

Jurisprudence Amid Legal Ambiguity in The Transition to Jim Crow: Black Women versus
Railway Companies, 1865-1908

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The period between the end of the Civil War in 1865 and the first meeting of the National Negro Conference (precursor to the NAACP) in 1909 marked a national legal struggle between the federal government, the states, and private entities in determining the legal position of free black persons in society. The Congressional Civil Rights Act of 1875 prohibited racial discrimination in all accommodations and conveyances, striking down attempts by businesses to impose racial segregation. The language of ‘separate by equal’ began to be used as a potential legal loop-hole in the equal protections clause, but the success of the ‘separate by equal’ arguments fluctuated radically while the Civil Rights Act was being enforced. However, on October 15, 1883 the Civil Rights Act was declared unconstitutional, and Jim Crow doctrine began to pervade race-based law.

The post-Emancipation years were marked across the nation by legal battles and contradicting definitions of legal ‘equality.’ Through the 1800s, the southern states were not the politically unified block they would become.¹ With end of the Civil War came a legal power-vacuum in which different forces vied for dominance in determining the social position of free black persons in society. This legal vacuum was, what I will refer to as, a period of legal ambiguity. Before the cementation of Jim Crow segregation, the old white establishment and newly empowered blacks vied for definitional dominance on race-based law, and the Civil Rights Act of 1875 was a major power supporting black litigation. After the Act was declared unconstitutional in 1883, the ability of different actors to vie for dominance in the legal field

¹ The Populist Revolt of the 1890s appeared in southern regions that had most strongly opposed secession during the Civil War such as the highlands which were generally farmed by independent yeomen, not plantation slaves; black political actors joined with many Populist movements in opposition to the Democratic, white planter class (Key, 1949).

started to disappear,² effectively ending this period of legal experimentation on the common carrier.

A critical turning point occurred in the legal arena with the Supreme Court's 1883 decision. In cases of black women claiming discriminatory damages against railroad companies, attorneys used largely different legal arguments and frames to make their claims in court before and after October 1883. I examine the methods by which black female plaintiff's lawyers attempted to claim for their clients an upper-class *feminine* identity before 1883. I also examine how this '*Femininity Frame*' phased out of courtroom arguments as Jim Crow segregation cemented the practice of explicitly segregating railroad cars by race after 1883; '*Jim Crow Frames*' eventually came to supplant '*Femininity Frames*.' Different legal cultures before and after October 1883 affected lawyers' legal framing in court cases of black women claiming damages against railroad companies. Before October 1883, there was an ambiguous legal culture; after October 1883, there was a settled legal culture around the legality of Jim Crow doctrine on the train.

Literature

There is unfortunately surprisingly little sociological research studying the period of legal ambiguity before a landmark judicial precedent has been established. In their 1967 piece, Lawrence M. Friedman — a leading figure in the legal cultures literature — and Jack Ladinsky acknowledge the gap in the sociological literature, stating that while sociologists recognize the importance of legal institutions in the social order, the topic of legal ambiguity “has never been fully explicated, either in theory or through research” (Friedman & Ladinsky, 1967: 50). Even fifty years later, little sociological research exists on legal ambiguity and ambiguous transitions

² This is perhaps most evident in the Supreme Court case, *Plessy v. Ferguson*, in 1896, cementing the legal legitimacy of segregation based on African American ancestry on public transportation.

in legal discourse. In the social movement literature, Boucher and McCammon (Forthcoming) acknowledge the dearth of research on strategic, purpose-driven litigation processes— meant to set legal precedent in times of legal ambiguity— compared to other movement approaches.

Edelman (1991, 1992) is one of the few sociologists who has studied legal ambiguity, but her focus is on agency enforcement, not judicial interpretation as in my study. However, her definition is still useful for my area of study, and I am defining “legal ambiguity” here in line with Edelman’s conception of it in her 1991 and 1992 publications:

“Laws that... set forth broad and often ambiguous principles that give organizations wide latitude to construct the meaning of compliance in a way that responds to both environmental demands and managerial interests” (Edelman, 1992: 1532).

Edelman’s 1991 and 1992 publications focus on how ambiguous laws are carried-out when mandates “do not clearly define what constitutes compliance” (Edelman et al., 1991: 73).

“Organizations respond initially by elaborating their formal structures to create visible symbols of compliance. As organizations construct and institutionalize forms of compliance with laws, they mediate the impact of those laws on society” (Edelman, 1992: 1531).

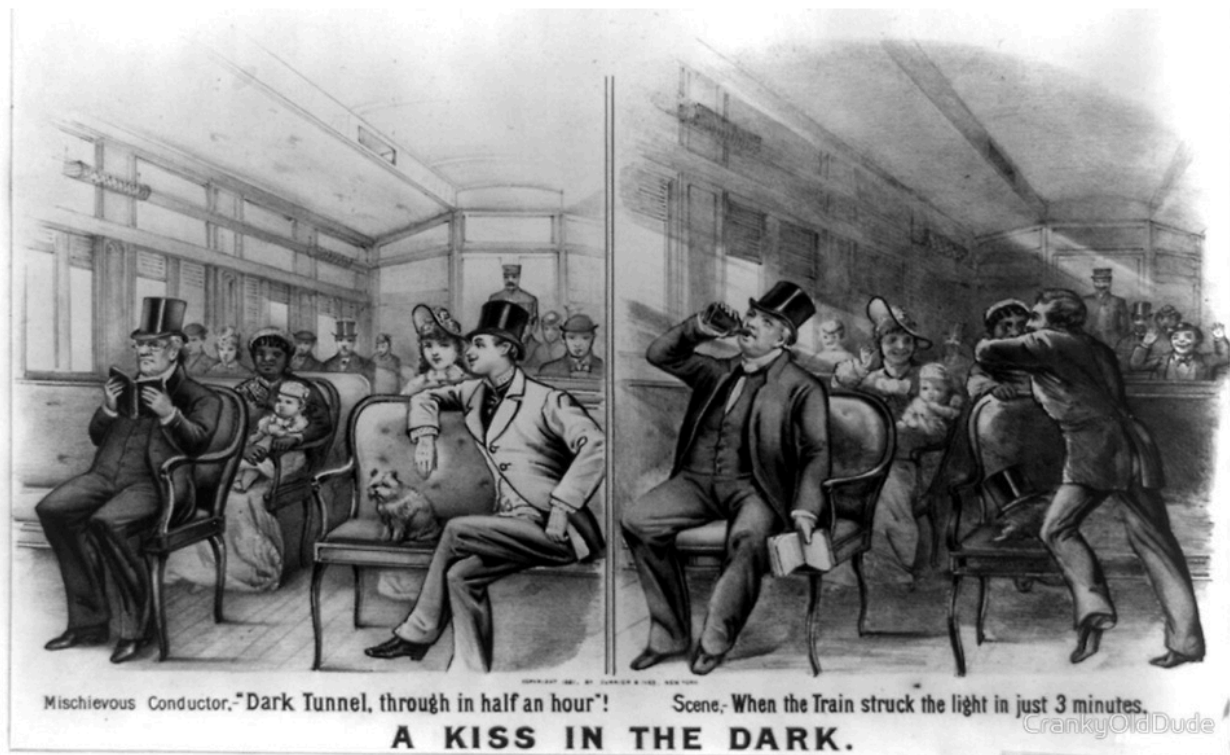
Thus, in speaking of legal ambiguity, I am discussing the interpretation, implementation, and enforcement of law. Sometimes this ambiguity results in “gaps between laws-on-the-books and laws-in-action” (Katuna and Holzer, 2016: 91). I am arguing that before the Civil Rights Act was struck down in 1883, there was an ambiguous legal culture in America; after the 1883 decision, there was a settled legal culture around the legality of Jim Crow doctrine on railroads. Friedman (1975) defines legal culture as the “public knowledge of and attitudes and behavioral patterns toward the legal system” (Friedman, 1975: 193). Legal culture is part of “general

culture – customs, opinions, ways of doing and thinking — that bend social forces toward or away from the law and in particular ways” (Friedman, 1975: 15). How a written law manifests itself in a society depends on the actors shaping it (Jacob, 1969; Hartog, 1985). “The essential power of law derives from the interpretive practices of actors... like lawyers and judges” (Katuna and Holzer, 2016: 81). The shape an ambiguous law takes can be influenced by the judges and justices interpreting the legality of the law, especially when there are political motivations for shifting legal discourse. Tiller (1998) examines the judiciary’s ability to influence federal agency regulatory policy; in Tiller’s model, the judiciary manipulates the ability of an agency to create and implement policy by straining agency resources. This subtle manipulation and shaping of regulatory policy can have drastic impacts on the social order, especially when applied to racial segregation (Lutz, 2005). This power of judges and justices to shape ambiguous law can extend to attorneys if their arguments successfully persuade the court. Even in Supreme Court cases, lawyers present stories to justices for consideration, and “their oral arguments play a distinct and vital role in the justices’ decision making process” (Ringsmuth et al., 2013: 436). In a period before established legal precedent, many different actors attempt to push the course of legal discourse one way or the other (also see Mitra et al., 2016; Bybee, 2000).

The kind of overt governmental discrimination apparent in such laws as the Black Codes of 1865-66 was quickly stopped by the federal government and courts, and on the railroad, the white supremacist establishment was faced with a dilemma of maintaining class lines within a space carrying many different persons who had a legal right to occupy said space as long as they paid the fare (Larder, 1850; Daggett, 1928). The cartoon, “A Kiss in the Dark,” by Currier & Ives depicts a train entering and exiting a tunnel; under the cover of the darkness, one gentleman

takes out a bottle of alcohol while another turns around and “mistakenly” kisses a black woman (Richter, 2005: 22). Amy Richter says of the scene, “this image plays upon the anonymity of railroad car life and suggests how moral uncertainty, social danger, and racial confusion merged in popular railroad stories” (Richter, 2005: 22).³ This cartoon illustrates the social unease felt by upper-class, white riders over the train car being a seemingly open space to lower class persons and lower class behavior.

IMAGE 1: “A Kiss in the Dark”



³ One popular anecdote from the time “mocked black women’s displays of respectability in the trains;” it goes: “A white man traveling through Illinois asks a veiled lady if he may occupy the seat next to her. She consents, and the two travel side by side in the poorly lit car. After discussing the weather and politics the conversation takes a more personal turn, and each confides that he or she is widowed. The man grows ‘more affectionate in his remarks,’ and as his station approaches he requests the honor of a kiss. Again the lady consents. As the man lifts her veil, the conductor enters with a bright lantern and illuminates the car to reveal the ‘luscious lips, glistening teeth, extensive nose, white eyes, charcoal countenance, and wavy hair of a she American of African descent. The account succinctly concludes, ‘He did not take that kiss’” (Richter, 2005: 54).

Prior to 1865, “white men had confidently assumed that they represented the interests of their dependents;” however, “such easy confidence in social hierarchies could not be presumed in the postbellum period, when whites were forced to share the rails with newly emancipated black citizens” (Mack, 1999: 7). This racial ambiguity was frightening to white supremacists. Black women especially occupied a liminal legal position during this period, and the confusion around where to place them within the social structure can be seen reflected in the court case records where black women asserted their right to sit in the same spaces as white women. In this project, I am studying a period of ambiguous legal culture followed by a settled legal culture around where to place black women on the train car directly following the Civil War. During the period of ambiguous legal culture, the subjectivity of court rulings based on arguments of femininity allowed black women to argue for their right to sit next to white ladies on the train, and the dilemma of where to place free black women within the social framework was uncovered as a contentious social dilemma.

Women of color have long lived at an intersection in the United States, making their experiences unique.⁴ Black women were traditionally excluded from white norms of womanhood, purity, and domesticity,⁵ but they tried to change this image after Emancipation, focusing on the domestic sphere (Jones, 2010). Freed black women were considered exempt

⁴ Crenshaw uses the term intersectionality to refer to the everyday experiences of black women dealing with multiple and simultaneous forms of discrimination: “Because the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated” (Crenshaw, 1989: 153).

⁵ In the mid to late 1800s and early 1900s, there was a women’s movement separate from the black rights movement, and the early women’s movement split along lines of support for the 15th amendment (Walls, 2014). The black female plaintiffs of this study were not challenging the gender norms of the period; instead the plaintiffs were explicitly and implicitly embodying an upper-class, white ideal of femininity in order to enter white, privileged spaces.

from the feminine, middle-upper class ideal of full-time domesticity (Jones, 2010)⁶. A lady's sexuality was closely guarded and regulated, while the sexuality of other women was often considered more liberally available, especially with women of color (West, 1995; White, 1999). White men had enjoyed almost unlimited "sexual access" to black women during slavery (Pascoe, 2009: 12), and in fighting to reclaim their social womanhood, black women were fighting for social and sexual protections that they had not experienced during slavery.

The white supremacist establishment was not happy with the efforts of black women to attain the ideal of protected, domestic womanhood, and male "owners-turned-employers showed their determination to mold a subservient black female work force and marshaled legal and extralegal measures to that end" (Hunter, 1997: 22). Stereotypes of the "Jezebel" (Mack, 1999; West, 1995; Marshall, 1998) and black women "playing the lady" (Welke, 2001) persisted and were used to justify the social exclusion of black women prior to the widespread use of Jim Crow segregation. The ambiguity around the class position of black women on the railroad following Emancipation presented an opportunity for lawyers, and this ambiguity was manipulated by lawyers on both sides to win court cases. Unequal racial discrimination of any kind was rejected by the Civil Rights Act, and thus lawyers often framed their arguments around feminine identity prior to 1883, making an explicit gendered argument instead of an explicit racial argument.

When arguments are reiterated by judges over time, even informally, these arguments can become more ingrained (Ringsmuth et al., 2013). "As laws become more deeply codified through regulatory policy or court cases, they often solidify certain values or language that can

⁶ But this did not stop freedwomen from cutting their work hours to raise children or working alongside their husbands as family units, to the ire of ex-slave owners who had become accustomed to the availability of black women, both as workers and targets of sexual advances (Jones, 2010).

shape future legal battles for decades” (Katuna and Holzer, 2016: 82). Thus as interested parties experiment with and discuss the law, they are also engaged in entrenching a particular interpretation of the law. As precedents are established, legal ambiguity decreases. Thus the particular framing strategies lawyers use in the courtroom are constrained by precedent. Framing, in this context, refers to the interpretive and communicative methods by which actors garner support for their cause (McCammon, 2004); framing involves actors articulating a particular point of view related to a particular problem and presenting reasons why others should support a particular solution to said problem (McCammon, 2007). Frames, as defined by Snow and Benford (1988), “assign meaning to and interpret relevant events and conditions in ways that are intended to... garner bystander support and to demobilize antagonists” (Snow & Benford, 1988). Legal framing is generally presented as the way by which law impacts social movement framing. Pedriana (2006) describes law as a “meaning-making institution,” and law and legal symbols act as “master frames” that encompass other framing discourses (Pedriana, 2006: 1723, 1725). “Because law articulates rights and obligations of competing social interests, law in part defines and legitimates formal-structural relationships among individuals, groups, and the state” (Pedriana, 2004: 184). The legal system does more than just reflect cultural and social values, the law “also produces and reproduces them” (Pascoe, 1996: 47), thus producing meaning.

If particular frames were used in previous court cases, and these cases lost, then lawyers have to abandon those frames in favor of new ones. How precedent constrains a lawyer’s framing options is illustrated in the frames used in turn-of-the-century miscegenation cases:

“From the 1880s until the 1920s, lawyers whose clients had been caught in the snare of miscegenation laws knew better than to challenge the constitutionality of the laws or to

dispute the perceived necessity for racial categorization; these were all but guaranteed to be a losing argument” (Pascoe, 1996: 51).

In miscegenation cases, lawyers noticed the “malleability” of racial classifications, and instead of attacking the constitutionality of anti-miscegenation law, they took advantage of the legal ambiguity of legal racial classification to “persuade a judge (or jury) that one particular individual’s racial classification was in error” (Pascoe, 1996: 51). Similar framing tactics were used by lawyers in cases of black women suing railroad companies over being excluded from the ‘Ladies’ Car,’ with a focus on the legal ambiguity of class-based gender classifications.

Lawyers defending railroad company employees who had denied black women the same amenities and protections as the white women travelling in their cars were constrained by law and precedent. Prior to the Civil Rights Act being declared unconstitutional in 1883, company lawyers could not argue for the lawfulness of unequal racial discrimination by companies. Generally, if a black woman was denied access to a space for ‘ladies,’ it could not be purely because of her skin color before 1883 (though in some occasions courts affirmed that segregation was lawful as long as the spaces were entirely equal). However, class-based discrimination was entirely lawful when applied to behavior, appearance, and general conduct. If a black woman could be shown to be not ‘ladylike,’ then her exclusion could be warranted. In the period of ambiguous legal culture before 1883, classed and gendered arguments dominated the court rooms. Railroad companies tried to argue that the plaintiff was not ladylike enough to sit in the Ladies’ Car using culturally salient language around class and gender while the plaintiff argued the opposite; these arguments were inherently subjective and ambiguous, and while these ‘Femininity Frames’ were the main arguments used in determining cases, ambiguity marked each case. In the period of settled legal culture after 1883, a railroad company could choose to

openly discriminate as long as they followed certain technical rules around what the courts decided was ‘separate but equal.’ During the period of ambiguous legal culture, lawyers could experiment with the language around social positionality, even poking holes in cultural ‘common sense’⁷; during the period of settled legal culture, lawyers’ arguments were often constrained to technical language around official company regulation and proper rule enforcement of Jim Crow.

In the time period following the Civil War and before the cementation of Jim Crow doctrine, free black women were faced with the challenge of asserting their status as ‘ladies’ upon public transportation vehicles. During this time period, white women were afforded an extra amount of protection in public places. Amenities designed specifically to keep women separate “made travel by women alone more socially acceptable” (Welke, 2001: 53). If black women could not assert their privilege as ladies (equally deserving of protection as white women) on the train, then they could be forced to sit in inferior spaces, on the platform under the elements, or else be forced off the carrier altogether.

The phenomenon of segregated cars was a unique feature of the train distinct from other forms of transport. Smoking Cars were meant to be spaces where rough men could smoke and drink and be rambunctious, while Ladies’ Cars were designed to keep ladies, and sometimes their gentlemen, separated and therefore protected from the rowdy men. As stated in two court cases: “carriers, acting upon the notions of chivalry... seek to protect women from rude conduct of the disorderly by providing for them a special ladies’ car,” (*Brown v. Memphis & C.R. Co.*, 1881); “the ladies’ car was set apart to be exclusively used and occupied by persons of good character, and genteel and modest deportment... it was... the duty of [the] conductor to exclude all persons of improper character” (*Brown v. Memphis & C.R. Co.*, 1880). Many court cases in

⁷ Harvey’s 2005 *A Brief History of Neoliberalism* includes an insightful discussion on the pitfalls of “common sense.”

this study describe the fear black women felt about being subjected to the attention of men in the Smoking Car and their desire for protection in the Ladies' Car. In the well documented *Chesapeake, Ohio & Southwestern Railroad Company v. Wells* case of 1885, acting as a witness for the plaintiff Ida B. Wells, G. H. Flowers described the Smoking Car as, "no fit place for a Lady" (Welke, 2001). This narrative of protected femininity was utilized by lawyers in court cases to argue that the plaintiff was either deserving or not deserving of protection in the Ladies' Car.

In their discussion of American juries, Vidmar and Hans (2007) describe the process by which lawyers present two different interpretations of events (or stories) to the jury in criminal cases, often presenting facts out of order for tactical reasons. The jury then considers the competing versions and comes to a decision. In court cases based around cultural salient language of femininity, one lawyer would be arguing that the plaintiff was ladylike and the other that she was not. Vidmar and Hans make a point that the evidence presented is likely to be incomplete as lawyers decide what facts contribute to a particular narrative of events. The job of the lawyer is to weave stories out of facts, and the jury/judge weighs the believability and likelihood of these stories. In crafting a story, lawyers focus on the audience hearing the story: what frames will resonate with this particular jury/judge?

In the scholarly discourse of law as story and legal storytelling, Weisberg (1996) discusses how weaving narrative out of law goes beyond opinions presented by judges and arguments presented by lawyers; it also encompasses "discovering hidden narratives underlying legal pronouncements" (Weisberg, 1996: 61). The historical and environmental context in which laws or legal rulings are conceived introduces "certain ethical, political, and legal values," that influences the final shape said laws and rulings take (Weisberg, 1996: 63). The more ambiguous

a law, the more these historical and environmental factors will influence that law's ultimate manifestation. In a period of high legal ambiguity, lawyers can more easily experiment with different framing strategies and tap into different cultural and social arguments in employing different framing strategies.

Martha Minow attests to the potential power of legal storytelling. In "Stories in Law" (1996), Minow discusses and evaluates "the collision of stories and narratives" in legal discourse (Minow, 1996: 30). While she is a supporter of legal storytelling—creating stories out of historical precedent and case-relevant events to better judge and evaluate legal cases/contestations today—she admits that there is an "incompleteness of storytelling as a mode for decisionmaking" (Minow, 1996: 31). As Minow describes, legal storytelling is a selective process that can either bring positive or negative light to the subject and/or case; one particular legal narrative of events and historical precedent might garner support and/or empathy for the plaintiff, while another might garner opposition and/or apathy.

The cultural context affects a particular frame's influence in mobilizing support, and successful frames are able to articulate "commonly held beliefs and values" and resonate with listeners; in order to achieve frame "resonance," the framers must "incorporate or respond to critical discursive elements" in the wider cultural environment" (McCammon, 2007). These frames are fluid by nature, and even in the legal context, frames still retain their intrinsically cultural property, as can be observed in the subjective nature of Anglo-American Victorian 'femininity' (later debunked by 20th century women's movements) and conceptions of 'separate-but-equal' accommodations (later debunked by *Brown v. Board of Education*). Ideological factors, such as "values, beliefs, meanings" are essential to frame resonance (Snow and Benford, 1988). Actors must decide how to frame a problem/solution and which opportunities to take

advantage of in the framing. Lawyers employ similar discursive tactics within a legal context, convincing judges (Rigsmuth et al., 2013) and juries (Vidmar & Hans, 2007; Kalven and Zeisel, 1966) by utilizing frames that resonate with these listeners.

One type of framing argument might be “weaker in some court cases than in others” (McCammon et al., 2018: 63). For example, in studying the success of “race-gender analogies”— a “frame bridging” tactic— in women’s movement litigation, McCammon et al. (2018) find that litigators faced with more conservative attitudes in legal cases strategically chose not to employ certain arguments that were “less likely to be compelling” (McCammon et al., 2018: 73). Lawyers must use frames that fit the particular socio-political environment in which a case is being tried, utilizing a “cultural and political resonance process” (McCammon, 2012: 61). Activists and lawyers “cannot change the content of legal ideologies in a single speech act” (Leachman, 2013: 30); lawyers may only create a framing strategy that is embedded in the reigning legal culture. McCammon et al. corroborate “the importance of the composition of the judiciary and its ideological orientation” in determining whether a particular framing strategy will be successful in a particular context (McCammon et al., 2018: 62). In conclusion, what is presented, where it is presented, when it is presented, and how it is presented are all critically important considerations in determining the success of a lawyer’s presentation of events and arguments.

There are numerous sociological studies that could help unpack the personal and political motivations of the plaintiffs in this study that draw on such theories as political opportunity theory in discussing why groups pursue litigation strategies (Barclay and Fisher, 2006; De Fazio, 2012; Anderson, 2005). However, while much of the research on social movement litigation focuses on the reasons why social movement actors choose to utilize strategic litigation tactics

and what said actors are trying to accomplish with litigation strategies, my unit of analysis is individual court cases, not the plaintiffs, so I will not utilize political opportunity theory in this discussion.

The personal perspectives and/or organizational motivations of the black plaintiffs are not the focus of this study since the image that the lawyers paint of the plaintiff might have nothing to do with her actual personality, behavior, or affiliations, calling to mind the research of Turner (1984), Bartky (1990), and Crossley (2006) on alienated embodiment and the use of someone else's image by outside actors for their own purposes. I am focusing on the arguments made by lawyers and presented to the jury/judge for judgment, regardless of their objective truth. Overall, I am interested in the legal frames presented in the court room by lawyers. In this study, the cultural conception of 'femininity' in Anglo-American Victorian culture is used in the framing of court room arguments before Jim Crow becomes the dominant point of discussion; Jim Crow frames are centered around a need to separate races for their own benefit and, by extension, the concept of 'separate but equal' accommodations comes to bare on arguments. In their study of strategic framing in the woman's suffrage movement, McCammon et al. (2004) describe how the suffragists relied on argumentation and persuasive framing to convince their audiences of the benefit and/or necessity of woman's suffrage. Specific discursive tactics were used by the movement to convince important political decision-makers to alter policy, and the success of these tactics was determined by cultural context (McCammon, 2007; McCammon, 2012).

While social movement activism is not my focus, the court cases brought forward by plaintiffs in my study do constitute a civil rights movement, though of a different sort than the movement of the 1950s-60s. Black litigants of the 1800s did not have a highly structured organization spearheading a specific movement. In collecting data, I made my cut-off year 1908

because 1909 marked the creation of the National Negro Committee (precursor to the NAACP) followed by the creation of the NAACP, in response to the 1908 Springfield Race Riots (Library of Congress Exhibitions), and thus this year can be seen as a turning point in black civil rights movement organization. The lack of a large, structured organization such as the NAACP does not indicate a lack of social movement activity. On the contrary, the individual actions of black litigants added together constituted the civil rights movement of the time. Jacob (1969) identifies litigants as significant political actors and judges as policymakers. According to Jacob, the continual accumulation of judicial opinions could crucially affect national policy; the shape of government, politics, and law is dependent on the people's willingness and ability to assert their agency and use the law on their own behalf. This places the civically-active citizen, such as the litigant, at the center of the lawmaking process. NeJaime (2012) discusses who is and is not a participant in a movement by studying how gay and lesbian couples in the U.S. pursued the right to marry in court as individual, separate litigants rather than as an organized collective; despite their separateness, the litigants had the power to shape the movement through their individual actions. Individual litigants can also help launch a movement— as apparent in Baker's 2008 study on workplace sexual-harassment suits in the U.S.— or bring an issue to the attention of advocacy organizations— as apparent in Vanhala's 2011 study of public-interest law groups.

The process of lawmaking through litigation is not simple or easy. “Judicial policymaking is a time-consuming and laborious process” requiring “new litigants to set the judicial agenda” (Marshall, 1998: 763). This gradual molding of law contributes to a problem of pluralism, with sometimes conflicting legislative decisions and judicial precedent. Hartog defines law as “an arena of conflict within which alternative social visions contended, bargained, and survived,”

with American law being especially contested due to its “implicit pluralism” or “its implicit acceptance of customs founded on multiple sources of legal authority” (Hartog, 1985). This pluralism leads to legal ambiguity as different actors and institutions interpret, implement, and enforce law.

Data and Methods

In this study, the argumentative Master Frames of interest utilized by lawyers refer to subjective interpretations of ‘ladylikeness,’ (or a Femininity Frame), and ‘separate but equal’ spaces, (or a Jim Crow Frame). The Femininity Frame is inherently subjective as it is based on the idea of there being a distinction between ‘ladies’ and women in general, which is a culturally-based conception. Prior to the ascendancy of the Jim Crow Frame, the plaintiff’s lawyer had to paint their client as more ladylike while the company’s lawyer had to paint the plaintiff as less ladylike using culturally salient language of femininity.

Trains are a unique common carrier in that they have the ability to designate each individual car as a separate space, taking race, class, and gender all into account in creating such distinctions as Luxury cars, Smoking cars, Ladies cars, and Jim Crow cars all on the same train. Steamboats, by contrast, were only divided into an upper deck and lower deck and street cars by a front section and back section. Thus I will only look at cases involving railroads in order to unpack the intersection of gendered, classed, and racialized segregation uniquely unveiled in these cases. The cases I examine are of two kinds. First, there are court cases in which black women claimed damages against railroad companies after being denied access to the Ladies’ Cars and other ladies’ accommodations provided by railway companies. Second, there are general cases in which black women are harassed or in some other way not provided the protections legally afforded to the white women while upon the train. I have developed

theoretical expectations which I evaluate in each of my railroad cases.

I expect that 1) if no explicit Jim Crow, “colored,” or “negro” car/section (distinct from a Smoking Car) was available for use by passengers, the arguments for and against were framed around cultural conceptions of femininity and ladylikeness, debating whether the plaintiff was enough of a lady to be allowed access to the Ladies’ accommodations. 2) If the case took place before October 15, 1883, when the Civil Rights Act was struck down, the arguments were framed around cultural conceptions of femininity and ladylikeness. 3) If the case took place after October 15, 1883, the arguments were framed around ‘separate but equal’ accommodations and whether there was a right/necessity to separate certain passengers. The time period (before/after 1883) and availability of Jim Crow seating is affected the frames utilized. These theoretical expectations do not cover all possible situations, and they are not meant to. A full, rigorous testing of my cases is beyond the scope of this paper, but these empirical observations are meant to illustrate the plausibility of my arguments.

While this study is looking at a small number of cases, the generalizability of the cases is not as much of an issue in this project as it might be in other projects. In the legal arena, each court case acts as a precedent for other cases to follow, and thus a small number of cases can have a very large impact on setting legal precedent. By looking at a time period before the cementation of law through judicial rulings, sociologists can develop a better understanding of legal ambiguity and the forces that shape legal precedent and discourse.

In this study, I focus on cases in which black women claimed damages against railroad companies after being denied access to Ladies’ accommodations or in some way not being provided protection afforded to other ‘ladies’ on the train. I have 20 total plaintiffs and 34 total coded cases (this includes appeals). I examine whether the time period and the availability of

Jim Crow seating on the train influences the frames utilized by lawyers in the courtroom. I use content analysis to determine the frames used in each court case.

I collected my case data from Lexis Nexis and Google Books' collection of Law Reports, for the years 1865-1908. My data consist of judicial opinions, though in the case of *Railroad Company v. Brown* (1873) I also reference a Congressional Report. I initially searched *Lexis Nexis Academic: Federal and State Cases Search*, going through sets of search terms (for example: (lady OR ladies) AND (colored OR black OR negro) and (rail OR train)). In reading through the historical literature of my time period,⁸ I made note of cases referenced in the literature that were not available through Lexis Nexis and might fit within the parameters of my study, and I keyword searched Google Books' collection of Law Reports for specific cases. I ultimately was able to find judicial opinions of the cases of three black women — Bailey, Wood, and Quinn — that were not available on Lexis Nexis. It must be noted that my data are limited; not all women who were denied access to Ladies' Cars in this time period went to court (eg: the wife of Texas Senator Walter Burton was thrown head-first from the train after refusing to leave the Ladies' Car but never sued (Smallwood & Crouch, 2008)). In addition, some formal judicial opinions appear to have been lost to time, save a few sparse references.

I identify the arguments by the plaintiff in terms of racialized and gendered language by close readings of judicial opinions. In my Femininity Frame, I note words and phrases that suggested a ladylike ideal. A lady in this context is more delicate, demure, polite, and handsome than an average woman, and the ideal is inherently upper-class and white. Mentions of skin lightness (mulatto/less "negro" blood), wealth indicators (nice dress), educational attainment

⁸ Batlan, 2013; Daggett, 1928; Friedman & Ladinsky, 1967; Grimsey & Lewis, 2004; Hunter, 1997; Jones, 2009; Keeler, 1983; Key, 1949; Lee & Bean, 2010; Lemmon, 1953; Lofgren, 1988; Minter, 1995; Mack 1999; Oberst, 1973; Pascoe, 2009; Pascoe, 1996; Riegel, 1984; Richter, 2005; Smallwood & Crouch, 2008; Van Slyck, 1996; Welke, 2001; White, 1999; Williamson, 1980; Woodward, 1955; Woodward, 1991

(graduated from a girl's school), maternal characteristics (pregnant/with children/married), polite conduct (or lack thereof), and handsomeness all indicate a use of the Femininity Frame. I use "Ms." to indicate unknown marriage status; I use "Mrs." and "Miss" when I have knowledge of the plaintiff's marriage status. In my Jim Crow Frame, I note words and phrases that explicitly indicate segregation based on race. Mentions of a need to separate passengers for their own good and a reassurance of the equity of the separate spaces indicate a use of the Jim Crow Frame.

I wrestled with whether to examine variation based on a case being tried in a state above or below the Mason Dixon line. My sample size makes such generalizations problematic, but an even larger problem exists by lumping the Southern states into one homogenous unit. I would need to decide where to place states that divided their loyalties during the Civil War— Missouri, West Virginia, and Kentucky— and slave-states that ultimately decided not to succeed— Maryland and Delaware. In addition, many states that voted to secede the union during the Civil War had counties that revolted against the decision, such as counties in east Tennessee. In addition, it wasn't until after the failure of the "Populist crisis" of the 1890s that a recognizable southern political unity around the Democratic Party was formed (Key, 1949). Ultimately, I decided that lumping 'the confederate states' into one category during this time period would be problematic for my examination.

Results

The Femininity Frame became the dominant frame used by lawyers until the Civil Rights Act of 1875 was declared unconstitutional on October 15, 1883, and a phasing-out of the Femininity Frame began in favor of the Jim Crow Frame. No cases that occur during the period of the Civil Rights Act utilize the Jim Crow Frame exclusively. No cases that occur after the

Civil Rights Act was struck down utilize the Femininity Frame exclusively. Counting appeals as separate cases, fourteen cases followed my expectation that a lack of explicit Jim Crow seating would lead to use of the Femininity Frame in court, and one case did not follow this pattern. Sixteen cases followed my expectation that a case being tried before October 1883 would lead to use of the Femininity Frame, and two cases did not follow this pattern (not including the October 15, 1883 case itself). All fifteen cases that occurred after October 1883 followed my expectation that a case being tried after October 1883 would lead to use of the Jim Crow Frame.

From 1865-1875, the arguments used in the court cases of my study fluctuated wildly. The four plaintiffs/defendants moving their cases forward before the creation of the Civil Rights Act of 1875 utilized the full range of legal arguments in their cases. Directly following the end of the Civil War, several different framing tactics were used by lawyers, with mixed results. The “original Jim Crow car case” (Lemmon, 1954: 175) occurred with Ms. Mary Miles in Pennsylvania (final decision in 1867). Ms. Mary Miles was instructed to leave the white Ladies’ section of the train car and move to the colored section of the car. In March 22, 1867 the Supreme Court of Pennsylvania passed an Act prohibiting any form of racial segregation on rail cars. Miles won her first case under this Act, but in appeal the court decided that since the incident happened before the Act was passed, “our decision pronounces the law only as it stood when the case arose;” the company argued for separate but equal seating, and the court determined it was permissible to separate passengers based on race in order “to prevent contacts and collisions arising from natural or well-known customary repugnances” (*The West Chester and Philadelphia Railroad Company v. Miles*). Miles lost in appeal. The court opined:

“Before the Act of March 22d 1867, the separation of black and white passengers in a public conveyance was the subject of a sound regulation to secure order, promote

comfort, preserve the peace and maintain the rights of both carriers and passengers” (*The West Chester and Philadelphia Railroad Company v. Miles*).

In an ironically similar case, the “separate but equal” segregation argument was rejected just six years later (1873) in Ms. Katherine “Kate” Brown’s Washington D.C. case. Ms. Kate Brown was dragged out of the Ladies’ car when she refused to move to a car for colored persons. Since Kate Brown was an employee of the Senate, there was a Congressional investigation in 1868 which was reviewed in the subsequent court cases. In the report, Kate Brown was described as a “yellow woman” (lighter skinned) who demonstrated “lady-like character” and was “intelligent” and “refined” (Report of the Senate Committee on the District of Columbia, June 17, 1868 (No. 131, 40th Congress, 2nd Session)). The railroad’s Congressional grant contained a specific provision that “no person shall be excluded from the cars on account of color;” the company claimed that it had “literally obeyed the direction” as the cars were “alike comfortable” (*Railroad Company v. Brown*). When the case reached the Supreme Court, the Justices called the company’s separate-but-equal argument “an ingenious attempt to evade compliance with the obvious meaning of the requirement,” differing significantly from the Pennsylvania decisions a few years prior. The court determined that the Congressional grant had been given with clear instructions not to discriminate by race, and “separate but equal” segregation was still discrimination. Kate Brown won all her cases through the Supreme Court. However, the court stated that “it was the privilege of the company to reject [the grant directives], but to do this it must reject the whole legislation with which it was connected” (*Railroad Company v. Brown*); in essence, the court allowed the possibility of Jim Crow segregation with private companies, but under public law, “separate but equal” was still discrimination.

In between these two cases in Illinois, Ms. Anna Williams was framed as being ladylike enough to ride in the Ladies' Car (final decision in 1870). Williams bought a first class ticket upon the train, but was denied access to the Ladies' Car, instead being instructed to sit in a car for men. It was argued that "the appellate was clad in plain and decent apparel, and it is not suggested... that she was not a woman of good character and proper behavior" (*The Chicago & Northwestern Railway Company v. Anna Williams*). The railroad did not have a first-class Jim Crow car or a separate car with equal accommodations. The company also did not have an explicit rule requiring segregated seating on their trains, and Williams won her case in both the lower court and appeal.

Mrs. Julia Redding's South Carolina cases (final decision in 1871) were the last before the Civil Rights Act was signed into law and were argued mostly around the question of whether the defendant was "liable for the unknown actions of employees" (*Redding v. South Carolina Railroad Company*). During the enforcement of the Civil Rights Act, two plaintiffs' cases used both the Femininity and the Jim Crow Frame — the cases of Mrs. Silena Gray in Ohio (final decision in 1882) and Ms. Elsie Britton in North Carolina (final decision in 1883) —, and three plaintiffs' cases exclusively used the Femininity Frame — the cases of Mrs. Green in Pennsylvania (final decision in 1878), Ms. Brown in Tennessee (final decision in 1880), and Mrs. Sallie Robinson in Tennessee (1883).

Ms. Brown (1880) was forcibly removed from the Ladies' Car by the conductor due to her "allegedly unchaste reputation" (*Brown v. Memphis & C.R. Co.*). Ms. Brown was described as having very ladylike conduct while on board the train: "She is not repulsive in appearance; is accustomed to dress well and even handsomely; behaves in a lady-like manner, and that on this occasion her conduct was unexceptionable;" her job entailed serving refreshments to "virtuous

ladies, wives, mothers, and daughters, and their husbands and fathers and to nurse them in sickness” (*Brown v. Memphis & C.R. Co.*). Many passengers testified to her good behavior. The employee was stated to offer Brown “first-class accommodation that was equivalent of the car in question,” but the court determined that the company as a whole did not have any specific regulation providing separate but equal cars for black and white persons. It was determined by the court that the conductor did not have the right to judge a passenger on their character beyond their behavior while on the train. The court awarded Brown \$3,000.

During the enforcement of the Civil Rights Act, one case focused entirely on the constitutionality of the Civil Rights Act, not focusing on either framing device — Mrs. Bella Smoot’s 1882 Kentucky case. Mrs. Bella Smoot’s case is noteworthy in that it illustrates how the constitutionality of the Civil Rights Act was coming into question. Smoot was refused access to the Ladies’ Car and filed suit. Her claim was based on the Civil Rights Act of 1875. The judge argued that the act “does not confer jurisdiction upon the federal court in an action for damages” (*Smoot v. Kentucky Central RY. Co.*). In addition, the judge stated: “Congress has no right to interfere because the state has passed no act discriminating between passengers on account of color. The prohibitions of the fourteenth amendment and the civil rights act both have reference to state action exclusively” (*Smoot v. Kentucky Central RY. Co.*). The court affirmed the right of private persons and business to enact racial segregation and dismissed Smoot’s case.

The Civil Rights Cases, as the Supreme Court case decided in 1883 would be named, was a combination of five cases, including Robinson’s, that raised the question of the constitutionality of the Civil Rights Act of 1875. The Supreme Court stated: “The court held that U.S. Const. amend. XIII prohibited the badges and incidents of slavery, and individual

discrimination against African Americans did not rise to the level of slavery” (*The Civil Rights Cases*). “Individual action,” the Court declared, “was the purview of state rather than federal law” and thus federal law could not prohibit Jim Crow discrimination within states.

After the Civil Rights Act was declared unconstitutional in 1883, four plaintiffs’ cases used both the Jim Crow Frame and the Femininity Frame — the cases of Miss Ida B. Wells in Tennessee (final decision in 1887), Mrs. Rebecca Smith in South Carolina (final decision in 1893), Ms. Fannie Lander in Kentucky (final decision in 1898), and Mrs. Lola Houck in Texas (final decision in 1888). On a Texas train, Mrs. Lola Houck was locked out of the Ladies’ Car by the brakeman although she had already bought a ticket for said car. She chose to sit out on the platform instead of in the Smoking Car because she felt more endangered in the Smoking Car than outside in the rain. Lola Houck was married, pregnant, and traveling to visit the sick bedside of her child. She was forced to sit outside the car during the train ride and suffered a miscarriage. Houck’s perfect ladylike conduct was brought up multiple times during the case. “The conductor said she acted ‘very ladylike’ all the time,” and it was mentioned that she had “some degree of negro blood in her veins; that casually looking at her or her husband it would be difficult to distinguish either of them from white persons” (*Houck v. Southern Pacific Ry. Co.*). It was stated that the “Jim Crow” car at the front of the train was available, but that it was often used by white persons and doubled as a Smoking Car. The Smoking Car had “inferior, uncushioned seats” (*Houck v. Southern Pacific Ry. Co.*). On several occasions on different rides, Houck had been allowed to ride in the Ladies Car, and on this occasion several white passengers remonstrated the brakeman for his conduct towards her. The court affirmed the right of the railroad to furnish separate cars for white and colored persons, but if a colored passenger paid a first-class fare, as Mrs. Houck did, the car provided to said passenger must be “as safe, and

substantially as inviting, to travel in, as it (the management) furnishes to white passengers” (*Houck v. Southern Pacific Ry. Co.*). The court awarded Houck \$5,000 in damages.

Wells is the only plaintiff who was undeniably an activist for black civil rights. After Wells won her initial case, the Memphis *Appeal Avalanche* proclaimed, “A Darky Damsel Obtains a Verdict for Damages against the Chesapeake & Ohio Railroad,” and Wells wrote extensively about the case in her own writings. Ida B. Wells was an overt activist, and this activism was used against her in her second case. In the 1887 appeal of her case, it was stated by the Supreme Court of Tennessee: “We think it is evident that the purpose of the defendant in error was to harass with a view to this suit, and that her persistence was not in good faith...” The court held that the two cars “were equal in all respects” and Wells “had no right to arbitrarily determine where she wished to sit” (*Chesapeake, Ohio & Southwestern Railroad Company v. Wells*). Activism was viewed as harassment, and it was not polite conduct of a lady who needed protection in the Ladies’ Car.

After the Civil Rights Act was declared unconstitutional in 1883, six plaintiffs’ cases exclusively use the Jim Crow Frame—the cases of Mrs. Anna Laura Logwood in Tennessee (final decision in 1885), Mrs. Mary Chilton in Missouri (final decision in 1893), Mrs. Anderson in Kentucky (final decision in 1894), Ms. Ella Wood in Kentucky (final decision in 1897), Ms. Quinn in Kentucky (final decision in 1897), and Ms. Cornelia Bailey in Kentucky (final decision in 1898). Jim Crow laws were founded on the basis of ‘separate but equal’ and thus did not come into conflict with common carrier laws. In fact, Jim Crow cars allowed for the more complete fulfillment of common carrier obligation by giving black passengers a defined space within the carrier. Ms. Ella Wood (1897) and Ms. Quinn (1897) won the appeal of their cases, claiming they were forced to sit next to rude white men on the train, and the conductor offered

no assistance. Due to the fact that Wood and Quinn had been properly sitting in the Jim Crow car, where they were supposed to, and the white men should not have been there, they received their compensation for damages.

In cases with Jim Crow frames, a case was often determined by technical questions, such as: did the railroad have an existing regulation requiring Jim Crow segregation?; had the plaintiff already bought a first-class ticket before being excluded from the first-class car?; was there a state or federal statute overriding the legitimacy of the “equal” versus “unequal” argument?; were both cars equal in furnishings and comfort? With these questions, the arguments centered around whether the train company was prudently enforcing, to the letter, already established rules/laws. In certain instances, both the Femininity Frame and the Jim Crow Frame could become irrelevant in the final decision and the company not liable: did or did not an employee have knowledge of passengers being harassed or discriminated against while on the train?; was the law around which court arguments centered constitutional?

Discussion and Conclusion

While the Jim Crow Frame and its connected compliance-with-regulation arguments utilized in some of my court cases create concrete lines determining technical liability, the Femininity Frame is based around a particular narrative of womanhood and victimization common in turn-of-the-century America. In court cases that use the Femininity Frame, the focus is not on technical distinctions and instead on the story being presented to the jury. Narratives serve as a better tool of empathetic persuasion than “abstract legal arguments, statistics, or the extensive research findings” (Murphy 1993: 1276). When Lola Houck was denied access to the Ladies’ Car, the jury was presented with a heartfelt tale of a mother travelling to visit the bedside of her sick child, who was so abused at the hands of the railroad that she suffered a miscarriage.

Mrs. Lola Houck's case is a unique case because in no other case does the plaintiff so strikingly and perfectly fit the narrative of victimized womanhood. Houck's was also the last case chronologically to win based (partially) on the Femininity Frame. The use of narrative in this case is markedly different than other post-1883 cases that were decided based on legal technicalities. *Only when the decision-makers are presented with a story with which to empathize are black women able to make strides toward integration into white women's spaces.*⁹ The power of legal storytelling is evident.

After the Civil Rights Act was declared unconstitutional, *Plessy v. Ferguson* (1896) corroborated the rights of railroads to impose Jim Crow segregation based on phenotypic racial indicators, and black women completely lost all leverage to claim the right to sit in the Ladies' Car (except on intra-state lines in certain states with anti-segregation laws). By the end of the 19th century, segregated cars eliminated the grey area around where black women could situate themselves in the vehicle. Court rulings became increasingly inflexible; black women could no longer fight to fit into the cultural conception of 'ladylikeness' as white society determined them to be in a specifically segregated class and therefore must occupy a specifically segregated space. Thus marked the end of a period of legal ambiguity.¹⁰

⁹ In her study of domestic violence law reform in Maryland, Murphy (1993) describes how lawmakers had "no interest" in and were "unsympathetic" to domestic violence reform until activists changed their strategy and presented to the lawmakers the personal stories of victims who had been harmed by the archaic laws (Murphy, 1993).

¹⁰ Moving forward with this project, I would like to delve into the archives to uncover the demographics and histories of the law firms and lawyers that represented plaintiffs and railroad companies in these cases. With further research, I could examine the identities of the lawyers who used the frames discussed in this paper and hypothesize how the choice of lawyers in a case could influence framing and perhaps even outcomes.

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- Wood, Ella B. *Wood v. Louisville & Nashville R.R. Co.*, 101 Ky. 703 (1897).

Full Descriptions of All Cases

Ms. Mary Miles' Pennsylvania cases upheld the validity of the separate-but-equal argument. Miles was instructed to leave the white Ladies' section of the train car and move to the colored section of the car. In March 22, 1867 the Supreme Court of Pennsylvania passed an Act prohibiting any form of racial segregation on rail cars. Miles won her first case under this act, but in appeal the court decided that since the incident happened before the Act was passed, "our decision pronounces the law only as it stood when the case arose;" the company argued for separate but equal seating, and the court determined it was permissible to separate passengers based on race in order "to prevent contacts and collisions arising from natural or well-known customary repugnances" (*The West Chester and Philadelphia Railroad Company v. Miles*, 1867). Miles lost in appeal. The court opinioned:

"Before the Act of March 22d 1867, the separation of black and white passengers in a public conveyance was the subject of a sound regulation to secure order, promote comfort, preserve the peace and maintain the rights of both carriers and passengers" (*The West Chester and Philadelphia Railroad Company v. Miles*, 1867).

Ms. Anna Williams' Illinois cases were argued purely around the question of whether the plaintiff was ladylike enough to sit in the Ladies' car. Williams bought a first class ticket upon the train, but was denied access to the Ladies' Car, instead being instructed to sit in a car for men. It was argued that "the appellee was clad in plain and decent apparel, and it is not suggested... that she was not a woman of good character and proper behavior" (*The Chicago & Northwestern Railway Company v. Anna Williams*, 1870). The railroad did not have a first-class Jim Crow car or a separate car with equal accommodations. The company also did not have an explicit rule requiring segregated seating on their trains. Williams won her case in both the lower court and appeal.

Mrs. Julia Redding's South Carolina cases were argued mostly around the question of whether the defendant was "liable for the unknown actions of employees." Redding was sitting in the Ladies' Parlor of the Railroad Depot when an employee instructed her to leave. When she refused, he dragged her out of the parlor "with violence." It is stated that she was pregnant and had purchased a first-class ticket. On a previous occasion, the same employee had instructed her out, whereby Mrs. Redding told him "she was not a negro," her skin being very light, and he apologized and left her. It is stated that Mrs. Redding "had a right to be" in the parlor. In the initial trial, the railroad successfully argued that the company was not liable for the unknown actions of employees, but Mrs. Redding succeeded in appeal (*Redding v. South Carolina Railroad Company*, 1871).

Ms. Katherine "Kate" Brown's Washington DC cases rejected the validity of the separate-but-equal argument. Kate Brown was dragged out of the Ladies' car when she refused to move to a car for colored persons. Since Kate Brown was an employee of the Senate, there was a Congressional investigation in 1868 which was reviewed in the subsequent court cases. In the report, Kate Brown was described as a "yellow woman" (lighter skinned) who demonstrated "lady-like character" and was "intelligent" and "refined" (*Report of the Senate Committee on the District of Columbia*, June 17, 1868 (No. 131, 40th Congress, 2nd Session)). The railroad's Congressional grant contained a specific provision that "no person shall be excluded from the cars on account of color;" the company claimed that it had "literally obeyed the direction" as the cars were "alike comfortable" (*Railroad Company v. Brown*, 1873). When the case reached the Supreme Court, the Justices called the company's separate-but-equal argument "an ingenious

attempt to evade compliance with the obvious meaning of the requirement,” differing significantly from the Pennsylvania decisions a few years prior. The court determined that the Congressional grant had been given with clear instructions not to discriminate by race, and Kate Brown won all her cases through the Supreme Court. However, the court stated that “it was the privilege of the company to reject [the grant directives], but to do this it must reject the whole legislation with which it was connected” (*Railroad Company v. Brown*, 1873).

In Pennsylvania, Mr. John Green and his wife Mrs. Green were denied access to the Ladies’ car and told to go to the Smoking car after having already bought a first-class ticket. Since the PA Act of March 22 1867 was clear that racial segregation of any kind was not allowed on Pennsylvania train cars, the court determined that this exclusion was only warranted if Mr. and Mrs. Green’s conduct was not appropriate for the Ladies’ car. The defense argued that Mr. Green was smoking, though the witness testimony was mixed, some saying he was only holding a cigar. However, the court determined that: “if Green was smoking, or was inebriated, either might have furnished a reason why the company should exclude him; but it would not entitle them to exclude the wife, if she was quiet and orderly, and not smoking” (*Central Railroad of New Jersey v. Green and Wife*, 1878). In the initial case, the court was divided. In appeals court, Mrs. Green’s behavior was determined to be appropriate and orderly, and she won the case.

In Tennessee, Ms. Brown was forcibly removed from the Ladies’ Car by the conductor due to her “allegedly unchaste reputation.” Ms. Brown was described as having very ladylike conduct while on board the train: “She is not repulsive in appearance; is accustomed to dress well and even handsomely; behaves in a lady-like manner, and that on this occasion her conduct was unexceptionable;” her job entailed serving refreshments to “virtuous ladies, wives, mothers, and daughters, and their husbands and fathers and to nurse them in sickness” (*Brown v. Memphis & C.R. Co.*, 1880; 1881). Many passengers testified to her good behavior. The employee was stated to offer Brown “first-class accommodation that was equivalent of the car in question,” but the court determined that the company as a whole did not have any specific regulation providing separate but equal cars for black and white persons. It was determined by the court that the conductor did not have the right to judge a passenger on their character beyond their behavior while on the train. The court awarded Brown \$3,000.

In Ohio, Mrs. Silena Gray and her sick child were denied access to the Ladies’ car and told to go to the Smoking Car. There were only two cars on the train, one being “Ladies’” and one being “Smoking.” The court stated: “Not every man likes to smoke; not every man likes tobacco. It is bad enough for them to force a gentleman who does not use tobacco, and who sickens at the scent of smoke or tobacco, into a car of that character, let alone forcing a lady there with a sick child” (*Gray v. Cincinnati Southern R. Co.*, 1882). Since the Smoking car was shown to be unequal to the Ladies’ car, for which Gray had purchased a first-class ticket, she won her case and received \$1,000 in damages.

In North Carolina, Ms. Elsie Britton was with a group of colored men and women sitting in the “Smoking Car,” which on this train was provided for white, male passengers, before being assaulted by white passengers and thrown off the train. In advertising the excursion, it was explicitly stated that separate cars for white and black passengers would be provided. The plaintiffs were described as having ladylike appearance and conduct: “The behavior of the plaintiff and her companions while in the car was entirely becoming, and their dress and appearance decent.” In the first case, Elsie Britton lost her case based on the fact that Jim Crow accommodations had been provided. In appeal, the court determined that the fault lay with the

company since the conductor had explicitly allowed the plaintiff and her companions to sit wherever they wished. In this instance, separation of black and white passengers was a duty of the carrier “in order to prevent contacts and collision arising from natural or well known antipathies” (*Elsie L. Britton v. Atlanta & Charlotte Air-Line Railway Company*, 1882; 1883).

Mrs. Bella Smoot’s 1882 Kentucky case is noteworthy in that it illustrates how the constitutionality of the Civil Rights Act was already coming into question. Smoot was refused access to the Ladies’ Car and filed suit. Her claim was based on the Civil Rights Act of 1875. The judge argued that the act “does not confer jurisdiction upon the federal court in an action for damages.” In addition, the judge stated: “Congress has no right to interfere because the state has passed no act discriminating between passengers on account of color. The prohibitions of the fourteenth amendment and the civil rights act both have reference to state action exclusively” (*Smoot v. Kentucky Central RY. Co.*, 1882). The court dismissed Smoot’s case.

In Tennessee, Mrs. Sallie Robinson’s case, along with four other cases that relied on the Civil Rights Act of 1875, went to the US Supreme Court. Robinson and her lighter-skinned nephew were denied access to the Ladies’ Car and made to go to the front car which was a Smoking Car. Robinson lost her case in the Tennessee decision, and:

“the judge allowed evidence to go to the jury tending to show that the conductor had reason to suspect that the plaintiff, the wife, was an improper person, because she was in company with a young man whom he supposed to be a white man, and on that account inferred that there was some improper connection between them” (*The Civil Rights Cases*, 1883). Thus, she was argued to be a women of unladylike character.

Robinson appealed to the US Supreme Court where the Civil Rights Act was declared unconstitutional in the October 15, 1883 ruling. It was determined that “none of the prosecutions can stand,” and Robinson ultimately lost her case (*The Civil Rights Cases*, 1883).

In Tennessee, Mrs. Anna Laura Logwood was denied access to the Ladies’ Car. There was no mention of ladylike conduct. The judge charged the jury: “If a railroad company furnishes for white ladies a car with special privileges of seclusion and other comforts, the same must be substantially furnished for colored ladies” (*Logwood and Wife v. Memphis & C.R. Co.*, 1885). The court adopted the same opinion as in the steamboat case, *The Sue* (1885), in which the plaintiffs won on the grounds that the accommodations were not of equal value, and Logwood won her case.

In Tennessee, Ms. Ida B. Wells was dragged out of the Ladies’ Car after refusing to move to the Smoking Car and sued the railroad company. She won on the basis of two Tennessee statutes: railroads could not charge black persons first-class fare and then seat them in second-class cars, and “separate but equal” accommodations were required for blacks and whites. The court awarded Wells \$500 in damages. In the 1887 appeal of her case, it was stated by the Supreme Court of Tennessee: “We think it is evident that the purpose of the defendant in error was to harass with a view to this suit, and that her persistence was not in good faith...” The court held that the two cars “were equal in all respects” and Wells “had no right to arbitrarily determine where she wished to sit.” Wells lost to appeal (*Chesapeake, Ohio & Southwestern Railroad Company v. Wells*, 1887).

On a Texas train, Mrs. Lola Houck was locked out of the Ladies’ Car by the brakeman although she had already bought a ticket for said car. She chose to sit out on the platform instead of in the Smoking Car because she felt more endangered in the Smoking Car than outside in the rain. Lola Houck was married, pregnant, and traveling to visit the sick bedside of her child. She was forced to sit outside the car during the train ride and suffered a miscarriage. Houck’s perfect

ladylike conduct was brought up multiple times during the case. “The conductor said she acted ‘very ladylike’ all the time,” and it was mentioned that she had “some degree of negro blood in her veins; that casually looking at her or her husband it would be difficult to distinguish either of them from white persons” (*Houck v. Southern Pacific Ry. Co.*, 1888). It was stated that the “Jim Crow” car at the front of the train was available, but that it was often used by white persons and doubled as a Smoking Car. The Smoking Car had “inferior, uncushioned seats.” On several occasions on different rides Houck had been allowed to ride in the Ladies Car, and on this occasion several white passengers remonstrated the brakeman for his conduct towards her. The court affirmed the right of the railroad to furnish separate cars for white and colored persons, but if a colored passenger paid a first-class fare, as Mrs. Houck did, the car provided to said passenger must be “as safe, and substantially as inviting, to travel in, as it (the management) furnishes to white passengers.” The court awarded her \$5,000 in damages.

In Missouri, Mrs. Mary Chilton was removed from the Ladies’ Car and instructed to go to the car reserved for colored persons. There was no mention of ladylike appearance or conduct in the record. The court determined that the car Chilton was instructed to ride in was “equal in accommodations” to the Ladies’ Car. Chilton was denied damages in her initial case and in appeal (*Chilton, Appellant, v. The St. Louis & Iron Mountain Railway Company*, 1893)

In South Carolina, Mrs. Rebecca Smith was ordered from one room at the train depot and forced to go to another room. The plaintiff argued that she had been forced from the Ladies’ room into one set apart for men, where smoking and chewing tobacco were allowed, and “she conducted herself in an orderly manner” (*Smith v. Chamberlain*, 1893). The company argued that it “was not the ladies’ room but one for the use of whites, and that the other room was for colored of both sexes,” and the court determined that “no chewing and smoking were going on at the time in the [Jim Crow] room,” and both the rooms were equal (*Smith v. Chamberlain*, 1893). Smith lost her case in both the initial trial and appeal.

In Kentucky, Mrs. Anderson and her husband were told to move to the “car for colored people” on two separate occasions (*Anderson v. Louisville & N.R. Co.*, 1894). No mentions of ladylike appearance or conduct were made. The company argued that it was complying with a Kentucky statute requiring separate cars for black and white persons, and the court affirmed that “so far as the car for colored people only was as good as the car for white people, all federal civil rights were preserved” (*Anderson v. Louisville & N.R. Co.*, 1894). However, the court determined that the Kentucky statute itself did not apply to interstate travel, and since the company did not itself have a specific regulation or rule that required the separation of black and white persons, the company’s demurrer was overruled in favor of Anderson.

In Kentucky, one year after *Plessy v. Ferguson*, Ms. Ella Wood was forced to sit next to rude white men on the train, and the conductor offered no assistance. The men, “were permitted to remain in the car with the plaintiff, and while there used vulgar and obscene language, made insulting and indecent proposals to her, abused and threatened her, and otherwise mistreated her” (*Wood et al v. Louisville & Nashville R.R. Co.*, 1897). It is mentioned that Wood had been properly sitting in the Jim Crow car, where she was supposed to, and the white men should not have been there. It was argued that employees of the railroad were aware of the presence of the white men and should have stepped in to halt the abuse. There was no mention of ladylike appearance or conduct in the record. Wood won an appeal of her case and received her compensation for damages. Ms. Quinn, a black passenger sitting next to Wood at the time of the harassment, also brought charges against the railroad company. Similar arguments were made, no ladylike conduct was mentioned, and Quinn won an appeal of her case on the same grounds

as Wood. An almost identical case to Wood and Quinn's was brought to trial by Ms. Cornelia Bailey in 1898 in which Bailey was harassed by white men while sitting in the Jim Crow car, but the court determined that no employees were aware of her harassment, and Bailey lost her case (*Bailey v. Louisville & Nashville R.R. Co.*, 1898).

In Kentucky, Ms. Fannie Lander bought a ticket for a first-class coach but was forced to sit in a car designated for colored persons instead of the Ladies' coach. In the initial case, Lander argued that the car she was forced to sit in was the "smoker" and was "unclean and equipped and fitted with accommodations greatly inferior;" Lander was argued to be "a lady of good character and reputation" (*Ohio Valley Railway's Receiver v. Lander, Etc.*, 1898). The company denied that the car was inferior. Lander won in the lower courts. However, in appeal, the arguments were centered around a Kentucky Statute requiring separate seating for white and black passengers. The court argued: "Under the authority of... the case of *Plessy v. Ferguson*, the States have a right to pass separate coach laws where they are made to apply solely to intra-state commerce;" while the train route extended out of state, Lander was only traveling between two stops in Kentucky, and thus "a plaintiff whose journey is confined entirely to this state cannot complain" (*Ohio Valley Railway's Receiver v. Lander, Etc.*, 1898). The Kentucky Statute required separation, so Lander could not be granted access to the Ladies' coach under the law. She lost her case.

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