Journal of Mississippi History

Volume 86 | Number 1 Article 2

2024

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Recommended Citation
Vines, William M. (2024) "A Flicker of Light in the Midst of Darkness: The Mississippi Supreme Court, African Americans, and Criminal Justice in the Progressive Era (1890-1920)," *Journal of Mississippi History*: Vol. 86: No. 1, Article 2.
Available at: https://aquila.usm.edu/jmh/vol86/iss1/2

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

by William M. Vines

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exclusion of African Americans from Jury Service

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[30] Ibid., 29.

[31] Ibid.

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

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

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

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

[32] *Farrow v. State*, 45 So. 619.

[33] Ibid. (emphasis added).

[34] Ibid.

[35] *See Smith v. State*, 42 Tex. Crim. 220 (Tex. 1900); *State v. Peoples*, 131 N.C. 784 (N.C. 1902); *Montgomery v. State*, 45 So. 879 (Fla. 1908); *Ware v. State*, 225 S.W. 626 (Ark. 1920).

[36] *Thomas v. State*, 517 So.2d 1285 (Miss. 1987); *Black v. State*, 187 So.2d 815 (Miss.

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

Racial Biases of White Jurors

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[46] Ibid.

[47] Ibid., *Pinder v. State*, 8 So. 837 (Fla. 1891); *Fendrick v. State,* 39 Tex. Crim. 147 (Tex. Crim. App. 1898).

[48] *Lee v. State*, 165 A. 614 (Md. 1933); *Hernandez v. State*, 742 A.2d 952 (Md. 1999).

[49] *State v. Higgs*, 120 A. 152 (Conn. 1956).

[50] *Commonwealth v. Foster*, 293 A.2d 94 (Pa. Super. 1972).

[51] *Brumfield v. Consolidated Coach Corp.*, 40 S.W.2d 356 (Ky. App. 1931).

[52] *Aldridge v. United States*, 283 U.S. 308 (1931).

[53] Ibid., 311-12.

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

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

Improper Admission of Pre-trial Confessions

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

[54] Ibid., 315.

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

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

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

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

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

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

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

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of Errors and Appeals.

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

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

undue influence."[60]

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

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

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

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

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

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

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[67] Ibid., 219-220.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[79] Ibid., 287.

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

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

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

[80] Michael J. Klarman, *The Racial Origins of Modern Criminal Procedure*, 99 Mich. L. Rev. 48 (2000), 96.
[81] Neil R. McMillen, *Dark Journey: Black Mississippians in the Age of Jim Crow* (Urbana and Chicago: University of Illinois Press, 1989), 218.
[82] Klarman, *Racial Origins*.
[83] Dan T. Carter, *Scottsboro: A Tragedy of the American South*, Revised Edition (Baton Rouge: Louisiana State University Press, 2007), 105-115.
[84] Letter of Lawrence H [full last name redacted] to Judge A. E. Hawkins, April 13, 1931, quoted in Carter, *Scottsboro*, 106.

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

Mob Violence

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

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

Even though lynchings were somewhat commonplace in Mis-

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

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

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

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

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

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

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

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

[91] Ibid.

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

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

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

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

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[92] Ibid.

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

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

[95] Ibid., 422.

[96] Ibid.

[97] Ibid.

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

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

Lack of Adequate Legal Representation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[106] Ibid., 695.

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

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

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

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

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

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

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

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

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

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

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

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

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

[114] Ibid.

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

Racially Inflammatory Remarks by Prosecutors

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

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

[115] *Hampton v. State*, 40 So. 545 (Miss. 1906).
[116] *Hampton v. State*, Kemper County Trial Court Record, November 1905, Series 6, Case No. 11959, B2-R108-B1-S5 Box 14338, Supreme Court Case Files, Mississippi Department of Archives and History, Jackson, Mississippi.
[117] *Hampton,* 40 So. 545.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

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

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

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

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

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