, looking at cases and situations from across Black America. These chapters include all of those torts included in chapter one, plus lynching. Chapter four is a doctrinal chapter. It contracts in scope and focuses on the tort cases from Mississippi as starting points for an analysis of how Black Mississippians'—and Black Americans'—cases contributed to the formation and refinement of tort doctrine surrounding the common law of common carriers and the legal principle of *respondeat superior*. The most important cases in this chapter are those that involved wrongful acts committed by common carrier employees.

# Chapter 1: Righting Public Wrongs

The sun had likely already set when Aaron Royston, an African American man, purchased a first-class ticket from Holly Springs, Mississippi, to Water Valley, Mississippi.[54] The train did not have separate accommodations for Black passengers, as was required by the state's separate coach law passed on March 2nd, 1888, so Royston and his Black companion took seats in a first-class coach occupied by white passengers. Sometime during the trip, the conductor, without explanation, told Royston to move to the "Smoker Car," which railroads generally designated for Black passengers. Royston found the car full of smoke, which, he later said, made him sick. He remained on the platform between the cars, where the conductor allegedly pistol-whipped him for not complying with his order. Royston sued the railroad company for negligence for allowing the alleged assault. The jury ruled against Royston, likely because they believed the testimony that Royston had been drunk, boisterous, belligerent, and exhibited behavior unbecoming of a first-class passenger. Royston appealed to the Mississippi State Supreme Court, which affirmed the lower court's ruling.[55] Royston lost his appeal.

On March 10th, 1912, Lawson Burford, Jr. made his way home to a basement apartment on W. R. Cole's property.[56] The local board of public works and affairs had recently appointed Captain Z. T. Terry, a white police officer, to patrol local citizens' property after a series of break-ins and an upsurge in mischief.[57] Terry, having seen Burford the night before, approached

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[54] Water Valley is an industrial community, a train hub with a large Swedish population. Train companies recruited Swedish engineers to come work in Water Valley to repair and maintain the trains. During this period there was a lot of industry in Mississippi and that communities were more dynamic and complex than just black and white.

[55] *Royston v. Illinois Central Railroad Company*, 67 Miss. 376 (1889).

[56] *Terry et al. v. Burford*, 131 Tenn. 451 (1914).

[57] "Private policemen, like Terry, were employed and paid by the citizens whose property they were detailed to protect, and were subject to the orders of those employing them." "Such special policemen shall each give bond to the mayor and city council in the sum of one thousand dollars, conditioned for the faithful discharge of their duties,

Burford on the night of March 10th to determine whether he was trespassing on Cole's property. When Burford asserted "that he lived there, and that he was Mr. Cole's chauffeur," Terry ordered Burford to prove his residency by opening the door to the apartment. Terry allegedly told Burford, Jr. "that if he did not, he would kill him."[58] When Burford refused, Terry fired two or three shots, leaving Burford "on the stairway leading from the basement to the upper part of the house in a dying condition."[59] Burford died that night.[60] His father sued Terry and the property owners who hired him to patrol their property at night in civil court for wrongful death.[61] At the trial level, an all-white jury awarded Lawson Burford, Sr., $3,500 in damages, despite the off-duty policeman's claims "that he had exercised his right to self-defense" in the killing.[62]

These cases highlight Black Americans' legal maneuvering in civil courts and raise questions about the relationship between African Americans and the courts under Jim Crow. In one case, a Black person filed a civil suit against a company for violence perpetrated by its white employee. In the other case, a Black plaintiff sued a white police officer and his employer for wrongful death after the officer murdered the plaintiff's son. How did Royston and Burford, Sr.

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and for the use and benefit of any person who may be wrongfully damaged whether in person or property, by their action." "The regular policemen of the city are required to report to the police department every two hours. They also report in person and keep in constant communication and close touch. But there is no rule requiring special policemen, or watchmen, such as Terry was, to report. Such special policemen make no reports to the department at all. It was not the custom for the police department to give special policemen any instructions, and no instructions were given by that department to Terry. The custom was for the board of public works and affairs to appoint such special policemen upon request of the persons who desired their special services, and Terry was so appointed." While "upsurge in mischief" is my phrase, the published opinion of the case uses "several burglaries had been committed." *Terry et al. v. Burford*, 131 Tenn. 451 (1914).

[58] *Terry et al. v. Burford*, 131 Tenn. 451 (1914).

[59] *Terry et al. v. Burford*, 131 Tenn. 451 (1914).

[60] According to the Tennessee Death and Burials Index, 1874-1955, Burford died March 10, 1911, the same night of the incident. He was buried on March 13, 1911, in the Mt. Ararat Cemetery in Nashville, Tennessee.

[61] In the published opinion, the judge writes, "This action was brought in the circuit court of Davidson County to recover damages for the unlawful killing of Lawson Burford, Jr., son of the defendant." *Terry et al. v. Burford*, 131 Tenn. 451 (1914).

[62] *Terry et al. v. Burford*, 131 Tenn. 451 (1914).

know that they had viable legal claims? At a time when Mississippi turned a blind eye to white attacks upon Black Americans, how did Black plaintiffs sometimes convince white judges and jurors to award them damages? How did they find attorneys that would represent them against white companies and white individuals? Such cases, where Black Americans sued under private law for incidents that involved white abuse, seem to suggest that civil courts may have afforded Blacks distinct, and possibly better opportunities to have their claims heard than in criminal courts.

This chapter uses cases like Royston and Burford's to move away from constitutional law and criminal courts, arguing that ordinary Black people used tort law in their everyday lives. It begins in 1880, after the formal end of Reconstruction and as Southern states intensified their push for Jim Crow legislation and ends in 1953, one year before *Brown v. Board of Education of Topeka* (1954).[63] This periodization allows me to focus on Black Americans' tort cases without becoming overly involved with test litigation or landmark cases. This chapter is about ordinary Black people who sued for attacks upon their persons without the NAACP at the helm. This chapter argues that Black people used tort law, including negligence, wrongful death, civil assault and battery, and other causes of action, to seek recourse for white violence, which was pervasive under Jim Crow.[64] Tort law was an area of miscellaneous private wrongs. Remedies for such wrongs could be sought in civil courts, rather than criminal courts.

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[63] After the formal end of Reconstruction, Tennessee was the first state to adopt a Jim Crow separate car law in 1881. After which Florida (1887), Mississippi (1888), Texas (1889), Louisiana (1890), Alabama (1891), Kentucky (1891), Arkansas (1891), Georgia (1891), South Carolina (1898), North Carolina (1899), and Virginia (1899). Gilbert Thomas Stevenson, "The Separation of The Races in Public Conveyances," *The American Political Science Review*, Vol. 3, No. 2 (May 1909), 181-182, 184, 190-191.

[64] Luther Porter Jackson, "The Virginia Free Negro Farmer and Property Owner, 1830-1860," *Journal of Negro History* 24, no. 4 (1939): 390-439; John Hope Franklin, *The Free Negro in North Carolina*, 150-60. Recent, scholarship has built upon Jackson and Franklin's works. The following citations capture some of the scholarship

Black people sued individual whites, police departments, and white-owned companies for torts when their injuries resulted from violent interactions with whites. These plaintiffs sued whether the violence occurred in public spaces or on private property. Welke examined Black suits for incidents involving violence on railroads. Here, I seek to expand upon her research and move beyond violent attacks on trains. This chapter is about Black people's suits resulting from violent interactions with white people more broadly. Though some of the incidents occurred on trains and there is an in-depth examination of the common law of common carriers, railroads are not the focus here. Black plaintiffs, their litigation strategies, and their lived experiences are at the heart of this chapter. These plaintiffs asserted that Black lives, Black bodies, and Black experiences had value by seeking recourse for such violence. Black plaintiffs also asserted their "fundamental rights of personhood," and as Welke describes it, their right to live free from physical abuse at the hands of whites without due process of the law, by challenging the legitimacy of extralegal white violence in civil court.[65] These plaintiffs used their citizenship

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that has built upon Jackson and Franklin. Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: The University of North Carolina Press, 2009). Ariela J. Gross, *What Blood Won't Tell: A History of Race on Trial in America* (Cambridge, Mass.: Harvard University Press, 2010). Martha Jones, *Birthright Citizens: A History of Race and Rights in Antebellum America* (New York: Cambridge University Press, 2018). Kelly M. Kennington, *In the Shadow of Dred Scott: St. Louis Freedom Suits and the Legal Culture of Slavery in Antebellum America* (Athens: University of Georgia Press, 2017). Kenneth W. Mack, *Representing the Race: The Creation of the Civil Rights Lawyer* (Cambridge, Mass.: Harvard University Press, 2012). Melissa Milewski, *Litigating Across the Color Line: Civil Cases Between Black and White Southerners from the End of Slavery to Civil Rights* (New York: Oxford University Press, 2018), 2-3. Dylan C. Penningroth, *The Claims of Kinfolk: African American Property and Community in the Nineteenth-Century South* (Chapel Hill: University of North Carolina Press, 2003). Mark V. Tushnet, *Making Civil Rights Law: Thurgood Marshall and the Supreme Court, 1936-1961* (New York: Oxford University Press, 1996). Anne Twitty, *Before Dred Scott: Slavery and Legal Culture in the American Confluence, 1787-1857* (New York: Cambridge University Press, 2016). Kimberly M. Welch, *Black Litigants in the Antebellum American South* (Chapel Hill: University of North Carolina Press, 2018).

[65] Welke argues that "personhood…rests most fundamentally on legal recognition and protection of *self*-ownership, that is, of a right to one's person, one's body." One element of personhood that stemmed from the principle of self-ownership was a "right to be free from physical abuse or coercion without due process of law." Welke goes on to argue that "protection of these basic rights of personhood requires, in turn, basic civil rights, including the right to sue and be sued, the right to suffrage, and the right to serve on juries and be eligible for elective office." She argues

right to sue and be sued to seek and sometimes gain retribution for violations of their right to self-ownership, or their personhood rights.

*Ordinary People and Their Claims*

Although this chapter surveys a small number of appellate cases, the numerical patterns are consistent with Melissa Milewski's broad survey of Black civil litigation. Though her work does not focus exclusively on civil cases that emerged after violent altercations between Black and white Americans, her survey helps us understand the rates at which Blacks were suing and winning across the South. Milewski surveyed local and appellate court records in Alabama, Arkansas, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, and Virginia.[66] According to her work, "71 percent of civil cases involving Black litigants in the eight state supreme courts occurred between white and Black litigants."[67] Milewski goes on to argue that "Black women litigated 41 percent of these suits, at times explicitly using their gender to elicit sympathy from the court."[68] Black women represent roughly half of the litigants in this dissertation. Milewski asserts that "between 1900 and 1920, the eight supreme courts…affirmed

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that "recognition of personhood establishes the preconditions of effective citizenship," but I would argue that the opposite is also true. In many cases, citizenship is a precondition for the ability to protect the "fundamental rights of personhood." Section I of the Civil Rights Act of 1866 gave all citizens the right to sue, and the Fourteenth Amendment reinforces that commitment in the Privileges and Immunities Clause by stating that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Here citizenship protects the right to sue, and when one's rights of personhood are violated, suing is one avenue of recourse. Welke, *Law and the Borders of Belonging in the Long Nineteenth Century United States*, 3, 5, 7. Original emphasis. *An Act to protect all Persons in the United States in their Civil Rights, and furnish the Means of their Vindication*, Chapter XXXI, U.S. Statutes at Large (1866): 27-30, 39th Congress, 1st session. U.S. Constitution, Amend. 14, Sec. 1.

66 Melissa Milewski, *Litigating Across the Color Line: Civil Cases Between Black and White Southerners from the End of Slavery to Civil Rights* (New York: Oxford University Press, 2018), 195.

67 Milewski, *Litigating Across the Color Line*, 8.

68 Milewski, *Litigating Across the Color Line*, 9.

lower-court rulings in favor of Black plaintiffs in 45 percent" of personal injury cases and "reverse 14 percent of lower court rulings against African Americans" in personal injury suits.[69] Although Milewski does not focus specifically on cases involving violence, the suits considered in this dissertation seem consistent with the trends Milewski identifies in her work.

Plaintiffs who sued for the injuries they sustained from violent interactions with white people came from various socioeconomic statuses. Some were literate farmers and liquor dealers, while others were retired widows, students, educators, and part-time employees of Black newspapers. They ranged in age from minor children to young adults, and some were even elderly. Henry Walls was a farmer who could read and write. Wesley Crayton was an entrepreneur and a Liquor Dealer.[70] Maria Dodd was a widowed farm owner, Mary Martin was a student at a seminary, and Mary Ward (Hopson) was a teacher at the Tuskegee Institute and worked at a Black newspaper during the summer.[71] Black men and women are represented almost equally in the cases considered here.[72] These plaintiffs sued railroad companies, police

[69] Milewski, *Litigating Across the Color Line*, 163.

[70] While it is unclear how old Walls was when he brought his suit, the two Henry Walls listed as living in Mississippi in the 1920 United States Federal Census were both farmers and able to read and write. Additionally, according to the published opinion, Walls claimed that he could indeed read and write. *Yazoo & Mississippi Valley Railroad Company v. Henry Walls*. 1900 United States Federal Census. *Louisville, New Orleans, & Texas Railway Company v. Wesley Crayton*.

[71] 1910 United States Federal Census. Record in *Yazoo and Mississippi Valley Railroad Company v. Martin* (1901), 49, Supreme Court Case Files, MDAH.

[72] Of the twenty-six cases considered in this chapter, black men appealed nineteen civil suits involving white-on-black violence. *Aaron Royston v. Illinois Central Railroad Company*, 67 Miss 376 (1889); *Louisville, New Orleans, and Texas Railway Company v. Wesley Crayton*, 69 Miss. 152 (1891); *New Orleans and Northeastern Railroad Company v. Jopes*, 142 U.S. 18 (1891); *Louisville, New Orleans, and Texas Railway Company v. Isaiah Douglass*, 69 Miss. 723 (1892); *The Richmond and Danville Railroad Co. v. Jefferson*, 89 Ga. 554 (1892); *Alabama and Vicksburg Railway Company v. Peter McAffee*, 71 Miss. 70 (1893); *Illinois Central Railroad v. Lincoln Latham*, 72 Miss. 32 (1894); *Southern Railway Company v. Henry Hunter*, 74 Miss. 444 (1896); *Yazoo & Mississippi Valley Railroad Company v. Peter Williams*, 87 Miss, 344 (1905); *Yazoo & Mississippi Railroad Company v. Walls*, 110 Miss. 256 (1915); *Illinois Central Railroad Company v. Green*, 130 Miss. 622 (1922); *Yazoo & Mississippi Railroad Company v. Cornelius*, 131 Miss. 37 (1922); *Woods v. Illinois Central Railroad Company*, 151 Miss. 395 (1928); *Sellers et al. v. Lofton*, 149 Miss. 849 (1928); *Sellers v. Varner*, 151 Miss. 594 (1928); *McCoy v. Key et al.*, 155 Miss 64 (1929); *Gulf, Mobile, and Northern Railroad Company v. Willis*, 171 Miss. 732 (1935); *Yazoo &*

officers, surety companies, and individual whites for civil assault and battery, negligence, wrongful ejection, personal injury, property damage, and wrongful death.[73]

Black plaintiffs reached out to local attorneys who might be sympathetic to see if they had a claim. Once retained, white lawyers assisted plaintiffs with filing their suits, sometimes posted the required bond for the suit, and argued Black victims' cases at trial. On appeal, these lawyers submitted briefs to the appellate court, and sometimes even made oral arguments.

Potential litigants would have had a hard time litigating their cases without sympathetic attorneys. According to one historian, most southern lawyers under Jim Crow were white, and "Black litigants had white attorneys in almost every civil suit between white and Black litigants that made it to an appellate court. Often these lawyers were prominent men in their

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*Mississippi Railroad Company v. Smith*, 188 Miss. 856 (1940); *Jefferson et al. v. Yazoo and Mississippi Valley Railroad Company*, 194 Miss.729 (1943). Black women appealed seven cases involving white-on-black violence during the same period. *Britton v. Atlanta and Charlotte Airline Railway Company*, 88 N.C. 536 (1883); *Alabama and Vicksburg Railway Co. v. Lucretia Holmes*, 75 Miss. 371 (1897); *Ward v. Yazoo & Mississippi Valley Railroad Com*pany, 79 Miss. 145 (1901); *Yazoo & Mississippi Valley Railroad Company v. Martin* (1901); *Illinois Central Railroad Company v. Maria Dodd*, 104 Miss. 643 (1913); *Natchez, Columbia & Mobile Railroad Company v. Boyd et al.*, 141 Miss 593 (1926); *Mississippi Power and Light Co. v. Garner*, 179 Miss. 588 (1937).

[73] Assault and/or battery: *Aaron Royston v. Illinois Central Railroad Company*, 67 Miss 376 (1889); *Louisville, New Orleans, and Texas Railway Company v. Wesley Crayton*, 69 Miss. 152 (1891); *Ward v. Yazoo & Mississippi Valley Railroad Com*pany, 79 Miss. 145 (1901); *Yazoo & Mississippi Valley Railroad Company v. Martin* (1901); *Yazoo & Mississippi Valley Railroad Company v. Peter Williams*, 87 Miss, 344 (1905); *Illinois Central Railroad Company v. Green*, 130 Miss. 622 (1922); *Woods v. Illinois Central Railroad Company*, 151 Miss. 395 (1928); *Sellers et al. v. Lofton*, 149 Miss. 849 (1928); *Sellers v. Varner*, 151 Miss. 594 (1928); *McCoy v. Key et al.*, 155 Miss 64 (1929); *Gulf, Mobile, and Northern Railroad Company v. Willis*, 171 Miss. 732 (1935); *Mississippi Power and Light Co. v. Garner*, 179 Miss. 588 (1937); *Yazoo & Mississippi Railroad Company v. Smith*, 188 Miss. 856 (1940). Breach of contract: *New Orleans and Northeastern Railroad Company v. Jopes*, 142 U.S. 18 (1891); *The Richmond and Danville Railroad Co. v. Jefferson*, 89 Ga. 554 (1892). Negligence: *Britton v. Atlanta and Charlotte Airline Railway Company*, 88 N.C. 536 (1883); *Aaron Royston v. Illinois Central Railroad Company*, 67 Miss 376 (1889); *Illinois Central Railroad Company v. Maria Dodd*, 104 Miss. 643 (1913). Personal injury: *Yazoo and Mississippi Railroad Company v. Walls*, 110 Miss. 256 (1915); *Woods v. Illinois Central Railroad Company*, 151 Miss. 395 (1928); *Alabama and Vicksburg Railway Company v. Peter McAffee*, 71 Miss. 70 (1893); *Yazoo & Mississippi Railroad Company v. Cornelius*, 131 Miss. 37 (1922). Unlawful search: *Sellers et al. v. Lofton*, 149 Miss. 849 (1928). Wrongful ejection: *Illinois Central Railroad v. Lincoln Latham*, 72 Miss. 32 (1894); *Southern Railway Company v. Henry Hunter*, 74 Miss. 444 (1896); *Alabama and Vicksburg Railway Co. v. Lucretia Holmes*, 75 Miss. 371 (1897), *Yazoo and Mississippi Railroad Company v. Walls*, 110 Miss. 256 (1915); *Natchez, Columbia & Mobile Railroad Company v. Boyd et al.*, 141 Miss 593 (1926); *Yazoo & Mississippi Railroad Company v. Smith*, 188 Miss. 856 (1940). Wrongful death: *Louisville, New Orleans, and Texas Railway Company v. Isaiah Douglass*, 69 Miss. 723 (1892); *Jefferson et al. v. Yazoo and Mississippi Valley Railroad Company*, 194 Miss.729 (1943).

communities."[74] Similar to their counterparts across the South, Black Mississippians often hired white attorneys to handle their suits. Some of their attorneys were prominent men like James R. Chalmers, who served as a Mississippi state senator and as a Mississippi representative in the United States House of Representatives before taking on a wrongful death suit for Isaiah Douglass in 1890.[75] Others like Varner's attorney, Jeff Collins, were "farmer lawyers," attorneys who supplemented their legal practice with other occupations, or vice versa.[76] And although men dominated the legal profession under Jim Crow, Louise Melton, a white woman, represented Jessie Lee Garner, a pregnant Black woman, in her 1932 case.[77] Melton was one of three attorneys representing Garner. White attorneys that helped Black Mississippians bring their suits were from varying social backgrounds, though they were all white and, the majority were men.[78]

Though not all these attorneys were wealthy men within their communities, they put their careers and reputations on the line to help Black victims sue. It was common practice for lawyers to take damage suits on a contingency basis, allowing plaintiffs to pay if they won. Often attorneys would charge their clients a large percentage of the sum of damages awarded. A win for these attorneys meant a substantial payout, and their clients' race was probably less

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[74] Milewski, *Litigating Across the Color Line*, 2, 10.
[75] *Louisville, New Orleans, and Texas Railway Company v. Isaiah Douglass*, 69 Miss. 723 (1892). 1870 United States Federal Census. 1880 United States Federal Census.
[76] The census worker recorded Jeff Collins's occupation as "farmer lawyer." 1930 United States Federal Census. 1940 United States Federal Census.
[77] 1940 United States Federal Census.
[78] M. Marshall, 1870 United States Federal Census. James R. Chalmers, 1870 United States Federal Census. St. John Waddell, 1880 United States Federal Census. A. Arthur Armistead, 1900 United States Federal Census. C. O. Jaap, 1940 United States Federal Census. Harry B. Greaves, 1910 United States Federal Census. J. D. Thames, 1910 United States Federal Census. Jeff Collins, 1930, United States Federal Census. Jon B. Higgins, 1940 United States Federal Census. Louise Melton, 1940 United States Federal Census. Myron S. McNeil, 1930 United States Federal Census. Nathan B. Feld, 1870 United States Federal Census.

important. Because many of the attorneys from this chapter were former Confederates, it is unlikely that these attorneys litigated cases for Black plaintiffs to promote Black civil rights.[79]

*Common Law of Common Carriers and Duty of Care*

With the advent of mass transportation, like passenger trains, steamboats, streetcars, and eventually buses, Americans appealed to the common law to establish rules and reasonable regulations of common carriers and other public accommodations for travelers. According to Charles A. Ray's 1893 treatise on railroads, "the idea which lies at the very base of the law of common carriers," which includes railroads, streetcars, and buses, "is that they are public servants and serve all alike."[80] Ray goes on to write that, "passengers can not be excluded on account of color" and "railway companies ha[d] no right to discriminate between persons."[81] Companies developed policies that had to "conform to the principle of 'reasonable regulation,' which allowed them to establish rules to preserve the peace, protect travelers, and cultivate business itself."[82] The common law of common carriers was important to Black travelers because it offered a race-neutral principle to establish who had access to public transportation, a principle that did not allow white-owned common carriers to discriminate against Black travelers based on race. Black travelers had to misbehave or demonstrate improper comportment to be denied access to public conveyances.[83] Furthermore, the common law of common carriers

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[79] I am not be able to speculate any further about these lawyers' motives. I have not been able to track down their papers and the correspondences (yet). In the manuscript, I intend to write a chapter exclusively on these lawyers if I am able to find the archival materials.
[80] Charles A. Ray, *Negligence of Imposed Duties, Carriers of Passengers* (Rochester, N.Y., 1893), 159.
[81] Ray, *Negligence of Imposed Duties, Carriers of Passengers*, 159.
[82] Masur, *An Example for all the Land,* 100.
[83] Bryon K. Elliott and William F. Elliott, *A Treatise on the Law of Railroads: Containing a Consideration of the Organization, Status and Powers of Railroad Corporations, and of the Rights and Liabilities Incident to the*

developed standards of care and duties to passengers that were, on the surface, race-neutral. These duties and standards of care applied to all passengers, Black and white. Though duties of care and standards of comportment were supposed to be race-neutral, however, railroads applied the standards to Black and white passengers differently, making railroads and other public accommodations contested spaces.

Common carriers played an important role in Black Americans' ability to use civil courts to their advantage during the Jim Crow era. Common carriers, and the common law associated with them, allowed Black Americans to seek recourse in civil courts for altercations that could also be covered by public law or considered criminal matters.[84] Because common carriers owed passengers a duty of care and protection under the common law, Black plaintiffs could take grievances that, in principle, should have been handled by criminal courts, and pursue them in civil courts in the form of damages suits. Some violations of someone's person could be classified as either criminal or civil wrongs, or both. Prosecutors could have easily prosecuted the assaults, batteries, murders, and destruction of property that Black people complained of in their civil complaints. Criminal courts, however, were often hostile to African Americans. Black people took advantage of the common law governing common carriers, which allowed them to employ various litigation strategies to seek damages for situations involving white violence that was characteristic of Black Americans' experiences in the Jim Crow South.

While the poorest Black people did not always have the financial means to purchase tickets for passage on railroad trains and streetcars, many working-class and middle-class Black

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*Location, Construction and Operation of Railroads; Together with their Duties, Rights and Liabilities as Carriers Including Street and Interurban Railways* (Indianapolis, I.N.: The Bobbs-Merrill Company, 1907), 372. Welke, *Recasting American Liberty*. Masur, *An Example for All the Land*.

[84] Welke, *Recasting American Liberty*.

Americans did have access to mass transit. Faced with the reality of travel by more and more Black people and growing pressures from southern states to segregate travel, common carriers developed rules that would preserve the peace during travel, accommodate segregationists, and protect passengers' safety during travel. Treatises on the common law of common carriers, however, explicitly prohibited race-based exclusion or refusal to carry, though they allowed for separate accommodations. One such treatise from 1907 stated that "a railroad company which is a common carrier of passengers can not [*sic*], in this country, refuse to carry a person merely because of his color or race."[85] Race could not be the only reason for refusing to carry a patron. Treatises on railroads and common carriers also delineated rules and duties of common carriers associated with keeping passengers safe during travel, as well as passengers' duties during travel. Railroad companies, passengers with grievances, and appellate judges consulted these treatises in the case of disputes.[86]

Black passengers could readily make claims to protection from harm and claims to reasonable care because of their legal status as passengers. According to one 1907 treatise on the law of railroads, it was common knowledge that "railroad companies are liable…for injuries to their passengers, who are without fault, by the negligent acts of their employes, but also for injuries willfully inflicted upon such passengers by their employes within the scope or line of their duty while…executing the contract of carriage."[87] Railroads had a duty to protect passengers from negligence, but they also had a duty to ensure that their employees behaved

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[85] Elliott and Elliott, *A Treatise on the Law of Railroads,* 372.
[86] Treatises were secondary legal sources dedicated to examining a specific area of law or a specific legal doctrine. They offer descriptions of specific legal doctrines and often offer statutes or cases as references. These legal encyclopedias were often cited by justices in their published opinions or were used as references by lawyers when making their cases.
[87] Elliott and Elliott, *A Treatise on the Law of Railroads,* 547-549.

professionally and treated passengers with care and respect, or in other words, respected their passengers' rights to personhood. The treatise warned, however, that the "terms 'scope of their employment' or 'line of their duty' are used in their narrowest sense."[88] Narrowing the scope of employment meant that the plaintiff had the burden of proving the employee committed a tortious assault, battery, or violated their rights to personhood while acting within the scope of his job duties.[89] If an employee assaulted a passenger outside of the scope of his duties, then the plaintiff could not recover damages from the company. The victim would have to sue the employee as a private citizen instead. Railroad companies, however, could pay out more considerable damages than railroad employees, so showing that an employee was acting within the scope of his employment was important.

Under specific circumstances, railroads might also be held liable for a passenger's injuries by a third party or another passenger, "making an unprovoked assault upon him."[90] According to one 1907 treatise, the railroad's liability depended on whether there was "evidence showing the employes of the carrier either knew or by the exercise of due care should have known…that injury to the passenger carried was threatened or impending… and might have been guarded against."[91] A passenger could not sue a common carrier unless the company knew, or

[88] Elliott and Elliott, *A Treatise on the Law of Railroads,* 547-549.
[89] The treatise goes on to flesh out the legal reasoning behind the railroad's (or common carrier's) duty to protect passengers from intentional or malicious attacks by its employees. "A carrier is bound to discharge the implied duty, arising out of its contract and imposed by law, that its passengers shall be protected from injury by its servants and shall not be willfully insulted and harmed by them…Either the company or the passengers must take the risk of infirmities of temper, maliciousness and misconduct of the employes whom the company has placed upon the train and to whom it has committed the discharge of its duty to protect and look after the safety of its passengers. A passenger has no control over them, and the company alone has the power to select and remove them." Therefore, because the company is the only entity that can remove employees, the company must be held liable for the actions of its employees. Elliott and Elliott, *A Treatise on the Law of Railroads,* 547-549.
[90] Elliott and Elliott, *A Treatise on the Law of Railroads,* 547-549.
[91] Elliott and Elliott, *A Treatise on the Law of Railroads,* 547-549.

should have known, about a threat, so passengers had to alert railroad employees to dangers or potentially volatile situations. If a passenger failed to notify a railroad employee of a threat, then it would be harder for him or her to recover damages for third-party injuries. These general principles were recounted in treatises, but treatises did not define state law. States like Mississippi could have defined and limited liability through statutes if the state legislature chose to do so. Mississippi did not have statutes on the books determining liability in these situations, and its courts generally followed the principles outlined by Elliott and Elliott in their treatise.[92]

Black plaintiffs like Elise Britton and a Black man named Jefferson testified that they had called upon the conductor for protection or help, enabling them to invoke the railroad's legal duty to protect them from injury. Britton testified that her companion called upon the conductor several times. Her companion, a Black man, named Culp, testified that he asked the conductor "as many as four times to protect them from insult."[93] Based on Britton and Culp's testimony, the railroad company could not argue ignorance of the abuse because the victims enlisted the conductor's help multiple times. He was aware of the attacks. In a similar case, according to state supreme court Justice Gober, a Black plaintiff named Jefferson "was insulted, assaulted, and beaten; he was cursed and abused by two drunken passengers. The conductor was appealed to and refused to interfere; the plaintiff was made to dance and sing; he was subjected to many indignities."[94] Jefferson and his lawyers convinced the state Supreme Court that "the conductor,

[92] The Mississippi Code of 1906 did not include statutory regulations of liability for third-party injuries on railroads. It did, however, have Jim Crow provisions for railroads. See, W. H. Hardy, *The Mississippi Code of 1906 of the Public Statute Laws of the State of Mississippi, Under the Provisions of an Act of the Legislature Approved March 19, 1904, and Reported to and Revised, Amended and Adopted By the Legislature at its Special Session in 1906* (Nashville, Tenn.: Brandon Printing Company, 1906), 1111-1129.
[93] *Britton v. Atlanta and Charlotte Airline Railway Company*, 88 N.C. 536 (1883).
[94] *The Richmond and Danville Railroad Co. v. Jefferson*, 89 Ga. 554 (1892).

signaling with a wink, was willing that it should go on."[95] Jefferson appealed to the conductor and made the company aware of the abuse, but the conductor winked and egged on Jefferson's attackers, neglecting his duty to protect Jefferson.

Other Black plaintiffs, like Peter Williams and Loverett "Larkie" Willis, invoked the railroad's duty to protect by arguing that it was the conductor, the most authoritative agent on the train, who had inflicted the complained of injury. Rather than defending passengers, conductors were perpetrating violence. Judge Truly affirmed the lower court's decision in Peter Williams' case because Williams' attorneys convinced the court that the conductor's behavior was an "outrageous and unwarranted invasion of the rights of a passenger."[96] Not only had the conductor violated Williams' rights as a passenger, but he had also violated Williams' rights of personhood. Justice Truly noted that the conductor "angered by his own mistake in collecting fairs, curse[d] an unoffending passenger; assault[ed] him," and again struck "the unresisting man."[97] In a similar case, Judge P. J. Ethridge noted that "the trainmaster admit[ted] striking the appellee and kicking at" Larkie Willis, the victim, and that even the trainmaster's testimony did not prove that Larkie's behavior warranted violent reprisal. In this situation, "the trainmaster had authority to control the train and prevent the injury," but in this case, he committed an assault instead.[98] Not only were conductors negligent in addressing situations where whites threatened Black passengers with violence but in some cases, white conductors violently attacked Black passengers, throwing their duty of care to the wind. As we will see, negligence and violent

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[95] Judge Gober cited it as convincing evidence in his opinion. *The Richmond and Danville Railroad Co. v. Jefferson*, 89 Ga. 554 (1892).
[96] *Yazoo & Mississippi Valley Railroad Company v. Peter Williams,* 87 Miss. 344 (1905).
[97] *Yazoo & Mississippi Valley Railroad Company v. Peter Williams,* 87 Miss. 344 (1905).
[98] *Gulf, Mobile, and Northern Railroad Company v. Willis*, 171 Miss. 732 (1935).

conductors did not bode well for railroad companies, which would sometimes be held liable for Black passengers' injuries.

By implicating the conductor, the most authoritative person on the train, African Americans used the common law of common carriers to hold the railroad company accountable for the abuse they suffered at the hands of whites. The plaintiffs argued that the conductors were complicit in the passengers' violence by explicitly engaging in the abuse or implicitly engaging by not aiding the victims who called upon him. According to a treatise on American railroad law, "to every passenger equally…the company owes the same degree of care.[99] It is hard to imagine that white passengers would be cursed, beaten, made to jump, sing, and dance with the conductor's knowledge, or that a conductor would partake in such abuse without fear of reprimand. The plaintiffs and their lawyers used the common law of common carriers to argue that violence against passengers—racially motivated or otherwise—was cause to recover damages.

*Police Powers and Duty to Protect*

Like common carriers, municipalities and their police forces owed citizens, including Black citizens, a duty of care. The U.S. constitution endowed state governments with police powers to protect their citizens. According to the *American and English Encyclopaedia of Law,* such power was "founded upon the duty of the state to protect its citizens and provide safety and good order of society."[100] When it came to local governance, like policing, municipalities "were

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[99] *The Richmond and Danville Railroad Co. v. Jefferson*, 89 Ga. 554 (1892).
[100] David S. Garland, et al., *American and English Encyclopaedia of Law,* 2nd ed., (Northport, N.Y.: Edward Thompson Co., 1902), 22:918.

infinitely more important to regular governance."[101] According to John Forrest Dillon's treatise on municipal corporations, "law and ordinances relating to the comfort, health, convenience, good order, and general welfare of the inhabitants, are comprehensively styled, 'Police Laws or Regulations.'"[102] Police laws or police regulations "may disturb the enjoyment of individual rights," but were there to make sure that property is not used in a way that injures other citizens.[103] Examples included regulations that prevented fires, prevented the spread of disease—therefore protecting public health—and anything else that "deemed necessary, for the public good."[104] William Novak argues that "local police ordinances and regulations were seen as the foundation for simultaneous freedom and order enjoyed in communities" within a well-regulated society.[105] Municipalities and local governments established local police departments and sheriff departments under the state's police powers.

Because police departments were arms of the local government, or "the state," police officers were required to protect citizens and the public peace. When states chartered local governments and established local police departments, they were explicit about police officers' and patrolmen's duties to the public. According to the 1892 *Police and Prison Cyclopaedia*, "the duty of the police force…[was] to preserve the public peace, to prevent crimes, detect and arrest offenders, suppress riots, mobs, and insurrections…protect the rights of persons and property…advise and protect immigrants, strangers, and travelers in public streets [and]…at

[101] Novak, *The People's Welfare*, 10.
[102] John Forrest Dillon, *Treatise on the Law of Municipal Corporations* (Chicago, 1872), 136.
[103] Dillon, *Treatise on the Law of Municipal Corporations*, 136.
[104] Dillon, *Treatise on the Law of Municipal Corporations*, 137-138.
[105] William J. Novak, *The People's Welfare: Law and Regulation in the Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1996), 10.

railroad stations."[106] Local governments also established codes of conduct for their peace officers, setting the expectation that "the police in their conduct and department must be quiet, civil, and orderly; in the performance of their duty, they must be attentive and zealous, control their temper, and exercise the utmost patience and discretion. They must at all time refrain from harsh, violent, coarse, and profane language."[107] The police force was supposed to be an orderly, professional organization that protected the public peace, assisted citizens in need of help, and behaved in a calm, respectful, respectable, and professional manner.

Police officers were essential to a well-regulated society, but how did race and Jim Crow affect regulation and police officers' duty to citizens? In her 2017 work, Masur invites scholars to do what Novak does not, incorporate Black people's experiences into our understanding of the police powers. Using Kunal Parker and Gerald Neuman as springboards, Masur argues that "policymakers regularly regarded freed people of African descent—like people immigrating from abroad—as outsiders in northern communities and as potential threats to public peace or order."[108] During the antebellum period, "people of African descent were not entitled to the presumption of innocence."[109] Even after emancipation and after Congress passed the Fourteenth Amendment, municipalities and states used their police powers to control Black Americans specifically. Sometimes police officers like Sellers used the police powers to harass and assault Black Americans without cause.[110] Despite the Fourteenth Amendment's guarantee of

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[106] George W. Hale, *Police and Prison Cyclopaedia* (Cambridge: Mass., 1892), 128.
[107] Hale, *Police and Prison Cyclopaedia*, 39.
[108] Kate Masur, "The People's Welfare, Police Powers, and the Rights of Free People of African Descent," *American Journal of Legal History* 57, no. 2 (2017): 239.
[109] Masur, "The People's Welfare, Police Powers, and the Rights of Free People of African Descent," 240.
[110] "Communities thus regulated their entry, circumscribed their ability to remain, insisted that they carry passes or post bonds--all without much concern that they were violating free blacks' liberty or right to mobility." Masur, "The People's Welfare, Police Powers, and the Rights of Free People of African Descent," 239.

constitutional rights and citizenship's relationship with rights of personhood, Black Americans—free and newly freed—were often seen as "a group that posed a particular threat to the public good or 'the people's welfare.'"[111]

Some historians argue that Jim Crow had less to do with segregation and more to do with social control over Black life, and that the purpose of Jim Crow was to "reaffirm and remind the Black population of their lesser status or 'place' in larger society."[112] If Jim Crow was about social control, then police would play an central part in reinforcing the racial caste system. C. Van Woodward wrote, in his influential work *The Strange Career of Jim Crow,* that "the Jim Crow laws put the authority of the state or city in the voice of the street car conductor, the railway brakeman, the bus driver," "the hoodlum of the public parks and playgrounds," and railroad conductor.[113] Jim Crow endowed ordinary whites with the power to police Black life within local communities. In theory, even with the authority of the state or city, conductors and bus drivers were legally required to show restraint and owed properly comported passengers a duty of care and protection. Formal police officers, on the other hand, "represented the South's repressive civil order and the ideology of white supremacy overall."[114] White supremacy permeated a system that was said to protect the public peace, but did not protect Blacks' most basic rights or afford Black people human decency or the rights of personhood. Despite the authority vested in police officers and their profession's legal immunity as arms of the state, not all Black Southerners—or Black Americans in general—submitted to white peace officers' abuse

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[111] Masur, "The People's Welfare, Police Powers, and the Rights of Free People of African Descent," 240.
[112] Sandra Bass, "Policing Space, Policing Race: Social Control Imperatives and Police Discretionary Decision," *Social Justice* 28, no. 1 (Spring2001): 161.
[113] C. Vann Woodward, *The Strange Career of Jim Crow*, 107-108.
[114] Bass, "Policing Space, Policing Race: Social Control Imperatives and Police Discretionary Decision," 161.

without protest. In the case of the plaintiffs mentioned here, that challenge arose through tort lawsuits.

Like plaintiffs who were attacked on trains, Black people who were attacked by police officers, like Varner, had to argue that they were good, peaceable citizens. Since police officers were arms of state, county, and municipal governments, they were able to invoke the police powers to cloak, explain, or excuse their targeting and mistreatment of Black people. For this reason, Black people argued or attempted to prove that they were not a threat to public peace when they were stopped, arrested, harassed, or assaulted by police officers. If police officers argued that Black people were threatening public peace, displaying improper comportment, or were possibly committing crimes, then they could defend their abuse of Black people.[115] Despite a long history of more stringent policing of Black people that extended back to the antebellum period with slave patrols and Black codes, Black Americans living under Jim Crow could and did argue that the police powers were meant to protect citizens and that duty superseded white people's prejudice.[116] Like abolitionists during the antebellum period, Black Americans living under Jim Crow had to invoke not only citizenship rights, but their rights of personhood—specifically the "right to live free from physical abuse or coercion without due process of the law"—in order to challenge police officers' mistreatment.[117]

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[115] Laura F. Edwards was the first historian to make this point. Here, I am extending it to the Jim Crow period. Laura F. 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. And see Masur, "The People's Welfare, Police Powers, and the Rights of Free People of African Descent," 242.

[116] Edwards, *The People and Their Peace.* Masur, "The People's Welfare, Police Powers, and the Rights of Free People of African Descent," 240. Bass, "Policing Space, Policing Race: Social Control Imperatives and Police Discretionary Decision," 156.

[117] Welke, *Law and the Borders of Belonging in the Long Nineteenth Century United States*, 3.

*Authority, Liability, and Constraint*

Black plaintiffs used "duty of care" and the "duty to protect" to frame their claims in a way that did not explicitly threaten the racial hierarchy. White judges and jurors likely distinguished between punishing a company for white employees' or police officers' tortious acts, and punishing a white private citizen for violence characteristic of Jim Crow. It is likely that they viewed disciplining the company to protect the legal category of passengers, a category composed mostly of white people, without resorting to criminal charges. Similarly, lawsuits against police officers were likely intended to deter officers from attacking citizens, Black and white, by punishing individual rogue officers. If a police officer had the capacity or disposition to violently attack Black people at random, what would keep him from attacking white citizens as well?

Black Americans' use of "duty of care" and the "duty to protect," and civil law more broadly, was effective because these principles centered Black people's claims on a duty to the public rather than on offenses against the public. Under Jim Crow, prosecutors rarely brought charges against whites who attacked Blacks because that would have required an acknowledgment that an offense against the public—a crime—was committed. Admitting that whites' violent attacks on Blacks were indeed crimes could have undermined whites' use of violence as a control mechanism under Jim Crow. Punishing common carriers and rogue police officers and sheriffs for negligence and civil assault and battery was far more palatable than the criminal court alternative.

By holding companies accountable for white men's abuses as employees and passengers, the common law of common carriers restrained whites from inflicting indiscriminate violence

upon Blacks, at least while on common carriers or within the employ of common carriers. With their profits on the line, it was in these companies' interests to keep white men in line, but also to protect Black passengers from these abuses. While Jim Crow violence was the cultural norm, the common carriers' duty of care and local governments' duty to protect under the police powers sometimes protected Black victims. Black plaintiffs used tort law to assert that protecting the peace also meant stymying white-on-Black violence, and it was in railroad companies' financial interests to do just that.

Despite their duty to protect citizens and public order, individual police officers violated individuals' rights to their persons and possibly the public order itself. Even though the police powers gave municipalities authority over their citizens, municipalities were liable under tort law. When white police officers abused Black people, even in the Jim Crow South, Black victims had the option to sue the municipality or county. Treatise writer Henry S. Fraser notes that "some States…enact[ed] laws and to include provisions in municipal charters exempting either the municipality or the officer, or both, from liability," in order to protect local municipalities and because they were unwilling to assume liability for the tortious acts of their officers.[118] Despite presumed or statutory immunity, Black plaintiffs still named municipalities in their claims.

When the local government could not be held liable for its sheriff or police officers' actions, Black victims could sue the individual police officer and hold him personally liable. Even though municipalities might escape liability for torts, victims could "recover against the guilty officer who inflicted the injury."[119] For plaintiffs to hold officers personally liable and

[114] Henry S. Fraser, *Civilian Defense Manual on Legal Aspects of Civilian Protection* (Washington: U.S. Government Print Office, 1943), 66.
[119] Fraser, *Civilian Defense Manual on Legal Aspects of Civilian Protection*, 66.

recover, they had to show "that he acted arbitrarily, either abusing his discretion or going outside of his lawful functions."[120] Under the legal doctrine of *respondeat superior*, or the law of agency, employers could be held responsible for the actions of their employees when employees committed torts within the scope of their employment. For Black people to successfully hold white officers, sheriffs, or deputies personally liable, however, they had to prove the officers were acting beyond the scope of their duties when they committed the tort. Plaintiffs and their attorneys, therefore, needed an understanding of police officers' duties, like the duty to "protect the public peace, to prevent crimes, to detect and arrest offenders" and to protect "travelers in public streets."[121]

When Black plaintiffs like Varner, Ben Lofton, and Roger McCoy sued individual white police officers, sheriffs, or deputies, they also sued the surety companies and white men that posted bond for the offending officer. In this case, the surety company could be held liable through the principle of *respondeat superior*.[122] By suing bonding companies for the actions of their insured, Black plaintiffs pressured surety companies into think critically about the types of men they insured. H. E. Sellers was sued by both Varner and Lofton for incidents that occurred within four weeks of each other.[123] In two separate cases, an all-white jury found in favor of Varner and Lofton, Black, over Sellers and his white insurers. The Mississippi State Supreme Court affirmed the juries' decisions in both cases. McCoy lost his case against S. W. Key, C. M.

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[120] Fraser, *Civilian Defense Manual on Legal Aspects of Civilian Protection*, 66. Some of these laws have been criticized for violating citizens' due process rights.
[121] Hale, *Police and Prison Cyclopaedia*, 128.
[122] Treatise writer Arthur Adelbert Stearns writes in his 1903 treatise on sureties that "it is held that the delivery of a bond by the surety to the principal establishes the relations of agency between these parties." Arthur Adelbert Stearns, *The Law of Suretyship: Covering Personal Suretyship, Commercial Guaranties, Suretyship as Related to Negotiable Instruments, Bonds to Secure Private Obligations, Official and Judicial Bonds, Surety Companies* (Cincinnati, O.H.: The W. H. Anderson Co., Publishers, 1903), 102.
[123] *Sellers et al. v. Lofton*, 149 Miss. 849 (1928). *Sellers v. Varner*, 151 Miss. 594 (1928).

Gulley, sheriff; the United States Fidelity & Guaranty Company; and the Mississippi Fire Insurance Company.[124] McCoy appealed to the Mississippi State Supreme Court, which reversed and remanded his case to the lower court, giving him another opportunity to convince an all-white jury to rule in his favor. Even with white supremacy and the authority vested in peace officers as arms of the local government, white men and white companies could be held liable for torts committed against Black people.

When companies had to continue to pay out damages on behalf of police officers who committed torts against Black citizens, or citizens in general, it was in the interest of those companies to constrain the officers covered under the bond. When surety companies could not trust white officers to show integrity, caution, and restraint, they could indirectly restrain white officers by refusing to underwrite sheriffs and police officers altogether. A 1922 treatise on surety bonds suggests that "some companies…will not write" surety bonds for sheriffs, constables, and other police officers at all because of "damage suits from errors" on behalf of the insured.[125] According to the treatise, "the average official underwriter looks askance at sheriffs' [or police officers'] bonds chiefly because of…the chance of damage suits due to the unlawful use of official authority by a willful or careless or ignorant sheriff, when he is preserving the peace…He may…arrest or imprison someone without sue cause, and may otherwise exceed his authority."[126] The treatise makes clear that surety companies understood the financial costs of insuring police officers and the financial threat that damage suits posed. Although the criminal

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[124] S. W. Key was white. I have looked up S.W. Key in the United States Federal Census and I found two white males with the initials S. W. and the surname Key in Kemper County, Mississippi, where the deputy shot Roger McCoy. 1860 United States Federal Census. 1920 United States Federal Census. C. M. Gulley, the sheriff, was a white physician. 1930 United States Federal Census.

[125] Edward Clark Lunt, *Surety Bonds: Nature, Functions, Underwriting Requirements (*New York, 1922), 153.

[126] Lunt, *Surety Bonds*, 154.

justice system did little to rein in rogue sheriffs and police officers until after World War II, surety companies may have done so to some extent by refusing to insure officers who might abuse their authority and commit torts against citizens, including Black Americans. Where the law would not constrain rogue officers, money or financial risk might.

*Respectability and Comportment*

In the post-emancipation period, proper comportment was a legal basis for claiming new and existing rights but also claiming access to common carriers and transportation. Scholars have written extensively about African Americans and respectability, uplift, and the politics of respectability, but for this chapter and my longer project, respectability refers to proper dress and behavior in public spaces.[127] Proper comportment is the legal translation of respectability. The common law of common carriers and the concept of comportment were important to African Americans and whites sharing public spaces because both laid out expectations for people in public spaces regardless of race. Because whites generally questioned Black people's ability to behave respectably and demonstrate proper comportment, Black passengers took care to dress respectably and behave properly.

In addition to securing Blacks' access to transportation, the legal principle of comportment also bolstered African Americans' legal claims to protection under the common law of common carriers. According to "long-standing common law conventions," common carriers were prohibited "from turning customers away without good reason," and while race was

[127] For more on the politics of respectability and black people's use of Victorian values in an attempt at racial uplift, see Kevin Kelly Gaines, *Uplifting the Race: Black Leadership, Politics, and Culture in the Twentieth Century* (Chapel Hill: University of North Carolina Press, 1996).

not a legal basis for turning passengers away, dirtiness, belligerence, and outrageous behavior—improper comportment—were.[128] If Black people presented themselves as clean, well-behaved passengers who paid their fare, then common carriers had no legal justification for abusing or discriminating against Black passengers (aside from race). When passengers misbehaved, however, they forfeited their right to protection under the common law of common carriers. Proper comportment, then, was essential to Black travelers' ability to make legal claims to damages in the face of discrimination *and* white people's violation of their rights of personhood.[129] Black passengers, like the plaintiffs considered here, were in for a rude awakening, however. For Black travelers, proper comportment did not always ensure protection, respect, or safe travel on public conveyances

White policymakers and railroad companies used comportment and gendered constructions of race to legitimate their discriminatory practices, but African Americans countered this move and appealed to gendered norms and respectability to claim protection and make strong claims for damages. Railroads took advantage of policymakers' use of gender—and the common understanding that it also included race—to discriminate against Blacks in a way that was race-neutral on the surface and did not violate rules prohibiting race as a basis for refusing to carry Black passengers. Black women adapted this racialized gender rhetoric to carve out political space for themselves, and to pursue damage suits against railroad companies, while Black men developed and adopted forms of masculinity that appealed to the paternalistic

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[128] Masur, *An Example for all the Land,* 100.
[129] Masur, *An Example for all the Land,* 90, 111.

sentiments of whites.[130] These plaintiffs used scripts of respectability and witnesses' attestations to their character to support their legal claims of proper comportment. In many cases heard by white judges and white juries, gender norms, respectability, and proper comportment played a role in jurors' decisions about whether to award Black plaintiffs damages.[131]

Black plaintiffs, male and female, invoked a script of respectability to solidify their claims to damages when white passengers and common carrier employees violently abused them. Elsie Britton presented herself as a woman who "demeaned herself decently and becomingly." When Britton's companion Culp cried out, "don't strike that lady" during the violent assault upon her, his use of the word lady ascribed a level of middle-class respectability to Britton. Culp's exclamation and testimony supported Britton's claim to proper comportment and performance of class and respectability.[132] In another case, Olivia Shankle, a Black schoolteacher convinced an all-white jury and a white judge that she was respectable. She did so by demonstrating in court that she "enjoy[ed] the respect and confidence of the school authorities" in her parish, "as well as that of the colored people whose children" attended the school where she taught.[133] Shankle's reputation as a respectable young professional supported her legal claim of proper comportment when she was attacked, which resonated with the courts, and in turn, contributed to her ability to recover damages for the injuries she suffered. By

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[130] Kevin Gaines, *Uplifting the Race: Black Leadership, Politics, and Culture During the Twentieth Century* (Chapel Hill: University of North Carolina Press, 1996); Glenda Gilmore, *Gender and Jim Crow: Women and the Politics of White Supremacy in North Carolina. 1896-1920* (Chapel Hill: University of North Carolina Press, 1996); Evelyn Brooks Higginbotham, *Righteous Discontent: The Women's Movement in the Black Baptist Church: 1880-1920*, (Cambridge, Mass.: Harvard University Press, 1993); Welke, *Recasting American Liberty*.
[131] Welke, *Recasting American Liberty*, 328-329, 335.
[132] *Britton v. Atlanta and Charlotte Airline Railway Company*, 88 N.C. 536 (1883).
[133] *Shankle et al. v Tri-State Transit Company of Louisiana*, 8 So. 2d 714 La. App. (1942). For another example of a case where a black plaintiff's occupation as a school teacher and Sunday school teacher was highlighted in the statement of the facts of the case, see *Bowie v. Birmingham Railway and Electric Company*, 125 Ala. 397 (1899)

characterizing themselves as "ladies" and leaning on their respectable reputations within their communities, African American women bolstered their legal claims of comportment and gained recourse for white violence.[134]

Many scholars have focused their attention on Black women's claims to respectability as a response to racial discrimination, but their claims did more than that. Black plaintiffs argued that they were merely well-mannered, passive passengers bullied by belligerent railroad employees and drunken passengers. Each of these characterizations played into a cultural script and a legal rule. By claiming the social status of a lady, Black women actively fought against the stereotype that they were immoral and deserved poor treatment.[135] Common carriers could refuse to carry passengers who did not demonstrate proper comportment.[136] Therefore, it was essential for Black women to perform their respectability to strengthen their claims of proper comportment. Further, by claiming the status of a lady and demonstrating proper comportment, Black women asserted themselves as middle class, which legally entitled them to the same

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[134] In another case, the Justice ruling on the appeal refers to a black plaintiff's wife as "Mrs. Crayton." This language is important because it means that white judges also attributed titles of respect, like Mrs. to black women. L*ouisville, New Orleans, & Texas Railway Company v. Wesley Crayton*, 69 Miss. 152 (1891). Similarly, in Lucretia Holmes' case, the justice writing the appellate opinion chose to refer to her as "an unlettered woman," rather than "an old ignorant negro," which suggests that she, her lawyers, and the case brief compelled the justice to ascribe some level of respectability to her as a woman. *Alabama & Vicksburg Railway Company v. Lucretia Holmes* and *Lucretia Holmes v. Illinois Central Railroad Company*, 75 Miss. 371 (1897).
[135] Gilmore, *Gender and Jim Crow*; Danielle McGuire, *At the Dark End of the Street: Black Women, Rape, and Resistance- a New History of the Civil Rights Movement from Rosa Parks to the Rise of Black Power* (New York: Vintage Books, 2011); Welke, *Recasting American Liberty;* Deborah Gray White, "Jezebel and Mammy: The Mythology of Female Slavery," *Ar'n't I a Woman: Female Slaves in the Plantation South* (New York: Norton Press, 1985).
[136] According to one treatise on American Railroad Law, "A railroad company is not bound to accept every person as a passenger who offers to become such. Even if he has a ticket, one who is drunk or disorderly need not be received…Persons whose person or dress is filthy may be excluded." Simeon E. Baldwin, *American Railroad Law* (Boston, Mass.: Little, Brown and Co., 1904), 304-305.

treatment as other middle-class Americans, including white women.[137] Proper comportment entitled passengers, both white *and* Black, to protection from violent attacks.

In addition to arguing that they successfully performed their respective gender roles, even while under attack, Black plaintiffs argued that they performed and embodied middle-class respectability. Black plaintiffs, especially Black men, argued that they were well-behaved, docile, non-threatening passengers. Peter Williams, for example, sued the Yazoo and Mississippi Valley Railroad Company for "abuse, outrages and assaults" after he complied with the agents' requests, but was still beaten. Williams sued the railroad company for civil assault and asked for $10,000 damages.[138] Justice Jeff Truly referred to Williams' experience as an "outrageous and unwarranted invasion of the rights of a passenger."[139] Similarly, Justice Arthur S. Buchanan described school teacher R.H. Neville as "a man of good character," who was "properly conducting himself" when he suffered "an unwarranted, unprovoked, brutal, and painful assault and battery."[140] Black men's stories about their comportment, non-violent demeanor, reputations, and status as middle-class professionals made them appear less threatening and strengthened their claims to protections as passengers.

Black men also performed their gender, but instead of performing the traditional role of the honorable Southern man, Black men cast themselves as deferential, humble, and passive, hoping, as one scholar has put it, "to invoke paternal protection of the court."[141] According to historian Royal Dumas, Jim Crow required "African Americans to be ignorant, docile, and

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[137] Welke, *Recasting American Liberty*, 336.
[138] Williams was awarded $5,000 by the jury. Record in *Yazoo & Mississippi Valley Railway Co. v. Williams,* 1, Supreme Court Case Files, MDAH.
[139] *Yazoo & Mississippi Valley Railway Co. v. Williams, 87 Miss. 344* (Nov 1905).
[140] *Neville v. Southern Railway Company*, 126 Tenn. 96 (1912).
[141] Dumas, "The Muddled Mettle of Jurisprudence," 441.

unthreatening," and if "a Black party couched himself in that vein" appellate courts might be "more inclined to steward his legal rights."[142] Many of the Mississippi tort suits follow this pattern. In an 1892 case, two drunk white men allegedly cursed, pistol-whipped, and threatened to shoot a Black man named Jefferson, though he had purchased his ticket and took his seat in the "Colored Coach." The trial court found that the attack on Jefferson was neither provoked nor resisted. Jefferson convinced the court that he had not brought this cruel treatment upon himself, but that he submitted to the abuse as the conductor watched.[143] Black men's testimonies of deference, even during violent assaults, signaled that they fit the description of comportment laid out by the common law of common carriers as well as the cultural script of respectability and subordination to whites that white supremacists ascribed to Black men. For these men, self-defense, however warranted, might have hurt their case. Jim Crow dictated Black men's submission and these arguments resonated with white judges and jurors.

Not only did plaintiffs characterize themselves as respectable, docile, and respectful citizens, but they also argued that they were meek passengers, which entitled them to the common-law right to protection and right to ride in peace. Their performance of these roles and the use of these tropes in their legal arguments helped them secure damages. Behaving properly in public spaces was important to Black people's damage suits, in part because proper comportment was a prerequisite for passage on common carriers, but also because improper comportment might have been a reason for passengers to be ejected from the common carrier.[144]

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[142] Dumas, "The Muddled Mettle of Jurisprudence," 441.
[143] *The Richmond and Danville Railroad Company v. Jefferson*, 89 Ga. 554 (1892). See also *McRae v. Wilmington and Weldon Railroad Company*, 88 N.C. 526 (1883); *The Georgia Railroad and Banking Company v. Dougherty*, 86 Ga. 744 (1890); *Yazoo & Mississippi Valley Railway Co. v. Williams, 87 Miss. 344* (Nov 1905).
[144] Simeon E. Baldwin, *American Railroad Law* (Boston, Mass.: Little, Brown and Co., 1904), 304-305.

In Shankle's case, Judge LeBlanc argued in his opinion that "there [was] no evidence that the plaintiff, [Shankle], made the slightest hostile demonstration toward assaulting the driver," Sam Brickley, and that even though "the plaintiff was a colored woman…and the bus driver 'was a Southerner'" the facts did not legally justify his assault upon her. To hammer his point home, Judge LeBlanc proceeded to write in his opinion that "the conduct of this woman [Shankle] was not such as would be calculated to deprive any man of good sense and judgment, of his sense of reason and the power to control himself, and to cause him to forget the ordinary duties he owes to a passenger."[145] By arguing that they had been docile and meek while they were being attacked, Black passengers made the legal argument that at no point did they forfeit the protections they were owed under the common law of common carriers. Furthermore, by arguing that they were humble, nonresistant, and passive, Black plaintiffs appealed to white juror's paternalist sentiments.[146]

White violence was so commonplace in the Jim Crow South that even police officers and sheriffs who had a duty to protect citizens—and their rights of personhood—and the public peace violently attacked Black citizens. To make the case against the white police officer who shot him in 1927, Varner and his attorney Jeff Collins had to argue that the young men were respectable, peaceable, and "good citizens." According to attorney Collins, "the assault was made by a man who was sworn to protect good citizens instead of molest[ing] and imperil[ing] their lives."[147] This claim to good citizenship invoked the script of respectability and the police's duty to protect citizens.

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[145] *Shankle et al. v Tri-State Transit Company of Louisiana*, 8 So. 2d 714 La. App. (1942)
[146] Dumas, "The Muddled Mettle of Jurisprudence."
[147] Record in *Sellers v. Varner*, 48, Supreme Court Case Files, MDAH.

In addition to asserting their class status and performing respectability, Black plaintiffs' litigation strategies included caricaturing white perpetrators as belligerent and sometimes intoxicated bullies. White employees were expected to be clean, quiet, polite, and well-behaved when carrying out their duties; this included remaining sober. Additionally, under the common law of common carriers, employees—both Black and white—were supposed to behave professionally when carrying out their duties, even when interacting with Black passengers. It was imperative for Black passengers to demonstrate proper comportment and they would not only hold white passengers to the same standard, but also hold railroad and bus employees to a standard of professionalism. In Mary Martin's case, Agent McDowell, the depot agent and her attacker, had allegedly been drinking on the job and was drunk when Mary Ward, an African American passenger, asked to buy a ticket. E. Humphreys, a white witness, testified that McDowell had propositioned Ward, and after she refused his sexual advance, McDowell in his alleged drunkenness grabbed his pistol and threatened to shoot the entire group, a reckless and belligerent act.[148] In another case from 1892, Jefferson, a Black passenger, traveled some miles peacefully when "two white men entered the coach in a state of drunkenness, using foul and profane language."[149] They tormented the plaintiff, "cursing [him], punching [him] with the muzzle of a pistol," and threatening to shoot him.[150] Martin, Ward, and Jefferson won their cases, convincing jurors that they had behaved appropriately and that their white attackers had not. Black people were successful in claiming damages when they showed that they had

[148] Record in *Yazoo and Mississippi Valley Railroad Company v. Martin*, 49, Supreme Court Case Files, MDAH.
[149] *The Richmond and Danville Railroad Company v. Jefferson*, 89 Ga. 554 (1892).
[150] *The Richmond and Danville Railroad Company v. Jefferson*, 89 Ga. 554 (1892).

displayed proper comportment, while white employees or passengers were drunk, belligerent, ill-mannered, and unprofessional.

Though race sometimes undercut African Americans' ability to benefit from proper comportment on the ground, African Americans employed the expectations imposed on them as passengers to hold whites accountable in court. By characterizing white aggressors as belligerent, drunk, and unprovoked attackers, African Americans turned comportment and the common law of common carriers to their advantage. They used a legal doctrine that was supposed to constrain their behavior to encourage white judges, jurors, and business owners to constrain the behavior of whites. This legal move was important because of its implications in this historical context.

Despite being race-neutral on paper, policies developed by state legislatures and even common carriers under Jim Crow were meant to limit African Americans' expression of freedom and to confine them to second-class citizenship.[151] Black plaintiffs flipped this tactic and used it to their benefit. Legally, common law expectations, protections, and limitations—and sometimes segregation statutes and polices—helped them gain damages for their pain, suffering, or wrongful deaths.[152] The long-term effect of this legal move could have helped undermine white supremacy, even though it may not have been apparent to all those involved. Not only was violence against Black people financially costly in certain contexts, but Black Americans could sometimes subvert policies that were meant to confine Black people to the bottom of the

[151] As Welke argues, Jim Crow laws and safety rules also limited white people's freedom. These limitations are important, but it is also important to note that Jim Crow laws did not limit white people's freedom in an attempt to relegate them to second class status. Welke, *Recasting American Liberty*.
[152] Jefferson was in the Colored Coach when he was attacked. *The Richmond and Danville Railroad Company v. Jefferson*, 89 Ga. 554 (1892).

American caste system to constrain and punish violent whites for violating Black Americans' rights of personhood and for taking advantage of Black vulnerability.

*Vulnerability*

Jessie Lee Garner stood outside of Sutton's Ice Cream Factory in Jackson, Mississippi as she waited for the bus on August 31, 1936. Six months pregnant, Garner was likely exhausted by the time the bus arrived. "After paying her fare, [Garner] retired to the extreme rear [of the bus] and took the very last seat in the section…reserved for the colored race."[153] Garner took a seat in the section reserved for Blacks, where only one other passenger was seated, a Black man. As the bus continued down Pearl Street, the bus filled up, leaving only standing room in the white section. A pregnant Garner rested as she made her way to her destination.

After the bus rounded the corner of Capitol Street near the Edwards Hotel, "a young white man" got on board, went to the section reserved for Black passengers, "and with rude and profane language ordered [the] plaintiff to get up and give him a seat."[154] According to Garner, she told the man "she was heavy with child, being about six months pregnant" and "courteously told the gentleman she did not feel like standing but that she would leave the bus at Farish Street."[155] Unhappy with her response, the man, "without cause or provocation cursed [Garner], and struck [her] twice in the face, once about the left eye, and once over the mouth, two blows of great severety [*sic*], knocking her violently to the floor of the bus."[156] As a result, several pieces

[153] Record in *Mississippi Power and Light Company v. Garner*, "Opinion," 2, Supreme Court Case Files, MDAH.
[154] Record in *Mississippi Power and Light Company v. Garner*, "Declaration," 5, Supreme Court Case Files, MDAH.
[155] Record in *Mississippi Power and Light Company v. Garner*, "Declaration," 5, Supreme Court Case Files, MDAH.
[156] Record in *Mississippi Power and Light Company v. Garner*, "Declaration," 5, Supreme Court Case Files, MDAH.

of dental work were knocked out of her mouth, her eyes were badly swollen, and Garner ultimately lost the baby she was supposed to welcome into the world three months after the assault. Garner was married, but she brought a suit on her own behalf, suing the Mississippi Power and Light Company for $3,000 in damages for negligence. Had the company partitioned the bus, offering more rigid separation of the races—which was mandated by Section 6133 of the Mississippi Code of 1930—Garner and her attorney argued, the assault that resulted in a miscarriage would not have happened. An all-white jury awarded Garner $1,000 to cover her "medical services, to pay nurses, to pay servants to do her ordinary work," and because she "suffered great pain and mental anguish."[157] The Mississippi Power and Light Company appealed, and the Mississippi State Supreme Court ultimately affirmed the lower court's ruling in Garner's favor.

Black women argued that they had behaved respectably and demonstrated proper comportment when bringing suits against common carriers and white individuals, but in some cases, they also highlighted their vulnerability due to age or other circumstances. Women like Lucretia Holmes used a script of being a helpless old woman to appeal to the sentiments of white jurors. Her lawyers argued that she was "a decrepit, enfeebled colored woman," and that it was the railroad's mistake that caused her to be wrongfully ejected from the train.[158] Had the conductor checked her ticket against her luggage tag, he would have been able to see that her ticket was wrong and that she had paid the appropriate fare. Instead, ignoring the fact that she

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[157] Garner sued for actual and punitive damages, but the jury did not say which it was awarding. The case record simply states "'we, the jury, find for the plaintiff in the sum of $1,000.00.'" Record in *Mississippi Power and Light Company v. Garner*, "Verdict," 46, Supreme Court Case Files, MDAH.
[158] *Alabama and Vicksburg Railway Co. v. Lucretia Holmes*, 75 Miss. 371 (1897).

was an old, sickly, "unlettered" woman, the conductor put her off of the train.[159] Similarly, in her negligence case, Maria Dodd's lawyers argued that she "was old, ignorant and helpless," and despite notifying "the defendant's agent of her trouble she was ignored."[160] Dodd's lawyers noted that "nobody cursed the old woman; nobody called her names," but that they "ignored absolutely the rights of the old woman."[161] Without transportation, Dodd was forced to work as a cook in town to pay for a return ticket that she had already purchased.[162] For frail, helpless older women, being ignored and left to fend for themselves was an act of violence, or at the very least, an act of negligence. Implicit in both arguments was the claim that the railroads were liable because they would not help these older women in their distress, though it was their duty to the passengers.

While Garner's age did not make her vulnerable on that fateful day, her pregnancy did. The bus company was negligent, Garner's legal team argued, because it did not anticipate violence that might arise on the bus in the absence of proper partitions and because it did not protect her from the white passenger's violent attack. Garner's attorneys referenced the common law of common carriers as another ground upon which the company owed Garner a duty of care and protection on appeal. In the brief submitted to the Mississippi State Supreme Court by Garner's attorneys, C. O. Jaap, Jr., John B. Higgins, and Louise Melton, the lawyers argued that "it is the duty of [the company's] employees to exercise great care and vigilance in preserving order and in guarding its passengers from annoyance, violence and insult" and that when an employee sees or hears an "injury by a fellow passenger, or might reasonably anticipate the

[159] *Alabama and Vicksburg Railway Co. v. Lucretia Holmes*, 75 Miss. 371 (1897).
[160] *Illinois Central Railroad Company v. Maria Dodd*, 104 Miss. 643 (1913).
[161] *Illinois Central Railroad Company v. Maria Dodd*, 104 Miss. 643 (1913).
[162] *Illinois Central Railroad Company v. Maria Dodd*, 104 Miss. 643 (1913).

happening of such an injury" but "neglects to take the proper precaution or to use proper means to prevent or mitigate such injury, it is liable therefor."[163] Jaap argued the company had reason to believe that not screening the bus "would very probably result in the injury to law-abiding, peaceable colored persons who were passengers on its buses, and that the proximate cause of the injury suffered by appellee was the failure of the power company to comply with the law, which directed them to separate the races."[164] Failure to comply with the Jim Crow law was negligent on the part of the bus company because it left Garner vulnerable.

Judges in Mississippi and other southern states acknowledged Black Americans' vulnerability in public spaces and on common carriers. In their opinions, state supreme court justices argued that the architects of Jim Crow codified segregation as a way to preserve the peace and as a way to protect Black people from whites who would perpetrate violence upon Black victims. Not only was this logic of preserving the public peace built into state justices' written commentary about Jim Crow laws, but it was also explicitly stated in the statutes themselves. Whether white legislators truly believed that segregation would preserve the peace and protect vulnerable African Americans is hard to say.

Jessie Lee Garner's lawyers were creative, and in addition to appealing to the common law of common carriers, they also repurposed a Jim Crow statute to suit Garner's legal needs. Garner's claim against the Mississippi Power and Light Company rested on the company's non-compliance with section 6133 of the Mississippi Code of 1930:

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[163] Record in *Mississippi Power and Light Company v. Garner*, "Brief for Appellee," 4, Supreme Court Case Files, MDAH. Garner's attorneys' names are listed at the end of the Brief for the appellee. Record in *Mississippi Power and Light Company v. Garner*, "Brief for Appellee," 6, Supreme Court Case Files, MDAH.
[164] Record in *Mississippi Power and Light Company v. Garner*, "Brief for Appellee," 4, Supreme Court Case Files, MDAH.

> All persons or corporations operating street railways, carrying passengers in their cars in this state shall provide equal but separate accommodations for the white and colored races by providing two or more cars, or by dividing their cars by a partition or adjustable screen which may be made movable so as to allow adjustment of space in the car in the manner suited to the requirements of the traffic, so as to secure separate accommodations for the white and colored races. No person or persons shall be permitted to occupy seats in cars or compartments other than the ones assigned to them on account of the race to which they belong.[165]

Garner's lawyer argued that the statute quoted above was "passed for the protection of the races and for the preservation of peace that the legislature in its wisdom decreed such statutes necessary to prevent just such injuries as are here complained of" and that bus company knew—or should have known—that its noncompliance with the law "would lead to assaults such as happened in this case."[166] This argument played into the paternalist sentiments of white jurors and judges, by arguing that the law passed by their peers was sound and logical and that although it called for segregation—and implicitly the subordination of Blacks—it should have been followed to protect Garner and her unborn child.

According to state legislators, Jim Crow laws like the one invoked in Garner's case were passed to protect both races.[167] Appealing to this legal rationale and playing into this charade, Garner's complaint contended that:

> the legislature well knowing and realizing that irresponsible white persons, infuriated at the proximity of negroes in the buses, would in all probability attack said negroes, possibly killing them, and do them great bodily injury, and plaintiff [has] shown unto the Court that said statute was enacted by the legislature of the state of Mississippi for the

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[165] Record in *Mississippi Power and Light Company v. Garner*, "Brief for Appellee," 3, Supreme Court Case Files, MDAH.
[166] Record in *Mississippi Power and Light Company v. Garner*, " Brief for Appellee," 4, Supreme Court Case Files, MDAH.
[167] For a similar case see *Shankle et al. v Tri-State Transit Company of Louisiana*, 8 So. 2d 714 La. App. (1942).

> purpose of preserving the peace and preventing breaches of the peace, and for the protection of the colored race.[168]

And while historians and contemporaries alike have concluded that this was not the intent of said laws, Garner and her attorney Jaap used the law to their advantage. Culturally and socially, this law subordinated Black Americans and relegated them to a second-class status by making them sit in the back of the bus or stand to accommodate white patrons. But Garner and her lawyer understood that in court, invoking a Jim Crow law might win her damages and offer her some sort of legal recourse for the violence and pain she endured. This move served two purposes; it bolstered her claim that the bus company owed her a duty of care and protection while she was a passenger, but it also played into the paternalist sentiments of the jurors. The argument suggested that the white attacker was not responsible for his attack upon Garner. If the company had complied with the rules that learned white legislators had put in place, Garner would not have been close to this white man and he would not have felt the need to attack her.[169]

Garner's team had to argue that the failure to comply with a Jim Crow statute was the reason she was assaulted if they wanted to win. The lawyers asked the court to charge the jury that, "if the failure of the defendant to separate the white and colored compartments of their busses by screen of metal, wood or cloth was the proximate result of the violation of the law by the party who assaulted the plaintiff, that the jury was authorized to find for the plaintiff."[170] The judge, seeing this as an admissible instruction, charged the jury as such. The defense appealed

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[168] Record in *Mississippi Power and Light Company v. Garner*, "Declaration," 3, Supreme Court Case Files, MDAH.

[169] Garner may not have agreed with this legal logic, but she had to make her case. She may have felt that her white attacker violated her rights of personhood because of his racism, and that the material that the partitions were made of was irrelevant. It is possible that different partitions would not have changed the outcome of the situation.

[170] Record in *Mississippi Power and Light Company v. Garner*, "Brief for Appellant," 6, Supreme Court Case Files, MDAH.

and argued that the judge erred in giving this instruction, but the Mississippi state supreme court found no error, affirming the lower court's decision.[171]

*Violence and Claims to Value*

Black plaintiffs were not shy about asking for large sum of damages. In many instances they went beyond asking for what lawyers called actual damages, to demand punitive damages as well. Actual or compensatory damages were "allowed as a recompense for the injury actually received" to one's "person, property, or relative rights."[172] The amount awarded was based on the proven harm, loss, or injury suffered by the plaintiff. Punitive or exemplary damages were damages in excess of actual damages and were "allowed as punishment for torts committed."[173] Punitive damages were typically awarded at the court's discretion when the defendant's behavior was found to be especially harmful.[174] Wesley Crayton, a Black businessman sued for $10,000 in damages when he was assaulted on a Louisville, New Orleans and Texas Railway Company Train.[175] In 1892 Isaiah Douglass sued the Louisville, New Orleans & Texas Railway Company for $25,000 after his son was threatened by two white train employees and died of injuries he sustained jumping from the moving train.[176] Peter Williams asked for $10,000 in damages for his

[171] Record in *Mississippi Power and Light Company v. Garner*, "Brief for Appellant," 6, Supreme Court Case Files, MDAH.
[172] John Bouvier, *Law Dictionary, Adapted to the Constitution and Laws of the United States of America, and of the Several States of the American Union*, (Philadelphia, P.A.: G.W. Childs, 1914), 421.
[173] William C. Cochran, *Students' Law Lexicon - A Dictionary of Legal Words and Phrases* (Cincinnati, O.H: R. Clark & Co, 1888), 83.
[174] Wex Legal Dictionary, "Actual Damages," (accessed September 30, 2017) http://www.law.cornell.edu/wex/actual_damages. Wex Legal Dictionary, "Punitive Damages," (accessed September 30, 2017) http://www.law.cornell.edu/wex/punitive_damages.
[175] Record in *Louisville, New Orleans & Texas Railway Company v. Wesley Crayton*, 3, Supreme Court Case Files, MDAH.
[176] He was only awarded $496. Record in *Louisville, New Orleans, & Texas Railway Co. v. Douglass*, 3, Supreme Court Case Files, MDAH.

suffering, suing for both punitive and actual damages. The jury awarded him $5,000.[177] Maria Dodd, an elderly Black woman asked an all-white Mississippi jury to grant her actual and punitive damages. In her first case, the jury awarded her $175 in punitive damages. This case was appealed and remanded.[178] In the second trial, a jury found in favor of Dodd, awarding her $250 in actual damages alone.[179] It seems extraordinary that Black Mississippians would sue for altercations involving racial violence in Jim Crow Mississippi. However when they did sue, many were ambitious. By asking for actual *and punitive* damages, Black plaintiffs asserted that their lives had great value.

But in suing for actual and punitive damages, Black plaintiffs also forced white people to hold other white people accountable for the harms they committed against Black victims. In Mary Martin's case, the defendant railroad company appealed on the grounds that the instructions submitted on behalf of the plaintiff were in error and because punitive and compensatory damages were inappropriate in this case. On appeal, Martin's lawyers cited a legal encyclopedia, arguing that punitive damages were appropriate when "malice, fraud, or gross negligence or recklessness enter into the commission of a tort," which they believed was the case in Martin's situation.[180] According to the brief and the legal encyclopedia, punitive damages should have been assessed to the railroad company to hold the company accountable for the agent's maliciousness and the company's negligence and recklessness in allowing the depot agent to assault, threaten, and proposition Martin and her companions. In the opinion of Peter

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[177] Record in *Yazoo & Mississippi Valley Railroad Company v. Peter Williams*, "Brief for Appellee," 1, Supreme Court Case Files, MDAH.
[178] When the court remands a case, they send it back to the lower court to be heard again.
[179] *Illinois Central Railroad Company v. Maria Dodd*, 104 Miss. 643 (1913).
[180] Record in *Yazoo & Mississippi Valley Railroad Company v. Martin*, "Brief for the Appellee."

Williams' case, Justice Truly conceded that "punitory damages were intended by way of punishment to the defendant and to compel it to have a due and proper regards for the public."[181] By suing for punitive damages—in addition to actual damages—Black plaintiffs used their experiences to hold companies accountable for protecting the rights of passengers and people's rights of personhood, irrespective of race.

*Contested Valuation*

Within the courtroom, Black plaintiffs forced railroad companies, judges, and jurors to contemplate the idea that Black people's experiences had value. They also pushed white courts to recognize that Black lives had value by compelling them to determine if Black plaintiffs should be awarded damages and how much they should be awarded. Black plaintiffs like Crayton, Douglass, Williams, and Philip Woods, who sued a railroad company for $3,000 after a physical altercation, worked with their lawyers to ascribe a monetary value to the injuries that they allegedly suffered at the hands of white people.[182] Each plaintiff's petition for damages established a starting point for negotiations. Henry Walls was awarded $2,500 in damages for injuries he sustained when he was wrongfully ejected from a moving train, and though it was not the full sum that he sued for, it was, in fact, a large sum of money. Woods, who sued for $3,000 in damages, was awarded $200 for an assault by a conductor. The victim deemed the "amount of damages awarded him by the jury so grossly inadequate to compensate him for the injury

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[181] Y*azoo & Mississippi Valley Railroad Company v. Peter Williams*, 87 Miss, 344 (1905).
[182] *Louisville, New Orleans & Texas Railway Company v. Wesley Crayton*, 69 Miss. 152 (1891), Louisville*, New Orleans, & Texas Railway Co. v. Douglass*, 69 Miss. 723 (April 1892), *Yazoo & Mississippi Valley Railroad Company v. Peter Williams*, 87 Miss, 344 (1905), *Woods v. Illinois Central Railroad Company*, 151 Miss. 395 (1928).

received" that he appealed his case, arguing that the sum "evince[d] passion or prejudice on the part of the jury in making up their verdict."[183] Here, the plaintiff set a high bar for negotiation, and when the jury did not meet him close enough to his expectations, he appealed to a higher authority, the Mississippi State Supreme Court. Woods was adamant that the jury's award was an inadequate valuation of his experiences and injuries.

Black Americans used the appellate process to seek compensation that they felt they deserved and to challenge potential jury prejudice. African American plaintiffs sometimes won but then appealed because the original ruling and award were "grossly inadequate to compensate [them] for the injury received."[184] In Mary Ward's case, the jury sided with Ward at the trial level, but she was not satisfied with the amount of damages she was awarded. Similarly, in a case brought by Phillip Woods against the Illinois Central Railroad Company, two hundred dollars in damages was not enough to compensate him for the injury.[185] Their cases tend to show that some African American plaintiffs were not content with a trial jury simply siding with them in a case where they were insulted or injured, but that they appealed their cases if they found that the damages awarded were "grossly inadequate."[186] It was not enough to "win" damages; Black plaintiffs sought recognition and compensation for the injuries they received. The size of the damages had to match the severity of the injury.

Plaintiffs did not always agree with jurors' assessment of the value of their lives, bodies, and experiences, but sometimes jurors did award large sums in damages. While jurors did not

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[183] *Woods v. Illinois Central Railroad Company*, 151 Miss. 395 (1928).
[184] *Woods v. Illinois Central Railroad Company*, 151 Miss. 395 (1928); *Ward v. Yazoo and Mississippi Valley Railroad Company*, 79 Miss. 145 (1901).
[185] *Woods v. Illinois Central Railroad Company*, 151 Miss. 395 (1928).
[186] "Brief for Appellee," case record, *Woods v. Illinois Central Railroad Company*, 151 Miss. 395 (1928).

always award plaintiffs the full amount of damages petitioned for, often they offered Black victims a substantial sum of money for their suffering.[187] Crayton sued for $10,000 but was awarded $2,000. Williams sued for $10,000, though he was awarded $5,000; half the amount asked for.[188] Mary Martin was awarded $5,000 when a railroad company employee "committed an assault" upon her, allegedly "made an indecent proposition to the plaintiff," "and used insulting language toward her.[189] By granting Black plaintiffs damages for civil wrongs committed against them, juries and judges recognized that Black lives and experiences had value--even if whites' assessment of said value was lower than the monetary value that Black victims assigned to their own injuries and experiences.

*Conclusion*

The cases considered in this chapter add to the scholarship on Blacks' use of civil law under Jim Crow by highlighting the ways African Americans used various causes of actions, legal concepts, and cultural scripts to gain compensation for incidents that involved white-on-Black violence. By using tort law to gain recourse for incidents involving white-on-Black violence, African Americans forced white judges and juries to hear their grievances. To argue their case in court, Black plaintiffs and their lawyers had to invoke various gender norms and ideals of respectability. By suing for compensatory and punitive damages, Black victims were able to ascribe value to their lives and their experiences and force whites to contemplate the value of Black lives. African American plaintiffs, white-owned companies, and white judges and

[187] *Yazoo & Mississippi Valley Railroad Company v. Walls*, 110 Miss. 256 (1915).
[188] Record in Y*azoo & Mississippi Valley Railroad Company v. Peter Williams*, "Brief for Appellee," 1, Supreme Court Case Files, MDAH.
[189] Record in *Yazoo & Mississippi Valley Railroad Company v. Martin*, "Brief for the Appellee."

jurors did not always agree on the valuation of Black lives and experiences. Still, white judges and jurors often awarded Black victims damages.

Welke and others have viewed Black plaintiffs' cases through the lens of citizenship rights and responses to legal discrimination, but my treatment of such cases puts white-on-Black violence at the center of the analysis. My plaintiffs did not talk much about their citizenship rights, and it seems like they were more concerned with violations of their rights of personhood, the right to live free from violent abuse. Few of my plaintiffs brought suits against railroad or bus companies because the company was discriminating against them or forcing them to occupy Jim Crow cars or sections of buses. The violence they faced was not always directly linked to enforcing Jim Crow segregation. Rather than focus on suits where Black plaintiffs were injured while they resisted Jim Crow segregation, this project looks at white-on-Black violence that happened in situations that did not involve segregation. By framing my analysis of Black civil litigation around cases that involve white-on-Black violence, it becomes clear that civil litigation was a tool African Americans could use to combat white violence and white people's violation of their rights of personhood. Furthermore, by highlighting that Blacks used civil litigation to combat Jim Crow violence, these cases offer a more nuanced account of the role the law played in Blacks' everyday lives.

Black plaintiffs pushed and sometimes succeeded in making white jurists see that unbounded and unwarranted racial violence was wrong in certain situations. Abusing Black people was an act that could be financially costly. Though white jurors and judges likely saw their rulings as protecting passengers, protecting the public, or as being paternalistic towards Black Americans, legal recognition of Black personhood and the value of Black life pushed back

against Jim Crow violence as a control mechanism. Using their citizenship right to sue—as protected by the Fourteenth Amendment—Black people challenged white violations of their rights of personhood and self-ownership. If Black people could sue white-owned companies and white individuals under tort law for incidents and altercations involving white violence and win large sums of money, were white attackers safe from the legal ramifications of their actions? Though prosecutors could protect white perpetrators from the wrath of the law in criminal court, Black victims were able to wield civil law and sometimes obtain justice—or at the very least compensation—for the racial violence that they endured.

As the judiciary's view on corporations shifted during the 1910s and 1920s, so did African Americans' litigation strategies for incidents involving white-on-Black violence.[190] During the post-Reconstruction period, it was possible for African Americans to appeal to the common law of common carriers and politics of respectability and vulnerability to pursue civil suits against railroad companies. After southern legislatures and courts solidified Jim Crow and jurists worked to streamline tort doctrine during the late-nineteenth-century, Black Americans began bringing tort suits for police violence, attacks on buses, and lynchings. In their quest for legal recourse under Jim Crow, Black Americans learned who they could hold accountable for Jim Crow abuse and violence. The shift from suing companies for injuries to suing individuals, surety companies, and municipalities marked an evolution in their litigation strategy. Holding bonding companies accountable for police officers and sheriffs' torts could have been the inspiration for anti-lynching, anti-mob violence, and anti-riot legislation that held municipalities

[190] "By 1900, then, tort law had gone through a marvelous series of changes. It stood in what might seem a state of indecision. The courts, by and large, still upheld the rights of enterprise; but they were creatures of their time, and their faith had been shaken [by industrial accidents]." Friedman, *A History of American Law*, 364. See also, Morton Horowitz, *The Transformation of American Law, 1780-1860*, (Cambridge, Mass.: Harvard University Press, 1976).

accountable for lynchings—which usually included complicit police officers, sheriffs, and prison guards.[191] These cases show that Black people could hold agents of the state and white people accountable for violent attacks against Black people, even under Jim Crow, so why not create legal protections from racially motivated mob-violence? The common law of common carriers remained an avenue of legal recourse, but the type of defendant sued for incidents involving white-on-Black violence shifted.

These litigation strategies became part of Black legal culture as Blacks continued to use the strategies and adapt them to their specific needs. With the rise of the Black press, more African Americans became aware of these litigation strategies; Black newspapers developed into the vehicles for transmitting and transforming Black legal culture throughout the South and the national network of Black communities.

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[191] "Anti-Lynching Law. South Carolina Jury Declines to Give Damages," *Augusta Chronicle* (Augusta, Georgia), September 28, 1900, 1. *Readex: Readex AllSearch*. "To Test Anti-Lynching Law. Arrest of Alabama Mob Leaders Who Hung White Man," *Daily People* (New York, New York), March 5, 1901: 1. *Readex: Readex AllSearch*. "Anti-Lynching Law in Georgia," *Columbus Daily Enquirer* (Columbus, Georgia), July 21, 1919: 4. *Readex: Readex AllSearch*. "Chicago Gives Up! Sick and Tired of Losing Riot Suits--Illinois Anti-Lynching Law Good!," *Cleveland Gazette* (Cleveland, Ohio), December 10, 1921: 1. *Readex: Readex AllSearch*. "Anti-Lynching Sentiment Fast Gaining Ground Twenty-two Lynchers Indicted in Georgia This Year--Four Convicted, Fifteen," *Broad Ax* (Chicago, Illinois), November 25, 1922: 2. *Readex: Readex AllSearch*. "Based On Our Ohio Law! The Georgia Legislature Again Has An Anti-Lynching Bill Which It," *Cleveland Gazette* (Cleveland, Ohio), August 8, 1925: 1. *Readex: Readex AllSearch*. "Minnesota's Anti-Lynching Law," *Appeal* (St. Paul, Minnesota), April 23, 1921: [2]. *Readex: Readex AllSearch*. "Virgnia's New Anti-Lynching Law Defended," *Negro Star* (Wichita, Kansas), October 5, 1928: [1]. *Readex: Readex AllSearch*. "Pa. Anti-Lynching Bill a Law!," *Cleveland Gazette* (Cleveland, Ohio), June 2, 1923: 1. *Readex: Readex AllSearch*. Black newspapers reported on state anti-lynching laws during the late nineteenth-century as well. "South Carolina's Anti-Lynching Law." *Cleveland Gazette* (Cleveland, Ohio), May 23, 1896: 2. *Readex: Readex AllSearch*. "The Texas Anti-Lynching Law." *Times-Picayune* (New Orleans, Louisiana), June 21, 1897: 4. *Readex: Readex AllSearch*. "They Discuss Lynching Now. the South Carolina Convention Puts a Drastic Anti-Lynching Provision in the Constitution." *Charlotte Observer* (Charlotte, North Carolina), November 10, 1895: [1]. *Readex: Readex AllSearch*.

## Chapter 2: Litigating in Black and White: Black Newspapers and the Shaping and Transmission of Black Legal Culture under Jim Crow

In 1891 the *Cleveland Gazette* published a one-sentence article on a Mississippi case concerning a well-known liquor dealer, Wesley Crayton. The one-liner read, “At Vicksburg, Miss., recently a jury of twelve white men gave Wesley Crayton, an Afro-American, who was ejected from a railroad train, a verdict of $2,000 damages.”[192] On the surface, the one-line article explained to Black readers that even in Mississippi, an all-white jury might award a Black person a substantial sum of damages. *The Gazette* and other Black newspapers reported that Crayton was wealthy, a successful proprietor of whiskey, served as an alderman, lived in a $7,000 home, and owned $30,000 worth of real estate.[193] The *Gazette* did not, however, devote much space to the proceedings of Crayton’s damage suit.[194]

On September 25, 1946, fifty-five years after Crayton’s altercation, James W. Graves, a Black porter, reportedly submitted an affidavit to a Tennessee chapter of the NAACP after being “Blackjacked and shot by a conductor in Mississippi.”[195] According to *The Plaindealer*, a Kansas City, Kansas, Black newspaper, Graves and the conductor, N. B. Kaigler, got into an argument about where Graves seated two Black passengers. Graves alleged that “the conductor struck him behind the ear with a Blackjack,” landing him in the hospital for eleven days. It was

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[192] "Doings Of The Race. Falls Heir to $75,000--Received $175,000 for His Property. Secured Good." *Cleveland Gazette* (Cleveland, Ohio), May 30, 1891, 1. *Readex: African American Newspapers*.

[193] "South [Illegible]," *Huntsville Gazette* (Huntsville, Alabama), March 27, 1886, 1. *Readex: African American Newspapers*. "Personal Mention," *Weekly Pelican* (New Orleans, Louisiana), February 19, 1887, 2. *Readex: African American Newspapers*. "Doings Of The Race. Falls Heir to $75,000--Received $175,000 for His Property. Secured Good." *Cleveland Gazette* (Cleveland, Ohio), May 30, 1891, 1. *Readex: African American Newspapers*. "Race Echos," *American* (Coffeyville, Kansas), August 6, 1898, 1. *Readex: African American Newspapers*. "[Topeka; Suprise; Visit]," *Wichita Searchlight* (Wichita, Kansas), March 15, 1902, 4. *Readex: African American Newspapers*. 1890 United States Federal Census.

[194] *Louisville, New Orleans, and Texas Railway Company v. Wesley Crayton*, 69 Miss. 152 (1891).

[195] "More Beatings of Porters on Illinois Central Reported," *Plaindealer* (Kansas City, Kansas), November 22, 1946, 1. *Readex: African American Newspapers*.

unclear whether Graves sued.[196] Unlike the *Cleveland Gazette*'s concise reporting on Crayton's case, the *Plaindealer* offered its readers details from Graves' altercation.

This chapter examines Black newspapers' discourse about civil suits involving white-on-Black violence and white people's violations of Black Americans' rights of personhood. It argues that these conversations in print shaped and transmitted Black litigation strategies and legal culture throughout Black America. Black journalists and Black newspaper editors expanded the network connecting Black communities across Black America through their reporting on civil lawsuits. Black newspapers circulated information about lawsuits against whites for white-on-Black violence and about the possibilities of tort law more broadly. These newspapers also shed light on the shift in Black litigation strategies and targets from the early days of Jim Crow to the post-World War II era.[197]

This chapter explores how Black print media shaped and disseminated legal knowledge and a Black legal culture using both Southern regional papers like the *Atlanta Daily World* and national Black newspapers like *The Chicago Defender*.[198] The chapter argues that Black newspapers transmitted legal culture, meeting eager Black readers' demand for legal information

[196] "More Beatings of Porters on Illinois Central Reported," *Plaindealer* (Kansas City, Kansas), November 22, 1946, 1. *Readex: African American Newspapers*.
[197] Towards the end of the period, readers would see more articles on lynchings, police brutality, and attacks on buses.
[198] Few scholars have examined syndicated black newspapers or the networks of black newspapers across the South. Scholars like Martin Dann, James Grossman, and Ethan Michaeli have examined the black press and black media, typically focusing on larger black newspapers, like Freedom's Journal, the Chicago Defender, New York Age, and the Washington Bee. To be sure, more widely available black newspapers across the country played a vital role in the dissemination of information to black communities across black America. But as historian Thomas Aiello notes, "such examinations of more widely available black newspapers neglect the existence of a legitimate and flourishing group of black newspapers throughout the South." Because of the gap in the archive, many smaller Southern black newspapers have "been given short shrift in discussions of the black press." Southern black newspapers were vital to spreading and shaping black legal culture. Thomas Aiello, *The Grapevine of the Black South: The Scott Newspaper Syndicate in the Generation Before the Civil Rights Movement* (Athens: University of Georgia Press, 2018), 2.

while picking up, shaping, and transporting legal knowledge in and out of the South. *The Chicago Defender* and Southern news syndication and exchange, which Aiello argues was the "grapevine of the Black South," illustrate how Black newspapers shaped and circulated Black legal knowledge.[199] Through the exchange of news and ideas and the physical travel of newspapers, Black readers could stay abreast of cases, events, and incidents of white violence in the South and beyond. Black newspapers covered cases involving white-on-Black violence in a variety of ways, sometimes offering sensational headlines, other times quoting the victim's legal complaint and formal petition. Through this news coverage, Blacks in Mississippi, across the South, and throughout Black America, were able to learn how other Black people were using civil law, which incidents they could sue for, and even which lawyers might be helpful.

### *Vehicles of News: Newspapers & Trains*

Black newspapers ensured that Black plaintiffs' litigation strategies and collective legal knowledge would transcend local and state boundaries.[200] African Americans living under Jim Crow had access to legal knowledge through Black newspapers that they purchased and read for themselves or heard through the grapevine. Though not all African Americans could afford a

[199] I am unhappy with the definitions of "heard it through the grapevine" offered by search engines as they argue that hearing something through the grapevine means hearing it through informal means. While this might be true, historically, "official" means have been limited to African Americans as "official" often refers to governmental or mainstream sources. Because of the bias and racism that is inherent in structures of power throughout American history, I will tweak the definition of "the grapevine." For the purpose of this chapter, "the grapevine" is a network amongst people, particularly African Americans. In the case of news, it begins at the source and is disseminated to others through word of mouth or through syndication and news collection and distribution. Grossman discusses some of this in his work.

[200] The Illinois Central Railroad line ran from Mississippi to Chicago, connecting the Deep South with the North (Midwest). James Grossman, *Land of Hope: Chicago, Black Southerners, and the Great Migration* (University of Chicago Press, 1989), 4, 44.

subscription to a newspaper, papers may have been passed along and read to those who were illiterate.[201]

Mississippi, like other states around the country, saw a boom of Black newspapers during the 1870s and 1880s. According to historian Julius E. Thompson, Black newspapers cropped up across Mississippi during the 1860s and 1870s, but were "plagu[ed]" by Black people's poverty, illiteracy, and "a weak, almost nonexistent advertising base."[202] Despite these struggles, however, Mississippi had more Black newspapers during Reconstruction than any other period, many of those being religious-oriented journals.[203]

With the rise of Jim Crow in Mississippi and the implementation of the Mississippi Plan, the Black press in Mississippi faced a daunting battle that led to a decrease in Black papers produced in the state and created a real need for news circulation.[204] According to Thompson, during the fifty years that followed "Redemption," "Jim Crow affected all aspects of Black life, including Black newspapers."[205] The crack-down on Mississippi's Black press under Jim Crow left a void for Black news circulation in Mississippi. Newspapers published outside Mississippi, like the *Weekly Pelican*, *Cleveland Gazette*, the *Plaindealer*, and the *Chicago Defender* would

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[201] "Discussions from the North, initiated by news from endless combinations of these sources came to dominate conversations in homes, churches, barber shops, and pool rooms…and other focal points of Southern black communities." Grossman, *Land of Hope*, 68-69.
[202] Thompson, *The Black Press in Mississippi*, 3, 5.
[203] For this project, I did not consult religious-oriented journals, in part because I did much of my research from Chapel Hill, North Carolina. I thought that secular newspapers might offer more of the coverage that I was interested in; black civil cases involving white-on-black violence. Recently, more black newspapers are becoming more widely available online, which will allow me to do more research when I begin the manuscript. With more time and the new resources available, I suspect that I will have more newspapers and articles to incorporate into this chapter. These religious journals were Christian newspapers. Dr. Dylan C. Penningroth has alerted me to the fact that the *Christian Recorder* (AME official paper) has a long, full digitized run and it reports a lot on court cases.
[204] The Mississippi Plan was a coordinated effort by Democrats to take control of the Mississippi state government. Democrats used violence, intimidation, economic oppression, and disfranchisement of black voters to do this. The Mississippi Plan would serve as the model for Redemption.
[205] Thompson, *The Black Press in Mississippi*, 11-15.

help fill the gap left by the decline of Black papers in Mississippi. For this project, these papers also fill holes in the historical archive and make it possible to examine Black legal culture in the press in Mississippi and beyond. Black newspapers from outside of Mississippi offered examples of how the Black media covered legal cases in the South and beyond. By the 1930s, thanks to syndication, the number of Black newspapers in Mississippi increased.[206]

Many Black newspapers went out of business because of their early financial struggles, but a few were able to weather economic storms and establish themselves as representatives of the race. *The Chicago Defender*, one of the most prominent African American newspapers during this period, was founded in 1905 by Robert Abbott, an African American law school graduate from Savannah, Georgia.[207] Like other Black newspapers in their infancy, *The Chicago Defender* faced financial crises that would shape the way that the paper engaged with the Black community in Chicago but also throughout Black America. Abbott founded *The Defender* with little startup capital, so he depended on "subscriptions from his church choir and at city pool halls, barbershops, bars, cabarets, restaurants, and residences, even going door to door in the Black neighborhood."[208] Because Abbott's newspaper business depended on Black customers both in Chicago and beyond, *The Defender* had to take an interest in issues that affected Black people throughout Black America.

*The Chicago Defender* played a critical role in ensuring the circulation of Black news in and out of Mississippi. In the 1930s, however, the Southern News Syndicate would change

[206] Thompson, *The Black Press in Mississippi*, 22-23.
[207] Ethan Michaeli, *The Defender: How the Legendary Black Newspaper Changed America: From the Age of the Pullman Porters to the Age of Obama* (Boston: Houghton Mifflin Harcourt, 2016), p. 18.
[208] Michaeli, *The Defender, 21,* 24.

this.[209] The Scott News Syndicate (SNS), as it would come to be known, became the voice of the Black South.[210] By 1955 the SNS was made up of 241 Black newspapers. Its portfolio included papers produced in Mississippi, like the *Greenville Leader*, *Weekly Echo*, *Mississippi World,* and eleven other Black Mississippi papers.[211]

Syndication offset some of the costs of running a newspaper while local editors maintained the freedom to publish stories relevant to their communities, including local damage suits. As with *The Defender*, the news picked up by the SNS circulated the South and Black America more broadly. The SNS scoured the South in search of newspaper content from a variety of editors who, if they joined the syndicate, "published syndicated editorial material content along with more straightforward news coverage."[212] Even with the syndicated material that member newspapers published, "publishers' papers remained their own."[213] Through syndication, Black publications across the South and Black America sold the right to some of their content. In return, they agreed to run syndicated material in their papers, thus expanding

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[209] In 1928, William Alexander Scott and Cornelius Scott founded the Atlanta World, which would eventually become the Atlanta Daily World in 1932. The Atlanta Daily World was only the beginning of the Scott Brothers' vision. Not only had they envisioned publishing a daily newspaper based out of Atlanta, but they also envisioned creating a network of black publications produced in the South for Southern readers. The Chicago Defender's practice of collecting articles from around the country, reprinting them, and smuggling the news into the deep South was critical, but Southern blacks wanted their stories told in their voices.
[210] Aiello, *The Grapevine of the Black South*, 7.
[211] There was also the *Mississippi Weekly*, *Mississippi Tribune*, *Corinth Gazette*, *Natchez Journal*, *Jackson Sentinel*, *Southern Sun*, *Vicksburg American*, *Jackson Advocate*, *Meridian Progress*, *Vicksburg Tribune*, and *Jackson Banner*. Aiello, *The Grapevine of the Black South*, 194-202. Note that some on these newspapers were only in circulation for a month or two, as was the case for many fledgling newspapers and newspapers that failed. According to Aiello's appendix, "proof of the existence of most of these papers and their time as a part of the Scott Syndicate comes from a methodical evaluation of the Atlanta Daily World's cash receipt books from 1931 to 1955." Here, Aiello alludes to the fact that not all of the papers have survived, and not all of them are accessible in the archive. I anticipate combing more physical archives for black newspapers in future revisions.
[212] Aiello, *The Grapevine of the Black South*, 7.
[213] Aiello, *The Grapevine of the Black South*, 7.

their readership through the syndicated network and securing their publications financially through subscriptions.

Through interstate travel and interstate recruits and employees, Abbott and other Black newspaper editors built the infrastructure for a national Black news network and, in turn, a national Black legal network. Black newspapers in the United States collected papers from around the country and the world and reprinted or recrafted those stories for their readership. *The Chicago Defender* used this practice, and other Black newspapers, in turn, reprinted *Defender* stories. Abbott hired Black railroad employees "to pick up old newspapers that passengers left behind to copy the stories for circulation amongst Black readers or to repackage the story from a Black perspective. Many of these stories covered lynching, assaults, racial violence, and other 'outrages.'"[214] In addition to collecting news stories for the paper, Black porters also smuggled the *Defender* into the South. They sold subscriptions to Black people they encountered during their travels.[215] Eventually, the newspaper devoted an entire section to Black communities outside of Illinois, featuring "state-by-state reports from Black communities across North America and beyond."[216]

### *The Post-Reconstruction Black Press, 1880-1910*

[214] Another man, Louis Clinton Harper, worked as a bellboy at the Chicago Press Club "where he collected publications from around the world and added them to the newspapers and magazines brought in to *The Defender*'s office by train porters." Michaeli, *The Defender,* 22-23, 69.
[215] Michaeli, *The Defender,* xii.
[216] Michaeli, *The Defender,* 50, 71.

Reconstruction-era Black newspapers grew out of a long legacy of Black journalism that promoted racial unity, self-help, and resistance to racism.[217] During the period following Reconstruction, the Black press continued to pursue these ends by "printing the daily instances of brutality and outrage that occurred," even when printing such stories made Black editors, journalists, and papers potential targets of white violence or imprisonment.[218] Even so, post-Reconstruction Black newspapers "called for protection and resistance."[219]

In addition to calling for unity, protection, and resistance to brutalities and outrages, Black papers understood the importance of educating readers. Black newspapers educated Black readers on the tools available to them to resist racism and oppression. The papers explained how some victims used the law to seek recourse for violence and violations of their rights of personhood, in addition to publishing articles that described the abuse and indignities Black people suffered. Post-Reconstruction Black newspapers approached their coverage of civil suits for violent outrages in a variety of ways.

Some post-Reconstruction Black newspapers devoted entire sections of their papers to legal proceedings and court cases of interest to Black people. The *Wisconsin Weekly Advocate*, founded in 1898, had two such columns, "News of the Courts" and "Legislative Acts/Legal Proceedings." Other papers had similar sections. The *Appeal*; *Plaindealer*; Raleigh, NC *Gazette*; *Western Recorder*; and *Huntsville Gazette* all included columns called "Legislative Acts/Legal

[217] Martin E. Dann, *The Black Press 1827-1890: The Quest for National Identity* (New York: G. P. Putnam's Sons, 1971), 14.
[218] Grossman, *Land of Hope*, 44.
[219] Dann, *The Black Press 1827-1890*, 21.

Proceedings."[220] These sections allowed Black readers to follow court cases, including civil damage suits, as well as legislative changes in their community, state, and country. With sections strictly devoted to court proceedings, readers could turn directly to the designated section when they were in search of case information, legal knowledge, or the outcomes of lower profile civil suits. When cases held more significance for an editor, the story made headlines.

Late nineteenth-century Black newspaper headlines guided Black readers to legal information, though the headlines themselves did not always provide in-depth legal knowledge. Post-Reconstruction Black newspapers featured headlines like "Mitchell's Relatives Will Sue," "Awarded $100 Damages," and "Berry Ought to Sue for Damages."[221] These and similar headlines alerted Black readers to the cases where Black victims sought legal recourse. These headlines were direct, avoided sensationalism, and invited Black readers to read the article for more details about why Black people were suing. Headlines like the one that accompanied the Berry article did more; they urged Black people to bring suits.

In addition to catching readers' attention with legal headlines, some Black newspapers avoided editorial comments and kept readers posted on factual developments in cases. At the

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220 "Legislative Acts/Legal Proceedings," *Western Recorder* (Lawrence, Kansas), March 28, 1884, 4. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Huntsville Gazette* (Huntsville, Alabama), February 12, 1887, 2. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Wisconsin Labor Advocate* (La Crosse, Wisconsin), April 15, 1887, 2. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Plaindealer* (Detroit, Michigan), September 18, 1891, 6. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Washington Bee* (Washington (DC), District of Columbia), June 27, 1908, 1. *Readex: African American Newspapers*. "Peonage Case in Mississippi," *The Freeman* (Indianapolis, Indiana), December 30, 1905. *America's Historical Newpapers*. "Awarded $100 Damages," *Cleveland Gazette* (Cleveland, Ohio), December 1, 1906. *Readex: African American Newspapers*.

221 "Mitchell's Relatives Will Sue," *Cleveland Gazette* (Cleveland, Ohio), July 3, 1897, 2. *Readex: African American Newspapers*. "Mitchell's Relatives Will Sue," *Cleveland Gazette* (Cleveland, Ohio), July 10, 1897, 2. *Readex: African American Newspapers*. "Mitchell's Relatives Will Sue," *Cleveland Gazette* (Cleveland, Ohio), July 17, 1897, 2. *Readex: African American Newspapers*. "Awarded $100 Damages," *Cleveland Gazette* (Cleveland, Ohio), December 1, 1906, 2. *Readex: African American Newspapers*. "Berry Ought To Sue For Damages—His Arrest Unjuet—Personal and Social News," *Cleveland Gazette* (Cleveland, Ohio), March 18, 1893, 2. *Readex: African American Newspapers*.

same time, other publications offered passionate and colorful commentary. Black newspapers, including *The Cleveland Gazette,* frequently ran columns in their papers that followed newsworthy developments within Black communities across the country. In 1885, the *Cleveland Gazette*'s column, "Doings of the Race," covered a story about "Catherine Brown, a colored lady of Caroline County, Md" who "ha[d] brought suit in the United States Circuit Court of Baltimore for $10,000 damages against Caleb C. Wheeler, white."[222] According to the paper, Wheeler "whipped [Brown] while she was before a Justice of the Peace in Hillsborough, to make a charge against Wheeler of a prior assault."[223] By placing Brown's case under its regular column, "Doings of the Race," the *Cleveland Gazette* framed Brown as a plaintiff seeking racial justice, not just damages for herself. Even while seeking racial justice, the article shows that Brown was suing for a substantial sum of damages. If criminal courts would not prosecute white attackers, then civil courts would. And if the Justice of the Peace would not protect Black Americans' rights of personhood, then federal courts might have been an alternative avenue for recourse. Black women brought their own suits against white men, despite implicit or explicit risks of further violence or economic retaliation. The *Cleveland Gazette*'s coverage of Brown's case informed or reminded Black readers that even if the local courts would not punish violent whites, Black Americans could bring civil claims in federal courts.[224]

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[222] "Doings Of The Race. Interesting Reading For All. The News in General Condensed and Commented," *Cleveland Gazette* (Cleveland, Ohio), November 11,1885, 1. *Readex: African American Newspapers*.
[223] "Doings Of The Race. Interesting Reading For All. The News in General Condensed and Commented," *Cleveland Gazette* (Cleveland, Ohio), November 11,1885, 1. *Readex: African American Newspapers*.
[224] In a 1920 article, that was likely repackaged from a Southern Newspaper, The *Chicago Defender* reported that in "Purvis, Miss.," on "Feb. 13.—A jury verdict for $1,000 in favor of 'Shine' Lott, a resident here was returned in Circuit Court in a suit against the New Orleans and Northeastern railroad upon allegations that while working his way on a local freight train he was assaulted by the conductor and knocked from the engine cab in which he was riding when the alleged assault was made." "Mississippi Jury Gives Injured Man Damages," *The Chicago Defender* (Big Weekend Edition) (Chicago, Illinois), February 14, 1920, 20. *ProQuest Black Newspapers*.

In addition to offering African Americans a glimpse of the possibilities for their civil suits, Black newspapers also reported status updates on civil cases involving white-on-Black violence. On April 16, 1887, the New Orleans *Weekly Pelican* reported that "Mr. Thomas F. Maher's suit for $5000 damages, came up for argument" in the Mississippi District Court "under advisement by Judge Voorhes."[225] Not only had Maher's case come up for argument, but the article reminded readers that Maher was suing in state court, that Judge Voorhes would be responsible for overseeing the trial, and that Maher had sued for $5,000. Unlike local Justices of the Peace in Maryland, Mississippi civil district courts were hearing Black plaintiffs' suits, therefore respecting his right to sue. Despite white attackers' disrespect of Black Americans' rights of personhood, Mississippi civil courts extended Black victims some modicum of due process and equal protection before the law. The *Weekly Pelican*'s straightforward reporting kept readers notified of key developments.

The paper's decision to publish updates suggests that readers were interested in following the case and that the case was notorious at the local level. A week after the paper's first article on the Maher Case, the paper followed up on Maher's case, reporting that the court awarded Maher $750 in damages.[226] After the final update, the *Pelican* offered no further commentary. Though the *Pelican* offered very few details in its last update on the Maher Case, the paper's choice to

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[225] "Algiers Anglings," *Weekly Pelican* (New Orleans, Louisiana), April 16, 1887, 3. *Readex: African American Newspapers*. Judge Voorhes is also a Mississippi state supreme court justice. In a similar vein, the *Macon Beacon* published a one-liner about Martin Jones's wrongful ejection suit. "Unable to find a ticket he had bought and placed in his pocket, Martin Jones alleges he was ejected by the conductor from a moving Alabama and Vicksburg passenger train and had his shoulder broken. He brings suit for $5,000 therefor." "Sues for $5,000 in Damages," *Macon Beacon* (Macon, Mississippi), March 27, 1903, 1. *Chronicling America: Historic American Newspapers*. Library of Congress. Provided by Mississippi Department of Archives and History. https://chroniclingamerica.loc.gov/lccn/sn83016943/1907-03-23/ed-1/seq-1/

[226] "Algiers Anglings," *Weekly Pelican* (New Orleans, Louisiana), April 16, 1887, 3. *Readex: African American Newspapers*.

follow the case suggests that it was important, not only to Black Mississippians, but also that the *Pelican*'s readers in Louisiana and surrounding areas. The coverage also demonstrates the fluidity of borders and the importance of interstate networks of news and legal knowledge within the South. Straightforward reporting was important because it presented Black readers with information and allowed them to interpret legal principles and case outcomes for themselves. Rather than have a paper tell them what to think about these cases, Black readers could do this intellectual work for themselves.

While some newspapers chose to publish concise reports on cases, other newspapers editorialized, in turn shaping Black legal discourse and Black legal culture. In one 1890 article, a writer for the *Cleveland Gazette* vividly described an altercation in Boston during which "a big burly white man…assaulted a refined and intelligent colored man."[227] When a white conductor beat a prominent Black Clevelander named Freddie Sampson in 1893, the *Cleveland Gazette* argued that no matter what happened leading up to the beating, the conductor could not justify the brutality of his attack.[228] The editor wrote that "for a great strong man to pound a youth's face as Hoyer did is a *burning disgrace*," and suggested that Sampson take the matter to court.[229] George Sampson, Freddie Sampson's father, eventually filed a suit against the Cleveland Electric Street Car Company for $10,000, a substantial sum. The *Cleveland Gazette* updated its readership on this development.[230] It is unclear what role the *Cleveland Gazette*'s article played

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[227] "Some Race Doings. A Boston Afro-American Mops Up Earth with a Big Burly White," *Cleveland Gazette* (Cleveland, Ohio), September 13, 1890, 1. *Readex: African American Newspapers*.

[228] "[Mr. and Mrs. James Joyce; Miss Lillian; Mr. Arthur; Mrs. Watson; Detroit; Rev. J. H. Garnett; Louisville; Ky.]," *Cleveland Gazette* (Cleveland, Ohio), July 1, 1893, 3. *Readex: African American Historical Newspapers*.

[229] Origina emphasis. "[Mr. and Mrs. James Joyce; Miss Lillian; Mr. Arthur; Mrs. Watson; Detroit; Rev. J. H. Garnett; Louisville; Ky.]," *Cleveland Gazette* (Cleveland, Ohio), July 1, 1893, 3. *Readex: African American Historical Newspapers*.

[230] "[Colorado; Mr. O. T. Jackson; Boulder; Rev. J. H. Coleman]," *Cleveland Gazette* (Cleveland, Ohio), August 5, 1893, 3. *Readex: African American Newspapers*.

in George Sampson's decision to sue, but it could have been the push he needed to hold the street car company accountable for his son's beating. It is also unclear how the article might have improved George Sampson's ability to hire a willing attorney or track down witnesses. But it is possible that the *Cleveland Gazette*'s coverage of the case offered the Sampson's exposure that could have proven beneficial for their case.

Editorializing also helped shape Black legal culture by offering Black readers commentary that might sway their opinions on the cases and altercations at hand. The Black press created and represented an intellectual space where Black people could make their voices heard and where they could express their desire to be in solidarity with other Black people across Black America. By using colorful language to describe altercations, Black editors drew Black readers' attention to cases of whites' verbal and physical abuse of Black people. Once writers had their readers' attention, they could suggest that a victim sue, as with Freddie Sampson, or inform the reader that a victim had initiated litigation. Furthermore, articles that used colorful commentary had the potential to move or encourage readers to sue companies and whites for white individuals' violations of their rights of personhood and abuse that they had suffered in their own lives. Black newspapers provided an intellectual space where Black people sought legal knowledge, where Black journalists provided legal information, and where Black journalists and editors could empower Black readers to pursue their own litigation and wield civil law as a weapon against white violence.

To honor their commitment to Black self-help, some journalists and editors sought to encourage Black readers to practice self-defense and protect each other. When reporting on a civil suit filed by a Black woman who was beaten by a white conductor, a writer for the

*Cleveland Gazette* described the attacker as a “cowardly white ruffian and brute conductor” who “beat an Afro-American lady over the head and in the face with his lantern.”[231] The conductor was the antithesis of a man. He was a coward, violent criminal, and a savage who beat a lady, respectable woman. What followed, however, pushed the idea of self-help further. According to the writer, “[i]f ever a man deserved lynching, that conductor is the one. It is enough to make one’s blood boil to *think* of such outrageous acts, let alone *witnessing them*.”[232] Calling for the lynching of a white man because he abused a Black woman was a bold statement, but it was also an expression of the anger that some Black Americans felt when they experienced or witnessed white violence. The writer’s colorful language also had the potential to arouse feelings of anger and righteous indignation with readers. What happened to one Black American could happen to any Black American. Some Black Americans embraced the idea of vigilante justice, though many others suggested taking grievances to court. The tension between seeking vigilante justice and taking legal action is evident here. This editorializing expressed how outrages took a toll on Black Americans across the country. It also had the potential to arouse Black readers who might have grown desensitized to outrages and attacks against Black Americans.

Black journalists highlighted whites’ disregard for Black womanhood and reflected the arguments about respectability that Black plaintiffs made in court. When the *Cleveland Gazette* reported on Catherine Brown’s lawsuit, the paper described her as “a colored lady,” which invoked the ideals of Black respectability.[233] Brown and the Black woman mentioned above

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[231] "[Atlanta],” *Cleveland Gazette* (Cleveland, Ohio), September 29, 1894, 2. *Readex: African American Newspapers*.
[232] Original emphasis. "[Atlanta],” *Cleveland Gazette* (Cleveland, Ohio), September 29, 1894, 2. *Readex: African American Newspapers*.
[233] “Doings Of The Race. Interesting Reading For All. The News in General Condensed and Commented,” *Cleveland Gazette* (Cleveland, Ohio), November 11,1885, 1. *Readex: African American Newspapers*.

were "ladies," but that did not prevent white men from assaulting them and violating their rights of personhood. Black women's respectability did not protect them from white men's attacks. Their respectability also did not encourage or move local authorities to come to Black women's aid. Trying to advocate for oneself before local authorities invited even more attacks.

To combat the violence and protect African American passengers, Black communities needed to band together to support, aid, and protect one another. In another example, an African American woman was "roughly treated by a conductor on the Tampa and Key West Railway."[234] In this case, however, the Black woman was not left to fend for herself because "the Mutual Protective Association of Florida ha[d] resolved to prosecute the company for damages" on her behalf.[235] According to the article, the "association circulated 25,000 circulars" to inform citizens about the incident and possibly invite financial support for the litigation.[236] Mutual aid societies, as the author saw it, were "much needed, to take cognizance of such outrages and see that the proper authorities are prosecuted for perpetrating [violent assaults] or for permitting their perpetration."[237] In the years before the founding of the NAACP, Black journalists' commentary hinted that some Black people saw a need for larger organizations to protect Black Americans' ability to live free from violent racial attacks or violations of their rights of personhood. With a mutual aid society at her back, the *Cleveland Gazette* implied, the woman in Florida could muster the resources and resolve needed to sue, endure a trial, and remain steadfast in the case of an appeal.

[234] "Editorial Notes," *New York Freeman* (New York, New York), July 24, 1886, 2. *Readex Historical Newspapers*.
[235] "Editorial Notes," *New York Freeman* (New York, New York), July 24, 1886, 2. *Readex Historical Newspapers*.
[236] "Editorial Notes," *New York Freeman* (New York, New York), July 24, 1886, 2. *Readex Historical Newspapers*.
[237] "Editorial Notes," *New York Freeman* (New York, New York), July 24, 1886, 2. *Readex Historical Newspapers*.

*Education through Satire*

In addition to editorializing incidents, Black papers also used satirical articles to offer some comic relief and educate Black readers about tort law.[238] In 1891, the *Plaindealer* published a short satire about a man named Briggs who bet his neighbor that he could hold off his dog with just his eyes.[239] The dog chased Briggs up a tree, and Briggs had to pry him off with "a hot poker."[240] Later, Briggs hobbled into a judge's office, asking if he could sue his neighbor. The judge explained why Briggs would not be able to sue his neighbor. Another comical article featured a farmer who complained to a lawyer that his neighbor had given him a Black eye. The lawyer assured him that there was nothing to worry about because he could "first sue him for assault. Then for battery. Then for personal damages…Meanwhile, he'll probably heartstring your cows, poison your calves and set fire to your barn and you can begin a new suit almost every week."[241] The lawyer pointed out that it was possible to sue someone for civil assault, civil battery, and destruction of property. These actions were not just crimes; they were also civil wrongs, and victims could bring a suit for each violation of their rights of personhood and their property rights. At first glance, these short satires might have seemed silly, but they show that tort law permeated the Black press in a variety of ways. These stories used humor to alert Black readers to what they could sue for, like civil assault, civil battery, property damage, and damaged

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[238] Funnies are humorous columns or comics in newspapers.
[239] "S'posin'," *Plaindealer* (Detroit, Michigan), August 14, 1891, 20. *Readex: African American Newspapers*.
[240] "S'posin'," *Plaindealer* (Detroit, Michigan), August 14, 1891, 20. *Readex: African American Newspapers*.
[241] "Happy Outlook on the Farm," *Wisconsin Weekly Advocate* (Milwaukee, Wisconsin), August 18, 1904, 4. *Readex; African American Newspapers.* In another short funny, a man named Mudge complained to his companion "that the moths ha[d] nearly ruined" his coat when his friend suggested that he sue. Mudge thought his friend was implying that he should sue the moths, but his companion meant that he should sue the business that sold him the coat. "Slight Misunderstanding," *Savannah Tribune* (Savannah, Georgia), February 4, 1893, 4. *Readex: African American Newspapers.* Also see "Funnygraphs," *Broad Ax* (Chicago, Illinois), September 14, 1901, 4. *Readex: African Armerican Newspapers*.

goods. They also used humor to assuage the fear, pain, and anger associated with white abuse under Jim Crow. Resilient, Black Americans tried to find joy—or at least a glimmer of joy—even in bad things.

Some Black journalists used their platform to connect African American readers to sympathetic lawyers, as attorneys were essential links between victims and justice. In July of 1905, a white conductor allegedly abused Thomas Whiting, a Black man from Canton, Mississippi, on an Illinois Central Railroad Company Train in Jackson, Mississippi.[242] According to *the Cleveland Gazette*, "Beadle & Howard, local Afro-American attorneys, filed suit for damages in the United States court for the Southern district of Mississippi" on Whiting's behalf, "and a white jury awarded him $100 and costs."[243] *The Gazette* showed readers that not only had Whiting decided to sue the railroad, but he also retained Black attorneys in Mississippi.[244] Historically, the Mississippi Bar was known for being predominantly white. The paper pointed readers to a local Black Mississippi law firm willing to represent Black causes, despite the ominous threat of violence. The Illinois Central Railroad line was known for abusing Black employees and Black passengers. Publishing the name of a Black law firm in Mississippi could have been vital for Black Americans wishing to travel to and from Mississippi, and for those who might take part in the Great Migration, as violent reprisal was possible.[245]

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[242] "Awarded $100 Damages," *Cleveland Gazette* (Cleveland, Ohio), December 1, 1906, 2. *Readex: African American Newspapers*. This was one of the lines that showed up in chapter one and a line that was used to smuggle news and newspapers in and out of Mississippi and the Deep South. See Grossman, *Land of Hope*, 4.
[243] "Awarded $100 Damages," *Cleveland Gazette* (Cleveland, Ohio), December 1, 1906, 2. *Readex: African American Newspapers.*
[244] "Awarded $100 Damages," *Cleveland Gazette* (Cleveland, Ohio), December 1, 1906, 2. *Readex: African American Newspapers.*
[245] Grossman, *Land of Hope*, 16-17, 32, 44, 46, 69, 82-83. See also William Cohen, *At Freedom's Edge: Black Mobility and the Southern White Quest for Racial Control, 1861-1915* (Baton Rouge: Louisiana State University Press, 1991), 250, 270-273.

Additionally, this information could have been helpful for porters who risked being caught carrying news in and out of Mississippi. Before the establishment of national organizations like the NAACP, print media played a role in fortifying national networks of law-oriented African American communities.

*Weathering the Storm: The Black Press & The Chicago Defender, 1905-1932*

Many Black newspapers ceased publishing in the early decades of the twentieth century. Sometimes their dissolution had to do with finances, and other times it resulted from economic and physical intimidation by local whites.[246] The Black press shrank, especially in the South during the early decades of the twentieth century, but that did not keep Black papers in the North and Midwest from carrying the mantle of racial solidarity, self-help, educating Black readers, and connecting Black communities across the United States.

Although Jim Crow decimated the Southern Black press, some Black newspapers from the South survived. Along with Black newspapers from the Midwest, these surviving papers continued to connect Black readers across Black America. Continuing the legacy of the post-Reconstruction papers of the late nineteenth- and early twentieth-century, Black newspapers in the 1910s and 1920s dedicated sections of their newspapers to legal matters. The *Broad Ax* published legal satires during the period.[247] The St. Paul, Minnesota *Appeal*, the *Cleveland Gazette*, and the *Plaindealer* persisted in publishing their "Legal Proceedings" columns.[248] Legal

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[246] Grossman, *Land of Hope*, 32.
[247] "[Jones; Smith; Damages]," *Broad Ax* (Chicago, Illinois), May 31, 1913, 2. *Readex: African American Newspapers*.
[248] "Legislative Acts/Legal Proceedings," *Plaindealer* (Topeka, Kansas) XIV, no. 13, March 29, 1912, 1. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Cleveland Gazette* (Cleveland, Ohio), May 1,

columns increasingly devoted more lines to civil cases and damages suits related to lynching, mob violence and destruction, and assault in the early decades of the twentieth-century.

These columns and individual articles also informed readers of actual or potential state legislation that facilitated suing for mob violence and property damage.[249] One 1925 *Cleveland Gazette* article donned the headline, “Thirteen Have Anti-Lynching Laws!,” citing North Carolina, South Carolina, Tennessee, and West Virginia as four of the thirteen states with anti-lynching laws.[250] Other articles published in the 1920s cited Georgia and Virginia as having anti-lynching laws, along with a plethora of Northern and Midwestern states, like Ohio, Illinois, and

1920, 4. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Cleveland Gazette* (Cleveland, Ohio), June 26, 1920, 4. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Cleveland Gazette* (Cleveland, Ohio), July 10, 1920, 4. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Cleveland Gazette* (Cleveland, Ohio), September 18, 1920, 4. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Cleveland Gazette* (Cleveland, Ohio), October 23, 1920, 4. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Cleveland Gazette* (Cleveland, Ohio), August 1, 1925, 4. *Readex: African American Newspapers*.

249 "Legislative Acts/Legal Proceedings," *Cleveland Gazette* (Cleveland, Ohio), May 1, 1920, 4. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Cleveland Gazette* (Cleveland, Ohio), June 26, 1920, 4. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Cleveland Gazette* (Cleveland, Ohio), July 10, 1920, 4. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Cleveland Gazette* (Cleveland, Ohio), September 18, 1920, 4. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Cleveland Gazette* (Cleveland, Ohio), October 16, 1920, 4. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Cleveland Gazette* (Cleveland, Ohio), October 23, 1920, 4. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Cleveland Gazette* (Cleveland, Ohio), November 7, 1920, 4. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Cleveland Gazette* (Cleveland, Ohio), January 22, 1921, 4. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Cleveland Gazette* (Cleveland, Ohio), March 5, 1921, 4. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Cleveland Gazette* (Cleveland, Ohio), August 12, 1922, 4. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Cleveland Gazette* (Cleveland, Ohio), August 26, 1922, 6. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Cleveland Gazette* (Cleveland, Ohio), September 9, 1922, 4. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Cleveland Gazette* (Cleveland, Ohio), December 23, 1922, 4. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Cleveland Gazette* (Cleveland, Ohio), February 17, 1923, 4. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Cleveland Gazette* (Cleveland, Ohio), July 14, 1923, 4. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Cleveland Gazette* (Cleveland, Ohio), October 11, 1924, 4. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Cleveland Gazette* (Cleveland, Ohio), August 1, 1925, 4. *Readex: African American Newspapers*. "Legislative Acts/Legal Proceedings," *Plaindealer* (Topeka, Kansas), March 25, 1927, 4. *Readex: African American Newspapers*.

250 "Thirteen Have Anti-Lynching Laws! Seven States Enacted Theirs in the Last Ten Years--The Dyer," *Cleveland Gazette* (Cleveland, Ohio), July 11, 1925: 2. *Readex: Readex AllSearch*.

Pennsylvania.[251] The *New York Age* published an article in November 1921 about a Black woman named Henrietta Stewart, who sued for damages for the lynching of her husband, Joe Stewart, using South Carolina's anti-lynching law. According to the article, Henrietta Stewart sued Laurens County, South Carolina for damages for her husband's lynching under the South Carolina anti-lynching law, and "in accordance with the instructions of Judge McIver, the jury has brought in a verdict for the full sum" of $2,000.[252] Those Black newspapers that survived kept Black readers abreast of legal action and legal knowledge.

Additionally, with the increase of lynching and physical violence directed at Black Americans, Black newspapers devoted more articles to damage suits involving mob violence. Some headlines alerted readers that a Black victim, "Will Sue for Damages."[253] Though these headlines offered very little legal information, readers did know that the articles were about damage suits. Despite the vague headline, readers would learn that the NAACP intended to sue

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[251] "Anti-Lynching Law. South Carolina Jury Declines to Give Damages," *Augusta Chronicle* (Augusta, Georgia), September 28, 1900, 1. *Readex: Readex AllSearch*. "To Test Anti-Lynching Law. Arrest of Alabama Mob Leaders Who Hung White Man," *Daily People* (New York, New York), March 5, 1901: 1. *Readex: Readex AllSearch*. "Anti-Lynching Law in Georgia," *Columbus Daily Enquirer* (Columbus, Georgia), July 21, 1919: 4. *Readex: Readex AllSearch*. "Chicago Gives Up! Sick and Tired of Losing Riot Suits--Illinois Anti-Lynching Law Good!," *Cleveland Gazette* (Cleveland, Ohio), December 10, 1921: 1. *Readex: Readex AllSearch*. "Anti-Lynching Sentiment Fast Gaining Ground Twenty-two Lynchers Indicted in Georgia This Year--Four Convicted, Fifteen," *Broad Ax* (Chicago, Illinois), November 25, 1922: 2. *Readex: Readex AllSearch*. "Based On Our Ohio Law! The Georgia Legislature Again Has An Anti-Lynching Bill Which It," *Cleveland Gazette* (Cleveland, Ohio), August 8, 1925: 1. *Readex: Readex AllSearch*. "Minnesota's Anti-Lynching Law," *Appeal* (St. Paul, Minnesota), April 23, 1921: [2]. *Readex: Readex AllSearch*. "Virginia's New Anti-Lynching Law Defended," *Negro Star* (Wichita, Kansas), October 5, 1928: [1]. *Readex: Readex AllSearch*. "Pa. Anti-Lynching Bill a Law!," *Cleveland Gazette* (Cleveland, Ohio), June 2, 1923: 1. *Readex: Readex AllSearch*. Black newspapers reported on state anti-lynching laws during the late nineteenth-century as well. "South Carolina's Anti-Lynching Law." *Cleveland Gazette* (Cleveland, Ohio), May 23, 1896: 2. *Readex: Readex AllSearch*. "The Texas Anti-Lynching Law." *Times-Picayune* (New Orleans, Louisiana), June 21, 1897: 4. *Readex: Readex AllSearch*. "They Discuss Lynching Now. the South Carolina Convention Puts a Drastic Anti-Lynching Provision in the Constitution." *Charlotte Observer* (Charlotte, North Carolina), November 10, 1895: [1]. *Readex: Readex AllSearch*.

[252] "Making Lynching Pay," *New York Age* (New York, New York), November 19, 1921: 5. *Readex: Readex AllSearch*. For an Ohio case, see "Dickerson's Sisters Will Sue," *Cleveland Gazette* (Cleveland, Ohio), April 30, 1904: 1. *Readex: Readex AllSearch.*

[253] "Will Sue for Damages," *Appeal* (St. Paul, Minnesota) 33, no. 27, July 7, 1917, 2. *Readex: African American Newspapers*.

"the city of East St. Louis and St. Clair county for personal damages on behalf of the dependents of the Negro men and woman who died at the hands of the…mobs in the orgy of murder…several days ago."[254] According to the article, the city and county were liable for the damages under state statute. Headlines like "Aged Negro Sues for $70,000" drew readers in with the large sum of damages.[255] By reading the article, readers would learn that a Black man sued seven white men for allegedly being "members of a mob which…drove him and his family from their farm…burned his house, destroyed and carried off property to the value of $2,000."[256] They would also be able to see that this elderly Black man retained "attorney Warren S. Reece," a white attorney, to sue in "Crenshaw County, Ala."[257] Readers learned that some white attorneys would represent Black victims of mob violence, even in the Deep South, even in suits against whites named as members of the mob. Though the headlines were vague, the articles that followed contained valuable legal information about seeking recourse for violent attacks by white mobs, even in the South.

The Chicago *Defender*, which circulated widely along the route of the Illinois Central Railroad, was important in developing Black legal culture. Robert Abbott, a Black lawyer and journalist from Georgia, founded *The Defender* in 1905 and weathered financial storms of his

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[254] "Will Sue for Damages," *Appeal* (St. Paul, Minnesota), July 7, 1917, 2. *Readex: African American Newspapers*.
[255] "Aged Negro Sues for $70,000," *Plaindealer* (Topeka, Kansas), February 23, 1912, 4. *Readex: African American Newspapers*.
[256] "Aged Negro Sues for $70,000," *Plaindealer* (Topeka, Kansas), February 23, 1912, 4. *Readex: African American Newspapers*. For similar articles with vague headlines about damage suits for mob violence, see "Will Sue for Damages," *Appeal* (St. Paul, Minnesota) 33, no. 27, July 7, 1917, 2. *Readex: African American Newspapers*. "Will Sue for Damages," *Appeal* (St. Paul, Minnesota) 33, no. 27, July 7, 1917, 2. *Readex: African American Newspapers*. "Will Sue for Damages," *Appeal* (St. Paul, Minnesota) 33, no. 29, July 21, 1917, 2. *Readex: African American Newspapers*. "Sue For Riot Damages! Our People Urged to Do So--An Attorney Provided for Them," *Cleveland Gazette* (Cleveland, Ohio), July 21, 1917, 1. *Readex: African American Newspapers*. "Will Sue for Damages," *Appeal* (St. Paul, Minnesota) 33, no. 30, July 28, 1917, 2. *Readex: African American Newspapers*. "Will Sue for Damages," *Appeal* (St. Paul, Minnesota) 33, no. 31, August 4, 1917, 2. *Readex: African American Newspapers*.
[257] 1930 United States Federal Census.

own. With the help of Black subscribers in the Midwest, North, and most notably, the South, *The Defender* became one of Black America's most prominent papers. In return, *The Defender*'s operations helped solidify a Black legal network by bringing news into the South and exporting news out of the South.

By collecting news stories from across the world, repackaging or reprinting the stories, and smuggling the papers into Southern states like Mississippi, Black newspaper editors like Abbott reinforced the web that united Black communities across the United States into a readership. This web helped the Black press create and transmit legal knowledge to people who likely otherwise did not have access to it and invited them to think about the law's role in their own lives. Through informative headlines, in-depth reporting, detailed accounts, and publishing the names of lawyers who represented Black victims, *The Defender* became an invaluable legal resource for Black Americans, even those who did not intend to migrate North. Black newspapers became one source of Black legal education.

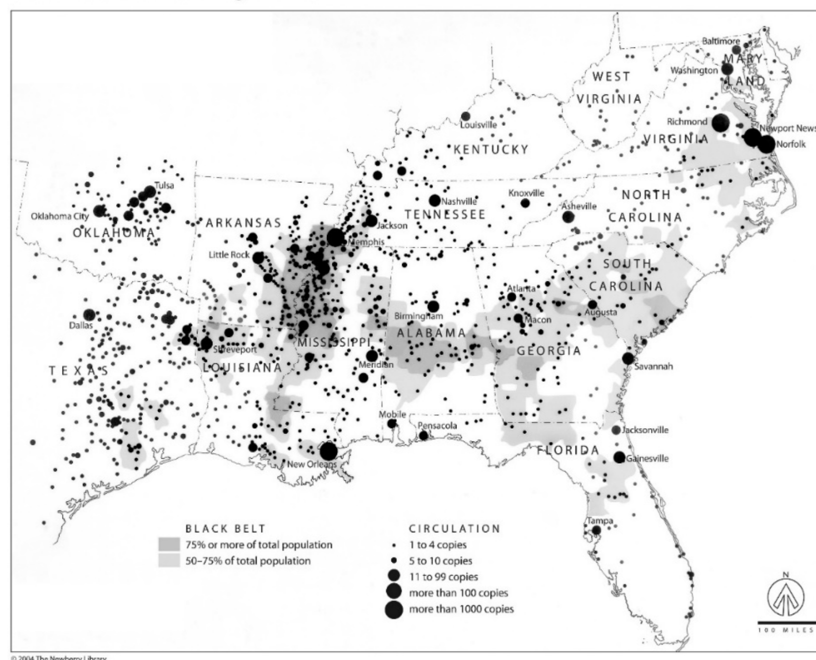


*Figure 1 Jim Grossman, "Southern Distribution of the Chicago Defender, 1919," The Newberry Library, 2004.* [http://www.encyclopedia.chicagohistory.org/pages/3714.html](http://www.encyclopedia.chicagohistory.org/pages/3714.html)

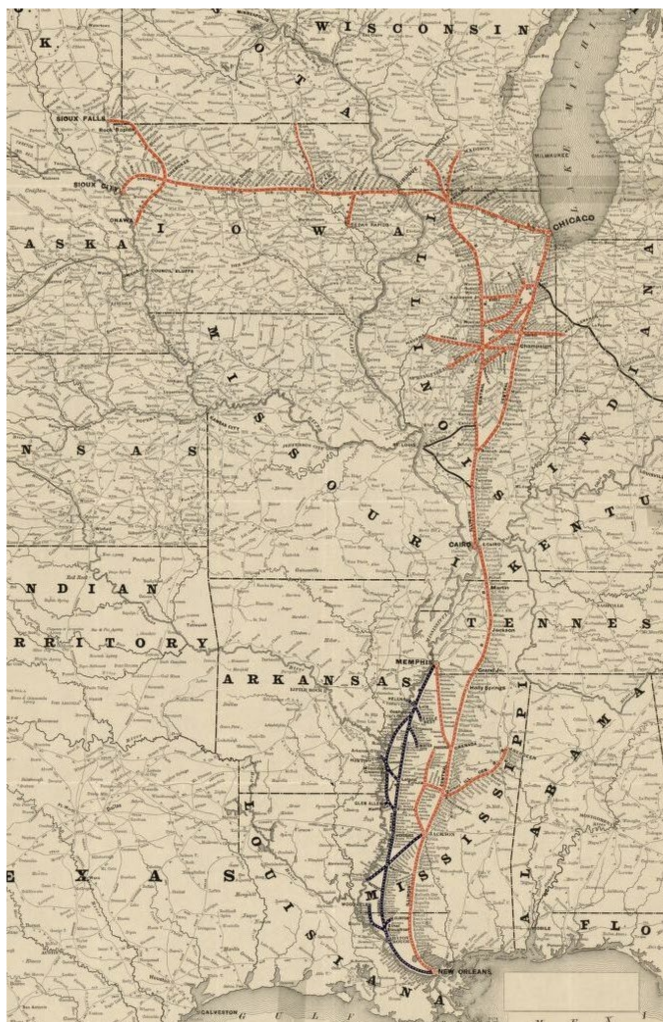


Figure 2 Rand Mcnally And Company and Illinois Central Railroad Company. Map of Illinois Central R.R. [Chicago, 1892] Map. https://www.loc.gov/item/98688682/.

Like other Southern and Midwestern newspapers, *The Defender* featured a column committed to providing legal information to Black readers and facilitating self-help. *The Defender* featured a column called "Defender's Legal Helps" where readers could write in to ask legal questions.[258] The *Defender* had its own legal department, within the newspaper, made up of

[258] Many of the people who wrote the "Defender Legal Helps" columnist lived in Chicago, as their questions pertained to local law and institutions. There were some questions that were general enough to have come from people outside of Chicago. Either way, the answers provided in the "Defender Legal Helps" column circulated throughout black America.

attorneys that was dedicated to the legal education of its readership and serving as the paper's legal counsel. The paper's legal department would answer the questions, and the paper published the questions and answers in the column.[259] "Defender's Legal Helps" covered a variety of subjects, many of them related to Chicago's corrupt judiciary and police department. Other questions were related to Black people's everyday legal issues including insurance, contracts, divorce, and duties to tenants.[260]

When the legal department was not answering questions about tenancy and family law, it advised readers of how to deal with assaults, insults, false imprisonment, and police brutality. When agents arrived to repossess goods from one writer, "they began searching [the writer's] house…to take the goods by force."[261] A scuffle broke out, and the writer was injured. Curious about possible recourse, the writer asked *The Defender*, "What can I do for the injury to my person?"[262] The columnist advised that the writer "had a cause of action for trespass" against the people who entered her house and the company that sent them.[263] Although a physical injury occurred as a result of the intrusion, the columnist did not suggest that the letter-writer sue for personal injuries or civil assault battery for the physical injuries they suffered as a result of the

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[259] "Defender's Legal Helps," *The Chicago Defender* (Chicago, Illinois), January 9, 1915, 8. *ProQuest Historical Newspapers.*

[260] "Defender's Legal Helps," *The Chicago Defender* (Chicago, Illinois), November 7, 1914, 8. *ProQuest Historical Newspapers.* "Defender's Legal Helps," *The Chicago Defender* (Chicago, Illinois), January 29, 1916, 10. *ProQuest Historical Newspapers.* "Defender's Legal Helps," *The Chicago Defender* (Chicago, Illinois), July 10, 1915, 8. *ProQuest Historical Newspapers.* "Defender's Legal Helps," *The Chicago Defender* (Chicago, Illinois), October 24, 1914, 8. *ProQuest Historical Newspapers.*

[261] "Defender's Legal Helps," *The Chicago Defender* (Chicago, Illinois), September 26, 1914, 8. *ProQuest Historical Newspapers.*

[262] "Defender's Legal Helps," *The Chicago Defender* (Chicago, Illinois), September 26, 1914, 8. *ProQuest Historical Newspapers.*

[263] I find it odd that the paper did not suggest she sue for civil assault or civil battery for the physical injuries they caused. It is unclear where the writer lived. The writer states that the company sent a wagon, which suggests that the letter-writer lived in a rural area, possibly the south. But it is also still possible that the writer lived in Chicago, in which case, maybe suing for personal injury and civil assault and battery in Chicago courts was harder.

incident. Maybe the columnist thought trespass would be an easier claim to prove in civil court. Perhaps the columnist thought that suing for civil assault and battery was harder to sell to a jury in the case of repossession from a presumably Black consumer. Regardless, the columnist suggested trespass as the cause of action based on their interpretation of the facts in the letter.

Because *The Defender* had a legal team, the paper had a network of attorneys at its disposal. The "Defender Legal Helps" column advised Black readers of when they needed an attorney.[264] Sometimes the paper used its legal team to connect Black readers who needed legal representation with willing attorneys in their network. On November 14, 1914, a letter-writer asked the "Defender's Legal Helps" for advice on behalf of an imprisoned acquaintance. The prisoner's white lawyer was not representing him well. According to the letter writer, the attorney was playing ball with white judges at his client's expense. The prisoner wanted to know what he should do to get better representation and if he was even able to get a new attorney. The columnist advised the prisoner to "send for a reputable colored attorney."[265] And if the prisoner was not permitted to write an attorney, the columnist encouraged the prisoner to "write a letter to

[264] "Defender's Legal Helps: Must Support Children," *The Chicago Defender* (Chicago, Illinois), November 7, 1914, 8. *ProQuest Historical Newspapers.* "Defender's Legal Helps: Patience Point in This Case," *The Chicago Defender* (Chicago, Illinois), February 20, 1915, 12. *ProQuest Historical Newspapers.* "Defender's Legal Helps: Complicated Case," *The Chicago Defender* (Chicago, Illinois), February 20, 1915, 12. *ProQuest Historical Newspapers.* "Defender's Legal Helps," *The Chicago Defender* (Chicago, Illinois), September 11, 1915, 8. *ProQuest Historical Newspapers.* "Defender's Legal Helps: Police Court Troubles," *The Chicago Defender* (Chicago, Illinois), July 10, 1915, 8. *ProQuest Historical Newspapers.* "Defender's Legal Helps: Receiving Stolen Property," *The Chicago Defender* (Chicago, Illinois), August 15, 1914, 8. *ProQuest Historical Newspapers.* "You *should consult* an attorney at once concerning the matter." Original emphasis. "Defender's Legal Helps: Personal Liberty," *The Chicago Defender* (Chicago, Illinois), August 15, 1914, 8. *ProQuest Historical Newspapers.* "Defender's Legal Helps: Unlawful Imprisonment and Detention by Police of Persons Without Booking," *The Chicago Defender* (Chicago, Illinois), July 31, 1915, 8. *ProQuest Historical Newspapers.* "Defender's Legal Helps: More Trouble in Jail," *The Chicago Defender* (Chicago, Illinois), November 14, 1914, 8. *ProQuest Historical Newspapers.*
[265] "Defender's Legal Helps: Lawyers in Jail," *The Chicago Defender* (Chicago, Illinois), November 14, 1914, 8. *ProQuest Historical Newspapers.*

the Chicago Legal Helps for advice and direction."[266] The legal department could offer legal advice if the prisoner could not "send for" a Black attorney. Furthermore, "if the colored prisoner [did] not know a good colored attorney, he should write the Defender Legal Helps and one will be recommended."[267] *The Defender*'s legal team aimed to connect Black people with attorneys or legal assistance when possible.

When the "Defender Legal Helps" column could not recommend a course of action, the legal department tried to advocate for letter-writers by making phone calls on their behalf or investigating their claims of abuse or corruption. In the same November 14, 1914, legal column, another writer asked the paper if there was "any relief against brutality which a turnkey and storekeeper inflicted upon a colored prisoner…by beating him and putting him in a dungeon?" According to the columnist, the prisoner could find relief. The paper did not suggest an attorney, but it did request that the writer send the facts and details of the incident to "the Chicago Defender, and the proper representations will be made to the jail authorities and the sheriff."[268] Even though the columnist did not recommend a cause of action for damages or recommend an attorney in this second article, it did promise to advocate for victims of prison abuse or at least find someone who would.

When Black readers were not turning to the "Defender Legal Helps" column for legal knowledge and legal advice, they could easily skim headlines for legal information. Like earlier papers, some articles featured headlines indicating that Black victims intended to sue like "Maid

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[266] "Defender's Legal Helps: Lawyers in Jail," *The Chicago Defender* (Chicago, Illinois), November 14, 1914, 8. *ProQuest Historical Newspapers.*
[267] "Defender's Legal Helps: Lawyers in Jail," *The Chicago Defender* (Chicago, Illinois), November 14, 1914, 8. *ProQuest Historical Newspapers.*
[268] "Defender's Legal Helps: More Trouble in Jail," *The Chicago Defender* (Chicago, Illinois), November 14, 1914, 8. *ProQuest Historical Newspapers.*

Released on Theft Charge, May Sue."[269] But unlike earlier papers, *The Defender* used more informative headlines. Other headlines alerted Black readers to the various causes of action that they could use against violent white attackers. The maid sued for false arrest after her employer dropped the charges. Other headlines screamed, "Asks $30,000 Damages When Woman is Beaten," "Dragged Through Town; Gets Damages," "Sues Express Company After Being Whipped," and "Beaten, Sues for $50,000."[270] Brief and to the point, these headlines informed Black readers to the types of abuses that would warrant damages, like beatings and mob violence, and that Black people could sue for large sums in damages.

Descriptive headlines planted seeds in Black readers' minds about the viability of suing for wrongful injuries, including those resulting from violent attacks. By translating causes of action and legal principles into basic terms that readers could understand, Black newspapers invited Black readers to engage with Black legal culture. Descriptive headlines made it easy for Black readers who were skimming their daily or weekly papers to gain legal knowledge and decide whether they needed or wanted to read the article for a more in-depth understanding. Black newspapers shaped Black legal culture as they collected information about Black people's civil litigation throughout Black America, interpreted incident details, and synthesized this legal knowledge in a way that readers could easily consume.

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[269] This story was picked up from Kansas City, Missouri. "Maid Released on Theft Charge May Sue," *The Chicago Defender* (Chicago, Illinois), April 3, 1920, 1.
[270] "Asks $30,000 Damages When Woman is Beaten," *The Chicago Defender* (Chicago, Illinois), April 12, 1919, 1. *ProQuest Historical Newspapers.* "Dragged Through Town; Gets Damages," *The Chicago Defender* (Chicago, Illinois), July 17, 1920, 1. *ProQuest Historical Newspapers.* "Sues Express Company After Being Whipped," *The Chicago Defender* (Chicago, Illinois), February 14, 1920, 1. *ProQuest Historical Newspapers.* "Beaten, Sues for $50,000," *The Chicago Defender* (Chicago, Illinois), December 2, 1916, 2. *ProQuest Historical Newspapers.*

The newspapers themselves became vehicles that transported Black legal culture to Black Americans throughout the United States. Many of the stories with descriptive headlines came from the South. Stories cited in this section came from Purvis, Mississippi; Woodson, Arkansas; Macon, Georgia; and Littlerock, Arkansas.[271] These headlines and the accompanying articles informed Southern Blacks that civil courts would hear their claims about racial violence. The violence of Jim Crow had been so commonplace for many Black people that they may not have known they could sue for beatings or that they had a chance at winning those types of cases in the South.

While earlier papers had offered straightforward reporting of Blacks' civil suits, *The Defender* offered more detailed accounts of some cases.[272] On February 27, 1925, *The Defender* published an article from New Orleans, Louisiana, with the headline "Mobs Victim Sues for $102,360."[273] The article reported that Sol J. Dacus, a Black union worker, was suing "the Great Southern Lumber company and six white employees for losses" six years after a mob attacked his home in 1919.[274] According to the paper, the trial had begun the previous week, and Dacus

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[271] Purvis, Mississippi; "Mississippi Jury Gives Injured Man Damages," *The Chicago Defender* (Chicago, Illinois), February 14, 1920, 20. *ProQuest Historical Newspapers.* Woodson, Arkansas; "Asks $30,000 Damages When Woman is Beaten," *The Chicago Defender* (Chicago, Illinois), April 12, 1919, 1. *ProQuest Historical Newspapers.* Macon, Georgia; "Sues Express Company After Being Whipped," *The Chicago Defender* (Chicago, Illinois), February 14, 1920, 1. Chattanooga, Tennessee; "Sues Sheriff for $25,000," *The Chicago Defender* (Chicago, Illinois), January 20, 1917, 1. Nashville, Tennessee; "Sues For Death," *The Chicago Defender* (Chicago, Illinois), October 21, 1916, 3. Savannah, Georgia; "Beats Jim Crow Law; Gets $537 Verdict," *The Chicago Defender* (Chicago, Illinois), May 29, 1920, 1. Little Rock, Arkansas; "Beaten, Sues for $50,000," *The Chicago Defender* (Chicago, Illinois), December 2, 1916, 2. *ProQuest Historical Newspapers.*

[272] For cases with detailed accounts, see also "Frees Wife Who Flogged Teacher: Denies Tying Rival Before Using Lash. Girl Plans Damage Suit Action," *The Chicago Defender* (Chicago, Illinois), October 20, 1928, 1. *ProQuest Historical Newspapers*.

[273] "Mobs Victim Sues for $102,360," *The Chicago Defender* (Chicago, Illinois), February 28, 1925, 1. *ProQuest Historical Newspapers*.

[274] 1920 United States Federal Census. "Mobs Victim Sues for $102,360," *The Chicago Defender* (Chicago, Illinois), February 28, 1925, 1. *ProQuest Historical Newspapers*. "Loyalty Leaguers Kill 3 Union Men: Bogalusa, La., Is Scene of a Pitched Battle Over a Negro Agitator. Unionists Shielded Negro," *The New York Times* (New York, New York), November 23, 1919, 1. *ProQuest Historical Newspapers*.

was represented by Hiddleston Kenner, a white attorney, though the paper did not note Kenner's race.[275]

*The Defender* provided these basic details of the case, but it went further, narrating the attack on Dacus' wife and home. The paper noted that the mob "fir[ed] a number of shots into the house, several of which narrowly missed Dacus's wife."[276] The article also noted that the mob had increased to "more than 100 men [who] circled Dacus' home" while Dacus sought "refuge behind a clump of bushes."[277] After shooting into his home while his wife was present, the mob "demolished" "personal effects and furniture," "seized" and threw out "a trunk containing $1,360 in War Savings stamps," and "set fire to the house," leaving a note warning Dacus not to return.[278] By noting that Dacus hid in a clump of bushes and that bullets barely missed his wife, the newspaper painted Dacus and his wife as defenseless and vulnerable when the mob attacked his home.[279] This characterization was consistent with the scripts of respectability, vulnerability, and defenseless discussed in the previous chapter. By noting the loss of personal property, the newspaper alluded to a potential cause of action, property damage. Scripts of respectability, defenselessness, and belligerent white attackers were important to litigants and newspapers.[280]

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[275] 1910 United States Federal Census. "Mobs Victim Sues for $102,360," *The Chicago Defender* (Chicago, Illinois), February 28, 1925, 1. *ProQuest Historical Newspapers*.

[276] "Mobs Victim Sues for $102,360," *The Chicago Defender* (Chicago, Illinois), February 28, 1925, 1. *ProQuest Historical Newspapers*.

[277] "Mobs Victim Sues for $102,360," *The Chicago Defender* (Chicago, Illinois), February 28, 1925, 1. *ProQuest Historical Newspapers*.

[278] "Mobs Victim Sues for $102,360," *The Chicago Defender* (Chicago, Illinois), February 28, 1925, 1. *ProQuest Historical Newspapers*.

[279] Though the newspaper did not say this explicitly, the article's characterization of Dacus could have also been interpreted as making Dacus seem cowardly. It is hard to know, however, if this was the author's intent.

[280] Dacus' story is fascinating and will make a great case to examine in the book. What was not clear to me when I first read this article in *The Chicago Defender* is that Dacus' situation was a part of a larger situation in Bogalusa.

*The Defender* reported that originally Dacus sued the town as well as six individuals. Dacus' lawyers argued that the City of Bogalusa was liable for damages for "failure to give police protection...[but] Judge Rufus E. Foster dismissed the suit against the town."[281] Reporting that Dacus named six individual attackers, the lumber company, and the city in his suit offered readers valuable information about who could be liable for property damage and financial "losses" as the result of mob violence.[282] The article signaled victims could try to hold companies, individuals, and cities responsible for attacks of this kind, even if the judge dismissed the case against the City of Bogalusa. Knowing who to sue was essential when determining if one could sue and which cause of action to use. *The Defender* provided an example of that knowledge and signaled how important it was. It also provided the reader with the exact nature of the attack upon Dacus and even included his lawyer's name, signaling to readers that Kenner was an attorney willing to take cases on behalf of Black plaintiffs.

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Dacus was a part of an interracial labor union. *The Chicago Defender* mentions that the mob was searching for Dacus because he was a labor union leader, but I think it is understated in the article. "Labor war" was not an exaggeration, the situation on the ground in Bogalusa was tense. *The New York Times* did not pick up the story of Dacus' damage suit in 1925, but it did cover the killing of three other union workers who were attempting to help Dacus in the original 1919 incident. L.E. Williams, A. Bouchillon, and Thomas Gaines were killed by the Loyalty League. According to the *Times*, "the Loyalty League…include[s] ex-service men and representatives of the Great Southern Lumber Company and other business interests." *The New York Times* explains that "the crowd started to find a negro [Dacus] who was said to have been active recently trying to stir up bad feeling among his race against whites." The Times goes on to explain that the day after the mob razed Dacus' house, Dacus came out of hiding in town, assisted by two white men. Three white men died in the incident and one was fatally wounded. The tone of the *New York Times*' article is quite different *from The Chicago Defender*'s and here, Dacus (who goes unnamed in the article) is painted as a rabble rouser and an agitator. *The New York Times*' article also focused on the white victims and painted the Loyalty League as a group or "crowd" rather than a mob. In *The Chicago Defender*'s account, Dacus was named and he was the victim of an attempted lynching rather than an "arrest." What the *Times* and *Defender* do not mention though, is that L. E. Williams' wife also sued the Great Southern Lumber Company for damages. "Loyalty Leaguers Kill 3 Union Men: Bogalusa, La., Is Scene of a Pitched Battle Over a Negro Agitator. Unionists Shielded Negro," *The New York Times* (New York, New York), November 23, 1919, 1. *ProQuest Historical Newspapers*. *Great Southern Lumber Co. v. Williams*, 17 F.2d 468 (1927).

[281] 1910 United States Federal Census. "Mobs Victim Sues for $102,360," *The Chicago Defender* (Chicago, Illinois), February 28, 1925, 1. *ProQuest Historical Newspapers*.

[282] 1910 United States Federal Census. "Mobs Victim Sues for $102,360," *The Chicago Defender* (Chicago, Illinois), February 28, 1925, 1. *ProQuest Historical Newspapers*.

It is not clear whether Dacus won his suit, and it was not always possible for Black readers to know the outcome of cases like Dacus' without going to local courthouses.[283] The inability to follow litigation from start to finish represents a limitation of the national Black legal network. Even if Black readers could not always follow cases from start to finish, Black readers were able to read about their peers' legal maneuvering, and they were able to ascertain the circumstances under which their peers brought civil suits for violence. Snapshots of prospective and actual legal actions exposed readers to new legal arenas that they may not have otherwise known were available to them. It was too dangerous for African Americans to fight Jim Crow violence and disrespect with violence and disrespect. Newspaper coverage of civil litigation suggested to readers that the courts were a place where African Americans could fight back.

Finally, despite the decline of Southern Black papers due to Jim Crow intimidation and financial storms, Black newspapers were still able to shape Black legal culture from the turn of the century through World War I, the Great Depression, and Jim Crow. Larger papers like *The Chicago Defender* played a role in carrying on a long tradition of Black print culture by covering Black litigation. Papers like *The Defender* offered advice columns on legal issues, wrote more informative headlines to grab Black readers' attention and guide their eyes, and offered greater details from the cases and incidents that they covered.

*Syndicated News: For the South by the South, 1931-1953*

[283] Another person was shot as sheriffs tried to execute a warrant for Dacus. The widow of the Great Southern Lumber Company employee who was wrongfully killed sued the company for damages. *Great Southern Lumber Co. v. Williams*, 17 F.2d 468 (1927); *Williams v. Great Southern Lumber Co.*, 277 U.S. 19 (1928).

Larger papers and papers published outside of the South were important forums and vehicles for Black news during the early twentieth century, but some Black Southerners wanted strong Southern Black newspapers to tell their stories. In 1932, the Scott brothers founded a Black Southern news syndicate thanks to the decline of lynching and the ability to build on the foundation laid of papers like the *Savannah Tribune*, the *Plaindealer, The Chicago Defender*, the *Pittsburgh Courier*, and many others. This news network collected and distributed stories that concerned Southern Blacks. At the outset, the Southern News Syndicate aimed to represent Black Southerners specifically, but as papers like *The Defender* demonstrated, the Black press connected Black communities across Black America. The SNS eventually incorporated Black papers from the North and Midwest, as many other Black news networks had, and changed its name from the Southern News Syndicate to the Scott News Syndicate. The *Atlanta Daily World*, however, remained the heart of the Scott News Syndicate.[284]

Like other post-World War I Black newspapers, Southern Black newspapers published between 1931 and 1953 used headlines to concisely relay crucial pieces of information about Black cases and potential Black civil litigation. Articles from the Scott News Syndicate touted headlines like "Victim of Augusta Bus Violence Sues $75,000 Damages" and "Vet to Sue Los Angeles for Police Brutality."[285] Headlines like these alerted readers to the fact that Black plaintiffs were suing bus companies and police departments for violence and abuse.[286]

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[284] Aiello, *The Grapevine of the Black South*, 8-10.
[285] "Victim of Augusta Bus Violence Sues $75,000 Damages," *Atlanta Daily World* (Atlanta, Georgia), August 25, 1953, 1. *ProQuest Historical Newspapers*. "Vet to Sue Los Angeles for Police Brutality," *Atlanta Daily World* (Atlanta, Georgia), July 19, 1947, 1. *ProQuest Historical Newspapers*.
[286] For more headlines from the *Atlanta Daily World*, which represents the Scott News Syndicate in this chapter, see the following articles. "Sues for $50,000 Woman Given $70," *Atlanta Daily World* (Atlanta, Georgia), October 24, 1934, 1. *ProQuest Historical Newspapers*. "Cleveland Leader Forced to Spend Night in Jail, Will Sue Store in 'Mistake,'" *Atlanta Daily World* (Atlanta, Georgia), June 21, 1937, 1. *ProQuest Historical Newspapers*. "Youth

Additionally, at a glance, readers could see that Black victims, including those in the South, were suing for large sums of money. Concise, descriptive headlines provided continuity between Black newspapers published during the post-Reconstruction period and papers published after World War I.

Southern Black newspapers also reminded their Black readership that they could sue police officers and sheriffs for beatings and assaults. Like *The Chicago Defender,* SNS newspapers' descriptive and concise headlines provided Black readers with litigation strategies and causes of action in one sentence or less. The *Atlanta Daily World* donned headlines like "Prather Sues Bonding Co. in Assault Case: Asks $10,000 For Each of 2 Counts Against 3 Deputies" and "Girl, 15 Beaten by Carolina Policemen Sues for $10,000."[287] Such headlines

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Sues Park Officials For Beating," *Atlanta Daily World* (Atlanta, Georgia), August 07, 1937, 4. *ProQuest Historical Newspapers*. "Man Flogged, Sues Lumber Co. for $10,000," *Atlanta Daily World* (Atlanta, Georgia), October 03, 1937, 1. *ProQuest Historical Newspapers*. Chris Ison, "Widow and Daughter Sue Ky. Insurance Company: Ask $53,000 for Slaying of Husband, Father," *Atlanta Daily World* (Atlanta, Georgia), December 25, 1940, 1. *ProQuest Historical Newspapers*. "Awarded $1,500 in Slaying by Rail Detective," *Atlanta Daily World* (Atlanta, Georgia), February 20, 1941, 1. *ProQuest Historical Newspapers*. "Jaw Broken by Brakeman, Fisk Univ. Student Sues Railroad for Damages: Fisk Student Brings Suit in Railroad Attack Jaw Fractured when Beaten by Train Brakeman," *Atlanta Daily World* (Atlanta, Georgia), January 11, 1942, 1. *ProQuest Historical Newspapers*. "Hint Texarkana Hospital Sued Over Lynching: Victim's Sister Seeks Damages for Mob Action," *Atlanta Daily World* (Atlanta, Georgia), August 06, 1942, 1. *ProQuest Historical Newspapers*. "Peonage Victim Sues Sheriff For $10,000: Bonding Co. is Named Jointly 'Responsible' Charges Rights and Privileges Were Violated," *Atlanta Daily World* (Atlanta, Georgia), October 03, 1943, 1. *ProQuest Historical Newspapers*. "Bus Operator Uses Blackjack on Tenn. Urban League Sec'y: Benjamin Bell Beaten on Head, Eye is Closed Announces He Will Sue Company For Damages Blackjacked," *Atlanta Daily World* (Atlanta, Georgia), December 25, 1943, 1. *ProQuest Historical Newspapers*. "Sues Bus Company for $25,000 Damages," *Atlanta Daily World* (Atlanta, Georgia), April 11, 1947, 3. *ProQuest Historical Newspapers*. "Abused Woman Sues Airline," *Atlanta Daily World* (Atlanta, Georgia), May 11, 1947, 8. "Ministers Sue for Injuries," *Atlanta Daily World* (Atlanta, Georgia), November 14, 1947, 1. *ProQuest Historical Newspapers*. "Lawyer, Maid Sue Hotel for Arrest, House-Breaking," *Atlanta Daily World* (Atlanta, Georgia), December 29, 1949, 1. *ProQuest Historical Newspapers*. "Sues on False Arrest Charge," *Atlanta Daily World* (Atlanta, Georgia), January 21, 1951, 4. *ProQuest Historical Newspapers*. "College Student to Sue Bus Co. for Fifty Grand," *Atlanta Daily World* (Atlanta, Georgia), March 02, 1952, 1. *ProQuest Historical Newspapers*. "Man, 78, Sues for $25,000 Damages," *Atlanta Daily World* (Atlanta, Georgia), March 20, 1953, 6. *ProQuest Historical Newspapers*.

[287] "Prather Sues Bonding Co. in Assault Case: Asks $10,000 For Each of 2 Counts Against 3 Deputies," *Atlanta Daily World* (Atlanta, Georgia), July 03, 1953, 1. *ProQuest Historical Newspapers*. "Girl, 15 Beaten by Carolina Policemen Sues for $10,000: Suit Says She was Whipped in Chief's Office Case Against Her was Dismissed by Juvenile Judge," *Atlanta Daily World* (Atlanta, Georgia), August 17, 1947, 1. *ProQuest Historical Newspapers*.

reminded Black readers that they could sue sheriffs for lynching. These headlines also alerted readers to the fact that they could sue police officers, police departments, and bonding companies for white officers' violations of Black Americans' rights of personhood.

The presence of headlines involving African Americans suing bonding companies, sheriffs, and police officers, and police departments corresponds to the shift in litigation strategies seen in the previous chapter. As Jim Crow crystallized, Black plaintiffs in Mississippi increasingly sued bus companies, police officers, and surety companies for the violence they suffered at the hands of whites. This shift in litigation strategies and targets is also evident in Black newspapers during the post-World War II period. Black legal culture developed in the courtroom with litigation strategies, and Black newspapers picked up on these strategies and transported them to readers across Black America.

Like *The Chicago Defender*, the SNS published detailed articles, but these papers also took in-depth looks at plaintiffs' legal argumentation. When journalists or editors took an interest in cases, they cited plaintiffs' petitions and complaints in their articles. In the Prather assault case, where George Prather sued a bonding company for an assault carried out by three Fulton County Sheriff's Deputies, the *Atlanta Daily World* and other members of the SNS reported that a suit was filed "in the Civil Court of Fulton County against the Century Indemnity Co., as underwriters of a 'surety bond' for the sheriff of Fulton County."[288] In addition to informing the SNS readership that a Black man was suing against the bond for sheriffs in Fulton County, the paper outlined and quoted Prather's complaint, arguing that "The first section [of the complaint]

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[288] "Prather Sues Bonding Co. in Assault Case: Asks $10,000 For Each of 2 Counts Against 3 Deputies," *Atlanta Daily World* (Atlanta, Georgia), July 03, 1953, 1. *ProQuest Historical Newspapers*.

sets up the following: 1. That the deputies began 'cursing and using vile, vane [*sic*] and profane language at and toward' Prather. 2. That Prather was told, "Nigger, if you don't open that car, we are going to kill you." Prather exited at gunpoint. "4. That Turner hit him in the head with a Blackjack and Gardner beat him in the face with fists and a 'blunt instrument' while Leathers held the pistol on him."[289] This article went into detail about the alleged facts of the encounter by using what appears to be the complaint or petition to quote Prather's causes of action.

By outlining the alleged facts of the case according to the petition, the paper offered its readers an example of the type of legal argument that could get a Black victim of police brutality into civil court. In Prather's case, the "three deputies were indicted by the Fulton Grand Jury…formally charged with the criminal offense of assault and battery for allegedly beating the young Negro businessman and World War II veteran 'with intent to commit a violent injury upon his person.'"[290]

It was not until after World War II that white attackers, especially police officers or sheriffs, would be charged, let alone indicted, tried, or convicted for their violent attacks upon Black Americans. The SNS reported on the case of Carrie Lee Jones and her daughter who also filed a suit against a surety company and the sheriff for the lynching of her husband Corporal John C. Jones. The paper's coverage of this case—which gained national media attention and the attention of the NAACP—is important because the white men accused of the lynching were "arrested in connection with the lynching" and "all [except one] were indicted and brought to

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[289] "Prather Sues Bonding Co. in Assault Case: Asks $10,000 For Each of 2 Counts Against 3 Deputies," *Atlanta Daily World* (Atlanta, Georgia), July 03, 1953, 1. *ProQuest Historical Newspapers*.
[290] "Prather Sues Bonding Co. in Assault Case: Asks $10,000 For Each of 2 Counts Against 3 Deputies," *Atlanta Daily World* (Atlanta, Georgia), July 03, 1953, 1. *ProQuest Historical Newspapers*.

trial in United States District Court."[291] Though her husband's killers escaped punishment, the newspaper implied, Jones could hold the sheriff responsible for handing her husband over to the mob.[292] The court dismissed Jones' suit, but it is important to note her attempt to use civil courts to gain recourse for her husband's murder.[293] Despite the indictment, however, Prather still sued.

Black newspapers were not Black people's only source of legal education, but these papers had the potential to teach readers new legal maneuvers. By reading Black newspapers, some Black readers probably learned that they could sue surety companies that insured police officers and sheriffs. The papers laid out the type of legal argument that attorneys could make on behalf of their Black clients.

In addition to educating Black readers about suing surety companies for torts committed by bonded sheriffs and police officers, Black newspapers also educated readers on another use of tort law to gain recourse for white-on-Black violence, the inclusion of civil rights claims. The cases considered in the previous chapter covered a variety of causes of action, from wrongful death to civil assault and battery to negligence, but they did not mention a violation of the victim's "civil rights." In my examination of briefs, complaints, and testimony, there was no evidence of African Americans conceptualizing their civil suits for torts as cases of civil rights

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[291] For a similar case, see "Veteran's Widow Sues Louisana Sheriff: Damage Suit Seeks Loss in Hubby's Slaying Mrs. Carrie Jones and Daughter File for $50,000." *Atlanta Daily World* (Atlanta, Georgia), Aug 17, 1947. 1. *ProQuest Historical Newspapers*. For more on this case see, Folder "Lynching: Minden, Louisiana, Newspaper Clippings 1946," Library of Congress Manuscript Collection, NAACP Papers, Part II, General Office File, 1940-1956, Box II: A4110. http://online.sfsu.edu/cwaldrep/NAACP%20LC%20Copies%20[3].pdf

[292] For more on the Jones lynching and the national response to the lynching see Adam Fairclough, *Race and Democracy: The Civil Rights Struggle in Louisiana, 1915-1972* (Athens: University of Georgia Press, 1999), 113-118.

[293] I looked to see if this case was appealed in Louisiana, other state, or federal court, and could not find the outcome of Jones' damage suit. A book on A.P. Tureaud, the black attorney who filed her suit, states that the case was dismissed. Rachel L. Emanuel and Alexander P. Tureaud, Jr., *A More Noble Cause: A. P. Tureaud and the Struggle for Civil Rights in Louisiana* (Baton Rouge: Louisiana State University Press, 2011), 115. Tureaud was also formally connected to and affiliated with the NAACP's litigation efforts.

violations as we think of them in the context of discrimination and the Civil Rights Movement. The phrase civil rights meant different things to different people during different historical periods. These plaintiffs did not claim that the injuries they sustained at the hands of whites were violations of their civil rights because they did not see their injuries that way.

Furthermore, Black plaintiffs did not frame their claims in terms of civil rights because the plaintiffs considered in this dissertation were often bringing their suits in state civil courts (with one exception). In order to have their claims heard in federal court, they needed to state a claim cognizable under some federal statute or Constitutional provision. In at least one case covered by that *Atlanta Daily World*, a plaintiff and his attorneys combined traditional tort language with the language of civil rights. According to the *Atlanta Daily World*, Roscoe Hillsman and his attorneys filed suit against a bus company in the "Atlanta Federal District Court," and the "petition charge[d] that the plaintiff was damaged by the 'bad faith' and 'malicious' conduct of the Modern Trailways Bus operator who, according to the petition, ejected him from the bus without 'just cause.'"[294] Additionally, "The petition further charges that the acts of the bus operator amounted to a 'deprivation of civil rights (of the complainant) while in the process of interstate travel.'"[295] Rather than simply relying on the common law of common carriers or violations of Jim Crow statutes, victims suing in federal couched their arguments in terms of civil rights. By making federal statutory or Constitutional arguments, like those that invoked the Fourteenth Amendment or Commerce Clause, plaintiffs could argue, sometimes successfully, that their civil rights had been violated.

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[294] Robert E. Johnson, *Atlanta Daily World*, Staff Writer. "College Student To Sue Bus Co. for Fifty Grand" *Atlanta Daily World* (Atlanta, Georgia), March 02, 1952, 1. *ProQuest Historical Newspapers*.
[295] Robert E. Johnson, *Atlanta Daily World*, Staff Writer. "College Student To Sue Bus Co. for Fifty Grand" *Atlanta Daily World* (Atlanta, Georgia), March 02, 1952, 1. *ProQuest Historical Newspapers*.

Hillsman's case is not unique, but this case and the *Atlanta Daily World*'s coverage of the case are significant because of the particular way Hillsman made his civil rights claim. By the 1950s, Black plaintiffs had begun to frame their legal arguments in terms of civil rights to make legal claims in federal courts. Hillsman's case was the first to surface in this dissertation where a plaintiff explicitly claimed that his civil rights had been violated, in addition to the tort that had been committed against him. Like Jessie Lee Garner, who sued a bus company for negligence after she was beaten and suffered a miscarriage, Hillsman alleged that "he 'quietly' seated himself in the back seat in compliance" with a Jim Crow sign, but was made to switch buses, despite having "bought a ticket to travel straight through without changing buses."[296] Here, Hillsman did not make a civil rights claim because of segregation. He complied with the Jim Crow law by sitting in the section reserved for Black people. Hillsman could have simply sued for negligence on the part of the driver, or under contracts, because he purchased a ticket that did not require transfers. Instead, he and his attorneys elected to integrate a civil rights argument into their petition because the company, they argued, made him transfer because of his race.

In addition to informing Black readers about new litigation strategies against surety companies, sheriffs, and police officers, or adding civil rights claims to tort claims, Black newspapers in the post-World War II period reported on sympathetic attorneys. While papers in earlier periods published the names of sympathetic attorneys, Black news articles in the post-World War II era seemed to include the names of attorneys more frequently. Sometimes papers merely noted that victims had attorneys.[297] In Roscoe Hillsman's wrongful ejection and civil

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[296] Robert E. Johnson, *Atlanta Daily World*, Staff Writer. "College Student To Sue Bus Co. for Fifty Grand" *Atlanta Daily World* (Atlanta, Georgia), March 02, 1952, 1. *ProQuest Historical Newspapers*.
[297] "Victim of Augusta Bus Violence Sues $75,000 Damages." *Atlanta Daily World* (Atlanta, Georgia), August 25, 1953, 1. *ProQuest Historical Newspapers.*

rights case, the paper noted that Hillsman was represented by "two Atlanta attorneys."[298] In the article published after the jury reached a verdict in Hillsman's case, the paper named one of Hillsman's attorneys as James Wilson.[299] By exposing African Americans to the fact that there were attorneys who might be willing to help, Black newspapers offered hope to those who had experienced violence at the hands of whites. If Hillsman and others could find local Southern attorneys to help them, then other potential Black litigants might find sympathetic attorneys as well.

When the SNS circulated its article on the Corporal Jones lynching and the damage suit Jones's widow intended to file, the writer indicated that Jones' wife's "petition was filed by Attorney A. P. Tureaud of New Orleans."[300] Though the article did not mention it, Tureaud was an African American attorney with ties to the NAACP. In a case involving two Black Chicagoans, the *Atlanta Daily World* informed readers that the victims' suit was "filed in U.S. District Court by Atty. Lucas T. Clarkson," who was white.[301] When two Black ministers decided to sue the City of Chicago for $20,000, Attorney Ulysses S. Keys, a Black attorney, represented the two.[302] In Prather's case, the SNS article disclosed that his "petition was filed by

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[298] Robert E. Johnson, *Atlanta Daily World*, Staff Writer, "College Student To Sue Bus Co. for Fifty Grand" *Atlanta Daily World* (Atlanta, Georgia), March 02, 1952, 1. *ProQuest Historical Newspapers.*
[299] Lerone Bennett, Jr., *Atlanta Daily World*, Staff Writer, "Fulton Jury Refuses to Gran Damages in Bus 'Bias' Complaint," *Atlanta Daily World (*Atlanta, Georgia), December 4, 1952, 1. *ProQuest Historical Newspapers.*
[300] "Veteran's Widow Sues Lousiana Sheriff: Damage Suit Seeks Loss in Hubby's Slaying Mrs. Carrie Jones and Daughter File for $50,000." *Atlanta Daily World* (Atlanta, Georgia), August 17, 1947, 1. *ProQuest Historical Newspapers*. Rachel L. Emanuel and Alexander P. Tureaud, Jr., *A More Noble Cause: A. P. Tureaud and the Struggle for Civil Rights in Louisiana* (Baton Rouge: Louisiana State University Press, 2011), 115. Tureaud was also formally connected to and affiliated with the NAACP's litigation efforts.
[301] "Lawyer, Maid Sue Hotel for Arrest, House-Breaking." *Atlanta Daily World* (Atlanta, Georgia), December 29, 1949, 1. *ProQuest Historical Newspapers.*
[302] "Ministers Sue for Injuries." *Atlanta Daily World* (Atlanta, Georgia), November 14, 1947, 1. *ProQuest Historical Newspapers*. According to the 1940 United States Federal Census, Ulysses S. Keys was a black attorney.

Atty. Daniel Duke…in Fulton County Civil Court."[303] The paper did not disclose Duke's race, but he was a white attorney practicing in Atlanta.[304]

Newspapers circulating throughout the South during the later period of the Black press served, intentionally or unintentionally, to connect African Americans on the ground with attorneys who might take their cases. Not only did these papers advise, discuss, and teach readers about legal strategies to sue whites for intentional torts, these newspapers also alerted readers to specific attorneys who had shown a willingness to take on Black cases. By connecting Black victims with attorneys who would potentially work with Black people, the newspapers served as networking agents.

*Conclusion*

This chapter has shown that Black newspapers took an interest in the intentional torts and wrongful injuries that Black people suffered. From the post-Reconstruction period to the early 1950s, Black newspapers included legal information. From columns devoted to legal proceedings to articles devoted to court cases, the law was ever-present in Black newspapers. Additionally, papers included articles that offered straight forward reporting, and over time Black newspapers across the country began offering readers more in-depth coverage of incidents and cases.

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[303] Note that Daniel Duke, Prather's attorney was white according to the 1940 United States Federal Census. Daniel Duke was a lawyer in Atlanta, Georgia who appears to have also worked for the government. "Prather Sues Bonding Co. in Assault Case: Asks $10,000 For Each of 2 Counts Against 3 Deputies." *Atlanta Daily World* (Atlanta, Georgia), July 03, 1953, 1. *ProQuest Historical Newspapers*.

[304] For another example, see "Peonage Victim Sues Sheriff for $10,000: Bonding Co. is Named Jointly "Responsible" Charges Rights and Privileges Were Violated." *Atlanta Daily World* (Atlanta, Georgia), October 03, 1943, 1. *ProQuest Historical Newspapers*.

Because many Black newspaper editors were committed to creating a sense of solidarity among Black people across the United States, Black newspapers called for Black people to stand up for themselves and gave them the tools to do so. By answering legal questions in print, offering legal advice, advising Black readers to get lawyers, and listing sympathetic lawyers' names, Black newspapers, editors, and journalists used their network to facilitate self-help. They encouraged Black readers to believe that, with an understanding of the law and an idea of when one was able to sue, Black people could seek damages for white attacks under specific circumstances. When Black people were unsure of whether they had a viable claim or if they did not know who to ask a legal question, they called on Black newspapers and the press's network for help. But the Black press would not be the only source of information for Blacks seeking legal knowledge and sympathetic attorneys. Black people also enlisted the help of the NAACP after its founding in 1909. And the NAACP answered.

# Chapter 3: Litigants, Liaisons, and Lawyers:

On March 2, 1919, Eugene Green sat in a jail cell in Belzoni, Mississippi, a town in the Mississippi Delta near the Yazoo River. Green had been accused of killing a white man and awaited his fate in the county jail. That night, Green "was taken from jail" by a mob and was never seen again.[305] *The Crisis Advertiser*, picked up, repackaged, and reprinted a story from a local white newspaper for its Black readers. An anonymous source wrote to Jackson, Mississippi's *Daily News*, a white newspaper, taunting members of the National Association for the Advancement of Colored People (NAACP) who had protested the lynching. "The governor is not in the city and the telegram has not been answered," but the NAACP "need not remain in the dark concerning the fate of Green. He was 'advanced'…from the end of a rope, and in order to save burial expenses his body was thrown in the Yazoo River" the writer taunted. Rubbing salt in the wound, the writer offered to "give you the size of the rope and the exact location where the coon was hung [*sic*]."[306] The writer left no doubt. A white mob had murdered Green. They were the judge, jury, and executioner.

A few months later, Herbert J. Seligmann, the publicity director for the NAACP, wrote executive secretary John R. Shillady in the National Office of the NAACP, reporting what he had learned of the Eugene Green lynching.[307] According to Seligmann, he had reached out to a

[305] *Crisis Advertiser*, Vol. 18, no. 1 (May 1919), 37.
[306] *Crisis Advertiser*, 37.
[307] According to the Biographical Note that accompanies the finding aid for the Herbert J. Seligmann Papers, Seligmann was born in New York City in 1891, attended Harvard University (where he graduated cum laude), wrote about civil rights for African Americans, and served as the publicity director of the NAACP from 1919 to 1932. As a member of the black press, Seligmann held other positions with organizations like the American Jewish Joint Distribution Committee. For more on Seligmann, see the finding aid for the "Herbert J. Seligmann Papers, 1908-1984" on the New York Public Library's website.
https://www.nypl.org/sites/default/files/archivalcollections/pdf/Seligmann.pdf

white Mississippi judge named James A. Teat, who informed Seligmann that several cases had arisen out of the Eugene Green lynching, including a "suit on behalf of Eugene Green's widow for $10,000 in Chicago before the federal court to hold the Sheriff personally responsible for his prisoner's death."[308] In order for Teat, a judge and attorney, to represent Green's widow in her federal case, however, he and his associates "insist[ed] that [any retainer] under $2,500, the minimum he proposed" would make "the case not worth their while."[309] Additionally, there was "a suit against…Teat" "for having claimed $500 reward offered for the surrender of Green, and for having received payment at a time when Green was already in custody."[310] Seligmann deduced that the "significant feature of the suit is that Judge Teat is charged with being counsel for the N.A.A.C.P," and Seligmann believed that "the charge [was] an obvious attempt to prejudice public opinion against him and his work."[311] And finally, attorneys had submitted "an appeal to the Supreme Court of Mississippi from the decision of the Circuit Court holding that the Sheriff was not in contempt of court for letting his prisoner be lynched."[312]

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[308] Letter from Herbert J. Seligman to John R. Shillady, NAACP Administrative File: Special Correspondence H. J. Seligmann, May 20, 1919, Proquest.

[309] Letter from Herbert J. Seligman to John R. Shillady, NAACP Administrative File: Special Correspondence H. J. Seligmann, May 19, 1919, Proquest. After searching for this case in NexisUni (formerly LexisNexis) under federal circuit courts, using Eugene Green's name as a search term, as well as "lynch!," "violence," and "mob" between 1914 and 1924, and finding nothing, I am not sure if this case actually made it to federal court. I also searched for this case in the Mississippi Department of Archives and History's online catalog, and did not find it. What is explained in this vignette is all that I know about the case, even after additional research.

[310] Herbert J. Seligman to John R. Shillady, May 19, 1919, NAACP Administrative File: Special Correspondence H. J. Seligmann, Proquest.

[311] Seligman to Shillady, May 19, 1919, ibid.

[312] Seligman to Shillady, May 19, 1919, ibid. I have searched to see if this case was actually brought to the Mississippi State Supreme Court. In order to find out who the attorneys were, I searched NexisUni. My parameters limited the search to cases brought before the Mississippi State Supreme Court between 1914 and 1924. I searched terms including "mob violence," contempt," and "sheriff," but did not find cases that matched the letter's description. In addition to the NexisUni search, I also went to the Mississippi Department of Archives and History's online catalog and searched for the case. I limited my search to cases between 1914-1924 and looked for cases that involved the state prosecutor or where the word "sheriff" appeared next to the appellee's name in the case name. I was not able to find a case in that catalog that suggested that the case was actually appealed.

Although there was much talk of litigation in Seligmann's conversations with attorney Teat and his associates, the NAACP files show no evidence that a lawsuit was filed in federal court, and it does not appear that the case against the sheriff was appealed to the Mississippi State Supreme Court. The story of Eugene Green's lynching and the various conversations and legal actions that arose as a result, weave together three of the four threads of this dissertation. The lynching involved white on Black violence and a direct violation of Green's rights of personhood without due process of the law; a Black newspaper picked up a story from a white paper that it repackaged for its Black readers; and the NAACP sent field agents to gauge the situation on the ground and begin discussions about potential litigation, meeting with sympathetic white lawyers on the ground in Mississippi.

This chapter uses episodes like the Eugene Green lynching to examine the NAACP's role in connecting potential litigants with sympathetic attorneys who "cooperated" with but were not employees of, the NAACP. It argues that the NAACP acted as a networking agent between Black victims, willing Black and white attorneys, and other mutual aid or legal aid societies.[313] This chapter uses letters to the NAACP's National Office in New York City between 1919 and 1953 to examine how the NAACP engaged with Black letter writers who were in search of legal advice. The chapter highlights how the NAACP connected Blacks who felt they had suffered injuries with attorneys who could represent them in lawsuits.

Many historians have assumed that the NAACP brushed off cases that fell outside its stated mission, which included seeing "that the Constitution be strictly enforced and the civil

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[313] Mark V. Tushnet, *Making Civil Rights Law: Thurgood Marshall and the Supreme Court, 1936-1961* (New York: Oxford University Press, 1994), 272-275.

rights guaranteed under the Fourteenth Amendment be secured impartially to all," securing equal education for Black Americans, and securing Black Americans' right to vote, as guaranteed through the Fifteenth Amendment.[314] The evidence, however, suggests a more nuanced story. Although the NAACP declined to represent Black people in tort damages suits, it did connect letter-writers with people who could: lawyers, many of them white, and some of them not even affiliated with the organization. These lawyers helped translate Black people's lived experiences into civil litigation.[315]

Attorneys, particularly those in the South, put their lives, reputations, and practices on the line when taking on Black Americans' civil suits. Many Black attorneys took on civil rights cases during the Jim Crow, but others took on damage suits simply to keep their practices alive. Sympathetic white lawyers, those who would take Black people's cases, took on Black plaintiffs' civil cases because they saw Black plaintiffs as potential sources of revenue, and some likely empathized with Black litigants. With a $2,500 retainer, Teat and his white associates would have litigated a case for damages on behalf of Green's widow. Despite benefitting from the racial caste system, Teat and his associates put their social, political, and professional capital on the line to help a Black woman, even though they did not have to.[316] Remember that there was "a suit against…Teat," and that Seligmann suspected "that Judge Teat is charged with being counsel for the N.A.A.C.P" and that "the charge [was] an obvious attempt to prejudice public

[314] Platform of the National Negro Committee, 1909. Printed document. NAACP Records, Manuscript Division, Library of Congress. See also Susan Carle, *Defining the Struggle: National Organizing for Racial Justice, 1880-1915,* (New York: Oxford University Press, 2013), 259.
[315] William L.F. Felstiner, Richard L. Abel, and Austin Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . ." *Law & Society Review* 15, no. 3/4 (1980), 632.
[316] Additionally, because these tort cases could be lucrative, many lawyers took them on contingent fees—only paid if they won. Lawrence Friedman*, A History of American Law* (New Haven, Conn.: Yale University Press, 2002), 362.

opinion against him and his work."[317] While it is hard to pin down attorneys' motivations for taking Black plaintiffs' cases, some likely took the cases because they were sources of income, others might have taken the cases on principle, while still others might have taken Black cases for a combination of those reasons, but all ran the risk of intimidation, mob violence, or social retribution in the Jim Crow South, depending on how their litigation efforts were perceived by white Southerners.[318] Black and white lawyers worked within the realm of private law, disrupting a racial caste system that permeated their everyday lives.

Much of the literature on the NAACP's work has focused on its role in litigation related to the formal Civil Rights Movement. This scholarship focuses on the NAACP's challenges to legal segregation, by bringing cases like *Brown v. Board of Education of Topeka* (1954) and other test cases before the United States Supreme Court, as well as other lower courts.[319] Other scholars, whose work does not focus on Constitutional test cases, focus on civil litigation related to segregation, lynching, and sexual violence. These scholars highlight the different legal issues Black Americans of all classes brought to the NAACP, and argue that in addition to litigants, judges allowed politics to inform their rulings on cases.[320] Kenneth Mack describes the 1970s historiography of civil rights and civil rights lawyering as chronicling "what was assumed to be

[317] Seligman to Shillady, May 19, 1919, ibid.
[318] Seligman to Shillady, May 19, 1919, ibid.
[319] Risa L. Goluboff, *The Lost Promise of Civil Rights* (Cambridge, Mass.: Harvard University Press, 2007); Michael Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (New York: Oxford University Press, 2006); Nancy MacLean, *Freedom Is Not Enough: The Opening of the American Workplace* (Cambridge, Mass.: Harvard University Press, 2006).
[320] Goluboff, *The Lost Promise of Civil Rights*; Klarman, *From Jim Crow to Civil Rights;* MacLean, *Freedom Is Not Enough.*

the legal liberal struggle of African-American lawyers, civil rights organizations, and local communities that achieved its longstanding objective in *Brown*."[321]

While critical legal studies provided one angle of thinking about civil rights and civil rights lawyering, through the lens of rights claiming and Supreme Court challenges, they missed key elements of the Black freedom struggle. As Mack notes, critical legal studies scholars have "argued that the abstract, contradictory, and unstable nature of the legal liberalism that took shape in and after the *Brown* decision limited the effectiveness of that rights discourse as a means of changing the status quo."[322] Rights discourse and test-cases, like *Brown*, were important, but so were other forms of legal challenges. Additionally, as scholars have shown since the 1970s, civil rights litigation could have taken many forms aside from Supreme Court challenges like *Brown*.[323]

The course that civil rights litigation took was more contingent than earlier historians thought. As Risa Goluboff argues, "the [NAACP] lawyers eschewed labor equality cases, the due process clause, private defendants, and material inequality in favor of a frontal attack on state-mandated educational segregation."[324] The NAACP had a set litigation agenda related to desegregation, suffrage, and education, and it chose cases based on these priorities.

Yet even though the NAACP chose a course, that did not mean that other avenues of litigation did not exist or that individual Black plaintiffs could not use other litigation strategies

[321] Kenneth Mack, "Rethinking Civil Rights Lawyering and Politics in the Era Before Brown," The Yale Law Journal 115, no. 2 (November 2005): 259.
[322] Mack, "Rethinking Civil Rights Lawyering," 259.
[323] Mack, "Rethinking Civil Rights Lawyering," 259. See also, Tomiko Brown-Nagin, *Courage to Dissent: Atlanta and the Long History of the Civil Rights Movement*, (New York: Oxford University Press, 2011); Goluboff, *Lost Promise of Civil Rights*; Klarman, *From Jim Crow to Civil Rights*; Maclean, *Freedom is Not Enough*.
[324] Goluboff, *The Lost Promise of Civil Rights*, 12.

to achieve their legal goals. This chapter argues that potential Black litigants had other paths to litigation, had access to civil courts even when costly, and sometimes even received assistance from the NAACP in other ways. Goluboff points out that in the 1940s and 1950s, people who had enough "resources" to get the case to court were more likely to have the NAACP intervene and obtain redress."[325] And the NAACP sometimes offered unofficial help to people too poor or not respectable enough for an official intervention.

*Respectability and Case Rejection*

McGuire's work on sexual violence and gender in the civil rights struggle argues that the NAACP's litigation strategy hinged on respectability. In the 1930s and 1940s, she argues, the NAACP's local branches and National Office declined to take certain cases because the potential litigant lacked the perceived respectability needed to successfully win the case.[326] According to McGuire, one NAACP local branch president declined to assist a potential litigant because her "dark skin color and working-class status made her a political liability in certain parts of the Black community" so she "could not possibly serve as the community's standard -bearer, nor be a good litigant."[327] Black people who did not live up to the NAACP's standards of respectability, and those who lacked resources could not count on the NAACP for legal aid. This line of argument, in conjunction with Goluboff's argument, implies that African Americans without resources and those who did not meet the NAACP's standards of respectability, were generally left with few options for securing an attorney after suffering abuse under Jim Crow.

[325] Goluboff, *The Lost Promise of Civil Rights*, 188.
[326] McGuire, *At the Dark End of the Street*, 75-76.
[327] McGuire, *At the Dark End of the Street*, 74.

But the NAACP did in fact assist Blacks around the country in finding solutions to their legal problems, even when the NAACP itself could not or would not represent them. A typical response was: "because of the pressure of other matters, it is impossible for the Association to take up the matter" presented in the letter or that "there is nothing that can be done in your case, except to advise you to consult a good lawyer who will advise you as to the best steps to be taken."[328] Many of the potential litigants in this chapter wrote letters to the National Office of the NAACP in New York City. At times the National Office of the NAACP would send field agents to local communities to discuss litigation, but those cases did not always make it to case reporters, either because no suit was ever filed, or because the cases did not make it to the appellate level. I examine Black Americans' letters to the NAACP about legal injuries they had suffered, and I analyze the responses of the NAACP, in order to look at Black legal culture and litigation from the bottom up.

This chapter considers the ways that Black Americans' social networks contributed to their ability to pursue legal recourse for rights violations. This examination of Black legal networking is significant because it suggests one way that legal knowledge was transmitted between legal professionals and Black laypeople. It is also important because it suggests one way that Black people found willing attorneys to litigate on their behalf. While the NAACP may have focused its resources on middle-class Black Americans, it assisted Black people of various social classes through its networking capacity.

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[328] Letter from Assistant Secretary to Mrs. Willie Fowler, August 4, 1921, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 28. Letter from the Assistant Secretary to Rebecca Brannon, April 4, 1921, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 7.

The NAACP was not a rigid organization; its branches were a web of local organizations that stretched back to the National Office. The NAACP's legal arm was also a web of staff and affiliated attorneys that stretched back to the Legal Redress Committee. Furthermore, while those people who wrote to the NAACP could read and write, the knowledge that they gained from their correspondences with the NAACP could have easily been transferred by word-of-mouth to family members, community members, church members and people who may not have been literate. The knowledge that letter writers gained from these correspondences had the potential to educate and empower entire communities to consider litigation in the face of a grievance, or at the very least, reach out to an attorney for assistance in determining whether litigation was possible.

Understanding Black people's interpretations of events leading up to litigation and examining how they might have decided to bring litigation is essential to understanding Black legal networking and Black legal culture. One influential theory widens the aperture beyond the courtroom to encompass the "dispute process" holistically. It holds that law is made when people's "experiences become grievances, grievances become disputes, and disputes take various shapes," including legal action.[329] Naming an injury is an important part of turning an experience into a dispute, but it is also key for convincing judges and jurors to see your injury as such. In chapter one the plaintiffs chose to name their injury in terms of torts, rather than civil rights, and in chapter three we see letter writers asking the NAACP, a trusted arbiter of justice, for help in blaming someone or something for their injury and claiming recompense. For Black Americans,

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[329] William L.F. Felstiner, Richard L. Abel, and Austin Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming…" *Law & Society Review* 15, no. 3/4 (1980), 632.

many times it was clear that an injury had occurred, but they were unsure how to name the injury in the most effective way possible, and they were unsure of next steps.[330]

The hours and days immediately after an altercation or injury were vital because that was when victims decided whether to become vigilantes, go to the police, or file a legal claim. According to Felstiner et al., the early stages were significant “because the range of behavior they encompass is greater than that involved in later stages of disputes, where institutional patterns restrict the options open to disputants.”[331] Building upon this argument, when Black people wrote to the NAACP they were “naming” and “blaming,” but they were also seeking help in making  a legal “claim” in a way that would yield the results they hoped for. The NAACP’s role as a networking agent was key in helping Black victims find trustworthy attorneys. Layers had the legal expertise needed to make an effective claim in court. Black people’s ability to sue and win hinged on their ability to secure a trustworthy attorney. Black letter-writers sought something beyond the feeling of retribution. They wanted something tangible like recovering lost property or securing monetary damages for their—actual, perceived, physical, mental, and emotional—losses.[332]

This chapter builds on the extensive body of literature on the NAACP and its role in civil rights litigation, but it also challenges some of the arguments made in the existing historiography. Some legal scholars have argued that the route of civil rights litigation taken by the NAACP during the period leading up to *Brown* was one of many possibilities for securing African Americans’ civil rights and dismantling Jim Crow. This chapter does not dispute this

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[330] Felstiner et al., *The Emergence and Transformation of Disputes*, 635.
[331] Felstiner et al., *The Emergence and Transformation of Disputes*.
[332] Felstiner et al., “The Emergence and Transformation of Disputes,” 636.

point. The current historiography also argues, however, that the NAACP drew hard lines when they decided which cases to accept and which cases to reject, implying that the rejected cases were cast aside and those plaintiffs were left to fend for themselves.[333]

The historiography on the NAACP's litigation efforts has previously focused on test cases, the Thirteenth Amendment, and the Fourteenth Amendment. Goluboff's work on the NAACP and Black litigation focused on the Thirteenth and Fourteenth Amendments as grounds upon which Black Americans could sue.[334] Brown-Nagin's work shifted the attention away from the NAACP and its national strategy, to local lawyering and dissent. In her examination of local lawyering, Brown-Nagin argues that not all lawyers who were connected to the NAACP followed the organization's legal strategy blindly, some "fashioned a brand of socially conscious lawyering that fit local circumstances and deviated in crucial ways from the model of legal activism of the NAACP Legal Defense Fund."[335] Even works like Brown-Nagin's, however, emphasizes Black litigation in federal courts under federal and constitutional law like the Fourteenth Amendment.

With the rise of "long civil rights movement" scholarship, legal historians have engaged in a debate about the efficacy of the "long civil rights movement" framework and the ways that we define "civil rights." In discussing the NAACP and its work with individual African Americans who wrote the organization seeking legal assistance, it is important to articulate that this chapter and the cases considered in this dissertation were not about "civil rights" as legally defined or defined by those living under Jim Crow. Black people who wrote the NAACP for

[333] Goluboff, *Lost Promise of Civil Rights*; McGuire, *At the Dark End of the Street.*
[334] Goluboff, *Lost Promise of Civil Rights*.
[335] Brown-Nagin, *Courage to Dissent,* 1.

legal advice and had their cases rejected by the legal redress committee of the NAACP were writing because they wanted to know if they had a viable legal claim or if the NAACP could refer them to an attorney. Those specific causes of action could be found under various types of law, including tort law. For some, their inquiries and litigation were about recovering for an injury—physical or psychological—and asserting that their lives, dignity, and experiences were worth *something*.

This chapter moves away from the NAACP's national legal agenda and Brown-Nagin's work, and pushes back against the focus on cause lawyering. It focuses on the work that NAACP-affiliated lawyers did outside of the scope of their work for or with the NAACP. The National Office referred cases to lawyers who cooperated with the NAACP, though they may not have had formal ties with the organization. This web of cooperating attorneys took Black cases referred to them by the NAACP, but not as cause cases.[336] Even though Black letter writers were looking to the NAACP for legal assistance, they did not always see their cases as part of a larger cause. Their lawyers did not see their cases as cause lawyering either, as they sometimes charged a retainer and the legal issues at hand were in no way related to "civil rights" as contemporaries were beginning to understand them. Examining letters between the NAACP and Black people seeking legal information offers a different view of the NAACP and its role as a legal institution during Jim Crow.[337]

### *Structure of the NAACP*

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[336] Kenneth W. Mack, "Rethinking Civil Rights Lawyering and Politics in the Era before 'Brown,'" *The Yale Law Journal* 115, no. 2 (2005): 259.
[337] Mack, "Rethinking Civil Rights Lawyering," 259.

The early structure of the NAACP shaped how the Legal Redress Committee functioned in later decades. The NAACP's founding members envisioned the organization as functioning under the direction of a Board of Directors and chose New York City as its headquarters, perhaps because that is where many of the founders lived. The National Office's day-to-day operations were to be handled by an office staff: "a secretary, who handled the organization's correspondence and ran the office; a field secretary, or organizer; and a publicity director, whose chief responsibility was to edit *The Crisis*, a NAACP-sponsored news magazine addressing topics related to African American civil rights."[338] Local branches were organized with a similar leadership structure and reported to the regional office. The National Office and the Board of Directors were meant to govern the local and regional branches. They were at the center of a web of local branches that made up the NAACP.[339]

The National Legal Committee—the predecessor of the NAACP Legal Defense Fund—was chartered as a national committee "'whose work shall be dealing with injustice in the courts as it affects the Negro.' Its charge was to function in an advisory capacity to the board, reviewing and deciding on potential cases for the NAACP's involvement, helping to recruit prominent lawyers to handle these cases, and setting legal direction and policy."[340] Like the NAACP's Board of Directors and National Office, the National Legal Committee was at the center of a web of staff lawyers—who worked for the NAACP—and affiliated lawyers—who sometimes worked

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[338] Susan D. Carle, "Race, Class, and Legal Ethics in the Early NAACP (1910-1920)," *Law and History Review* 20, no. 1 (2002): 106. See also, Susan D. Carle, *Defining the Struggle: National Organizing for Racial Justice, 1880-1915* (New York: Oxford University Press, 2013), 275-277.
[339] Carle, "Race, Class, and Legal Ethics in the Early NAACP (1910-1920)," 106. See also, Carle, *Defining the Struggle*, 275-277.
[340] Carle, "Race, Class, and Legal Ethics in the Early NAACP (1910-1920)," 106.

with the NAACP, but often received referrals from the NAACP and took the cases that the NAACP could not or would not take.

Because the NAACP's legal team was often overburdened or underfunded, and because of a very specific litigation agenda, the Legal Redress Committee, headed by Arthur Spingarn, filtered cases, accepting some and declining others. Despite these rejections, the NAACP's National Office assisted Black victims in at least five ways. It referred Black letter writers to local branches that it thought could better assist in obtaining a trustworthy local lawyer, it referred Black letter writers directly to local lawyers, it referred them to other mutual aid or legal aid societies that could assist with certain legal matters, it advised letter writers of the law at hand, and it provided continuing legal advice to writers who had already hired lawyers.[341]

*Local Branches for Local Lawyers*

With the establishment of the Legal Redress Committee in 1911, the NAACP actively recruited non-staff affiliated attorneys who would agree to help people like Eugene Green's widow and consulting with people referred to them by local branches of the NAACP or the National Office. These lawyers were not always paid by the NAACP but were willing to take on Black clients.[342] Judge Teat is one example of a sympathetic white lawyer, but there were others, Black and white.

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[341] Letter from Assistant Secretary to H. S. Henry, February 5, 1921, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 9. Arthur Spingarn and his brother Joel Spingarn were early members of the NAACP's National Legal Committee. Arthur was a New York attorney, and Joel was a Columbia University English Professor. Joel was a member of the inaugural legal committee. Carle, "Race, Class, and Legal Ethics in the Early NAACP (1910-1920)," 110.

[342] Mark V. Tushnet, *Making Civil Rights Law: Thurgood Marshall and the Supreme Court, 1936-1961*, (New York: Oxford University Press, 1994), 274. The NAACP role in securing African Americans' rights "would involve civil and political rights, to be approached through legal strategies, in which the NAACP was already developing a

The NAACP offered varying kinds of assistance to litigants whose cases they rejected, often referring letter writers to local branches for assistance in tracking down a trustworthy lawyer who was a member of the state bar and who would be willing to take the case. After being put out of a restaurant on multiple occasions because of his race, Paul Brown, an African American student at the University of Illinois Champaign-Urbana, wrote the NAACP requesting help in getting the "restaurant keeper" arrested. According to Brown, he "went to two different justices of the peace to swear out a warrant for the arrest of said restaurant keeper, but each justice of the peace told me that he could not issue the warrant, because he did not think it wise in the face of so much trouble between the races."[343] Dissatisfied with the Justices of the Peace's decision, Brown reached out to the National Office of the NAACP for guidance as to what else he could do.

The National Office referred Brown's case to the legal redress committee for their suggestions, but until the committee rendered its decision on whether the NAACP could assist with the case, the Chairman of the National Office advised Brown that the committee would probably advise him "to consult a local lawyer. The law is different, as you know, in different states."[344] The NAACP's move to advise Black letter writers to find local lawyers underscores the fact that Black letter to seek recourse in state and local civil courts for civil injuries. Federal courts were meant as oversight to ensure that state law was applied to citizens equally. When the

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specialized expertise as it recruited lawyers to help advise it in the legal matters in which it had become involved." Albert Pillsbury, a white New York attorney, is an example of an affiliated lawyer who would litigate on behalf of the NAACP when needed, free of charge. Carle, *Defining the Struggle*, 275, 277.

[343] Paul F. Brown to the National Office of the NAACP, October 3, 1919, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26-Folder 1.

[344] Letter from Chairman to Paul F Brown, October 14, 1919, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 1.

legal issue at hand was not related to equal application of state law, then a Black letter writer's first step was to seek a remedy in state or local court, not federal court.

When Black victims chose to sue under state tort law, victims would need a local attorney, and their cases likely would not help advance the NAACP's litigation agenda. In a situation where a Black person was beaten by a bus driver, the potential litigant could sue under negligence, a tort, and receive damages for his or her injury. By suing in state courts under tort law, rather than in federal courts under civil rights law, Black American plaintiffs did not have to prove that there was discrimination, or that the injury had occurred *because* they were Black. Therefore, for many Black victims of white violations of their rights of personhood, suing under state tort law would be easier, more straightforward, and would not need a large legal team, like the NAACP's, to litigate.

Around the same time that tort law and Jim Crow crystallized, the NAACP established its first local branch in Mississippi in 1919, connecting Black Mississippians to a larger network of attorneys and persons with legal acumen. Sometimes local lawyers headed local and regional branches. Attorneys Sidney D. Redmond and W. L. Mhoon, both Black American, sat on the Jackson, Mississippi NAACP Branch's Board of Directors in 1940.[345] If local branch leadership included attorneys, then an attorney in a leadership role had the potential to take a case on behalf of a letter writer or connect the letter writer with a willing local attorney. This type of connectedness further strengthened Black legal networks.

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[345] Sidney D. Redmond was a "colored" attorney in 1940. W. L. Mhood was a "negro" lawyer in 1940. 1940 United States Federal Census. Both sat on the Jackson, Mississippi Branch's Board of Directors. Letter from A. W. Wells to William Pickens, March 16, 1940. "Jackson, Mississippi Branch Operations, 1944-1955," Papers of the NAACP, Part 26: Selected Branch Files, 1940-1955, Series A: The South, Group II, Series C, Branch Department Files, Geographical File, Folder 001493-014-0284. *ProQuest History Vault's NAACP Papers*.

When the NAACP could not immediately agree to or decline to litigate a case, or when the organization could not represent a potential litigant, the NAACP would refer Black letter writers to their local branches to find local lawyers. H. L. Todd wrote the NAACP's National Office complaining that on February 17, 1923 "there was what I would call a mob that laid way the public road and killed my Bro" in Itta Bena, Mississippi, about two hours north of Jackson.[346] According to Todd, he was reaching out to the NAACP's National Office because he wanted "get a detective to colict [*sic*] evidence so that [he could] prosecute those that were in the mob."[347] In his effort to secure a trust-worthy private detective, Todd asked the National Office "will you recommend one to me [so that] I will feel that he is worthy of trust."[348] The NAACP's National Office declined to take the case, suggesting Todd "write Mr. Morris Lewis, executive secretary of our Chicago Branch," listing Lewis' address and explaining that "as Chicago is much nearer your city, you can obtain a competent detective much more reasonable than you could from New York."[349]

While Paul Brown and the Chairman of the National Office waited to hear back from the legal redress committee, the chairman advised him to reach out to a local branch, as the NAACP

[346] Letter from H. L. Todd to James W. Johnson, March 3, 1923, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D27, Folder 2.
[347] Letter from H. L. Todd to James W. Johnson, March 3, 1923, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D27, Folder 2.
[348] Letter from H. L. Todd to James W. Johnson, March 3, 1923, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D27, Folder 2.
[349] Letter from Assistant Secretary to H. L. Todd, March 14, 1923, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D27, Folder 2. For similar responses see Letter from Secretary to C. B. Holmes, October 11, 1921, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 8; Letter from Assistant Secretary to L. H. White, June 16, 1922, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 10; Letter from Assistant Secretary to George W. Slater, Jr., October 16, 1922, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 10; Letter from Assistant Secretary to W. K. Burritt, May 22, 1923, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D27, Folder 1.

had a "a branch in Bloomington. The president is Dr. E. F. Covington, 410 East Market St. They should be ready to help you in this matter."[350] Similarly, a North Carolina pastor wrote the *Crisis* on behalf of a congregant who was intimidated by whites into selling his property, after they ran him out of town.[351] The *Crisis* forwarded the letter to the National Office. The chairman advised that while the NAACP did not have a branch in the pastor's town, the "nearest branches in North Carolina are at Durham, Greensboro and Winston-Salem," and he wrote that he hoped that one of those local branches might be able to help the congregant find an attorney to take legal action.[352] The National Office went through the appropriate bureaucratic channels before offering formal assistance, but it believed that local branches could help connect victims with trusted lawyers (and detectives) in the meantime.

Some might argue that these letters were merely brush-offs, that the NAACP National Office connected potential litigants with local branches simply to avoid offering these people assistance. But the National Office may have believed that members of the local branch were best positioned to assist potential litigants. The leaders of local NAACP branches were

[350] Letter from Chairman to Paul F. Brown, October 14, 1919, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 1. For similar responses, see Letter from Chairman to Rev. Edward F. Green, January 27, 1919, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 2; Letter from Office Secretary to Mr. Thomas Johnson, August 8, 1919, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 3; Letter from Secretary to Mrs. Fannie Bailey, March 29, 1920, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 4.

[351] Letter from Rev. Edward F. Green to the NAACP, January 21, 1919, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 2.

[352] Letter from Chairman to Rev. Edward F. Green, January 27, 1919, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 2. For more examples of this see, Letter from Assistant Secretary to Neal Sloan, December 10, 1926, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D28, Folder 8; Letter from Assistant Secretary to Sarah E. Bates, May 10, 1924, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D27, Folder 6, Letter from Assistant Secretary to Rev. J. A. F. Porter, May 10, 1924, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D27, Folder 6.

prominent members of their local Black—and interracial—communities and would have had a better gauge of which attorneys were sympathetic and which attorneys could be trusted to handle matters on behalf of Black people. Furthermore, although the NAACP National Office's network of affiliated attorneys was expansive, it did not have attorneys on the ground in every city.

The fact that the NAACP referred African American victims to their local branches to find local lawyers shows that the NAACP was indirectly involved in rejected cases. Those working in the National Office understood that local lawyers were not only members of the state bar where a potential litigant would be suing, but also that the success of litigation would hinge on local race relations, local political conditions, and the relationship between local lawyers and Black plaintiffs. This logic is congruent with the type of local lawyering and local nuance described by Brown-Nagin.[353] By encouraging letter-writers to reach out to the local branch, the National Office of the NAACP supported potential litigants by connecting them to an arm of the organization that could help them more expeditiously and better cater to their needs. The leaders of local branches likely knew local Black attorneys and sympathetic white attorneys who might be willing to take letter-writers' cases. And because branches were often run by middle- and upper-class Black people, it was possible that an attorney was in the ranks of the local branch leadership. Contrary to the implications of McGuire's assessment of the NAACP and its move towards test cases, the NAACP did not completely abandon Black victims whose cases did not fit within the parameters of test cases and the politics of respectability.

*Referring Local Lawyers*

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[353] Brown-Nagin, *Courage to Dissent.*

In some cases, the NAACP's legal redress committee instructed the Secretary to reach out to friendly lawyers before giving out their addresses to letter writers. Paul Brown's story did not end with the National Office recommendation that he reach out to the local branch in Bloomington. Responding to the National Office's request for consideration from the legal redress committee, the Chairman Arthur B. Spingarn suggested that "in case Mr. Brown cannot get an attorney at Champaign to handle his case, the [*sic*] he communicate with Judge Brown of Chicago."[354] Chairman Spingarn went on to explain that in Paul Brown's case, "The matter, of course, is one that must be decided under the Illinois law, and an Illinois lawyer can best advise him; besides, Judge Brown will probably have some correspondent or legal acquaintance in Champaign whom he can recommend."[355] Judge E. O. Brown, a forty-one year old white attorney from Chicago who sat on the Illinois Appellate Court, appears to have been an ally to the NAACP and well-connected in the state of Illinois.[356] Connecting Paul Brown with Judge Brown might have opened the doors of possibility for Paul Brown in his search for legal recourse that the NAACP-paid lawyers could not have opened.

When the NAACP had local lawyers' contact information readily available, the organization did not hesitate to directly refer potential litigants to lawyers on the ground.[357]

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[354] Letter from Arthur B. Spingarn to Mary W. Covington, October 17, 1919, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 1. For similar responses see Letter from Field Secretary to J. Thomas Hill, January 25, 1919, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 2.

[355] Letter from Arthur B. Spingarn to Mary W. Covington, October 17, 1919, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 1

[356] "E. O. Brown, Chicago, Cook County, Illinois," 1900 United States Federal Census.

[357] Similarly, the Secretary advised S. M. Grant and Reverend Luther Granes, two potential litigants with distinct legal concerns to write "Mr. Scipio A. Jones, Attorney at Law, Room 225 Mosaic Temple Annex, Little Rock, Arkansas." Letter from Assistant Secretary to S. M. Grant, February 9, 1925, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D28, Folder 2; Letter from Secretary to Rev. Luther Granes, July 24, 1925, Library of Congress Manuscript Collection, NAACP Papers, Part I,

These recommendations took many forms. When the NAACP was not sure whether a letter writer knew any honest and trustworthy lawyers in their area, the Secretary would advise that their case was "not a case within the scope of the Association's activities but…in the event you wish to consult a lawyer and have no specific one in mind, we will be glad to submit a list of reliable and competent lawyers from which list you can choose whichever one you wish to consult."[358] Similarly, when Annie Elizabeth Heath wrote the NAACP for legal assistance, the Secretary informed her that "since your case is not one of discrimination on account of color, it does not come within the scope of the work of the N.A.A.C.P. What you need is a good lawyer, one who is honest, to handle the matter…If you care to have us recommend some lawyer in New Jersey, who we think will deal justly with you in this matter, please let us know."[359] In a letter to another potential litigant, the Secretary advised a letter writer that "we would suggest that you take the matter up with a good colored attorney. I am sure one of the following would be glad to give you advice: Mr. Aiken A. Pope—366 Broadway; Messrs. French & French—139 West

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Legal File, Cases Rejected, 1919-1939, Box I: D28, Folder 2. See also, Letter from Director of Branches to W. P. Curtis, September 22, 1922, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 10. In another letter, Leonard Fischer was referred "to a lawyer in Connecticut whom we can recommend with the fullest assurance. You may write to Mr. J.W. Crawford, 42 Church Street, New Haven, Connecticut. Mr. Crawford is a reliable lawyer, and one of the members of the Board of Directors of this association. I am sure that he will give you efficient and trustworthy service." Letter from Secretary to Leonard Fischer, October 20, 1925, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D28, Folder 1. Similarly, Tucker C. Harrell was advised to "present the full facts to Mr. George W. Crawford (attorney) at 42 Church Street, New Haven, Conn., and he, I am sure will advise you as to the best thing that can be done." Letter from Assistant Secretary to Tucker C. Harrell, July 12, 1923, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D27, Folder 1. In another letter, the Assistant Secretary wrote James J. Smith, writing that "we regret to state that we cannot be of assistance since this is not a case which comes within the scope of the Association's activities. If you care to write to McGill & McGill, Attorneys-at-Law, Jacksonville, Florida, I am sure they can advise you as to the proper steps to take." Letter from Assistant Secretary to James J. Smith, April 7, 1924, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D27, Folder 7.

[358] Letter from Assistant Secretary to Agnes Whidbee, December 21, 1925, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D28, Folder 4.

[359] Letter from Secretary to Annie Elizabeth Heath, July 30, 1925, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D28, Folder 2.

135th Street; Mr. A. L. Dingle—2313 Seventh Avenue."[360] The three references were for Black attorneys in New York City. When more than one willing and affiliated attorney was within the vicinity of a letter writer, the NAACP suggested multiple attorneys or firms.

In one case, the NAACP had to decline a case that did seem to fit the scope of its mission, but the National Office secretary referred the letter writer to a local attorney anyway. In March of 1923, W. L. Spencer wrote the NAACP from Memphis, Tennessee. Spencer began his letter by recapitulating what he thought the NAACP's mission was, writing, "If the specific purpose of the N.A.A.C.P. is to assist colored people to secure justice and equal rights before the law, there is much you can do right here in now." [361] Using his understanding of the NAACP's mission as a starting point, Spencer went on to explain that "more than one hundred colored persons who have been arrested, imprisoned, and made to work on the county roads in Crittenden County, Ark. across the river from [Memphis]" and that he too "was arrested and fined and imprisoned there…on a charge which is not only false but insufficient to constitute a case. I want to enter suit against the county for false imprisonment or in some way that I can secure damages."[362] According to Spencer, a railroad abandoned some railroad ties four or five years before, and the ties washed away and were carried away over the course of that time.

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[360] Letter from Secretary to Daphne Streeter Kenny, March 18, 1925, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D28, Folder 2.

[361] Letter from W. L. Spencer to the NAACP, May 21, 1921, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 9.

[362] Letter from W. L. Spencer to the NAACP, May 21, 1921, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 9. While it may not seem clear why I am including this case in this chapter if the dissertation is supposed to be about white-on-black violence, I want to point out that false imprisonment is a tort, and based on my research for chapter one, in many situations where African Americans were falsely imprisoned, there was a degree of physical violence involved. Furthermore, forced labor, whether it is chattel slavery or legal slavery as a punishment for a crime is inherently violence. Finally, violence usually accompanied chain gang labor, as white guards oversaw prisoners' labor in ways that ran parallel to overseers' work in plantation fields. For more on prison labor during this period, see Edward Ayers, *Vengeance and Justice: Crime and Punishment in the 19th Century American South* (New York: Oxford University Press, 1984).

Spencer, like many other people, used their ties for firewood. The deputy sheriff and a railroad special agent arrested him for stealing the ties. The judge fined him $27.60 and made him work it off on the county road, presumably in a chain gang.[363]

Whether or not the charges against Spencer and the other inmates were trumped up, his story seemed to fit the NAACP's stated mission. Upon receiving Spencer's letter, the Assistant Secretary "referring it to a lawyer in Memphis asking him to take up the matter and to advise us regarding the way in which we can be of greatest assistance."[364] The Assistant Secretary wrote an affiliated attorney, Joseph S. Settle in Memphis, who conducted an investigation into the matter. It is likely that Assistant Secretary sent the case to the Legal Redress Committee for approval, but when the NAACP refused the case, he was forced to tell Spencer, "suggest[ing] that [he] to "get in touch with" Settle himself. "[T]his case is a case that does not come within the scope of the Association's activities," the Assistant Secretary told Spencer, "and my advice to you is employ a lawyer and have him handle the case for you."[365] Despite its inability to help *every* Black letter-writer, the NAACP used its network of trust-worthy attorneys to assist African Americans in their pursuit of recompense.

Because the NAACP was founded to protect the rights of African Americans by using existing resources, such as other legal and mutual aid societies, it served as a networking agent

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[363] Letter from W. L. Spencer to the NAACP, May 21, 1921, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 9.
[364] Letter from Assistant Secretary to W. L. Spencer, May 24, 1921, Letter from W. L. Spencer to the NAACP, May 21, 1921, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 9.
[365] Letter from Assistant Secretary to W. L. Spencer, June 20, 1921, Letter from W. L. Spencer to the NAACP, May 21, 1921, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 9.
[365] Letter from Hazel Gelzan to the NAACP. November 27, 1926, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D28, Folder 4.

from the outset. According to historian Susan Carle, the founders of the NAACP recognized that there were other organizations "working for 'the civil and political rights of the Negro,'" but that the race also "needed a 'strong central legal bureau able to employ the ablest counsel.'"[366] The establishment of the NAACP and the Legal Redress Committee resulted from the meeting of two committees that included the founders of the NAACP and leaders from other mutual aid organizations.[367] Therefore, it should come as no surprise that the NAACP continued its practice of connecting African Americans with much needed resources. The organization's practice of connecting Black letter writers with local branches and local lawyers continued the networking function of the NAACP to assist Black victims in gaining recourse in courts. Leading up to and following the establishment of the NAACP's LDF, the NAACP drew on attorneys connected to the organization, those who at times were paid NAACP lawyers or members of the NAACP who were also attorneys.[368] By referring potential litigants to these lawyers, not only did the NAACP curry favor with sympathetic attorneys, the organization also wielded its vast national network of attorneys to help individual Blacks. These referrals demonstrated the NAACP's commitment to helping Blacks gain recourse in courts for a variety of wrongs, beyond suffrage, desegregation, and the protection of civil rights under the Fourteenth Amendment. Through these referrals, the NAACP went beyond its founding mission.

Focusing on cases that the NAACP rejected underscores Mack's point that the "voluntarist strand [of racial uplift] emphasized lawyers' every day, practice-oriented work rather than transformative litigation."[369] The test cases were important, but so were the cases

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[366] Carle, *Defining the Struggle*, 259.
[367] Carle, *Defining the Struggle*.
[368] Carle, *Defining the Struggle.* Tushnet, *Making Civil Rights Law.*
[369] Mack, "Rethinking Civil Rights Lawyering," 352.

handled by NAACP associated attorneys. Even when no lawsuit resulted, by connecting African Americans to local branches who could help them find local lawyers or by directly referring letter writers to specific lawyers, the NAACP helped enable this type of voluntarist, practice-oriented uplift. "Affiliated attorneys" who made themselves available for referrals not only used their practice to uplift the race, they also enabled African Americans to continue their everyday legal struggles against racial oppression more broadly.[370] Furthermore, while some might argue that the cases taken on by affiliated attorneys were mundane, they helped ordinary African Americans who could not secure assistance from the NAACP maintain access to the courts under Jim Crow.

With the help of well-connected Black and white lawyers, ordinary Black plaintiffs were able to navigate the ins and outs of civil law. In a letter to the National Office regarding the Eugene Green case, Seligman wrote that

> [Judge Teat] outlined to me a plan for bringing suit against the Sheriff's Surety Company before the Federal Court in Chicago and thereby making the Sheriff a defendant also. The winning of the case, he claimed, would cause surety companies to require indemnities of sheriffs and this would provide the necessary economic [notice] for law officers to see to it that prisoners were not forcibly removed from their custody.[371]

Not only did Teat assist in the case on behalf of Green's widow—not the NAACP—he also strategized ways to protect African American prisoners from white violence in the future. By holding surety companies financially accountable for the unlawful murders of Black prisoners—or any prisoners for that matter—surety companies found it in their best interest to pressure sheriffs to protect Black prisoners in their custody, else lose their bonds. Holding white companies and stakeholders accountable for the actions of their employees or their insured

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[370] Mack, "Rethinking Civil Rights Lawyering," 352.
[371] Letter from Herbert J. Seligman to John R. Shillady, NAACP Administrative File: Special Correspondence H. J. Seligmann, May 19, 1919, Proquest.

encouraged them to restrain other whites' actions, or at least encourage their subordinates to protect Blacks from white violence. With the help of a local lawyer, Eugene Green's death had the potential to provide his widow and family a substantial sum of money in damages and it also had to potential to help protect other African Americans in the future.

*Mediating Fraught Attorney-Client Relationships*

One of the most peculiar ways that the NAACP served potential litigants was acting as a mediator when relationships between attorneys and their clients broke down. According to Thurgood Marshall in a letter to a potential litigant—the Chairman of the Regional Conference of Southern Branches—the NAACP's legal team was responsible for "legal routine cases in the office," but "also legal office routine work including help and advice to local lawyers."[372] Advising local lawyers was a part of the legal team's work, even if the team could not litigate on behalf of all of the potential plaintiffs who reached out.

In 1939, J. L. LeFlore, the Chairman of the Regional Conference of Southern Branches, embarked on a mission to sue the Illinois Central and Missouri Pacific railroads for discriminatory practices in Pullman cars.[373] In order to bring litigation against the railroad lines, the LeFlore wrote Thurgood Marshall, to see if the NAACP could litigate the case. Unfortunately, LeFlore had asked the NAACP to take several discrimination cases, which left the legal staff overburdened. In his response to LeFlore's request, Marshall wrote, "Right after your case against the Pullman Company you sent us the Teagues Case concerning discrimination

[372] Letter from Thurgood Marshall to J. L. LeFlore, October 12, 1939, NAACP Administrative File Discrimination on Transportation, Proquest.
[373] Letter from Thurgood Marshall to J. L. LeFlore, October 12, 1939, NAACP Administrative File Discrimination on Transportation, Proquest.

in Railway Unions urging us to take up that case. We did this and we are working on it now."[374] In addition to the cases already suggested by LeFlore, the NAACP also handled several other civil rights cases. Though the NAACP had to formally decline to take LeFlore's newest case, Marshall advised that "Arthur D. Shores in Birmingham might be able to handle the case with my advice."[375] Shores was an attorney in Birmingham who had a relationship with the NAACP and litigated cases on behalf of the NAACP as a NAACP-paid attorney, but also as a private attorney litigating on behalf of private individuals referred to him by the NAACP. When Marshall advised LeFlore to retain Shores, he reassured LeFlore by offering to oversee the litigation from behind the scenes. Furthermore, it seems that Marshall envisioned the case as an issue of private civil litigation, not as NAACP litigation, because he did not offer the NAACP National Office's assistance in paying for filing fees and the $100 retainer in addition to offering to oversee the case from behind the scenes.

Heeding Marshall's advice, LeFlore wrote Attorney Shores in order to secure his services, but the conversation did not go as LeFlore had expected. Shores was going to charge LeFlore filing fees, plus a $100.00 retainer.[376] LeFlore told Shores: "I am a bit disappointed that you are demanding a retainer fee of $100.00. I hoped that the case would be the initial effort upon the part of the N.A.A.C.P. to fulfill that part of the Association's program pledged to the breaking down of discrimination on common carriers."[377] He went on to write that he "want[ed]

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[374] Letter from Thurgood Marshall to J. L. LeFlore, October 12, 1939, NAACP Administrative File Discrimination on Transportation, Proquest.
[375] Letter from Thurgood Marshall to J. L. LeFlore, October 12, 1939, NAACP Administrative File Discrimination on Transportation, Proquest.
[376] Letter from J. L. LeFlore to Attorney Arthur D. Shores, October 29, 1939, NAACP Administrative File Discrimination on Transportation, Proquest.
[377] Letter from J. L. LeFlore to Attorney Arthur D. Shores, October 29, 1939, NAACP Administrative File Discrimination on Transportation, Proquest.

the case filed as an Association matter, hoping thereby to further encourage Negroes to support the work in which we are unselfishly engaging."[378] In his view, the case was an effort to fight segregation on behalf of all Blacks, not just himself, and as such, he should not be required to pay a retainer. If the case was brought as an Association matter, then he would not be expected to pay a retainer. With this, LeFlore suggested that they "file suit for punitive damages. I trust that you will agree to percentage or share basis for attorney's fees, in the event of success in the courts."[379] It was commonplace for plaintiffs who sued large companies, and even individuals, to sue for actual and punitive damages, of which the attorney would receive a percentage if the jury ruled in favor of the plaintiff.

The conflict between Attorney Shores and LeFlore sheds light on the tension between attorneys' cause lawyering *for* the NAACP, and lawyers' work as attorneys helping African Americans under Jim Crow, working *with* the NAACP. Lawyers working *for* the NAACP were engaged in cause lawyering, whereas lawyers working *with* the NAACP were a part of a network of attorneys that would assist Black plaintiffs, but who did so as private attorneys with private practices. They took on Black clients referred to them by the NAACP as normal clients. This is important because not all Black plaintiffs saw their cases as private civil matters. Some, like Leflore, saw their cases as "cause" cases. This disagreement about classification could lead to differing opinions on the importance of a case, litigation strategies, and even attorneys' fees. According to Schmidt, "this was a time when NAACP lawyers themselves described only some of their work as 'civil rights' work; it was a time in which a Civil Rights Section could have little

[378] Letter from J. L. LeFlore to Attorney Arthur D. Shores, October 29, 1939, NAACP Administrative File Discrimination on Transportation, Proquest.
[379] Letter from J. L. LeFlore to Attorney Arthur D. Shores, October 29, 1939, NAACP Administrative File Discrimination on Transportation, Proquest.

clear conception of what was or was not contained in their title's mission."[380] The lawyers assisting Black letter writers in this chapter did not always operate as "civil rights lawyers," either. Sometimes they functioned as regular lawyers who took cases, charged a retainer, and litigated on behalf of a plaintiff because that was their profession. Many of them might have been "civil rights lawyers" when engaging with litigation brought or supported by the NAACP, but when cases outside of the scope of the NAACPs formal work were referred to these attorneys, they treated the cases like any other civil case.

Still unhappy with Attorney Shores, LeFlore wrote Walter White, the Executive Secretary of the NAACP, complaining about the retainer. LeFlore recounted the facts of the situation, "Mr. Marshall suggested that we endeavor to enlist Mr. Shores services because the National Legal Committee was unable to accept the case owing to heavy schedule of other cases."[381] He explained his understanding of the situation. Because "of Mr. Shores connection with the N.A.A.C.P., we felt it would be splendid strategy to have him as attorney in the case, especially so upon the strength of Mr. Marshall's pledge to furnish advice and perhaps render such other assistance as would aid the legal procedure."[382] Despite his initial optimism, LeFlore still did not want to pay the retainer.

Again, LeFlore's conflict sheds light on the resistance that attorneys like Shores faced when they attempted to take work referred to them by the NAACP. It appears that some African Americans saw these attorneys as only "civil rights attorneys," and some Black plaintiffs tried to

[380] Christopher W. Schmidt, "Legal History and the Problem of the Long Civil Rights Movement," *Law & Social Inquiry* 41, no. 4 (2016): 1102.
[381] Letter from J. L. LeFlore to Walter White, October 28, 1939, NAACP Administrative File Discrimination on Transportation, Proquest.
[382] Letter from J. L. LeFlore to Walter White, October 28, 1939, NAACP Administrative File Discrimination on Transportation, Proquest.

spin cases that were about the individual as cases that were for the benefit of the race in its entirety. Historian Kenneth Mack argues that civil rights historiography has "treated civil rights lawyers" as "'cooperating attorneys,'" who "implement[ed] strategies that had their origins in the NAACP's desegregation litigation."[383] There were, however, attorneys who were sympathetic to Black issues, and who litigated outside of the NAACP's legal agenda.

*Legal Advice*

The NAACP was quick to refer Black letter writers to local branches, refer them to local lawyers, or alert them to the fact that the NAACP could not handle their case, but when the Secretary or Assistant Secretary was familiar with the law at hand, he would also offer potential litigants legal advice. In 1921, Mrs. Annie Bobby Stephens and her children took a train from Tennessee to Chicago, and were forced to change trains without notice. She was not able to properly dress the children before alighting, and the children fell ill.[384] The NAACP could not take Stephens' case because it did not involve discrimination, but the Secretary offered Stephens advice on how to proceed.[385] In his letter to Stephens the Secretary advised that "the matter of change of cars which you and your children were compelled to make, I wish to say that this does not come under the head of discrimination on account of race," and for that reason the NAACP could not take her case.[386] But being familiar with railroad law and the common law of common

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[383] Mack, "Rethinking Civil Rights Lawyering," 264.
[384] Letter from Annie Bobbie Stephens to the NAACP, September 1, 1921, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 9.
[385] On September 1, 1921, Annie Stephens wrote the NAACP seeking advice on what to do about what she and her children experienced on the train from Chattanooga to Chicago. Letter from Annie Bobbie Stephens to the NAACP, September 1, 1921, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 9.
[386] Letter from Secretary to Annie Bobbie Stevens, October 11, 1921, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 9.

carriers, the Secretary advised Stephens that "the only claim you could make in the matter is that you had no notice of any kind that you had to change cars at that point and that as a consequence your children were made ill on account of not being properly clothed."[387] With this cause of action, Stephens could bring "a civil suit for damages against the railroad, and the best suggestion I could make to you would be to consult a reliable lawyer…If you have a good case against the railroad, any reputable lawyer will take it without your having to pay down a fee."[388] Though the NAACP could not represent Annie Stephens and they could not refer her to a specific attorney, the Secretary did offer her advice on how she might gain recourse for her children's suffering in a civil court.

Because of its experience with the railroads and their antidiscrimination work, the NAACP was able to offer letter writers legal advice before advising letter writers to secure an attorney. J. Thomas Hill wrote the NAACP complaining that a railroad would not honor his mother-in-law's ticket. The Field Secretary wrote Hill, advising that it was possible that his "mother-in-law's ticket was not good on the trains which left between the time of her arrival at Fort Worth and her departure," but that the answer to this question was "a matter that would need to be established as a question of fact."[389] The Field Secretary went on to explain that "If her ticket was good on the trains which she was not allowed to board, it seems quite evident that you have a good case against the railroad; or if she was prohibited from boarding the trains because they carried only pullman cars, as in some instances it has happened, she would have a good

[387] Letter from Secretary to Annie Bobbie Stevens, October 11, 1921, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 9.
[388] Letter from Secretary to Annie Bobbie Stevens, October 11, 1921 Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 9.
[389] Letter from Field Secretary to J. Thomas Hill, January 25, 1919, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 3.

case."[390] While it might have been a good case, it was not appropriate for the NAACP. With this information, the Field Secretary advised Hill to secure a lawyer. Similarly, when J. W. Johnson complained of being "abused as though I was a dog in the presence of [his] wife and other passengers by the porter," being called a "Black Bastard and a damned nigger aloud," the Assistant Secretary advised that he "complain to the Police Department or have a warrant sworn out for the arrest of the motorman."[391] The Assistant Secretary did not offer Johnson detailed legal advice in his case, but he did instruct Johnson on how to seek recourse for his unjust treatment.

When the National Office of NAACP was not sure how to assist letter writers, sometimes they would write to other legal authorities for advice before responding to letters. In the case of Mrs. Lenora Richardson, the Assistant Secretary of the NAACP wrote the United States Attorney General on her behalf. The Assistant Secretary described the "action of the sheriff and other individuals in breaking into the home of a self-respecting colored woman at Natchez, Miss., dragging her from her bed, and appropriating articles" belonging to Mrs. Richardson.[392] The letter went on to explain that "it is evident that nothing can be done through local authorities, I am requesting information if there is any action which the Federal Government can take in this case."[393] In his response, Attorney General J. Edgar Hoover explained that "from the facts

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[390] Letter from Field Secretary to J. Thomas Hill, January 25, 1919, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 3.

[391] Letter from J. W. Johnson to NAACP, November 16, 1926, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D29, Folder 2; Letter from Assistant Secretary to James F. Smith, November 17, 1926, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D28, Folder 8.

[392] Letter from Assistant Secretary to the Attorney General (D.C.), December 16, 1924, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D27, Folder 5.

[393] Letter from Assistant Secretary to the Attorney General (D.C.), December 16, 1924, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D27, Folder 5.

submitted there is no indication whatever of any violation of a Federal Statute."[394] It was left to the Assistant Secretary to write Ralph W. Lees, who had initially written the NAACP on Richardson's behalf, to explain that the Department of Justice "consider[s] the treatment of Mrs. [Lenora] Richardson by the local sheriff as a matter entirely within the jurisdiction of the state."[395] Though the National Office was not sure how to advise Lees about Richardson's case, the office sought information from the Department of Justice before offering legal advice.

*Other Mutual Aid and Legal Aid Organizations*

When local branches and attorney referrals would not suffice, the NAACP would recommend that letter writers reach out to other mutual aid societies and legal aid societies. On June 27, 1919, Pairlee Akens's sister, Carrie McCarty was scheduled to be hanged for allegedly murdering her husband in Mississippi. McCarty successfully secured a new trial in Jackson, Mississippi. E. G. Williams, an attorney from McComb City, Mississippi and a former employer of McCarty wanted to represent McCarty, but Akens did not have the funds to secure his services. Akens wrote the NAACP "begging…for a favor" and the NAACP's "best advice," as she was poor and had spent all her resources. Unfortunately, the NAACP responded that it "regret[ted] very much that [they] were unable at present to provide aid in defense of [her] sister, as cases of this sort do not come within the scope of the work of the Association." Although the

[394] Letter from J. Edgard Hoover to NAACP, December 22, 1924, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D27, Folder 5.
[395] Letter from Assistant Secretary to Ralph W. Lees, December 30, 1924, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D27, Folder 5. For more examples of this, see Letter from Assistant Secretary to Lillian Jackson, February 15, 1923, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D27, Folder 1; Letter from Secretary to John Cline, October 22, 1923, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D27, Folder 1.

case was rejected because it was not deemed within the scope of the work that the NAACP did, the National Office referred Akens to "Mr. Jack C. Wilson, Secretary of the Mississippi Welfare League," listing his address so that she could write him at "214 Daniels Building, Jackson, Miss."[396] Similarly in another 1924 letter, the NAACP's National Office wrote to a potential litigant that "we are in no sense of the word a 'legal aid society' and, unfortunately our funds do not permit us to aid in cases of mere individual injustice however worth they may be."[397]

Similar to cases like Akens', the National Office of the NAACP referred Black letter writers to state and federal agencies that might better suit their needs. In a letter to J. M. Nunn, the National Office "recommend that you write to the Georgia Committee On Race Relations, 416 Palmer Bldg., Atlanta, Ga., and ask them to help you in this case," and when Alberta Williamson reached out to the NAACP's National Office in order to secure her husband's military pension, the Secretary regretted to inform her that "Greatly as [the NAACP's National Office] sympathize[s] with you, the N.A.A.C.P. cannot be of service as this case does not come within the scope of the Association's activities. I would suggest, however, that you take this matter up directly with the U.S. Veterans' Bureau at Washington."[398] As in other cases that the National Office declined to take, the NAACP referred these people to federal and state agencies that could better assist them in their search for recourse.

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[396] Letter from the Assistant Secretary to Pairlee Akens, January 13, 1920, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D26, Folder 4.
[397] Letter from Assistant Secretary to Vance Clyburn, October 1, 1924, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D27, Folder 4.
[398] Letter from Assistant Secretary to J. M. Nunn, March 6th, 1923, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D27, Folder 2; Letter from Secretary to Alberta Williamson, May 1, 1924, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D27, Folder 7.

When the NAACP's National Office could not refer letter writers to state and federal agencies that could help them, the National Office would refer potential litigants to mutual aid societies and businesses that might better assist them. In 1924, John C. Jones wrote the NAACP for legal assistance, but the Assistant Secretary responded "I should like to recommend that you take up with Mr. J. M. Avery, Vice-President of the North Carolina Mutual Life Insurance Company, Durham, N. C., the matter of a lawyer as we believe Mr. Avery will be able to recommend a man better than we could."[399] The NAACP wrote John Nixon that the Organization "If you would write The New York Urban League, 202 West 136th Street, New York City, possibly they could help you."[400]

*The Crackdown*

In the 1950s, following the NAACP's success in *Brown*, the NAACP's networking activities between Black letter writers and local branches and attorneys prompted an assault by southern legislatures. The early NAACP was concerned with navigating anti-barratry laws and norms, which barred lawyers from stirring up litigation, when choosing test cases and practicing legal networking. But the white attorneys on the early NAACP's Legal Redress Committee were better situated to circumvent the issue of legal ethics and anti-barratry laws because of their status as wealthy white attorneys with connections to the New York Bar.[401] In the period following *Brown* (1954), however, southern states like Virginia used ethics rules to cast doubt on

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[399] Letter from the Assistant Secretary to John C. Jones, January 8, 1924, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D27, Folder 5.
[400] Letter from Assistant Secretary to John Nixon, December 10, 1926, Library of Congress Manuscript Collection, NAACP Papers, Part I, Legal File, Cases Rejected, 1919-1939, Box I: D28, Folder 8. See also, Letter from Alan B Morse to Kivie Kaplan, December 6, 1954, 194-1955 General Office File Mississippi, Proquest.
[401] Carle, "Race, Class, and Legal Ethics in the Early NAACP (1910-1920)."

the NAACP's referral of cases to other attorneys. Anti-barratry laws were at the heart of the south's legal assault on the NAACP's Legal Defense Fund and its legal networking work.

In the early twentieth century, barratry was defined as "stir[ring] up strife and litigation," or "hunt[ing] up causes of action…in order to be employed to bring suit, or…breed[ing] litigation by seeking out those having claims."[402] Barratry, therefore is the act of soliciting business from people who may not have initially thought to bring a suit, or to encourage someone to bring a suit in order to create business for oneself as an attorney. After the *Brown* decision in 1954, southern legislatures and courts accused NAACP LDF attorneys and affiliated attorneys of violating anti-barratry rules.[403] In their attack on the NAACP, Southern legislatures expanded statutory definitions of ethical violations to encompass actions that were ordinary functions of the NAACP, such as connecting victims with cooperating attorneys or encouraging Black people to litigate.[404] Additionally, these states made it punishable for attorneys to advocate for legislation that "promoted that passage of legislation…on behalf of any race or color…" and "for a lawyer to solicit legal business by using an agent in connection with lawsuits in which it was not a party and did not have a pecuniary right."[405] Though the types of legal issues letter writers complained of in this chapter were typical legal issues, these new statutes seemed to bar the kinds of networking work that the NAACP did.

State legislatures attempted to make it harder for African Americans to gain access to the courts by trying to charge cooperating attorneys and NAACP staff attorneys with violating

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[402] William Herbert Page, *Law of Contracts* (Cincinnati: W.H. Anderson Co., 1905), p. 532, section 344; Charles L Aarons, "The Practice of Law by Non-Lawyers" (1929) 14:1 *Marq L Rev* 1, p. 3.
[403] Mark V. Tushnet, *Making Civil Rights Law: Thurgood Marshall and the Supreme Court, 1936-1961* (New York: Oxford University Press, 1994), 274.
[404] Tushnet, *Making Civil Rights Law*, 272.
[405] Tushnet, *Making Civil Rights Law*, 274.

barratry laws, criminalizing the legal networking that the NAACP's National Office did, and by writing more stringent laws against the NAACP's involvement with legislative issues and lawsuits. It is possible that southern courts and legislators feared that more precedents like *Brown* would derail their segregationist efforts. It is also likely that southern legislatures wanted to make it more difficult for African Americans to have access to civil courts and legal aid.

*Conclusion*

By connecting Black letter-writers to local branches and cooperating attorneys, the NAACP brought them one step closer to translating an injury into a claim. The NAACP's networking responses were not mere brush-off letters, they were an important part of the pursuit of justice. African Americans had already decided that they had suffered an injury and that they wanted to pursue legal action by the time they reached out to the NAACP, but they needed help translating their injury into terms that would secure damages in Jim Crow civil courts.

The NAACP played a role in connecting some Black victims with sympathetic attorneys. The fact that the NAACP served as a networking agent between Black victims and sympathetic attorneys offers an alternative narrative about the NAACP's legal work. The NAACP's National Office and legal redress committee did have a litigation agenda, and they were selective about the cases that they took, but they were also active in helping African Americans pursue other forms of litigation. By connecting Black letter-writers to sympathetic attorneys who cooperated with the NAACP, the NAACP made sure that the Black victims they rejected were not left without any direction. Local lawyering under tort law was disruptive lawyering, even if it did not

pursue a civil rights agenda, because it allowed Black Americans to push back against white Southerners' habitual violations of Black people's rights of personhood and property rights.

Whether Black people were writing newspapers to gain legal knowledge or asking the National Office of the NAACP for legal help, Black people consistently sought legal knowledge. The Black press and the NAACP were institutions within Black America, and they were important in shaping Black people's conversations about the law. These institutions were also vital to Black people's abilities to tap into legal networks.

This chapter argues that although the historiography tends to focus on the NAACP's test litigation, the NAACP helped facilitate Black people's everyday litigation. The NAACP connected Black letter writers to local branches and local attorneys near or within letter-writers' communities. They also suggested specific attorneys who might be able to help the letter-writer in her quest for justice. Finally, the NAACP helped ordinary African Americans by mediating fraught attorney-client relationships.

Together, Black civil litigation, discourse about suing for damages, and Black legal networking—as illustrated by the NAACP—created a Black legal culture. And as the next chapter will argue, Black legal culture and Black civil litigation left a mark on tort case law. We cannot understand tort doctrine without remembering and examining Black experiences under Jim Crow.

# Chapter 4: Reimagining Tort Law

Two things are certain about the altercation between a white conductor and Black passenger on July 24, 1886: John C. Carlin, a white New Orleans, and Northeastern Railroad Company conductor shot a Black passenger named Joseph H. S. Jopes, and Jopes sued the railroad company for $30,000 for "breach of the contract to carry safely" in the Hancock County District Court in Mississippi.[406] The central legal question was whether Carlin, the conductor, had shot Jopes in self-defense. If Carlin had shot Jopes in reasonable self-defense, then Jopes could not recover from Carlin or the railroad company because no tort was committed. The New Orleans and Northeastern Railroad Company petitioned to have the case removed from the Hancock County District Court to the United States Circuit Court for the Southern District of Mississippi because Jopes was a citizen in the state of Mississippi and the railroad company was based in Louisiana. The railroad company also argued that the case should be moved to the federal district court because Jopes sued for more than $2,000.[407] Yet on May 15, 1888, an all-white jury in a federal district court ruled in favor of Jopes, awarding him $9,500 in damages, a significant sum of money.[408]

The railroad company's lawyers filed an appeal to the United States Supreme Court. According to the Brief for the Plaintiff in Error, or the railroad company, "the court instructed the jury that if the evidence showed that the plaintiff was a passenger on the train and that he was shot and wounded by the conductor while he was such passenger," "and such shooting was not in

[406] *New Orleans & N. R. Co. v. Jopes*, 142 U.S. 18 (1891); Transcript of Record, *New Orleans & N. R. Co. v. Jopes*, 142 U.S. 18 (1891), 2.
[407] Transcript of Record, *New Orleans & N. R. Co. v. Jopes*, 142 U.S. 18 (1891), 5-6.
[408] Jopes' $9,500 in damages was the equivalent to $1,540,000 in unskilled wages. Samuel H. Williamson, "Seven Ways to Compute the Relative Value of a U.S. Dollar Amount, 1790 to present," *MeasuringWorth*, 2020. https://www.measuringworth.com/calculators/uscompare/relativevalue.php.

necessary self-defense, the plaintiff was entitled to recover compensatory damages."[409] The court also instructed the jury that "if the jury believe the plaintiff, when shot, was advancing on the conductor, or making hostile demonstrations toward him, with a knife, in such a manner as to put the conductor in imminent danger of his life, or of great bodily harm, and that the conductor shot to plaintiff to defend himself, the plaintiff was not entitled to recover."[410] Additionally, the court instructed the jury that "if it appears that the conductor shot the plaintiff" while he was traveling as a passenger, and shot Jopes "wantonly and without any provocation at the time, then the jury may award exemplary damages."[411] Here the court laid out conclusions the jury might draw and guided them on which type of damages were appropriate based on their interpretation of the facts.

The company's attorneys argued that the federal circuit court erred by not allowing any of the railroad company's exceptions to these instructions.[412] The railroad company's lawyers asked the judge to instruct the jury that "if they believed from the evidence that when Carlin shot the plaintiff, he, Carlin, had reasonable cause to believe…that Jopes was about to assault him with a knife, and that it was necessary to shoot him to prevent great bodily harm, then the jury should find for the defendant, whether Jopes was intending to do great bodily harm or not."[413] The railroad company's attorneys' instructions argued that it did not matter whether Jopes intended to harm Carlin. They also argued that "the law of self-defense justifies an act done in

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[409] Brief for the Plaintiff in Error, *New Orleans & N. R. Co. v. Jopes*, 142 U.S. 18 (1891), 6-7.
[410] Brief for the Plaintiff in Error, *New Orleans & N. R. Co. v. Jopes*, 142 U.S. 18 (1891), 6-7.
[411] Brief for the Plaintiff in Error, *New Orleans & N. R. Co. v. Jopes*, 142 U.S. 18 (1891), 6-7.
[412] Judges give juries instructions on points of law before the jury is set to deliberate. Parties must submit their instruction requests in writing and circulate them to the opposing party. The court has to inform the plaintiff and defendant of how it plans to rule on requested instructions before closing arguments. Judges may instruct the jury before and after the arguments are completed.
[413] Brief for the Plaintiff in Error, *New Orleans & N. R. Co. v. Jopes*, 142 U.S. 18 (1891), 6-7.

honest and reasonable belief of immediate danger."[414] And "[f]or an injury done in justifiable self-defense, one can neither be punished criminally, nor held liable for damages in a civil action."[415] According to the company's attorneys, the court had erred by not allowing the instruction that did not depend Jopes' intent—or lack of intent—to do Carlin great bodily harm. If Carlin felt he was acting in self-defense, even though Jopes did not intend to harm him, then Carlin could not be held liable for the shooting, and therefore the railroad company could not be held liable. The United States Supreme Court found that the federal district court erred and reversed and remanded Jopes' case to the Circuit Court of the United States for the Southern District of Mississippi.

Jopes lost, but his civil suit and the points of law examined on appeal were significant and influenced cases beyond Hancock County and the state of Mississippi. Although Jopes likely hoped to recover damages to cover the costs of his medical bills and lost wages, his case did far more.[416] One hundred thirteen cases, in twenty-nine different state appellate courts, and twelve federal jurisdictions cited *Jopes*. Most of those citations centered on the Court's limiting of vicarious liability and limiting employers' liability for situations involving agents' alleged self-defense.[417] Jopes' experiences as a Black man in Jim Crow Mississippi shaped how he and his attorneys litigated his case. As discussed in chapter 1, Black male plaintiffs had to argue that

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[414] *New Orleans & N. R. Co. v. Jopes*, 142 U.S. 18 (1891).
[415] *New Orleans & N. R. Co. v. Jopes*, 142 U.S. 18 (1891).
[416] The "plaintiff…became sick in body and mind…rendered incapable of…transacting his necessary affairs and business…and also thereby was forced…to…pay…the sum of $100…endeavoring to be cured of the bruises, wounds, sickness, and disorder. [The] plaintiff has been permanently disabled for life and rendered physically unable to labor and attend to his business." Transcript of Record, *New Orleans & N. R. Co. v. Jopes*, 142 U.S. 18 (1891), 2.
[417] Alabama, Arizona, Arkansas, California, Connecticut, Florida, Georgia, Indiana, Iowa, Maine, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas Utah, Virginia, Washington, and West Virginia.

they were non-threatening, docile passengers who demonstrated proper comportment, despite violent attacks by white railroad employees. Lawyers and judges might erase the context of Jopes' lived experiences when citing his suit, but his experiences contributed to building case law. He chose to bring suit, and he agreed with his lawyers' decisions during the litigation process. Should a jurist, attorney, legal scholar, or historian consult the United States Supreme Court record of *Jopes* (1891), she will find a snapshot of how Jopes experienced his Blackness, his humanity, and oppression under Jim Crow, in his own words. The stenographer captured and inked Jopes' experiences, and they will remain in the corpus of tort case law. In cases such as *Jopes* (1891), African Americans interpreted their lived experiences, they identified wrongs whites committed against them, and their cases contributed to the building blocks of case law in Mississippi, in states throughout the country, in federal courts, and other legal authorities. The cases in this chapter will demonstrate how Black Americans' experiences under Jim Crow and the civil tort suits resulting from those experiences served as building blocks for tort case law.

Tort law is an area of civil or private law, rather than criminal law, that crystallized in the mid-nineteenth century, joining a variety of civil wrongs or wrongs against the individual. According to Francis Hilliard's 1859 treatise, *Law of Torts or Private Wrongs*, "A tort is a *private* or *civil wrong* or *injury*. All acts or omissions, which the law recognizes as the subjects of its provision and application, are either *contracts*, *torts*, or *crimes*; the first being *agreements*, express or implied; the second, injuries of omission or commission, done to individuals; and the third, injuries done to the public or the State."[418] More generally, nineteenth-century legal

[418] Hilliard Francis. *Law of Torts or Private Wrongs*. Boston, Little, Brown and Company (1859), 49. (Chapter 1, Section 1) https://heinonline.org/HOL/P?h=hein.beal/tortpw0001&i=49. For a modern, plain English explanation of what a tort is, the three different categories of torts, the types or remedies, and a partial list of the more popular types

scholars and jurists divided law between private—contracts and torts—and public—crimes. Torts were, therefore, intentional or unintentional acts that harmed individuals who were not bound by an agreement, whereas crimes were actions that hurt the state or the public peace. *Criminal law* also *punishes* people for public wrongs that have not necessarily caused harm but could cause injury, while an injury is a prerequisite for a tort suit. Tort law compensates victims for injuries already committed; courts rarely mean for tort damages to be punitive.[419]

The boundary between tort law and criminal law is, in theory, permeable, because of punitive damages and the fact that sometimes the only factor distinguishing a crime from a tort is prosecutorial discretion. But the court's treatment of both tort and criminal law in practice reinforces the border. As historians Lawrence Friedman and Barbara Welke have argued, during the late nineteenth and early twentieth century, American courts were sensitive to the damage and injury that mass transportation caused to individuals when left unchecked.[420] As injuries increased, the courts grew more sympathetic to the victims of mass transit accidents. That sympathy reflected in greater numbers of rulings in favor of plaintiffs in negligence suits against these corporations.

One place where tort law and Jim Crow developed was in Black Americans' suits against railroad companies, bus companies, and surety companies that posted bond for white police officers. Some Black plaintiffs' suits for personal injury, property damage, and wrongful death were cited widely within Mississippi and in other state and federal jurisdictions. *Jopes* is one

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of torts, see "Torts," WexLaw, Legal Information Institute, Cornell Law School https://www.law.cornell.edu/wex/tort. Accessed May 10, 2019.

[419] Simons, "The Crime/Tort Distinction," 720-721.

[420] Lawrence Friedman, *A History of American Law* (New Haven, Conn.: Yale University Press, 2002) 356-357, 363.

such example. In addition, as treatise writers cited cases to explain areas of law in their treatises, they too relied on Black plaintiffs' civil suits. Because these suits arose from altercations under Jim Crow, Black people's experiences of Jim Crow came to bear on tort doctrine. Further, because criminal courts were hostile towards Black victims of white violence, civil courts offered a potential remedy to Jim Crow abuse.

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Scholars generally agree that Reconstruction and the post-Reconstruction period were eras of potential and contingency. As Northern empathy for the South waned, white Southerners attempted to reconsolidate power.[421] Through election fraud, intimidation, threats of violence, and murder, white Southerners reinstated a racial caste system, destroyed the potential for an interracial coalition, and attempted to beat Black Southerners into submission. Their efforts worked in some cases, but not in others. Whites used mob violence as a tool to reinforce white supremacy to tighten their grip on the social order. The rise of the lynch mob undermined Southern criminal courts which found themselves under siege, forced—whenever they were not complicit in mob rule—to make "justice" swift and merciless.[422]

Because of the lingering threat of the lynch mob, southern criminal courts often swiftly convicted Blacks accused of crimes. Trials were usually a formality. Evidence was sparse if present at all, and deliberations were brief. When courts tried to take the time to try and hear a case adequately, they ran the risk of losing the prisoner to the lynch mob regardless. The mob

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[421] According to historian C. Vann Woodward, as the bloc of white southerners who resisted and condemned racial violence eroded and the distance between upstanding blacks and upstanding whites widened, vigilantism ascended its throne in the South. Unhappy with the progress that African Americans had made during the post-emancipation period, and uneasy about the threat of an interracial coalition, white Southerners (particularly Southern Democrats) moved to reconsolidate power. Woodward, *The Strange Career of Jim Crow*, 239-241.
[422] Woodward, *The Strange Career of Jim Crow*, 246-247.

usually played the role of judge, jury, and executioner, no matter what the criminal justice system did to facilitate a fair trial or ensure a Black prisoner's safety.[423] Jim Crow criminal courts often worked one, way against Black Americans. Black victims of white-on-Black violence, therefore, had to find an alternative to the criminal justice system.

They found some of the ingredients for that alternative in civil courts. Because judges embraced legal formalism and judicial paternalism, Black Americans had a better chance of receiving more equal treatment before the law in civil courts. According to Morton Horwitz and Christopher Waldrep, judges in the post-Emancipation period, particularly county court judges, used Classical legal thought (sometimes called legal formalism) in their decision-making to gain the respect of the local bar.[424] Horwitz argues that classical legal theory is the philosophy that law begins at first principles and radiates outward. Judges invoked precedent under classical legal thought. And when "no prior decision seemed directly applicable, a court often would attempt to extract from the rulings made in a group of loosely related prior cases a general principle that could be brought to bear on the case before it."[425] Waldrep argues that criminal court "judges who bypassed the law risked losing the respect of the bar, even if they cut corners in the service of white supremacy."[426] Despite this use of legal formalism and classical legal

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[423] Additionally, as many scholars of Jim Crow criminal courts have pointed out, while the courts were generally hostile to black defendants, white prosecutors were generally indifferent towards African American victims of violent white crime. Neil R. McMillen, *Dark Journey: Black Mississippians in the Age of Jim Crow* (Champaign: University of Illinois Press, 1990); Edward Ayers, *Vengeance and Justice: Crime and Punishment in the 19th-Century American South* (New York: Oxford University Press, 1984); David Garland, "Penal Excess and Surplus Meaning: Public Torture Lynchings in Twentieth-Century America," *Law and Society Review* Vol. 39 No. 4 (Dec. 2005), 793-833.
[424] Christopher Waldrep, *Roots of Disorder: Race and Criminal Justice in the American South, 1817-80* (Urbana: University of Illinois Press, 1998) 117-118.
[425] Horwitz et. Al., *The Bridge*, "Legal Realism and the Realist Critique," https://cyber.harvard.edu/bridge/LegalRealism/essay2.htm . Accessed 12/1/2019.
[426] Waldrep, *Roots of Disorder*, 117.

thought, judges "harbored no charitable feelings toward African Americans."[427] Cultural norms and professional norms did not always coalesce.

Classical legal thought opened the door for Black Americans to bring claims in civil courts. But formalism also stripped Black plaintiffs' cases of their social and political context. On the one hand, classical legal thought forced courts to apply legal rules to Black Americans with strict adherence to precedent and legal norms. But, on the other hand, judges' and lawyers' process of stripping cases down to the facts and legal principles, removing race and other variables for the sake of uniformity and applicability, obscures the role that African Americans played in making law. Furthermore, the practice of stripping cases of legally irrelevant content conceals the ways that Jim Crow as a social, political, and economic regime shaped tort law as we know it.

Scholars agree that white southerners attempted to use the law to oppress Black Americans. Still, individual whites often resorted to lynching and violence to Black people in "their place." While judges and attorneys might have avoided the wrath of the mob, Black Americans who dared to initiate suits involving white-on-Black violence or violations of Black people's rights of personhood might not be so lucky. Despite the threat of violence, if local whites perceived their civil lawsuits as a threat to white supremacy, Black Americans continued to sue whites and white-owned companies for monetary damages. By the late 1890s, Jim Crow had crystallized as a legal regime, and Black and white southerners had realized that, in the hands of formalist judges, "common-law doctrine promoted equality."[428] For Black people living

[427] Waldrep, *Roots of Disorder*, 118.
[428] Waldrep, *Roots of Disorder*, 119, 173.

under Jim Crow, tort law, a body of common law, provided a potential path to justice or at least retribution.

It should be noted that as white Southerners turned racist customs into state-mandated law and resorted to extrajudicial violence to maintain the racial hierarchy, Americans across the country and color-line worked out the meaning of tort law. Plaintiffs, judges, attorneys, and treatise-writers learned, interpreted, and sometimes mad law and tort doctrine. Tort law did not explicitly cover *racial* violence, but it did cover *violence*. Black passengers and Black victims of police violence used a variety of tort law protections to bring suits against corporations and individuals for injuries inflicted by individual whites.

*Importance*

Black plaintiffs resorted to civil or private law because there were no statutes that prohibited racially motivated violence in the South. Some southern states, like Alabama, Georgia, North Carolina, South Carolina, Tennessee, and Texas did, however, have anti-lynching laws that allowed victims to sue counties for damages for lynching or mob violence.[429] Because

[429] "Thirteen Have Anti-Lynching Laws! Seven States Enacted Theirs in the Last Ten Years--The Dyer," *Cleveland Gazette* (Cleveland, Ohio), July 11, 1925: 2. *Readex: Readex AllSearch*. "Anti-Lynching Law. South Carolina Jury Declines to Give Damages," *Augusta Chronicle* (Augusta, Georgia), September 28, 1900, 1. *Readex: Readex AllSearch*. "To Test Anti-Lynching Law. Arrest of Alabama Mob Leaders Who Hung White Man," *Daily People* (New York, New York), March 5, 1901: 1. *Readex: Readex AllSearch*. "Anti-Lynching Law in Georgia," *Columbus Daily Enquirer* (Columbus, Georgia), July 21, 1919: 4. *Readex: Readex AllSearch*. "Chicago Gives Up! Sick and Tired of Losing Riot Suits--Illinois Anti-Lynching Law Good!," *Cleveland Gazette* (Cleveland, Ohio), December 10, 1921: 1. *Readex: Readex AllSearch*. "Anti-Lynching Sentiment Fast Gaining Ground Twenty-two Lynchers Indicted in Georgia This Year--Four Convicted, Fifteen," *Broad Ax* (Chicago, Illinois), November 25, 1922: 2. *Readex: Readex AllSearch*. "Based On Our Ohio Law! The Georgia Legislature Again Has An Anti-Lynching Bill Which It," *Cleveland Gazette* (Cleveland, Ohio), August 8, 1925: 1. *Readex: Readex AllSearch*. "Minnesota's Anti-Lynching Law," *Appeal* (St. Paul, Minnesota), April 23, 1921: [2]. *Readex: Readex AllSearch*. "Virgnia's New Anti-Lynching Law Defended," *Negro Star* (Wichita, Kansas), October 5, 1928: [1]. *Readex: Readex AllSearch*. "Pa. Anti-Lynching Bill a Law!," *Cleveland Gazette* (Cleveland, Ohio), June 2, 1923: 1. *Readex:*

Black Americans made up 72.7% of the 4,743 reported lynchings between 1882 and 1968, these anti-lynching laws benefitted the families of Black victims if they were courageous enough to sue. The anti-lynching laws did little, however, in states like Mississippi where lynching ran rampant and unchecked.[430] Furthermore, though there were statutes criminalizing lynching and assault and battery, prosecutors often failed to charge whites for physically attacking Black Americans. The state's unwillingness to prosecute white attackers for crimes everyone knew they committed; Black people needed tort law to seek justice within the judicial system.[431]

During "the late nineteenth century [tort] law experienced its biggest spurt of growth."[432] Jim Crow also matured during the late nineteenth and early twentieth centuries, giving rise to tort

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*Readex AllSearch*. Black newspapers reported on state anti-lynching laws during the late nineteenth-century as well. "South Carolina's Anti-Lynching Law." *Cleveland Gazette* (Cleveland, Ohio), May 23, 1896: 2. *Readex: Readex AllSearch*. "The Texas Anti-Lynching Law." *Times-Picayune* (New Orleans, Louisiana), June 21, 1897: 4. *Readex: Readex AllSearch*. "They Discuss Lynching Now. the South Carolina Convention Puts a Drastic Anti-Lynching Provision in the Constitution." *Charlotte Observer* (Charlotte, North Carolina), November 10, 1895: [1]. *Readex: Readex AllSearch*.

[430] Often the lynchings of Mexican Americans and Chinese Americans in in the Southwest and on the West Coast are not counted in estimates of the number of people lynched during this period, so anti-lynching laws would have potentially benefited non-black people of color. Furthermore, of the 4,743 lynchings that were reported, 27.3% of those were of "white persons." It is unclear whether those white persons were just those white-Americans who fraternized with African Americans or helped in civil rights efforts, or if these numbers include all non-black victims. The National Association for the Advancement of Colored People, "The History of Lynchings. https://www.naacp.org/history-of-lynchings/ . Accessed May 20, 2019. The NAACP's statistics were pulled from "Lynching, Whites and Negroes, 1882-1968," The Tuskegee University Archives, September 9, 2010. http://hdl.handle.net/123456789/511. Accessed July 2, 2019.

[431] It is important to pause for a moment to acknowledge that African Americans had more than two choices. Relying on prosecutors and the criminal justice system to deal with white offenders was an option and resorting to civil courts was another option. There was a third option, however. African Americans could have resorted to armed resistance, as they had during Reconstruction, but without the protection of African American officials and the federal government's presence in the south, armed self-defense would have likely been a death sentence for African Americans. If the lynch mob did not kill black vigilantes (and their entire family) for violating the social hierarchy first, then black vigilantes would have been charged and tried for the assault of or murder of a white person. During the trial for their vigilante justice, blacks would have been vulnerable to the lynch mob (yet again), and if they were able to get through the entire trial without incident, they would surely be sentenced to the chain gang or sentenced to be hanged. Vigilante justice was black victims' riskiest option when determining how to react to white violence. For more on this, see Ayers, *Vengeance and Justice*.

[432] Lawrence M. Friedman, *A History of American Law* (New York: Touchstone by Simon & Schuster, 1973, 1985, 2005), 350.

suits that resulted from Jim Crow customs and laws. Since tort law and Jim Crow came of age at the same time, Black plaintiffs' lawsuits and experiences under Jim Crow were built into tort case law. Each case considered in this dissertation represented a brick used to build or reinforce tort principles.

While the work that lawyers do to strip cases down to facts pertinent to their cases or legal arguments is essential for arguing cases and writing briefs and opinions, this stripping of context does not help us understand the nuances of case law or legal decision-making. To fully understand the case law and the role that Black Americans played in building it, legal scholars must work to recover context to explain how racial, social, and legal backgrounds framed the arguments that plaintiffs made. The gravity of Black plaintiffs' decisions to sue and their cases' potential to shape tort case law changes when one takes into consideration that they were suing during a time when many Southern whites wanted to strip them of their legal rights. Black litigants helped create case law as they continued to name their grievances, blamed white-owned companies and white individuals, and claimed damages they believed themselves owed. The litigation that arose from Black people's "naming, blaming, and claiming" allowed courts to cite their cases in opinions of cases involving Black or *white* plaintiffs. Courts within Black plaintiffs' state jurisdiction, other state jurisdictions, and under federal jurisdiction could also cite Black people's court cases.

*Citations within Mississippi*

Many of the cases considered in this chapter helped carve out or reinforce the contours of *respondeat superior*, or a company's liability for the actions of its employees. Cases like *Jopes*

(1891) contributed to case law by establishing precedents that narrowed what civil courts considered as actions within the scope of an employee's duties. Limiting the scope of employment benefitted corporations because it limited the circumstances under which a passenger or patron could sue a business for the actions of its employees. This move would ultimately hurt Black passengers. Rulings that limited corporations' liability and narrowed the scope of employment diminished Black plaintiffs' ability to sue companies for racially motivated attacks because company attorneys argued that those actions were beyond the scope of the employee's employment. Black victims had to sue individual employees who were worth less than large corporations. These plaintiffs faced more difficulty proving their cases when courts released companies from liability if their employees claimed and convinced a jury that the employee had acted in self-defense. Where companies convincingly argued that their employees had reasonably acted in self-defense, companies could not be held liable for a tort. Other suits considered in this chapter widened the scope of employment, broadening the number of injuries for which a corporation may be held liable.

*Jopes* reached well beyond Hancock County, Mississippi, the county in which Jopes' altercation occurred, though the case was only cited once by the Mississippi State Supreme Court since 1891. In *McLaurin v. McLaurin Furniture Company* (1933), the Mississippi State Supreme Court relied on *Jopes* to hold that a company could not be held liable for a tort for which its employee could not be held liable—a rule that limited vicarious liability. In *McLaurin*, Leslie S. McLaurin sued the furniture company for injuries she sustained when her husband wrecked a company car in which she was riding.[433] On appeal, according to the Mississippi State Supreme

[433] *McLaurin v. McLaurin Furniture Company*, 166 Miss. 180 (1933).

Court, the issue facing the Lauderdale County Circuit Court was whether Leslie McLaurin could "recover from the master of the servant, the husband. This question has not been presented, or decided, in this state, and the courts of other states are in conflict with regard thereto."[434] While the courts had not contemplated this particular question, whether a wife could recover from her husband's employer for her husband's tort, the Mississippi State Supreme Court determined that the circuit court did not err in granting the peremptory instruction.[435] According to Justice McGowen, "The tortious act of [McLaurin's husband] the servant is none the less unlawful, although the wife is denied a remedy in the courts therefor."[436] At the trial level, in granting instructions, the trial judge had to determine as a matter of law whether McLaurin could recover from the master.

Justice McGowen cited *Jopes* (1891) as backing for the proposition that a "master" (that is, an employer) was not liable for a tortious act committed by its "servant" (employee). Under normal circumstances, the employer was responsible for the actions of its employee. But a common carrier was liable only if its employee's act was "wrongful," the *Jopes* court held, and conductor Carlin shot Jopes in self-defense, believing that Jopes was about to attack him. There was nothing "unlawful," "wrongful" or "negligen[t]" about Carlin's act and therefore nothing for which his employer could be held liable.[437] *Jopes*' carved out an exception to the rule of vicarious liability. Justice McGowen applied that exception to the facts in *McLaurin.* Forty-two years after Carlin shot Jopes on that New Orleans and Northeastern Railroad Company train,

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[434] *McLaurin v. McLaurin Furniture Company*, 166 Miss. 180 (1933).
[435] According to Black's Law Dicitonary, a peremptory instruction is the "instruction of a judge to the jury that will point them in the direction of a verdict." https://thelawdictionary.org/peremptory-instruction/
[436] *McLaurin v. McLaurin Furniture Company*, 166 Miss. 180 (1933).
[437] *New Orleans & N.E.R. Co. v. Jopes,* 142 U.S. 18, 24-26 (1891).

Jopes' experiences under Jim Crow in its infancy came to bear on a white woman's claim against her husband's employer.

Although the Mississippi State Supreme Court only cited *Jopes* (1891) once, the case still offered insight into case law in Mississippi. One reason the state of Mississippi might not have referenced Jopes (1891) widely is that this case's opinion might not have been the best articulation of these points of law. It is possible that there were other Mississippi cases that concisely articulated the court's thoughts on peremptory instructions or the master-servant rule. *Jopes* (1891) was one of the last cases cited in *McLaurin* (1933), and Justice McGowen was not very clear on the legal issue at hand in *Jopes* (1891). The lawsuit also might not have been as important to the Mississippi State Supreme Court because the case was further removed from tort case law in the state of Mississippi. The railroad company appealed the case to the United States Supreme Court, not the Mississippi State Supreme Court. Though this case might not have gained a lot of traction in shaping Mississippi's tort case law, it did shape case law across the United States.

Unlike *Jopes* (1891), many of the other cases considered in this dissertation were cited widely across the state of Mississippi, which made these cases building blocks, big and small, of case law in Mississippi.[438] In 1905, Peter Williams, a Black man, sued the Yazoo and

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[438] *Aaron Royston v. Illinois Central Railroad Company*, 67 Miss 376 (1889); *Louisville, New Orleans, and Texas Railway Company v. Wesley Crayton*, 69 Miss. 152 (1891); *New Orleans and Northeastern Railroad Company v. Jopes*, 142 U.S. 18 (1891); *Louisville, New Orleans, and Texas Railway Company v. Isaiah Douglass*, 69 Miss. 723 (1892); *The Richmond and Danville Railroad Co. v. Jefferson*, 89 Ga. 554 (1892); *Alabama and Vicksburg Railway Company v. Peter McAffee*, 71 Miss. 70 (1893); *Illinois Central Railroad v. Lincoln Latham*, 72 Miss. 32 (1894); *Southern Railway Company v. Henry Hunter*, 74 Miss. 444 (1896); *Yazoo & Mississippi Valley Railroad Company v. Peter Williams*, 87 Miss, 344 (1905); *Yazoo & Mississippi Railroad Company v. Walls*, 110 Miss. 256 (1915); *Illinois Central Railroad Company v. Green*, 130 Miss. 622 (1922); *Yazoo & Mississippi Railroad Company v. Cornelius*, 131 Miss. 37 (1922); *Woods v. Illinois Central Railroad Company*, 151 Miss. 395 (1928); *Sellers et al. v. Lofton*, 149 Miss. 849 (1928); *Sellers v. Varner*, 151 Miss. 594 (1928); *McCoy v. Key et al.*, 155 Miss 64 (1929);

Mississippi Valley Railroad Company for civil assault after a white conductor beat him with a ticket puncher for refusing to pay his fare twice. The Mississippi State Supreme Court cited *Williams* (1905) twenty-three times. With *Williams* (1905), the Mississippi State Supreme Court noted that it was established doctrine that "punitive or exemplary damages are always properly allowed where the trespass complained of or the breach of duty committed was malicious, wanton, wilful, or capricious."[439] *Cornelius* (1922), a case where a Black plaintiff sued after a railroad employee shot him while stealing a ride, was cited 18 times in Mississippi. On appeal the railroad company argued that the court had issued an improper instructions; the Mississippi State Supreme Court when it reversed the decision in *Cornelius* and subsequently when it cited *Cornelius* to explain the court's ruling on instructions.[440] Mississippi's highest court cited *Willis* (1934) fifteen times. In this case, a Black man sued the railroad company for an assault by railroad employees while helping another passenger. The court cited five of the other suits considered in this chapter between one and nine times.[441] These cases began at the site of injury and radiated out of the local communities where the injuries occurred. As they moved through the appellate process, the lived experiences captured by these cases remained in the background.

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*Gulf, Mobile, and Northern Railroad Company v. Willis*, 171 Miss. 732 (1935); *Yazoo & Mississippi Railroad Company v. Smith*, 188 Miss. 856 (1940); *Jefferson et al. v. Yazoo and Mississippi Valley Railroad Company*, 194 Miss.729 (1943); *Britton v. Atlanta and Charlotte Airline Railway Company*, 88 N.C. 536 (1883); *Alabama and Vicksburg Railway Co. v. Lucretia Holmes*, 75 Miss. 371 (1897); *Ward v. Yazoo & Mississippi Valley Railroad Com*pany, 79 Miss. 145 (1901); *Yazoo & Mississippi Valley Railroad Company v. Martin* (1901); *Illinois Central Railroad Company v. Maria Dodd*, 104 Miss. 643 (1913); *Natchez, Columbia & Mobile Railroad Company v. Boyd et al.*, 141 Miss 593 (1926); *Mississippi Power and Light Co. v. Garner*, 179 Miss. 588 (1937).

[439] *Yazoo & Mississippi Valley Railroad Company v. Peter Williams*, 87 Miss, 344 (1905). *Nassar v. Concordia Rod & Gun Club*, 682 So. 2d 1035 (1996). The twenty-three cases that cited *Williams* (1905) referenced punitive damages.

[440] *Yazoo & Mississippi Railroad Company v. Cornelius*, 131 Miss. 37 (1922).

[441] *Sellers v. Lofton*, 149 Miss. 849 (1928); *Jefferson v. Yazoo and Mississippi Valley Railroad Company*, 194 Miss. 729 (1943); *Alabama and Vicksburg Railway Company v. Holmes*, 75 Miss. 371 (1897); *Louisville, New Orleans, and Texas Railway Company v. Crayton,* 69 Miss. 152 (1891); *Royston v. Illinois Central Railroad Company*, 67 Miss. 376 (1889*); Illinois Central Railroad Company v. Green*, 130 Miss. 622 (1922).

As other cases cited points of law that helped make a lawyer or judge's argument, stripping the case of social and racial context, the history and contingencies of these cases and the plaintiffs' experiences remain, buried like a plant's roots.

Courts cited Black plaintiffs' cases for a variety of reasons, including that they established rules about punitive damages, jury instructions, and protecting privileged information from testimony. Mississippi courts cited *Williams* (1905) twenty-three times during the Jim Crow era and after the "end" of Jim Crow. Each time the courts cited *Williams* (1905) they argued that it was "firmly established doctrine in this state that punitive or exemplary damages are always properly allowed where the trespass complained of, or the breach of duty committed was malicious, wanton, willful, or capricious."[442] Rather than rearguing the point, the court referenced a case involving an African American plaintiff as one of the leading cases on punitive damages in Mississippi. Another widely cited case involving a Black plaintiff was *Cornelius,* which was a leading case in establishing the state's rules for jury instructions. As the court put it in *Hammond v. Morris* (1930), a case brought by a white plaintiff, a jury "instruction should define, for the jury, the material allegations, and not leave them to draw their own conclusions

[442] *Yazoo and Mississippi Valley Railroad Company v. Williams*, 87 Miss. 344 (1905). The following cases cited Williams (1905) using the exact quote above: *Nassar v. Concordia Rod & Gun Club*, 682 So. 2d 103 (1996); *Ciba-Geigy Corporation v. Murphee*, 653 So. 2d 857 (1994); *C & C Trucking Co v. Smith*, 612 So. 2d 1092 (1992); *Royal Oil Company v. Wells*, 500 So. 2d 439 (1986). The following cases cited or followed *Williams* (1905) when deciding whether or not to award punitive damages, but did not use the exact quote above: *Mutual Life Insurance Company v. Estate of Wesson*, 517 So. 2d 521 (1987); *Bankers Life & Casualty Co. v. Crenshaw*, 483 So. 2d 254, (1985); *Standard Life Insurance Company v. Veal*, 354 So. 2d 239 (1977); *Woodall v. Ross*, 317 So. 2d 892 (1975); *Snowden v. Osborne*, 269 So. 2d 858 (1972); *Reserve Life Ins. Co. v. McGee*, 444 So. 2d 803 (1983); *Friendly Finance Co. v. Mallett*, 243 So. 2d 403 (1971); *Council v. Duprel*, 250 Miss. 269 (1964); *Capital Electric Power Association v. Hinson*, 230 Miss. 311 (1957); *Sandifer Oil Co. v. Dew*, 220 Miss. 609 (1954); *Thomas v. Mickel*, 214 Miss. 176 (1952); *Planters Wholesale Grocery v. Kincade*, 210 Miss. 712 (1951); *Taggart v. Peterson*, 182 Miss. 82 (1938); *Teche Lines, Inc. v. Pope*, 175 Miss. 393 (1936); *Bounds v. Watts*, 159 Miss. 307 (1931).
The following cases cited followed Williams with regards to issuing jury instructions: *Yazoo & Mississippi Valley Railroad Company v. Wade*, 162 Miss. 699 (1932); *Edwards v. Cash*, 156 Miss. 507 (1930); *Hinton v. State*, 129 Miss. 226 (1922); *Yazoo & Mississippi Valley Railroad Company v. May*, 104 Miss. 422 (1913).

from the declaration."[443] The Mississippi State Supreme Court fleshed this rule out in its 1922 ruling in *Cornelius* (1922).[444]

The third most cited case in this chapter, *Gulf, Mobile, and Northern Railroad Company v. Willis* (1934), cited by the Mississippi Supreme Court fifteen times, established Mississippi's interpretation of a statute for protecting privileged conversation. As recently as 1983,[445] the court quoted *Willis* in limiting the scope of the state's privilege statute to exclude communications between pharmacists and clients. In *Willis*, the court sought to determine whether the witness, a dentist, fell within the statute's meaning and definition of "physician." The Mississippi State Supreme Court held "that a dentist is not a physician within the intent and meaning of section 1536, Code of 1930."[446] According to the court, the intent of the statute was "to protect physicians and surgeons from having to testify [about] communications" covered by doctor-patient confidentiality "and to protect patients from having to disclose statements made to physicians."[447] Here, even though the court ruled that dentists were not physicians within the scope of the law, this did not warrant a reversal of the initial verdict.[448]

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[443] Ernest V. Hammond was a white farmer and veteran of World War I. 1930 United States Federal Census. *Hammond v. Morris*, 156 Miss. 802 (1930). According to Black's Law dictionary, in pleading, a declaration is "first of the pleadings on the part of the plain- tiff in an action at law, being a formal and methodical specification of the facts and circumstances constituting his cause of action." In civil law, the declaration might also be called a petition. Henry Campbell Black, *Dictionary of Law Containing Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (St. Paul, Minn.: West Publishing Co., 1891), 339.

[444] *Rucker v. Hopkins*, 499 So. 2d 766 (1986); *Merchants Co. v. Hutchinson*, 186 So. 2d 760 (1966); *Draughn v. Lewis*, 248 Miss. 834 (1964); *Gore v. Patrick*, 246 Miss. 715 (1963); *Glens Falls Ins. Co. v. Linwood Elevator*, 241 Miss. 400 (1961); *Tynes v. McLendon*, 235 Miss. 336 (1959); *Rawlings v. Royals*, 214 Miss. 335 (1952); *Southland Broadcasting Co. v. Tracy*, 210 Miss. 836 (1951); *Meridian City Lines v. Baker*, 206 Miss. 58 (1949); *Ellis v. State*, 33 So. 2d 838 (1948); *Southern R. Co. v. Buse*, 187 Miss. 752 (1940); *Scott-Burr Stores Corp. v. Edgar*, 181 Miss. 486 (1938); *McDonough Motor Express, Inc. v. Spiers*, 180 Miss. 78, 176 So. 723 (1937); *Teche Lines, Inc. v. Keller*, 174 Miss. 527 (1936); *Gurley v. Tucker*, 170 Miss. 565 (1934); *Rowlands v. Morphis*, 158 Miss. 662 (1930); *Thompson v. State*, 158 Miss. 121 (1930); *Hammond v. Morris*, 156 Miss. 802 (1930).

[445] *Ladner v. Ladner,* 436 So. 2d 1366 (1983).

[446] *Gulf, Mobile, and Northern Railroad Company v. Willis*, 171 Miss. 732 (1935).

[447] *Gulf, Mobile, and Northern Railroad Company v. Willis*, 171 Miss. 732 (1935).

[448] *Gulf, Mobile, and Northern Railroad Company v. Willis*, 171 Miss. 732 (1935).

*Citations beyond Mississippi*

State jurisdictions across the country cited Black Mississippians' cases. Twenty-eight states outside of Mississippi cited Jopes' suit in seventy-nine separate cases. Many of the cases cited *Jopes* (1891) because it articulated the legal principle of *respondeat superior.*[449] According to Seymour Thompson's 1886 treatise on the law of negligence and contract, under *respondeat superior*, "a principal or master is civilly responsible for the wrongs committed by his agent or servant while acting about the business of the principal or master and within the scope of the employment of the agent or servant."[450] Thompson's treatise further argues that "if a servant, authorized to use force about his master's business, uses excessive force, his master must answer

[449] *Mi-Lady Cleaners v. McDaniel*, 235 Ala. 469 (1938); *Alabama and Great Southern Railroad Company v. Ensley Transfer & Supply Company*, 211 Ala. 298 (1924); *Ashworth v. Alabama and Great Southern Railroad Company*, 211 Ala. 20 (1924); *Supreme Lodge of World, etc. v. Gustin*, 202 Ala 246 (1918); *Culberson v. Empire Coal Company*, 156 Ala. 416 (1908); *Rosenzweig and Son, Jewelers v. Jones*, 50 Ariz. 302 (1937); *National Bank of Commerce v. HCA Health Services of Midwest, Inc.*, 304 Ark. 55 (1990); *Bernhard v. Bank of America N. T. and S. A.*, 114 P.2d 661 (1941); *Fimple v. Southern Pacific Company*, 38 Cal. App. 727 (1918); *Southern Railway Company v. Harbin*, 134 Ga. 122 (1910); *Stapleton v. Stapleton*, 85 Ga. App. 728 (1952); *Pinkus v. Pittsburgh C., C. and S. L. R. Company*, 65 Ind. App. 38 (1916); *Arnett v. Illinois Central Railroad Company*, 188 Iowa 540 (1920); *Hobbs v. Illinois Central Railroad Company*, 171 Iowa 624 (1915); *Karahleos v. Dillingham*, 119 Me. 165 (1920); *Horgan v. Boston E. R. Company*, 208 Mass. 287 (1911); Jackson v. Old C. S. R. Company, 206 Mass. 477 (1910); *Begin v. Liederbach Bus Company*, 167 Minn. 84 (1926); *McLaurin v. McLaurin Furniture Company*, 166 Miss. 180 (1933); *Stith v. J. J. Newberry Company*, 336 Mo. 467 (1935); *McGinnis v. Chicago, Rock Island, and Pacific Railroad Company*, 200 Mo. 347 (1906); *Zobel v. General Motors Corporation*, 702 S.W.2d 105 (1985); *Williams v. Kaestner*, 332 S.W.2d 21 (1960); *Robinson v. Moark-Nemo Consol. Mining Company*, 178 Mo. App. 531 (1914); *Vaniewsky v. Demarest Brothers Company*, 106 N.J.L. 34 (1929); *Caplan v. Caplan*, 268 N.Y. 445 (1935); *Schubert v. August Schubert Wagon Company*, 223 A.D. 502 (1928); *Anthony v. Covington*, 187 Okla. 27 (1940); *St. Louis and S. F. R. Company v. Dancey,* 74 Okla. 6 (1918); *Chicago, Rock Island, and Pacific Railroad Company v. Reinhart*, 61 Okla. 72 (1916); *Chicago, Rock Island, and Pacific Railroad Company v. Austin*, 43 Okla. 698 (1914); *Callahan v. Graves*, 37 Okla. 503 (1913); *Brobston v. Darby*, 290 Pa. 331 (1927); *Creech v. Addington*, 281 S.W.3d 363 (2009); *Rankhorn v. Sealtest Foods*, 63 Tenn. App. 714 (1971); *McFaddin, Wiess, and Kyle Land Company v. Texas Rice Land Company*, 253 S.W. 916 (1923); *Eastland County v. Davidson,* 13 S.W.2d 673 (1929); *McLaughlin v. Chief Consol. Mining Company*, 62 Utah 532 (1923); *Federal Land Bank v. Birchfield*, 173 Va. 200 (1939); *Waynesboro v. Wiseman*, 163 Va. 778 (1934); *Doremus v. Root*, 23 Wash. 710 (1901); *Humphrey v. Virginian Railway*, 132 W. Va. 250 (1948).

[450] Seymour D. Thompson, *Law of Negligence in Relations Not Resting in Contract* (1886), 884.

in damages to the person thereby injured."[451] But "where a servant abandons his duty and willfully becomes a wrong-doer, the master will not be liable for the *wilful* [*sic*] or *criminal* acts of his servant, although done at a time when he was pursuing his master's business."[452] Even though the 1886 treatise clearly articulates the principle of *respondeat superior*, there was room for interpretation and refinement of the doctrine.

In *Jopes,* the United States Supreme Court cited iterations of *respondeat superior* like the one from the 1886 treatise, but limited vicarious liability for situations involving "excessive use of force." According to the high court, "it may be generally affirmed that if an act of an employe be lawful, and one which he is justified in doing, and which casts no personal responsibility upon him, no responsibility attaches to the employer therefor."[453] The 1886 treatise had stated this just five years earlier. Justice Brewer, however, articulated what the 1886 treatise did not: if a servant inflicted an injury using excessive force but was acting in self-defense, he could not be held criminally liable for the act. If the servant could not be held criminally responsible for the assault and battery, then she could not be held civilly liable for the action. Therefore, when a servant is not held civilly liable for an act of self-defense or excessive force, the master is not held responsible.[454]

The United States Supreme Court's ruling in *Jopes* (1891) was useful to corporations because it limited *respondeat superior* or a company's liability for the actions of its employees.

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[451] Thompson, *Law of Negligence in Relations Not Resting in Contract, 887.*
[452] Thompson, *Law of Negligence in Relations Not Resting in Contract, 886.*
[453] *New Orleans & N. R. Co. v. Jopes*, 142 U.S. 18 (1891).
[454] I carried out a keyword search for "self-defense" within Thompson, *Law of Negligence in Relations Not Resting in Contract* and I did not find the phrase "self-defense" which leads me to believe that the self-defense element of *respondeat superior* developed after Jopes was shot and is the result, even in part, from the United States Supreme Court's ruling in *Jopes* (1891).

Railroad companies and municipalities could argue that an employee's tortious actions were outside of the scope of his employment. If the tort occurred within the scope of the employee's work, and the employee used force, then companies could argue that their employee believed that there was an imminent threat. Hence, their use of force was reasonable, given the circumstances. Limiting *respondeat superior* and protecting acts that occurred in self-defense or when the employee feared for his safety placed a burden on future plaintiffs. Plaintiffs, Black and white, would have to establish that the company or municipality owed them a duty of care or a duty of protection. They would also have to prove that the employee committed a tort within the scope of employment, that there was no contributory negligence, and that they did not threaten their attacker. When arguing that an employee had acted in self-defense, employers had the burden of proving self-defense. Race and racial stereotypes complicate the burden of proof. It would be easier for a white attacker to argue that they feared for their lives or felt threatened by a Black plaintiff because of whites' heightened fears of Black people. It would be far more difficult for a Black plaintiff to argue that they were not a threat to the attacker's safety.

*Jopes* (1891) set a potentially bad precedent for African Americans. The courts made it harder for victims, particularly African Americans, to hold companies accountable for the actions of their white employees by limiting vicarious liability and incorporating self-defense as a mode of escaping liability. Companies could theoretically argue that when confronting Black passengers, trespassers, or employees, white employees used excessive force because they feared for their lives. Interracial altercations had the potential to take on new life in the imaginations of railroad companies and white jurors. According to historian Aline Helg, "from the 1880s to the 1920s, white Southerners' stereotype of the Black rapist helped justify continuing white violence

against Blacks."[455] If whites could use stereotypes of Blacks' inherent violence to justify white violence against Blacks in the community at large, then what would stop white employees and employers from deploying the same logic when Black people sued for whites attacks involving excessive force?[456] Many whites during the period held common stereotypes of Blacks as "half-savage," "insolent," aggressive, and "ignorant 'brute[s],' unable to restrain his savage and barbaric instincts and propensities."[457] When white conductors (and police officers) argued that they feared for their lives and were acting in self-defense, they invoked whites' subconscious fears of Black people. They also alluded to rhetoric that whites had historically used to criminalize and demonize Black people since the first encounters on African shores.[458] Black plaintiffs had to convince white jurors that they did not pose a threat to their attackers *and* that the defendant owed damages for a tort.

In a world where white supremacy and whites' fears of "'aggressive' and unpredictable Black behavior" ran rampant, it would have been easy for white aggressors to argue that they feared for their lives.[459] Carlin, the white conductor, alleged that he "saw [Jopes] slip a knife up

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[455] Aline Helg, Black Men, Racial Stereotyping, and Violence in the U.S. South and Cuba at the Turn of the Century," *Comparative Studies in Society and History*, Vol. 42, No. 3 (Jul., 2000), 580. https://www.jstor.org/stable/2696646

[456] Aline Helg, Black Men, Racial Stereotyping, and Violence in the U.S. South and Cuba at the Turn of the Century," *Comparative Studies in Society and History*, Vol. 42, No. 3 (Jul., 2000), 580. https://www.jstor.org/stable/2696646

[457] Leon Litwack, *Trouble in Mind: Black Southerners in the Age of Jim Crow* (New York: Vintage Books, 1998), 209-211.

[458] Aline Helg, Black Men, Racial Stereotyping, and Violence in the U.S. South and Cuba at the Turn of the Century," *Comparative Studies in Society and History*, Vol. 42, No. 3 (Jul., 2000), 580-581. https://www.jstor.org/stable/2696646. Winthrop D. Jordan, *White over Black: American Attitudes toward the Negro, 1550-1812* (Chapel Hill: University of North Carolina Press, 1968). For more on the continued legacy of demonizing black men to the present, see Laurence Ralph and Kerry Chance, "Legacies of Fear," *Transition*, No. 113, What is Africa to me now? (2014), 137-143.

[459] Leon Litwack, Trouble in Mind: Black Southerners in the age of Jim Crow (New York: Vintage Books, 1998), 201. See also, Aline Helg, "Black Men, Racial Stereotyping, and Violence in the U.S. South and Cuba at the Turn of the Century," *Comparative Studies in Society and History* 42, no. 3 (2000): 576-604. www.jstor.org/stable/2696646.

his sleeve" and that because "Jopes was three or four feet from me when I shot him—near enough to spring on me," "I considered that I was in imminent danger from him with his knife open advancing on me."[460] The conductor painted a picture of a situation where he feared for his safety and acted to protect himself. Despite claiming that he was in imminent danger, Carlin "followed him into the car and told him to give me that knife, and he gave it to me and left."[461] Jopes had to prove that he was not a threat to Carlin before he could attempt to prove that the railroad was liable and owed him damages for the shooting. In a world where many whites perceived Blacks, especially Black men, as aggressive and threatening, it would have been challenging for Jopes to convince a white jury that Carlin had not feared for his life. The argument of self-defense and the limitation to vicarious liability placed African Americans in a precarious position. White employees could abuse African Americans, and employers and employees could make a formidable argument by arguing self-defense and invoking white Southerners' fear of African Americans.

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The United States Supreme Court's articulation of self-defense as it related to vicarious liability in *Jopes* (1891) gained the most traction in case-law and even in Thompson's treatise writing. Several cases decided in the 1910s cited Justice Brewer's explanation that "if the employee who causes the injury is free from liability therefor, the employer must also be free

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[460] *New Orleans & N. R. Co. v. Jopes*, 142 U.S. 18 (1891); Transcript of Record, *New Orleans & N. R. Co. v. Jopes*, 142 U.S. 18 (1891), 22, image 25.

[461] The fact that Carlin followed Jopes after shooting him does not suggest to me that Carlin felt he was in imminent danger or that he feared for his life. *New Orleans & N. R. Co. v. Jopes*, 142 U.S. 18 (1891); Transcript of Record, *New Orleans & N. R. Co. v. Jopes*, 142 U.S. 18 (1891), 22, image 25.

from liability."[462] Here, Justice Brewer concisely articulates what could be called the second half of *respondeat superior*, the part of the principle that absolves a master of vicarious liability. Though not all of the cases that cited *Jopes* (1891) used this exact quotation, many borrowed Brewer's line of reasoning. The opinion in *Jopes* (1891) made its mark on tort doctrine by expanding the logic of an essential principle of tort law.

Not all tort cases cited in this dissertation were as influential as *Jopes* (1891) in other state jurisdictions, but many of them reached well beyond Mississippi state lines. Five state jurisdictions cited *Royston v. Illinois Central Railroad Company* (1889) in nine cases; once in Connecticut, once in Indiana, four times in Mississippi, once in North Carolina, and twice in Texas.[463] States cited this case for several reasons: intentional and willful injuries, torts, and trespass, and negligent acts of agents and liability of principals. The Court of Appeals of Indiana cited *Royston* (1889) in its decision in *Lake Erie and Western Railroad Company v. Arnold* (1901). According to the Indiana Court of Appeals, *Royston* (1889) established that "if a passenger is violently assaulted by a fellow passenger while the conductor is absent attending to his duties…not knowing of the assault, or that it was threatened, the carrier cannot be held liable therefor."[464] In 1912 the Court of Civil Appeals of Texas in Amarillo cited *Royston* (1889) when W. D. Twitchell, a white man, brought a case against the Pecos and Northern Texas Railway Company after another white passenger, J. W. Childress, Jr. assaulted Twitchell. The court applied *Royston* (1889) because, like Aaron Royston, someone attacked Childress "while the

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[462] *Doremus v. Root*, 23 Wash. 710 (1901); *Southern Railway Company v. Harbin*, 134 Ga. 122 (1910); *Hobbs v. Illinois Central Railroad Company*, 171 Iowa 624 (1915); *Fimple v. Southern Pacific Company*, 38 Cal. App. 727 (1918); *Rosenzweig and Son, Jewelers v. Jones*, 50 Ariz. 302 (1937).
[463] *Royston v. Illinois Central Railroad Company*, 67 Miss. 376 (1889)
[464] *Lake Erie and Western Railroad Company v. Arnold*, 26 Ind. App. 190 (1901)

conductor was absent, attending to his duties in another part of the train."[465] Individual altercations had ramifications beyond the local community and the state of Mississippi.

State jurisdictions beyond Mississippi cited five of the twenty-six Mississippi cases considered in chapters one and four. *Louisville, New Orleans, and Texas Railway Company v. Crayton* (1891) was cited in Louisiana once and Mississippi six times, with the Mississippi State Supreme Court deeming it an authority governing corroborative and cumulative evidence.[466] In *Juden v. Nebham* (1912), a case over a promissory note, the Mississippi State Supreme Court cited *Crayton* (1891) for the principle that "'only in rare and exceptional cases'" would "'a new trial will be granted upon newly discovered evidence that is merely cumulative, and that a new trial should not be granted on account of newly discovered evidence, unless such evidence, in the opinion of the court, would remove all doubt and lead to a different result."'[467] Following the court's determination in *Crayton* (1891) that "While the newly-discovered evidence [was] clear and strong in corroboration of the circumstances… [but did] not profess to establish the fact of the conductor's non-culpability," so the admission of new evidence did not require the court to assign error.[468] Likewise, in *Juden* (1912), the Mississippi State Supreme Court would not grant a new trial because the new evidence was merely cumulative and would not change the outcome of the case or change the facts of the case.

[465] *Pecos and Northern Texas Railway Company v. Twitchell*, 145 S.W. 319 (1912).
[466] *Louisville, New Orleans, and Texas Railway Company v. Crayton,* 69 Miss. 152 (1891); *Trotter v. Staggers*, 201 Miss. 9 (1946); *Redmond v. Marshall*, 162 Miss. 359 (1931); *Hamilton v. Cartney*, 125 So. 345 (1930); *Allman v. Gulf and Ship Island Railroad Company*, 149 Miss. 489 (1928); *Juden v. Nebham*, 103 Miss. 84 (1912); *Williams v. State*, 99 Miss. 274 (1911).
[467] *Juden v. Nebham*, 103 Miss. 84 (1912).
[468] *Louisville, New Orleans, and Texas Railway Company v. Crayton,* 69 Miss. 152 (1891).

In a similar case, *Alabama Great Southern Railroad Company v. Harris* (1893), another Black Mississippian's lived experience transcended his initial injury; it helped build case law surrounding a common carrier's duties toward trespassers.[469] *Harris* (1893) was cited in Mississippi three times, Illinois twice, Iowa once, North Carolina once, and Oregon twice. The Illinois intermediate court cited *Harris* (1893) as an authority for the proposition that employers were responsible for the acts of their "servant[s]…within the scope of [their] employment" even "where the carrier was under no contractual obligation to carry safely."[470] The Iowa Supreme Court cited *Harris* in establishing that '"To the trespassers on its trains, just as to trespassers on its tracks, the railroad company owe precisely the same duty which it owes to all mankind, and this duty is exactly what each man owes to every other; that is, abstention from wanton and willful injury in the use of one's property."'[471] In a 1904 North Carolina State Supreme Court Case, Justices Walter Clark and Walter A. Montgomery dissented from Chief Justice Robert M. Douglas' opinion reversing the county court's decision. Justices Clark and Montgomery argued that

> all the above are based upon the idea that no one can recover for negligent injuries unless a passenger, and that no one is a passenger unless there is a legal contract, express or implied, a legal obligation to convey him. The above citations from text-books [*sic*] are amply sustained by authorities, among which: 'A railroad company owes no duty to a trespasser on its trains except to abstain from wantonly or maliciously injuring him.' *Railroad v. Harris*, 71 Miss. 74.[472]

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[469] *Alabama Great Southern Railroad Company v. Harris*, 71 Miss. 74 (1893).
[470] *Chicago, Rock Island & Pacific Railway Company v. Brackman*, 78 Ill. App. 141, (1898). *Earl v. Chicago, Rock Island & Pacific Railway Company,* 109 Iowa 14 (1899).
[471] *Earl v. Chicago, Rock Island & Pacific Railway Company,* 109 Iowa 14 (1899).
[472] *McNeill v. Durham and Charlotte Railroad Company*, 135 N.C. 682 (1904). For more Mississippi State Supreme Court cases involving African American victims and white attackers or white-owned companies that were cited outside of the state of Mississippi, see *Alabama and Vicksburg Railroad Company v. Holmes*, 75 Miss. 371 (1897); *Yazoo and Mississippi Valley Railroad Company v. Cornelius*, 131 Miss. 37 (1922); and *Gulf, Mobile, and Northern Railroad Company v. Willis*, 171 Miss. 732 (1934).

Here, three separate state appellate courts in the Midwest and the South cited a case brought on behalf of an underage African American boy, cited as precedent and authority in case law. Citations beyond state and local jurisdictions show how poor, working class, and middle-class African Americans' local experiences could influence state case law throughout the country. These cases were cited in cases that made it easier for employers to evade responsibility for the harmful actions of their employees. This hurt Black plaintiffs, but it also hurt white plaintiffs. Black experiences helped shape law, which affected white people's lived experiences as well.

*Citations in Federal Cases*

Some Black plaintiffs' local experiences under Jim Crow also contributed to federal case law. The Fifth Circuit Court cited Peter Williams' 1905 lawsuit in its dissenting opinion in *Brabham v. Mississippi* (1938). In his dissent, Judge Edwin Ruthven Holmes argued against rehearing a case because *Williams* (1905) and nine other Mississippi State Supreme Court cases had already set the standards for rehearing cases.[473] Additionally, federal courts cited *Jefferson v. Yazoo and Mississippi Valley Railroad Company* (1943) once in the Fourth Circuit, twice in the Fifth Circuit, and once in the D. C. Circuit Court.[474] Mississippi also cited the case twice.

African Americans appealed their Mississippi civil cases for a variety of reasons. Still, the precedent that these cases set on appeal helped shape specific areas of case law at the federal level. These individuals' experiences transcended their need to use state law, tort law, to gain

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[473] *Yazoo and Mississippi Valley Railroad Company v. Williams*, 87 Miss. 344 (1905); *Brabham v. Mississippi*, 97 F.2d 251 (1978).
[474] *Jefferson v. Yazoo and Mississippi Valley Railroad Company*, 194 Miss. 729 (1943); *Burton v. Bowers*, 172 F.2d 429 (1949); *New York Life Ins. Co. v. Schlatter*, 203 F.2d 184 (1953); *Joyce v. Southern Bus Lines, Inc.*, 172 F.2d 432, (1949); *United States v. Barker*, 514 F.2d 208, 168 U.S. App. D.C. 312 (1975).

legal recourse for incidents involving white-on-Black violence. Their everyday experiences under the Jim Crow regime and their ability to name a grievance, blame a perpetrator and make claims before a civil court judge made their lived experiences the building blocks in state and federal tort case law.

*Citations in Treatises*

African Americans' civil suits against white people and white-owned companies under Jim Crow became precedents in the body of tort case law. Their cases also bolstered treatise-writers' legal arguments. The *Oxford English Dictionary* defines treatises as books "or writing which treats some particular subject; commonly one containing a formal or methodological discussion or exposition of the principles of the subject."[475] Legal treatises are writings that systematically treat specific areas of law or doctrine. "Legal treatises are supposed to describe the law and report it in something like a neutral or objective way," and like legal decisions, help shape "what the law is."[476] Treatises served as guides for judges' discretion when deciding cases and "lawyers bought these books…as repositories of all the possible positions that could be raised with regard to a potential legal problem."[477] Though treatises did not make case law, they had the potential to shape how lawyers argued cases and how judges decided cases.

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[475] Angela Fernandez and Markus D. Dubber, *Law Books in Action: Essays on the Anglo-American Legal Treatise* (Oxford: Hart Publishing, 2012), 1.
[476] Fernandez and Dubber, *Law Books in Action*, 4.
[477] Fernandez and Dubber, *Law Books in Action*, 10.

Treatises from 1894 to 1958[478] cited more than half of the cases considered in this dissertation. [479] Treatise-writers likely cited cases involving common carriers and cases from the turn of the century more because they contributed to legal scholars' understanding of torts during tort law's developmental years. The intersection of this developmental period and the rise of Jim Crow allowed African Americans to participate in defining the bounds of tort doctrine.

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[478] *Louisville, New Orleans, and Texas Railway Company v. Wesley Crayton*, 69 Miss. 152 (1891) was cited in 1894 in H. C. Underhill, *Treatise on the Law of Evidence* (Chicago: T.H. Flood and Co., 1894) p. 477 and *Gulf, Mobile, and Northern Railroad Company v. Willis*, 171 Miss. 732 (1935) was cited in Clinton DeWitt, *Privileged Communications between Physician and Patient* (Springfield: Charles C. Thomas, 1958), p. 85.

[479] *Aaron Royston v. Illinois Central Railroad Company*, 67 Miss 376 (1889) cited in Fetter Norman, *Treatise on the Law of Carriers of Passengers* (St. Paul, West Publishing Co., 1897), 235; Charles S. Mangum Jr., *Legal Status of the Negro* (Chapel Hill: University of North Carolina Press, 1940), 183, William Benjamin Hale, "Compensatory Damages," *Handbook on the Law of Torts* (St. Paul, Minn: West Publishing Co., 1896), 221; Dewitt C. Moore, *Treatise on the Law of Carriers* (Albany: Matthew Bender & Co., 1906), 642; Byron K. Elliott and William F. Elliott, "Damages—Personal Injuries," *Treatise on the Law of Railroads* (Indianapolis: The Bobbs-Merrill Company, 1907, 1897), 930; Edwin A. Jaggard, *Hand-Book of the Law of Torts* (St. Paul, Minn: West Pub. Co., 1895), 262. *Louisville, New Orleans, and Texas Railway Company v. Wesley Crayton*, 69 Miss. 152 (1891) cited in H. C. Underhill, *Treatise on the Law of Evidence* (Chicago: T.H. Flood and Co., 1894), 477; William Edward Baldwin, Editor, *Bouvier's Law Dictionary, Student's Edition* (New York: Banks Law Pub. Co., 1928), 269; Leslie J. Tompkins, *Trial Evidence: The Chamberlayne Handbook: A Concise Statement of the Rules of Evidence in Civil Trials* (Albany: Matthew Bender & Co., 1936), 1138; Moore, *Treatise on the Law of Carriers*, 623; Mangum, *Legal Status of the Negro*, 185; Elliott and Elliott, *Treatise on the Law of Evidence*, 274. *New Orleans and Northeastern Railroad Company v. Jopes*, 142 U.S. 18 (1891) cited in Edward J. White, *Law of Personal Injuries on Railroads* (St. Louis: F. H. Thomas Law Book Co., 1909), Section 732, 1116; Charles A. Ray, *Negligence of Imposed Duties, Carriers of Passengers* (Rochester, N.Y.: Lawyers' cooperative Pub. Co., 1893), 371; Simeon E. Baldwin, *American Railroad Law* (Boston: Little, Brown and Co., 1904), 321; Elliott and Elliott, *Treatise on the Law of Railroads*, 2583; Jaggard, *Hand-Book of the Law of Torts*, 1092; Thomas G.; Amasa A. Redfield Shearman, *Treatise on the Law of Negligence* (New York: Baker, Voorhis & Co., 1898), 235; Thomas M. Cooley, *Treatise on the Law of Torts, or the Wrongs Which Arise Independently of Contract* (Chicago: Callaghan & Co., 1932), 57; Seymour D. Thompson, *Commentaries on the Law of Negligence in All Relations* (Indianapolis: Bowen-Merrill Co., 1901-1914), 499. *Southern Railway Company v. Henry Hunter*, 74 Miss. 444 (1896) cited in Moore, *Treatise on the Law of Carriers,* 747-748. *Yazoo & Mississippi Valley Railroad Company v. Peter Williams,* 87 Miss. 344 (1905) cited in J. G. Berryman and John R. Sutherland, *Treatise on the Law of Damages: Embracing an Elementary Exposition on the Law and Also Its Application to Particular Subjects of Contract and Tort* (Chicago: Callaghan and Company, 1916), 1275-1276. *Illinois Central Railroad Company v. Maria Dodd*, 104 Miss. 643 (1913) cited in Berryman and Sutherland, *Treatise on the Law of Damages: Embracing an Elementary Exposition on the Law and Also Its Application to Particular Subjects of Contract and Tort*, 3472-3473. *McCoy v. Key et al.*, 155 Miss 64 (1929) cited in Walter H.; et al. Anderson, *Treatise on the Law of Sheriffs, Coroners and Constables: With Forms* (Buffalo, N.Y.: Dennis., 1941), 19. *Gulf, Mobile, and Northern Railroad Company v. Willis*, 171 Miss. 732 (1935) cited in Edwin Clarence Conrad, *Modern Trial Evidence* (St. Paul: West Pub. Co., 1956), 269-270; Clinton DeWitt, *Privileged Communications between Physician and Patient* (Springfield: Charles C. Thomas, 1958), 85. *Mississippi Power and Light Company v. Garner*, 179 Miss. 588 (1937) cited in Mangum, *Legal Status of the Negro*, 209, 220. *Yazoo & Mississippi Railroad Company v. Smith*, 188 Miss. 856 (1940) cited in Floyd R. Mechem and Philip Mechem, *Outlines of the Law of Agency* (Chicago: Callaghan, 4), 271.

Seymour Thompson's 1886 treatise articulated the portion of the principle that placed vicarious liability on a master or employer. Still, it did not mention self-defense or the fact that masters or employers could be relieved of responsibility if their employee was relieved of civil and criminal liability. *Jopes* changed Thompson's conception of *respondeat superior*. According to Thompson's 1901 edition, "if an act of an employé [is] lawful, and one which he is justified in doing, and which casts no personal responsibility on him, no responsibility attaches to the employer therefor [*sic*]."[480] Here, Thompson followed Justice Brewer's logic in *Jopes*. Additionally, Thompson paid homage to Jopes' case, the point of law that arose, and Justice Brewer's logic by citing *Jopes* as one of his leading cases on this point.

Similarly, treatises on the common law of common carriers cited other cases brought by Black plaintiffs in the late 1880s and 1890s. An early treatise on common carriers cited Aaron Royston's case from 1889. The treatise cited *Royston* because Royston appealed his case against the railroad company because he argued, the trial court had erred by not submitting one of his instructions to the jury. On appeal, "the court found that the trial court properly refused [Royston]'s requested instructions," which argued that the carrier's failure to provide the statutorily required separate accommodations for Blacks and whites" was the proximate cause of Royston's injuries.[481] Treatise-writer Fetter Norman cited Royston's case as an authority on proximate cause. He argued that "a passenger on a train who is assailed and beaten by a fellow passenger, while the conductor is absent attending to his duties in another part of the train" "cannot recover damages of the railroad company" if the conductor was not aware of a threat or

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[480] Thompson, *Commentaries on the Law of Negligence in All Relations*, 499.
[481] *Aaron Royston v. Illinois Central Railroad Company*, 67 Miss 376 (1889).

abuse.[482] Or put another way, "the damages recoverable for personal injury are limited to those shown to be the natural and proximate result of the wrongful act complained of." Without knowledge of the threat or injury or responsibility for the proximate cause, the railroad could not be held liable, and the passenger could not recover from the company.[483] Norman and Elliott and Elliott used *Royston* (1889) in their treatises to explain a passenger's responsibility to notify common carrier employees of danger. Without reasonable knowledge of the threat, the railroad could not foreseeably prevent the injury.[484]

Other treatise-writers cited *Jopes* (1891) when arguing that passengers could not recover damages if they provoked an attack and or if an employee was acting in self-defense. Witnesses for the railroad company testified at trial that Jopes had provoked Carlin, the conductor who shot him. According to Carlin, Jopes "was drinking…and disposed to be boisterous [and] swearing."[485] He went on to testify that he saw Jopes "slip a knife up his sleeve" and that he " went into [his] valise and got [his] pistol."[486] Carlin also testified that Jopes "advance[d] on [him] with his knife in his right hand."[487] Carlin's testimony was quite different from the testimony of Jopes' witnesses. E. J. Sigerest, a witness for Jopes, suggested that the self-defense

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[482] Fetter Norman. *Treatise on the Law of Carriers of Passengers* (St. Paul, West Publishing Co., 1897) Chapter 7, Section 98, p. 235.
[483] Byron K. Elliott and William F. Elliott, *Treatise on the Law of Railroads* (Indianapolis: The Bobbs-Merrill Company, 1907, 1897) p. 930.
[484] *Royston* (1889) was cited as an authority for denying the recovery of compensatory damages in Norman, *Treatise on the Law of Carriers of Passengers;* Elliot and Elliott, *Treatise on the Law of Railroads*; William Benjamin Hale, *Handbook on the Law of Torts* (St. Paul, Minn: West Pub. Co., 1896) p. 221; Dewitt C. Moore, *Treatise on the Law of Carriers* (Albany: Matthew Bender & Co., 1906) p. 642; Edwin A. Jaggard, *Hand-Book of the Law of Torts* (St. Paul, Minn: West Pub. Co., 1895) p 262. Additionally, *Royston* is cited in Charles S. Jr. Mangum*, Legal Status of the Negro* (Chapel Hill: University of North Carolina Press., 1940) p. 183, noting that African Americans are subject to criminal charges if they stay in a coach reserved for whites, but if a railroad fails to provide African Americans with proper accommodations and the failure to accommodate is the proximate cause of an injury to a black passenger, then the black passenger can sue the company.
[485] Transcript of Record, *New Orleans & N. R. Co. v. Jopes*, 142 U.S. 18 (1891), 25.
[486] Transcript of Record, *New Orleans & N. R. Co. v. Jopes*, 142 U.S. 18 (1891), 25.
[487] Transcript of Record, *New Orleans & N. R. Co. v. Jopes*, 142 U.S. 18 (1891), 25.

argument was a farce, testifying that “as far as I know, the difficulty was instigated by the conductor who did the shooting.”[488] Jopes testified that he and Carlin had joked after he paid his fare.[489] Another witness testified that Jopes “and the conductor had some conversation…[and] when Carlin slapped Jopes on the shoulder in a friendly way…both of them laughed.”[490] According to Jopes’ attorneys, he did not threaten Carlin; Jopes merely cleaned his nails with his pocket knife.[491]

The jury sided with Jopes, but the United States Supreme Court reversed and remanded the case. The Court argued that “the law of self-defense justifies an act done in honest and reasonable belief of immediate danger.”[492] It credited the testimony that Jopes held the conductor at knife-point, which made it reasonable to believe that conductor thought that he was in imminent danger.[493] It is interesting that the Court determined that Carlin was in imminent danger when the circuit court jury did not.

With its ruling in *Jopes*, the United States Supreme Court set a precedent for the way that courts could handle allegations of excessive use of force and self-defense in tort cases. *Jopes* relieved companies of vicarious liability when employees claimed they were acting in self-defense. When plaintiffs sued companies for employees’ excessive force, the courts had to determine whether the employee’s act was excessive. If the court found that the employee acted

[488] Transcript of Record, *New Orleans & N. R. Co. v. Jopes*, 142 U.S. 18 (1891), 18.
[489] Transcript of Record, *New Orleans & N. R. Co. v. Jopes*, 142 U.S. 18 (1891), 21.
[490] Transcript of Record, *New Orleans & N. R. Co. v. Jopes*, 142 U.S. 18 (1891), 20.
[491] Transcript of Record, *New Orleans & N. R. Co. v. Jopes*, 142 U.S. 18 (1891), 18.
[492] *New Orleans and Northwestern Railroad Company v. Jopes*, 142 U.S. 18 (1891).
[493] *New Orleans and Northwestern Railroad Company v. Jopes*, 142 U.S. 18 (1891). Jopes also testified that he had a woman and children with him on the train, which seems to refute any account that he had been drinking. It seems highly unlikely that he would have been traveling with a woman and children while intoxicated. Transcript of Record, *New Orleans & N. R. Co. v. Jopes*, 142 U.S. 18 (1891), 21.

in self-defense or reasonably feared for his life, then the plaintiff could not recover damages from the employer. Treatise-writers, like Edward White, used this ruling to maintain that

> if excessive force is used by the employees of the railroad company to repel force used by the passenger to resist expulsion, or in defending themselves from the attack of a passenger, and the passenger is injured, there is no liability on the part of the railroad company.[494]

Since the passenger provoked the attack, he was in the wrong.[495] In Jopes' case, the pocket-knife played a role in his inability to recover damages because it would have given Carlin reason to believe that he was in danger and prompted his use force. In other words, the courts could reasonably conceive that Carlin feared for his life, considering Jopes did have a pocketknife and considering prevailing racial stereotypes of the time that characterized Black men as savage and murderous. Eight key treatises on the law of railroads cited *Jopes* as the standard, which would govern for cases where one fact was different: the race of the victim.[496]

In addition to citing cases considered in this dissertation to support their explanations of legal principles related to the common law of common carriers, treatise-writers cited suits from this dissertation to articulate and support various elements of the law of damages. The Mississippi State Supreme Court and treatises cited *Williams* widely to explain that exemplary or punitive damages punished a tortfeasor and deterred others from committing the same torts.

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[494] Edward J. White, *Law of Personal Injuries on Railroads* (St. Louis: F. H. Thomas Law Book Co., 1909), Section 732, p. 1116.

[495] Edward J. White, *Law of Personal Injuries on Railroads* (St. Louis: F. H. Thomas Law Book Co., 1909), Section 732, p. 1116.

[496] Edward J. White*, Law of Personal Injuries on Railroads*; Charles A. Ray, *Negligence of Imposed Duties, Carriers of Passengers* (Rochester, N.Y.: Lawyers' cooperative Pub. Co., 1893) p. 371; Simeon E. Baldwin, American Railroad Law (Boston: Little, Brown and Co., 1904) p. 321; Byron K. Elliott and Williams F. Elliott, *Treatise on the Law of Railroads* (Indianapolis: Bowen-Merrill Co., 1897) p. 2583. For additional cases that were cited in treatises as tort doctrine, see Dewitt C. Moore*, Treatise on the Law of Carriers* (Albany: Matthew Bender & Co., 1906), p. 747-748; which cites *Southern Railway Company v. Henry Hunter*, 74 Miss. 444 (1896) when noting that "a trespasser [cannot] be ejected so long as the train or car is moving at a rate which renders ejection dangerous."

According to Berryman and Sutherland's *Treatise on the Law of Damages*, exemplary damages "are allowed when a wrongful act is done with [a] bad motive, or so recklessly as to imply a disregard of social obligations, or where there is negligence so gross as to amount to misconduct and recklessness."[497] J. G. Berryman and John R. Sutherland, who cited *Williams* in their 1916 treatise on the law of damages, also cited *Illinois Central Railroad Company v. Maria Dodd* (1913), another Black Mississippi case. Maria Dodd's lawyers argued that despite notifying "the defendant [railroad company]'s agent of her trouble she was ignored."[498] To return home, Dodd had to labor as a cook to pay for repurchase of her return ticket.[499] For frail, helpless older women, being ignored and left to fend for themselves, was an act of violence, or at the very least, an act of negligence. Implicit in both arguments was the claim that the railroads were liable because they would not help these older women in their distress, though it was their duty to the passengers. The *Treatise on the Law of Damages* used cases like *Dodd* to argue that "it is now established that not only bodily pain but…mental suffering—anxiety, suspense, fright, sense of wrong from insult or indignity—may be treated when the facts will justify it, as an element of the injury for compensation should be allowed."[500] Here, an "old, ignorant and helpless" African American woman's experience became a citation and a building block for determining damage awards.[501]

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[497] J. G. Berryman and John R. Sutherland, *Treatise on the Law of Damages: Embracing an Elementary Exposition on the Law and Also Its Application to Particular Subjects of Contract and Tort* (Chicago: Callaghan and Company, 1916), p. 1275-1276.
[498] *Illinois Central Railroad Company v. Maria Dodd*, 104 Miss. 643 (1913).
[499] *Illinois Central Railroad Company v. Maria Dodd*, 104 Miss. 643 (1913).
[500] J. G. Berryman and John R. Sutherland, *Treatise on the Law of Damages: Embracing an Elementary Exposition on the Law and Also Its Application to Particular Subjects of Contract and Tort* (Chicago: Callaghan and Company, 1916), p. 3472-3473.
[501] *Illinois Central Railroad Company v. Maria Dodd*, 104 Miss. 643 (1913).

Even after the crystallization of tort law, treatises on evidence and of Jim Crow laws cited cases from this dissertation, turning Black experiences into potential citations in future briefs and legal opinions. Two treatises, one on the law of evidence and the other on communications between doctors and patients, cited *Willis* (1935) because the appellate opinion limited the types of relationships that counted as privileged communications between doctors and patients.[502] A white passenger, as you will recall, brutally beat Jessie Lee Garner on a bus in Jackson, Mississippi, causing her to miscarry her baby at the end of her second trimester. Garner, who was married, sued the bus company for $3,000 in damages on her behalf.[503] She and her lawyers argued that the bus company was negligent because it did not separate the races more stringently, and the company should have foreseen the violent attack upon the plaintiff. An all-white jury awarded Garner $1,000 for her suffering and loss, and Mangum's *Legal Status of the Negro* cited her case as a particular way to secure damages under Jim Crow Statutes.[504]

Mangum's *Legal Status of Negroes* laid out Jim Crow statutes and the possible legal challenges to those statutes. In his examination of partitions on buses, Mangum writes, "there have been a number of personal injury suits which have arisen under these motor vehicle statutes…In Mississippi, a motor carrier was held liable where it failed to furnish proper partitions between the white and colored compartments as required by statute."[505] Because some

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[502] Edwin Clarence Conrad, *Modern Trial Evidence* (St. Paul: West Pub. Co., 1956), p. 269-270; Clinton DeWitt, *Privileged Communications between Physician and Patient* (Springfield: Charles C. Thomas, 1958), p. 85.
[503] During that time, black women became leaders in their families and communities, and as historian Dylan Penningroth points out, black women "did much of the work that 'made' slaves' property." Black women were uniquely positioned to handle their own affairs because master broke up slave families through sales and because black women were an important part of the informal slave economy. Dylan C. Penningroth, *The Claims of Kinfolk: African American Property and Community in the Nineteenth-Century South* (Chapel Hill: University of North Carolina Press, 2003), 104, 82-83, 101, 105-106.
[504] *Mississippi Power and Light Co. v. Garner*, 179 Miss. 588 (1937); Mangum, *Legal Status of the Negro*, 220.
[505] Mangum, *Legal Status of the Negro*, 220.

states dictated that buses had to furnish partitions to separate the races, failure to do so could leave a bus company open to personal injury suits like the one Jessie Lee Garner brought. Not only could lawyers use this book to challenge Jim Crow laws, but legislators could also use the manual to avoid potential pitfalls in their legislation. Mangum's use of *Garner* (1937) cut both ways. Garner's case and experiences as a victim of Jim Crow violence could help other plaintiffs make their case, contribute to better-written Jim Crow laws, or help common carriers avoid potential lawsuits by installing more rigid partitions.

Additionally, according to Mangum's readings of statute and case law, Garner's case also sheds light on how state courts might think about bus companies' compliance with Jim Crow partition laws. In her case, Garner argued that even though there was a partition separating the races, it was not strong enough to protect her from her white attacker. The treatise cites the Mississippi State Supreme Court as deciding in *Garner* "that the posting of signs does not constitute sufficient compliance with the statutory requirement of adjustable screens. It was said that the signs did not come up to the stated specifications."[506] Although ordinary citizens might not have read treatises, their attorneys did, and treatises like Mangum's could be a vital tool in combatting Jim Crow or at least pursuing justice for white on Black violence. By citing cases like Garner's, Mangum's treatise furnished attorneys across the south and the country with avenues of attack and potential litigation strategies when representing Black victims. The treatise also served as a reference for state appellate justices and federal judges.[507]

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[506] Mangum, *Legal Status of the Negro*, 209.

[507] Mangum was cited in a 1948 California State Supreme Court case where a white plaintiff challenged the constitutionality of a state law prohibiting interracial marriage because it violated the Equal Protection Clause. In his dissent, Justice John W. Shenk argues that "Twenty-nine states in addition to California have similar laws. Six of these states have regarded the matter to be of such importance that they have by constitutional enactments prohibited

*Molding Doctrine*

From shaping doctrine on common carriers' duties to passengers to clarifying the rule of *respondeat superior*, these plaintiffs and their cases influenced the development of legal doctrine. While the first half of this chapter painted a picture of how an individual African American's experience permeated outward to other jurisdictions that cited these individuals' cases, this section of the chapter will illuminate how these cases shaped judges' understanding, interpretation, and articulation of case law. On appeal, justices reexamined points of law in each case and determined if the lower court had erred. With this determination, other local, state, and federal jurisdictions could use the appellate court's ruling to inform their interpretation of points of law and their reading of statutes. Additionally, other lawyers could cite these opinions in their arguments at trial and their briefs on appeal. African Americans' contribution to building tort case law cannot be captured by counting citations beyond their local communities and their state. Their contribution to tort case law can also be measured by how the cases collectively shaped an area of law when cited as leading cases or when cited together.

Beyond *Jopes* (1891), other cases considered here were influential in further defining when a master *was* liable for injuries caused by its servants, or at the very least, they helped push judges to debate the issue. *Douglass* (1892), *McAfee* (1893), *Latham* (1894), *Hunter* (1896), and

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their legislatures from passing any law legalizing marriage between white persons and Negroes or mulattoes. Several states refuse to recognize such marriages even if performed where valid." He cites Mangum to support his objection to interracial marriage. *Perez v. Sharp, 32 Cal. 2d 711* (1948). Perez (1948) was a landmark case in the law of "miscegenation." In a concurring opinion, Justice Roger J. Traynor cites Mangum in reference to the unconstitutionality of de jure residential segregation. *Fairchild v. Raines*, 24 Cal. 2d 818 (1944). Judge John Minor Wisdom cites Mangum in the majority opinion on the constitutionality of an "interpretation test" to vote in Louisiana. In footnote eight, the judge (or his clerk) writes "But discriminatory registration laws and practices are the most potent weapons to keep Negro voting down," followed by a reference to *The Legal Status of the Negro*. *United States v. Louisiana,* 225 F. Supp. 35 (1963).

*Green* (1922) were all cited in cases involving an employer's liability. Together, the Mississippi State Supreme Court used these cases (and others) to parse out the meaning of *respondeat superior*, also known as the master-servant rule, and the scope of an employer's liability for the acts of its employees. Jurists and litigators cited these precedents in a variety of ways.

Cases involving Black plaintiffs continued to limit vicarious liability.[508] Just three years after *Jopes* (1891), an African American man named Lincoln Latham brought a suit against the Illinois Central Railroad Company.[509] According to the Court's summary of the facts of the case, Latham was attempting to steal a ride on an Illinois Central Railroad Company train from Memphis, Tennessee, to Sardis, Mississippi, just fifty-three miles south of Memphis.[510] Latham attempted to avoid paying his fare by riding on the top of the train as a trespasser.[511] Latham, however, was spotted by the brakeman. Though it was the brakeman's duty to report trespassers to the conductor, on this day, the brakemen had other plans in mind. The brakeman demanded that Latham pay fifty cents in exchange for safe passage on the train from Memphis to Sardis. The brakeman did not intend for the fifty cents to cover Latham's fare, but instead, it would buy the brakeman's silence.

The brakeman, in this case, should have reported the trespasser to the conductor, but he did not. Additionally, the brakeman had the authority to eject Latham at the next stop, but he did

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[508] *Respondeat superior*, vicarious liability, and the master-servant rule all refer to a company or employer's liability for the actions of its employees while operating within the scope of his or her employment or job duties.

[509] 1880 United States Federal Census. https://search.ancestrylibrary.com/cgi-bin/sse.dll?_phsrc=sJx240&_phstart=successSource&usePUBJs=true&qh=j52barwPejq8AYyQx8A6zg%3D%3D&gss=angs-g&new=1&rank=1&msT=1&gsfn=lincoln&gsfn_x=0&gsln=latham&gsln_x=0&msypn__ftp=Mississippi,%20USA&msypn=27&catbucket=rstp&MSAV=0&uidh=a21&pcat=ROOT_CATEGORY&h=8394250&dbid=6742&indiv=1&ml_rpos=1

[510] *Illinois Central Railroad Company v. Latham*, 72 Miss. 32 (1894). Westlaw.

[511] *Illinois Central Railroad Company v. Latham*, 72 Miss. 32 (1894). Westlaw.

not. It is important to note that brakemen were not empowered to remove trespassers from a train while the train was in “rapid motion, so as to endanger his life.”[512] And “while the railroad company [was] not bound to the same degree of care” to trespassers, “it [was] nevertheless not exempt from responsibility to such strangers for injuries arising from its negligence or from its tortious acts.”[513] Here, the treatise writer not only argued that the company was liable for negligence, but also intentional torts, done out of malice. The brakeman threw Latham off of the moving train because he would not pay the fifty-cent extortion. Finally, the writer argues that the company is responsible for injuries that result from “the peremptory order of its servant, accompanied by threats.”[514] The 1893 treatise makes it clear that railroads had an ordinary duty of care to trespassers and that railroads and their employees were not permitted to threaten, injure, or kill trespassers.[515]

Despite the established law governing railroads’ treatments of trespassers, Latham’s case put the issue to the test. Latham was not a passenger on the train; rather, he was a trespasser. After the brakeman discovered Latham, the railroad company was within its rights to eject Latham once the train had slowed down or stopped at the nearest station. The jury that heard

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[512] Charles A. Ray, *Negligence of Imposed Duties, Carriers of Passengers* (Rochester, N.Y.: Lawyers' cooperative Pub. Co., 1893), 214. https://heinonline.org/HOL/P?h=hein.beal/negduca0001&i=292

[513] Ray, *Negligence of Imposed Duties, Carriers of Passengers*, 214. https://heinonline.org/HOL/P?h=hein.beal/negduca0001&i=292

[514] Ray, *Negligence of Imposed Duties, Carriers of Passengers*, 214. https://heinonline.org/HOL/P?h=hein.beal/negduca0001&i=292

[515] Remember, Black’s Law Dictionary defines ordinary care as care that “is usually exercised in the like circumstances by the majority of the community, or by persons of careful and prudent habits.” Henry Campbell Black, *Dictionary of Law Containing Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (St. Paul, Minn.: West Publishing Co., 1891), 173. https://heinonline.org/HOL/P?h=hein.beal/black0001&i=185 In Ray’s 1893 treatise, he notes that “a person cannot lawfully be ejected from a railroad train while in motion, so that his being put off would subject him to great peril. But removing a passenger from a train of cars while the train is moving very slowly is not negligence or wantoness per se.” Ray, *Negligence of Imposed Duties, Carriers of Passengers*, 213. https://heinonline.org/HOL/P?h=hein.beal/negduca0001&i=291

Latham's case in the Panola County Court seems to have followed the rule outlined in Ray's treatise—that companies had a duty to trespassers and could be held accountable for their employees' tortious acts. The jury ruled in favor of Latham, awarding him $2,500 in damages.[516] The Illinois Central Railroad Company appealed to the Mississippi State Supreme Court on the ground that the trial court had erred in not granting a peremptory instruction for the defendant company.[517]

Ray's treatise on negligence and common carriers should have resulted in an affirmance in Latham's favor since the brakeman had not shown Latham proper care. The treatise, however, did not take into consideration how personal prejudices and the political or economic context might affect a case's outcome. Latham was Black, and in 1894, white southerners were in the process of regaining control of the region. Stereotypes of African Americans ran rampant, some whites believed that African Americans had forgotten their place, and many feared a permanent disruption of the old racial order. Latham's race could have been one reason why the courts revisited this principle in a case involving a white plaintiff with similar facts, but the white plaintiff's case yielded a different outcome.

On appeal, the Mississippi State Supreme Court chose not to rule on brakemen's implied authority to eject passengers and trespassers, likely because two precedents would have pushed them to rule for Latham, a Black man. In the published opinion, Justice Alfred Whitfield argues that the Mississippi State Supreme Court was "not prepared to hold that it may not be the implied duty of a brakeman to eject trespassers," even though other state courts were ruling on the issue.

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[516] *Illinois Central Railroad Company v. Latham*, 72 Miss. 32 (1894). Nexis Uni.
[517] According to Black's Law Dicitonary, a peremptory instruction is the "instruction of a judge to the jury that will point them in the direction of a verdict." https://thelawdictionary.org/peremptory-instruction/

If the Mississippi State Supreme Court had followed New York and Kansas and ruled that there was an "implied authority" vested in the brakeman to eject passengers, then the brakeman would have acted within the scope of his duty when he ejected Latham.[518] The railroad company would have been liable for the brakeman's tort if there was an implied duty. Despite case law acknowledging an implied authority vested in brakemen to eject passengers, the Mississippi State Supreme Court was not prepared to rule in line with precedent and would leave the matter open.[519]

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[518] The Court of Appeals of New York and the Kansas State Supreme Court had ruled that there was an implied authority vested in brakemen to remove or eject passengers or trespassers. *Hoffman v. The New York Central and Hudson River Railroad Company*, 87 N.Y. 25, 28 (1881). Henry Hoffman was a white "infant;" he was a child likely between 1 and 2-years-old when a railroad employee allegedly kicked him off a moving train. The Superior Court of the city of New York ruled in favor of Hoffman and Court of Appeals of New York affirmed the Superior Court's decision. 1880 United States Federal Census. *Kansas City, Fort Scott & Gulf Railroad Company v. Kelly*, 36 Kan. 655, 14 P. 172 (1887). William Kelly was white and sustained injuries when a brakeman made him jump from a moving train. He was awarded $4,000 in damages. When the railroad appealed, the court affirmed the Johnson District Court's decision. 1880 United States Federal Census. West Virginia, on the other hand, had ruled that there was no implied authority vested in brakemen to eject passengers, which means that the brakeman's actions in *Latham* (1894) would not have been within the scope of his duty. *Bess v. Chesapeake & Ohio Railroad Company*, 35 W. Va. 492 (1891). James Walter Bess was a 9-year-old white boy who sued a railroad company by next of friend for $12,000. Bess alleged that brakeman kicked his hand as he was trying to climb off a train, which caused his foot to get stuck under the wheel that crushed his foot. The West Virginia Supreme Court of Appeals argued that the lower court found for Bess in error. Citing Horace Gary Wood's Treatise on the Law of Railroads, the court argued that the trespassers could only recover if "but for the act of a brakeman of the train, who, without the direction of the conductor, should remove a trespasser from the train, the company would not be liable, unless express authority to do an act to which the act complained of is incident is shown "but for the act of a brakeman of the train, who, without the direction of the conductor, should remove a trespasser from the train, the company would not be liable, unless express authority to do an act to which the act complained of is incident is shown." Because the conductor did not tell the brakeman to remove Bess from the train, Wood's treatise and the West Virginia Supreme Court of Appeals argued that the brakeman was not acting within the scope of his employment. It is unclear if or how Bess' class played into the court's decision. His father was a farm laborer, and his mother was not employed. Like Latham's case, the appellate court could have cited precedent to affirm the lower court's ruling for Bess. Instead the case was reversed and remanded.

Here, Justice Whitfield seems to be aware that by following West Virginia, the court would be setting a precedent that could bar white and black plaintiffs from recovering when they were ejected by brakemen. By following New York and Kansas, the court would have set a precedent that benefitted black and white victims. By focusing on the extortion and determining whether that was within the scope of the brakeman's employment, the court could avoid finding for Latham and avoid setting a precedent that it was unsure about. *Illinois Central Railroad Company v. Latham*, 72 Miss. 32 (1894). Westlaw.

[519] *Illinois Central Railroad Company v. Latham*, 72 Miss. 32 (1894). Westlaw.

Instead of focusing on the brakeman's implied authority, the court focused on whether the brakeman acted in the scope of his employment when he decided to charge Latham fifty cents to ride the train illegally. In Justice Alfred Whitfield's view, "in no just reasonable view could it be held that the acts of the brakeman" were done "in his master's business" because the brakeman did not report the trespasser to the conductor and tried to extort money from Latham.[520] Because the brakeman did not eject Latham when he discovered Latham stealing a ride or put him off at the nearest station, he could not have acted within the scope of his duty when he ejected the plaintiff, causing his injuries. Justice Whitfield avoided ruling in favor of Latham, a Black man, and set a precedent that might hurt white trespassers and passengers in the future by arguing that the question in Latham's case was "whether the brakeman…was acting for the company, or in the accomplishment solely of his own, independent, willful, malicious, and wicked purposes; using his authority to eject trespassers…as a mere cover under which to extort money."[521] The Mississippi State Supreme Court used Latham's experience, injury, and case to create new law while declining to follow precedents that might have favored Latham's claim.[522]

Justice Whitfield chose not to follow two precedents set in other states, to reverse and remand Latham's case. He also actively chose not to follow West Virginia's precedent denying brakemen's "implied authority" to eject passengers. The Court apparently made case law to suit its objectives. Treatises and case law already established that railroad companies and their employees owed trespassers a duty of ordinary or reasonable care and that if an employee were

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[520] *Illinois Central Railroad Company v. Latham*, 72 Miss. 32 (1894). Westlaw.
[521] *Illinois Central Railroad Company v. Latham*, 72 Miss. 32 (1894). Nexis Uni.
[522] *Illinois Central Railroad Company v. Latham*, 72 Miss. 32 (1894). Nexis Uni. I am making the distinction between Westlaw and Nexis Uni here because Nexi Uni offers parts of the brief submitted by appellants and appellees.

acting within the scope of his responsibilities—explicit or implicit—the master, or the railroad, would be held liable. For Whitfield to rule against this Black plaintiff, he had to acknowledge the brakeman's implied authority to eject trespassers and then accept the employer's argument that in this case the "brakeman use[d] his authority as a mere cover for the accomplishment of an independent and wrongful purpose of his own."[523] Whether the brakeman used his implied duty to hide his attempted extortion seems to be a matter of fact for the jury to decide, not a matter of law for the state supreme court to decide. Maybe the brakeman ejected Latham after Latham would not pay because he saw that he could not make money from the situation, and he wanted to carry out his duty to eject trespassers. Despite the attempt to extort money from the trespasser, it was still his duty and responsibility to safely eject Latham.

Justice Whitfield's narrow interpretation of what was within the scope of an employee's duties, and his decision to reject other state courts' more liberal interpretations, affected Latham's immediate circumstances, but also the lives of other victims whose cases hinged on this narrow reading. Whitfield's interpretation influenced cases involving Black and white plaintiffs and leaves readers to question his motives. Whether Whitfield was motivated by racism, classical legal thought, or something else, the precedent set by *Latham* (1894) affected at least five other plaintiffs whose cases were appealed to the Mississippi State Supreme Court, two of whom were African Americans. Though the precedent established by *Latham* (1894) stood for a decade, that did not keep the Mississippi State Supreme Court from revisiting the issue of what was within the scope of an employee's duty and vicarious liability.

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[523] *Illinois Central Railroad Company v. Latham*, 72 Miss. 32 (1894). Westlaw.

The cases considered in this section, when read alongside one another, highlight the significance of Black plaintiffs' cases in limiting the scope of an employer's responsibility for torts committed by its employees in Mississippi. In 1904 when a white plaintiff, Thomas B. Barmore, brought a case before the Warren County Circuit Court, Mississippi's judiciary had to revisit the master-servant rule and the precedent set by *Latham* (1894). According to Barmore, he was hit or grazed by an employee of the Vicksburg, Shreveport, and Pacific Railway Company while riding the company's tricycle back to the train after searching for firewood.[524] In Barmore's case, the court had to decide if the employee acted within the scope of his employment when he hit the plaintiff. According to the facts of the case, the employee gathered fuel for the water pump. He then decided that he should also collect fuel for his personal use while on duty, though he did not abandon his duty as an employee of the railroad company.[525] The Mississippi State Supreme Court argued that after he had gathered his personal fuel, "he again started with the tricycle to retrace his course back to the spot where his duty to his master called him."[526] Before he reached the train, "he negligently ran the tricycle against and seriously injured the appellant, who was walking across a trestle and could not avoid the collision."[527] The employee allegedly hit the victim on his way back to the railroad's fuel gathering location.

A decade after delivering his creative interpretation of the common law of common carriers and the master-servant rule, Justice Whitfield still sat on the Mississippi State Supreme Court. He dissented in *Barmore* (1904). Unconvinced by the legal reasoning used to decide *Barmore* (1904) in favor of the appellant victim, Justice Whitfield relied on his majority opinion

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[524] *Barmore v. Vicksburg, Shreveport, and Pacific Railway Company*, 85 Miss. 426 (1905). Westlaw.
[525] *Barmore v. Vicksburg, Shreveport, and Pacific Railway Company*, 85 Miss. 426 (1905). Westlaw.
[526] *Barmore v. Vicksburg, Shreveport, and Pacific Railway Company*, 85 Miss. 426 (1905). Westlaw.
[527] *Barmore v. Vicksburg, Shreveport, and Pacific Railway Company*, 85 Miss. 426 (1905). Westlaw.

in *Latham* (1894). According to Whitfield's dissent, the majority opinion in *Barmore* (1904) did not make sense, because "The doctrine…on this subject, needs no restatement, nor do I understand my Brethren to differ in the least from the doctrine announced in the three cases from our own court above referred to."[528] As far as he was concerned, he had already settled this issue on behalf of the Mississippi State Supreme Court.

*Latham* (1894) informed judicial interpretation and, in turn, real people's lives, both Black and white. Although Justice Whitfield tried to couch his ruling against a Black plaintiff in (thin) legal logic, when the issue arose in a case involving a white plaintiff, the Mississippi State Supreme Court chose to revisit the issue. It is unclear whether it was the entire bench that hid behind the thin legal reasoning in *Latham* (1894) or just Justice Whitfield, and it is also unclear whether the court ruled in favor of the appellant railroad company because Latham was Black. In Justice Whitfield's dissent in *Barmore* (1904), he applies the same legal reasoning as in *Latham* (1894). Did Whitfield adhere to classical legal thought? Did the Mississippi State Supreme Court hide behind Whitfield's classical interpretation in his narrow reading of doctrine in *Latham* (1894) to rule against a Black plaintiff? What role, if any, did Latham's Blackness play in the court's ruling on appeal?

If Justice Whitfield were a student of classical legal thought, then he considered his role as a judge apolitical, and believed in the autonomy of the law. During the period when Justice Whitfield sat on the Mississippi State Supreme Court, legal realists started to challenge nineteenth-century legal orthodoxy. Horwitz argues that nineteenth-century jurists believed in the "'rule of law'—the conviction that there existed a structure of impartial and self-executing

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[528] *Barmore v. Vicksburg, Shreveport, and Pacific Railway Company*, 85 Miss. 426 (1905). Westlaw.

norms" called the law.[529] These norms were independent of people's political views and racial prejudices. According to legal realists, however, "classical legal thought was neither neutral, natural, or necessary."[530] But perhaps Justice Whitfield believed in classical legal orthodoxy wholeheartedly. If so, this would explain why he remained consistent in his tenuous legal reasoning for more than a decade. To Whitfield, the narrow scope of an employee's duties would apply in cases involving Black and white plaintiffs alike. Perhaps it was the other justices on the bench who treated Latham and Barmore differently because of their race.

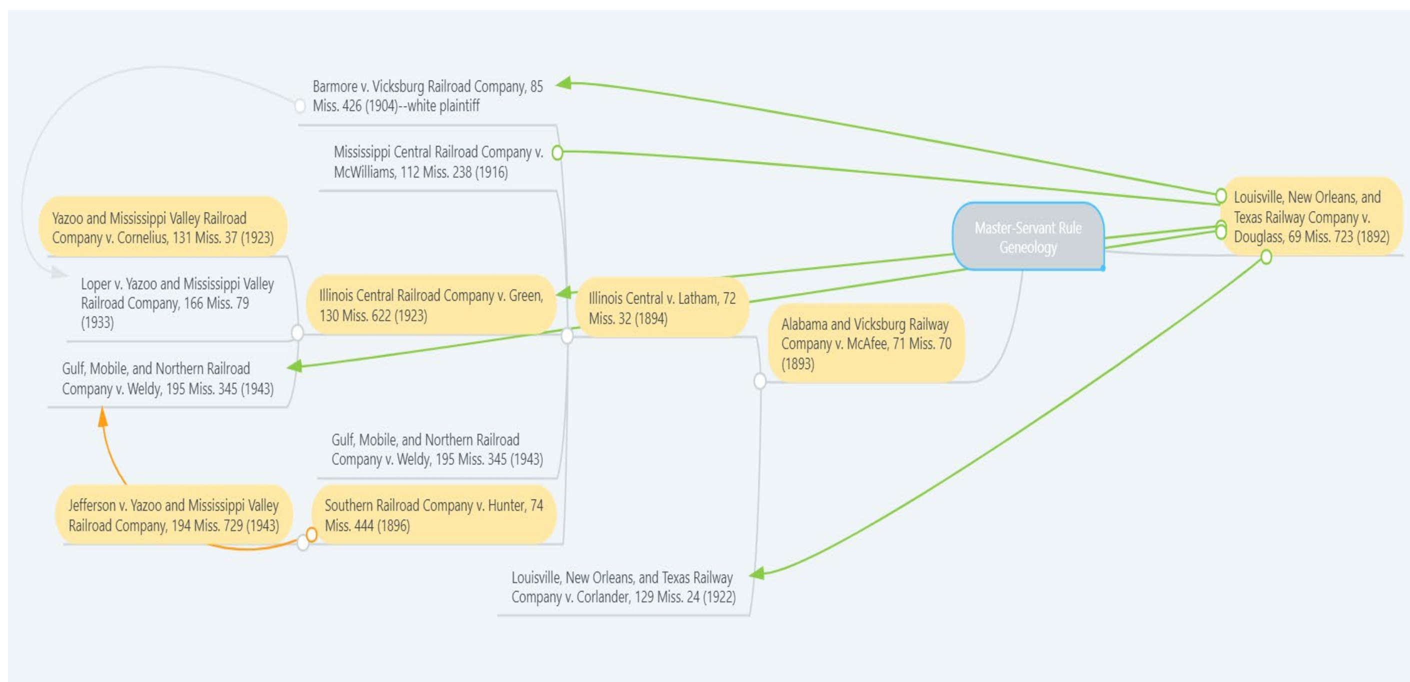


Figure 3: Cases in yellow bubbles are cases considered in this dissertation and have Black plaintiffs. White plaintiffs brought the suits that are not highlighted in yellow. Cases with green arrows cited *Douglass* (1892). Cases with orange arrows cited *Hunter* (1896) but were not direct offshoots from the case.

If this was, in fact, a situation where the court ruled on behalf of an appellant railroad company in *Latham* (1904) using thin legal reasoning because the plaintiff/appellee was Black, it

[529] Morton Horowitz, *The Transformation of American Law, 1870-1960: The Crisis of Legal Orthodoxy*, (New York: Oxford University Press, 1992), 4.
[530] Horowitz, *The Transformation of American Law, 1870-1960*, 6.

further shows how African Americans' race and lived experiences, influenced the contours of tort doctrine. The citation map above shows the genealogy of the Mississippi State Supreme Court's opinion on the master-servant rule. For at least a decade, the court interpreted the scope of employment in very narrow terms, going against the doctrine already restated in treatises. Blackness might have affected this legal reasoning. In the case that Blackness did not affect the court's rulings and precedents on the reading of the scope of employment, it is still true that African Americans' suits against railroad companies under the doctrine of vicarious liability and duty of care collectively affected and shaped doctrine.

*Erasure, Transcendence, and Importance*

According to Robert Gordon, when studying legal history, we must consider the "idea that the most basic ways in which people conceive of the natural and social universes...are culturally and historically contingent." The cases considered in this chapter are key because of their effect on case law, and because these plaintiffs' cases shaped case law despite their living under an oppressive social and legal regime.[531] While it might seem inconsequential that African Americans sued under tort law like white Americans, it is critical to remember the contingency of the period. Jim Crow could have limited African Americans' agency within civil courts, but something else happened. African Americans used Jim Crow civil courts to their advantage. Although Jim Crow might have limited their ability to recover damages in some cases because of judges' or jurors' prejudices, the Jim Crow regime did not completely bar African Americans from seeking legal recourse. Criminal courts might have failed to prosecute whites for violence

[531] Robert Gordon, "Critical Legal Histories," *Stanford Law Review* 36 (1984), 98.

against Black passengers, but Black plaintiffs were able to petition for damages in civil courts. And Black people's experiences were important to the evolution of tort law.[532]

That African Americans' lived experiences played out in county courtrooms, and made their way into treatises is important because, except for Mangum's *The Legal Status of the Negro*, none of treatises that cited these cases mentioned the plaintiff's race. While it may have been a professional norm to exclude the race of the victim, this tendency erased Black Southerners' specific social, legal, and historical context from our understanding of the development of tort doctrine and legal doctrine more broadly. Because of African Americans' unique positionality in the Jim Crow South, regardless of socioeconomic status, it is important to consider these African Americans' lived experiences when studying tort law. Black people's experiences helped shape tort law, limiting the scope of employment and vicarious liability. Black people were an integral part of tort law's development.

*Conclusion*

From the Mississippi State Supreme Court to federal courts to state courts throughout the United States, African Americans used civil courts to make claims about perceived injuries. Black Americans' decision to sue, their testimonies about their experiences, and the outcomes of their suits contributed to case law and doctrine. Treatises and recorded opinions that cited these cases enshrined Black experiences in the corpus of tort case law. Black plaintiffs' agency within civil courts allowed them not only to gain recourse the injuries complained of but also to become makers of law.

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[532] Robert Gordon, "Critical Legal Histories," *Stanford Law Review* 36 (1984), 75.

Though it is the lawyer's and judge's job to strip cases down to the facts and relevant points of law, much is lost if they do so in isolation or without considering context. Legal historians must recover and engage with the context that attorneys and jurists so readily strip away. What makes the cases considered in this chapter remarkable is that African Americans helped shape and build tort case law under one of the most repressive anti-Black legal regimes in American history (aside from slavery). Sometimes African Americans' legal options were limited by their material circumstances, but they were also limited by their historical circumstances.[533] Living in the South under Jim Crow made it difficult for them to seek legal recourse for violent encounters that might have otherwise been prosecuted as offenses against the public peace, or crimes. Despite the limitations set by Jim Crow, Black Americans still brought civil suits for incidents involving white-on-Black violence and achieved varying success in civil courts.

[533] I say that black people's material circumstances did not always limit their ability to sue because I found countless situations where black people sued in forma pauperis. When they did have to post bond to sue and did not have the funds available, black people sometimes found white people to post bond on their behalf.

# Conclusion

Four hundred years after the first people of African descent arrived in North America, Black Americans still must prove their humanity, worth, and value as people and members of the United States body politic. The Black Lives Matter Movement and Black activism on the social media platform, Twitter, hold new meaning when considered within a longer historical context of white-on-Black violence, violations of Black Americans' rights of personhood, Black civil litigation, policing, and Black print culture. Using the written word as a form of protest and activism and using civil litigation as a weapon against a racist criminal justice system has its roots in the nineteenth century.

## *Research Questions & Argument*

This dissertation has examined the historical roots of Black Americans' legal and written responses to white-on-Black violence and violations of Black people's rights of personhood, including their right to live free from physical abuse or coercion without due process of the law.[534] The project traced the historical roots of African Americans' use of civil litigation to combat violence resulting from interracial altercations back to the 1880s and the beginning of the Jim Crow Era. It continued throughout the Jim Crow Era. In searching for the roots of Black Americans' use of civil litigation as a weapon against violent encounters, this dissertation uncovered a Black legal culture. How did Black Americans convince white Southerners to award them damages for violence that was characteristic of the Jim Crow Era? How did Black people

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[534] Welke, *Law and the Borders of Belonging in the Long Nineteenth Century United States*, 3.

even know when they had viable legal claims, and how did they find attorneys willing to work with them in the hostile Jim Crow South?

Black people took advantage of the legal possibilities of tort law as they sought recourse for abuse that was characteristic of Jim Crow. Rather than submit to the violence that white Southerners (and sometimes white Northerners) used to uphold white supremacy and Jim Crow, Black people wielded civil law to advance their interests and pursue justice. African Americans developed tropes and performed respectability in court. They appealed to white paternalism by invoking the "old ignorant negro" stereotype and appealed to white sensibilities by arguing that companies or municipalities owed them a duty of care because of their legal status as passengers, citizens, or even as trespassers. These plaintiffs demonstrated their legal savvy by hiring attorneys to argue that they were respectable passengers or law-abiding citizens.

One way that Black Americans learned when they might have viable legal claims was to write to Black newspapers asking for legal advice or to read columns and articles covering legal developments across Black America. Black journalists and editors included legal cases, offered legal advice, and wove the law of tort into the columns of their newspapers. From concise case summaries to in-depth coverage to legal columns and comics about suing, Black newspapers found ways to teach Black readers about the law. The law permeated Black culture, and Black newspapers helped facilitate the transformation of a Black legal culture that began in the antebellum period and transformed under Jim Crow.[535]

[535] Kimberly Welch, *Black Litigants in the Antebellum American South* (Chapel Hill: University of North Carolina Press, 2018).

Other Black people sought legal advice from the National Association for the Advancement of Colored People. Black people in search of legal advice often wrote to the NAACP's National Office in New York City. Some bold letter-writers even addressed their letters to Thurgood Marshall himself. Although the NAACP had to turn away many Black Americans seeking legal advice or representation, it did offer some practical solutions in some cases. The NAACP referred Black letter-writers to their local branches, some of which were headed by Black attorneys, and sometimes to local white attorneys who were a part of the organizations' underground legal network. In addition to pointing Black people seeking legal advice to sympathetic cooperating attorneys, the NAACP also offered legal advice when it could and at least one case managed fraught attorney-client relationships. Though the historiography has painted the NAACP as abandoning ordinary Black Americans' legal needs, this dissertation shows that the NAACP extended itself to ordinary Black people when it had referrals or legal advice readily available.

In drawing out the contours of a distinct Black legal culture, this dissertation has uncovered tort cases involving African Americans that contributed to shaping tort legal doctrine. Black plaintiffs' race and their lived experiences became a part of the foundation of tort case law, with each case becoming a building block. Some of the lawsuits considered in this dissertation helped articulate the contours of case law in Mississippi. Jurisdictions across the country used other suits discussed in this dissertation to bolster legal arguments. Still others would become building blocks of tort doctrine as treatise-writers cited these cases to support their articulations of specific areas of law. These findings should alter how we think about Black people's contribution to the development of legal doctrine, specifically tort law.

*Sources, Methods, & Limitations*

This dissertation used a variety of legal and cultural sources to spotlight Black legal culture under Jim Crow. Chapter one used case reporters, published opinions, case briefs, and trial transcripts of Mississippi State Supreme Court cases to examine Black people's litigation strategies. I read these materials as legal documents that explained Black plaintiffs' causes of action, the facts of the case, and the legal grounds for appeal. As legal documents, these sources revealed Black plaintiffs' legal maneuvers and strategies for winning damages. As cultural artifacts, trial testimony explained the scripts that Black plaintiffs used, and the social expectations Black plaintiffs tried to embody to convince white juries to rule in their favor. Read as cultural artifacts, these cases highlight Black voices, even if the stenographer and their white attorneys mediated those words. Case records also highlight Black legal agency under one of the most repressive legal regimes in United States History (second only to indigenous genocide and chattel slavery).

Chapter 2 uses Black newspapers from across Black America to tell a national story about Black legal culture under Jim Crow. Newspapers transported news involving Black people, ideas created by Black people, and information of interest to Black Americans in and out of the South, metaphorically and literally. These papers were also forums where Black people discussed the law, white violence, court cases, and their legal agency. Black newspapers offered a foil against which potential Black litigants could compare their experiences and a forum where journalists could call Black America to action. Black communities were not homogeneous, but

Black newspapers' discussions of law and suing for damages were a part of a longer journalistic tradition of calling for solidarity.

The third chapter of this dissertation examined Black voices and Black legal culture through letters between ordinary Black Americans from across the United States and the National Office of the NAACP. These letters showed that Black people reached out to the NAACP about a variety of legal issues, including lynchings and cases involving white violence. People provided the NAACP with the details of their experiences. The NAACP's responses to Black letter writers varied greatly. Those responses show that the NAACP did not merely brush off people who the organization deemed unfit for test cases. It offered Black people practical help, even if that meant reaching out to local lawyers or cooperating attorneys.

Chapter 4 used case reporters published opinions, and treatises to examine how jurists and legal scholars used the cases from chapter one to bolster their legal arguments in case rulings or treatises. By examining how legal professionals used Black suits, we can begin to think about Black people's role in shaping the contours of law. Black people had race-specific experiences of Jim Crow, and they brought those experiences with them into the courtroom. Furthermore, those experiences shaped their legal claims and their performances, giving birth to precedents that judges could interpret and re-interpret to create new law. Jim Crow and Black Americans left their mark on tort doctrine. Those marks are still visible if one knows where to look.

Using appellate court cases, especially those from Mississippi, which included the original trial transcripts, was an excellent first step towards seeking an understanding of Black people's litigation strategies. As I continue to revise this work, I aim to use the same method for one other state to help with the issue of representativeness. Furthermore, to supplement these

appellate cases, I intend to use what I have learned about southern courts, clerks, and administrative systems to find more civil cases involving white-on-Black violence in county courthouses.

Using digitized newspapers and keyword searches had advantages and disadvantages. Keyword searches made it possible to search large swaths of digitized Black newspapers. Still, the quality of the digitization and optical character recognition limited my ability to find articles on court cases. There was also the issue of digitization during my research timeline. Some newspapers would not become available to me until right before my draft was due. There is a possibility that I missed articles, issues, and papers, or that I prematurely or inadvertently shut off avenues of inquiry.

*Contribution to the Field*

This dissertation has started to historicize trends in Black people's use of civil law in the decades following Reconstruction. Not only did Black Americans use civil courts to seek recourse for Jim Crow violence, but they also employed similar tactics to seek legal remedies for the extrajudicial killings of unarmed Black people. Tort law and the common law of common carriers were not merely means for opposing segregation or Jim Crow laws; they were weapons Black Americans used to seek legal acknowledgment of white people's violations of their rights of personhood. Even though violence was a critical aspect of Jim Crow, Black people did not always submit to such treatment. Even if they could not lynch white attackers, as one newspaper article suggested, they could use civil courts to ask for financial compensation. One hundred

years later, Black people are still trying to persuade white prosecutors, white judges, and white jurors that Black lives, Black experiences, and Black bodies have value.

This work also outlines the ways that national organizations like the NAACP and Black newspapers helped shape a Black legal culture. Black newspapers offered a discursive space for Black people to seek and share legal knowledge and information. Still, they also physically transported news and legal knowledge in and out of the South. Organizations like the NAACP, despite their preoccupations with their litigation agenda, did play a role in assisting ordinary Black people in pursuing legal remedies against whites. Although the tort suits from this dissertation were not a part of a larger movement or formal resistance to segregation, the web of legal networking woven by Black newspapers and the NAACP is essential to our understanding of Black legal culture and Black legal agency under Jim Crow.

Finally, this dissertation invites jurists and legal professionals to think critically about Black people's contributions to case law, specifically race-neutral areas of law like torts. With a handful of exceptions, like Welke and Milewski, tort scholars seem to have forgotten Black Americans. Black people were just as much a part of the development of tort doctrine as railroad corporations and injured workers. When one considers that tort law came of age during Jim Crow, one must ask what role race, white supremacy, and Black experiences of Jim Crow played in shaping tort doctrine.

*Work for Future Researchers*

This project has uncovered what appears to be a distinctive Black legal culture under Jim Crow. Black plaintiffs used Black newspapers and mutual aid organizations like the NAACP to

seek legal advice and pursue civil suits for incidents that involved violations of their rights of personhood. They used tort law and the common law of common carriers to hold railroad and bus companies, surety companies, and individual white people accountable for negligence, civil assault, civil battery, personal injury, and wrongful deaths. Black newspapers and the NAACP worked with Black Americans, educating them on the law, covering cases at hand, and identifying and referring Black people to attorneys who were sympathetic to Black claims. Together, Black plaintiffs, Black newspapers, and the NAACP helped shape Black legal culture under Jim Crow.

While the NAACP and Black newspapers were two networking agents that connected potential Black litigants with sympathetic or willing attorneys, I suspect Black people's local legal networks were also robust. This dissertation has begun the work of trying to understand how Black victims knew when they could sue and how they found attorneys willing to assist them, but there is still work to be done. How did Black victims who did not write the NAACP or Black newspapers for assistance know which white attorneys could be trusted? What did Black Americans' legal networks look like on the ground in local communities? I suspect there is a rich web of local interracial relationships that also helped facilitate Black litigation for violations of their rights of personhood.

There is still much to uncover. By looking at cases at the county level, researchers may be able to find more lawsuits like the ones considered in this dissertation. These cases will be more representative of the cases in a state. Only exceptional cases or cases where there was a ground for appeal could make it to an appellate court like the Mississippi State Supreme Court. In addition to offering more suits and a more representative sample, examining cases at the

county level might shed light on local relationships and networks connecting potential Black litigations and attorneys. Maybe some local attorneys had a reputation of representing anyone, regardless of race. Or, maybe there were more local attorneys like Judge Teat, who had undercover ties with the NAACP and Black communities.

Finally, future scholars can take a more in-depth look at the idea of influence presented in chapter 4. My main goal in the chapter was to draw attention to Black plaintiffs' tort cases as building blocks of tort law. But what the research in this dissertation does not answer more concretely is to what degree did Black plaintiffs' suits actively change the direction of tort doctrine, and how important were they to building tort law beyond citations and expanding or limiting vicarious liability.

*Connecting Past and Present*

Black activism in response to white people's violations of Black Americans' rights of personhood and Black discourse about the law in print media have their roots in the Jim Crow Era if not earlier periods of Black American history. That is not to conflate the Civil Rights Movement and other parts of the Black freedom struggle, like the Black Lives Matter Movement, but it is to say that Black activists have used similar tools to affect change.[536] In the twenty-first century, Black Twitter has become a forum for legal education, a space for written expressions

[536] This line of argument engages with Long Civil Rights Movement debates. For more on this see Jacquelyn Dowd Hall, "The Long Civil Rights Movement and the Political Uses of the Past," *The Journal of American History* 91, no. 4 (2005): 1233-263. And for a critique of the Long Civil Rights Movement argument, see Sundiata Keita Cha-Jua and Clarence Lang "The 'Long Movement' as Vampire: Temporal and Spatial Fallacies in Recent Black Freedom Studies," *The Journal of African American History* 92, no. 2 (April 1, 2007): 265–288. See also, Tomiko Brown-Nagin, "The Long, Broad, and Deep Civil Rights Movement: The Lessons of a Master Scholar and Teacher," in *Making Legal History: Essays in Honor of William E. Nelson*, ed. Daniel J. Hulsebosch and R. B. Bernstein (New York: New York University Press, 2013), 140-61.

of protest, and a vehicle for transporting legal knowledge virtually. Activists, scholars, and attorneys share information about protestors' rights, offer commentary on litigation and legislation, and organize protests and direct action on Twitter. In the nineteenth and twentieth centuries, Black newspapers served Black communities in this capacity.

Additionally, twenty-first-century activists and victims have resorted to using Black Twitter, and social media more broadly, to connect victims of oppression, police brutality, hate crimes with sympathetic attorneys. Those willing to serve victims encourage their followers to connect them with potential litigants, and allies and activists post the contact information of willing attorneys. When activists find themselves detained, disappeared, or arrested for protesting, other allies and activists solicit the help of attorneys and civil rights organizations to help locate, protect, and advocate for activists who have found themselves in police custody. Black Twitter serves as a vehicle for legal knowledge and a legal network, connecting attorneys with laypeople.

This dissertation also historicizes Black people's use of tort law to gain a semblance of justice for violations of their rights of personhood. Altercations, where white people had violated Black Americans' persons through violence or coercion was at the heart of many of these cases, even though the plaintiffs sued under tort law and the common law of common carriers. White violence was pervasive under Jim Crow, and prosecutors rarely prosecuted white attackers. Still, Black Americans used civil law and civil courts to seek justice or at least compensation for their physical and mental suffering as well as property damage.

Systems of oppression used to subordinate Black Americans have adapted and evolved since Jim Crow. Still, prosecutors and the criminal justice system are slow to hold white

aggressors, especially white police officers, accountable for violence against and the lynching of Black Americans. Over one hundred years later, Black victims and their families must still seek justice for violations of their rights of personhood in civil courts.

The families of recent high-profile cases of extrajudicial killings by police officers often filed wrongful death or civil rights suits in response to their loved one's murder. Bereaved families and friends sued common carriers like Bay Area Rapid Transit; corporations like Walmart; and local municipalities like New York City; the City of Ferguson; North Charleston, South Carolina; the City of Baltimore; the City of Chicago; Cleveland, Ohio; Tulsa, Oklahoma; East Pittsburgh, Pennsylvania; Arlington, Texas; Beavercreek, Ohio; and Waller County, Texas. They also sued white police officers, police chiefs, and city council members. Some officers were convicted, but grand juries chose not to indict or juries acquitted many of their charges.[537]

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[537] "Fruitvale Station trial ends as Bart settles with Oscar Grant's Friends," *The Guardian*, May 21, 2014. https://www.theguardian.com/world/2014/may/21/fruitvale-station-oscar-grant-trial-settlement (accessed June 8, 2020). Maura Dolan, "Father of Oscar Grant loses lawsuit against BART officer," *Los Angeles Times*, July 1, 2014. https://www.latimes.com/local/lanow/la-me-ln-bart-lawsuit-20140701-story.html (accessed June 8, 2020). J. David Goodman, "Eric Garner Case Is Settled by New York City for $5.9 Million," *The New York Times*, July 13, 2015. https://www.nytimes.com/2015/07/14/nyregion/eric-garner-case-is-settled-by-new-york-city-for-5-9-million.html (accessed June 8, 2020). "Michael Brown's Family Received $1.5 Million Settlement With Ferguson," NBC News, June 23, 2017. https://www.nbcnews.com/storyline/michael-brown-shooting/michael-brown-s-family-received-1-5-million-settlement-ferguson-n775936 (accessed June 8, 2020). Greg Botelho and Sonia Moghe, "North Charleston reaches $6.5 million settlement with family of Walter Scott," CNN, October 9, 2015. https://www.cnn.com/2015/10/08/us/walter-scott-north-charleston-settlement/index.html (accessed June 8, 2020). "Jon Swaine," Baltimore to pay Freddie Gray's family $6.4m in wrongful death settlement," *The Guardian*, September 8, 2015. https://www.theguardian.com/us-news/2015/sep/08/baltimore-freddie-gray-family-wrongful-death-settlement (accessed June 8, 2020). Aamer Madhani, "Chicago cop Jason Van Dyke sentenced to more than six years for murder of Laquan McDonald, *USA Today*, January 18, 2019. https://www.usatoday.com/story/news/2019/01/18/laquan-mcdonald-jason-van-dyke-sentencing/2602213002/ (accessed June 8, 2020). Monica Davey, "Chicago Pays $5 Million Over Killing of Teenager," *The New York Times*, April 16, 2015. Jon Swaine, Oliver Laughland, and Afi Scruggs, "Cleveland agrees to pay Tamir Rice family $6m over police shooting," *The Guardian*, April 25, 2016. https://www.theguardian.com/us-news/2016/apr/25/cleveland-tamir-rice-family-lawsuit-settlement (accessed June 8, 2020). Lauren Hodges, "Cleveland To Pay $6 Million To Settle Tamir Rice Lawsuit," NPR, April 25, 2016. https://www.npr.org/sections/thetwo-way/2016/04/25/475583746/cleveland-to-pay-6-million-to-settle-tamir-rice-lawsuit (accessed June 8, 2020). Alanne Orjoux, "Philando Castile's family reaches $3 million settlement wi,th city of St. Anthony," CNN, June 26, 2017. https://www.cnn.com/2017/06/26/us/philando-castile-family-settlement/index.html (accessed June 8, 2020). Joshua

For those left to mourn Black men and women murdered by police, civil lawsuits seem to offer promise for a semblance of justice. It seems as though cities and counties would rather pay out millions of dollars than admit wrongdoing on the part of police officers or prosecute them to the fullest extent of the law and punish them for their crimes.

The plaintiffs in this dissertation did not sue to become a part of a movement, and I am not sure that the families of twenty-first-century victims saw their civil litigation as a part of a larger movement. I do, however, believe that twenty-first-century bereaved families and friends have chosen to use their platform—through media attention—and their stories, not necessarily their litigation, to galvanize a country towards change. This change was made possible by litigation strategies and social networking that predated Black Lives Matter or the current iteration of the Black freedom struggle.

Jim Crow left yet another stain on American history, and despite the ways that white America tried to oppress Black America, Black Americans found a way to resist. As we, Black Americans, continue to resist our oppression and the oppression of other minorities, it is essential to remember that our methods and our legal culture were born in slavery and matured under Jim

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Crow. In the same way that white supremacy and racism manifest themselves differently in different historical periods, so too do our methods of resistance. Before Oscar Grant, Eric Garner, Michael Brown, Walter Scott, Freddie Gray, Laquan McDonald, Tamir Rice, Philando Castile, Terence Crutcher, Antwon Rose II, O'Shae Terry, John Crawford, Sandra Bland, Breonna Taylor, George Floyd, and the countless other unarmed Black people who were killed by twenty-first-century police officers, there was Aaron Royston, Mary Ward, Wesley Crayton, Peter Williams, Elsie Britton, Roger McCoy, Eugene Green, Lawson Burford Jr., E. L. Varner, and Jessie Lee Garner. Before there was Black Twitter, there was a thriving, dynamic, opinionated Black press that saw legal education as a part of its mission. Black people have shaped every part of this country, even the law, even under Jim Crow.

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