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COVER IMAGE — Illinois Central Depot, Hattiesburg, Mississippi. Courtesy of the Railroad Depot Post Card Collection at the Mississippi Department of Archives and History.

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"Look for Me in the Spring:" Migration Clubs and the Black Metropolis

by Eve Wade

Sometime after 1910, Mary and George Washington stood at the Yazoo and Mississippi Valley (Y&MV) Railroad station in Vicksburg, Mississippi. On the cusp of a life-changing journey, the young couple chatted about their uncertain but exciting future. The conversation flowed with dreams of enjoying a measure of racial equity characterized by political participation, modern housing, plentiful employment, and higher wages. When the discussion ebbed, Mary Washington pondered the incidents that pushed her to flee the only home that she had ever known. She recalled a pitiful scarcity of education and modern conveniences, dreadful labor on her father's rented farmland, and her mother's death. Too small to see the body, the three-year-old was only able to take one last look at her mother with the assistance of her father's strong arms. As the family left the burial site, the child was directed to seek refuge from the Mississippi heat under the wagon that also carried her nine siblings home. The distant but familiar sound of a train whistle signified the end of an era. When the steam locomotive arrived, the Washingtons boarded, found a space on the smoky, crowded Jim Crow car, and watched the miles melt away. After the train crossed the Illinois border, the couple joined other African American passengers moving out of the segregated rail car to racially equitable and more comfortable seating. Like innumerable migrants to come, the Washingtons adhered to budding migratory patterns that followed established rail lines by riding the train to the terminus in Chicago, Illinois.

When the newcomers detrained, they were greeted by a thriving metropolis that pulsed with energy and possibility. Life was pleasant for a time, as housing with indoor plumbing, stable employment, and the addition of two children made the couple a happy family. By 1920, however, Mary Washington had become a widow, carving out a

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life from a small room in a boardinghouse. Despite life's challenges, the single mother did not return to Vicksburg. Instead, she became a hairstylist and continued to negotiate life from what would become Chicago's Black Metropolis, "a narrow tongue of land," not more than twenty to thirty blocks long and seven blocks wide.[1]

Mary and George Washington were part of a steady stream that would soon morph into a mighty river. When they left Vicksburg, more than 80 percent of the African American population lived in the South. Motivated by a desire to cultivate the same soil as their ancestors and maintain proximity to family members, the Washingtons and many others suffered through racial segregation and discrimination, with comparatively few venturing north or west. With the outbreak of World War I in 1914, however, a growing number of Black southerners turned their backs on Jim Crow and set their sights on northern cities. Their aims coincided with those of struggling northern factory owners who sought to fill wartime employee and quota shortages by deploying labor agents throughout the South to entice Black workers with offers of free transportation and higher wages. The boldest agents positioned themselves on street corners and distributed train tickets to young, strong African Americans. More discreet recruiters shuffled through crowded streets saying, "Anyone want to go to Chicago, see me." While some laborers accepted the offer immediately, others waited to verify the rumors. Confirmation of Labor Agents' claims came through conversations with Pullman porters and letters from friends and family

[1] Bureau of the Census, *Twelfth Census of the United States*, 1900 (Washington, D.C.: U.S. Government Printing Office, 1904), accessed March 25, 2022, https://www.ancestry.com/imageviewer/collections/7602/images/4120355_00114?pId=28487692.; Bureau of the Census, T*hirteenth Census of the United States*, 1910 (Washington, D.C.: U.S. Government Printing Office, 1913), accessed May 19, 2022, https://www.ancestry.com/imageviewer/collections/7884/images/31111_4330333-00457?pId=160430858.; Bureau of the Census, *Fourteenth Census of the United States*, 1920 (Washington, D.C.: U.S. Government Printing Office, 1921-1925), accessed May 19, 2022, https://www.ancestry.com/imageviewer/collections/6061/images/4300184_00710?pId=38035026.; Mary Washington, interviewed by the author, December 24, 1989; St. Clair Drake and Horace Cayton, *Black Metropolis: A Study of Negro Life in a Northern City* (Chicago: The University of Chicago Press, 1993), 12. It should be noted that migratory patterns often followed the rail lines. For example, Black migrants from Mississippi and Tennessee rode the Illinois Central Railroad to Chicago and Detroit and those from Texas eventually often landed in California. Naturally, workers from Georgia, North and South Carolina, and Virginia rode the train to New York, Pennsylvania, and New Jersey. In fact, early studies by African American scholars including W.E.B. Du Bois with *The Philadelphia Negro* documented similar settlements that existed with smaller numbers before the Black exodus that occurred during the Great Migration.

members sharing details about how they were "getting along nicely" in northern cities. When the *Chicago Defender* promoted the Great Northern Drive in 1917, the scene at the Y&MV Railroad station changed significantly. An anonymous letter to *The Herald*, titled "Why Stand Ye Idle?" documents the transformation. The author wrote:

> A few months ago, I stood at the Y and M. V. station where a crowd of colored people had gathered to bid farewell to one of their number who had decided to try life in Chicago. On the surface there was nothing unusual in this gathering of Negroes: but anyone standing near might have heard enough to convince him that they had come not alone to say goodbye to their departing friends, but to prepare the way for their own departure a few weeks later. I believe every member of the party, after wishing the friend good luck, called out, "Look for me in the Spring. . . ."

The author further explains:

> I have been called to the same station many times since then to take leave of my own friends; and, upon every such occasion, I have seen troups [sic] of other Negroes going north as to leave no doubt in my mind of the sincerity of the intention . . . expressed by the first group.

In a few sentences, the author reveals that individual migration employed by brave pioneers like the Washingtons succumbed to collective migration in less than a decade. The author also discloses, albeit subtly, that the "troups [sic]" of people departing from the Y&MV station calling out "look for me in the Spring" were announcing a plan to continue the movement.[2]

Though individual agency, corporate sponsorship, and letters published in newspapers like *The Herald* and *The Chicago Defender* remain central to Great Migration historiography, they were only one part of the story. Another aspect of the movement of "more than four

[2] Jay R. Mandle, "Continuity and Change: The Use of Black Labor After the Civil War," *Journal of Black Studies* 21, no. 4 (June 1991): 415-416, http://www.jstor.org/stable/2784686.; Emmett J. Scott, *Negro Migration During the War* (New York: Oxford University Press, 1920), 33; Scott, Negro Migration During the War, 36-37.

hundred thousand" Black migrants unfolds in a study conducted by famed sociologist Charles S. Johnson.[3] As a researcher for Emmett Scott's book *Negro Migration During the War*, Johnson spent the summer of 1918 knocking on doors in Chicago's Black Belt and interviewing new arrivals about the conditions surrounding their flight. Nestled deep within more than eight hundred pages of information lies an interview note under a heading marked "Clubs." It states that "when free transportation abated—clubs of 10 and more were formed." This statement refers to the end of corporate funding from northern factory owners and the removal of labor agents from the South. Afterward, eager, cash-strapped migrants determined to move north employed Migration Clubs. In what is possibly the best organized and least known apparatus of movement during the historic Black exodus, these clandestine vehicles of movement functioned like well-oiled machines. Their inner workings and impact are best exemplified through Migration Clubs operating between cities and towns in Mississippi and Chicago, Illinois, which used a three-step process that included relocation, resettlement, and reestablishment.[4]

The collective relocation efforts began with a single, well-respected community member or "captain." This individual established the Migration Club and assumed responsibility for facilitating recruitment, travel, and at times, housing arrangements. Recruitment began when the captain quietly announced the intent to relocate. The news was shared with nearby relatives, whispered to friends before or after church services, and then circulated "through the community" along with information about the day and "time the club would leave." Interested parties reserved their spot and then quietly settled their affairs

[3] Scott, *Negro Migration During the War*, 3; Charles S. Johnson. "Migration Study," National Urban League Records, Part I: Box F86, F87, Manuscript Division, Library of Congress, Washington, D.C.

[4] Johnson. "Migration Study," Box 86, Folder 6; James R. Grossman, *Land of Hope: Chicago, Black Southerners, and the Great Migration* (Chicago: The University of Chicago Press, 1989), 96-97.; It should be noted that also in Johnson's Migration Study, there are excerpts from newspaper articles that suggest the utility of Migration Clubs in places outside of Mississippi including Memphis, Tennessee, and Birmingham, Alabama. For example, one news excerpt titled "Thousands Leave Memphis" states:

> Memphis, Tenn. June 1.
>
> Your correspondent took a walk to Central station Saturday night just to see what was going on, and to his surprise and delight, he saw gathered there between 1,500 and 2,000 Race men and women. Number 4, due to leave for Chicago at 8:00 o'clock, was held up twenty minutes so that those people who hadn't purchased tickets might be taken aboard. It was necessary to add two additional eighty-foot steel coaches to the Chicago train in order to accommodate the Race people, and at the lowest calculation there were more than 1,200 taken on board.

before the trip. One man from Hattiesburg, for example, purchased a single ticket to Chicago. After he secured housing and employment, he wrote back to his wife, instructing her to "sell everything and join him." This woman shared the letter with "her closest friends [and] became the captain of a club of ten." Likewise, a man identified only as Holloway first migrated to Chicago from Hattiesburg in February 1917. After becoming satisfactorily established, he sent for his mother, wife, and children. When Holloway's wife received the notification, she became the captain of her own Migration Club. Before relocating, the couple owned several houses but could not sell them for the desired price. Instead of waiting, they left their homes with "caretakers" and stored any remaining furniture. On departure day, twenty-one members of the close-knit community boarded the train. Clearly, Migration Club captains were important liaisons who easily spread information to relatives and friends through frequent interactions around town. Recruitment, however, was not limited to Black urbanites.[5]

Rural dwellers across the South often learned about newly formed Migration Clubs when they visited nearby cities to acquire services and supplies that were not readily available on farms. On Saturdays, for example, men, women, and children across southeast Mississippi made their way to Hattiesburg. In 1910, the city had a population of 11,733, of which nearly one-half were African Americans living in a self-contained community called Mobile Street. City directories from the period indicate that the "city within a city" was home to a residential and a Black business district. As rural visitors undertook Saturday chores, they moved through these districts exchanging information about work, family, and travel plans. A family stopping in GT Spence's shoe store at 414 Mobile Street to have boots repaired would have an opportunity to read the latest edition of the *Chicago Defender* and catch up on the latest news. The same family might also receive updates about friends who relocated to Chicago with Migration Clubs through letters or visitors. Afterward, they might have lunch next door at JC Rogers Restaurant where they would discuss the exciting news with other hungry patrons. At 417-422 Mobile, other rural dwellers visiting town to pay an undertaker for services rendered or receive a haircut at the Thigpen Brothers establishment might learn about newly formed Migration Clubs. At 426 and 500 Mobile Street where the People's Drug Store and BF & Son Grocery Co. stood, the discus-

[5] Johnson, "Migration Study," Box 86, Folder 6.

sion might begin with turpentine oil or apples then quickly turn to Migration Clubs departing for northern cities, especially Chicago. Even rural visitors who intentionally avoided the business district, desiring only to call on relatives who lived in neighborhoods near Mobile Street, could not avoid discussions fixated on news from Chicago and newly formed travel clubs. With the enthusiasm surrounding Migration Clubs, rural visitors undoubtedly went back to their leased, rented, or owned land in the countryside with names of captains and dates of departure on their minds.[6]

While some southern residents pondered migration, others who perceived recruitment campaigns as corroboration of higher wages and better living conditions in the North simply abandoned their possessions. The frenzy came to be called "Northern Fever" by Mobile Street residents and migrants alike. One interviewee said, "Northern Fever was just simply contagious; they [migrants] couldn't help themselves." Driven by a burning desire to leave, migrants afflicted by "Northern Fever" made frantic preparations to depart, selling "everything they had," including "homes, mules, horses, cows, and everything . . . but their trunks." Evidence of the excitement is revealed through a woman living in the countryside who unloaded furniture, a cow, and all of her chickens in anticipation of her departure. Similarly, a woman from Ellisville, Mississippi, "would go to her window and see" the train loaded with friends and "became excited." The enthusiasm prompted her to discharge her property and become the captain of a Migration Club with twenty-six participants. When the two houses co-owned with her husband did not sell, they were deserted. The urgency driving "Northern Fever" is best summarized by a gentleman who stated, "I don't know why or where I'm going, but I'm on my way."[7]

Although "Northern Fever" was an important motivator, Migration Club recruitment in urban and rural areas was characterized by social and economic benefits. In 1917, the wages for men in Hattiesburg's sawmill and railroad industries were approximately $1.25 per day. Pay for women earning a living as washerwomen or domestics was

[6] Bureau of the Census, *Negro Population in the United States* 1770-1915, Reprint, ed. William Loren Katz (New York: Arno Press and the New York Times, 1968), 770; *Hattiesburg City Directory*, 1909 (Jackson: Dixie Book Binding Company, 1909); *Hattiesburg City Directory*, 1905 (Hattiesburg: The Daily Progress, 1905).

[7] Johnson, "Migration Study," Box 86, Folder 6; Scott, *Negro Migration During the War*, 41.

even less. As "the straight fare" for a train ticket on the Illinois Central Railroad averaged $22.10 per person, captains of Clubs with ten or more members could secure a reduced rate, which averaged $16.58. This discount was significant since $22.10 was the modern equivalent of approximately $552.11, and $16.58 was comparable to $414.21. Thus, the financial incentives provided by Migration Clubs attracted many who might not have otherwise been able to afford the trip.[8]

Along with the economic benefits, Migration Clubs also provided social incentives. Cooperative travel was favored because it allowed Black migrants to feel a sense of safety in numbers. Although this survival technique has been exercised for more than a century, in an environment imbued with lynching and other violence, African Americans traveling alone were often the victims of humiliation and, at times, physical abuse. To reduce the chances of confrontation, Black migrants employed and organized group expeditions through unfamiliar terrain. Migration Clubs were, therefore, both physically and emotionally superior to traveling alone. In the words of one migrant, "wherever there is the biggest bunch of birds, that's where I go." Consequently, full-priced, individual migration experienced by the Washingtons gave way to a perfect storm of events. Together, recruitment campaigns, discounted group rail fares, and collective travel compelled tens of thousands of men and women to succumb to the "wave of enthusiasm" that encompassed the South. In the aftermath, Migration Clubs of "10 to 80" members or more became extremely popular.[9]

After recruitment ended, Migration Club captains led the surge of Black Mississippians through the travel portion of the relocation process on the Illinois Central Railroad. Newspapers from the period, including the *Hattiesburg Daily News* and Johnson's "Migration Study," worked together to document the exodus. Whereas the newspaper focused on labor agents' activities in 1916, Johnson's study detailed more than fifteen Migration Clubs that made their way North during the first half of 1917. In January, a man named Crigen left Hattiesburg for Chicago. After securing housing and employment, he

[8] Johnson, "Migration Study," Box 86, Folder 6; "Inflation Calculator," Bureau of Labor Statistics, accessed July 8, 2022, https://www.bls.gov.; Scott, *Negro Migration During the War*, 44.

[9] Johnson, "Migration Study," Box 86, Folder 6; KangJae Jerry Lee, and David Scott, "Racial Discrimination and African Americans' Travel Behavior: The Utility of Habitus and Vignette Technique," *Journal of Travel Research* 56, no. 3 (March 2017): 381, https://doi.org/10.1177/0047287516643184.

sent enough money for his wife to purchase tickets for herself and their two children. In April, they made the trip as participants in a Migration Club with sixty members. In February, John Berg began a similar process when he migrated to Chicago and secured housing and employment. Three months later, his wife and three children arrived with a party of twenty-eight. Tempted by higher wages and friends "leaving . . . fast," a Mr. Ellis, his wife, and their seven children traveled from Jackson to Chicago in April with a party of sixty. The following month, a family named Lynch, with seven children, moved from Hattiesburg to Chicago in a group with eighty members. Though Migration Clubs left from every city and town in Mississippi, so many departed from Hattiesburg that it created a "syphoning process" that continued until "Mobile Street was almost depopulated." One late migrant to Chicago recalled the tremendous silence along Mobile Street at the height of the outmigration. She stated, "You could go out on the street and count on your fingers all the colored people you saw during the entire day. Now and then a disconsolate looking Italian storekeeper would come out in the street, look up and down and walk back. It was a sad looking place, and so quiet it gave you the shivers."[10]

Amid the dire circumstances created by Migration Club recruitment, officials in Mississippi towns and cities decided not to sit idly by and watch their labor force ride away. Efforts to discourage the movement included city staff and business moguls alike. At the Hattiesburg Depot, rail agents tried withholding tickets, but residents with "Northern Fever" would not be stopped. A particularly large Migration Club with a man named Bowman as captain sought to travel from an unnamed town in Mississippi to Chicago with "a party of 200." The ticket agent initially refused the purchase, then "demanded that he [Bowman] deposit $1000 for use of 2 cars." When captain Bowman produced the funds, the ticket agent then changed the story and "said there were no cars." While the outcome is not noted, it is possible that Bowman's group escaped scrutiny by traveling south to New Orleans, where they boarded trains headed for Chicago or simply "went to another city to buy tickets." It is also possible that, like the boldest migrants, Bowman wrote to the Illinois Central Railroad's general su-

[10] Johnson, "Migration Study," Box 86, Folder 6; Scott, *Negro Migration During the War*, 43, 67; "Many Negroes Sent North," *The Hattiesburg Daily News*, August 24, 1916, 2; "Negroes in Train Loads are Flocking to Northern States," *The Hattiesburg Daily News*, November 2, 1916, 1.

perintendent, which caused ticket agents to have a change of heart and offer more "courteous" service. Like ticket agents, business owners tried to prevent residents from leaving the state. In Hattiesburg, Old Man Tatum, the proprietor of one of the city's largest sawmills, decided to make a personal appeal to workers and "ran down to the station and begged his men not to leave . . . offering more money." The men refused and boarded the train anyway.[11]

As the Migration Club's recruitment efforts continued to assault the South's dwindling labor reserves, the premier form of travel engaged with participant preferences for timing and faith. According to Black migrants, stations along the Illinois Central Railroad experienced especially large numbers on Wednesday, Friday, and Saturday nights. These were busy nights for two reasons. First, laborers were paid for hours worked on Wednesday and Saturday evenings. A potential migrant could, therefore, receive their final earnings and board the train with surplus funds to aid in beginning anew. Second, the trip from Mississippi to Chicago ordinarily lasted two days. Clubs that departed on Wednesday and Friday detrained on Friday evening and Sunday afternoon respectively. Both days permitted friends and family members to meet newcomers at Central Station without interrupting work and worship schedules.[12]

Even though Mississippi migrants did not always arrive in time for church on Sunday, the emotion on and off trains was palpable and occasionally assumed a distinctly spiritual tone. Some migrants knew of the similarities between baptism, the "biblical story of the children of Israel wandering in the wilderness," and their own exodus. One man shared his belief that the migration was "an act of God" and told a labor agent that he viewed himself as "an instrument in God's hands." When another man's migratory fervor was questioned, his response "yes, and only the waters of Lake Michigan can cure me" clearly referenced the connection between baptism and northern settlement. The most poignant example occurred when "a party of 147 from Hattiesburg, Mississippi, . . . knelt down, . . . prayed, . . . [and] stopped their watches, . . . amid tears of joy" as their train crossed over the Ohio River. The deep connection with the biblical exodus became more appar-

[11] Johnson, "Migration Study," Box 86, Folder 7; Scott, *Negro Migration During the War*, 77.

[12] Johnson, "Migration Study," Box 86, Folder 6-7.

ent when participants sang the familiar songs of deliverance, including "I done come out of the Land of Egypt with the good news, . . . *Beulah Land* . . . and . . . *Dwelling in Beulah Land*." A woman in the party even declared that after passing from the South into the North, "the air was "lighter." With the move from Mississippi to Chicago, each Migration Club participated in the first phase of a developmental process that relocated groups of Black migrants from one region to another.[13]

After Migration Club participants had disembarked at Central Station, they engaged in resettlement. This second phase of the process included recreating their former neighborhoods in a new location. It is estimated that from January 1916 to July 1917, Chicago absorbed at least 50,000 Black migrants from Mississippi and neighboring states. The new arrivals followed settlement trends established by earlier migrants until housing in the Black community "was no longer available." Despite the lack of space, men and women with prearranged accommodations often became short-term guests in the homes of friends or family members. One such friend was a woman named McMillen, who migrated from Hattiesburg and then decided to write "to friends at home telling them of Chicago and offering a place to stop." As McMillen previously ran a boardinghouse in Hattiesburg, Migration Club captains trusted the accommodations and endorsed the establishment. With this recommendation, Migration Club captains concluded their duties and joined the ranks of migrants engaged in resettlement.[14]

Newcomers who failed to secure housing before departure relied not only on Club captains but also on the rumors of assistance that might be offered once they arrived in the Midwest's Metropolis. For these hopefuls, the city extended lodging opportunities through organizations. The most prominent was the local chapter of the National League on Urban Conditions among Negroes. Founded in 1910, what is now called the National Urban League sought to improve Black life in northern cities. To accomplish its goal, Chicago's Urban League (CUL) placed volunteers at Central Station to ensure that new arrivals received reliable directions to prearranged destinations and direct-

[13] Johnson, "Migration Study," Box 86, Folder 6-7; Scott, *Negro Migration During the War*, 45.

[14] Scott, *Negro Migration During the War*, 102; Johnson, "Migration Study," Box 86, Folder 6; Christopher Robert Reed, *Black Chicago's First Century: Volume I 1833-1900* (Columbia: University of Missouri Press, 2005), 437.

ed those in danger of homelessness to proper lodging. In addition to the CUL, associations created by recent migrants from southern states helped newcomers secure housing. Thus, migrants from Alabama might receive information from members of the Alabama Club, just as those from Tennessee would be directed by representatives of the Tennessee Club and so forth. As a result, Mississippi migrants without accommodations and employment would be greeted by a representative from the Mississippi Club and receive help in finding housing and employment. It could be accidental; however, it appears that newly arrived Mississippi migrants decided to live near settlers from the same state. This trend is observed by Johnson, who wrote, "There is in Chicago a little colony of Mississippians, principally from Hattiesburg, which has been transplanted so completely as to retain practically all of its customs and mores. On Rhodes Avenue between Thirty fifth and Thirty ninth, there are more than 150 families."[15]

Among the Black migrants resettled in what Johnson called "The Mississippi Colony" were Dennis Horton, Richard (Rich) Harmon, and their families. The relocation of these migrants from Hattiesburg, Mississippi, to Chicago, Illinois, illustrates how neighborhoods were transplanted to the tiny strip of land that would eventually become known as Bronzeville and serves as an example of the significance of Migration Clubs. Born in rural Alabama sometime after 1880, little is known about Horton's early life. In 1902, he married a woman named Elizabeth and migrated to a town amid an expansive pine forest. Between 1884 and 1910, the booming sawmill town attracted so many African Americans from rural Louisiana, Alabama, and Florida that the community grew from less than 1,000 to more than 4,300 African Americans. As segregation prevented Black migrants from living with White residents, the Hortons settled along Mobile Street, Hattiesburg's historically African American community. In Ariel Barnes's oral history, she shares that this self-contained community accommodated all the needs of its inhabitants. In addition to a residential area, there was a bustling business district that hosted an abundance of establishments, including grocers, tailors, restaurants, and butchers, as well as Hall and Collins Undertakers and Funeral Home, the Blue Moon Café,

[15] Scott, *Negro Migration During the War*, 103-104; Johnson, "Migration Study," Box 86, Folder 6-7; Touré F. Reed, *Not Alms but Opportunity: The Urban League & the Politics of Racial Uplift*, 1910-1950 (Chapel Hill: The University of North Carolina Press, 2008), 11-12.

Star Theater, Chester Jackson's Ice Cream Shop, and Dr. Howard's Office.[16]

Once settled in Hattiesburg, Horton became a vital member of the Mobile Street community where he owned a home, served as a deacon at the local church, and was a successful businessman. Each day he would walk or ride from his home to another popular Mobile Street business, Horton and Reynold's Barbershop. Located at 602 Mobile Street, this barbershop served as a mainstay in the community. In an environment where racism, segregation, and even violence prevented people of color from fully experiencing citizenship, this barbershop treated Black men and boys with respect by supplying haircuts, shaves, and information. Each week, Horton bought "forty and fifty copies of the *Chicago Defender* to sell, without profit, just for the sake of distributing the news of a fearless paper." Horton admitted that the *Defender* emboldened him to the point that he did "some dangerous talking himself." In the politically charged environment, the barbershop prospered and allowed Horton to earn an income large enough to afford to pay one child's college tuition while his wife, Elizabeth, passed her days as a homemaker. In 1916, the Hortons attended their eldest daughter's graduation from Straight College in New Orleans, Louisiana. During their visit, Dennis Horton secured a temporary post at a local barbershop where he was courted by labor agents offering free transportation and high wages to men who agreed to work in northern factories. When the family returned to Hattiesburg, Horton was "more dissatisfied than ever." Interview notes from Charles S. Johnson's Migration Study explain that in addition to Horton's political dissatisfaction, religious leaders' opposition to the movement eventually pushed him over the edge. During a deacons' meeting, Horton became so frustrated over Pastor Perkins's words against migration that the

[16] Bureau of the Census, *Negro Population in the United States*, 99; Ariel Barnes, "An Oral History with Ariel Barnes," Interview by Sarah Rowe, April 1, 1993, McCain Library and Archives, University of Southern Mississippi.; Bureau of the Census, *Thirteenth Census of the United States*, 1910 (Washington, D.C.: U.S. Government Printing Office, 1913), accessed October 1, 2018, https://www.ancestry.com/discoveryui-content/view/13676359:7884?tid=&pid=&_phsrc=fSA1&_phstart=successSource.; Detailed research of the Hattiesburg census records as well as World War I Draft Registration Cards, and Telephone Directory Records indicate that R.S. Horton (As described in Johnsons "Migration Study" and used in many monographs) and Dennis Horton were the same person. It should be noted that Johnson identified Horton in many places simply as Mr. B. Thus, it is possible that the name was changed to protect Horton's identity or simply because African Americans have a custom of changing their names to match their station in life.

two argued passionately. Horton went to the heart of the matter when he pointed out that people had stopped coming to church because they did not want to be dissuaded from leaving. While Perkins decided to remain in Hattiesburg, Horton organized a Migration Club.[17]

In January 1917, a few months before the United States officially entered World War I, Dennis and Elizabeth Horton and their daughters arrived at Hattiesburg's train depot, where they joined other members of the Migration Club and waited for the train run by the Illinois Central Railroad to arrive at the station. The scene was reminiscent of the Vicksburg station as members of the group said goodbye to friends and family members they would soon leave behind. Horton promised those who could not make the trip that he and others were going ahead to "prepare a place for them." When the steam engine docked, at least forty Hattiesburgers boarded the train destined for Chicago.[18]

Along with Horton, Chicago also attracted fellow Mobile Street resident Richard (Rich/Rick) Harmon. Born in rural Alabama sometime around 1880, Harmon's childhood and youth are unremarkable. Census records indicate that he married a woman named Nancy in 1897, and together the couple lived in Meridian, Mississippi. Harmon earned enough money from his employment as a railroad flagman to afford a rental home. By 1910, the Harmon family had expanded to include seven-year-old Emma, four-year-old Naomi, and two-year-old Gladys. At some point, the family relocated to Hattiesburg, where they lived at 411 Manning Avenue. Here, Nancy Harmon cared for the home and children while Richard Harmon traded his job with the railroad for a new career. Census records indicate that after the move, Harmon earned a living as a "clergyman." Although it is unknown exactly which church he served as a clergyman, Harmon ascended to the middle or upper rungs of the African American social strata. During much of the twentieth century, African American ministers were widely respected because in the absence of societal equality and property, churches and

[17] Johnson, "Migration Study," Box F86, Folder 6.

[18] Johnson, "Migration Study," Box 86, Folder 6-7; World War I Draft Registration Cards, 1917-1918," digital image, Ancestry.com (https://www.ancestry.com/discovery-ui-content/view/9664372:6482: accessed June 12, 2018), 3520, Local Board for Division No. 5, City of Chicago, State of Ill., Wendell Phillips High School; citing *World War I Selective Service System Draft Registration Cards, 1917-1918*, Nara microfilm publication M1509; no specific roll cited.

their leaders were at the center of Black life. Beyond religious services on Sunday and Wednesday night Bible study, churches hosted a variety of events. There were literary club meetings, weddings, funerals, oratory contests, cotillions, spelling bees, summer camps, and some of the first African American schools.[19]

Despite their centrality, churches and ministers like Harmon were often casualties of the mass outmigration. One Hattiesburg pastor, for example, shepherded Mobile Street's largest congregation. From its founding in 1886 to the beginning of the Great Migration in 1915, Mt. Carmel was the oldest church in Black Hattiesburg. By 1918, however, the congregation of 700 dwindled to only 150 members. The pastor of the First Baptist Church was another clergyman affected by the exodus. Following his dispute with Horton, Reverend A. L. Perkins is said to have "lost all but one deacon." Unlike these two ministers, Harmon did not wait until the migration was in full bloom. Instead, he was among the first southern migrants to arrive in Chicago. In November 1916, Harmon secured employment, then accumulated enough money to retrieve "his wife, children, and 'some' of his congregation" from the South. Whether inspired by family and friends or dwindling church assemblies, Mississippi migrants arrived in the Midwest's Metropolis en masse. Instead of settling in available housing in scattered sites across the city's south and west sides, Migration Club members stood faithfully by each other. In the words of one potential transplant, "everybody's going and I'm going too. We people from Mississippi stick together."[20]

Along with Horton, Harmon, and other migrants from Hattiesburg, a continuous stream of people from Laurel, Jackson, Greenville, and other Mississippi cities and towns made their way to Chicago via

[19] Albert Raboteau, *Slave Religion: The 'Invisible Institution' in the Antebellum South* (New York: Oxford University Press, 2004), ix.; Bureau of the Census, *Twelfth Census of the United States*, 1900 (Washington, D.C.: U.S. Government Printing Office, 1904), accessed January 31, 2019, https://www.ancestry.com/discoveryui-content/view/27989196:7602?tid=&pid=&_phsrc=Hje1&_phstart=successSource.; Bureau of the Census, *Thirteenth Census of the United States*, 1910 (Washington, D.C.: U.S. Government Printing Office, 1913), accessed June 27, 2022 https://www.ancestry.com/discoveryui-content/view/13672685:7884?tid=&pid=&queryId=4de1ef66cb7b3d772eb935ec-2b3e8a17&_phsrc=vvv1&_phstart=successSource.

[20] Johnson, "Migration Study," Box 86, Folder 6; "Hattiesburg, MISS," *The Freeman*, November 14, 1908, 1. It should be noted that Reverend A. L. Perkins is included in information about Mt. Carmel from sources in 1908 as well as the First Baptist Church in 1918. In Johnson's "Migration Study," he is described as pastoring the First Baptist Church instead of Mt. Carmel.

Migration Clubs. Together, they created a neighborhood that closely resembled their communities in the South. Johnson's interviews reveal that as a flood of newcomers arrived at Central Station, they were directed to temporary lodging along Rhodes Avenue.

For example, when a man named McMillan from Gregory, Mississippi, arrived in Chicago in 1917, he might have been met by friends at Central Station. On the way to his housing arrangement on Rhodes Avenue, McMillan was greeted by a neighborhood that reminded him of home. To reach his lodging, friends might have guided the newcomer past a building on 35th Street facing Rhodes, where a migrant from Hattiesburg rested before returning to his position as a Pullman porter. Turning the corner and walking down the street, McMillan might notice a handsome building at 3522 Rhodes, where a man from Meridian recently settled. As they continued through the Mississippi Colony, McMillan probably realized that each address held a story.[21]

Since small communities often read like open books, McMillan's friends probably explained that within a building numbered 3552-54 Rhodes, seven Mississippi migrants carved out new lives. They might further express that the building's owners, a man named Taylor and his wife, first came to Chicago from Jackson, Mississippi, in 1911. One year later, the couple moved into a house on Rhodes. As a family of activists accustomed to speaking up about unfair "treatment and lack of privilege," it was no surprise that a sister known for "protesting against cruelty, lynching, poor wages, and Jim Crowism" recently arrived and found the city agreeable. Of the four remaining lodgers at the address, one arrived from Greenville, and three called Jackson their hometown. While it remains unclear exactly how many of the residents took advantage of Migration Clubs to facilitate their trip, one boarder's experiences are well-documented.[22]

Having lived in the city only one month at the time of the 1918 interview, a woman named Parker had fresh memories. From her residence at 3552-54 Rhodes, she shared that the information from labor agents, letters, and stories from visitors started the snowball effect that led to mass migration. According to Parker, "when she first heard of the movement, she, like most others, doubted it." After her brother

[21] "End of the Line for Central Station," *Illinois Central Magazine*, May 1972, http://illinois-central.net/Tom%27s%20Closet/EndOfCentralSta.pdf.; Johnson, "Migration Study," Box 86, Folder 6.

[22] Johnson, "Migration Study," Box 86, Folder 6.

ventured north and wrote back "about chances in Chicago," she decided to make the trip and sold her property "at a sacrifice." In another clear biblical reference, Parker explained that during June and July, Migration Clubs left "'like Judgement Day' 30 and 40" in each party. Any person with a sincere desire to join a club was included. Even if a potential Migration Club failed to reach the minimum number of members, no person was left behind. The participants would "contribute to the fare of the 10th person." When Parker left Jackson, straight fares to Chicago were $20.00 for individuals and $15.02 for Migration Clubs. At more than five dollars, the discounted Migration Club rate had increased from the year before and served to pull even more interested parties, including McMillan, toward Chicago.[23]

After learning about the similarities between his journey and those of others living in the Mississippi Colony, McMillan arrived at his new home. Soon after, he secured employment at Wilson Brothers Packing House where he earned three dollars per day and settled into life at 3602 Rhodes Avenue. In his movements through the city, McMillan met a woman from Hattiesburg who traveled to Chicago with her mother, father, and uncle in a Migration Club of forty members. While the details of their courtship are lost to history, what is known is that the couple married and eventually opened their home to other Mississippi migrants.[24]

In a two-flat located at 3612 Rhodes, another man and his wife from Hattiesburg joined McMillan in building the Mississippi Colony. In the first flat, this couple took in boarders from both Canton and their hometown of Hattiesburg. One boarder made her way to Chicago from Hattiesburg in the spring of 1918 with a group of 120 participants. According to Johnson's interview, two railcars came to Chicago, and one went to St. Louis. In the second flat, the Lynch family lived and worked. Mrs. Lynch ran a boardinghouse while her husband and daughter worked at the Stockyards. The couple's two sons secured employment in a foundry in nearby Gary, Indiana, while a lodger worked for the Gas Company. As the neighborhood between 35th and 39th streets blossomed, Migration Club participants joined other newcomers in recreating a residential district that began to resemble self-contained African American communities in cities and towns in

[23] Johnson, "Migration Study," Box 86, Folder 6.
[24] Johnson, "Migration Study," Box 86, Folder 6.

Mississippi.[25]

When the residential district took shape, the community entered a third phase of development characterized by reestablishing the Black business district to serve the growing number of Mississippi migrants. Johnson's description suggests that in addition to similar residential areas, Chicago's Black business district mirrored those established in Mississippi, including Farish Street in Jackson and Hattiesburg's Mobile Street. He wrote, "On Thirty fifth Street, the main thoroughfare, facing Rhodes Avenue, there is a Hattiesburg Barbershop, a Mississippi Coal and Wood Company, a delicatessen store . . . and a pool room." Owned by none other than Dennis Horton, the Hattiesburg Barbershop served as a meeting place where haircuts and information were freely given. One of Johnson's interview subjects reported that Mobile Street migrants "could meet all old friends from home or at the very least, learn about their whereabouts at the Hattiesburg Barber Shop."[26]

Though the transport of Horton's barbershop and other Mississippi businesses might appear to be an isolated incident, many southern entrepreneurs reopened their establishments after settling in Chicago. As explained by Drake and Cayton in *Black Metropolis*, in its early years, "the center of Bronzeville's commercial activities was still in the northern end of the Black Belt at State Street and 35th . . . [where] many migrants who had been shopkeepers in the South, . . . opened small retail enterprises . . . [creating] a steady increase in retail business." Chicago City Directories and Johnson's research notes indicate that other Black businesses operated near those owned by Mississippians, and 35th Street became a thriving business district. In the introduction to *Chicago's New Negroes: Modernity, The Great Migration, and Black Urban Life*, Davarian Baldwin explains that "theaters, restaurants, dance halls, and [other] businesses centered around 35th and State until the late 1920s." While the 35th Street business corridor continued to expand to include dressmakers, saloons, dentists' and doctors' offices, insurance companies, and eventually Binga State Bank at the corner of 35th and State Street, nearby, another pillar of the Mobile Street community was also busy helping to recreate south-

[25] Johnson, "Migration Study," Box 86, Folder 6. In Chicago a two-story building with a legal apartment on each floor is called a two-flat. In other parts of the United States, these buildings are known as duplex apartments.

[26] Johnson, "Migration Study," Box 86, Folder 6.

ern environs in a new city. Instead of housing and business, however, the focus was faith.[27]

After the Harmon family arrived in Chicago, they resided within walking distance of the Mississippi Colony on 43rd Street near Rhodes. When members of Harmon's Migration Club were settled, he met with "a small group of baptized believers . . . from the state of Mississippi . . . to discuss organizing a Missionary Baptist Church." The group voted in the affirmative and elected Harmon as their pastor. Afterward, they "rented a space at 45 W. 31st Street as their temporary church home." Eventually, the membership purchased a building "from the St. Mark congregation at the cost of $22,000." In their new, permanent location at 3572 Cottage Grove Avenue, Harmon shepherded his flock of migrants until resigning in 1922.

Migrating to Chicago, Dennis Horton, Rich Harmon, and many other southern migrants settled and carved out lives characterized by a measure of social and political equality as well as access to economic and educational opportunities that they could not achieve in the South. After living, working, and raising families in the Midwest's Metropolis, Horton and Harmon passed away on January 23, 1927, and May 4, 1942, respectively, without documenting their exodus or their continued contributions to sustaining the Black Metropolis.[28]

Whereas the existing historical narrative explains that during the Great Migration, African Americans "moved" from the rural South to the urban North, the lives of Horton, Harmon, and several thousand more participants suggest that the reigning perception is limited. Migrants from Mississippi and other southern states did more than move; they developed Migration Clubs. This effective group travel apparatus allowed parties of ten to more than one hundred to expand the

[27] Johnson, "Migration Study," Box 86, Folder 5; *Bell Telephone Directory: Chicago and Adjoining Counties*. (Chicago: R. Donnelley Corporation, 1917); St. Clair Drake and Horace Cayton, *Black Metropolis: A Study of Negro Life in a Northern City* (Chicago: The University of Chicago Press, 1993), 436; Davarian Baldwin, *Chicago's New Negroes: Modernity, The Great Migration and Black Urban Life* (Chapel Hill: University of North Carolina Press, 2007), 25; Don Hayner, *Binga: The Rise and Fall of Chicago's First Black Banker* (Evanston: Northwestern University Press, 2019), I.; After the 1920s, black businesses along 35th Street moved further south to 47th Street.

[28] Dr. L Bernard Jakes, "Historical Highlights of West Point Baptist Church: Reverend R. H. Harmon, 1917-1922," accessed July 8, 2022 at http://www.wpmbc.org/wp-content/uploads/2017/10/Friends-and-Family-Bulletin.pdf.; *The Negro in Chicago*, 1779 to 1929, Volume 1-2 (Chicago: Washington Intercollegiate Club of Chicago and International Negro Student Alliance, 1929), 270.

long-established skill of collaboration from complex relocation to the reproduction of residential and business districts in Chicago's Black Belt. In so doing, southern migrants demonstrated that the Migration Clubs were far more important than most narratives suggest. When migrants arrived in the Midwest's Metropolis, a population that "for much of the nineteenth century . . . had remained small . . ." increased exponentially. The rise in residents caused northern racial bias to surface, and "new black residents were steered toward preexisting black enclaves on the South and West Side." Here, men, women, and children who had already created self-contained African American communities along Mobile Street in Hattiesburg, Walnut Street in Louisville, Auburn Street in Atlanta, and many other spaces, took advantage of the rift in equitable housing. Together, they exercised their new freedoms and helped to produce another self-contained African American community, but this time it was in the northern city of Chicago. Southern rural dwellers and urbanites alike were, therefore, not only migrants, they were also contributors. These forward-thinking travelers, experienced residents, faith-filled believers, and entrepreneurs tracked news from the Chicago Defender and took control of their destiny by creating commonsense organizations, which enabled them to participate in laying the foundation for what would eventually become the Black Metropolis. [29]

[29] Tera W. Hunter, *To 'Joy My Freedom: Southern Black Women's Lives and Labors After the Civil War* (Cambridge: Harvard University Press, 1997), 101; Luther Adams, *Way Up North in Louisville African American Migration in the Urban South, 1930-1970* (Chapel Hill: University of North Carolina Press, 2010) 15, 149; Robert E. Weems, Jr., *Building the Black Metropolis: African American Entrepreneurship in Chicago* (Champaign: University of Illinois Press, 2017), 5-6; Dennis S. Horton, Ancestry.com, *Illinois, U.S., Deaths and Stillbirths Index, 1916-1947*, no file or certificate number listed: https://www.ancestry.com/discoveryui-content/view/2620450:2542?tid=&pid=&queryId=a60e9bb30432cec56c9f7864f4ed0693&_phsrc=QZe3&_phstart=successSource.; Richard Harmon, Ancestry.com, *Illinois, U.S., Deaths and Stillbirths Index, 1916-1947*, no file or certificate number listed: https://www.ancestry.com/discoveryui-content/view/2083552:2542?tid=&pid=&queryId=f026bfae6f90e73ceba15497c5a0e697&_phsrc=vrR2&_phstart=successSource.

A Flicker of Light in the Midst of Darkness: The Mississippi Supreme Court, African Americans, and Criminal Justice in the Progressive Era (1890-1920)

by William M. Vines

> The appellant is a negro, yet he is entitled to be tried by the same rules of law, and he must receive, while upon a trial for his life, the same treatment as other persons. Common justice and common honesty cry aloud against the treatment shown by this record.
>
> – Justice William Campbell McLean
> Mississippi Supreme Court
> *Collins v. State*, 1911

On January 4, 1912, a jury in the Circuit Court of Claiborne County, Mississippi, convicted John Mathews, a fourteen-year-old African American boy, of grand larceny and sentenced him to one year in the county jail.[1] Local authorities had charged Mathews with stealing a diamond pin valued at $350 from a White lady, Mrs. John W. Heath, for whom Mathews worked as a "house boy." When the pin went missing early one morning at Mrs. Heath's home, she immediately suspected Mathews and began questioning him. When Mathews denied any knowledge of the pin's whereabouts, Mrs. Heath attempted to coerce a confession using various means of persuasion, including bribery. When her efforts failed, she contacted the town marshal, Watt Magruder, who came to the house and told Mathews that "it would be all right" if he just admitted to stealing the pin. He told Mathews that "all Mrs. Heath wanted was her pin" and that nothing would happen to him if he

[1] *Mathews v. State*, Claiborne County Trial Court Record, 32, January 4, 1912, Series 6, Case No. 16070, B2-R106-B2-S6 Box 14836, Supreme Court Case Files, Mississippi Department of Archives and History, Jackson, Mississippi.

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simply admitted he had stolen it. When Mathews continued to affirm his innocence, Magruder and another man, Mandeville Richmond, took him to the "buggy house" behind Mrs. Heath's home and took turns beating him until he cried. Mathews finally "confessed" that he had stolen the pin but later lost it. Mathews was arrested and charged with grand larceny.

Because no one ever located the pin, the state's case against Mathews rested entirely upon his confession. Mathews' attorney argued the confession was inadmissible because it was made under torture and duress. Circuit Judge Henry Mounger, however, overruled Mathews' objection and admitted the confession into evidence. Based solely on the confession, the jury returned a guilty verdict, after which Mathews appealed to the Mississippi Supreme Court. The Supreme Court reviewed the facts of the case in detail and concluded the confession never should have been admitted into evidence.[2] The Court took special note of the fact that Mathews was only fourteen years old at the time of the alleged crime and had maintained his innocence even in the face of the "various promises" made to him by Mrs. Heath and Watt Magruder. Most importantly, the Court noted that Mathews made his confession only after being severely beaten by two grown men. Based on these undisputed facts, the Court, speaking through Justice Richard F. Reed, concluded that Mathews' confession was "surely not free and voluntary."[3] Accordingly, the Court reversed Mathews' conviction and ordered a new trial.

The case of John Mathews typifies how the criminal justice system worked for many African Americans in Mississippi during the thirty-year period between 1890 and 1920 known as the Progressive Era. African Americans were regularly tried and convicted in sham trials in which well-established standards of law and justice were blatantly disregarded, only to have their convictions overturned on appeal by the more conscientious and fair-minded justices of the Mississippi Supreme Court. During the Progressive Era, Mississippi's trial courts routinely denied the most basic civil rights to African American criminal defendants. Authorities arrested and charged many African Americans, like John Mathews, based on insubstantial or tainted evidence. Courts frequently indicted, tried, and sentenced African Amer-

[2] *Mathews v. State*, 59 So. 842 (Miss. 1912).
[3] Ibid.

icans within just a few days of the commission of the crime without affording them any reasonable opportunity to conduct their own investigation, locate witnesses, or prepare a defense. Juries were all-White. Local prosecutors frequently used racially inflammatory arguments to arouse the passions of prejudiced juries. Trials were sometimes conducted amidst intense racial excitement instigated by armed White mobs outside (and sometimes inside) the courthouse. Trial judges often applied the rules of evidence unfairly and refused to grant new trials to convicted African Americans even when it was obvious the state had failed to prove the defendant guilty beyond a reasonable doubt. African American criminal defendants sometimes faced trial without legal representation, and even when they had representation, defense lawyers were often unprepared. Many trials of African American criminal defendants were travesties of justice.

What is remarkable about this period, however, is the sharp contrast between the way African Americans were treated in the trial courts of Mississippi and the way they were treated on appeal by the Mississippi Supreme Court. An analysis of the published decisions of the Mississippi Supreme Court during the Progressive Era reveals a surprisingly large number of cases in which criminal convictions of African Americans were reversed. One might have expected the Mississippi Supreme Court merely to have "rubber stamped" every conviction appealed by African Americans from the trial courts. But this is not at all what happened. In fact, the record shows that the Mississippi Supreme Court was very protective of the rights of African American criminal defendants and did not hesitate to reverse convictions when the trial court flagrantly ignored the rule of law. The Mississippi Supreme Court overturned many wrongful convictions of African Americans during the Progressive Era, including convictions for murder,[4]

[4] *Maury v. State*, 9 So. 445 (Miss. 1891); *Pulpus v. State*, 36 So. 190 (Miss. 1904); *Turner v. State*, 42 So. 165 (Miss. 1906); *Moseley v. State*, 41 So. 384 (Miss. 1906); *May v. State*, 42 S0. 164 (Miss. 1906); *Hampton v. State*, 40 So. 545 (Miss. 1906); *Walker v. State*, 44 So. 825 (Miss. 1907); *Cooper v. State*, 42 So. 601 (Miss. 1907); *Clemmons v. State*, 45 So. 834 (Miss. 1908); *Farrow v. State*, 45 So. 619 (Miss. 1908); *Burnett v. State*, 46 So. 248 (Miss. 1908); *Hayes v. State*, 46 So. 249 (Miss. 1908); *Foster v. State*, 45 So. 859 (Miss. 1908); *Sykes v. State*, 45 So. 838 (Miss. 1908); *Anderson v. State*, 45 So. 359 (Miss. 1908); *Jones v. State*, 45 So. 145 (Miss. 1908); *Weathersby v. State*, 48 So. 724 (Miss. 1909); *Burrell v. State*, 50 So. 694 (Miss. 1909); *Casey v. State*, 50 So. 978 (Miss. 1910); *Echols v. State*, 55 So. 485 (Miss. 1911); *Collins v. State*, 56 So. 527 (Miss. 1911); *Riley v. State*, 68 So. 250 (Miss. 1915); *Hill v. State*, 72 So. 1003 (Miss. 1916); *Kelly v. State*, 74 So. 679 (Miss. 1917); *Herring v. State*, 84 So. 699 (Miss. 1920)

rape,[5] attempted rape,[6] forgery,[7] infanticide,[8] assault and battery,[9] burglary,[10] larceny,[11] carrying a concealed weapon,[12] perjury,[13] vagrancy,[14] unlawful sale of intoxicating liquors,[15] and others.[16] The remarkably large number of reversals during this period demonstrates that the Progressive Era Mississippi Supreme Court was acutely aware of, and committed to, rectifying the injustices regularly being inflicted upon African Americans in the trial courts of Mississippi.

This is not to say that the Progressive Era Mississippi Supreme Court was hesitant to affirm convictions of African Americans when the facts and law justified it. To be sure, the Court affirmed many such convictions.[17] But the overwhelming majority of affirmances involved convictions in which the defendant's race either played no apparent role in the outcome of the trial or where the defendant did not raise the issue of race on appeal. Many of the affirmances, in fact, involved

[5] *Monroe v. State*, 13 So. 894 (Miss. 1893); *Horton v. State*, 36 So. 1033 (Miss. 1904); *Jeffries v. State*, 42 So. 801 (Miss. 1907); *Rawls v. State*, 62 So. 420 (Miss. 1913); *Garner v. State*, 83 So. 83 (Miss. 1919).

[6] *Green v. State,* 7 So. 326 (Miss. 1890); *Spell v. State*, 42 So. 238 (Miss. 1906); *Frost v. State*, 47 So. 898 (Miss. 1909).

[7] *Scott v. State*, 44 So. 803 (Miss. 1907); *Sherrod v. State*, 44 So. 813 (Miss. 1907); *May v. State*, 76 So. 636 (Miss. 1917).

[8] *Brown v. State*, 49 So. 146 (Miss. 1909).

[9] *Woods v. State*, 43 So. 433 (Miss. 1907); *Bell v. State*, 43 So. 84 (Miss. 1907); *Harris v. State*, 50 So. 626 (Miss. 1909).

[10] *Irving v. State*, 47 So. 518 (Miss. 1908); *Griffin v. State*, 71 So. 572 (Miss. 1916).

[11] *Mathews v. State*, 59 So. 842 (Miss. 1912); *Galloway v. State*, 63 So. 313 (Miss. 1913); *Williams v. State*, 81 So. 238 (Miss. 1919).

[12] *Jenkins v. State*, 54 So. 158 (Miss. 1911).

[13] *Johnson v. State*, 84 So. 140 (Miss. 1920).

[14] *Gordon v. City of Hattiesburg*, 66 So. 983 (Miss. 1915).

[15] *Tate v. State*, 44 So. 836 (Miss. 1907); *Day v. State*, 44 So. 813 (Miss. 1907); *Hardaway v. State*, 54 So. 833 (Miss. 1911); *Moseley v. State*, 73 So. 791 (Miss. 1917).

[16] *See, e.g.*, *Sanford v. State*, 44 So. 801 (Miss. 1907) (reversal of conviction for "profane swearing"); *Bryant v. State*, 46 So. 247 (Miss. 1908) (reversal of conviction for selling examination questions for teachers of public schools).

[17] *White v. State*, 11 So. 632 (Miss. 1892) (murder); *Mackguire v. State*, 44 So. 802 (Miss. 1907) (forgery); *Lewis v. State*, 45 So. 360 (Miss. 1908) (robbery); *Drane v. State*, 45 So. 149 (Miss. 1908) (murder); *Phillips v. State*, 45 So. 572 (Miss. 1908) (murder); *Scott v. State*, 46 So. 251 (Miss. 1908)(manslaughter); *Gillespie v. State*, 51 So. 811 (Miss. 1910) (unlawful sale of intoxicants); *Johnson v. State*, 58 So. 777 (Miss. 1912) (unlawful sale of intoxicants); *Clark v. State*, 59 So. 887 (Miss. 1912) (manslaughter); *Shows v. State*, 60 So. 726 (Miss. 1913) (manslaughter); *McWilliams v. State*, 63 So. 270 (Miss. 1913) (unlawful sale of intoxicants); *Wilson v. State*, 74 So. 657 (Miss. 1917) (unlawful sale of intoxicants); *Jennings v. State*, 79 So. 813 (Miss. 1918) (pointing pistol at another); *Spight v. State*, 83 So. 84 (Miss. 1919) (murder); *Pool v. State*, 83 So. 273 (Miss. 1919) (murder); *Williams v. State*, 84 So. 8 (Miss. 1919) (murder); *Hampton v. State*, 96 So. 166 (Miss. 1920) (burglary); *Springer v. State*, 92 So. 638 (Miss. 1920) (murder).

frivolous or near-frivolous appeals.[18] However, when race was a determinative factor in the outcome of the trial, the Mississippi Supreme Court was not reluctant to reverse.

Any evaluation of Mississippi's criminal justice system during the Progressive Era must consider the critical role played by the Mississippi Supreme Court in seeking to protect the rights of African Americans during this turbulent period of history. This article will consider how the Mississippi Supreme Court confronted six principal issues involving race during the Progressive Era: (1) exclusion of African Americans from jury service, (2) racial biases of White jurors, (3) improper admission of pre-trial confessions, (4) the threat of mob violence against accused African Americans, (5) lack of adequate legal representation, and (6) racially inflammatory arguments by prosecutors. The cases discussed below are not necessarily the most well-known cases decided by the Court during the Progressive Era. They were selected for inclusion in this article because they illustrate the striking disparity between how African Americans were treated in the trial courts and how they were treated on appeal.

An analysis of the Mississippi Supreme Court's Progressive Era cases reveals both continuity and discontinuity with the Court's decisions before and after the Progressive Era. In some of its decisions, the Mississippi Supreme Court broke new legal ground by departing from prior law and thereby expanding the rights of African American criminal defendants. In other cases, the Court reversed convictions based on well-established legal authority. Therefore, while the Mississippi Supreme Court certainly did set some new and important precedents during the Progressive Era, not all of its cases involving African American criminal defendants extended the legal protections afforded to them under then-existing law.

Unfortunately, none of the Mississippi Supreme Court's decisions from the Progressive Era seem to have dramatically changed

[18] *See, e.g.*, *Clark v. State*, 59 So. 887 (Miss. 1912) (manslaughter conviction affirmed where defendant admitted during trial testimony he killed the victim); *White v. State*, 11 So. 632 (Miss. 1892) (murder conviction affirmed where defendant acknowledged he killed law enforcement officer while attempting to flee arrest); *Shows v. State*, 60 So. 726 (Miss. 1913) (manslaughter conviction affirmed where defendant's sole argument on appeal was that the grand jury was not sworn in, whereas minutes of grand jury proceedings showed it was sworn in); *McWilliams v. State*, 63 So. 270 (Miss. 1913) (conviction affirmed where trial court refused to permit defendant to change plea of guilty to not guilty).

conditions on the ground for African Americans, many of whom continued to suffer terrible injustices in Mississippi's trial courts throughout much of the twentieth century. Moreover and regrettably, the Mississippi Supreme Court itself regressed in the decades following the Progressive Era and sometimes abandoned its earlier commitment to colorblind justice. And yet, the advances made by the Progressive Era Mississippi Supreme Court in the arena of criminal justice are undeniable, and in many ways foreshadowed future advances in Mississippi and throughout the United States.

Exclusion of African Americans from Jury Service

The Civil War and its immediate aftermath completely upset the social order that had existed in Mississippi and throughout the South during the previous century. Prior to the end of the war, African Americans had virtually no political, social, or economic power in the South. Things began to change during Reconstruction with the ratification of the Thirteenth, Fourteenth, and Fifteenth Amendments to the United States Constitution and the passage of the Civil Rights Act of 1866.[19] These new federal legal protections seemingly guaranteed, at least on paper, the full rights of national citizenship to the formerly enslaved African Americans.

On the state level, Mississippi adopted a new constitution in 1868 that gave African American men the right to vote.[20] In the early 1870s, African American men registered to vote in record numbers in Mississippi and even began sitting on juries. Many African Americans were elected to public office.[21] Not surprisingly, the political ascenden-

[19] The so-called Reconstruction or Civil War Amendments abolished slavery (Thirteenth Amendment), promised equal protection under the law (Fourteenth Amendment) and prohibited race discrimination in voting (Fifteenth Amendment).

[20] Mississippi enacted the 1868 Constitution to comply with the federal Reconstruction Act of 1867, which set forth certain requirements for readmission of the former Confederate states. Among those requirements was the granting of race-neutral access to the voting booth. For a full discussion of the effect the Reconstruction Act and its amendments had on African American suffrage, see Gabriel J. Chin, *Symposium: Law, Loyalty and Treason: How Can the Law Regulate Loyalty Without Imperiling It?* 82 N.C.L. Rev. 1581 (June 2004).

[21] The Mississippi Legislature sent two African Americans to the U.S. Senate during Reconstruction: Hiram Revels and Blanche Bruce. Dozens of African Americans were elected to the Mississippi Legislature. John R. Lynch, an African American born into slavery in Louisiana in 1847, was elected in January of 1872 as Speaker of the Mississippi House of Representatives, a position he held until being elected to the U.S. House of Representatives later that same year. African Americans were elected to the statewide

cy of African Americans infuriated many White Mississippians who were still committed to the old order of White supremacy. When federal troops retreated from Mississippi in the mid-1870s, White anti-Reconstruction Democrats (the so-called "Redeemers") regained political control in the state and thereby brought an end to virtually all the political and social advances made by African Americans during the decade of Reconstruction. They accomplished this feat largely though a well-organized campaign of racial violence, voter intimidation, and fraud.

One of the priorities of the resurgent White supremacists was to remove all marks of African American citizenship, including the right to serve on juries. States like Tennessee and West Virginia enacted statutes specifically disallowing African Americans from jury service. In 1880, however, the United States Supreme Court declared such statutory schemes unconstitutional in *Strauder v. West Virginia*.[22] The following year, in *Neal v. Delaware*, the Supreme Court declared unconstitutional *any* legislative enactment specifically barring African Americans from jury service, even if it was in place before the Reconstruction Amendments were adopted.[23]

Mississippi did not have a statute specifically barring African Americans from jury service. Its disenfranchisement scheme was more subtle and effective. Mississippi redrafted its state constitution in 1890 and added several voter eligibility requirements that were not included in the 1868 constitution, including a two-year residency requirement, a literacy requirement, and the payment of a two-dollar poll tax.[24] To circumvent the Fifteenth Amendment, these constitutional provisions did not mention race and were intended to look neutral. However, they disproportionately affected African Americans and effectively disenfranchised them from the ballot box and jury box. After the 1890 constitution was adopted, African American voter registration plummeted in Mississippi, and African Americans essentially disappeared from juries across the state. Even in counties that had a substantial number of African Americans on the voter registration rolls who were qualified for jury service, local authorities frequently removed their names from

offices of lieutenant governor, superintendent of education, and secretary of state, as well as to many positions in local government across the state.

[22] *Strauder v. West Virginia*, 100 U.S. 303 (1880).

[23] *Neal v. Delaware*, 103 U.S. 370 (1881).

[24] Miss. Const., Art. 12, §§ 241, 244 and 243, respectively (1890).

jury lists, thereby ensuring that African American criminal defendants would be tried by all-White juries.

Early attempts to challenge the new franchise provisions of Mississippi's 1890 Constitution were unsuccessful. In a series of cases from the mid and late 1890s, both the Mississippi Supreme Court and the United States Supreme Court rejected due process and equal protection challenges brought by African American criminal defendants indicted and tried by all-White juries.[25] In each of these cases, the constitutional provisions under attack were upheld because, unlike the West Virginia statute struck down in *Strauder*, they were facially neutral. As explained by the United States Supreme Court in *Williams v. Mississippi*:

> The operation of the Constitution and laws [of Mississippi] is not limited by their language or effects to one race. They reach weak and vicious white men as well as weak and vicious black men, and whatever is sinister in their intention, if anything, can be prevented by both races by the exertion of that duty which voluntarily pays taxes and refrains from crime. . . The [Constitution and laws of Mississippi] do not on their face discriminate between the races, and it has not been shown that their actual administration was evil; only that evil was possible under them."[26]

In the wake of these unfavorable decisions from the 1890s, it became clear to most African American criminal defendants that it was pointless to challenge the substantive franchise provisions of Mississippi's new constitution. Thus, they began focusing their challenges on the actual administration of local jury venire selection, i.e., the discriminatory practices of county officials in charge of compiling jury lists and summoning jurors for service. The first successful challenge to such a scheme was the 1908 case of *Farrow v. State*.[27] In *Farrow*, an all-White jury in the Circuit Court of Tate County, Mississippi,

[25] *Gibson v. Mississippi*, 162 U.S. 565 (1896); *Smith v. Mississippi*, 162 U.S. 592 (1896); *Dixon v. State*, 20 So. 839 (Miss. 1896); *Williams v. Mississippi*, 170 U.S. 213 (1898).

[26] *Williams*, 170 U.S. at 222, 225.

[27] *Farrow v. State*, 45 So. 619 (Miss. 1908).

convicted Arthur Farrow, an African American, for the murder of a White man, Murt Scott.[28] Several weeks before Scott's murder, Farrow accused Scott of stealing cotton from a third party. Angered at being slandered, Scott threatened to kill Farrow. On the night of November 29, 1906, Farrow and Scott ran into each other at a fish fry, where they got into an altercation. Later that evening around midnight, as Farrow was heading home, Scott and several others ambushed him. During the ambush, a struggle ensued during which Scott and Farrow both pulled pistols. Farrow fired two shots, one of which hit Scott and killed him. Farrow turned himself in to authorities and admitted to killing Scott, but he insisted it was in self-defense.

While Farrow was sitting in jail, the Tate County Board of Supervisors compiled a list of registered voters from which to draw names of people to sit on the grand jury. The Board of Supervisors intentionally removed the names of all African Americans.[29] After removing their names, the Board of Supervisors placed the names of the White voters in a box, and the sheriff drew thirteen names of men who sat on the grand jury. The all-White grand jury indicted Farrow on April 23, 1907. The Board of Supervisors then compiled another list names from the voter registration rolls of people qualified to serve on Farrow's trial jury, again removing the names of all qualified African Americans.[30] When Farrow's attorney received word of what the Board of Supervisors had done, he immediately filed a motion to quash the indictment and the trial jury panel, arguing it would be fundamentally unfair to try Farrow for the murder of a White man where the Board of Supervisors had made it impossible for any African Americans to serve on either the grand jury or the trial jury. Significantly, the district attorney admitted in court documents that the Board of Supervisors had intentionally excluded all African Americans from jury service.[31] Despite this admission, Judge James Boothe denied Farrow's motion to quash and set the case for trial. After a two-day trial, the all-White jury convicted Farrow of murder and sentenced him to be hanged. Farrow appealed.

[28] *Farrow v. State*, Tate County Trial Court Record, April 1907, Series 6, Case No. 12823, B2-R98-B3-S4 Box 14503, Supreme Court Case Files, Mississippi Department of Archives and History, Jackson, Mississippi.

[29] *Farrow*, Tate County Trial Court Record, 27-29.

[30] Ibid., 29.

[31] Ibid.

On appeal, Farrow argued that by refusing to quash the indictment and trial jury panel, Judge Boothe violated the due process and equal protection provisions of the Fourteenth Amendment. The Mississippi Supreme Court agreed and reversed Farrow's conviction.[32] The Court, speaking through Chief Justice Albert Hall Whitfield, stated:

> The omission to list any names of negroes for jury service was not done *accidentally*, but was done *wittingly*, in accordance with and in furtherance of a well-established idea, custom, and practice of that sort, *for the express purpose of depriving the negro citizen of participation in the administration of the laws altogether*. [33]

Significantly, the Court's opinion specifically cited the Fourteenth Amendment as the primary basis for reversal and pointed out that this amendment guarantees the same constitutional protections to African Americans "which it accords to [ ] white citizens."[34] The adoption of the Fourteenth Amendment and the other Reconstruction Amendments in the late 1860s had forever changed the legal landscape in America. It represented a tectonic cultural shift. But despite this fact, many of the trial courts in Mississippi were intransigent. They continued to follow a "business-as-usual" approach in their treatment of African Americans. One can detect in the language of the *Farrow* opinion the Mississippi Supreme Court's irritation—even outrage—at the trial court's obstinate refusal to accord African Americans equal treatment under the law as required by the Fourteenth Amendment.

The unconstitutional exclusion of African Americans from jury service, of course, was not limited to Mississippi. Numerous southern state supreme courts condemned this discriminatory practice during the Progressive Era.[35] *Farrow*, however, was the first decision by the Mississippi Supreme Court to do so, and the Court has cited it authoritatively in many subsequent cases.[36] As such, its importance cannot

[32] *Farrow v. State*, 45 So. 619.
[33] Ibid. (emphasis added).
[34] Ibid.
[35] *See Smith v. State*, 42 Tex. Crim. 220 (Tex. 1900); *State v. Peoples*, 131 N.C. 784 (N.C. 1902); *Montgomery v. State*, 45 So. 879 (Fla. 1908); *Ware v. State*, 225 S.W. 626 (Ark. 1920).
[36] *Thomas v. State*, 517 So.2d 1285 (Miss. 1987); *Black v. State*, 187 So.2d 815 (Miss.

be overestimated. Unfortunately, even after *Farrow* was handed down, many Mississippi counties continued to systematically exclude African Americans from jury service, and regrettably, the Mississippi Supreme Court did not always come to the rescue. In fact, in the decades immediately following the Progressive Era, the Mississippi Supreme Court sometimes upheld convictions of African Americans even when there was clear evidence of discriminatory jury selection practices. For example, in the 1947 case of *State v. Patton*, the Mississippi Supreme Court affirmed a Lauderdale County death sentence conviction of an African American man accused of killing a White man despite evidence that no African American had been allowed to sit on a Lauderdale County jury in the thirty years preceding the defendant's conviction.[37] The United States Supreme Court later reversed the Mississippi Supreme Court's decision.[38] Thus, even though *Farrow* represented a significant victory for African American defendants on paper, it did not put an end to the well-entrenched practice of intentional, race-based exclusion of African Americans from jury service in Mississippi.

Racial Biases of White Jurors

Several years after *Farrow*, the Mississippi Supreme Court had another opportunity to review Mississippi's jury system in *Hill v. State*, where the Court considered the issue of whether African American criminal defendants were entitled to question prospective jurors about their racial biases during jury selection.[39] *Hill* was an appeal of a murder conviction of an African American from the Circuit Court of Bolivar County. The defendant, Joe Hill, shot and killed another African American, Wesley Hill (no relation to Joe), at a keg party Joe was hosting at his residence on the Massey Plantation.[40] Apparently, the party was as much a business venture as it was a social function for

1966); *Shinall v. State*, 187 So.2d 840 (Miss. 1966); *Caldwell v. State*, 517 So.2d 1360 (Miss. 1987); *Harper v. State*, 171 So.2d 129 (Miss. 1965); *Hopkins v. State*, 182 So.2d 236 (Miss. 1966).

[37] *State v. Patton*, 29 So.2d 96 (Miss. 1947).

[38] *Patton v. State of Mississippi*, 332 U.S. 463 (1947). Patton was represented in the United States Supreme Court by Thurgood Marshall, who twenty years later would become the first African American to serve on that court.

[39] *Hill v. State*, 72 So. 1003 (Miss. 1916).

[40] *Hill v. State*, Bolivar County Trial Court Record, December 1915, Series 6, Case No. 18715, B2-R103-B5-S5 Box 15958, Supreme Court Case Files, Mississippi Department of Archives and History, Jackson, Mississippi.

Joe, as he was charging his guests twenty-five cents per bucket of beer. Wesley, one of the guests, asked the man in charge of the keg for twenty-five cents worth of beer. When Wesley received his beer, he asked, "Is this all you get for twenty-five cents?" Joe overheard Wesley's complaint and approached him. Before long, a heated argument ensued, which ended when Joe shot and killed Wesley. Joe claimed Wesley had been the aggressor and that he had shot him in self-defense.

At the beginning of jury selection, Judge William Alcorn asked the jury panel whether they had any "feeling of bias, prejudice or ill will for or against the defendant."[41] They all said no. The district attorney asked the panel a similar question and received the same answer.[42] When Joe's attorney questioned the panel, he specifically asked whether they had any feelings of *racial* prejudice that would prevent them from being fair and impartial to Joe. He asked, "Have you got any prejudice against the negro, as a negro, that would induce you to return a verdict on less or slighter evidence than you would return a verdict of guilty against a white man under the same circumstances?"[43] The district attorney objected to this question because the jurors had already said they had no feelings of bias or prejudice against Joe. Joe's attorney argued that the jury had been asked only about bias or prejudice in general, and not specifically about *racial* bias or prejudice. Judge Alcorn sustained the district attorney's objection and prohibited Joe's attorney from continuing with this line of questioning.[44]

The all-White jury convicted Joe of murder and sentenced him to be hanged. On appeal, the Mississippi Supreme Court reversed the conviction, holding that Judge Alcorn had unfairly prohibited Joe's attorney from asking the jurors whether they had any racial bias against African Americans.[45] The Court stated:

> The defendant on trial was a negro and was being tried by white men. If for no other purpose than to exercise intelligently his right to peremptorily challenge jurors, the defendant had a right to inquire with reference to any bias or prejudice on account of

[41] *Hill v. State*, Bolivar County Trial Court Record, 6.
[42] Ibid., 8.
[43] Ibid., 12-13, 20.
[44] Ibid.
[45] *Hill v. State*, 72 So. 1003 (Miss. 1916).

> race that might exist in the mind of any juror tendered to him. Under the circumstance in this case, it was a fatal error to deny the defendant this right . . .[46]

Hill was the first case in Mississippi to hold that criminal defendants are entitled to question prospective jurors about potential racial bias. In arriving at this decision, the Mississippi Supreme Court cited cases from Florida and Texas which had previously conferred that right upon African Americans.[47] The Court's reliance on these cases is significant because it demonstrates the Court's willingness to accept input and guidance from other state courts on race-related issues. *Hill* proved to be an important decision not just in Mississippi but throughout the country. Appellate courts in Maryland,[48] Connecticut,[49] and Pennsylvania[50] subsequently cited *Hill* for the proposition that African American criminal defendants are entitled to question prospective jurors about their racial biases. The Court of Appeals of Kentucky relied upon *Hill* in holding that African American litigants in *civil* cases are entitled to inquire into the racial biases of prospective jurors.[51]

More importantly, *Hill* was one of the cases upon which the United States Supreme Court relied in reaching its landmark 1931 decision, *Aldridge v. United States*.[52] In *Aldridge,* an African American was tried in the District of Columbia for the murder of a White police officer. The trial judge prohibited Aldridge's attorney from asking prospective jurors whether they harbored any racial biases against African Americans. Aldridge was convicted and the Court of Appeals for the District of Columbia upheld the conviction. The United States Supreme Court reversed, holding that the "essential demands of fairness" required trial judges to allow African American criminal defendants to ask prospective jurors about any "disqualifying state of mind" including racial bias.[53] In reaching its decision, the Court specifically

[46] Ibid.
[47] Ibid., *Pinder v. State*, 8 So. 837 (Fla. 1891); *Fendrick v. State,* 39 Tex. Crim. 147 (Tex. Crim. App. 1898).
[48] *Lee v. State*, 165 A. 614 (Md. 1933); *Hernandez v. State*, 742 A.2d 952 (Md. 1999).
[49] *State v. Higgs*, 120 A. 152 (Conn. 1956).
[50] *Commonwealth v. Foster*, 293 A.2d 94 (Pa. Super. 1972).
[51] *Brumfield v. Consolidated Coach Corp*., 40 S.W.2d 356 (Ky. App. 1931).
[52] *Aldridge v. United States*, 283 U.S. 308 (1931).
[53] Ibid., 311-12.

cited the Mississippi Supreme Court's decision in *Hill*, and concluded that "no surer way could be devised to bring the processes of justice into disrepute" than to deny a defendant the right to ask prospective jurors if they harbored sentiments of racial prejudice that could influence their verdict.[54]

The United States Supreme Court's decision in *Aldridge* has been very influential. It has been cited in more than 300 reported decisions in federal and state courts across the United States since being handed down. The Court's decision was based, in part, on the Mississippi Supreme Court's decision in *Hill* from fifteen years earlier, which shows that the Progressive Era Mississippi Supreme Court was at least somewhat ahead of the national curve in this important area of law.

Improper Admission of Pre-trial Confessions

The Mississippi Supreme Court's decisions in *Farrow* and *Hill* broke new legal ground by extending the rights of African American criminal defendants in two key areas involving jury selection practice. But not all the Court's race decisions during the Progressive Era were as groundbreaking. For many years before the Progressive Era, the law in Mississippi provided that any pre-trial confession must be excluded from the jury if it was shown that it was not "freely and voluntarily made."[55] The Mississippi Supreme Court applied this rule of law very consistently throughout the years, even in cases involving African American defendants. One very early case from 1844 involved an enslaved man named Peter who was indicted in Lawrence County for the murder of Samuel Harvey.[56] After being arrested, Peter was taken to the justice of the peace, where he was surrounded by several armed White men who told him he would be hanged immediately unless he confessed to Harvey's murder. Not surprisingly, Peter confessed. He was then tried, convicted, and sentenced to death based largely on the testimony of the witnesses who heard his confession. On appeal, Mississippi's High Court of Errors and Appeals[57] reversed Peter's convic-

[54] Ibid., 315.

[55] *Browning v. State*, 30 Miss. 656 (Miss. 1856); *Lynes v. State*, 36 Miss. 617 (Miss. 1859); *Simmons v. State,* 61 Miss. 243 (Miss. 1883); *Ellis v. State*, 3 So. 188 (Miss. 1887).

[56] *Peter v. State*, 12 Miss. 31 (Miss. 1844).

[57] Between 1832 and 1870, Mississippi's highest court was known as the High Court

tion, holding that a confession such as his, clearly made under duress, could not properly be admitted into evidence. The Court stated, "[i]t is true that by adopting this rule the truth may sometimes be rejected; but it effects a greater object, in guarding against the possibility of an innocent person being convicted, who from weakness has been seduced to accuse himself, in hopes of obtaining thereby more favor, or from fear of meeting with immediate or worse punishment."[58]

Despite the wisdom and simplicity of this evidentiary principle, many Mississippi prosecutors in the late nineteenth and early twentieth centuries secured convictions of African Americans based on confessions obtained under suspicious circumstances. Those cases, however, were almost always reversed on appeal. Two cases from the Progressive Era involving African American defendants illustrate this.

In *Cooper v. State*, two African American men, Cooper and Ross, were suspected of killing another man named Giles.[59] On the night of the killing, Cooper and Ross were seen with Giles near a railroad track in Pike County. Giles' body was later discovered to have been brutally murdered. Cooper and Ross were both detained and summoned to testify before the grand jury. While in jail waiting to testify, Ross promised to give Cooper eighty dollars if he admitted to killing Giles. Ross also told Cooper that his prison sentence would be light if he was convicted and that Ross would get him a pardon. There was evidence Cooper was mentally challenged and constantly under the influence of Ross.

Cooper went before the grand jury and confessed to killing Giles, after which he was indicted and tried for murder. During the trial, however, Cooper testified he did not kill Giles. Over the objection of Cooper's attorney, the trial judge admitted Cooper's grand jury confession into evidence. Based on the confession, the jury found Cooper guilty and sentenced him to death. On appeal, the Mississippi Supreme Court held that the grand jury confession should not have been admitted into evidence and reversed the conviction. The Court stated, "[Cooper] was then in custody on the charge of committing the very crime for which that grand jury indicted him, and there is evidence in the record that he was induced to make the statement by precedent

of Errors and Appeals.

[58] *Peter v. State*, 12 Miss. 38-39 (Miss. 1844).

[59] *Cooper v. State,* 42 So. 601 (Miss. 1907).

undue influence."[60]

A few years later, in *Johnson v. State*, the Mississippi Supreme Court reversed another murder conviction of an African American that was based on a tainted pre-trial confession.[61] Johnson was indicted and tried in the Circuit Court of Claiborne County for the murder of Elston Brewer. Brewer and Johnson had been on a houseboat together on the Mississippi River near Vicksburg. Brewer's body was later discovered floating in the river with weights fastened to it. His skull had been crushed. The body had been in the water so long it was barely recognizable. Johnson was arrested and jailed. While in jail, he developed malaria-like symptoms and became extremely ill. A witness testified that Johnson "was lying on his cot, and great beads of perspiration [were] breaking out on his forehead and his hands and all portions of his cheek, and he was tossing from one side of the cot to the other, and turning over, and sat up awhile and laid down awhile, and his sentences were disconnected, and looked like he was mentally deranged."[62]

Despite being in this condition, Mr. E. A. Fitzgerald, who worked for a local newspaper, was allowed to interview Johnson on three separate occasions. Fitzgerald told Johnson he was a "spiritualist." He told Johnson, "I can look down in your black heart and see this diabolical crime you committed at midnight the other night."[63] He continued, "You better confess. . . There is no doubt about your guilt, and you have not slept a wink since you killed that boy, and you won't have any peace until you confess."[64] Fitzgerald then told Johnson he needed to "look beyond the grave for comfort" and that his "only hope was salvation."[65] After receiving three such visits over a twenty-four hour period, Johnson finally "confessed" to the murder.

The jury convicted Johnson based on the confession. On appeal, Johnson argued his confession should not have been admitted into evidence as it was not freely and voluntarily made. The Mississippi Supreme Court agreed with Johnson and reversed his conviction on the grounds that he was denied "the fair trial guaranteed to him by our fundamental laws."[66] The Court stated:

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[60] Ibid., 602.
[61] *Johnson v. State*, 65 So. 218 (Miss. 1914).
[62] Ibid., 219.
[63] Ibid.
[64] Ibid.
[65] Ibid.
[66] Ibid., 220.

> [Johnson] was friendless and a stranger in the city. He was charged with the gravest offense known to the law and imprisoned therefor. He was ill and in a nervous and weak physical condition. . . In this condition he was visited three times within twenty-four hours by a strong man, one who was experienced in obtaining confessions, and who visited him only to secure his confession. . . It does not appear that the confession was from the "spontaneous operation" of [his] own mind. It was not free from extraneous causes and influences.[67]

In the 1920s and 1930s, the Mississippi Supreme Court cited *Johnson* and *Cooper* as authoritative in dozens of cases.[68] Despite citing them as authoritative, the Court did not always adhere to the legal principles enunciated in them. In fact, contrary to *Johnson* and *Cooper*, the Court sometimes affirmed convictions of African Americans that were based on coerced confessions. Perhaps the most infamous example of such a case is *Brown v. State*, in which three African American men confessed, after being severely beaten and tortured, to the 1934 murder of Raymond Stewart in Kemper County.[69] The defendants were represented at trial by a group of court-appointed attorneys from

[67] Ibid., 219-220.

[68] *Holloway v. State*, 192 So. 450 (Miss. 1939); *Johnson v. State*, 191 So. 127 (Miss. 1939); *Elliott v. State*, 189 So. 796 (Miss. 1939); *Quan v. State*, 188 So. 568 (Miss. 1939); *Anderson v. State*, 186 So. 836 (Miss. 1939); *Hitt v. State*, 181 So. 331 (Miss. 1938); *Humphries v. State*, 179 So. 561 (Miss. 1938); *Allen v. State*, 177 So. 787 (Miss. 1938); *Bartee v. State*, 177 So. 355 (Miss. 1937); *Owen v. State*, 171 So. 345 (Miss. 1936); *Pullen v. State*, 168 So. 69 (Miss. 1936); *Brittenum v. State*, 167 So. 619 (Miss. 1936); *Keeton v. State*, 167 So. 68 (Miss. 1936); *Wright v. State*, 161 So. 870 (Miss. 1935); *Brown v. State*, 158 So. 339 (Miss. 1935); *Brown v. State*, 158 So. 339 (Miss. 1935); *Owens v. State*, 152 So. 651 (Miss. 1934); *Carraway v. State*, 148 So. 340 (Miss. 1933); *Nichols v. State*, 145 So. 903 (Miss. 1933); *Weatherford v. State*, 143 So. 853 (Miss. 1932); *Comings v. State*, 142 So. 19 (Miss. 1932); *Perkins v. State*, 135 So. 357 (Miss. 1931); *Tyler v. State*, 131 So. 417 (Miss. 1930); *Stepney v. City of Columbia*, 127 So. 687 (Miss. 1930); *Randolph v. State*, 118 So. 354 (Miss. 1928); *Fisher v. State*, 116 So. 746 (Miss. 1928); *Stubbs v. State*, 114 So. 827 (Miss. 1927); *Clash v. State*, 112 So. 370 (Miss. 1927); *Fisher v. State*, 110 So. 361 (Miss. 1926); *Whip v. State*, 109 So. 697 (Miss. 1926); *Donahue v. State*, 107 So. 15 (Miss. 1926); *Walker v. State*, 105 So. 497 (Miss. 1925); *Lee v. State*, 102 So. 296 (Miss. 1924); *Taylor v. State*, 98 So. 459 (Miss. 1924); *Williams v. State*, 92 So. 584 (Miss. 1922); *White v. State*, 91 So. 903 (Miss. 1922); *Smith v. State*, 133 So. 681 (Miss. 1931); *Felder v. State*, 67 So. 56 (Miss. 1915).

[69] *Brown v. State*, 158 So. 339 (Miss. 1935).

DeKalb. The lead defense attorney was John Clark, a state senator from Kemper County. The prosecutor was future United States Senator John C. Stennis. During the state's case in chief, Stennis called Sheriff J. D. Adcock as a witness to testify about the confessions. The defense objected, whereupon Judge J. I. Sturdivant excused the jury, and Adcock was examined outside its presence. During cross-examination, Adcock admitted the defendants had been beaten prior to making their confessions. Despite this admission, Judge Sturdivant ruled the confessions had been made freely and voluntarily. Later in the trial, during the prosecution's rebuttal case, Stennis introduced three more witnesses who testified they had heard the defendants' confessions. The defense should have made another motion to exclude this testimony but failed to do so. The jury convicted all three defendants.

On appeal, a 4-2 majority of the Mississippi Supreme Court affirmed the convictions on the technicality that "no motion was made to exclude the confessions" when the prosecution's rebuttal witnesses were called to testify.[70] Even though the Court acknowledged that the confessions were coerced, the Court ruled that the defense lawyer's failure to interpose an objection mandated an affirmance. Justice Virgil Griffith, horrified at this result, wrote a stinging dissent in which he condemned not only the trial court proceedings but also the majority's decision as well. Griffith opined:

> [The trial] was never a legitimate proceeding from beginning to end; it was never anything but a fictitious continuation of the mob which originally instituted and engaged in the admitted tortures. If this judgment be affirmed by the federal Supreme Court, it will be the first in the history of that court wherein there was allowed to stand a conviction based solely upon the testimony coerced by the barbarities of executive officers of the state.[71]

Justice William D. Anderson, equally disgusted by the majority's decision, wrote a separate dissent which concluded:

[70] Ibid., 342.
[71] Ibid., 344, Griffith, J, dissenting.

> In some quarters there appears to be very little regard for that provision in the Bill of Rights guaranteeing persons charged with crime from being forced to give evidence against themselves. The pincers, the rack, the hose, the third degree, or their equivalent, are still in use.[72]

Justices Anderson and Griffith have been described as men who "exemplified the best of post-Reconstruction Mississippi."[73] As a young man, Anderson had taught in an African American school.[74] He had a long, distinguished career in public service. He was mayor of Tupelo between 1899 and 1907 and served as a member of the Mississippi House of Representatives and Senate before being elected to the Mississippi Supreme Court in 1920.[75] Griffith served as a chancery court judge on the Mississippi Gulf Coast before being elected to the Mississippi Supreme Court in 1928. He became somewhat of a legend among Mississippi lawyers and judges for his treatises *Mississippi Chancery Practice* (1925) and *Outlines of the Law: A Comprehensive Summary of the Major Subjects of American Law* (1949).

The most remarkable aspect of Anderson's and Griffith's dissents in *Brown* is their scathing tone. Supreme Court justices usually demonstrate a great deal of collegiality toward one another even when they sharply disagree. But there is little collegiality in the *Brown* dissents. Anderson and Griffith essentially accused their brethren of endorsing torture and cruelty. One cannot help but wonder what type

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[72] Ibid., Anderson, J., dissenting. Anderson's dissent in *Brown* bears similarities to another dissent he wrote seven years earlier in *Loftin v. State*, 116 So. 435 (Miss. 1928). In *Loftin*, a majority of the Mississippi Supreme Court affirmed a murder conviction of an African American man who confessed after being surrounded by a mob of armed White men. Anderson's dissent states, in part, "the confession was the result of fear—the fear of being mobbed. The crowd surrounding [Loftin] in the nighttime, with guns in the hands of some of its members, must have looked to him like a mob. Can it be said that the requirement of the law, that the evidence must show beyond a reasonable doubt that the confession was free and voluntary, was complied with? I think not." *Loftin*, 116 So. at 436, Anderson, J, dissenting.

[73] Joseph A. Ranney, *A Legal History of Mississippi: Race, Class, and the Struggle for Opportuni*ty (Jackson: University of Mississippi Press, 2019), 103.

[74] Leslie Southwick, *Mississippi Supreme Court Elections: A Historical Perspective*, 19 Miss. C.L. Rev. 115: 134 (1997-1998).

[75] Anderson actually served two stints on the Mississippi Supreme Court. In 1910, he was appointed to the Court by Governor Edmund Noel but resigned a year later to resume his law practice in Tupelo. In 1920, he was elected to the Court and served until his retirement in 1944.

of reaction these dissents must have provoked among members of the majority in the days and weeks following the decision.

The defendants in *Brown* filed a petition for writ of certiorari in the United States Supreme Court which agreed to hear their case in 1936. The defendants were represented in the Supreme Court by former Mississippi governor Earl Brewer.[76] Lead trial lawyer, John Clark, had suffered a nervous breakdown while the case was pending before the Mississippi Supreme Court and had to withdraw. Clark's wife, a longtime friend of Brewer's, approached Brewer and pleaded with him to take over the case. According to Ms. Clark, Brewer initially "was very indignant" but eventually "consented to help us solely because of his personal love for Mr. Clark and for the purpose of helping right a grievous wrong."[77]

After hearing the appeal, the United States Supreme Court reversed the Mississippi Supreme Court's decision, holding that the admission of the confessions into evidence was a "wrong so fundamental that it made the whole proceeding a mere pretense of a trial, and rendered the conviction and sentence wholly void."[78] The Court stated:

> In the instant case, the trial court was fully advised by the undisputed evidence of the way in which the confessions had been procured. The trial court knew that there was no other evidence upon which conviction and sentence could be based. Yet it proceeded to permit conviction, and to pronounce sentence. The conviction and sentence were void for want of the essential elements of due process, and the proceeding thus vitiated could be challenged in any appropriate manner.[79]

[76] Brewer, a native of Carroll County, Mississippi, represented Yalobusha County in the Mississippi Senate between 1896 and 1900 before being appointed district attorney for the 11th judicial district. He served as governor of Mississippi between 1912 and 1916.

[77] Quoted in Richard C. Cortner, *A "Scottsboro" Case in Mississippi: The Supreme Court and Brown v. Mississippi* (Jackson: University of Mississippi Press, 1986), 64. Brewer had already established himself as an attorney willing to fight for the rights of minorities. In *Rice v. Lum*, 104 So. 105 (Miss. 1925), Brewer represented a high-school aged Chinese girl who had been prohibited from attending the White high school in Rosedale. Both the Circuit Court of Bolivar County and the Mississippi Supreme Court ruled that the Chinese student was "colored" and therefore not legally entitled to enroll in the White school. The decision was affirmed by the United States Supreme Court. *Lum v. Rice*, 275 U.S. 78 (1927).

[78] *Brown v. Mississippi*, 297 U.S. 278, 286 (1936).

[79] Ibid., 287.

Brown is another example of the Court's post-Progressive Era regression in its treatment of African American criminal defendants. Professor Michael Klarman has observed that the Progressive Era Mississippi Supreme Court, which was more committed to racial equality than succeeding generations of the Court, "almost certainly" would have reversed the convictions in *Brown*.[80] Various attempts have been made to explain the Mississippi Supreme Court's regression. Some have attributed the regress to the fact that the terms of Mississippi Supreme Court justices went from appointive to elective in 1914, thus making the members of the Court "directly answerable to a lily-white electorate."[81] It certainly seems plausible that the justices of the Mississippi Supreme Court would have felt at least some political pressure to satisfy the desires of the White electorate once their jobs came to depend on the popular vote.

Others have explained the Court's regress as a "backlash" against the national criticism of the South's brutal treatment of African American criminal defendants during the age of Jim Crow.[82] In his book about the infamous Scottsboro cases from Alabama in which several young African American males (aged 13-20) were wrongfully convicted of raping a White woman in 1931, Dan Carter describes the fierce outside criticism leveled against the trial judge, A. E. Hawkins, following their convictions.[83] One outraged college student from New York wrote a letter to Judge Hawkins stating, "What kind of a mindless savage are you? Is condemning eight teenagers to death on the testimony of two white prostitutes your idea of 'enlightened' Alabama justice?"[84] This kind of criticism was common in the wake of the Scottsboro convictions.

Although Mississippi did not receive the same degree of negative national attention following the convictions in *Brown*, the justices of the Mississippi Supreme Court were no doubt aware of the scorn

[80] Michael J. Klarman, *The Racial Origins of Modern Criminal Procedure*, 99 Mich. L. Rev. 48 (2000), 96.

[81] Neil R. McMillen, *Dark Journey: Black Mississippians in the Age of Jim Crow* (Urbana and Chicago: University of Illinois Press, 1989), 218.

[82] Klarman, *Racial Origins*.

[83] Dan T. Carter, *Scottsboro: A Tragedy of the American South*, Revised Edition (Baton Rouge: Louisiana State University Press, 2007), 105-115.

[84] Letter of Lawrence H [full last name redacted] to Judge A. E. Hawkins, April 13, 1931, quoted in Carter, *Scottsboro*, 106.

heaped onto the neighboring state of Alabama following the Scottsboro cases. Klarman has argued that the justices of the Mississippi Supreme Court "may have concluded after Scottsboro that if northerners were intent on criticizing southern states for their treatment of black criminal defendants notwithstanding the recent progress they felt had been made toward achieving colorblind justice, they were not going to offer any assistance in that enterprise."[85] Thus, the outside criticism of the South during the Jim Crow era may have had the unintended and unfortunate consequence of making things worse for some African American criminal defendants.

Mob Violence

As bad as conditions usually were for African American criminal defendants inside Mississippi's courtrooms, conditions sometimes were worse *outside* the courtroom. White lynch mobs regularly took direct, violent action against African Americans suspected of committing crimes against Whites. It was not uncommon for a vigilante mob to apprehend a suspect in the middle of the night and conduct a mock trial in which the accused was coerced to testify against himself. The "water cure" was a favorite device utilized by lynch mobs to extract extrajudicial confessions. This torture involved pouring water into the nose of the accused, causing extreme physical pain and psychological terror (the sensation of drowning). The Mississippi Supreme Court condemned this barbaric practice on more than one occasion.[86]

Mobs sometimes tortured, mutilated, and murdered accused African Americans without going to the trouble of a trial by ordeal. Although the precise number of African American lynchings is unknown, it is estimated that there were at least six hundred in Mississippi between 1880 and 1945.[87] The numbers peaked between 1889 and 1908 following the adoption of the 1890 Constitution and again between 1918 and 1922 following World War I.[88]

Even though lynchings were somewhat commonplace in Mis-

[85] Klarman, *Racial Origins*, 75.

[86] See, e.g., *White v. State*, 91 So. 903 (Miss. 1922); *Fisher v. State*, 110 So. 361 (Miss. 1926).

[87] McMillen, *Dark Journey*, 229.

[88] Dennis J. Mitchell, *A New History of Mississippi* (Jackson: University of Mississippi Press, 2014), 297.

sissippi in the late nineteenth and early twentieth centuries, local law enforcement officers ordinarily were able to rescue accused African Americans from the hands of the mob. But even when a mob was temporarily thwarted, the threat of vigilante violence usually dangled over trial proceedings like the Sword of Damocles. When mobs threatened, trial judges felt intense pressure to "act fast" or risk losing all control of public order. Judges frequently arranged hasty trials for accused African Americans to placate the mob and maintain at least a semblance of due process. Trials conducted amidst the threat of impending mob violence were hopelessly compromised. A conviction usually was a foregone conclusion. And even in those extremely rare cases when an accused African American was somehow acquitted, vigilante mobs sometimes lynched the exonerated defendant anyway.[89]

The 1904 case of *Brown v. State* (not to be confused with the *Brown* case discussed in the preceding section) exemplifies the prejudicial influence lynch mobs exerted over criminal trials involving African Americans. Tom Brown was an African American arrested and jailed for killing a White man, Murdee Williams, in Montgomery County.[90] A mob formed outside the jail and demanded that Brown be brought out for hanging. The mob even threatened to blow up the jail with dynamite unless the sheriff handed Brown over to them. The sheriff refused to accede to the wishes of the mob and kept Brown in custody. It took six deputies to guard Brown during the day and sixteen deputies to guard him at night. Brown's attorney implored Judge William F. Stevens for a change of venue based on the "highly inflamed state of public feeling [and the] almost universal expression that he ought to be hung."[91] Judge Stevens, cognizant of the possibility of retaliation from the mob if he moved the trial to another county, denied the request for change of venue, after which Brown was summarily tried, convicted, and sentenced to death. On appeal, the Mississippi Supreme Court reversed Brown's conviction, holding that the mob's undue influence on the judge and jury "demonstrated beyond all doubt that the court erred

[89] See *Fisher v. State*, 110 So. 361, 363 (Miss. 1926).

[90] *Brown v. State*, 36 So. 73 (Miss. 1904). Although the Mississippi Supreme Court's opinion does not state the race of Brown or Williams, the original court files contain references to the fact that Brown was African American and Williams was White. See *Brown v. State*, Series 6, Case No. 11403, B2-R109-B3-S5 Box 14117, Supreme Court Case Files, Mississippi Department of Archives and History, Jackson, Mississippi.

[91] Ibid.

in not granting the motion for change of venue."[92] The Court concluded that "it is mockery to talk of a fair trial" under the egregious circumstances presented in the case.[93]

The same result was reached by the Mississippi Supreme Court in *Tennison v. State*.[94] In *Tennison*, an African American was indicted for murdering a White man in Columbus. Prior to the trial, there was a considerable amount of local publicity concerning the murder. Almost everyone in Columbus knew something about the case. Lynchings were threatened. Tennison's attorney requested a change of venue. At the hearing, more than twenty witnesses testified that it would be impossible for Tennison to get a fair trial in Columbus. One witness testified that he heard it said that Tennison "ought to be hung without judge or jury."[95] Another witness testified that Tennison had "already been tried" in the court of public opinion and that "he was guilty."[96] Other witnesses offered similar testimony. Despite the overwhelming pre-trial public sentiment and threats of violence against Tennison, the trial judge denied the motion for change of venue, whereupon Tennison was tried and convicted.

The Mississippi Supreme Court reversed Tennison's conviction, holding that the undisputed facts established beyond doubt that a fair trial simply could not be conducted in Columbus.[97] The Court stated:

> It is one of the crowning glories of our law that, no matter how guilty one may be, no matter how atrocious his crime, nor how certain his doom, when brought to trial anywhere he shall . . . have the same fair and impartial trial accorded to the most innocent defendant. Those safeguards, crystallized

[92] Ibid.

[93] Ibid. When the case was remanded, venue was transferred to Carroll County, where Brown was tried and convicted again. The Mississippi Supreme Court reversed the second conviction because the trial court erroneously refused to permit Brown to put on evidence of prior conflicts between him and his alleged victim. *Brown v. State*, 37 So. 957 (Miss. 1905). Following the second reversal, Brown was tried and convicted a third time. This conviction was also reversed by the Mississippi Supreme Court on similar grounds as the previous reversal. *Brown v. State*, 40 So. 737 (Miss. 1906). It is unknown whether Brown was tried a fourth time.

[94] *Tennison v. State*, 31 So. 421 (Miss. 1902).

[95] Ibid., 422.

[96] Ibid.

[97] Ibid.

> into the constitution and laws of the land as the result of the wisdom of centuries of experience, must be . . . sacredly upheld.[98]

Although not every trial involving African American criminal defendants was plagued by the threat of mob violence, many of them were. This fact certainly is one of the primary reasons African Americans found it so difficult to obtain fair treatment in the trial courts. It probably also helps to explain why African Americans tended to get far better treatment on appeal. Unlike trial judges, the justices of the Mississippi Supreme Court did not face the threat of mob violence. They lived and worked far away from the local clamor that so often accompanied criminal trials of African Americans. The justices had the luxury of deliberating and making decisions on their cases in the quietude of their chambers, sometimes hundreds of miles from the courthouse where the underlying case had been tried. Since they did not have to worry about avoiding a lynching, they probably felt greater freedom to apply the law fairly and equitably.

Lack of Adequate Legal Representation

On several occasions during the Progressive Era, the Mississippi Supreme Court had to decide whether to uphold convictions of African Americans tried without legal representation. During the nineteenth and early twentieth centuries, criminal defendants of both races sometimes faced felony trials without the benefit of an attorney. At that time, there was no recognized constitutional right to defense counsel in state court felony prosecutions. The United States Supreme Court did not recognize the constitutional right to defense counsel in state court *capital* cases until 1932,[99] and that right was not extended to cover *all* state court felony prosecutions until 1963.[100] Mississippi's 1890 Constitution did not guarantee the right to defense counsel in criminal cases. It merely provided that "[i]n all criminal prosecutions the accused shall have the right to be heard *by himself or counsel, or*

[98] Ibid., 422-23. See also *Anderson v. State*, 46 So. 65 (Miss. 1908) (assault and battery conviction of African American reversed where there was undisputed evidence that a lynch mob was allowed to remain inside the courtroom during the defendant's trial).

[99] *Powell v. Alabama*, 287 U.S. 45 (1932).

[100] *Gideon v. Wainwright*, 372 U.S. 335 (1963).

both. . ."[101] Nevertheless, in at least two cases from the Progressive Era the Mississippi Supreme Court reversed convictions of African Americans where the defendant either had no counsel at trial or had ineffective assistance of counsel.

In *Burrell v. State*, the Circuit Court of Prentiss County indicted a fifteen-year-old African American, Samuel Burrell, for the murder of Joseph Judd, a seventeen-year-old African American.[102] Burrell's attorney was E. C. Sharp. Judge Eugene O. Sykes set the trial for February 9, 1909.[103] When the trial date arrived, Sharp filed a motion for a special jury venire. A special jury venire is distinguished from a regular jury venire in that a regular jury venire is called in the ordinary course of court business to serve on whatever trial might be called on the day in question. In contrast, a special jury venire is one that is specially called for a specific case.[104] When the attorneys appeared before Judge Sykes to argue the motion, Sharp agreed to waive the request for a special jury venire if the district attorney would postpone the trial until the afternoon of February 11. The district attorney agreed to this request in the presence of Judge Sykes.

In reliance on the agreement with the district attorney, Sharp went to Corinth on the morning of February 11 with the intention of returning to Booneville for the trial that afternoon. However, that morning Judge Sykes and the district attorney started the trial in Sharp's absence. Sharp's partner, A. J. McIntyre, went to the trial but was unprepared to try the case. When Sharp returned to Booneville that afternoon and went to court, he discovered to his chagrin that the trial had started without him. The jury convicted Burrell of murder and sentenced him to death. Sharp immediately filed a motion for new trial, arguing the trial should not have started in his absence given the

[101] Miss. Const., Art. 3, § 26 (1890). In keeping with *Gideon*, Mississippi law now guarantees that "a defendant shall be entitled to be represented by counsel in any criminal proceeding." Miss. R. Crim. P. 7.1(a). This right attaches "once the proceedings against the defendant reach the accusatory stage." *Williamson v. State*, 512 So.2d 868, 876 (Miss. 1987).

[102] *Burrell v. State*, Prentiss County Trial Court Record, February 1909, Series 6, Case No. 13864, B2-R86-B3-S8 Box 15664, Supreme Court Case Files, Mississippi Department of Archives and History, Jackson, Mississippi.

[103] Judge Sykes (1876-1945) served as a circuit court judge for several years before being appointed by Governor Theodore Bilbo to the Mississippi Supreme Court in 1916, where he served until 1924. In 1934, he was appointed by President Calvin Coolidge to serve as the first chairman of the Federal Communications Commission.

[104] Under Mississippi law, then and now, a criminal defendant charged with a capital crime is entitled to a special venire upon motion.

agreement he and the district attorney made in the presence of the judge. Judge Sykes denied the motion and scheduled the execution.

On appeal, the Mississippi Supreme Court reversed Burrell's conviction.[105] The Court held it was fundamentally unfair to begin a death penalty trial when the lead defense attorney was not in court, especially since the district attorney and trial judge specifically agreed not to start the trial until the afternoon of February 11. The Supreme Court stated that Burrell "was prejudiced in his trial, by reason of having been forced into trial, in the absence of Mr. Sharp, in the forenoon of Thursday, in contravention of the agreement set out."[106]

A few years later, in 1916, the Mississippi Supreme Court reversed another conviction of a young African American because he was forced to try his case with no lawyer at all.[107] In *Griffin v. State*, a jury in Warren County convicted a sixteen-year-old African American, Henry Griffin, of burglary and sentenced him to three years in the penitentiary.[108] Griffin worked as an "errand boy" for Katzemeyer's Bakery in Vicksburg.[109] One night, apparently after business hours, Joe Katzemeyer, the owner of the bakery, was up front and noticed light coming from the storeroom attached to the bakery. When he went to the storeroom to investigate, someone burst out of the storeroom door and ran past him. Although Katzemeyer was unable to make a positive identification, his son, Lester, and two employees of the bakery identified the person as Griffin.

Griffin was indicted for burglary and arraigned on December 6, 1915.[110] The arraignment identified Griffin's attorney as Willis E. Mollison, a well-known African American attorney in Vicksburg.[111]

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[105] *Burrell v. State*, 50 So. 694 (Miss. 1909).

[106] Ibid., 695.

[107] *Griffin v. State*, 71 So. 572 (Miss. 1916).

[108] *Griffin v. State*, Trial Court Record, Series 6, Case No. 18985, B2-R104-B9-S6 Box 15860, Supreme Court Case Files, Mississippi Department of Archives and History, Jackson, Mississippi.

[109] *Griffin v. State*, Brief of Appellee, p. 1, Series 6, Case No. 18985, B2-R104-B9-S6 Box 15860, Supreme Court Case Files, Mississippi Department of Archives and History, Jackson, Mississippi.

[110] *Griffin v. State*, Arraignment, Trial Court Record.

[111] Mollison was one of the few African American members of the Mississippi Bar during this period. He was born in Mayersville, Mississippi, in 1859. He practiced law in Vicksburg for many years before moving to Chicago where he practiced until his death in 1924. Mollison was a delegate to several Republican National Conventions and also served as the President of the Cook County, Illinois Bar Association. Willis E. Mollison Obituary, *The Broad Ax*, Chicago, Illinois, June 1924. Mollison has been described as "Mississippi's foremost civil rights leader" of the Progressive Era. Christopher Waldrep,

The arraignment provided that the trial would be held on December 8, 1915.[112] However, the trial was held on December 10 in Mollison's absence. There is nothing in the trial court record explaining why the trial date was moved to December 10 or why Mollison was not present. Nevertheless, Griffin sat through the trial by himself with no legal representation.

During the trial, the only evidence of breaking and entering was Katzemeyer's testimony that the lock on the storeroom had been "tampered with." No witness testified that Griffin was the one who tampered with it. Nor was there any evidence Griffin stole anything. The only evidence was that a sack of groceries was left behind in the storeroom. Griffin asked no questions of any of the state's witnesses and put on no witnesses of his own. He made no statement to the jury, although the judge gave him an opportunity to do so.

Griffin was found guilty of burglary, after which Mollison filed an appeal on his behalf to the Mississippi Supreme Court. The Supreme Court reversed Griffin's conviction on two grounds. First, the Court found the state had not presented sufficient evidence of guilt beyond a reasonable doubt. Second, the Court held that Griffin should not have been tried in the absence of his attorney.[113] The Court stated:

> Here was a young negro boy, a human being, charged with a felony, being tried in a tribunal of justice; ignorant, poor, and friendless, without the aid of counsel to speak for him, and unable to speak in his own behalf, he is condemned and consigned to prison upon this character of proof. . . The learned court should have especially required that the testimony offered by the state, establish the "breaking and entering," as charged in the indictment. In failing to do this the lower court committed error. . .[114]

Griffin and *Burrell* are noteworthy because they were decided by the Mississippi Supreme Court *before* there was a recognized con-

Jury Discrimination: The Supreme Court, Public Opinion, and a Grassroots Fight for Racial Equality in Mississippi (Athens, GA: University of Georgia Press, 2010), 207.

[112] *Griffin v. State*, Arraignment, Trial Court Record.

[113] *Griffin*, 71 So. 573.

[114] Ibid.

stitutional right to defense counsel in state court felony prosecutions. Had the Mississippi Supreme Court affirmed the convictions of Griffin and/or Burrell, it is likely the United States Supreme Court would not have disturbed the result. The fact that the Mississippi Supreme Court overturned their convictions further exemplifies the Court's commitment to fair and equitable administration of justice to African American criminal defendants during the Progressive Era.

Racially Inflammatory Remarks by Prosecutors

Another issue the Mississippi Supreme Court addressed over and over during the Progressive Era was whether prosecutors had improperly appealed to racial prejudice during trials of African Americans. It was commonplace for district attorneys to attempt to secure convictions by inflaming the passions of all-White juries. However, in virtually every case where this issue was brought before the Mississippi Supreme Court, the Court condemned such prosecutorial appeals to racial prejudice. The seminal case was *Hampton v. State*.[115] In *Hampton*, a jury in the Circuit Court of Kemper County convicted Ezra Hampton, a biracial man, for the murder of Henry Welch, an African American.[116] During a picnic one day in September 1905, Henry accused Ezra's brother, Jim, of making advances on Henry's wife. An argument ensued. The state attempted to prove that as Henry was retreating from Jim, Ezra approached Henry from behind and shot him in the back of the head. Ezra testified that during Henry and Jim's altercation, Henry pulled a knife and was about to stab Jim to death, whereupon Ezra pulled a gun and shot Henry.

The key moment in the trial, at least as far as the Mississippi Supreme Court was concerned, came during the state's closing argument when the district attorney went into a racially charged tirade against Ezra Hampton. The district attorney argued, "Not a negro in that great concourse of negroes who threaten to be respectable has dared to come here and testify in behalf of this mulatto."[117] He then stated, "In any other commonwealth in this Union he would be hung

[115] *Hampton v. State*, 40 So. 545 (Miss. 1906).

[116] *Hampton v. State*, Kemper County Trial Court Record, November 1905, Series 6, Case No. 11959, B2-R108-B1-S5 Box 14338, Supreme Court Case Files, Mississippi Department of Archives and History, Jackson, Mississippi.

[117] *Hampton,* 40 So. 545.

without benefit of clergy. . . Mulattoes should be kicked out by the white race and spurned by the negroes."[118] He then said that although Hampton and his brother were "whiter" than himself or anyone else in the courtroom, they were "still negroes," and "as long as one drop of the accursed blood was in their veins they have to bear it."[119] He argued that Hampton and his brother "thought they were better than other negroes, but in fact they were worse than negroes; that they were negritoes, a race hated by the white race and despised by the negroes, accursed by every white man who loves his race, and despised by every negro who respects his race."[120]

The all-White jury convicted Hampton of murder and sentenced him to hard labor in the state penitentiary for the remainder of his life.[121] Hampton's attorney filed a motion for a new trial, arguing the prosecutor had improperly appealed to racial prejudice to sway the jury. The trial judge refused to grant a new trial, after which Hampton appealed. The Mississippi Supreme Court carefully reviewed the record and concluded that the prosecutor's argument was entirely inappropriate. In reversing the conviction and ordering a new trial, the Court stated:

> Mulattoes, negroes, Malays, whites, millionaires, paupers, princes, and kings, in the courts of Mississippi, are on precisely the same exactly equal footing. All must be tried on facts, and not on abuse. Only impartial trials can pass the Red Sea of this court without drowning. Trials are to vindicate innocence or ascertain guilt and are not to be vehicles for denunciation.[122]

It is noteworthy that the Mississippi Supreme Court's opinion in *Hampton* was authored by Justice Solomon S. Calhoon. Calhoon, who had served as president of Mississippi's Constitutional Convention of 1890 before being appointed to the Mississippi Supreme Court in 1900, was an outspoken advocate for White supremacy who once

[118] Ibid.
[119] Ibid.
[120] Ibid.
[121] *Hampton v. State*, Kemper County Trial Court Record, 46.
[122] *Hampton*, 40 So. 546.

referred to African American suffrage as a "great and constantly irritating evil."[123] Despite his opposition to African American suffrage, the record shows that Calhoon was surprisingly fair to African American criminal defendants during his tenure on the Mississippi Supreme Court. He authored many opinions such as *Hampton* in which the Court reversed criminal convictions rendered against African Americans.[124]

Hampton is the first in a long line of Mississippi Supreme Court decisions in which the Court condemned improper prosecutorial appeals to racial prejudice.[125] One of the more egregious examples of this practice occurred in the Sharkey County murder trial of *Collins v. State* where the prosecutor said, "This bad nigger killed a good nigger; the dead nigger was a white man's nigger, and these bad niggers like to kill these kind; the only way you can break up this pistol toting among these niggers is to have a neck-tie party."[126] In reversing Collins' conviction and death sentence, the Mississippi Supreme Court stated:

> Can anyone say, under such circumstances, the defendant has had that which the Constitution guarantees to every man—a fair and impartial trial? The appellant is a negro, yet he is entitled to be tried by the same rules of law, and he must receive, while upon a trial for his life, the same treatment, as other persons. Common justice and common honesty cry aloud against the treatment shown by this record. . . Violators of the criminal laws should be vigorously prosecuted, but there is a vast differ-

[123] Solomon S. Calhoon, *The Causes and Events that Led to the Calling of the Constitutional Convention of 1890*, Publications of the Mississippi Historical Society, Oxford, Mississippi, Vol. 6 (1902) 105, 110.

[124] *Moseley v. State*, 41 So. 384 (Miss. 1906); *Jeffries v. State*, 42 So. 801 (Miss. 1907); *Sanford v. State*, 44 So. 801 (Miss. 1907); *Woods v. State*, 43 So. 433 (Miss. 1907); *Waller v. State*, 44 So. 825 (Miss. 1907); *Bell v. State*, 43 So. 84 (Miss. 1907); *Burnett v. State*, 46 So. 248 (Miss. 1908); *Hayes v. State*, 46 So. 249 (Miss. 1908).

[125] *Sykes v. State*, 42 So. 875 (Miss. 1907); *Harris v. State*, 50 So. 626 (Miss. 1909); *Hardaway v. State*, 54 So. 833 (Miss. 1911); *Collins v. State*, 56 So. 527 (Miss. 1911); *Kelly v. State*, 74 So. 679 (Miss. 1917); *Moseley v. State*, 73 So. 791 (Miss. 1917); *Garner v. State*, 83 So. 83 (Miss. 1919); *Herring v. State*, 84 So. 699 (Miss. 1920); *Funches v. State*, 87 So. 487 (Miss. 1921); *Herrin v. State*, 29 So.2d 452 (Miss. 1947); *Harris v. State*, 46 So.2d 91 (1950); *Reed v. State*, 99 So. 2d 455 (Miss. 1958); *Herring v. State*, 522 So.2d 745 (Miss. 1988).

[126] *Collins v. State*, 56 So. 527 (Miss. 1911).

> ence between legitimate prosecution and appealing to race prejudice and to the popular clamor.[127]

Sometimes prosecutors stoked the irrational fears some White jurors had of African Americans. In *Sykes v. State*, an African American was on trial for rape.[128] During his closing argument, the district attorney told the all-White jury, "Gentlemen of the jury, if you turn this prisoner loose he might be guilty of perpetrating his lust upon some of the white women of the county."[129] In reversing the conviction, the Mississippi Supreme Court held that this was an "exceedingly inflammatory" remark "calculated to arouse prejudice in the minds of the jury."[130]

In other cases, prosecutors urged the juries to convict African Americans simply to demonstrate that Whites were still in control in Mississippi. This appeal to White supremacy was essentially the argument of the district attorney in the Pike County assault and battery trial of William Harris in 1909. In his closing argument, the district attorney said, "The white people of this country will take the law into their own hands and enforce the law to suit themselves if you don't do it yourself. This is our country. We bought it with our own blood, and we have a right to rule it."[131] The Mississippi Supreme Court reversed Harris' conviction, holding that these remarks were "a direct appeal to race prejudice" and of "a highly inflammatory character" transcending "any legitimate bounds of argument."[132]

In at least one case, the prosecutor told the jury to convict simply because the state's witness was White and the defendant was African American. In *Hardaway v. State,* an African American was on trial in Jones County.[133] The trial judge was future United States congressman and governor of Mississippi, Paul B. Johnson.[134] The state's

[127] Ibid., 528-29.
[128] *Sykes v. State*, 42 So. 875 (Miss. 1907).
[129] Ibid.
[130] Ibid.
[131] *Harris v. State*, 50 So. 626 (Miss. 1909).
[132] Ibid.
[133] *Hardaway v. State*, 54 So. 833 (Miss. 1911).
[134] Johnson served as a circuit court judge from 1910 until 1919. He was elected to the United States House of Representatives in 1919 and served two terms. In 1939, he was elected governor of Mississippi. He died in office in 1943. Paul B. Johnson State Park, located in Forrest County, Mississippi, is named for him. His son, Paul B. Johnson Jr., was elected governor of Mississippi in 1964.

"star witness" was White. During closing argument, the prosecutor bluntly told the jury that it should believe the state's witness because "his skin is white while the defendant's is black."[135] The prosecutor then declared, "Somehow or other it is just natural and inborn in me to believe a white man before I will a negro."[136] In reversing Hardaway's conviction, the Mississippi Supreme Court stated:

> Race prejudice has no place in the jury box, and trials tainted by appeals thereto cannot be said to be fair and impartial. . . It is the duty of the court to see that the defendant is tried according to the law and the evidence, free from any appeal to prejudice or other improper motive, and this duty is emphasized when a colored man is placed upon trial before a jury of white men. . . . Every defendant at the bar of his country, white or black, must be accorded a fair trial according to the law of the land, and that law knows no color.[137]

Many more examples could be cited where prosecutors improperly appealed to racial prejudice to sway the passions of all-White juries. Sadly, this kind of inflammatory, race-based argumentation worked to secure convictions all too often in Mississippi's trial courts during this period. The appellate record, however, demonstrates that the Progressive Era Mississippi Supreme Court did not hesitate to condemn this practice and reversed such convictions.

Conclusion

This article has attempted to show that during the Progressive Era the Mississippi Supreme Court was, by and large, highly protective of the rights of African American criminal defendants. Whereas Mississippi's dominant White class appears to have regarded the trial courts as just another instrument to be wielded to protect and preserve White superiority, those prejudices do not seem to have influenced the

[135] *Hardaway*, 54 So. 833.
[136] Ibid.
[137] Ibid., 834.

decisions made by the justices of the Mississippi Supreme Court. In case after case, in a wide variety of legal contexts, the Mississippi Supreme Court proved itself capable of transcending the racial prejudices of its day and rendering colorblind justice to African Americans. This is not to say that individual justices of the Court were beyond reproach or that their views on race even came close to approximating modern notions of egalitarianism and full racial equality. As this article has noted, some of the members of the Court were outspoken in their opposition to African American suffrage, at least prior to their tenure on the Court. Nevertheless, as an institution, the Mississippi Supreme Court during the Progressive Era was capable of, and committed to, fairly and impartially administering justice to Mississippi's most vulnerable class of citizens.

Be that as it may, the Mississippi Supreme Court's Progressive Era decisions had little, if any, immediate impact on the conduct of criminal prosecutions against African Americans in Mississippi's trial courts. Many of Mississippi's local law enforcement officers, including prosecutors and trial judges, were excruciatingly slow to conform their behavior to the directives of the state's highest court. That the Mississippi Supreme Court had to address many of the same systemic problems over and over evidences this fact. Despite the strides made during the Progressive Era, there were notable setbacks for African Americans in the years that followed. The Mississippi Supreme Court itself regressed starting in the years following the Progressive Era and even failed to follow its own precedents in several key areas. Even today, over a hundred years after the end of the Progressive Era, trials of African American criminal defendants in Mississippi are sometimes plagued by unconstitutional, discriminatory jury selection practices.[138]

Ultimately, it must be acknowledged that there is only so much

[138] The well-publicized case of Curtis Flowers exemplifies this jury selection issue. In 1996, Flowers was indicted by a Montgomery County, Mississippi, grand jury for four murders that took place in the town of Winona. Flowers was incarcerated for over twenty years during which time he was tried for capital murder six times. Two of Flowers' trials resulted in mistrials and four resulted in guilty verdicts. The Mississippi Supreme Court reversed the first three guilty verdicts because of prosecutorial misconduct, which primarily involved the unlawful striking of African American jurors during jury selection. The Mississippi Supreme Court affirmed the fourth guilty verdict, but the United States Supreme Court later reversed. *Flowers v. Mississippi*, 139 S.Ct. 2228, 204 L.Ed. 638 (2019). Following the decision of the U.S. Supreme Court, state prosecutors announced they would not try Flowers a seventh time. Flowers was released from prison and awarded $500,000 for wrongful imprisonment.

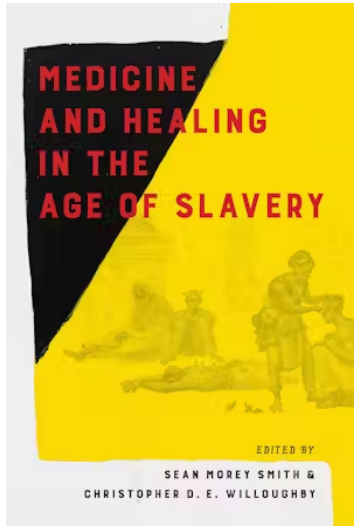
societal change any appellate court can affect. Judicial power, after all, is "no panacea for the troubles of the oppressed."[139] Hearts and minds are slow to change, and the wheels of justice are sometimes equally slow to turn, especially for the marginalized and disadvantaged. And yet, for a crucial period during the late nineteenth and early twentieth centuries, the Mississippi Supreme Court was a light—if only a flicker—in the midst of darkness.

[139] David E. Bernstein and Ilya Somin, Review of Michael Klarman's *Judicial Power and Civil Rights Reconsidered: From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality*, 114 Yale L.J. 591, 657 (2004).

BOOK REVIEW

Medicine and Healing in the Age of Slavery
Edited by Sean Morey Smith
and Christopher D.E. Willoughby
(Baton Rouge: Louisiana State University Press, 2021.
Foreword, acknowledgements, notes, contributors, index.
Pp. vii, 224. $45 hardcover. ISBN: 0807171219.)

Few methodological obstacles have plagued historians of the United States and of the Atlantic World as chronically as the layers of racial bias that limit and mediate the archival footprint of enslaved people. Scholars such as Marisa Fuentes and Pablo Gomez, in particular, have begun to wade through such bias and to suggest potential means to overcome these investigative hurdles (in various printed and conference settings), establishing a promising foundation for future researchers. The editors of and contributors to *Medicine and Healing in the Age of Slavery* build on that foundation and push the field in exciting new directions. While the archive will continue to present difficulties, the essays in this collection give one hope that even the most prejudiced records can be read and reinterpreted in a manner that opens more direct avenues to the thoughts, feelings, and experiences of the enslaved.



The editors set out with three ambitious goals: to "position western medicine as one of many healing systems that circulated within the Atlantic World," to "reveal new insights into the inner world of the enslaved and their health desires and choices," and "to highlight the role of state intervention . . . while also grappling with the diversity of states in the Atlantic World" (2). The contributors indeed make great strides not only in relativizing the—all too often triumphalist—history of Western medicine, but also in addressing points of contact between the healing and medical traditions of Africans, Amerindians, and Europeans. We learn, for example, that areas of significant overlap existed between "Iberian and West African methods of bloodletting" and that "sick enslaved people . . . could [and regularly did] integrate formal and folk networks of healing in their efforts to survive" (74, 125). Likewise, multiple contributors go

beyond well-trodden "frameworks of resistance" and "grand narrative[s] about master-slave power struggles" and focus instead on the "quotidian work of survival, self-reliance, and self-advocacy that happened in the thick of slavery" (47, 112). Transcending this "grand narrative" includes analyzing conflicts that arose between enslaved individuals, amidst the tension that frequently characterized the "forced intimacy of plantations" (52). The first two goals are thus consistently achieved. The authors' attempts to capture the life-worlds—and even the "tactile [or 'haptic'] experiences" (88)—of the enslaved are especially admirable and enlightening.

The analyses of state intervention and diversity are, on the other hand, rather less commendable. Although the role of various European states in upholding and emboldening the racist and gendered practice of medicine through the licensing of practitioners is thematized in several essays, those states remain essentially undifferentiated. European states and their medicinal traditions generally appear as vague monoliths, and this is the volume's primary weakness. Contributors point out that European traditions were consistently elevated above those of indigenous or African cultures, yet we scarcely glimpse what those European traditions entail. To focus too narrowly on European society would, of course, be an afront to the subject matter. For the sake of orientation, though, the volume could have profited from more extended, substantive discussions of the legal, social, and intellectual characters of the metropoles that imposed their ideological frameworks on colonial societies.

Such minor flaws notwithstanding, this edited volume represents an important—even pathbreaking—contribution to the field. I know of no other works that manage to draw readers so deeply into the everyday lives of the enslaved, and the contributions are generally well-written, accessible, and informative. No piece of scholarship is free from jargon; one might occasionally need a dictionary to define terms such as "undisciplinarity" (114), "anthropometry," and "craniometry" (190). But on the whole, the book should be suitable even for advanced undergraduates, and a more general educated audience could certainly read and profit greatly from it. As always, there is more work to be done; the historians who contributed to this volume have *initiated* the process of integrating the study of diverse medicinal and healing traditions as well as of the idiosyncrasies of transplanted European legal systems with that of slavery in the United States and Atlantic World—but they certainly have not finished it. In sum, *Medicine and Healing in the Age of Slavery* represents the cutting-edge of the historiography surrounding medicine, healing, and slavery in the Atlantic World, leaving readers with the impression that the future of the subfield is bright.

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NOTE TO PROSPECTIVE CONTRIBUTORS

Initial submissions should be made to editor Dennis J. Mitchell, dmitchell@meridian.msstate.edu or P.O. Box 571, Jackson, MS 39205-0571. Preferred manuscript length is 25–40 pages (double-spaced), exclusive of footnotes. The *Journal* encourages the inclusion of illustrations—photographs, drawings, maps, tables—that enhance the essay.

The Chicago Manual of Style (latest edition) should be followed, with some exceptions (primarily dates: the *Journal* prefers "December 1, 1866," to Chicago's "1 December 1866").

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