REGULATING RACE: INTERRACIAL RELATIONSHIPS, COMMUNITY, AND LAW IN JIM CROW ALABAMA

by

L. KATHRYN TUCKER

(Under the Direction of James C. Cobb)

ABSTRACT

This thesis, based largely on legal cases concerning miscegenation in Alabama, argues that legal efforts to impose social control by prohibiting interracial marriages and relationships proved ineffective due to the efforts of defendants to find legal loopholes, the racial ambiguity of a tri-racial society, and the reluctance of many communities to prosecute offenders. Nationwide interest in matters of race fueled the passage of one-drop laws in the 1920s, but also provided defendants with ways to claim racial backgrounds that fell outside the scope of the laws. Concurrently, local communities proved disinclined to prosecute interracial relationships unless individuals felt personally involved through desires for revenge or monetary gain. This often long-term toleration of interracial relationships, along with interracial couples' own efforts to escape prosecution, proves that southern race relations were often more flexible and accommodating than harsh laws and the attitudes behind them would suggest.

INDEX WORDS: Miscegenation, Race relations, Jim Crow, Alabama, One-drop rule, Marriage, Interracial relationships

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DEDICATION

For My Family

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INTRODUCTION

In 1933 a lawyer in rural South Alabama argued a case designed to appeal to his white, male appellate judges' fears of the depravity of the "negro" man and his reprehensible designs on white women. In language filled with inflammatory statements and vivid imagery, this lawyer first raised the specter of the degenerate, uncivilized African man, recalling that "Some negro men, brought from the jungles of Africa, took that white woman and ran off with her- took that woman and lived in adultery with her," before turning to a direct attack on the defendant. The lawyer exclaimed that this particular man, Jesse Williams, "takes this woman in the face of [his knowledge of the laws], under the protest of the white people in that community and he parades her up and down the street, off in the woods, and says: Do what you can about it." The prosecution thus sought to instill in the judges' minds a purposeful and continuous menace to the white community. His tirade against this defiant and depraved "negro" concluded with the final assertion that "the desire has existed in this man's brain, years and years, to have intercourse with a white woman." By the end of his arguments, the lawyer anticipated no room for doubting that Williams consciously and deliberately broke the sacred tenets of the Jim Crow South and would gladly do so again.[1]

According to typical perceptions of southern justice, this lawyer would have prevailed, his arguments having stirred the racist sentiments lying so close to the surface in southern white men, resulting in the conviction for miscegenation, if not the lynching, of Jesse Williams. Instead, in the interest of an "impartial trial free from undue appeals to passion or prejudice," the

[1] *Williams v. State*, 25 Ala.App. 342 (1933).

judges hearing this case in the Alabama Court of Appeals overturned the conviction.[2] The arguments and decision in this case reveal both that miscegenation occurred more frequently and voluntarily than southern whites might have cared to admit and that attempts to eliminate miscegenation through legal means provided an imperfect method of maintaining white superiority and solidarity. Often, as Williams' case reveals, defendants in miscegenation cases succeeded even when historical precedent would suggest a different outcome, thus undermining the ideals of white southern society.

Across the South and throughout its history, interracial relationships challenged white desires for racial purity and dominance, prompting enactment of strict laws and harsh penalties. The capstone of this ongoing attempt to impose white control over interracial relationships came with the passage in the 1920s of what became known as "one-drop" laws, which equated as little as one drop of "African blood" with social and legal blackness.[3] The increasingly strict definitions of blackness leading up to and including the one-drop law represent the white majority's attempts to control not only African Americans but also those whites who might engage in relationships across the color line. This much-feared infraction against Jim Crow thus required harsh laws and penalties forbidding any form of interracial relationship in order to achieve the goal of social control.

Numerous scholars have addressed the legal issues, implications, and evolution of miscegenation laws and one-drop rules. Robert J. Sickels wrote a classic examination of miscegenation laws in 1972, but his concentration on the ways in which these laws and cases worked in the legal realm offered little analysis of the social and cultural functions of miscegenation barriers. Peter Wallenstein's more recent study of miscegenation laws and the

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

forces that shaped and created these barriers provides somewhat more analysis of the social impact of these laws, although, like Sickels, Wallenstein remains largely interested in legal matters such as questions of constitutionality and precedence.[4]

While legal historians have focused on the evolution and passage of anti-miscegenation laws, all recognize the fact that laws cannot entirely wipe out a behavior or the desires of individuals to engage in certain relationships. As social historians have begun to point out, black men and white women, white men and black women, continued to form voluntary and willing interracial relationships and thus to challenge both legal and social conventions. Looking at pre-Civil War Virginia, Joshua Rothman reveals the social networks and implications of interracial relationships as well as the ongoing clash between community and law that likewise emerge in my study of post-war Alabama. Martha Hodes, who also examines interracial relationships primarily before the Civil War, provides a model for scholars seeking to use legal sources to approach social questions. She argues that interracial sexual relationships occurred not infrequently, and sometimes were tolerated socially before, although rarely after, the Civil War. Joel Williamson earlier proposed this same division, arguing that interracial relationships were rare and heavily condemned after the Civil War. I argue instead that Alabama's numerous miscegenation cases and the included testimony suggest that these relationships continued with

[4] Robert J. Sickels, *Race, Marriage, and the Law* (Albuquerque: University of New Mexico Press, 1972); Peter Wallenstein, *Tell the Court I Love My Wife: Race, Marriage, and Law- An American History* (New York: Palgrave Macmillan, 2002). For other studies of the legal aspects of miscegenation laws see Peter W. Bardaglio, *Reconstructing the Household: Families, Sex, and the Law in the Nineteenth Century South* (Chapel Hill: University of North Carolina Press, 1995); Ariela J. Gross, "Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South," *Yale Law Journal* 108 (1998) 109-188; and A. Leon Higginbotham, Jr., *Shades of Freedom: Racial Politics and Presumptions of the American Legal Process* (New York: Oxford University Press, 1996).

frequency and at least occasional tacit social acceptance by whites throughout the late nineteenth and much of the twentieth centuries.[5]

For those seeking to understand the social implications of anti-miscegenation laws and the couples who broke them, particularly after the Civil War, Alabama provides especially valuable insight through over fifty appellate cases dealing directly with interracial relationships between 1865 and 1970. Other southern states saw only a handful of similar cases during this time period. Alabama's numerous cases reveal that long before and even after the passage of the one-drop law, interracial couples persisted in forming relationships and sometimes succeeded in escaping punishment for their actions. Just as importantly, these successes illustrate the general ineffectiveness of anti-miscegenation laws in the face of adaptive defense strategies, racial ambiguity, and community toleration.

Several historians have used Alabama's plentiful cases as the basis of their examinations of interracial relationships, with varying degrees of success. Political scientist Julie Novkov attempts to use Alabama's cases to reveal a link between eugenics and the rise in miscegenation defense strategies focusing on defining race. While Novkov's legal examination of defense strategies contributes to the literature on anti-miscegenation laws, her link between racially based defenses and eugenics is tenuous. Historians such as Edward J. Larson have long argued that, due to previously enacted anti-miscegenation laws, eugenicists rarely focused on interracial relationships in their attempts to achieve white racial purity. With Novkov's emphasis on a rather broad understanding of eugenics and her consequent argument about the centrality of

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

eugenics to miscegenation law, Novkov neglects the more valuable aspects of what Alabama's cases can tell us.[6]

Charles Robinson provides a more comprehensive assessment of Alabama's miscegenation cases and their importance, arguing successfully that rhetoric and actions regarding interracial sex differed greatly and that southerners deliberately enforced—or failed to enforce—miscegenation laws according to a certain set of underlying concerns. Some of these concerns, such as the political utility of anti-miscegenation laws in undermining African Americans, clearly played a role in race relations. Other concerns that Robinson cites, however, seem less authoritative upon re-examination of the cases. For example, while he argues that true intimacy faced harsher prosecution than casual sex, large numbers of cases proving long-term acceptance of relationships throw doubt on the centrality of this concern in legal prosecutions. Likewise, Robinson's argument that "color closeness" allowed respite for some couples ignores the vital role that local communities played in the legal outcome of interracial relationships. Robinson's examination of Alabama's cases thus certainly provides valuable insight into racial interactions, but these cases clearly have more to offer scholars seeking to understand race relations under Jim Crow.[7]

While previous scholars have begun the task of mining Alabama's miscegenation cases for insight into race relations, many aspects of these cases, in particular their commentary on community perceptions of race and reactions to interracial relationships, remain unexplored. Therefore, in this thesis I use Alabama's miscegenation cases to explore the social implications of interracial relationships and the laws banning them. Ultimately, I conclude that interracial

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[6] Julie Novkov, "Racial Constructions: The Legal Regulation of Miscegenation in Alabama, 1890-1934" *Law and History Review* 20 (2002): 225-227. For a discussion of the eugenics movement in the South, see Edward J. Larson, *Sex, Race, and Science: Eugenics in the Deep South* (Baltimore: Johns Hopkins University Press, 1995).
[7] Charles Frank Robinson, II, *Dangerous Liaisons: Sex and Love in the Segregated South* (Fayetteville: University of Arkansas Press, 2003).

relationships occurred more frequently and with greater community acceptance than the laws and traditional historical interpretations of race relations would indicate. Indeed, the laws themselves, regardless of how strictly legislators defined race or relationship, largely failed to impose the desired social order because of both the ambiguity of race and community unwillingness to enforce the laws. In order to arrive at these conclusions, I examine several aspects of law, community, and race in Jim Crow Alabama, using trends and patterns to tease out the insights these cases can provide on race relations.

My study begins with an initial examination of anti-miscegenation laws and their history, before turning to their social implications. In the second chapter, I look at the ways in which defendants in miscegenation cases responded to social cues to create defense strategies, and the ways in which they found and took advantage of the loopholes where the law failed to address social and cultural reality. As trial testimonies show, defendants in miscegenation cases proved savvy in discovering and utilizing the weaknesses of the law. Despite a long history of white attempts to prevent interracial liaisons, they continued to adapt their legal strategies to evolving social trends, often with success. A popular defense strategy during the 1920s of utilizing racial ambiguity to challenge the legal definitions of race proved particularly valuable to defendants hoping to escape conviction or validate their relationships. An examination of this racial strategy provides important insights into how race and law played out on a local and community level.

In the third chapter, I turn from legal strategies to community understandings of race. In particular, I explore the ways in which racial ambiguity played a crucial role in the persistence of interracial relationships. Both the law and local communities struggled to determine an individual's racial makeup, even at the level of one-drop. In many cases, courts and communities alike found that defining and determining an individual's race could be nearly

impossible, given the vague and contradictory standards used to assess racial identity. Even the one-drop law failed to eliminate this ambiguity, as defendants continued to argue their Indian or Spanish as opposed to African ancestry. This inability of the law to address racial ambiguity in a conclusive manner rendered such laws largely ineffective.

Finally, I turn in the fourth chapter to the role of neighbors, families, and community members in providing a buffer between interracial couples and the law. Crucially, communities often displayed a reluctance to prosecute and a surprising toleration of interracial relationships. Witness testimony reveals an overwhelming tendency among neighbors and friends to mind their own business, as well as a general lack of interest concerning interracial couples. Even in the Jim Crow South, then, interracial relationships often failed to incite the expected degree of anger, outrage, and, sometimes, even interest. Lack of community engagement again hindered white legislators' efforts to enforce social control through anti-miscegenation laws and strict racial definitions.

While previous scholars have laid the groundwork for the study of miscegenation laws and their repercussions, I hope to further our understanding of how interracial relationships actually functioned within the communities in which they occurred. As Alabama's miscegenation cases, along with close examination of the interactions of law, race, and community, suggest, southerners had a deep understanding of the nuances and motivations behind race relations, and they used these insights to negotiate the terms of a tri-racial society according to their own varied beliefs and intentions. Revealing this new side of race relations allows us to see the Jim Crow South as more complicated, more self-aware, and less monolithic than previous studies have indicated.

CHAPTER ONE

MISCEGENATION AND THE LAW

Anti-miscegenation sentiment and legislation has a long history in North America, predating the United States itself by more than a century. This background proves crucial to understanding the interactions of law, community, and race in the late nineteenth and early twentieth centuries. Efforts to ban interracial relationships began in 1662, when Virginia passed the first law forbidding "Christians" to commit fornication with "Negroes." Maryland followed closely after, banning interracial marriage in 1664.[1] Clearly, interracial marriage became an issue and a concern virtually from the moment of interracial contact.

These early colonial regulations initiated in Virginia and Maryland set the standard for future legislation enacted throughout the entire United States, not just the southern states. The southern region, however, did have a particular interest in anti-miscegenation laws, as suggested by the fact that precedent for these laws emerged from the South. Given the particular concerns and societal structure of this region that increasingly depended upon racial slavery, a major factor driving these laws was the fear that children of black men and white women would be free.[2] Where society defined slavery and freedom based on race, as the white South came to do early in its history, free individuals with black ancestry proved problematic, prompting the white slave-owning elite to enact legal regulations to reduce this possibility.

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

[2] Daniel J. Sharfstein, "Crossing the Color Line: Racial Migration and the One-Drop Rule, 1600-1860," *Minnesota Law Review* 91 (2007): 12.

Along with increasingly strict legislation against miscegenation—Virginia, for example, expanded its ban in 1691 to cover mulattoes and Indians in addition to "negroes"—and increasing identification of blackness with slavery, white elite society developed progressively strict and solidified concepts of racial purity and "blood."[3] As these definitions of what it took to be black or white and who fell into these categories shifted, the scope of anti-miscegenation laws also changed. By the nineteenth century, some states had adopted "one-drop" rules, which defined any person with any degree of "black blood" or African ancestry, no matter how remote, as black.[4] These laws and debates concerning purity of blood established traditions and precedents later used to justify anti-miscegenation laws even after the abolition of slavery, and rendered the original justification for these laws moot.

These strict racial beliefs, however, did not arrive in North America with the first Europeans. In fact, early settlers praised the virtues of intermarriage with Native Americans as they anticipated a stronger human race encompassing the best of both races.[5] Before blackness and slavery became as closely linked as they later would, society even showed less concern for black and white intermarriages than it would in later years.[6] As dreams of civilizing the savage Indians faded and bondage became the lot of the black man as slavery became more profitable

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[3] Winthrop Jordan and Edmund S. Morgan present two different views of how race and slavery came to be equated. Jordan argues that racism against Africans pre-dated slavery, while Morgan argues that slavery only came to be equated with blackness as white indentured servitude became less economically advantageous than enslaving Africans for life. Winthrop Jordan, *White Over Black: American Attitudes Toward the Negro, 1550-1812* (Chapel Hill: University of North Carolina Press, 1968); and Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York: W.W. Norton and Company, 1975).

[4] For discussion of the one-drop rule and racial ideas prior to the Civil War, see Christine B. Hickman, "The Devil and the One-Drop Rule: Racial Categories, African Americans, and the US Census," *Michigan Law Review* 95 (1997): 1161-1265; Kevin Mumford, "After Hugh: Statutory Race Segregation in Colonial America, 1630-1725," *American Journal of Legal History* 43 (1999): 280-305; and Sharfstein, "Crossing the Color Line."

[5] Theda Purdue provides one relevant discussion of early intermarriage between European settlers and Indians in *Mixed Blood Indians: Racial Construction in the Early South* (Athens: University of Georgia Press, 2003). Also see Gary B. Nash, *Forbidden Love: The Secret History of Mixed Race America* (New York: Henry Holt and Company, 1999), 8-9.

[6] See Hodes, *White Women, Black Men,* for examples of early acceptance of interracial relationships.

than indentured servitude, this open endorsement of interracial relationships quickly disappeared. The first symptoms of these hardening racial attitudes appeared in the early miscegenation laws.

As increasingly harsh interpretations of race and corresponding regulations developed from initial support of mixed unions during colonization into the strict legal and social oppression of race-based slavery of the antebellum period, so did efforts of all races and classes to get around these laws. White elite society continued to persecute relationships resulting in free blacks, but it also often turned a blind, if not quite accepting, eye toward sexual relationships between white planters and their female slaves. The power of the planters and the slave condition of children of these relationships granted such liaisons an uneasy but noticeable place in society. On occasion, planters even recognized their children from such unions as legitimate heirs, further skewing racial distinctions and defying anti-miscegenation laws. In a few large, relatively cosmopolitan cities such as Charleston, South Carolina and New Orleans, Louisiana, free mulattoes developed an elite class that in many ways paralleled, identified with, and gained the support of the white elite. While careful to preserve their superior position, the white elite recognized this class as a buffer between them and the lowest slave classes and used ties of kinship and economics to gain the loyalty and support of these free mulattoes.[7]

If white elite males enjoyed some immunity from the laws against interracial liaisons, free blacks, slaves, poor whites, and white women still fell squarely under the jurisdiction of the law. Such individuals had few options when accused of miscegenation; blacks and slaves could

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

not even testify in court, and women faced the dominating control of their male relatives. Nevertheless, scholars such as Martha Hodes and Victoria Bynum record instances of miscegenation prior to the end of slavery involving these lower or less powerful classes, revealing that such relationships did occur, despite legal punishments and whites' social fears of free blacks.[8] Even under the specter of slavery, then, legal and social restrictions could not prevent interracial relationships entirely, a trend that continued until such laws were finally repealed a century after the abolition of slavery.[9]

The Civil War and abolition destroyed this carefully balanced society and necessitated a reworking of miscegenation regulations and social norms previously based on the premise of preventing a large free black population. Despite the abolition of slavery and the efforts of a Republican Congress to establish a degree of equality between the races, white southern society continued to oppose racial mixing and worked to reinstate antebellum ideals and social hierarchy. As Reconstruction ended and the Redeemer movement gained momentum, southern states thus reenacted anti-miscegenation statutes. But in a changed society no longer based on racial slavery, challengers to these reenacted laws, particularly newly freed slaves who could for the first time testify in court, had a wider range of available tactics to counter prosecution for miscegenation. The ways in which individuals challenged these statutes reveal both the persistence of pre-war debates concerning race and the ways in which these ideas changed and evolved in response to larger societal forces.

The reenactment of anti-miscegenation statutes throughout the southern states after the Civil War followed a general pattern, with the majority of states passing laws between 1873 and

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

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

1881, as Reconstruction ended. Most of these laws simply prohibited marriage between white persons and persons of African descent; a few states initially defined "persons of African descent," but many did not specify degree of blood until the later 1880s. By this time, all southern states had adopted some definition of one-fourth, one-eighth, or one-sixteenth blood as constituting a "negro" and thus falling under the jurisdiction of anti-miscegenation statutes. This form of anti-miscegenation statutes in the South remained fairly stable until around the 1920s, when many states tightened their definitions of "negro" and moved to what in essence were one-drop rules, prohibiting persons with "any ascertainable trace" of negro blood from intermarrying with whites.[10]

Despite the strict standards of this law, this shift in the definition of race actually had little effect on how states prosecuted miscegenation. By the 1920s, Africans, Europeans, and Indians had been mixing for so long that any standard of racial definition could be difficult to prove. Even the most common standard in southern states, that of one-eighth African blood, which specified an individual with one African great grandparent, was nearly impossible to prove definitively, as few individuals, families, or communities had a solid concept of a family's exact racial identity three generations back. A scarcity of written records, either official government documents or personal accounts, only exacerbated this difficulty. While the one-drop rule proposed to eliminate this ambiguity, in reality, the unaddressed possibilities of Indian, or Spanish, or Creole blood, combined with the generational distance of racially ambiguous ancestors, rendered the one-drop rule only slightly if any more effective than previous standards. This ongoing racial ambiguity, still inadequately addressed in the legal code, combined with new

[10] Wallenstein, in *Tell the Court I Love My Wife*, discusses the evolution of miscegenation laws throughout the United States.

adaptive legal defense strategies and prevalent community indifference to render even the one-drop rule largely ineffective.

Trends in Alabama's attempts to deal with interracial relationships prove particularly relevant to any understanding of miscegenation, community, and law, given this state's proliferation of appellate cases concerning miscegenation which vastly outnumber similar cases in other southern and western states. Other states' appellate courts heard an average of only three cases directly addressing miscegenation in the time period between the Civil War and the 1967 U.S. Supreme Court decision overturning these statutes. In contrast, Alabama's appellate courts heard forty-five miscegenation cases and over a dozen other cases involving interracial couples in some capacity. The abundance of these cases makes Alabama's experience invaluable to any attempt to understand the evolution of miscegenation laws and social attitudes concerning racial mixing.

The one-drop rule, both in Alabama and in other states, represented the height of attempts to prevent racial mixture, but its passage in the 1920s raises the questions of why legislators felt it necessary, and why at this particular point in time. Clear-cut answers remain elusive, particularly given the total lack of newspaper coverage of the passage of the law in Alabama, whose legislature apparently accepted the one-drop amendment to its anti-miscegenation law with debate or even comment.[11] The general racial tone of the nation at this time, however, can suggest reasons why the one-drop law might have been embraced easily and quickly throughout the South and even other areas of the nation.

In 1915, a group of men outside of Atlanta, Georgia resurrected the Ku Klux Klan in response to rapid changes sweeping the nation. National media coverage such as the film *Birth*

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

of a Nation, recent and unprecedented immigration from "less desirable" areas of Europe, and lingering antagonism from Reconstruction fueled the Second Klan as it spread throughout the South and Midwest after World War I and set itself up as the guardian of morality. In the early 1920s, Alabama in particular fell under the control of the Klan both politically and socially, and countless individuals became victim to floggings and violence. While the Klan also targeted Catholics, Jews, and "fallen" whites, blacks remained a favorite target, particularly those "too prosperous" or "too uppity" for white sensibilities. By the late 1920s, the elite political leadership of Alabama had stripped the Ku Klux Klan of its earlier prominence, but many Alabamians continued to sympathize with its goals and methods. The tightening grip of Jim Crow and its segregation, discrimination, and disfranchisement throughout these years further illustrates the widespread sympathy, even at the governmental level, for such goals as the KKK pursued so violently, including white racial purity.[12]

The violence and discrimination embodied in the Klan and Jim Crow joined new pseudo-scientific theories of race in contributing to the further deterioration of race relations in the early twentieth century. According to the then-popular theory of Social Darwinism, the most intelligent and talented individuals would rise to the top of society, and those at the bottom, including blacks, would deservedly die out. This theory echoed abolition-era beliefs that blacks would disappear in a few generations without whites caring for them and also provided support for the eugenics movement. Eugenics, the practice of using various methods of intervention to genetically improve the human race, including the breeding out of undesirable traits and the opposing of interracial matches in attempts to preserve racial purity, also fueled the racial fervor. Such supposedly scientific theories gained great acceptance throughout the nation, with

[12] Glenn Feldman, *Politics, Society, and the Klan in Alabama, 1915-1949* (Tuscaloosa: University of Alabama Press, 1999), and Nancy MacLean, *Behind the Mask of Chivalry: The Making of the Second Ku Klux Klan* (New York: Oxford University Press, 1994) both discuss the founding of the Second Klan and its rapid spread.

supporting articles published in mainstream academic journals. The increasing acceptance and spread of these ideas would have only intensified efforts to legally separate the races, which had, after all, been proven scientifically and biologically unequal in abilities and future prospects.[13]

As with the actions and beliefs of the resurrected Ku Klux Klan, these new scientific beliefs about race held significant implications for people other than blacks. For example, even as southern states returned to the one-drop rule and the nation turned to scientific theories of race, the United States passed its most restrictive immigration law, the 1924 National Origins Act, designed to keep racially and socially undesirable people out of the country, targeting those people from southern and eastern Europe, or Asia. Alabama, despite its largely homogenous white population, in many ways exemplified this growing opposition to and virulent fear of new waves of immigration and of people not matching Alabama's homogenous profile.[14] Hiram Evans, an Alabama native and the second leader of the new Ku Klux Klan, accused the Pope of numerous grievances and the Jews of "giving America colic." Many Alabamians responded sympathetically to such examples of persecution of Jews, Catholics, Greeks, and other undesirable nationalities, and these objectionable individuals fell victim to a disproportionate amount of Klan violence. In fact, sexual relationships between these individuals and supposedly pure whites faced many of the same types of violence and discrimination as did relationships between blacks and whites. Perhaps Alabama's homogeneity resulted in even less toleration for

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[13] See Edward J. Larson, *Sex, Race, and Science: Eugenics in the Deep South* (Baltimore: Johns Hopkins University Press, 1995) for an examination of eugenics in the South; and Feldman, *Politics, Society, and the Klan in Alabama*; and Nash, *Forbidden Love*, for discussions of scientific theories of race.

[14] Earl Lewis and Heidi Ardizzone, *Love on Trial: An American Scandal in Black and White* (New York: W.W. Norton and Company, 2001)*;* and Wallenstein, *Tell the Court I Love My Wife*,143-44 include discussions of both scientific racism and immigration. For analysis of the National Origins Act, see Matthew Pratt Guterl, *The Color of Race in America, 1900-1940* (Cambridge: Harvard University Press, 2001).

non Anglo-Saxons than other states or regions displayed, as such newcomers were readily identifiable in this otherwise uniform population.[15]

During this same period, a shift in population, specifically the mass movement of many African Americans to the North, brought issues of race directly into many people's lives for the first time. When combined with the insecurities wrought by influxes of undesirable foreign immigrants, concerns of race and nationality rose to the forefront of national debates with old stock Americans fighting to preserve their racial and cultural purity. Alabama's political and social climate, as usual, proved no exception to the trend. In 1921 Joseph Simmons, the original founder of the second Ku Klux Klan, urged Alabamians to protect their racial purity, Caucasian blood, and civilization from the "foul touch of a lower stock." Two years later, Alabama's governor proved only too willing to follow through on this order, beseeching the White House to prevent the integration of Tuskegee's veteran's hospital.[16] The adoption of Alabama's one-drop rule a few years later in 1927 exemplified in the clearest terms possible Simmons' mandate and attitude. Such examples reveal that issues of race and nationality visibly permeated the American mind during the decades of the 1910 and 1920s, and that in many ways the South and Alabama led the charge for racial purity.

This heated atmosphere incited many states and politicians throughout the nation to embrace anti-miscegenation laws during the first decades of the twentieth century, as politicians, scientists, and laypeople alike increasingly embraced both fears of the racial other and desires for racial purity. As the push toward harsher anti-miscegenation laws and, ultimately, one-drop standards, took hold of the southern states in the early twentieth century, southern congressmen led the way in a serious attempt to turn this standard into a national law. In 1912, Representative

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[15] Feldman, *Politics, Society, and the Klan in Alabama,* 56-58.
[16] Ibid., 52-54.

Seaborn Anderson Roddenbery of Georgia, upon introducing an anti-miscegenation constitutional amendment to Congress, argued that "the consequences [of miscegenation] will bring annihilation to that race which we have protected in this land for all these years." While Roddenbery's amendment failed, just the fact that it created serious debate "illuminated much of what was going on around it," as legal historian Peter Wallenstein explains.[17]

The same year that Roddenbery proposed his amendment, United States Senator Boise Penrose promised his influential support for a Pennsylvania equal rights bill that passed the lower house of that state's legislature. This bill directly opposed both the spirit and goals of Roddenbery's proposal, but both bills exemplified the ongoing and hotly debated issues of race that engaged the entire nation in the early twentieth century. Despite certain legislative defeats, however, southern politicians remained dedicated to their cause of ensuring racial separation. Like Representative John R. Tyson of Alabama, numerous outraged southern politicians and editorialists argued that the Pennsylvania "proposition defeats the order of Divine Providence and is an attempt by the legislation to compel the intermixture of races widely separated, which will result in the destruction of the high standard of moral, religious, and educational conditions as they now exist. Social equality cannot be enforced and maintained by legislative enactments." Debates such as those centered on Roddenbery and Penrose's bills prove that while anti-miscegenation sentiment may have reached its zenith in the South, issues of race relations and racial mixing clearly resonated across the nation.[18]

Specific cases concerning racial intermarriage that rose to national prominence in the early twentieth century further illustrate this national obsession with racial purity. Wallenstein argues that the 1912 marriage of black boxer Jack Johnson to a white woman provided the

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[17] As quoted in Peter Wallenstein, *Tell the Court I Love My Wife*, 133-136.
[18] "Says Penrose Denies the Rights of Whites: Alabama Representative Holds Senator's Proposed Negro Equality Law Violates Constitution," *New York Times*, 3 April 1921. nytimes.com archives.

impetus for Roddenbery's passionate but failed attempt to outlaw interracial marriage throughout the country. Legal scholar Denise C. Morgan agrees, citing the fact that "In the year after Johnson and [Lucille] Cameron were married, anti-miscegenation bills were introduced in ten of the twenty states that allowed interracial marriages, and at least twenty-one such bills were introduced to Congress."[19] Although Illinois, where Johnson wed his white wife, had repealed its laws against miscegenation and Johnson thus never faced prosecution, the outrage his marriage sparked spread across the nation. Such a high profile case reveals the nation's interest in defining, and often in "preserving," race.[20] At the same time, the outrage proved to have more bark than bite. Morgan points out that, despite initial reactions, "none of the bills that were proposed that year to ban interracial marriage were enacted into law," largely "due to the lack of enthusiasm of white Americans and the opposition of black Americans."[21] Such inconsistencies hint at the dichotomy that would simultaneously allow white southern legislators to pass the one-drop rule while local southern communities displayed an overwhelming lack of interest in interracial relationships.

Jack Johnson's marriage was not the only northern case that brought interracial marriage into the national spotlight. What became possibly the most famous case of interracial marriage originated in New York in 1925, when Kip Rhinelander, a young member of New York's rich elite society, married Alice Jones, a working class girl of questionable racial background. Although New York, like Illinois, had no law against interracial marriage, Rhinelander's wealthy and influential father, upon learning of the marriage, pushed for an annulment suit on the grounds that Jones had deceived Rhinelander about her racial identity. As increasingly

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[19] Denise C. Morgan, "Jack Johnson Versus the American Racial Hierarchy," in Annette Gordon-Reed, *Race on Trial: Law and Justice in American History* (New York: Oxford University Press, 2002), 90.
[20] Wallenstein, *Tell the Court I Love My Wife.*
[21] Morgan, "Jack Johnson," 91.

outrageous details emerged about the relationship between Rhinelander and Jones, both black and white newspapers around the nation began to devote front page coverage to the story. The *Birmingham Age-Herald,* for example, ran almost daily stories covering the case, revealing Alabama's careful attention to all matters concerning racial mixture.[22] Clearly, racial mixing as a taboo and scandalous topic held the imagination of both Alabama and the entire country, illustrating both the centrality of racial questions and the distress that racial ambiguity could cause during the early twentieth century, as well as the commonality of such racially ambiguous persons.[23] Although this obsession does not entirely explain Alabama's adoption of the one-drop standard in 1927, it certainly provides a relevant and valuable background for understanding the social context of Alabama's racial debates.

The history of anti-miscegenation laws and the one-drop rule in particular provides valuable insights into to the ways in which local courts and communities dealt with interracial relationships in the late nineteenth and early twentieth centuries. Even as legislators persevered in their attempts to eliminate interracial relationships and impose social control, the persistence of such relationships showed the inadequacies of legislators' legal mandates. As the nation's obsession with racial purity reached a pinnacle in the early twentieth century, legislators adopted their harshest measure to control interracial liaison, the one-drop rule. As the following chapters will illustrate, however, even this standard failed to achieve the goal of white social control, due in large part to the inability of the law to address racial ambiguity and to the willingness of local communities to tolerate interracial couples.

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[22] The *Age-Herald* ran seventeen articles covering this case during early winter of 1925. *Birmingham Age-Herald*, 14 Nov 1924- 6 Dec 1925. On microfilm at Birmingham Public Library.
[23] Lewis and Ardizzone, *Love on Trial.*

CHAPTER TWO

PATTERNS OF DEFENSE

Despite the seemingly clear-cut and foolproof legal definitions of miscegenation, especially after the passage of the one-drop rule, individuals indicted and convicted of "crimes against morality" under anti-miscegenation statutes continued to fight the laws through the court system, and a number of their cases made it to the appellate level. But as they persisted in fighting miscegenation convictions, individuals turned to different methods of defense, often responding to pressures from society at large. Throughout the century after the Civil War, miscegenation appeals followed a basic pattern of defenses based on constitutionality of statutes, technicalities, and racial definitions. An in-depth examination of this pattern reveals the ongoing nature of debates about race, the persistence of challenges to white southern ideals, the ebb and flow of Jim Crow, and the centrality of racial definitions to southern society. Most importantly, these adaptive defense strategies proved crucial to locating and utilizing the weaknesses in anti-miscegenation laws. This ability to contest and debate the laws illustrates the ongoing ineffectiveness of anti-miscegenation laws and racial definitions, even as such laws became stricter and more narrowly defined.

The distinct pattern of defense tactics used to contest miscegenation convictions as appellants tested and challenged the laws also reflects larger societal trends concerning race and highlights relevant debates and issues that influenced defense decisions. The earliest cases during Reconstruction, along with the very last cases during the Civil Rights Movement, thus questioned the constitutionality of miscegenation statutes at times when the nation hotly debated

civil rights. As such concerns became less open for discussion, defendants throughout the late nineteenth and early twentieth centuries instead turned to the basic legal strategy of debating technicalities for defense. This heavy utilization of basic legal strategies was interrupted by a period of debate over racial definitions and composition in the early twentieth century, in direct response to the nation's obsession with racial purity and ethnicity at this time. Such strategies thus reveal a back and forth between legislators, interracial couples, and culture, with each side continually adapting to contend with the successes and failures of the other.

The first tactic appellants used to dispute convictions for miscegenation argued that anti-miscegenation laws violated both state and federal constitutions. In the years prior to 1881, appellants relied almost exclusively on this defense; out of twelve miscegenation cases appealed in the southern states in this period, eight address constitutionality. Six of these twelve cases came from Alabama, and all six focused on the constitutional issue.[1] By 1881, however, it became clear that the state courts almost universally upheld the statutes' constitutionality, and the United States Supreme Court confirmed the constitutionality of anti-miscegenation laws in 1883, effectively ending debate on the matter.[2] Only as the Civil Rights Movement of the mid twentieth century drew attention to the discriminatory nature of these laws did appellants return to this defense, and challenges to constitutionality became the only defense used after 1954.[3]

The first post- Civil War miscegenation case made it to the appellate courts in 1868 in Alabama, with *Ellis v. State*. In this often-cited case, Thomas Ellis, a black man, and Susan Bishop, a white woman, were jointly indicted for "living together in adultery or fornication" and

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[1] *Scott v. State*, 39 Ga. 321 (1869); *State v. Hairston and Williams*, 63 NC. 451 (1869); and from Alabama, *Ellis v. State*, 42 Ala. 525 (1868); *Burns v. State*, 48 Ala. 525 (1872); *Ford et al. v. State*, 53 Ala. 150 (1875); *Green et al. v. State*, 59 Ala. 68 (1877); *Hoover v. State*, 59 Ala. 57 (1877); and *Pace & Cox v. State*, 69 Ala. 231 (1881).

[2] In January, 1883, the United States Supreme Court in *Pace v. Alabama* ruled that anti-miscegenation statutes were constitutional, as they applied equally to both races. *Pace v. State of Alabama*, 106 U.S. 583 (1883).

[3] See *Loving v. Commonwealth*, 206 Va. 924 (1966); and from Alabama, *Jackson v. State*, 37 Ala.App. 519 (1954); Rogers *v. State*, 37 Ala.App. 638 (1954); and *U.S. v. Brittain*, 319 F.Supp. 1058 (1970).

fined one hundred dollars each. Shortly before the Reconstruction Constitution of 1868 resulted in their removal from the court, the judges of the Supreme Court of Alabama reversed this conviction after deeming that this particular punishment was not prescribed by the statute. In their written opinion, however, these judges devoted a large portion of the decision to justifying the constitutionality of the anti-miscegenation statute, arguing that because the statute punished both races equally it did not violate the constitution, thus setting a precedent for later cases and providing the key argument in constitutionality debates.[4]

Although *Ellis* ultimately prevailed and set the precedent for upholding the constitutionality of anti-miscegenation laws, another option and precedent did exist. In 1872, the Alabama Supreme Court reversed the earlier decision from *Ellis*. In *Burns v. State,* they ruled that the anti-miscegenation statutes did indeed violate the Constitution, specifically the Fourteenth Amendment. Two possible reasons exist for this unusual decision. Although every state had laws forbidding officials from performing interracial marriages, out of the over fifty miscegenation appeals throughout the South, *Burns* was the only case that dealt with a minister or justice of the peace.[5] Thus, this reversal could conceivably represent a purposeful anomaly designed to exonerate a possibly influential white community leader. On the other hand, the Alabama Supreme Court in 1872 was composed of three judges elected under Reconstruction in 1868, primarily local Alabama Unionists with Whig and Republican leanings. From this perspective, *Burns* likely represents a last attempt at spreading and instituting Reconstruction and Republican policies before the court began filling with Southern Democrats again in 1873 and 1874.[6] This decision ran contrary to many white southerners' beliefs concerning miscegenation,

[4] *Ellis v. State* (1868).
[5] *Burns v. State* (1872).
[6] For listings and discussions of Alabama's Supreme Court justices, see J. Ed Livingston, George Earl Smith and Bilee Cauley, "A History of the Alabama Judicial System," www.judicial.state.al.us/documents/judicial_history.pdf;

but nevertheless represents a challenge and an alternative to the acceptance of miscegenation statutes as constitutional.

While *Ellis* set the precedent and *Burns* represented an alternative, *Pace & Cox v. State* became the most significant miscegenation case challenging the constitutionality of the anti-miscegenation laws. Originating in 1881 in the black belt of Alabama when Tony Pace, a black man, and Mary Jane Cox, a white woman, were indicted for miscegenation, this case made it all the way to the US Supreme Court. The Supreme Court of Alabama, citing its previous decisions including *Ellis*, had affirmed the conviction and the constitutionality of Alabama's statutes. Arguing that "the punishment of each offending person, whether white or black, is the same," the US Supreme Court agreed with the Alabama court, thus affirming the constitutionality of anti-miscegenation laws and closing debate on the subject for almost a century.[7]

Pace quieted debate concerning the constitutionality of anti-miscegenation statutes for decades, but this defense ultimately proved most successful in overturning not merely individual convictions, but the laws themselves. In 1954, after seventy-three years without constitutional challenges to anti-miscegenation laws, *Jackson v. State*, again in Alabama, once more raised the issue. While the court affirmed this conviction on the basis of earlier precedents, other appellants after *Jackson* continued to challenge these laws.[8] These individuals and their choice of defense tactics directly reflect the larger societal trends of the time, as the Civil Rights Movement and ongoing struggle for equality spurred couples to challenge what they saw as discriminatory statutes. Miscegenation and interracial marriage joined this larger fight to become another front for political, economic, and social justice.

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and "Alabama's Supreme Court Chief Justices," Alabama Department of Archives and History, www.archives.alabama.gov/judicial/justices.html.

[7] *Pace v. State* (1881) and *Pace v. Alabama* (1883).

[8] *Jackson v. State* (1954).

The breakthrough in overturning anti-miscegenation statutes finally came in Virginia with the 1966 case of *Loving v. Commonwealth*. After the Supreme Court of Appeals of Virginia affirmed the conviction of Richard Loving, a white man, and Mildred Loving, a black woman, for violating the statute making it a crime to leave the state to evade anti-miscegenation laws, the case advanced to the United States Supreme Court.[9] In a landmark decision, the U.S. Supreme Court overturned Virginia's conviction, striking down anti-miscegenation statutes based on their violation of Constitution protections. Chief Justice Earl Warren delivered the opinion that "these statutes cannot stand consistently with the Fourteenth Amendment," because in these statutes "there is patently no legitimate overriding purpose independent of invidious racial discrimination," interestingly reflecting closely the reasoning in the *Burns* decision almost a hundred years earlier. With the 1967 *Loving* decision, the anti-miscegenation laws remaining on the books in sixteen states were struck down, thus ending a centuries-long debate over interracial marriage and reflecting the larger societal and political movement toward acknowledgement of civil rights and the struggle toward equality.[10]

In the decades between the landmark decisions of *Pace v. Alabama*, which eliminated constitutionality as a viable defense strategy in miscegenation cases, and *Loving v. Virginia*, which declared prosecution for miscegenation unconstitutional, appellants had to look beyond constitutionality as a strategy to contest their individual convictions. Between 1883 and 1917, defendants turned to a variety of defenses, almost two-thirds of which rested on some type of technicality. The most basic type of defense in this category rested on issues such as improper charges and inadmissible testimony. But in Alabama, technicalities also included cases that

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[9] *Loving v. Commonwealth*, 206 Va. 924 (1966).
[10] *Loving v. Virginia*, 388 US 1 (1967). For a recent historical analysis of the *Loving* decision, see Phyl Newbeck, *Virginia Hasn't Always Been for Lovers: Interracial Marriage Bans and the Case of Richard and Mildred Loving* (Carbondale: Southern Illinois University Press, 2004).

debated the scope of statutes and definitions of specific aspects of the laws, such as what constituted ongoing relationships and adultery.[11] Generally these cases involved prostitution and even rape, leaving room for appellants to argue that their actions did not fall within the scope of the statute.

The case of *McAlpine et al. v. State* first challenged the scope of anti-miscegenation statutes in 1898. The defense for Will McAlpine, a black man, and Lizzie White, a white woman, told the jury that "a woman who keeps or helps to keep a house of prostitution is not guilty of living in adultery, as charged in this case, with a man who at such house merely has occasional acts of criminal sexual intercourse with such woman." The Supreme Court of Alabama reversed the original jury verdict based on these charges, which it found "misleading, invasive of the province of the jury, and faulty generally." The issue of intent proved particularly significant to this decision; the appeals court found that regardless of relationship length, intent of the participants to continue the relationship would warrant a conviction.[12]

This case, along with others involving prostitution and rape, revealed the ongoing challenges to definitions of miscegenation and raised the issue of what exactly was necessary in order to be prosecuted for interracial relationships.[13] In the 1912 case *Story v. State*, for example, Beatrice McClure, a white woman who admitted to working as a prostitute, claimed that her co-defendant, a black man named Clarence Story, had raped her. Her reputation became the crucial element of the case when Story argued that McClure had a reputation for sleeping with black men, thus damaging McClure's claim of rape. The judges ruled that "the consensus of public opinion, unrestricted to either race, is that a white woman prostitute is yet, though lost

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[11] See *Love v. State*, 124 Ala. 82 (1899); and *Story v. State*, 178 Ala. 98 (1912).
[12] *McAlpine et. al. v. State*, 117 Ala. 93 (1898).
[13] In particular, see *Love v. State*; *Story v. State*; and *State v. Tutty*, 7 L.R.A. 50 (1890). See also *Jackson v. State* (1954); and *Gilbert v. State*, 32 Ala.App. 200 (1945) for examples of these defenses in the later period of dominance of technicalities.

of virtue, above the even greater sacrifice of the voluntary submission of her person to the embraces of the other race." Therefore, testimony that McClure had a reputation for sleeping with black men was prejudicial, and the judges reversed the conviction.[14] As late as 1912, then, courts and communities continued to question what was necessary to form and to prove a willing interracial relationship.

Through such cases, the courts established that rape and single instances of prostitution with no intent to continue, although certainly involving interracial intercourse, did not fall within the scope of the anti-miscegenation statutes. Similarly, though relevant to fewer cases, the ruling that white women would on principle refuse to sleep with black men—a theory already disproved before its acceptance in *Story* by earlier cases involving willing white women and black men—allowed a potential escape route for white women. These loopholes, though tiny, provided appellants with new defenses and demonstrated individuals' and couples' ongoing propensity to engage in interracial relationships and to find and challenge the weak points of the law.

Although debate concerning the scope of statutes proved significant during the early twentieth century, many appellants relied on more basic arguments such as improper admission of testimony to challenge their convictions.[15] These defenses remained valid up until the point at which constitutional defenses again became relevant, gaining particular popularity throughout the 1940s and 1950s. Although larger societal trends that encouraged the popularity of other defense strategies such as race and constitutionality affected the usage of these defenses, technicalities remained valid and constituted a type of default argument during periods in which

[14] *Story v. State* (1912).
[15] For examples, see *Cauley v. State*, 92 Ala. 71 (1891); *Jones v. State*, 156 Ala. 175 (1908); *Smith v. State*, 16 Ala.App. 79 (1917); and in the later period *Fields v. State*, 24 Ala.App. 193 (1931); *Murphy et al. v. State*, 27 Ala.App. 546 (1937); *Jordan v. State*, 30 Ala.App. 313 (1941); and *Griffith v. State*, 35 Ala.App. 582 (1951).

defendants were forced to regroup and to develop new methods of discovering and challenging the inadequacies of the law.

Between 1918 and 1935, defendants developed just such a useful strategy, and a third category of defense rose to prominence to test the limitations of miscegenation statutes and challenge societal conceptions of race. During this period, almost two-thirds of appellants in Alabama used racial definitions and heredity to challenge their convictions, arguing that they did not meet the requisite degree of negro blood to fall under the provisions of the statutes.[16] This argument spanned the years both before and after the adoption of the one-drop rule, as even after its passage defendants used claims of Spanish, Indian, and Creole ancestry to complicate and confuse already ambiguous racial identities.

Although race-based arguments first emerged during the 1890s,[17] racial definitions did not become the central issue debated in miscegenation cases until around 1917. The first case of this period to use a racially based defense, *Metcalf v. State*, argued that one of the defendants was never proven to be white, revealing the breadth and variety of arguments concerning racial definitions. As the prosecution in this case failed to prove a crucial element of the crime—that of interracial intercourse—the Alabama Court of Appeals reversed the conviction, opening the door for future cases using race as defense.[18] This strategy ultimately proved extremely successful in highlighting the inabilities of both the old standards and the new one-drop laws to address racial ambiguity, as well as in displaying the racial beliefs and attitudes of local communities.

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[16] See *Metcalf v. State*, 166 Ala.App. 389 (1918); *Reed v. State*, 18 Ala.App. 353 (1922); *Wilson v. State*, 20 Ala.App. 137 (1923); *Weaver et al. v. State*, 22 Ala.App 469 (1928); the Williams cases; and *Mitchem v. State*, 25 Ala.App. 338 (1933).
[17] See *Bryant v. State*, 76 Ala. 33 (1886); *Linton v. State*, 88 Ala. 216 (1890); *Parker v. State*, 118 Ala. 655 (1898); *Jones v. Commonwealth and Gray v. Commonwealth*, 80 Va. 538 (1885).
[18] *Metcalf v. State* (1918).

Another early case illustrating the difficulties of conclusively defining racial composition reached the Court of Appeals of Alabama in 1923. *Wilson v. State* centered on the race of defendant Sarah Wilson, and, lacking knowledge of her family history, the court relied on witness testimony to determine her race. Several individuals, including the wife of the man Sarah slept with, testified that they "can tell by her looks she is a negro," and that "she has been on the streets with negroes." A few witnesses also mentioned that Wilson "had been picked up by the police department many times, and… locked up with the colored women." In the end, the court sided with the prosecution, opining that it is not "necessary and incumbent upon the state to fully trace the antecedents of a defendant in order to establish the race of the accused," and that such requirements "would often defeat the ends of justice."[19]

This decision, however, seems at odds with the clear legal definition based on the racial identity of ancestors that, at this time, reached back to include the great grandparents. Regardless of this inconsistency, the court reaffirmed its decision five years later in *Weaver et al. v. State*, confirming that juries could use the appearance of a defendant and his close relatives to determine race.[20] Such cases demonstrate powerfully that courts could not simply rely on the standards set by law to decide actual cases of miscegenation. When it came to real people and situations, judges and juries were forced to turn away from the set and defined standards of the law and to look at appearance and community reputation in order to even attempt a racial designation. Clearly, the law was unable to adequately address the realities of race and community in the South.

While Wilson and Weaver failed to overturn their convictions based on racial ambiguity due to courts looking beyond the confines of the law to gain convictions, other defendants more

[19] *Wilson v. State* (1923).
[20] *Weaver v. State* (1928).

successfully raised reasonable doubt of their racial background. Jesse Williams' cases present perhaps the most interesting example of racially based defense against miscegenation charges. Williams was born around 1910 to a white woman, Fronie Lundy, a few weeks after her marriage to Amer J. Williams, a white man. The court recognized that Jesse's brothers, grandparents, and extended family, with whom he grew up on his grandfather's farm, were all white "without a taint of negro blood." Jesse Williams, however, presented a more ambiguous racial identity. An elderly black midwife and "an eminent local physician" both testified that as an infant Williams showed "certain infallible signs" of negro blood. Despite the fact that "no cohabitation [was] directly proven," evidence that an elderly black man, "Old Black Joe Adkins," lived with Williams' grandfather in close proximity to Williams' mother provided the only offered potential explanation for his dark skin, "black curly hair and [resemblance to] a negro." This proximity and the fact that as a slave Adkins had belonged to Williams' mother's family were the extent of evidence provided to suggest that Williams possessed African blood and ancestry.[21] On the other hand, Williams himself suggested that his ambiguous traits resulted from Indian ancestry.

Williams' uncertain racial background became an issue in the appellate courts of Alabama four times, regarding two separate cases, as a result of his involvement in relationships with two different white women. His first case involved an alleged marriage to Louise Cassady, a white woman, in Opp, Alabama in 1928. Upon the presentation of a marriage license to this effect, the defense argued that the marriage was null and void, due to the expiration of the Justice of the Peace's term in office fifteen months prior to the performance of the marriage ceremony. The court accepted this argument and, as "the state relied solely for a conviction *upon the statutory marriage* of the parties, and there was no attempt to show, and no evidence offered,

[21] *Williams v. State* (1933); and *Williams v. State*, 26 Ala.App. 53 (1934).

that a common-law marriage existed, or that they had 'lived in adultery or fornication,'" it also reversed the conviction.[22]

This first case ended several years before the one-drop rule passed through Alabama's legislature, and while technicalities formed the basis of the decision, the issue of Williams' racial background, whether African, Indian, or pure European, consumed the majority of the lengthy trial. Both sides were careful to cover their bases in attempting to prove either that Williams fell under the legal definition of black or that he did not. Quite possibly, the court decided the case based on a technicality in order to avoid having to clearly determine Williams' race given such contradictory and ambiguous evidence. Despite the clear standards of the law, then, the courts in practice struggled to define race and sometimes opted out of doing so, as Williams' first experience with the law illustrates.

Williams' next appearance in the appellate courts of Alabama resulted from his relationship with a different white woman, Bessie Batson,[23] and occurred just after Alabama passed the one-drop law. Instead of marriage without fornication, as in his earlier case, the state now accused Williams of adultery and fornication without marriage. Despite the difference in charges, circumstances, and even the legal definition of blackness, the court again overturned his conviction and opted out of having to determine his race, instead citing the inflammatory language of the prosecution, including those examples used in the opening of this thesis. The opinion concluded that "on account of the prejudicial argument of the solicitor and the erroneous rulings of the court thereon, the judgment is reversed, and the cause is remanded," thus avoiding engaging the issue of racial composition.[24]

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[22] *Williams v. State*, 23 Ala.App. 365 (1930).
[23] Bessie Batson occasionally went by Bessie Mitchem, the name used for her trial, *Mitchem v. State.*
[24] *Williams v. State* (1933).

This case reached the appellate courts on its second appeal a year later. After restating the facts of Williams' mother's proximity to "Old Black Joe Adkins," the court opined that "the evidence in this connection was insufficient to even create a suspicion that such relations had ever existed," and concluded that Williams had again failed to receive a fair and impartial trial, once more reversing the conviction. Williams probably benefited from the courts' refusals to define his race and the continual citing of technicalities, as he had four reversals and no convictions at the appellate level. That the appellate courts persistently addressed Williams' cases based on technicalities rather than on the much more predominant issue of race illustrates the wide breach between the law and reality. Even after the passage of the one-drop standard, and even when presented with hundreds of pages of testimony, much of which argued that Williams' physical appearance proved his African ancestry, the court seemingly felt unable to clearly define Williams as even one-drop black. Although the legislature passed the one-drop law to avoid such difficulties, Williams' cases reveal that persistent ambiguity still prevented the newly revised statute from accomplishing its purpose.[25]

The Williams cases raise several significant points concerning the difficulties of defining race in Alabama's appellate courts. In a society in which the ideal of total separation of the races rarely existed, close proximity of different races and classes resulted in tangled family histories and individuals who defied categorization. These individuals in turn challenged the legal system of the state as they forced the courts to develop new methods not prescribed by law to determine racial composition and to repeatedly utilize these methods to prove degrees of blood. The court often struggled to accomplish these goals, and sometimes sidestepped these difficult issues in favor of less ambiguous arguments in order to ease the burdens of defining race. Where the legal system proved unable to conclusively and consistently define its own terms and beliefs, it is easy

[25] *Williams v. State* (1934).

to imagine a larger society with a yet more tenuous grasp on racial identity. The difficulties both judges and juries faced in determining and proving race, and the inabilities of the laws to do so despite revisions, reveal the fluidity of race within southern society, in defiance of white elites' ideals of the contrary.

While Williams' later cases proved that the one-drop rule certainly did not nullify racially based defenses, appellants in Alabama did shift back towards technicality based defenses during the 1930s, before utilizing constitutional challenges in the 1950s and 1960s. Defendants did not totally abandon the strategy of challenging racial definitions however, as Hosea Agnew's success with this defense in 1951 illustrates.[26] Such developments of new strategies and subsequent shifts back to old ones demonstrate the abilities of defendants to use societal and legal trends to their advantage. Defendants throughout the nineteenth and twentieth centuries continually used their strategies to probe the weaknesses of the laws. Often, they succeeded in finding these weaknesses, whether loopholes for prostitutes, white women, or racially ambiguous individuals. While not all defendants succeeded, and no one tactic worked every time, the adaptive nature of defense strategies allowed many defendants to escape conviction. Just as importantly, these defense plans continually highlighted the inadequacies and inabilities of the law to address all aspects of interracial relationships, even after the passage of the strictest miscegenation statutes.

While the shifts in defense strategies prove valuable for illustrating inadequacies of the law, such as loopholes for single instances of intercourse and confusion of racial background, they are equally relevant in revealing and reflecting societal trends, such as the growing national interest in race and racial purity during the early twentieth century. Certainly, this widespread fascination increased defendants' awareness of racial ambiguity as a method to challenge convictions. The rise and fall of constitutional challenges likewise reflects larger societal trends,

[26] *Agnew v. State*, 36 Ala.App. 205 (1951).

as they dominated during Radical Reconstruction, ended with Redemption, and again gained relevance during the Civil Rights Movement, thus closely following periods of concern with the rights of African Americans.

At the same time that these cases and defenses trace expected social trends, they can also reveal surprising patterns, particularly concerning the effects of the one-drop law. Seemingly, the increasing debate over degrees of blood leading to creation of the one-drop standard would be the most obvious reason for the increase in race-based defenses during the 1920s, with the adoption of this standard clearly contributing to the decline in defenses centered on racial definitions after the early 1930s. After all, once states passed these statutes, lack of "traceable blood" would presumably become much harder to prove as opposed to lack of one-eighth or one-sixteenth African blood. The appellate cases, however, fail to support this hypothesis.

In the period between the Civil War and *Loving v. Virginia*, at least fifteen southern miscegenation cases centered on the issue of racial definitions. Seven of these came before the institution of one-drop rules in 1927-1930, while eight came afterwards; certainly these numbers suggest that the one-drop rule did not by any means end or even decrease attempts to argue appeals based on race. Success rates of these defenses again suggest the lack of a significant effect of the one-drop rule on how defendants appealed miscegenation cases. Before 1927, four of seven appellants succeeded in having their convictions reversed, while five of eight succeeded after 1930, giving appellants both before and after the one-drop rule a slightly better than 50-50 chance of succeeding with a defense challenging the racial background of the defendants. Both in numbers of attempts and success rates, then, cases argued on the basis of racial definitions proved virtually identical in the periods before and after the institution of the one-drop rule.

If the rise in miscegenation appeals debating racial composition did not stem directly from the legal push toward the one-drop rule, the related trends did, however, share a relationship. As discussed earlier, as Jim Crow became increasingly entrenched in southern law and custom, the nation as a whole exhibited rising interest in matters of race and ethnicity. Trends such as the rebirth of the Ku Klux Klan, the rise of pseudo-sciences, the passage of restrictive immigration laws, and national attention to high-profile interracial marriages all reiterate the growing obsession with race that prompted both the passage of the one-drop rule and the use of race to avoid its legal penalties.

Throughout the century between the Civil War and *Loving v. Virginia*, miscegenation cases illustrate how both prosecutions and defenses responded to societal trends and pressures, beginning with the reestablishment of anti-miscegenation laws during the Redeemer period and the increase in racially based defenses as Jim Crow violently raised issues of race to still more prominence in a society already fixated on race. The synchronization of defense strategies with social shifts lends greater weight to the legal inadequacies that defendants demonstrated through their defense strategies. Defendants were not the only people concerned with defining race and relationships; indeed, the entire nation shared similar concerns during the same time periods, and powerful white legislators continually sought to address these concerns through the legal code. The defendants, almost universally lacking the wealth, power, and education of their adversaries, nonetheless proved resourceful in challenging laws and convictions. They continually shifted their strategies and adjusted them to the realities of their specific period in attempts to overcome the burdens of these statutes, and despite the hostility of elite white society many of these individuals succeeded. Their successes revealed not only the ongoing persistence of interracial relationships, but also the inabilities of law to entirely prevent them. Despite the strictest

measure enacted into law, defendants continuously sought and discovered loopholes and limitations in the law, which they then used to prevent or overturn their convictions.

CHAPTER THREE

DEFINING RACE

In the rural Alabama of the 1920s, race would seem to have been a simple enough concept, easily documented from birth. When born, white babies displayed skin "as fair and tender as a little tender chicken," while black babies felt as "rough as a scaly lizard."[1] In childhood, white children attended white schools whereas black children attended black schools. As adults, individuals continued to associate primarily with those of their race, who could be easily identified using traits such as hair texture. If all else failed, a community need only resurrect the memory of an individual's forefathers and their respective racial designations in order to categorize a person into his or her neat and tidy racial group. After all, prior to 1927 Alabama's laws defined a "negro" as the descendant of negroes to the third generation inclusive, thus definitively settling the issue in the rare case of dispute.[2] This racially divided society depended upon the deeply ingrained conviction that a person was either black or white, and could be definitively classified as such. From this simple belief, supposedly, stemmed order and reason in society.

In reality, however, this belief was just that—a belief, and not a fact. Such a clear cut world existed only in the desires of its elite white inhabitants, and race repeatedly proved to be a difficult concept to pin down, as seen in numerous court cases. White legislators tried to use law to create their desired world of racial divides, but centuries of intermarriage and sexual relations between whites, blacks, and Indians led to numerous racially ambiguous individuals who defied

[1] *Williams v. State* (1930), 11; *Williams v. State*, 24 Ala.App. 262 (1931), 15.
[2] Code of Law of Alabama (1923): Art. 7, sec 5001.

traditional racial categories. And while the white elites who made the rules of society might have preferred to ignore the repercussions of these individuals' existence, doing so proved impossible. In defiance of the laws, or simply in the absence of racially divisive attitudes, whites, blacks, and racially mixed persons continued to interact on a daily basis, often on terms of near equality and friendship. When these friendships deepened into sexual relationships, as they sometimes did, the law faced challenges to its attempts through defining "race" and "relationships" to divide the world into white and black.

Rather than easily handling and ending interracial relationships, this legal realm of anti-miscegenation statutes and carefully defined racial compositions often faced the near impossibility of proving racial background when dealing with actual individuals and communities as opposed to hypothetical situations. During the early twentieth century, defendants took advantage of this difficulty to argue, often successfully, that they did not qualify under the statutes' definitions. Given such arguments, the courts sometimes found themselves forced to deviate from the law's racial definition in order to convict defendants of miscegenation. In the cases of Sarah Wilson and Jim Weaver, for example, the courts turned to community perception rather than legal definitions of racial background in order to determine guilt of miscegenation.[3] When the legal definitions thus proved inadequate to determine a defendant's race, both courts and communities had to turn to traditional societal methods of determining race, such as physical features and reputation. Even with these standards, communities as well as courts disagreed about the racial classifications of people and thus their rights and standing in society. Whites and blacks, rich people and poor people, often argued all different sides of the issues, unconstrained by social standing. These legal debates and community disagreements

[3] *Wilson v. State* (1924); and *Weaver v. State* (1928).

regarding race, in addition to illustrating the inadequacies of the laws, provide a valuable insight into the ways in which people actually defined and considered race.

The key aspect to legal cases concerning race throughout the nineteenth and twentieth centuries remained the ability to define and to actually determine "race," be it African or Italian or Jewish. Without this ability, white society would be unable to determine who to target, either through the law or through more violent extra-legal means. Given an increased focus on race and racial purity in the early twentieth century, it seems logical that race would become even more sharply defined and thus easier to determine, but evidence reveals just the opposite. Communities actively debated racial definitions and how to determine an individual's ancestry, often making decisions based on politics, personal emotions, and numerous factors other than race. As Daniel Sharfstein points out, "at the height of Jim Crow, people—even and perhaps especially the most rabid of racists—understood what a legal fiction was."[4] In fact, at this time more than before or after, people successfully challenged racial definitions and sparked local debates, proving the ambiguity of race despite the increasing focus on and perceived need to define race, as seen in the move toward the one-drop law. As racial purity gained importance in the early twentieth century and interracial relationships increasingly fell under attack, miscegenation cases such as that of the Rhinelanders and those of Alabama's interracial couples provided the most relevant and valuable assessments of these societal issues. In these cases, individuals of all types took the stand to debate issues of race and interracial intimacy, providing a window into early twentieth century views on race and identity.

Throughout the 1920s, Alabama's lawyers and appellants alike tried many methods of proving racial identity, as appeals focused almost exclusively on issues of racial identity. The majority of individuals facing conviction for miscegenation at this time argued that they did not

[4] Sharfstein, "Secret History of Race," 1476.

qualify racially as "negro" under the state's laws, and even the definition of "white" came under attack. The institution of the one-drop standard did not nullify these attempts, and defendants such as Jesse Williams continued to use these arguments successfully. Through these cases debating race emerged the most common and popular methods of determining race, including physical characteristics, family lineage, and social associations and reputation.

On the surface, perhaps, physical appearance presented the most trustworthy proof of race, but numerous courtroom debates proved that appearance actually could be trusted only rarely. The 1928 Weaver case presents a good overview of the types of traits courts and communities used to define race. Lawyers in this case cross-examined witnesses on the defendant's hair—kinky or straight, his nose—flat or Caucasian, and even on his scent, as at the time many whites believed blacks emitted a particularly foul stench when sweating.[5] Despite the confidence of the questioning lawyers in the veracity of such traits, features like nose width and smell proved nothing more than social constructs, leaving many courts and communities still uncertain of a defendant's race after reviewing such ambiguous traits.

Other cases reveal the difficulties in determining even the tone of skin and its attached meaning. In the 1921 case *Lewis v. State*, the race of Bess Adams' oldest child became a central issue. Lawyers reasoned that if the clearly black Adams had an equally unambiguously black son, then the other defendant, a white man named Hint Lewis, could not be the father. A neighbor's testimony that the child "was light colored, white," thus would have supported Lewis' paternity. A later witness, however, called the same child "bright," indicating mulatto and making Lewis' parentage less certain. Not only did different witnesses in this case describe the same child as belonging to two distinct racial categories, but one also testified that a black woman gave birth to a "white" son, a supposed impossibility under the then current racial belief

[5] *Weaver v. State* (1928), 13.

system. These contradictions clearly highlight the inconsistencies that communities and courts alike faced in defining race, despite the careful definition provided by the law.[6]

Some few individuals wisely refused to play this game of defining race based on arbitrary physical traits. In one of the many appellate cases involving Jesse Williams, a witness sidestepped the contentious issue of Williams' physical appearance when a lawyer cross-examined her. In answer to the question, "What color is his skin?" the witness replied, "Well, you are looking at him, you can tell yourself." When directed to elaborate on this answer, she continued, "Well, I have seen folks said to be white folks, past (sic) for white folks, darker than he is. I don't hardly know." Another witness in the same case drew laughter and certainly frustration from the prosecution with a similar reply that "They can see [his color] about as good as I can."[7] These witnesses' testimonies vividly and humorously illustrate how physical appearance often fell short of the goal of identifying an individual's race. Instead, physical traits often further muddied the water with inconsistencies and community acknowledgement of racial aberrations.

When the court could not determine an individual's race from his or her physical appearance, the next step generally involved asking the same question concerning his or her family. This method seemed more consistent with the legal definition of "third generation inclusive," as both relied on genealogical determinants of race. But in reality, both methods fell short of the goal, as people rarely recorded their family histories far enough back to prove the degree of ancestry necessary for conviction or acquittal, and even more rarely remembered—and willingly testified to—the accurate racial identity of their ancestors. The inconsistencies of legal records and corresponding lack of reliable record keeping at this time, especially in the rural

[6] *Lewis v. State*, 18 Ala.App. 263 (1921).
[7] *Williams v. State* (1933), 31.

areas from which many of these cases originated, only compounded this problem. Given the shortage of written sources and the usually contradictory opinions and memories of family and community members, it is no wonder that one-eighth, one- sixteenth, and even one-drop standards continually failed. Without proof, even the clearest standards became open to debate and challenge. Despite these difficulties in tracing racial genealogies, however, family history remained a crucial source used to define race.

The Reed cases from the southern Alabama-Mississippi border provide a perfect example of this type of argument. In 1882, the Washington County Circuit Court found John Goodman, a white man, and Jennie Reed, a racially ambiguous woman, not guilty of a miscegenation charge. Decades later, in 1922, Jennie's cousin Percy faced a similar trial, which this time reached the appellate courts, as did Percy's nephew Daniel's case, in 1925. In a complicated charge to the jury that sounded more like a genealogical account than a legal argument, the judge explained that "Percy Reed's father was named Reuben Reed, that Reuben Reed was a son of Rose Reed, and that Rose Reed was half white and half negro and was the daughter of a slave." The defendant, however, argued that "Rose Reed's mother was an Indian woman," not an African slave, in which case "there could be no conviction… because the law only follows [degree of negro blood] to the third generation."[8] After lengthy testimony concerning memories of Rose's parentage and appearance, the jury found Percy guilty, which conviction an appellate judge later overturned. Jennie and Percy Reed's cases centered on the racial background of their grandmother Rose, just as Daniel Reed's case centered on the race of Rose and her son, revealing the legitimacy and persistence of family history in miscegenation cases and racial definitions.[9]

[8] *Reed v. State*. 18 Ala.App. 353 (1922), 2-3.
[9] Ibid, and *Reed v. State*, 20 Ala.App. 496 (1925).

In a later case, *Weaver et al. v. State*, in which the defendants were more distantly related to the Reeds, the judge definitively confirmed the family background method of racial determination, stating that juries could use knowledge concerning a defendant's close relatives to determine race, again proving the centrality of family history to racial categorization.[10] Likewise, the judge in *Locklayer v. Locklayer*, a case debating whether a white widow could inherit her black husband's property, the judge ruled that the fact that the man's negro parents treated him as such became the crucial factor in deciding the case against the white widow.[11] Clearly, family history could be a valuable tool in determining race, but this standard often fell short of the strict third-generation definition the law desired, or even contradicted it, as defendants either dredged up hazy and only minimally useful memories, like the Reeds, or else limited themselves to more recent generations, like the Locklayers.

Much of the difficulties that the courts faced in determining race, even by physical means, stemmed from the defendants' own attempts at muddling the issues. By the 1920s, most blacks came from families that at some point had experienced racial mixture—whether by choice or by force—and many white families, contrary to their fervent beliefs, also had racially mixed forebears.[12] Savvy defendants in miscegenation cases used this fact to their benefit, claiming ancestors who variously possessed Spanish, Indian, or the ambiguous "Creole" or "Cajun" blood in order to explain dark skin tones. This defense proved particularly valuable in states such as Alabama, where the legislatures never outlawed marriage between Indians and whites. Closely linked to attempts to define race based on physical characteristics of both defendants and

[10] *Weaver v. State* (1928).
[11] *Locklayer v. Locklayer*, 139 Ala. 354 (1904).
[12] Robert J. Sickels, *Race, Marriage, and the Law* (Albuquerque: University of New Mexico Press, 1972), 67, for example, estimates that three-fourths to four-fifths of the African American population has some white ancestry.

families, attempts to explain away ambiguous features based on Indian heritage often proved successful.

The cases of Rose Reed and her grandchildren, Jennie and Percy, illustrate the validity of the Indian foremothers line of defense. Before Percy's trial, the judge in his case agreed with the defendant's version of his ancestry, determining for the record that Percy Reed "is of Indian and Spanish origin," and thus providing quite a burden for the prosecutors to overcome.[13] Witnesses further complicated the story, testifying that "Daniel Reed [Percy's grandfather] owned slaves… and was a Spaniard," that "Percy's mother claims to be Indian and had long straight hair," that "Rose Reed's mother was a yellow woman—what I know as mulatto, ginger cake color," and that Percy's nieces and nephews "go to a white school," thus addressing many of the standards of determining racial identity. At Jennie's trial, the court even produced Rose and her hair to the jury, of which one witness recalled that "it was one and a half to two feet long and straight." All this testimony addressed the simple issue of whether Rose Reed descended from Indians or Africans, and thus whether her descendants could legally marry white persons.[14] That courts went to such drastic measures for which the law made no provision in order to define race again underscores the scarcity and lack of reliability of written records regarding race in such isolated, impoverished areas, as well as the difficulties of meeting strictly defined racial standards. While the Reeds may or may not have descended from an Indian foremother with no admixture of "African blood," their efforts at defining race through appearance and community proved convincing enough to avoid two convictions of miscegenation, as the courts ultimately allowed both Jennie and Percy to remain married to their respective white spouses and to raise families with them.

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[13] *Reed v. State* (1922), 6.
[14] Ibid.

Jim Dud Weaver, a more distant cousin of the Reeds, also used the Indian defense, although with less success than did his cousins. At his 1928 trial, his father argued that "I am Indian and white… We registered in 1922 on the Democratic side… We are part Indian and part French," thus adding political whiteness to the whiteness of Indian and European descent.[15] Unfortunately, neither of his appeals to whiteness worked in this case, and the court affirmed the conviction of Jim Weaver. Despite his ultimate loss, however, Weaver again revealed that Indian ancestry could be a viable and promising method of defense. This strategy could successfully challenge either the third-generation or one-drop standards of negro ancestry by explaining away ambiguous traits, thus providing a valuable loophole for defendants and revealing a major flaw in the law.

The extended Weaver and Reed clan, now recognized as founding members of the Mowa Choctaw tribe, possibly had one of the strongest claims to Indian ancestry, but they were by no means the only people to use this defense. Jesse Williams, who appealed two separate convictions of miscegenation, also used this strategy. His claims prompted an elderly black midwife present at his birth to speculate that "[the defendant's great-grandfather] had dark skin… and a tolerably long face, but I did not notice particularly that he had high cheekbones."[16] Indian heritage played only a minor role in Williams' defense, but he nevertheless covered his bases in asserting this ancestry. Williams did not prove unique in this sense; in fact, most appellants claimed Indian or Spanish ancestors in an attempt to explain away ambiguous physical features. By not banning Indian and European mixes, Alabama's law allowed for such arguments, and by not addressing racial ambiguity in distant generations, the possibility of

[15] *Weaver v. State* (1928), 6.
[16] *Williams v. State* (1930), 13.

Indian rather than African ancestry, although unlikely in many cases, nevertheless provided individuals with viable methods to redefine their racial identity.

In addition to claims of Indian ancestry, defendants used the difficulty of proving or disproving family lineages and ongoing inconsistencies in racial categorization reaching back over generations to refute even obvious physical characteristics. Racially ambiguous individuals did not simply appear in the 1920s to challenge societal norms through interracial relationships. Rather, they generally came from long lines of ancestors who at different times bore inconsistent racial labels and designations. The Reeds, who so adamantly and convincingly argued Indian descent, in fact never showed up as such in census records.[17] Instead, census takers beginning in 1850 consistently classified Rose and her family as mulattoes or blacks rather than as Indians. In 1920, Percy was even listed as white, before being re-classified as black in the 1930 census, along with his wife, who in the 1922 trial was indisputably white.[18] That marriage to an ambiguously black individual could turn even a "pure white" woman black further revealed the inconsistencies of racial categories and the inability of legal definitions to address these ambiguities.

Like their cousins the Reeds, the Weavers experienced a long history of racial uncertainty. In 1860 and 1910 they found themselves listed in the census as mulatto, in 1900 as

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[17] Census takers rarely categorized anyone as Indian, preferring to place them in the mulatto or even black category. Several dozen members of the Mowa tribe, of which the Reeds and Weavers were a part, were, however, classified as Indian on the census throughout the years. See Wilford Taylor et.al., *CDIB: Corruption, Deceit, Identity, and Bureaucracy in Indian Country*, http://www.cdibthebook.com/cdib.pdf.

[18] Manuscript Census Returns, Seventh Census of the United States, 1850, Washington County, Alabama, Schedule 1; Manuscript Census Returns, Eighth Census of the United States, 1860, Washington County, Alabama, Schedule 1, p. 47; Manuscript Census Returns, Ninth Census of the United States, 1870, Washington County, Alabama, Schedule 1, p. 14-15; Manuscript Census Returns, Tenth Census of the United States, 1880, Washington County, Alabama, Schedule 1, Beat 1, p. 18, 21; Manuscript Census Returns, Twelfth Census of the United States, 1900, Washington County, Alabama, Schedule 1; Manuscript Census Returns, Thirteenth Census of the United States, 1910, Washington County, Alabama, Schedule 1, Precinct 8, Sheet 4A; Manuscript Census Returns, Fourteenth Census of the United States, 1920, Washington County, Alabama, Schedule 1, Precinct 8, Sheet 7; all on ancestry.com.

black, and in 1930 as white.[19] Although scholars recognize the inherent inconsistencies of census records, that any family could be classified in such different categories underscores the ambiguity and flexibility of race and highlights the difficulties courts faced in determining race, as even the few available written records thus disagreed as much as community and family members. Clearly, racial uncertainty could become an inherited trait throughout southern families, one which became a relevant issue as the racial environment worsened in the 1920s. Yet the continued reclassification of long-term ambiguous families also speaks to a certain limited freedom and ability to redefine oneself, or the acceptance of racial ambiguity. If nothing else, inconsistencies over long periods of time certainly proved a useful defense against charges of miscegenation and a helpful way to explain away certain physical characteristics.

When neither family history nor physical appearance could conclusively categorize an appellant's race, often as a result of defendants' efforts at using their racially ambiguous backgrounds to confuse the issues and refute "physical evidence," courts turned to other methods that strayed even farther from the law's methods of defining race. The friendships and associations of an individual, along with his or her reputation, proved particularly valuable in these cases. In *Wilson v. State*, for example, the court lacked knowledge of the defendant, Sarah Wilson's, family history, and thus relied on witness testimony to determine her race. One witness testified that "[Wilson] has been on the streets with negroes," and others mentioned that she "had been picked up by the police department many times, and… locked up with the colored women." In the end, the court agreed with this argument, opining that it is not "necessary and

[19] Manuscript Census Returns, Eighth Census of the United States, 1860, Washington County, Alabama, Schedule 1, p. 47; Manuscript Census Returns, Twelfth Census of the United States, 1900, Washington County, Alabama, Schedule 1, Precinct 14, Sheet 7; Manuscript Census Returns, Thirteenth Census of the United States, 1910, Washington County, Alabama, Schedule 1, Precinct 14, Sheet 4; Manuscript Census Returns, Fourteenth Census of the United States, 1920, Washington County, Alabama, Schedule 1, Precinct 14, Sheet 7; Manuscript Census Returns, Fifteenth Census of the United States, 1930, Washington County, Alabama, Schedule 1, District 12, Sheet 2A; all on ancestry.com.

incumbent upon the state to fully trace the antecedents of a defendant in order to establish the race of the accused," and that such requirements "would often defeat the ends of justice."[20] While this opinion certainly supports the methods used to define Wilson's race, it challenges precedent set in earlier cases that family members and appearance should be used in such situations. These two divergent opinions reveal the difficulties that courts faced even in establishing legal precedent for deciding race, much less for actually doing so in individual cases, regardless of laws and legal definitions.

Continuing to cover all possibilities, the Reeds and Weavers used this same reputation defense as did Sarah Wilson, with Dudley Weaver arguing that "the defendant did not associate with negroes, that he never had seen defendant at a negro party, he did not send the defendant to a negro school…, and he don't visit [negro churches]." Such testimony concisely covered the major aspects of reputation and association.[21] Virtually every defendant likewise found himself or herself having to defend choices concerning school and church attendance, always insisting they attended only white institutions, or else attended none at all. Such protestations hardly proved foolproof, however, as outside witnesses could always be found to testify one way or the other concerning the matter of association. Apparently, the contradiction between racial definition by reputation and the law's genealogical focus, and in particular the inability of reputation to meet the standards of the law, did not bother white judges, jurists, and politicians. Rather, they used all available tools to fill in the gaps left by the law and thus secure convictions in miscegenation cases.

Long-term uncertainty concerning the race of entire clans of people, individuals' own efforts at confusing the evidence of their heritage, and the existence of a social space between

[20] *Wilson v. State*, 20 Ala.App. 137 (1924).
[21] *Weaver v State* (1928), 7.

black and white absolutes naturally led to dissent within communities over individuals' racial identities. When these issues became matters of the court, witnesses often clashed over their perceptions of defendants' race. Jesse Williams, the undisputed son of a white woman, faced such contention in his numerous cases. Witnesses first debated the proximity of his young mother to "Black Joe" Adkins in order to establish the possibility of Williams' racially mixed heritage. They then turned to his appearance and racial identity, as an elderly black midwife, Sarah Bryant, testified extensively that in her long experience, black and white babies had many distinct differences and that as an infant Jesse displayed all the traits of a black baby, such as rough skin and black testicles. Her confidence grew with each successive trial, along with additional points of testimony she appropriated from other witnesses, until in 1934 she confidently declared that "If he weren't a negro I ain't one… You have got my experience in it from my heart."[22] Williams' stepfather, who married his mother two weeks before his birth, agreed with Sarah Bryant, testifying that as an infant, Jesse's "skin looked rough and curious and his hair looked kinky and stiff." When asked "What does he look like?" Williams' stepfather quickly replied "He looks like a negro."[23] A local physician also provided crucial testimony against Jesse Williams, declaring that based on an examination made of a toddler long ago, "[Williams] was a negro then, a negro now, and always will be a negro."[24]

Not everyone in the small, rural world of Covington County agreed with these witnesses. Jesse Williams, his mother, and his grandfather testified to his whiteness, along with several friends and community members who opted out of voicing an opinion by directing the jurors to assess his race for themselves. These witnesses also debated Williams' associations, establishing that he attended neither white nor black schools or churches, and mostly kept to himself and his

[22] *Williams v. State* (1934), 10.
[23] *Williams v. State* (1933).
[24] Ibid., 18.

family, although the various witnesses reached different opinions about the implications of this fact.

Williams, a quiet, introverted farmer who might someday have the fortune to inherit a bit of land but who lived a largely private life, thus found himself at the center of a raging community debate. The extreme contentiousness of the issue of his race and the number of witnesses willing to repeatedly take the stand under oath and testify to contradicting opinions of his racial background reveal the importance of community opinion and backing in cases of racial ambiguity. Quite possibly, Williams actually was the child of his white mother and a black man—a census taker certainly thought so when he categorized Jesse as black and the rest of his household as white in 1930[25]—but the standing his family held in the community as landowners and landlords, along with the inconsistencies of methods of defining race, allowed him to argue plausibly against the facts of his physical appearance. Race thus came down to much more than physical traits and even ancestry, and occasionally allowed individuals such as Williams to challenge and maybe even defy a tightening racial order.

As the Williams cases became a community-wide event, the *Andalusia Star*, the newspaper for the county seat of Covington County, initially seemed to take the prosecution's side and unequivocally categorized Williams as a "negro." The paper first raised the issue of Williams' legal difficulties in an extremely vague article that more argued for a change in political leadership than it addressed the details of the case. Nevertheless, the article clearly revealed attitudes surrounding the case, explaining that "Such an offense which makes a trial of this character necessary is extremely unfortunate because it brings to the fore prejudices that have existed and perhaps will ever exist in the Southland, and this is that the Anglo Saxon does

[25] Manuscript Census Returns, Fifteenth Census of the United States, 1930, Covington County, Alabama, Schedule 1, Precinct 3, Sheet 5A, on ancestry.com.

not intend to have intermarriage of the negroes and whites." In tone and wording, the author thus presumed that the white population of Covington County would agree with him about the degrading horror of miscegenation. Certainly, the author made it clear that this case had indeed caught the attention of the community, therefore sparking such debate and opinions. Without once naming the defendants, he stated that "the case was so out of the ordinary that it attracted many spectators," revealing the intense curiosity such cases aroused. Despite the paper's reluctance to engage the facts and specific issues of the case, that the case received coverage at all spoke to the centrality of community in miscegenation cases, as well as to the scandalous nature of issues of racial mixture that aroused the curiosity of the public.[26]

A later article, like its counterpart positioned conspicuously on the front page, took a less political approach to the Williams affair. Instead, this second acknowledgement of the case briefly stated the facts and revealed that the higher court reversed Williams' case on appeal. In addition, the article informed readers that Williams' co-defendant, Louise Cassady, was in Florida after being paroled from a juvenile school of corrections for women. In contrast to the earlier coverage, this article stated that "it was alleged that Williams is of negro blood," rather than blatantly labeling him black. This article, however, again failed to explicitly address the crucial aspect of Williams' case, that of racial ambiguity, instead hiding the debate in simply stated facts and allegations. Likewise, a final article about Williams' third trial, now with Bessie Batson, stuck to the facts of the case, indicating that although local courts had found Williams guilty of miscegenation four times—the last time after ten hours of deliberation—the higher court had thrice reversed the convictions.[27] These articles indicate that although issues of racial

[26] "A Criminal Court Scene," *The Andalusia Star*, 2 November 1928, on microfilm at Alabama Department of Archives and History.
[27] "Jesse Lundy Found Guilty of Miscegenation," *The Andalusia Star*, 1 June 1933, p. 1, on microfilm at Alabama Department of Archives and History.

mixture might have caught the attention and imagination of a community, such communities still proved less than forthcoming in acknowledging their sometimes implicit acceptance of the racially ambiguous social space that resulted in such cases. Despite this reluctance to acknowledge such space, however, communities continued to play a central role in defining race and in debating interracial relationships, even when the supposedly unassailable law became involved.[28]

Miscegenation cases prove that communities, courts, and even families struggled to define and determine race, but they also reveal that defining and proving a relationship could be tricky as well. In *Metcalf v. State*, for example, witnesses seemed less concerned with race than with behavior. One neighbor testified that he "saw nothing wrong there between [the defendants]," voicing an opinion that other witnesses of the defendants' shared buggy rides to work echoed. Whether or not these neighbors classified the defendants as white, black, or in between, they proved less interested in defining race than in defining societal codes of behavior. Ultimately, then, communities proved prepared to engage in debate concerning an individual's race, but for the most part were willing to let racially ambiguous persons live out their lives in an in-between zone of neither blackness nor whiteness.[29]

The many standards courts developed to define and determine race and relationships speak strongly to the difficulties courts and communities encountered in doing so. Despite the definition provided by law, the realities of race and community rendered an easy determination virtually impossible. For every attempt at defining race through the either legal definition of ancestry or the social standards of appearance and reputation, defendants found a viable response. The persistence of interracial relationships bolstered this confusion and inability to

[28] "Case of Miscegenation Against Williams Ended by Court of Appeals," *The Andalusia Star*, 24 April 1931, on microfilm at Alabama Department of Archives and History.
[29] *Metcalf v. State* (1918), 5.

define race, as did possibilities of "Indian foremothers," ongoing racial ambiguity reaching back generations, and conflicting community opinion. Such factors continued to create inconsistencies in racial definitions that the law was incapable of addressing, thus allowing certain individuals to slip through the cracks of a tightening racial system of the early twentieth century South and to establish themselves in racially ambiguous but socially accepted spaces.

Cases such as Alabama's miscegenation appeals prove that even as the concept of race gained increased importance and attention in the 1920s, actually defining race remained as difficult as ever. The long persistence of interracial relationships had created a population of individuals who defied categorization, generation after generation. While white elites tried to define these people out of existence with one-drop rules, local communities and even courts continued to acknowledge and debate the inconsistencies of racial identity. Despite the utilization of physical appearance, ancestry, and reputation to legally define race, certain individuals continued to use generational inconsistencies to claim Indian ancestry, or to use community support to mitigate the implications of a dark skin tone or kinky hair. The fact that many of these individuals succeeded in frustrating efforts to classify them as legally black reveals the ongoing ambiguities of race, and thus the legal loopholes that such inconsistencies allowed. Instead of being a set biological fact, race in the 1920s remained very much a societal construct, one that could be adjusted with community support and the creative invocation of family history.

CHAPTER FOUR

COMMUNITY TOLERATION

Courts and communities alike implemented a wide array of methods to determine race, but at the same time displayed an unexpected resistance to defining every last person, as they clearly and not infrequently accepted certain individuals as racially ambiguous, not one thing or another. Earl Lewis and Heidi Ardizzone, in their book length study of the Rhinelander trial and the national media attention it received, highlight this uncertain racial status that a surprising number of individuals, such as Alice Jones and her family, occupied in society. Neither white nor black, these people "simply lived in the spaces between absolutes," generally accepted on their own terms by society unless scandals such as high profile marriages brought them to popular attention. On a daily basis, this "racial ambiguity enabled such individuals and families to embrace the multiple histories that constituted them. They were white and black and other." Legal historian Daniel Sharfstein agrees that certain "people exercised a surprising degree of tolerance in their everyday lives at a time of massive racial hysteria and had a basic awareness that racial identity was something that could be disputed and creatively argued, at least in the courtroom." Most of Alabama's miscegenation cases echo this finding, with communities often showing little if any inclination to definitively label racially mixed individuals, or even to bother prosecuting interracial couples at all.[1]

Local communities played a central role in determining and defining race, but they played an equally crucial role in deciding how much importance they would place on racial

[1] Lewis and Ardizzone, *Love on Trial*, 36-37; and Daniel J. Sharfstein, "The Secret History of Race in the United States," *Yale Law Journal* 112 (2003), 1476, 1487.

differences in relationships. Evidence from Alabama's appellate cases suggests that, for the most part, communities placed little emphasis on interracial relationships until the courts forced them to do so. In fact, most interracial couples only faced prosecution after months or years of an ongoing relationship, suggesting that communities generally tolerated interracial liaisons. Further evidence reveals that communities often became involved in cases debating race and relationships only after an individual found reason to feel personally involved in the case and thus brought charges. Such reasons included revenge, rape, the birth of racially ambiguous children, or inheritance disputes, but few of the cases that indicate reasons for prosecution suggest that outrage against the simple fact of interracial interaction formed the primary motivation. Perhaps this implies that communities struggled to define race in part because they showed less interest in such issues than traditional history would suggest.

Numerous cases indicate long-term toleration of interracial relationships by families and communities, again highlighting the importance of community involvement or lack thereof in the lives of interracial couples. Charles Robinson argues that intimacy, or long-term, committed relationships, faced harsher persecution than casual occasions of sex, but a break-down of Alabama's cases does not support this finding.[2] Out of fifteen miscegenation appeals that indicate length of relationships or alleged relationships, only two resulted in arrests within a few days of the commencement of the relationship, and only one other after less than half a year, at three months. The majority of cases only arose after substantial lengths of time: two after six months, one after roughly nine months, and the most cases—six—after at least a year. The final three cases that indicate length of relationship reveal even more substantial periods of toleration,

[2] Robinson, *Dangerous Liaisons*.

at two years, four years, and five years. Based on these cases, the length of a relationship before prosecution averaged just over fifteen months.[3]

Interestingly, many of the relationships with the shortest length of toleration occurred in more urban areas such as Birmingham and Talladega, where community ties might not have been as strong or as pervasive. One can imagine that in a rural community, where everyone is connected socially in some way, police officers would find it more difficult to arrest a neighbor or cousin than urban officers would find in arresting strangers from a neighborhood or social network outside of their own. While the number of cases is not large enough to definitively prove this trend does not exist, it certainly seems to suggest that community and local ties between families and individuals played a crucial role in the prosecution of miscegenation.

In addition to these miscegenation cases, six related cases, mostly involving inheritance, reveal the presence of interracial couples who never faced prosecution for miscegenation at all, despite relationships that sometimes lasted for decades.[4] Clearly, then, interracial relationships did not automatically or immediately lead to legal prosecution; rather, communities showed consistent tendencies to tolerate interracial relationships even long after such liaisons became common knowledge. Such community acceptance combined with racial ambiguity to further damage the effectiveness and power of anti-miscegenation laws.

The finding that, despite community knowledge, few individuals immediately prosecuted interracial relationships raises the questions of why these neighbors displayed such toleration and what made them eventually change their minds. Addressing the first question, testimony from

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[3] Although most miscegenation appeals gave little indication of length of relationship, fifteen cases gave enough information to arrive at a reasonable estimate. These cases are: *McAlpine v. State; Love v. State; Jones v. State; Story v. State; Lewis v. State; Rollins v. State; Bufford v. State; Reed v State; Fields v State; Williams v State; Pendley v. State* and *Agnew v State; Murphy v. State; Jordan v. State; Griffith v. State;* and *Gilbert v. State.*

[4] These cases are *Locklayer v. Locklayer; Allen v. Scruggs; Crowder v. State; Reichert v. Sheip; Mathews v. Stroud;* and *Dees v. Metts.*

appellate court records indicates that toleration stemmed from a desire to mind one's own business and a simultaneous lack of concern or outrage regarding interracial couples. Witness after witness recounted seeing an interracial couple together and not thinking anything of it. In the 1918 case *Metcalf v. State*, for example, witness Lorensy Nichols testified that "I saw defendant and Jim Simmons riding on horseback side by side… I supposed they were going to their work." This casual statement reveals that Nichols' first thought upon seeing a black woman and white man together, like many other witnesses in these cases, was not of anger, violence, or retaliation, but at most of mild curiosity concerning an explainable and commonplace event.[5]

A witness in *Reed v. State* showed similar lack of concern over an interracial marriage, testifying that "I saw them together one time- they told me they were married, that was three years ago this past summer." Despite repeated interactions with the couple over the next three years and his sworn belief that "in my judgment [defendant Daniel Reed's father] was a negro," this witness never showed any inclination to prosecute, ostracize, or even avoid the interracial couple or their families.[6] Again, such testimony reveals community members' consideration of these relationships as more commonplace than inflammatory, thus helping to explain long delays in prosecution or lack of prosecution altogether. If no one was unduly concerned or outraged, then no one prosecuted.

In addition to lack of outrage, neighbors sometimes revealed a stubborn tendency to deny what little knowledge they had of illicit affairs and a persistent reluctance to choose sides in these community debates. *Rollins v. State* provides a perfect example, in which one neighbor clearly demonstrated this lack of inclination to condemn an alleged relationship between a black man and white woman. Although she admitted that "I see [the defendant, Jim Rollins] going in

[5] *Metcalf v. State* (1918), 5.
[6] *Reed v. State* (1925), 12.

and out of [the co-defendant, Edith Labue's, house] sometimes," the neighbor then qualified her observations by explaining that he was usually bringing her food and by stating that "I don't understand much…. I ain't watchin' nobody."[7] Such testimony and refusal to speculate on the nature of the relationship proved ambiguous and certainly indicated little desire to censure interracial couples.

Likewise, a neighbor in the case *Bufford v. State* explicitly stated that, despite his close proximity to the couple and community knowledge that the couple came together from Georgia two years ago, "I never did look after them like I look after my own business… I never looked after them at all."[8] Witnesses such as these appear throughout the records, often refusing to criticize neighbors despite their sometimes apparent nosiness concerning local activities. A neighbor testifying in *Jordan v. State* put it best, saying "I ain't told nobody because I had nothing to do with it."[9] Whether these witnesses genuinely paid no attention to their neighbors or not, their refusal to share details and information indicates a valuation of privacy over punishment, even for interracial couples. Such lack of concern and outrage from the community allowed many interracial couples a significant period of time together before prosecution, if indeed they ever faced prosecution at all, and rendered anti-miscegenation laws and one-drop standards largely irrelevant and powerless at the local levels.

Several appellate cases involving interracial couples, but not miscegenation charges, reveal that a significant number of interracial couples never faced prosecution at all. The actual number of relationships that escaped prosecution is impossible to determine, given that such circumstances rarely made it into the public record, but the existing cases reveal that these situations were not unheard of. Most of these related cases involved inheritance disputes, usually

[7] *Rollins v. State*, 18 Ala.App. 354 (1922), 10.
[8] *Bufford v. State*, 20 Ala. App. 197 (1924), 29.
[9] *Jordan v. State*, 30 Ala. App. 313 (1941), 33.

when a white man left property or money to his black mistress or wife. Only through the contestation of these wills, rather than through prosecution for miscegenation, did these relationships become known in the public record.[10] Such cases prove that, in spite of harsh laws against miscegenation, community toleration of interracial liaisons often lasted for decades and lifetimes.

Turning a blind eye towards illicit relationships seemed to be the rule rather than the exception in most cases of interracial relationships. Even when individuals did face prosecution, communities showed tendencies toward toleration as neighbors refused to condemn each other, as people proved reluctant to turn in interracial couples, and as individuals considered these relationships to be less than extraordinary. Testimony, however, indicated that communities not only tolerated and refrained from prosecuting interracial couples, but also that they occasionally actively accepted them socially as well.

Witnesses portrayed a number of miscegenation appellants as somewhat reclusive and unlikely to venture far from their own homes and families, but testimony rarely indicates ostracism or social repercussions for interracial couples. Instead, even damaging witnesses often reaffirmed their friendships and social connections with defendants through their testimony. Mattie Leonard's father thus revealed his previously friendly relations with his daughter's white boyfriend, George Smith, even in his request that Smith stay away from Mattie. Mr. Leonard testified that Smith "said he was my friend… and I told him he had better stay away if you are my friend."[11] Despite the power differential between a white and black man, for a white man to admit to friendship with a black man and to a year-long courtship of that man's daughter indicates a certain degree of societal acceptance of interracial friendships and relationships.

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[10] These cases include *Locklayer v. Locklayer; Allen v. Scruggs; Crowder v. State; Reichert v. Sheip; Mathews v. Stroud*; and *Dees v. Metts*.
[11] *Smith v. State* (1917), 3.

Numerous witnesses in miscegenation trials recounted friendly interactions with interracial couples even after the commencement of such liaisons, as seen in earlier examples, but the 1944 inheritance case of *Dees v. Metts* directly addressed the failure to ostracize interracial couples. Despite the racially inflammatory language of the court's decision and its belief that Ben Watts "preferred to live this life of shame and face the criticism, or perhaps ostracism that would naturally follow [his relationship with a black woman,]" the court also admitted that "organized society—the law—took no step to interfere, and the guilty parties [were] left unmolested." Additionally, the decision conceded that "so far as the business men with whom he came in contact all the years are concerned, he was not ostracized, but continued to enjoy their confidence and continued to carry on business with them as usual," a fact to which numerous prominent men testified during the trial. Their testimony revealed not only a lack of anger or action over Watts' relationship, but a purposeful decision to continue to treat him as an equal and to allow him to retain his position in society.[12] While the language of the court thus indicated that ostracism could have been a very real possibility for interracial couples, the majority of witness testimony, on the contrary, revealed that such social punishments were rarely enforced and that these individuals for the most part continued their lives as usual.

Although virtually every appellate case concerning miscegenation or related situations demonstrated some degree of social acceptance of interracial liaisons, this should not be confused with a total lack of racist sentiment in southern communities. Fewer witnesses directly addressed their general thoughts on miscegenation or even on African Americans than their thoughts on the circumstances of their interactions with the defendants. But a number of witnesses revealed that such toleration stemmed from a reluctance to get involved in other people's affairs rather than from a progressive view of race relations. Charley Rainwater, for

[12] *Dees v. Metts*, 245 Ala.App. 370 (1944).

example, testified in *Reed v. State* that he turned Daniel Reed and Thelma Currie over to the authorities because "I don't think it is right for a colored man to marry a white girl."[13] These comments, as well as sentiments such as those that the judge expressed in *Dees v. Metts*, occasionally appear in the trial records, but, despite personal beliefs concerning race, most community members chose to grudgingly tolerate or even accept what they saw as unremarkable relationships.

Regardless of personal racial beliefs, testimony from the dozens of appellate cases concerning interracial relationships demonstrates a striking pattern of reluctance to prosecute and tacit toleration, if not active acceptance, of interracial couples. Given this pattern of delayed reaction to interracial marriage, the question becomes why people eventually prosecuted what they had previously tolerated. A careful reading of trial transcripts reveals that a number of cases originated in personal grudges and attempts to gain revenge for unrelated arguments, rather than racial outrage or a desire to follow the letter of the law. In such cases, issues of race mixing or racial purity had less to do with the motivations for prosecution than did personal disagreements. Those individuals who turned interracial couples in understood and made use of the region's collective racial beliefs for personal gain. In such cases, only when people felt personally involved would they prosecute couples.[14]

Perhaps the clearest example of legal proceedings as revenge comes from the case of *Murphy v. State*. This Depression-era case arose out of a dispute between neighbors in a shantytown in rural Lauderdale County, in the extreme northwest corner of Alabama. Felix

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[13] *Reed v. State* (1925), 8.

[14] Fifteen of the appellate miscegenation cases offer some information indicating either why the case came about, who commenced prosecution, and/or what his or her motives might have been. Of these, only nine reveal who brought charges against the defendants and why. Two others indicate that the cases began with the police being called to arrest the defendants without specifying who called them or why. Another two indicate disagreements or hard feelings between witnesses and defendants, and two others suggest that the birth of a "negro" child to a white women played a role in prosecution, but likewise fail to indicate who pressed charges

Perry and his family lived in a tent a short distance from a creek, which they accessed via a small path. In early September, Alice Murphy, along with her husband, brother-in-law, and children, moved into the area and "they put their tent across our path," only twenty or thirty steps from the Perrys' tent.[15] A neighbor described the placement of this tent as "tight up next to" the Perrys, "twixt theirs and the creek," [16] and Felix Perry admitted that the Murphys' new tent "closed the path up to where my wife couldn't get water. They sure put their tent across the path and I asked them not to do that." Despite this clear contention with the Murphys, Perry denied that the disagreement made him angry enough to press false charges against members of the other family. The final player in this local drama, Coleman Cole, an African American, lived just down the road from the white Perrys and Murphys in a small concrete building described as a "dynamite house." A week after the Murphys moved in, Felix Perry alleged that he heard Alice Murphy and Coleman Cole having intercourse in the Murphys' tent and alerted the police, thus initiating the miscegenation case.[17]

A tent full of rowdy new neighbors blocking the path to the creek could provide a motive for revenge against the Murphys, but pointed questioning revealed a compelling reason for Felix Perry to accuse Alice Murphy of illegal intercourse specifically with Coleman Cole. A lawyer asked Perry if he was not "operating a bootlegging joint out there with… Cole, and had this same fellow… going out and getting girls and men to come to your place and then when the Murphys moved out there, that interfered with your arrangement and you had to get them out of the way and this is the only way you knew to do it?"[18] This accusation raises a number of personal reasons for which Perry could have targeted Cole, including possible disagreements over

[15] *Murphy v. State*, 27 Ala.App. 546 (1937), 5.
[16] Ibid., 46.
[17] Ibid., 40.
[18] Ibid., 10.

bootlegging and their other illegal business ventures, or even a simple desire to gain control of a larger share of the illicit profits. At another point in the trial, the lawyer asked Perry if "you had a talk with Coleman Cole, if you told him that you were going to make these people, the Murphys, move away from there if you had to swear to lies on him to do it?" Clearly, Felix Perry had a number of reasons to hold grudges against both Coleman Cole and the Murphys and saw a miscegenation charge a convenient way to handle both.

In Perry's testimony, he evoked an image of himself as a moral watchdog, using racist language and claiming that he hated to turn the defendants in but felt that he had to. The Court of Appeals, however, saw through the charade, declaring in the decision that "the sordid testimony's… contradictions, inconsistencies, improbabilities, and factitious nature, everywhere apparent, stamps it as unworthy of belief." Rather than a man concerned with racial purity, community morals, and the law, the trial transcript revealed a man who knowingly manipulated the racial divides in his community to further his own means. Rather than arising out of any impulses for racial purity or outrage over interracial intercourse, this case arose out of a number of grudges and disagreements between Felix Perry and both defendants, supporting the thesis that many individuals had less concern for interracial relationships or upholding the law than for their own personal dramas.

Bufford v. State provides another example of how individuals used miscegenation charges to further their own goals. J. M. Clements socialized with Ella Lee Brown and John Bufford for two years before commencing prosecution against them. While he never directly indicated in his testimony what changed his mind about this couple, pointed questioning again revealed his probable motive. On cross examination, the lawyer asked, "Don't you know that they are bad and you are mad with him because you had some whiskey hid over there and he required you to

move it and that you told him then that you were going to turn him up for that?" Clements denied this charge, but a dispute over whiskey provides a likely explanation for his sudden change of mindset concerning his friends and neighbors' relationship.[19] Miscegenation charges and legal proceedings proved a convenient a method of acting upon personal grudges rather than purely a call for racial segregation and purity.

Other cases suggest that the individuals who charged couples with miscegenation might have found that previous miscegenation charges in the defendant's family furthered their chances of success. Three separate cases indicate grudges or desired revenge on the part of the accusing party and also reveal prior miscegenation charges that likely suggested miscegenation as a method of revenge and certainly gave enemies a stronger chance of succeeding. One early miscegenation case, *McAlpine v. State* in 1898, seems to fit under this category. C. Bishop, whose supporters described him as a "before the war negro," brought charges against Will McAlpine and Lizzie White for miscegenation on the advice of justice of the peace W. T. Thornton. A significant debate during the trial concerned Bishop's "[bad] feeling against the defendants," possibly because of the poor reputation of Lizzie White and her mother. Trial records reveal that Lizzie's mother had previously faced miscegenation charges, and that both Lizzie and her mother had reputations as prostitutes who ran a brothel out of their home.[20] While remaining records give no details about the hard feelings between Bishop, Thornton, McAlpine, and White, it can be inferred that the justice of the peace determined that another miscegenation trial commenced by a man with a known dislike for the defendants would be a likely method for cleaning up the vice at the Whites' house. The primary concern here was prostitution, and charges of illicit interracial intercourse were seen as a viable method for preventing and

[19] *Bufford v. State* (1924), 28.
[20] *McAlpine v. State* (1898).

eliminating a different moral offense. This case reiterates that concerns regarding interracial relationships and legal mandates often came second to concerns such as morality, privacy, and an individual's own agenda, and that communities were often willing to tolerate interracial liaisons until presented with an additional motive for prosecution.

Possibly no family faced more miscegenation charges than did the extended Reed and Weaver clan of rural Washington County. Local whites and blacks alike avoided the backwoods of Washington and northern Mobile counties in which the "Cajuns," an ambiguous group of racially mixed families including the Reeds and Weavers, lived in impoverished isolation. This group proved equally reluctant to integrate with the outside world, strongly protesting efforts to send their children to black or even white schools and avoiding contact outside of their clans.[21] Apparently, this isolation could be penetrated, however, as Jennie Reed went to court in 1881 to support her marriage to a white man, and her cousin Percy Reed followed her to court in 1918, reaching the Court of Appeals in 1922. In the midst of Percy's ongoing case, in 1920, his nephew Daniel was charged with the same crime and likewise faced a long and contentious trial, which finally ended at the appellate level in 1925. Overall, the Reeds proved successful in arguing Indian rather than African heritage and all three were acquitted, but Jennie and Percy's second cousin, Jim Dud Weaver, did not share their success in his 1928 appellate case. Clearly, by the time Charley Rainwater brought miscegenation charges against Daniel Reed in 1920, the family already had faced a long and contentious history of dealing with miscegenation charges. Perhaps Rainwater, in pondering methods to gain revenge against Daniel Reed and his wife

[21] See Jacqueline Anderson Matte, *They Say the Wind is Red: The Alabama Choctaw—Lost in their own Land* (Montgomery: New South Books, 2002); and Wilford Taylor, et.al., *CDIB: Corruption, Deceit, Identity, and Bureaucracy in Indian Country* (http://www.cdibthebook.com/cdib.pdf).

Thelma Currie, used his awareness of the Reed's ongoing legal difficulties to formulate charges that seemed likely and legitimate means for achieving his own personal aims.[22]

Charley Rainwater initially equivocated about whether he brought charges in this case, saying "as to whether I came here and prosecuted him for marrying this girl, I am not telling what I did." He later stated that "I don't think I am supposed to tell what I did about prosecuting them; you don't know that I did prosecute them," making it clear that, despite his ambiguity, he did initiate the charges against Daniel Reed and Thelma Currie. Other statements suggested his motive: "I have been convicted of living in adultery, for living with [Thelma Currie's] mother… [Thelma] is not my girl, and I don't claim her."[23] A later witness reinforced this seemingly tenuous link, testifying that "They had a prosecution here as to Charley Rainwater supposing to be her father."[24] Although Rainwater apparently avoided being named as Currie's legally recognized father, the expense, hassle, and embarrassment of a trial nevertheless provides a valid reason for him to bear grudges against the Currie family. Additionally, whether he actually was Thelma's father or not, the shame of his reputed daughter marrying an allegedly black man could further damage his reputation and provide a secondary motive for him to bring charges against the couple. Rainwater clearly had a personal stake in this case that had less to do with interracial marriage than it did with protecting his own reputation and gaining revenge against those responsible for his own legal difficulties. Like those in other communities and other cases,

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[22] Two other cases dealing with miscegenation and mixed race also have ties with the Reeds and Weavers. The Reeds, Weavers, Chestangs/Chastangs, and Juzangs were some of the primary founding families whose descendants now claim membership in the Mowa tribe. These families often intermarried, making most members of these families at least distant relatives. The 1925 miscegenation case Pryor v State, originating in Mobile County, involved Philomenia Chestang. In the 1933 segregation case Farmer v School Board of Mobile County, the main defendant, Samuel Farmer, first married a woman descended from the Juzangs, then remarried a woman from the Chestang family. All of these women were most likely related in some way to the Reeds and Weavers who also faced legal action based on their racial backgrounds, and both of these convictions were affirmed. See Matte, *They Say the Wind is Red*; Taylor et.al., *CDIB: Corruption, Deceit, Identity, and Bureaucracy in Indian Country*; *Pryor v. State*, 21 Ala.App. 689 (1926); and *Farmer v. School Board*, 226 Ala. 62 (1933).

[23] *Reed v. State* (1925), 8.

[24] Ibid., 15.

Rainwater did not show any particular disapproval or outrage at Reed and Currie's relationship until he saw an opportunity to pursue his own personal goals.

If the extended Reed family shared the most prosecutions as a group, then Jesse Williams of Covington County certainly faced the most trials of any individual. Williams' first two trials dealt with his marriage to a white woman, Louise Cassady. A few years after his acquittal due largely to technicalities, Williams again found himself charged with miscegenation with another white woman, Bessie Batson. This case also went through two trials, providing a wealth of information. From the over one hundred pages of testimony concerning this case arises a picture of an entire community embroiled in issues of race, wealth, power, and revenge. Jesse Williams, despite his dubious skin tone, belonged to a fairly well to do family for Covington County's standards—they may have lived in a three room house with boarded up windows, but they also hired numerous tenants, both black and white, to help farm their land, placing them socially and economically above most of the people with whom they interacted on a daily basis. Williams himself testified that he ran "a seven horse farm. I had five plows by myself," and that "I had tenants on my place."[25] Several white witnesses readily testified to working for Jesse, despite his ambiguous racial background.[26]

In the spring of 1931, Williams' grandfather, Joe Lundy, perhaps exercised some of the power his social station granted him in bringing charges against Oliver Petty for setting fire to the house of one of his tenants, Jim Batson. Within a few months, Petty, who could not have missed the commotion that Jesse's first trial caused in the small community,[27] filed

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[25] *Williams v. State* (1934), 80

[26] Ibid., 76.

[27] Most rural miscegenation cases did not receive much press attention, but the local papers published a total of three articles about Jesse Williams. Additionally, the large number and wide societal range of witnesses would have made it difficult for anyone in the community at this time to avoid knowledge of Jesse's predicament. See "A Criminal Court Scene," *Andalusia Star*. 2 November 1928. p. 1;

miscegenation charges against Jesse Williams and Bessie Batson. Bessie was the daughter of Jim Batson, whose house Petty had allegedly burned, and she occasionally lived with Joe Lundy and kept house for him, supposedly giving the two opportunity to become intimate. While these circumstances seem damning enough for Petty—miscegenation charges against Jesse Williams and Bessie Batson would provide revenge against both families involved in the arson dispute—other testimony further suggests that Petty brought charges for personal reasons. Williams testified repeatedly that he had "heard of a right smart of threats made by Petty against me."[28] In fact, Williams "left [town] because of some threats Petty had made. I was scared of Petty, and did not want to have any trouble with him."[29] These threats had roots not only in the arson charge, but in an incident a day or two before Petty brought charges against Jesse and Bessie. Petty tried to coerce Williams into paying for whiskey that the Batson boys had destroyed, and then have his grandfather take the money out of the boys' wages. After Williams refused, Petty allegedly said he "would down him if [he] had to shoot him down."[30] As with the Murphy case, numerous contradictions in witness testimony from trial to trial further undermine Petty's story, in addition to witness testimony suggesting that not only did Williams not live with his grandfather when the incidents allegedly occurred, but also that the windows were boarded over and no one could have seen anything taking place inside the house.

Testimony regarding Petty's alleged change of heart concerning Jesse Williams proved even more damaging to his case. Although Petty denied it, several witnesses, including Williams' mother, grandfather, brothers, and stepfather, testified that Petty came to them and the lawyers involved in the case and told them that he had made up the charges and wanted to drop

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"Case of Miscegenation against Williams Ended by Court of Appeals," *Andalusia Star*. 24 April 1931. p. 1.; and "Jesse Lundy Found Guilty of Miscegenation," *Andalusia Star*. 1 June 1933. p. 1.

[28] *Williams v. State* (1934), 75.

[29] Ibid., 78.

[30] Ibid., 33

them, hoping that he would not then get charged with perjury. Petty even visited Williams in the local jail and "shook hands with me and said that he wanted to beg my pardon for swearing a lie against me."[31] As grandfather Joe Lundy testified, "Petty said that there was not a dam thing to what him and Hall had swore against Jesse and Bessie and that he had never seen anything between them… he swore that what he swore before was not true."[32] Several witnesses even testified that Petty offered to pay them money to testify against Williams.

While conflicting witnesses, from medical doctors and midwives to sheriffs and sharecroppers, obscure many facts in this case, personal disagreements undeniably played a large role in the prosecution of Jesse Williams. Oliver Petty had a number of reasons to be angry at both Jesse Williams' and Bessie Batson's families, and he knew that a miscegenation charge might stick, given that Jesse had only escaped his prior charge due to a technicality. Whether a quiet young man who plowed alongside his tenants and played cards with his neighbors, and a young girl who helped an elderly neighbor keep house, shared a relationship was not the issue here. Local politics, personal disagreements, and power and wealth differentials instead allowed a vengeful man to use racial mixing to further his own agenda.

Out of the small number of cases indicating how and by whom a couple came to be charged, the largest number include clear indications that revenge or related motives drove prosecution, rather than outrage over nothing more than infractions to the racial codes and norms.[33] Other reasons for the commencement of miscegenation charges include rape and being caught by patrolling policemen. Interestingly, couples seemed more likely to be caught by the police than turned in by neighbors in larger cities such as Birmingham. Possibly, the willingness

[31] Ibid., 82
[32] Ibid., 71
[33] Out of nine cases that state a clear indication of origin, two cases begin with policemen on patrol happening across an interracial couple. Five cases include enough information to surmise that revenge played a role in prosecution, and two indicate rape.

seen in larger cities to arrest couples came from a lack of personal familiarity that could not be avoided in small rural communities. Local ties thus played a significant role in the toleration of interracial relationships and individuals who engaged in them.[34]

Revenge clearly proved a powerful motivation for prosecution, but desire for wealth also brought many interracial relationships into the public records. Neighbors and community members persistently displayed a tendency to allow interracial couples to live in peace out of a personal regard for privacy and a lack of outrage, but family members arguably had a stronger desire to avoid the prosecution of their fathers, mothers, siblings, or children, as they presumably would want to avoid seeing family members incarcerated. After that person's death, however, the threat of punishment ended and families proved willing to denounce long-standing relationships in favor of gaining money and benefits. Like revenge and personal retribution, money proved a more powerful factor in bringing interracial relationships into court that did desire for racial purity, even within an individual's own family.

In 1887, Jackson Locklayer swore out an affidavit "that he was neither a negro, nor a descendant of a negro" for the purpose of marrying his white fiancée, Nancy. Apparently he succeeded, and the couple married. Seventeen years later, when Jackson Locklayer passed away and left property worth $265.81 to his wife, his brother sued for the inheritance on the basis that the marriage had been null and void due to his African ancestry. Based on witness testimony and evidence that Locklayer's clearly "negro" parents had treated him as such, the Supreme Court of Alabama declared the marriage "illegal and adulterous." Furthermore, they pointed to evidence that Locklayer had married a black woman prior to his marriage to Nancy as proof that she knew

[34] Four cases seem to indicate that they originated with arrests from patrolling policemen. These cases are *Love v. State*, (1899); *Jones v. State*, 156 Ala. 175 (1908); *Rollins v. State*, (1922); and *Fields v. State*, 20 Ala.App. 193 (1922), originating in Opelika, Birmingham, Birmingham, and Tuscumbia, respectively. Each of these cities was relatively large and urban when compared to most of Alabama.

his racial status and could not claim inheritance rights. While Locklayer's relatives ultimately succeeded in declaring his interracial marriage illegal and inheriting the money, neither they nor the community had made an attempt to challenge the marriage for seventeen years.[35] Money clearly proved a stronger motive than racial outrage for this rural community which displayed seventeen years worth of toleration towards this interracial couple.

Money continued to speak well into the twentieth century. Before his death in 1939, Charlie C. Stroud listed his black mistress, Estella Mathews, as the beneficiary of his insurance policy. His surviving children from a previous marriage to a white woman successfully sued to claim the benefits after arguing that Mathews had no legal standing as a beneficiary under the laws of Alabama. While the decision does not specify the length of Stroud and Mathews' relationship, he named her his beneficiary in January, 1938 and passed away in June, 1939, indicating that Stroud's children and community refrained from prosecuting them for at least a year and a half, although the relationship could have been much longer.[36] Only personal involvement through insurance benefits compelled his children to challenge the relationship, and only through this challenge did this interracial relationship enter into the public record.

In another inheritance case, L. Ryal Noble's children sought to probate his lost will. Complicating this process was the fact that Noble, "a white man, coming from an entirely respectable family of people… soon after the War between the States… began a meretricious association with Kit Allen, a negro woman," that lasted "many, many years." His five children and heirs resulted from this union. Evidence revealed that Noble treated the children as his own, paying their bills and disciplining them, and that "his fatherhood of them was generally known in that section." In order to establish when Noble wrote his will, witnesses recalled the

[35] *Locklayer v. Locklayer* (1904).
[36] *Mathews v. Stroud,* 239 Ala.App. 687 (1940).

participation of William A. Callis, a white man, as a witness. This helped pinpoint a date, as Noble killed Callis two years after the will was written because of Callis' intimacy with one of his daughters, although other witnesses claimed this death was accidental. Between the time Noble wrote his will and allegedly killed Callis, the younger couple of Noble's daughter and William Callis had gone away for a time to live together elsewhere.[37]

This case thus reveals two interracial relationships that apparently never faced legal prosecution, those of Ryal Noble and Kit Allen, and their daughter Lucy Noble and William Callis. At least one of these relationships, that of the older couple, persisted for decades without legal censure. While some the language in the judge's opinion echoes that of *Dees v. Metts* in suggesting ostracism of Noble, evidence suggests otherwise. In fact, the record explicitly states that Noble's family continued to visit him and that a number of white individuals played a significant role in his life, including the white justice of the peace who went to Noble's house to write his will. While the community may not have openly approved of Noble's family, they nonetheless accepted its existence to the point of tolerating it for decades and allowing him to retain at least some of his social privileges. Even after his death, race remained a secondary issue to simply establishing the existence and provisions of a will, as the appellate judge decided in favor of Noble's mixed race children.[38]

Dees v. Metts, the 1944 inheritance case that debated ostracism, provides yet another example of an interracial relationship that the community never prosecuted, and, in this case, even socially sanctioned. Although the records give no indication of how long Ben Watts and Nazarine Parker's relationship lasted, testimony implies that it was long-standing. Despite occasional "remonstrance" from his mother regarding "his disgraceful way of life," Watts

[37] *Allen v. Scruggs*, 190 Ala. 654 (1914).
[38] Ibid.

continued to socialize and eat meals with his family on a regular basis and to conduct business in town on equal and friendly terms. As the appellate judge wrote in the decision, "however boldly he may have defied the laws of our State and its public policy, and the recognized traditional racial distinction, organized society took no steps to interfere." This statement perhaps best encompasses local southern communities' apparent beliefs toward interracial relationships—they may not have approved, but neither were they concerned enough to intervene.[39]

While most non-miscegenation cases concerning interracial couples dealt with money, one particularly interesting case instead concerned murder. In 1922, a jury convicted the white physician John Wade Crowder of killing African American Arthur Head, with whom his wife Iola was having an affair. Rumors concerning Iola's divorce from a previous husband nine years earlier on account of another interracial affair complicated the case. These rumors speculated that Dr. Crowder, before he married Iola, "delivered her of said negro baby, …castrated this negro man, and poisoned [Iola's] father." Understandably, "sentiment was very high" in the area, and "the crowd in attendance upon the trial became interested to the point of excitement." Community members could have debated whether or not Arthur Head faced "proper punishment" for his crime of miscegenation at the hands of his mistress's angry husband, but neither Iola nor either of her boyfriends faced legal prosecution for miscegenation.[40] That such couples avoided trial for miscegenation, and in significant numbers, again reveals a marked level of community toleration and tacit acceptance of interracial relationships.

Throughout the late nineteenth century and early twentieth century, hundreds of couples found themselves charged with miscegenation. Most of their stories have not survived beyond minimal statistics, but records from the cases that made it to the appellate level can provide an

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[39] *Dees v. Metts.*
[40] *Crowder v. State*, 18 Ala.App. 632 (1922), 3.

overview of the issues involved in such cases. The cases that provide information on length of relationship and motivations for prosecution provide a surprising pattern of lengthy interracial liaisons and reluctance to prosecute, regardless of how strictly legislators defined race and miscegenation. While many more cases than not left no record regarding these circumstances, the overwhelming majority of surviving information supports these trends. Even given the negative racial ideas that many witnesses admitted to holding, these witnesses also admitted little interest in prosecuting their neighbors or family members, instead preferring to mind their own business. Only when neighbors and family members felt personally involved, either through soured relationships, fights, or inheritance disputes, did most couples find themselves on trial for their relationships. The prosecution of interracial relationships thus often had less to do with racial outrage or legal mandates—few if any witnesses exhibited any appreciable degree of anger or outrage—but more with local politics and personal disagreements. Communities, on the whole, showed remarkable and persistent toleration, even acceptance, of the interracial couples in their midst.

CONCLUSION

In the nineteenth and twentieth centuries, race relations often proved to be a complicated issue, and interracial relationships were no exception. On the one hand, powerful white elites passed progressively harsh laws against miscegenation, revealing their dedication to imposing social control over racial interactions. Court cases dealing with interracial relationships, however, reveal another side to the story. Even after the passage of the harshest standard, the one-drop law, individuals continued to engage in interracial relationships and, when necessary, to use adaptive defense strategies to avoid conviction.

Importantly, however, not all interracial couples needed to use such tactics. Many communities revealed a surprising capacity to tolerate these relationships, often with little social ostracism of the participants and for long periods of time, until personal motives interfered. Even in the courtroom, neighbors disagreed on how to determine race and on the racial identities of many individuals. Clearly, community played a crucial role in the prosecution of miscegenation, often a more important role than the letter of the law itself.

Given the importance of community and the inadequacies of the law, anti-miscegenation statutes and legal definitions failed to impose the order that white legislators desired. Defendants' capacity to follow social and legal trends in developing defense strategies that often successfully highlighted loopholes and limitations of the law undermined the efficacy of anti-miscegenation laws. The law also proved unable to handle the ambiguity of racial identity that many individuals presented; in such cases, courts often had to ignore racial definitions that the law established and turn to other methods of defining a defendant's race. These secondary

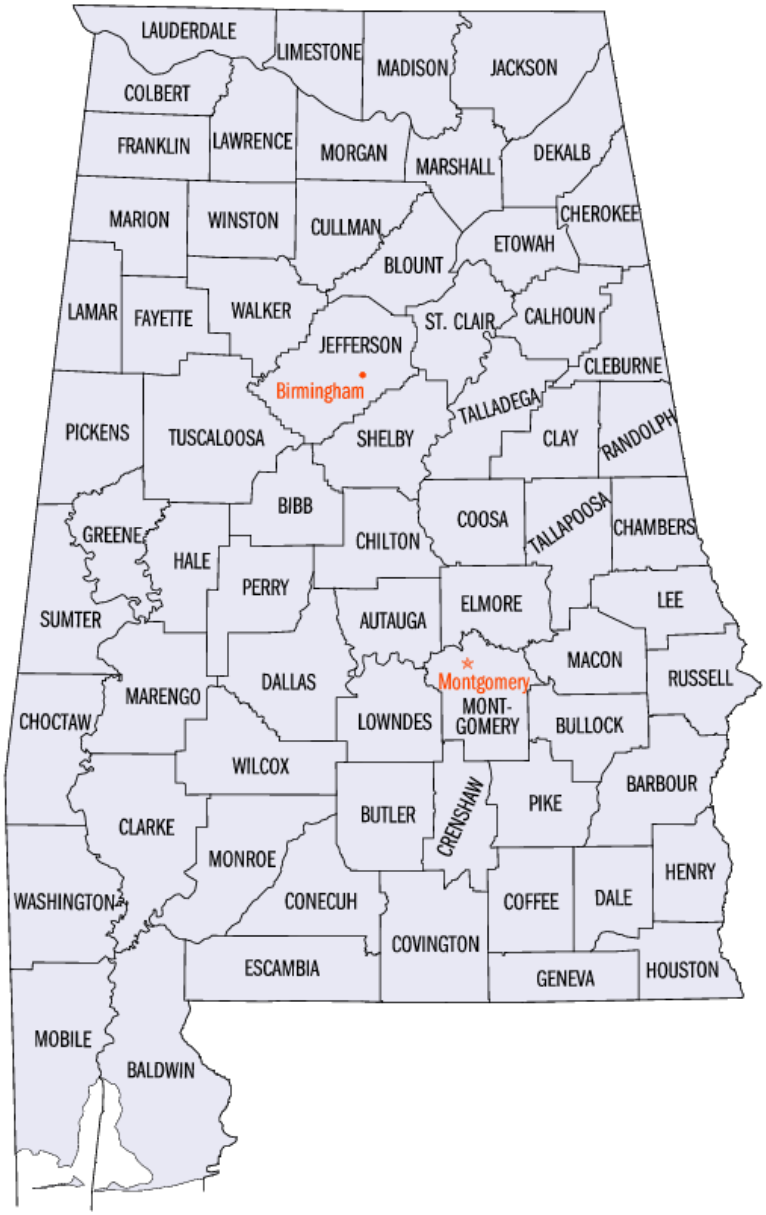
methods, often based on community knowledge, also proved less adequate in defining race, as neighbors disagreed with each other or made allowances depending on personal emotions or social standings. Even more crucially, communities confounded the legal process not only by disagreements and inconsistent standards, but, significantly, by neglecting to prosecute illegal relationships for long periods of time, often until personal motivations such as revenge or greed intervened.

Defendants and their local communities, then, proved that race relations offered a more complex and multi-faceted racial reality than previous scholars have found. Regardless of the motivations and actions of the white elite, a large number of individuals of various social standings showed little concern for the supposed outrage of interracial relationships. Additionally, the limitations of that law in addressing racial ambiguity are clear. Under this system, anti-miscegenation laws had less capacity to impose control than their creators had intended, as the true power of defining race and accepting certain relationships lay with the community rather than the law.

The implications of both local communities' roles in interracial relationships and also the law's inabilities to address racial ambiguity go beyond simply explaining how southern society dealt with infractions against this aspect of segregation and racial oppression. In revealing the complex forces at work in these cases, we see that race relations in the South encompassed a wide variety of opinions, motivations, and even actions. The banning interracial sex in many ways represented the heart of Jim Crow, but even there miscegenation cases reveal a more flexible and accommodating system of race relations that the letter of the law might suggest. In Alabama's miscegenation cases, we find clear evidence that both white and black southerners

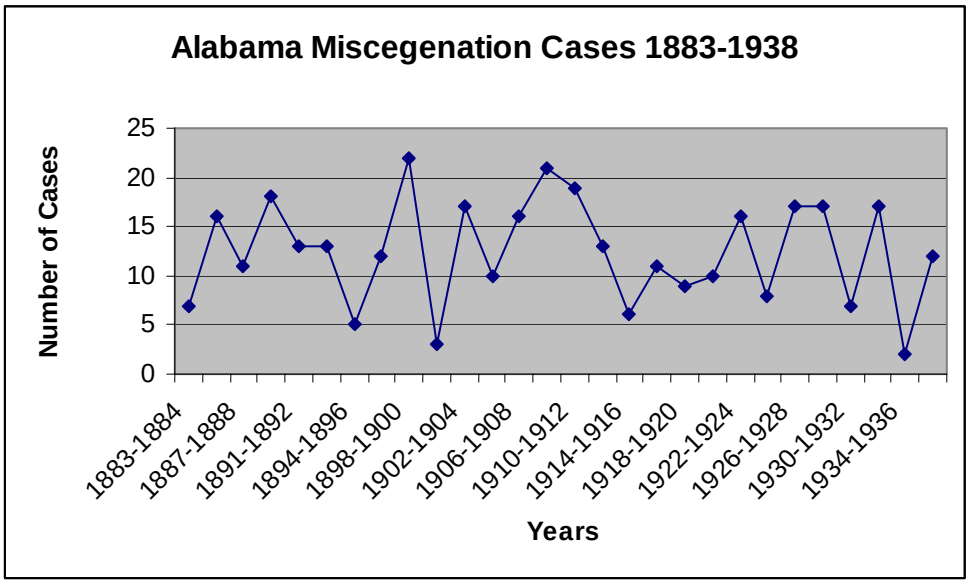
displayed nuanced understandings of race, law, politics, and society, and that this understanding allowed individuals to negotiate control and often to evade the harsher aspects of Jim Crow.

Appendix A: Map of Alabama Counties



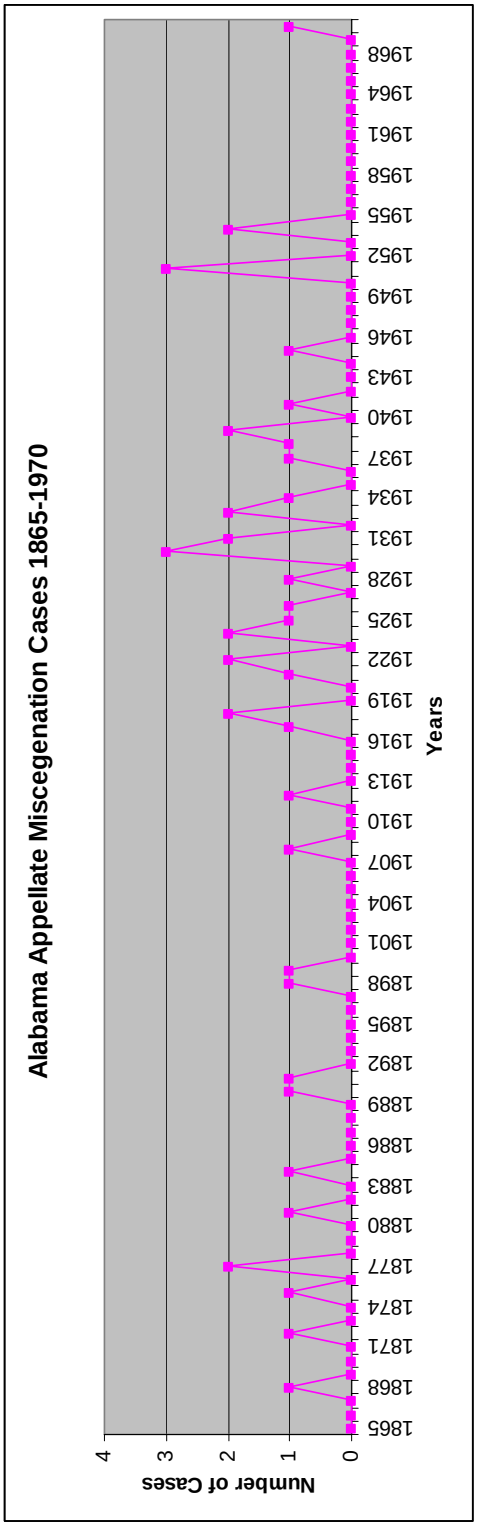
Source: www.fedstats.gov/qf/maps/stout01.gif, 5 December 2007

Appendix B: Alabama Miscegenation Cases, 1883-1938



Source: Compiled from Biennial Reports of the Attorney General of Alabama, 1883-1938. Alabama Department of Archives and History. This graph includes all recorded miscegenation charges in Alabama for the years listed. Cases for the years 1883 through 1892 were originally recorded in one year intervals. I combined them into two year intervals to match the format of the Attorney General's Reports from 1893 to 1938. Each time interval as marked on the graph spans from 1 October of the first year listed through 30 September of the last year listed.

Appendix C: Alabama Appellate Miscegenation Cases 1865-1970



Source: Compiled from records at the Alabama Department of Archives and History, and from Westlaw.com

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