Black Access to Law in Reconstruction: The Case of Warren County, Mississippi - Freedom: Politics

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BLACK ACCESS TO LAW IN RECONSTRUCTION: THE CASE OF WARREN COUNTY, MISSISSIPPI

Christopher Waldrep*

After the Civil War many understood that real freedom for ex-slaves would have numerous meanings, but it must certainly include the liberty to use state and federal courts, a right circumscribed during slavery.¹ In a truly free society, African Americans would feel as free as whites to bring their disputes into formal settings for resolution and whites would bring their grievances against blacks into court as well. A fundamental characteristic of slavery had been extra-legal violence; whites had “resolved” disputes with their slaves outside court with a beating.² Even after emancipation, some whites continued to believe that blacks did not respond to anything other than physical abuse.³

A few southern whites were willing to admit blacks into the legal process, but even they hoped that law could somehow substitute for the master’s lash.⁴

Efforts to extend full citizenship rights to blacks after the Civil War failed. The North “lost” Reconstruction even as it won the Civil War. White ex-Confederates regained power and subjected southern blacks to one hundred years of segregated brutalities.⁵

¹ Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1856). For the meaning of freedom, see the Civil Rights Act of 1866, ch. 31, 14 Stat. 27 (1866).
⁴ LITWACK, supra note 3, at 365-71.
⁵ The most important source for understanding the impact of emancipation on southern justice is EDWARD L. AYERS, VENGEANCE AND JUSTICE: CRIME AND PUNISHMENT IN THE 19TH-CENTURY SOUTH (1984). Most studies of Reconstruction contain some analysis of changes in the southern criminal justice system after the Civil War. See, e.g., ERIC FONER, RECONSTRUCTION: AMERICA’S UNFINISHED REVOLUTION, 1863-1877 (1988); KENNETH M. STampp, THE ERA

* Associate Professor of History, Eastern Illinois University.

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formers could not make over southern society in the decade after the Civil War will likely always remain a subject for scholarly debate. But it is worthwhile to explore the role law and legal culture played in the failure. Law performs a vital role in any society. It serves to mediate relations among free people by ordering social and economic relationships. Formal dispute resolution proscribes violent conduct by channeling quarrels into appropriate forums. After the Civil War, freed people desperately needed access to a neutral legal system that would enforce their rights on a daily basis. But, despite various federal civil rights acts and three amendments to the Constitution, Republicans failed to permanently place race relations within the ambit of law. Failure to establish law as a neutral arbiter of rights and relations undermined Reconstruction and fostered white supremacy. In the Reconstruction South, Republicans encountered an entrenched legal culture resistant to reform. In some places, they improved access to law in real and significant ways, but reformers, even when in power, failed to fully open the legal system to freed slaves. This crippled efforts to reconstruct the South after the Civil War.

This article looks at the use African Americans made of legal services available to them in Warren County, Mississippi, by considering the numbers of African Americans serving on grand juries and by looking at how many black crime victims brought their charges to court. When blacks gained access to grand jury service, African American crime victims did feel freer to use the courts and the number of cases involving black crime victims swelled dramatically. But even when reformers ran the government, wrote a new state constitution (in 1868), revised the criminal code (in 1871), and controlled the courts that administered the new constitution and criminal code, they could not overcome the legal culture’s basic bias against grand jury service by the poor and the illiterate. Ex-slaves never had complete access to law in nineteenth-century Warren County, Mississippi. Even in Warren County, where blacks vastly outnumbered whites and enjoyed real political power, Reconstruction never had a chance.

I. The Grand Jury

Understanding the role of law at the grassroots requires study of the grand juries which guarded access to the criminal justice system. In most jurisdictions every complainant had to persuade a grand jury
to return an indictment before any prosecution could go forward. Victims in the countryside, where most people lived, had no police force they could call on for help. The local sheriff served only as a process server. These victims had to approach their justice of the peace or district attorney, hoping to convince such officers that they really had been victimized and could identify the culprit. Justices of the peace could order the arrest of someone charged with criminal conduct, hear his or her story, and decide whether to jail the person, release him or her on bond, or drop the whole business. District attorneys listened to complaining witnesses and, if they thought their stories plausible, wrote an indictment for the grand jury.

For blacks to move their relations with whites into the southern criminal justice system, they would have to convince local grand juries to hear and take seriously their complaints against whites. The best way to accomplish this, of course, would be through service on grand juries by the blacks themselves. Even whites sensitive to the plight of the freed people would not be as likely to listen sympathetically to the testimony of an illiterate black field hand as would another black field hand. It had been a truism among slaves that talking to white people was a special skill possessed by some but definitely not all African Americans. Even whites eager to listen to slaves skilled at speaking to them probably could not distinguish a lie from the truth. Many blacks sustained themselves through slavery and after by deceiving whites. Just as not all blacks could communicate effectively with whites, not many whites could meaningfully converse with blacks. The black community had always been distinct enough from whites so that only African Americans could consistently judge the credibility and veracity of their fellows.

Not only could grand jurors discourage or encourage complainants, the composition of grand juries heralded black access to law. By very visibly presenting freed slaves as preservers of law, grand jury service performed an important symbolic function. Grand jury panels had a reputation for including the better sort in the county. If ex-slaves could gain entry, then it would be more difficult to deny that they had attained full citizenship rights. This would help insure that not only slavery, but also its trappings, would be dead for sure.

In fact, grand jury practices represented a serious problem for those hopeful that blacks could be admitted to the legal system. Most Americans, whether from the North or the South, agreed with William Blackstone, who once wrote that grand jurors "are usually gentlemen of the best figure in the county." More to the point, most people thought they should be "gentlemen of the best figure." Generally illiterate and poor, ex-slaves did not strike many whites as "gentlemen" of any sort and certainly not the best sort. To gain seats on southern grand juries, blacks would have to overcome Blackstone's idea that jurors should be special people, better than the common sort.

But several states had statutes that illustrate how difficult this would be. Under the common law courts formed juries by issuing writs of venire facias commanding the sheriff to summon a specified number of "good and lawful" men. Before the Civil War, "good" had meant a white male of good moral character; "lawful" meant a person meeting the legal qualifications for service. As states codified jury selection they often wrote common law rules into their statutes. States often either adopted the "good and lawful" language directly or wrote their own variation, requiring, for example, that jurors be "judicious" or "moral" or "sober" or "discreet." All these words probably served as euphemisms for people with more property than average and at least some education. Similarly, Congress, by allowing marshals a discretion similar to that enjoyed by sheriffs, made no pretense that federal jurors represented a cross section of the community. Congress agreed that jurors should not represent every segment of the community and after the Civil War disqualified from jury service anyone who had assisted the Confederate states.

But as Republicans moved into southern court rooms it would be wrong to say they had no model to draw on that allowed them to select truly representative juries. A democratic ideal competed with the common law tradition. Jury service had historically represented an opportunity for non-elites to participate in government. In the co-

13. Rev. Laws Ind. ch. 56, § 1 (1824).
lonial era, grand jury service was at least as important as voting for giving citizens access to their local governments. They proposed new laws, protested corruption, investigated crime, and performed administrative tasks. In Virginia, for example, many white male freeholders served on juries, controlling procedural due process in their communities. They would not enforce unpopular statutes. By refusing to indict, such juries could frustrate judges and sheriffs. In addition, grand juries issued reports evaluating the conduct of officials appointed by the crown.15

Jury service took on special significance during the Revolutionary era, when opponents of English authority described juries as the "voice of the people." Even in the colonial period grand juries refused to indict for some political crimes and trial juries sometimes would not convict. In New York Governor William Cosby unsuccessfully sought an indictment of printer John Peter Zenger before two grand juries until finally giving up and proceeding on an information. As is well known, a subsequent trial jury proved no more willing to act against Zenger than the grand juries.16

The revolutionaries made juries instruments of resistance, knowing the panels would refuse to indict or convict activists charged with sedition. Naturally, the colonials heaped praise on jurors as representing the will of common people. John Adams noted that jurors "are taken by Lot . . . from the Mass of the People" and declared that "the common people should have as compleat a Controll, as decisive a Negative, in every Judgment of a Court of Judicature."17 Adams praised juries as "an Essential Wheel in the Watch" and went on to declare that "the People" must not only have a share in the making of laws but also in their execution.18 In the eighteenth century, juries,


both grand and petit, sometimes substituted their will for that of the legislature.19

Revolutionary James Wilson described jury service as the common man's ideal model of political participation. Explicitly rejecting Blackstone, Wilson urged the rank-and-file citizenry to comprehend, shape, and thus cherish the law through their jury service.20 Neither Adams nor Wilson really wanted "the rabble" on juries. But their rhetoric did not make this clear and many in the rabble thought democracy meant they had a right to jury service. One Anti-Federalist even claimed jury trials more necessary than representation in the legislature,21 a notion which persisted into the nineteenth century. Ten states allowed juries to decide questions of law as well as fact and Georgia guaranteed this in its constitution.22 During the early national period, Kentuckians could not vote for their local leaders, but they could serve on juries and jurors scrupulously policed the conduct of powerful community elites. Commonwealth grand juries regularly indicted sheriffs, judges, prosecutors, and other prominent persons of whom they disapproved but could not vote out of office. If unpopular officials could not be presented—the term used when the jurors initiated the prosecution themselves—for misconduct in office or corruption, they could always be charged with profane swearing.23

Given the democratic connotations associated with jury service, it is not surprising that after the Revolutionary War many states required the random selection of jurors. One writer contrasted the English system, where "jurors are returned by the sheriff" with the American procedure, where "they are draughted by lot, from each town, which . . . is the most equitable method . . . ."24 No one seriously expected women or children or African Americans to serve, of course, but to many revolutionary ideology demanded that every white male freeholder have an equal opportunity to represent his community on a.


22. Lutz, supra note 19, at 48 n.100.


jury. Illinois opened grand jury service to "all free white male taxable inhabitants . . . being of sound mind and discretion." 25 Michigan instructed its assessors to examine their rolls for all persons of "good character." 26 It was very likely that Illinois and Michigan sported the trappings of random selection rather than actual randomness. Selection had to be random, drawn from a box, but officials had a lot of leeway in picking the names that initially went into the box. But some states wrote jury selection laws designed to pick jurors representative of their communities. Rhode Island lawmakers must have been influenced by the Revolution when they told their town councils in 1798 to make lists of "all persons liable by law, and whom they shall judge to be qualified as Jurors, and put the names of such persons on separate pieces of paper into a box." Selected officials picked grand and petit jurors in blind drawings. 27

North Carolina went to the greatest lengths of all to insure selection of grand and petit jurors truly representative of the white male population. That state ordered court clerks to select potential jurors from freeholders listed on the county tax returns. But North Carolinians worried that some freeholder might not be on the tax rolls: "and if said tax returns shall not contain the names of all the inhabitants of their said county, who in their opinion are well qualified to act as such jurors, they shall cause the names of all such persons to be inserted on their said jury list." But legislators thought that even that might not insure that every last freeholder made it onto the list and so went on to require judges "to examine carefully the jury lists . . . and diligently inquire if any persons qualified to be jurors as above mentioned are omitted . . . ." The names produced by this process went into a box. To guarantee a random selection, the law required that the drawing be performed by a child under ten years of age. 28

Interestingly, at roughly the time Mississippi Republicans rewrote their state's laws, the Arizona territorial legislature revised its state code. Arizona enacted the Howell Code in 1866 and revised it in subsequent legislative sessions. Coles Bashford codified the amendments into a new digest in 1871, the same year Mississippi Republicans promulgated a new version of their state's criminal code, with a jury selection statute. Arizona's territorial law required county boards of

25. Act of June 1, 1827, § 1, 1833 Ill. Laws 378.
27. An Act Proportioning Each Town's Quota of Jurors to Attend the Several Courts of this State, and Directing the Method of Choosing Them, and Regulating their Attendance at Said Courts, § 2, 1798 R.I. Laws 181.
supervisors to make a list of "all persons . . . qualified and liable to serve as jurors . . . ." In the Arizona territory all English-speaking voters over twenty-one and under sixty "[i]n the possession of [their] natural faculties" and not convicted of a felony or misdemeanor involving moral turpitude had to be on the list. Sheriffs chose jurors from the list with no requirement that the men chosen be particularly "discreet" or "judicious." 29

Curiously, in the South, it was the white conservatives who called for the unbiased selection of jurors on the Arizona model—when it suited their political needs to do so. Racist whites did not hesitate to turn to the powerful Revolutionary rhetoric that John Adams, Thomas Jefferson, and others had advanced on behalf of juries when they thought such language would help them regain power. In 1879 Democrats launched a vigorous and successful attack on Republican legislation forbidding jury service by ex-Confederates, demanding random selection of jurors from a jury box or wheel. Considerable irony surrounded their arguments, of course; the last thing southern whites wanted was truly representative juries that included blacks. But they claimed Republicans had "packed" juries with individuals hostile to southern white conservatives. 30 White conservatives understood that winning Reconstruction included winning the right to a jury of their peers. Senator John Tyler Morgan of Alabama told his fellow Senators in 1879 that "my right to sit on a jury is a right that belongs to me as an American citizen." He went on to insist that the right to sit on a jury belongs "to the very character, nature, and essence of American citizenship." He said, "I find myself entitled as a man to a fair and impartial trial by a jury . . . and yet I find that all those people who know me, all those who are blood of my blood and flesh of my

29. COMP. LAWS AZ. ch. 47, §§ 2, 4-8 (Bashford 1871). The legislature never formally adopted Bashford's compilation. However, he merely recorded legislative activity, making no innovations his compilation accurately documents Arizona territorial law. JAMES M. MURPHY, LAWS, COURTS, AND LAWYERS: THROUGH THE YEARS IN ARIZONA ch. 6 (1970).

30. David J. Bodenhamer, Criminal Justice and Democratic Theory in Antebellum America: The Grand Jury Debate in Indiana, 5 J. EARLY REPUBLIC 482-84 (1985). Politically active racist whites opposed to Reconstruction called themselves conservatives. Democrats called themselves conservative in hopes of attracting ex-Whigs to their banner. They certainly were not conservatives by the standards of today; they could even be called radical as they would have loved to return to slavery. Joel Williamson, in fact, has employed the term "radical" to describe extreme racism. JOEL WILLIAMSON, THE CRUCIBLE OF RACE: BLACK-WHITE RELATIONS IN THE AMERICAN SOUTH SINCE EMANCIPATION (1984). But Dan Carter argues "they promoted distinctly conservative policies." DAN T. CARTER, WHEN THE WAR WAS OVER: THE FAILURE OF SELF-RECONSTRUCTION IN THE SOUTH, 1865-1867, at 3 (1985). In the end it seems best to simply employ the political lexicon of the time rather than try to "correct" it.
flesh and bone of my bone, are disenfranchised from serving on the jury."

Republicans in the post-bellum South confronted a strong tradition against allowing the lower orders of society access to grand jury service. But they could also draw on a rival paradigm, one that argued for jurors representative of the general male population. The same discourse conservative whites would invoke to recapture juries from their enemies was of course available to Mississippi Republicans. They, too, could have claimed that serving on a jury constituted the "essence" of citizenship. They could have argued that blacks coming into court had a right to jurors with blood of their blood, flesh of their flesh, and bone of their bone.

II. WARREN COUNTY, MISSISSIPPI

To understand the effectiveness of efforts to reform law enforcement requires research that is narrowly, rather than broadly, focused. The lawyers, clerks, judges, and juries in particular places develop local traditions for processing complaints and prosecutions. Such culture cannot be easily discarded. In 1982 legal scholar Thomas W. Church, Jr. marveled at the "extraordinary ability of criminal courts to absorb reform efforts . . . without any substantial change in operation." Local officials develop habits and accommodations among adversaries, networks of meanings and shared understandings, that allowed them to maintain the interests of regular participants while weathering waves of offenders as well as high-minded reformers.

This article draws on data from Warren County, Mississippi, located on the Mississippi River at the foot of the Delta. The county's criminal records are well preserved and accessible. In some ways, Warren County typified the experience of many southern communities in the Reconstruction period. More importantly, Warren County represents an excellent opportunity to study the effectiveness of black political power. Warren County blacks outnumbered whites seven to three. Here, they had a good chance to win control of the county government and influence the criminal justice system. Vicksburg, the county seat, served as the commercial hub for a black-majority, cotton-producing plantation culture. So many blacks lived in Vicksburg.

31. 9 Cong. Rec. 2036 (1879).
32. Thomas W. Church, Jr., U.S. Dep't of Justice, Examining Local Legal Culture: Practitioner Attitudes in Four Criminal Courts 4 (1982). For the localistic origins of due process, see also Konig, supra note 15, at 63-82. For southern localism generally, see Finkelman, supra note 3, at 110-16.
and Warren County, 19,000 in 1870, that the area represented one of the best opportunities in Mississippi, perhaps in the entire South, for blacks to exert real influence over local politics and the courts.

After the Civil War the famously vitriolic William H. McCardle attacked Reconstruction from the pages of his Vicksburg newspaper, the *Vicksburg Times*. The movement that ultimately unseated the Republicans in Mississippi and ended Reconstruction had its beginnings in Vicksburg. When white Vicksburgers vowed to follow a white line when voting in 1868, they were the first in the state to do so, becoming a model for all those that followed. Vicksburgers also first suggested formation of the taxpayers’ leagues that so effectively tarred Republican governments with charges of corruption. In 1874 the Vicksburg riot shook Mississippi Republicanism to its core, temporarily forcing from office local black Republicans, replacing them with white conservatives, and launching a new wave of racial violence across the state.

Runaway lawlessness beyond the control of elites or anyone else characterized Presidential Reconstruction (1863-1867) in Warren County just as it did later during the Republican era (1867-1875). Even many whites found law enforcement during Presidential Reconstruction ineffective. Surviving Warren County circuit court files record 23 homicides between 1865 and 1869. This certainly undercounts the murderous violence in Warren County; not all homicides resulted in a grand jury indictment. It is also quite likely that the case files for some that did result in a grand jury indictment have not yet surfaced. For those years, then, the county murder rate per year averaged at least 4.6. But this is a hard number to put in context. Murder rates make more comparative sense when calculated on the basis of population. In 1870, 26,769 persons lived in Warren County; 23 homicides

33. *Ex Parte* McCardle, 73 U.S. (6 Wall.) 318 (1867). McCardle published an editorial in the *Vicksburg Times* entitled *The Scoundrelism of Satraps*. In this article McCardle described United States Army generals as “infamous, cowardly, and abandoned villains, who, instead of wearing shoulder straps and ruling millions of people, should have their heads shaved, their ears cropped, their foreheads branded, and their precious persons lodged in the penitentiary.”


36. Presidential Reconstruction is the term used to describe the period when the president, rather than Congress, dominated national policy making on matters related to the ex-Confederate states. Historians have criticized President Andrew Johnson for returning antebellum elites to power.
that year resulted in an annual murder rate of 17 per 100,000. Seventeen homicides per 100,000 is a staggering rate, higher than the ante-bellum figure. In the 1850s, Warren County's yearly homicide rate had been two a year, or 11 per 100,000, although murders of slaves may well have gone unrecorded on rural plantations. Warren County's homicide rate is even high by the standard of today's urban, drug-plagued culture. In 1992 the national homicide rate was 9.3 per 100,000; that year Washington D. C. had a homicide rate per 100,000 of 15.7. Murderous violence plagued Warren County even more than in late twentieth-century America.

In Mississippi, county boards of supervisors nominated grand jurors in public meetings. In Warren County, the board consisted of five men, each elected from a different district. During Presidential Reconstruction, these supervisors made no more effort to choose grand jurors "representative" of their county than they had before the Civil War. Six middle-aged white bankers, planters, and merchants served on the Board of Supervisors between 1865 and 1867. According to the 1870 census one supervisor, W. R. Billingslea, a farmer from Bovina, owned no real or personal property. The local reporter for the R. G. Dun and Company credit rating company must have summed up local feelings about Billingslea when he described the small planter as a "reliable and progressive man" who "stands well" in the community. The Dun reporter thought Billingslea "very honest" with a good character and moral habits. The other Supervisors owned more property than most Warren County whites. J. W. Goodrum, for example, owned $2,000 and Alexander Arthur $25,000 in real estate. These Old Line Whigs, as they called themselves, selected literate white males as grand jurors. In a county where forty-seven percent of the adult male population could neither read nor write, literates made up ninety-eight percent of the grand juror population.

38. Boards of supervisors were called boards of police before the 1868 constitution. For consistency, this article will refer to the county governing bodies as boards of supervisors. For ante-bellum grand jury selection, see REV. CODE MISS. ch. 61, § 11 (1857). For procedures under the Republican code, see REV. CODE MISS. ch. 8, §§ 724-25 (1871).
39. R.G. DUN & CO. CREDIT LEDGERS, 21 Mississippi at 64 (Historical Collections Department at Baker Library, Harvard University Graduate School of Business Administration).
40. Warren County, Mississippi Literacy rates:

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<th>Adult Males</th>
<th>Adult Black Males</th>
<th>All Adults</th>
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<tr>
<td></td>
<td>Number</td>
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<tr>
<td>Literate</td>
<td>2749</td>
<td>47.4</td>
<td>504</td>
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<tr>
<td>Illiterate</td>
<td>3052</td>
<td>52.6</td>
<td>2935</td>
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All were white; just over one third described themselves in the 1870 census as "planters," "farmers," "gardeners," or "fruit growers." Merchants made up a slightly smaller proportion (28.4%) and nineteen percent were artisans while twelve percent were professionals. Twenty-five percent had no property at all according to the 1870 census, but in a county where the mean value of all adult males' property came to less than five thousand dollars (the median value was $335), the mean value of the real and personal property grand jurors reported to census enumerators in 1870 amounted to $13,358 (the median value was $4,000). The supervisors turned their nominees over to the sheriff who actually notified prospective jurors. If the sheriff could not locate persons selected by the supervisors, he chose his own substitutes.  

During Presidential Reconstruction, a period when conservative whites dominated county boards of supervisors and grand juries, few black victims saw Mississippi's criminal justice system as a useful forum. Although blacks constituted seventy percent of Warren County's population, they made up only about eleven percent of complainants. The "average" complainant was a thirty-five-year-old literate white male with six thousand dollars in property. Perhaps justices of the peace and grand juries took the complaints of literate, wealthy men more seriously than those of illiterates. Perhaps illiteracy correlates with a timidity among crime victims that made them reluctant to step forward. Eighty-three percent of complainants could read and write.

III. THE FREEDMEN'S BUREAU

Warren County's black population did not have to rely on state courts in the years just after the Civil War. Their experience with the Freedmen's Bureau offered them a bridge from slavery to formal dispute resolution in regular courts. Captain E. E. Platt served as the Bureau of Refugees, Freedmen and Abandoned Lands' Sub-Assistant

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<tr>
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<th>All Black Adults</th>
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<tr>
<td></td>
<td>Number</td>
<td>%</td>
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</tr>
<tr>
<td>Literate</td>
<td>883</td>
<td>12.2</td>
<td>3819</td>
</tr>
<tr>
<td>Illiterate</td>
<td>6355</td>
<td>87.8</td>
<td>261</td>
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1 United States Census Office, The Statistics of the Population of the U.S. (1870) (compiled from the original returns of the ninth census). Adults are defined as individuals aged 21 and older. Data comes from a sample of all precincts and wards with the exception of Bovina and Davis Bend which were not coded.

41 United States Census Office, Manuscript Population Census Schedules (1870) (compiled from the original returns of the ninth census) [hereinafter 3 Ninth Census].
Commissioner in Vicksburg. Hundreds of freed people came to Platt’s office with their problems. Platt’s records indicate he patiently listened to their stories and acted in a judge-like fashion. But his “court” was more informal and paternalistic than state courts. He kept a record of every complaint, summoned persons complained of, heard witnesses, and “dismissed” cases he thought trivial or unjustified.42 Most of the blacks who came to Platt complained that their white employers had failed to pay them their wages. Platt negotiated settlements. For example, when eighteen laborers from the local brickyard crowded into his office, reporting that their boss had refused to pay them, Platt contacted the owner of the brickyard. The owner claimed he did not have the money, but agreed to pay the wages in bricks.43 Some of the blacks coming to Platt appeared to be trying out the federal official to see what he could do for them. One farm laborer complained that his employer harassed him when he failed to pick clean cotton.44 Sarah Lewis complained that a justice of the peace had seized her furniture when she failed to pay her rent. Platt explained she must pay her rent.45 One man appeared “wanting rations” and “left grumbling” when Platt would not feed him.46

Husbands and wives brought their marital problems to Platt’s attention. A wife complained that her husband paid too much attention to other women. Platt summoned the man to his office and decided the woman deserved as much, or more, blame than the husband. The agent dispensed marital advice and dismissed the case.47 Platt generally hesitated to intervene when women complained that their husbands beat or abused them. When Kittie Stephens said her husband had threatened her life, Platt reported that she had no witnesses to support her story. He gave both parties “good advice” and sent them home.48 Another woman complained that the man she had been living with had assaulted her. Platt seemed as concerned about her failure to marry as the violence: “I have given her some good advice & dismissed the case.”49

43. Id.
44. Id.
45. Id.
46. Id.
47. Id.
48. Id.
49. Id.
In some cases Platt encouraged blacks to go to state authorities. When Thomas Simms wanted his sister's children bound to him, Platt told him to go to the probate judge. Another freedman complained that his neighbor's cattle ate his crops. Platt told the man he deserved compensation and should go to a justice of the peace. Platt sent a woman wanting a divorce to state court. When the brother of a man the circuit court had imprisoned for stealing $30 complained that his brother had been jailed unjustly, Platt did nothing but dispensed more of his "good advice." When blacks did go to court, Platt sometimes acted as their unofficial counselor. Several men brought contracts and other legal papers for Platt to examine.

Platt did not just deal with freedmen; planters needed guidance from time to time as well. When one landlord complained that his hands did not fulfill their contracts, Platt wrote a letter to them "explaining things &c." Another man wanted to know "if a col'd woman has a right to bring her sick child & keep it in his qrs on his Plantation." Platt thought she "had a right to take her sick child to her house no matter where his house was." The planter left, saying "he thought it d_d [damned] strange if a man could not control his own property &c."

Platt was no lawyer, but he tried to explain to both the freed people and their former masters the ways of the world in a universe governed by law rather than paternalism or the force slavery legitimated. In some ways Platt himself served a paternalistic function and many African Americans saw his authority as a substitute for that of their former owners. But the Sub-Assistant Commissioner introduced many Warren Countians to law-like solutions for their disputes. He urged them to formalize interracial dispute resolution.

IV. CONGRESSIONAL RECONSTRUCTION

Congress commenced a new phase in efforts to reform southern society with its passage, over the President's veto, of "An Act to Pro-

50. Id.
51. Id.
52. Id.
53. Id.
54. Id.
55. Id.
56. Id.
vide for the More Efficient Government of the Rebel States" and the "Tenure in Office Act." With the first law, known informally as the Reconstruction Act of 1867, legislators invalidated state governments formed under Presidents Lincoln and Johnson, divided the former Confederacy into five military districts, and defined the terms by which seceded states could gain reentry to the Union. To prevent presidential obstruction of their plans, the Tenure in Office Act prohibited the President from removing officials confirmed by the Senate without Senatorial consent.

Under Presidential Reconstruction, ante-bellum elites had returned to power. But Congressional Reconstruction (1867-1877) thrust northern whites and southern unionists into local and state offices. Not only governors, but mayors, sheriffs, prosecutors, and judges would be, at first, appointees of military authorities. Later they would be selected in elections organized by the Republicans. Congressional Reconstruction introduced northern attitudes about law and the place of law in southern society into southern court rooms.

Northern Republicans carried South attitudes toward the defeated Confederates and the law practiced there, attitudes they had developed both before and during the Civil War. Through the 1840s and 1850s the kind of law slaveowners liked clashed with abolitionism. As northerners increasingly came to feel threatened by slavery, some judges practiced what legal scholars called instrumentalism, openly manipulating legal precedent to benefit slaveowners. The Fugitive Slave Law and Bleeding Kansas seemed to represent proof that slavery threatened local self-government. Southern secession struck many northerners as a particularly lawless act and many joined the army to restore order. While southerners had so little faith in the political process that Lincoln’s election drove them to secession, Northern citizens had extensive experience in local government and identified closely with its institutions. In the 1860s legal instrumentalism and southern lawlessness fell into disrepute, prompting many to favor law binding

60. Congressional Reconstruction is the term used to describe that period when Congress, rather than the President, dominated national decision-making on matters related to the ex-Confederate states. Historians normally date the end of national Congressional Reconstruction in 1877. In Mississippi white conservatives displaced the Republicans in November 1875.
judges with formal rules and science-like logic. Leading northern Republicans conceived of Congressional Reconstruction as a fight to bring law to the South. Postwar southern vigilantism and the so-called Black Codes struck a nerve in the North because they seemed to represent a continuation of the same threat to order that northerners fought against in the Civil War.

President Andrew Johnson placed General Edward O. C. Ord in command of the Fourth Military District which included Mississippi. Ord sought to restore order, trying horse thieves before military courts, and sending a number of them to a prison off the coast of Florida. In September Congressional Reconstruction reached Warren County when Ord removed Vicksburg’s city marshal, five of seven city councilmen, the sheriff, and one member of the county board of supervisors from office, replacing them with appointees.

The Republicans Ord and his successors put in control of county government faced a daunting task. In Warren County, ante-bellum county government had policed six thousand white citizens. Twelve thousand slaves also lived in the county, and they sometimes committed capital crimes requiring action by local authorities, but for the most part slave owners disciplined them outside the law. However, the tumult of war had brought thousands of refugees into Vicksburg. The Republicans had to extend governmental services to these new arrivals as well as to local African Americans recently freed from bondage. When they took power they had to provide governmental services to eight thousand whites and eighteen thousand black citizens. And they had no more resources to accomplish this than ante-


63. James W. Garner, Reconstruction in Mississippi 161 (1968); Harris, supra note 34, at 2.

64. Harris, supra note 34, at 10-11.


66. For the influx of refugees into Vicksburg during and after the war, see Janet Sharp Herman, The Pursuit of a Dream 37-60 (1981); Currie, supra note 65, at 33-54; Peter F. Walker, Vicksburg: A People at War, 1860-1865, at 117-19 (1960).
bellum authorities had when they ministered to a free population one fourth as large.

Mississippi Republicans recognized the writing of a new state constitution as an important step toward bringing their black constituents into the polity. The 1868 gathering, which white conservatives ridiculed as the "Black and Tan Convention," championed equality before the law, seeking to punish those white Mississippians opposed to the concept. The convention hotly debated whether to proscribe ex-Confederates from political participation. Delegates finally decided to allow ante-bellum officials disqualified from voting to redeem themselves by taking an oath admitting the "political and civil equality of all men."

The delegates also wanted to make jury selection more democratic. But there was actually little they could do to improve the existing statutory language. The 1832 constitution said nothing about qualifications for jury duty and Mississippi's law on the eve of the Civil War specified that jurors could be either freeholders or householders. This opened jury duty to renters—not just those with property. It did limit service to householders, meaning only the heads of households could serve as jurors. Before the war, few whites could even imagine a black man on a jury, but such language allowed jury service by poor white householders. Nonetheless, delegates to the 1868 constitutional convention wanted to signal the impact emancipation had made, or should make, on the legal system with language overtly outlawing discrimination. The convention considered language that would have made the householder restriction unconstitutional: "No qualification, except that of a good moral character, shall ever be required of a juror." This provision was defeated, as was a suggestion that the convention constitutionalize the old freeholders or householders statute. In the end, the convention declared that "No property qualification shall ever be required of any person to become a juror." As subsequent case law confirmed, this marked no real advance over the ante-bellum statute and the legislature promptly restored the household language, requiring that grand jurors be the head of a household.

67. HARRIS, supra note 34, at 140-48.
68. Id. at 147.
70. JOURNAL OF THE PROCEEDINGS IN THE CONSTITUTIONAL CONVENTION OF THE STATE OF MISSISSIPPI, 1868, at 229-31 (1871); REV. CODE MISS. ch. 8, art. 9, §§ 724-25 (1872).
head had to own his establishment, only that he head it, it did not violate the constitution.

The new constitution did not invent a new system of jury selection. As one observer put it, the constitution merely extended and enlarged the old system. Nonetheless, the new language symbolized the revolutionary change that had, in fact, occurred. Mississippi's highest court declared that a new day had dawned as the new constitution had "abolish[ed] property qualifications for jury service, and impose[d] the duty on all citizens alike, who are electors . . . ." The Jackson-era constitution did not limit service to freeholders, but the real change—not articulated, but real nonetheless—was that blacks could now serve on grand juries.

Some delegates wanted and most expected blacks to serve on grand juries. But eighty-five percent of black adult males were illiterate and local whites thought the majority irresponsible. Thus Mississippi's new organic law challenged and contradicted the picture most people had of a grand juror. "[T]he difficulty," Vicksburg banker and politician Alexander H. Arthur commented, "consists in the fact that all citizens have a right to be jurors, without any reference to their intelligence or education." The Republicans had created a constitution that they hoped to use to open up criminal justice in Mississippi, but it challenged conventional notions of who qualified for grand jury service.

V. Crime Control under Republican Rule

Unfortunately, Republicans had to implement their new organic law in an environment plagued with criminality. Moreover, Warren County Republicans soon established a reputation of their own for criminal behavior. Republican Sheriff Charles E. Furlong organized a corrupt court house "ring" that vigorously looted the county from 1867 through 1873. He then served several terms in the legislature and retired, living a lavish life of leisure until his death in 1907 when

71. Head v. State, 44 Miss. 731, 749 (1870). In 1879, under the influence of conservative Redeemers, Mississippi's highest court explained that the householder language meant, in fact, that not all electors had been called to service. To qualify as a grand juror, a Mississippian must be "the head, master, or person who has the charge of and provides for a family." This excluded persons who were "subordinate members or inmates of the household." Nelson v. State, 57 Miss. 286, 288 (1879). Republicans emphasized how inclusive the constitutional language was; the Redeemers pointed out that it allowed some limitations.

72. See supra note 40.

he left an estate valued at half a million dollars.\textsuperscript{74} Furlong left the sheriffalty because blacks agitated for control of county government. But they proved not much better than Furlong. Born a free black in ante-bellum Charleston, South Carolina, Thomas W. Cardozo sought political office in South Carolina, superintended a black school in Baltimore, and ran for sheriff in North Carolina. He came to Vicksburg only after finding his political ambitions rebuffed elsewhere. In Mississippi he became Warren County circuit court clerk, state superintendent of education, established the United Order of Odd Fellows, and served as an officer in the Union League. But his ambition and greed apparently overshadowed any desire to help his constituents. In 1874 and 1875 Warren County grand juries charged him with graft and a subsequent petit jury deadlocked on the charges against him.\textsuperscript{75}

Given such corruption, it may seem incongruous to observe that Warren County Republicans championed law, calling for more rigid enforcement of the criminal laws to end what everyone recognized as an epidemic of disorder.\textsuperscript{76} But they understood the necessity for restoring respect for the law in Mississippi. Governor James L. Alcorn described law and order as “the first condition of Liberty.”\textsuperscript{77} When Alcorn appointed three commissioners to codify Mississippi’s criminal code, local Republicans crowed triumphantly. As they saw it, “the modern Democracy is a foul combination of treason to the Union, treachery to the right of the people, hostility to the ballot-box, intolerance, ostracism, murderers, horse thieves and Ku Klux.” Writing a new set of laws would put such rascals on the run. Codification carried “a political significance wherein the Democracy can read their fate.”\textsuperscript{78} Republicans attacked the South’s honor code as a source of disrespect for law. They also offered temperance as a solution for lawlessness.\textsuperscript{79} One Republican judge thundered from the bench that most crime resulted from drunkenness. He quoted a local minister

\textsuperscript{74} MICHAEL W. FITZGERALD, THE UNION LEAGUE MOVEMENT IN THE DEEP SOUTH: POLITICS AND AGRICULTURAL CHANGE DURING RECONSTRUCTION 97-98 (1989).

\textsuperscript{75} State v. Cardozo, No. 528 (May 1874); State v. Cardozo, No. 592 (Nov. 1874); State v. Cardozo, No. 531 (Nov. 1874); State v. Cardozo, No. 532 (Nov. 1874); State v. Cardozo, No. 533 (Nov. 1874); State v. Cardozo, No. 534 (Nov. 1874) (all in Warren County Circuit Court Papers, Old Court House Museum) [hereinafter OCHM]; Euline W. Brock, \textit{Thomas W. Cardozo: Fallible Black Reconstruction Leader}, 47 J. S. Hist. 183-206 (1981); ERIC FONER, FREEDOM’S LAWMAKERS: A DIRECTORY OF BLACK OFFICEHOLDERS DURING RECONSTRUCTION 40 (1993).

\textsuperscript{76} VICKSBURG TIMES AND REPUBLICAN, Aug. 21, 1870.

\textsuperscript{77} HARRIS, supra note 34, at 394.

\textsuperscript{78} VICKSBURG TIMES AND REPUBLICAN, July 23, 1870.

\textsuperscript{79} VICKSBURG TIMES AND REPUBLICAN, Aug. 6, 1870; VICKSBURG TIMES AND REPUBLICAN, Aug. 12, 1879; VICKSBURG TIMES AND REPUBLICAN, Sept. 2, 1870. Agitation for temperance continued, of course, beyond Reconstruction. See Ayers, supra note 5, at 256-59.
who had styled “petty” grocery stores and dram shops “the breathing holes of hell.” There was only one remedy, and that was to enforce the law, even against “men of wealth and possessors of friends.”

Mississippi’s Republican-dominated legislature demonstrated its conviction that alcohol rather than race lay at the heart of their state’s crime problem by passing tough new temperance legislation. In March and April, 1873, Mississippi Republicans enacted three new temperance laws. Such laws were hardly unprecedented. Antebellum legislatures had passed three major pieces of temperance legislation. In 1839 the legislature made it illegal for candidates to “treat” or make gifts of liquor to voters. This law also made it illegal to sell alcohol to Indians or blacks, or for anyone to sell liquor in quantities of less than a gallon. An 1842 law required the licensing of liquor sales, and in 1854 the legislature further tightened licensing. But the Reconstruction legislation represented something altogether new. Republican lawmakers passed a statute ousting officials caught drunk on the job. The author of the 1839 law thought drunkenness had been pervasive in his state, even among judges, legislators, and governors, but he did not dare propose discharging such drunken officers. Even the mild law he did propose sparked protests.

Another law, entitled “An Act to Provide Against the Evil Resulting from the Sale of Intoxicating Liquors,” outlawed the sale of liquor to minors and required that “all rooms, taverns, hotels, eating-houses, bazaars, restaurants, drug stores, groceries, coffee-houses, cellars, or other places of public resort” in violation of the law be shut down. Family members of persons injured or killed as a result of any person’s drunken behavior could seize the property of the purveyor of the alcohol or, in the case of a renter, his or her landlord’s property. A third law tightened restrictions on any druggists and physicians who might “prescribe” alcoholic beverages as a way around the law. Mississippi Republicans used law to control social behavior in new and unprecedented ways.

80. VICKSBURG TIMES AND REPUBLICAN, Aug. 6, 1870.
81. Act of Apr. 18, 1873, ch. 80, 1873 Miss. Laws 84; Act of Mar. 17, 1873, ch. 93, 1873 Miss. Laws 97; Act of Apr. 17, 1873, ch. 94, 1873 Miss. Laws 102.
84. HENRY S. FOOTE, CASET OF REMINISCENCES 264-74 (Chronicle Publishing Co. 1968) (1874).
85. Act of Mar. 17, 1873, ch. 93, 1873 Miss. Laws 97, 97-98.
86. Act of Apr. 17, 1873, ch. 94, 1873 Miss. Laws 102.
If Republicans gained control of the selection of grand juries, they could encourage black crime victims to challenge the authority of whites in court. In 1869 such an historic step began to seem possible when Albert Johnson became the first black supervisor, an appointee of General Adelbert Ames. By 1871 blacks outnumbered whites on the Board three to two. From 1872 through 1874 every member of the Board but one was black. As had been the case during Presidential Reconstruction, each supervisor made nominations to the grand jury in an open meeting. But when the Republicans controlled the Board, their conservative opponents attended meetings where they loudly objected to proposed grand jurors. The Republican prosecutor commented that the Board "allowed a loose sort of practice to prevail, and anybody could come in and talk." He stated that "offensive and rude" people challenged the Board in public meetings while they chose grand jurors and added "I don’t think they appreciated the indecency of it." More often than under Presidential Reconstruction, the sheriff reported he could not locate the persons nominated. In some cases the Board failed to nominate anyone and in such cases the sheriff chose the jurors without direction. Between 1868 and 1875, this happened over half of the time, often enough to allow white conservatives to plausibly complain that the sheriff chose grand jurors not from a list of any kind but from among his friends.

Had the Republican sheriff and the Board of Supervisors chosen truly representative grand juries, illiterate ex-slaves would have dominated Warren County grand juries. By law Warren County supervisors could select as grand jurors male householders between twenty-one and sixty years of age except state court officers, doctors, teachers, keepers of public mills and ferries, ministers, officers of the U.S. government, and lawyers. In 1870, 4,602 Warren County men qualified for jury duty. Seventy-four percent of these men were black. Sixty-six percent of those eligible for jury duty were under forty-one years of age. Sixty percent could neither read nor write. Seventy-six percent were either laborers or farmers. Ninety percent owned no land whatsoever. In other words, a grand jury really reflective of Warren County's population would have been made up primarily of young black laborers or farmers who owned no land. Although

89. 3 NINTH CENSUS, supra note 41. Literacy data comes from all precincts and wards with the exception of Bovina and Davis Bend which were not coded. All other data comes from the entire county.
barely forty percent of Warren Countians eligible for jury duty could read and write, a representative jury would have been overwhelmingly illiterate. In Warren County three quarters of white heads of household qualified for jury duty could read and write; ninety-seven percent of eligible blacks could not. A truly representative grand jury would have included many "country negroes," ex-slaves still performing agricultural labor on rural Warren County plantations.

The Republicans achieved impressive gains in opening grand jury service to blacks. But Republican grand jurors did not represent a cross section of Warren County society. Thirty-five percent were black, a vast improvement over the dismal record achieved during Presidential Reconstruction to be sure, but blacks made up seventy percent of Warren County's population. Measured against that standard, rather than the pitiful record compiled during Presidential Reconstruction, Warren County Republicans did poorly. Nor did Warren County Republicans encourage illiterates to participate in the criminal justice system as grand jurors. Eighty-eight percent were literate. Thirty-one percent had no property recorded in the 1870 census and forty-three percent had less than $500 in property. The change from Presidential Reconstruction to Congressional Reconstruction had little effect on the wealth of grand jurors.

But looking at all grand jurors chosen between 1868 and 1875 can be misleading. Republican power waxed and waned; during some years they operated more confidently than in others. The Republicans could most freely choose the jurors they wanted between 1870 and 1873. Not that conservative whites did not hinder the Republicans at all then, but they seemed less threatening than they would later. Nonetheless, while Republicans chose more representative jurors during this period, even then their grand jurors largely resembled the residents of Warren County.

90. For literacy data on all Warren County adults, see supra note 40. This data also comes from the 1870 census but is limited to those legally qualified for jury duty.

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3 NINTH CENSUS, supra note 41. Adults are defined as individuals aged 21 and older. Data comes from a sample of all precincts and wards with the exception of Bovina and Davis Bend which were not coded.

91. Id.

92. But in Greene County, Georgia, they did even worse. Not one black man served on a jury in that black-majority county. See Jonathan M. Bryant, 'A County Where Plenty Should Abound': Race, Law, and Markets in Greene County, Georgia, 1850-1885, at 63 (1992) (unpublished Ph.D. dissertation, University of Georgia).
the ideal all aspired to regardless of political affiliation. Of 120 grand jurors identified by race who served between 1870 and 1873 in census and tax records, sixty were black. Eighty-five percent claimed they could read and write. Almost half the grand jurors owned $500 in property or less. At the height of their power, Republicans chose jurors who far better resembled the county as a whole than their white conservative predecessors. But even during their salad days, Republicans showed a preference for literate white jurors with substantial property holdings.

Historian William A. Dunning and his followers once criticized black southerners associated with Reconstruction governments as incompetent and corrupt. But the blacks Warren County supervisors chose to sit on their grand juries had a positive impact on criminal justice. Many more blacks brought their grievances against other blacks or against whites during this period of integrated grand juries than they had before. Those blacks who served as jurors surprised white observers by the vigor with which they went after crimes committed by their fellow blacks. The integrity of black men chosen as grand jurors carried over into their service on trial juries and can be most easily documented by the comments of whites at public trials. When asked about the willingness of "colored [petit] jurors" to convict those of their own color, one white judge complained that "[t]hey have manifested too great an eagerness to do so." Perhaps black jurors wanted to prove themselves or sought to rid their community of its criminal element. Or they may simply have cared less about whites who victimized other whites or felt they had to defer to whites. In any case, criminal lawyers with black defendants preferred white trial jurors over blacks. One prosecutor said some black grand jurors shielded a few criminals, but no more often than whites and "it is generally the other way." This prosecutor also praised the fairness of black jurors, saying "if I were on trial as a white man, I would rather be tried by a colored jury than by a white one."

Of course, black service on grand juries was not the only variable driving the statistics. After May 1870 carpetbagger George F. Brown served as circuit judge. Brown moved to Mississippi in 1867 and served as a delegate to the 1868 constitutional convention before becoming circuit judge. As judge he tried to stay out of politics and

93. WILLIAM A. DUNNING, RECONSTRUCTION: POLITICAL AND ECONOMIC, 1865-1877, at 112 (1907); GARNER, supra note 63, at 269, 308.
95. MISSISSIPPI LEGISLATURE’S JOINT COMMITTEE REPORT, supra note 87, at 29.
avoided making speeches. He once told a Congressional committee he had no special "influence" over Warren County blacks, suggesting he had little contact with them at all.  

But if the judge proved a non-entity, the district attorney played a more important role. It was he that actually listened to complaining citizens and encouraged or discouraged them after hearing their stories. He wrote the indictments. For Warren County blacks interested in criminal justice, Luke Lea was the most important white man during Reconstruction. Lea, though a native of staunchly Republican east Tennessee, had lived in Mississippi thirty years by the 1870s. Before the war he had been an active, if politically unsuccessful, Whig. The Democratic newspapers in antebellum Vicksburg called him a "democratic" Whig, apparently because his plain habits and sympathies set him apart from the more haughty variety. Later, as U.S. Attorney, he proved so lenient toward impoverished loggers poaching on public lands that the Attorney General tried to fire him. Lea genuinely tried to make the criminal justice system responsive to black concerns, once telling a largely black audience that "he had never gone among the colored men telling them how much he loved them; but can any of you . . . point to an instance were I have not been found at my post when one of you desired my assistance?"

The case of State v. Johnson illustrates the importance of open access to law. Many blacks had few possessions, and their title to the belongings they could claim was regarded by many as questionable. In 1872 William Johnson pretended to Isaac Harris that he was, in the words of his subsequent indictment, "a great doctor & conjurer." Johnson explained to Harris that he had determined that Harris's wife Jane had been bewitched "& that a certain frog had been magically & hoo-dooishly introduced into the stomach of the said Jane Harris." Johnson assured Harris that he could not only remove the frog but prevent its return. To convince Harris that his wife had a frog in her stomach would have been a relatively simple matter for a skilled "conjure man." As one conjuror explained later, he would have induced

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98. VICKSBURG TIMES, Aug. 16, 1871.  
the woman to vomit and then dropped a hidden frog in the bucket.\textsuperscript{100} To make sure the frog did not return, Johnson explained, he would need to borrow Harris's mule for a while for two magic feedings. When he did not return with the mule, Harris went to the authorities. The Republican district attorney listened to Harris and wrote an indictment; the Republican sheriff arrested Johnson and jailed him; the grand jury returned an indictment. In one sense Johnson's trial was a very ordinary fraud case. In another, it shows the legal system helping a crime victim new to the polity protect his property. During Presidential Reconstruction white conservatives might well have dismissed such a case as merely "nigger business." Probably no black would have bothered to bring such a case to the attention of authorities in the first place. If any did, no record exists of it. In this case a black man fought to keep his mule, the most important "implement" a nineteenth-century farmer could own.\textsuperscript{101}

In court Johnson went right to the heart of the matter, challenging Harris's property rights, claiming that the mule did not really belong to him. Johnson sought to keep their fight outside the legal sphere. Although a black man himself, he implicitly made the argument white conservatives would have endorsed: Harris was just an "uppity nigger" claiming to own a mule. Brown rejected Johnson's argument: "If Harris had made a contract for the purchase of the mule & had paid part of the purchase money & had possession of the mule under contract, then he had such a title to the mule as is sufficient to maintain this indictment." Harris kept his mule; Johnson went to jail.\textsuperscript{102} Encouraging men like Harris to take to court cases like the one he brought against Johnson should have been a high priority for Warren County Republicans. It meant bringing a population excluded from participation in law under slavery within the rule of law.

But, while access under Lea was better than at any other time, it was not good enough. Between 1868 and 1875 the mean value of real and personal property held by complainants (as recorded in the 1870 census) was $11,342, or nearly the same as had been the case during Presidential Reconstruction. Fifty-one percent were literate as compared to eighty-three percent during Presidential Reconstruction. And blacks made up only nineteen percent of the population of com-

\textsuperscript{100} Richard M. Dorson, \textit{American Negro Folktales} 193-95 (1967); Leslie Howard Owens, \textit{This Species of Property: Slave Life and Culture in the Old South} 42-43 (1976).

\textsuperscript{101} State v. Johnson, No. 337 (Nov. 1872) (OCHM).

\textsuperscript{102} Id. (judge's instructions).
plaintants. Even in the best year, blacks made up only fifty-four percent of complainants. Between 1870 and 1873, when Republicans chose jurors most freely, complainants averaged $13,846 (but the median was only $100) in property and only forty-six percent were black. Half owned nothing and half could neither read nor write. This represented a vast improvement over what came before, but the bulk of illiterate young African-American farmhands never saw the inside of Warren County's court house as jurors, defendants, or complaining witnesses.

During the Republican era most cases in court involved white-on-white crime, just as had been the case during Presidential Reconstruction. Four-hundred-and-forty-two defendants in Warren County circuit court can be identified in cases where the victim is also identifiable by race. This represents only a sample of the total, but it is a random sample. Between 1865 and 1867, 184 (or 70% of cases prosecuted where both parties can be identified by race) involved white complainants and white defendants. Between 1868 and 1875, 114 (or 73% of the cases) involved such white-on-white crime. In only twenty-eight cases between 1870 and 1873 can both defendants and victims be identified by race. However, the numbers are suggestive if not entirely conclusive. During this highpoint of Republicanism ten cases involved white-on-white crime, about a third of the identifiable total. Nine crimes alleged crimes by black defendants with white victims. Three black victims charged whites with crimes. Even during this period of maximum Republican influence, only 6 blacks charged other blacks with crimes. If this tiny sample is representative, then white-on-white crime still dominated, even during the Republican era, but not as much as at other times.

One obvious possibility is that in Warren County whites actually committed more crimes against other whites than against blacks. Perhaps whites committed more crimes than blacks and almost always against each other, rarely harming African Americans. But scholars of crime statistics warn against relying on grand jury indictments as a "crime rate." There is always a "dark figure"—crimes committed that never reach the grand jury.103 This must have been true in Warren

103. The most important work in trial records has been carried out by students working in time periods before the publication of opinions from appeals courts. These scholars warn about the "dark figure." See J. M. Beattie, Towards a Study of Crime in 18th Century England: A Note on Indictments, in The Triumph of Culture: 18th Century Perspectives 299-314 (Paul Fritz & David Williams eds., 1972); V.A.C. Gatrell & T.B. Hadden, Criminal Statistics and Their Interpretation, in Nineteenth-Century Society: Essays in the Use of Quantitative Methods for the Study of Social Data 350-51 (E.A. Wrigley ed., 1972); John I. Kitsuse &
County; it seems unlikely that blacks there would have been unusually law-abiding when blacks elsewhere committed ordinary assaults and robberies at roughly the same rate as whites. Poverty may have made them more prone to theft. Nor does it seem likely that criminally-inclined and violent whites would have been particularly solicitous of black sensitivities. Organized lawlessness directed against blacks did not become common in Mississippi until the so-called “Black and Tan Convention,” but Freedmen’s Bureau records make it clear that the more casual variety that occurred between employer and employee was endemic. Eric Monkkonen offers the soundest advice: remember that “criminal justice data measure system behavior, not necessarily individual offender behavior.”

Only when Republicans stood at the apex of their power could they significantly shift the criminal justice system away from its heavy bias toward white-on-white crime. And even then crimes alleged by black victims constituted less than half of all crimes alleged. Most significantly, only a tiny percentage of blacks took allegations against white defendants to the criminal justice system. Coming at a time of night-riding terrorism and a daily cascade of casual violence, blacks thought it far safer to take complaints against other blacks to court than allegations against white criminals.

VI. REDEMPTION

Perhaps even a handful of blacks willing to directly challenge the master race in court proved intolerable to whites. Or maybe the few raised the spectre of many more to come, if black political power was allowed to grow and flourish. In any case, white conservatives worked to “redeem” power. Their efforts began in 1868 when Republicans wrote a new state constitution. The Ku Klux Klan launched its reign of terror and white conservatives held protest meetings, but these early efforts at organization proved feeble. In Vicksburg a meeting of citizens pledged not to pay one dollar in taxes to governments sanc-


104. This seems to have been the case in Texas. See Donald G. Nieman, Black Political Power and Criminal Justice: Washington County, Texas, 1868-1884, 55 J.S. Hist. 391 (1989).

tioned by the new constitution. The gathering named a committee to ask the commander of the Fourth Military District if he intended to collect taxes "with bayonets." But while the initial Vicksburg meeting was "numerously attended" nothing immediately came of it.106 Five years later the Tax-Payers League complained that too few whites belonged to make the organization effective. One meeting broke up when organizers could not even muster twenty-five stalwarts for a quorum.107

Republican efforts to bring law to Mississippi inflamed many whites. While the Republicans advocated temperance, implicitly dividing society along non-racial lines, the Democrats attacked black voting and urged establishment of a white man's party.108 From the Democrat's perspective, lawlessness resulted from the nature of the "black beast" rather than from liquor. The Democrats' chief organ in Vicksburg, the Vicksburg Herald, relentlessly catalogued every alleged black criminal act, regularly rushing to judgment. In July, 1873, the paper decided that a black alderman had been receiving and selling stolen goods and declared that he should "resign his aldermanic office and prepare for a pilgrimage to [the prison in] Jackson—if the courts do their duty and his guilt is established." The courts did not "do their duty," probably because the alderman had actually committed no crime.109 A den of thieves operated out of a neighborhood whites nicknamed "Poverty Flat."110 According to the newspapers black men regularly exchanged shots in saloons over their "paramours."111

The Herald claimed two black women got into a fight over "a young Lothario" and one "carved into mincemeat [her] colored sister."112 The Democrats claimed that Republican political meetings resembled anarchic drunken rows where whisky flowed, bullets flew, and fights were frequent.113 Repeating reports it could never confirm, the Herald described one Republican politician as "a 'yaller nigger' from the North—half Mexican and half negro—so said to be, and reported to be a convict from Sing Sing prison."114

The Democrats relentlessly ridiculed Republican efforts to discipline blacks through law. This can be seen best in the Herald's treat-

106. VICKSBURG TIMES, Feb. 2, 1868.
107. VICKSBURG HERALD, Apr. 12, 1873.
108. VICKSBURG TIMES AND REPUBLICAN, Aug. 23, 1870.
109. VICKSBURG HERALD, July 11, 1873; VICKSBURG HERALD, July 20, 1873.
110. VICKSBURG HERALD, July 12, 1873.
111. VICKSBURG HERALD, July 13, 1873.
112. VICKSBURG HERALD, Oct. 5, 1873.
113. VICKSBURG HERALD, Aug. 13, 1873.
114. VICKSBURG HERALD, Oct. 11, 1873.
ment of Vicksburg's city court as a kind of continuing comedy. After local blacks called for an "indignation" meeting to protest a judicial ruling against the state civil rights law, the Herald began jokingly referring to the police court as an "indignation meeting" held by "a motley group of a dozen persons of various complexions, tastes, and affinities."\(^\text{115}\) A few days later the paper sneered at "Judge Arthur's Pets at His Daily Matinee."\(^\text{116}\)

Vicksburg Republicans left themselves open to such attacks by the way they ran their courts and public forums. The Republican Times conceded that the city court ignored "the majesty of the law" by allowing smoking and loud talking. "Yesterday," the newspaper reported, "our attention was drawn particularly to this subject by the conduct of a son of Erin, who, having received his sentence, coolly drew forth his 'dudeen,' and seating himself in a chair with one foot resting on another sat as complacently smoking as if he were the judge and jury combined." The newspaper completed the scene by describing the antics of "a crazy negress roaming around the court in an almost nude condition."\(^\text{117}\) Despite such warnings from the press, Vicksburg Republicans never worried enough about decorum, giving currency to Democratic criticism.

Black lawlessness and what some whites saw as ludicrous efforts to discipline savages through law convinced many whites of the need to redeem their government. But it was black agitation for political office that galvanized Warren County whites into action. Black Republicans made only limited headway in 1871, but in 1873 they further horrified whites with new efforts to gain legal recognition of their civil rights and launched an effective crusade for higher political office. At the Republicans' 1873 summer convention blacks dominated the proceedings. They refused to renominate the incumbent white Republican for sheriff, chancery clerk, or circuit clerk, offering a black candidate instead. Whites remained as prosecutor and judge, but observers recognized the sheriff as the traditional leader of the court house "ring," boss of the county.\(^\text{118}\) In November Warren County elected Peter Crosby, a thirty-year-old black man originally from Clark County, sheriff. Other blacks became chancery and circuit clerks.\(^\text{119}\)

115. Vicksburg Herald, May 6, 1873.
117. Vicksburg Times, July 13, 1871.
119. Vicksburg Herald, Nov. 5, 1873.
Crosby's election energized the all-white "Tax-Payers League."\footnote{120} By the summer of 1874 racial tensions in Vicksburg had become palpable. Whites won control of the city government. Rival black and white militias paraded in the streets trying to intimidate each other.\footnote{121} By the end of 1874 whites felt strong enough to march on the court house and demand the resignations of black officeholders and they succeeded in wresting a resignation from the black sheriff.\footnote{122} Crosby consulted with Mississippi's Republican governor and, getting no solace there, led Warren County blacks in a march on Vicksburg. Whites, organized in militia companies, resisted, killing blacks as they approached the city.\footnote{123}

Subsequently, the U.S. Army returned Crosby to office, but Republicans' efforts to restore law and order to Mississippi had already collapsed. Congressional Reconstruction did not formally end in Mississippi until November 1875 when white conservatives triumphed at the polls. But just six months after the Army had restored Crosby to office, a Natchez newspaper described Warren County as being in a state of anarchy. "The city of Vicksburg and county of Warren are virtually at the mercy of an infuriated mob of political desperados. There is but little if any security for life or property."\footnote{124}

Through 1875 white criminality undermined and intimidated black and white Republicans. This was true even though blacks and Republicans nominally controlled the board of supervisors and other local offices until the end of 1875. Republicans found it impossible to organize a meeting. Few dared attend. When they did hold a meeting to celebrate the Fourth of July a file of white conservatives entered the court house in the midst of a speech and quietly lined up around the room. The silent intimidation did not last long. One of the whites fired his pistol, killing a white Republican, and the crowd stampeded as the whites yelled "Get out of here, you radical sons of bitches!"\footnote{125} Armed white teenagers prowled Vicksburg looking for blacks they could stop and then order to run for their lives. Sometimes they shot in the air as the frightened African Americans fled, but they shot several men.\footnote{126} Subsequently Warren County's black Republicans pru-
dently decided to nominate a white Democrat for sheriff rather than a Republican. As one Republican later explained, "as politicians do, we sometimes mix up things to get at what we want" and so supported T. C. Bedford, "knowing he was a democrat; but we judged he was a good citizen and would administer the laws impartially; . . . we felt sure he would protect us . . . ."127

But white conservatives would not tolerate even that. Insisting that the blacks support their own racist candidate for sheriff, they assassinated one of the leading proponents of the scheme to nominate Bedford.128 Sixty or seventy blacks met in a hotel to discuss whether they should dare nominate Bedford in the face of such violence, but whites broke up the meeting.129 Thereafter blacks met secretly in swamps or in hushed, unlit cabins at night.130 Whites permitted Republicans to nominate their own candidates for offices other than sheriff, but shortly before the convention they tried to assassinate the Chancery Clerk, killing his brother-in-law instead. They did murder B. L. Hickman, a supporter of T. C. Bedford, and wounded two others. That night the Chancery Clerk, George W. Davenport, fled the city.131

Whites put the word out that they intended to carry the election "at all hazards,"132 frankly telling black politician and minister S. H. Scott of their plans to win the election by any means necessary. As Scott later remembered ruefully, "and sure enough they did."133 A particularly violent wing of the local Democratic party called the Modocs championed the conservative whites' candidate for sheriff. In September a group of black citizens petitioned the governor for protection, complaining that these Modocs were "better prepared now for fighting than they was before the war." The "rebs," these citizens continued, ride around at night "taking arms from the colored folks daring to ever leave home."134 The Modocs did not stop at violence; they bribed election officials, bought votes, and stuffed the ballot boxes. Naturally, they won the election.

127. Id. at 1319 (S.H. Scott testimony).
128. Id. at 1320 (S.H. Scott testimony).
129. Id. at 1355 (W.W. Edwards testimony).
130. Id. at 1379 (D.J. Foreman testimony).
131. Id. at 1338 (S.H. Scott testimony). For the convention, see JACKSON PILOT, Oct. 19, 1875. For the murders, see State v. Green, No. 613 (OCHM); State v. Green, No. 629 (OCHM).
132. S. REP. NO. 527, supra note 125, at 1340 (G.M. Barber testimony).
133. Id. at 1326 (S.H. Scott testimony).
134. Id. at 89 (Colored Citizens to Ames, Sept. 8, 1875).
VII. TRENDS IN THE DATA

All this violence destroyed Republican influence over criminal justice in Warren County, even as Republicans continued to formally control the machinery of criminal justice. After 1874 the percentage of black grand jurors in Warren County sharply declined to twenty-five percent of the total. Through the remainder of the decade the redeemers kept the number of black grand jurors at about that level. These mostly white grand juries resisted returning many indictments based on black complaints and proved less receptive to the testimony of illiterates as well. Only fourteen percent of complainants could not read or write. But this trend started well before the so-called redeemers formally took control of the court house.

The effects of these political shifts can be plotted by looking at what percentage of complainants were black. A statistical technique called "smoothing" makes these trends even clearer. Statistician John W. Tukey explains smoothing as a way "to unhook the viewer's eye from the minor wiggles" inherent in raw data. To do this Tukey uses what he calls a running median, the median of three successive val-
ues. When black complainants are smoothed with a running median, the result looks like this:

Figure 2
Black Victims as Percentage of Total Victims: Smoothed

Smoothed, the data shows more clearly tendencies in the raw data. These trends closely follow Reconstruction politics. Tracking Republican voting from the late 1860s through 1880 provides a quantitative picture of Reconstruction. In 1868, fifty-seven percent of Warren County voters voted for Republican and former Union army general George McKee in his bid for a Congressional seat. Congress refused to seat McKee and the next year Mississippi held another election and McKee ran again, receiving 71.9% of the vote. Congress still refused to admit McKee but his strength suggests that Republican Reconstruction had become firmly entrenched. This proved the highwater mark for Republican voting power in Reconstruction Mississippi. In 1872 the Republicans garnered sixty-five percent of the vote in the congressional district that included Warren County, in 1875, forty percent, in 1876, thirty percent, and finally, in 1878, only

135. JOHN W. TUKEY, EXPLORATORY DATA ANALYSIS ch. 7 (1977).
136. Congress did not readmit Mississippi to the Union, and allow Mississippi representatives seats in Congress, until February 23, 1870. 16 Stat. 67 (1870).
seventeen percent even though this last election occurred after the
district had been gerrymandered to give blacks a majority.137

When Republican voting strength is plotted against blacks as a
percentage of complainants, two things become clear. Participation in
the criminal justice system by freed people lagged behind their asc-
cending voting strength between 1868 and 1872. Their willingness to
enter the criminal justice system dropped well in advance of the de-
cline of their political fortunes after 1872. The 1875 election merely
ratified the reality reflected in decreasing black influence on grand
juries and their declining willingness to call on the courts for help.

Blacks participated in Warren County grand juries in a pattern
that resembled the willingness of freed people to bring their com-
plaints to criminal court. Figure 3 shows a plot of the black propor-
tion of Warren County grand jurors and figure 4 shows the same data
smoothed. As had been the case with complainants, black grand jury
service increased during Congressional Reconstruction and decreased
after Redemption.

Figure 3

Black Grand Jurors as Percentage of Total

<table>
<thead>
<tr>
<th>Year</th>
<th>1865</th>
<th>1870</th>
<th>1875</th>
<th>1880</th>
</tr>
</thead>
<tbody>
<tr>
<td>0+</td>
<td>*</td>
<td>*</td>
<td>*</td>
<td>*</td>
</tr>
<tr>
<td>20+</td>
<td></td>
<td></td>
<td>*</td>
<td>*</td>
</tr>
<tr>
<td>40+</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>60+</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

137. CONGRESSIONAL QUARTERLY INC., CONGRESSIONAL QUARTERLY'S GUIDE TO U.S.
ELECTIONS 776, 778, 780, 783, 789, 791, 795 (1985). For Congressional redistricting, see KEN-
NETH C. MARTIS, THE HISTORICAL ATLAS OF UNITED STATES CONGRESSIONAL DISTRICTS,
Between 1865 and 1872 the percentage of black complainants consistently exceeded the percentage of blacks serving in grand juries. Between 1872 and 1876 the percentage of black grand jurors exceeded the percentage of blacks among complainants. After 1876 blacks again complained in proportions greater than their share of the grand juror population. During Presidential Reconstruction and after redemption black complainants demonstrated a determination to use the criminal justice system in excess of the Board of Supervisors' willingness to admit blacks on grand juries.

But the plots confirm that blacks never made full use of the legal system. Racism explains white unwillingness to admit blacks into court and racial violence explains the reluctance of black victims of white violence to step forward. But racism is a less satisfactory explanation for the incomplete use blacks made of the criminal justice system between 1870 and 1873. The high rate of illiteracy among blacks either discouraged their participation in the legal system, or serves as a proxy for another variable which did. Literacy was closely correlated with participation in the criminal justice system. Although the freed people were overwhelmingly illiterate, between 1865 and 1879, sixty-nine percent of victims were literate. The success illiterates had
in securing indictments from a Warren County grand jury closely matched that of blacks. Few illiterates complained during Presidential Reconstruction, many more under the Carpetbaggers,\textsuperscript{138} and fewer again under the Redeemers.\textsuperscript{139}

But race, literacy, and voting Republican were intertwined, raising the thorny issue of multicollinearity. Closely correlated variables can make it nearly impossible to distinguish the effect of one from another. About ninety-three percent of Warren County white adults could read and write while only about twelve percent of blacks could.\textsuperscript{140} Naturally, then, when blacks increased their participation in the criminal justice system this meant illiterates did too. But even among whites, the literate complained far more often than the illiterate. And under the Republican regime, when blacks and illiterates had their best chance at participation, twenty-two percent of black complainants could read and write, a far higher percentage than among the general black population. It appears, then, that even when the Republicans controlled the court house, literate blacks felt more comfortable going to law than the illiterate or perhaps officials took the complaints of literate blacks more seriously than illiterate blacks. Literacy itself may have had little to do with access to justice. Perhaps persons marked illiterate by census enumerators lacked the self-confidence to approach prosecutors or, if they could summon the courage to visit an important white man in his court-house office, make a good presentation. In the quarters the slaves always understood that some of their number knew "how to Talk before White People" while the less articulate did not.\textsuperscript{141} It is impossible to know just what variable literacy really represented even though it is possible to demonstrate a greater statistical correlation between literacy and participation in the criminal justice system than between Republican voting strength and black participation in that system. Since eighty-eight percent of blacks could neither read nor write, this bias against illiteracy (or what it represented) constituted a serious, if not insurmountable, barrier to full access to law by freedpeople.

\textsuperscript{138} Like many political labels, the term "Carpetbagger" came from the enemies of the group being labeled. Southern whites applied the term pejoratively to northern Republicans who came South to hold political office. As is typically the case with such nomenclature, the term has passed into general use.

\textsuperscript{139} White racists who seized power in the mid-1870s called themselves "Redeemers" because they "redeemed" power. Undoubtedly they recognized the Biblical connotations of the label and embraced it for precisely that reason.

\textsuperscript{140} See supra note 40.

\textsuperscript{141} Wyatt-Brown, supra note 6, at 1243-44.
When Republicans came to power in Mississippi they had two traditions in jury selection to choose from. Common law practice required sheriffs to choose not representative juries but juries composed of the "best" sort of men from their communities. But the Revolutionary War left a more egalitarian legacy. Many states had boxes or wheels for blind drawings of jurors. Since states often limited whose name could go in the wheel or box, this provided more the trappings of random selection than actual randomness. But some jurisdictions, most notably North Carolina and the Arizona Territory, did open grand jury service to all male householders.

But most lawyers and other observers, even Republicans, believed grand juries should not include the illiterate or the impoverished. This conviction crippled efforts to open the criminal justice system to participation by all. Mississippi Republicans could not overcome their legal system's bias for literate grand jurors with property. In other places Republicans did place illiterates and impoverished citizens on grand juries. But in Mississippi they could not, in effect, overcome the thinking represented by Blackstone when he called grand jurors the "best gentlemen" in their jurisdictions—even though they obviously had the political strength to do so. Mississippi Republicans chose not to fashion a jury selection statute similar to that devised by their contemporaries in Arizona, or to North Carolina's older law. Nor did county officials encourage the poor or poorly educated to serve on grand juries. Political conservatism does not explain this; only the conservatism of the legal culture, more powerful and pervasive than mere political ideology, could have persuaded Republican lawyers and officials that most of their constituents were not fit grand jurors.

Blacks enjoyed better access to law for a short time under the Carpetbaggers than at any other time from 1865 through 1879. But even that access did not encourage many illiterate croppers and renters to approach the grand jury or a magistrate or the prosecutor. A determined crime victim might well take his or her case to a grand jury regardless of who was on it. But through Reconstruction and after many in Warren County must have watched the courts, calculating just how open post-emancipation justice would turn out to be. With few or no illiterate ex-slave field hands serving on the grand jury, it seems likely that a huge segment of the population calculated that the

142. Nieman, supra note 104, at 404 tbl. 4.
criminal justice system had not yet opened to them. If this is correct, then countless fights and other disputes between rural blacks and acts of violence perpetrated on blacks by whites never went to court because black crime victims concluded the courts were not for them.

During Reconstruction Warren County blacks never gained the access to law they needed to protect themselves from lawlessness. For just a moment between 1870 and 1873 they enjoyed an unprecedented access to criminal justice, far greater than they had ever enjoyed as slaves or would as freed people under the Redeemers. But even then only a tiny minority of uneducated rural black farmhands saw the courts as a forum interested in their problems. Black county officials chose black jurors more often than white jurors. But even they preferred a few literate blacks over the many illiterate; property holders over the propertyless. White and black Republicans failed to entirely open up the system to equal participation by all; they could not make the law protect African Americans.
APPENDIX

TABLE 1

BLACK GRAND JURORS IN WARREN COUNTY, MISSISSIPPI

<table>
<thead>
<tr>
<th>Year</th>
<th>% Black</th>
<th>N. Black</th>
<th>Total Identified by Race</th>
</tr>
</thead>
<tbody>
<tr>
<td>1866</td>
<td>0</td>
<td>0</td>
<td>37</td>
</tr>
<tr>
<td>1867</td>
<td>0</td>
<td>0</td>
<td>66</td>
</tr>
<tr>
<td>1868</td>
<td>0</td>
<td>0</td>
<td>66</td>
</tr>
<tr>
<td>1869</td>
<td>28</td>
<td>14</td>
<td>50</td>
</tr>
<tr>
<td>1870</td>
<td>48.5</td>
<td>16</td>
<td>33</td>
</tr>
<tr>
<td>1871</td>
<td>46.4</td>
<td>13</td>
<td>28</td>
</tr>
<tr>
<td>1872</td>
<td>46.2</td>
<td>18</td>
<td>39</td>
</tr>
<tr>
<td>1873</td>
<td>65</td>
<td>13</td>
<td>20</td>
</tr>
<tr>
<td>1874</td>
<td>58.6</td>
<td>17</td>
<td>29</td>
</tr>
<tr>
<td>1875</td>
<td>39.1</td>
<td>9</td>
<td>23</td>
</tr>
<tr>
<td>1876</td>
<td>20</td>
<td>6</td>
<td>30</td>
</tr>
<tr>
<td>1877</td>
<td>16.7</td>
<td>8</td>
<td>48</td>
</tr>
<tr>
<td>1878</td>
<td>18.5</td>
<td>5</td>
<td>27</td>
</tr>
<tr>
<td>1879</td>
<td>23.4</td>
<td>11</td>
<td>47</td>
</tr>
</tbody>
</table>

Source: Warren County Circuit Court papers (OCHM); 1870 Population Census for Warren County, Mississippi; 1880 Population Census for Warren County, Mississippi.
### Table 2
**Black Victims (Complainants) in Warren County, Mississippi**

<table>
<thead>
<tr>
<th>Year</th>
<th>% Black</th>
<th>N. Black</th>
<th>Total Identified by Race</th>
</tr>
</thead>
<tbody>
<tr>
<td>1865</td>
<td>0</td>
<td>0</td>
<td>33</td>
</tr>
<tr>
<td>1866</td>
<td>13.2</td>
<td>20</td>
<td>151</td>
</tr>
<tr>
<td>1867</td>
<td>13.1</td>
<td>11</td>
<td>84</td>
</tr>
<tr>
<td>1868</td>
<td>9.2</td>
<td>8</td>
<td>87</td>
</tr>
<tr>
<td>1869</td>
<td>13.5</td>
<td>5</td>
<td>37</td>
</tr>
<tr>
<td>1870</td>
<td>47.6</td>
<td>10</td>
<td>21</td>
</tr>
<tr>
<td>1871</td>
<td>54.2</td>
<td>13</td>
<td>24</td>
</tr>
<tr>
<td>1872</td>
<td>38.9</td>
<td>7</td>
<td>18</td>
</tr>
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<td>1873</td>
<td>41.7</td>
<td>10</td>
<td>24</td>
</tr>
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<td>1874</td>
<td>26.1</td>
<td>6</td>
<td>23</td>
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<tr>
<td>1875</td>
<td>44.4</td>
<td>12</td>
<td>27</td>
</tr>
<tr>
<td>1876</td>
<td>22.2</td>
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<td>18</td>
</tr>
<tr>
<td>1877</td>
<td>31.0</td>
<td>13</td>
<td>42</td>
</tr>
<tr>
<td>1878</td>
<td>53.8</td>
<td>7</td>
<td>13</td>
</tr>
<tr>
<td>1879</td>
<td>40.0</td>
<td>8</td>
<td>20</td>
</tr>
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</table>

**Source:** Warren County Circuit Court papers (OCHM); 1870 Population Census for Warren County, Mississippi; 1880 Population Census for Warren County, Mississippi.

### Table 3

<table>
<thead>
<tr>
<th></th>
<th>1865-1867</th>
<th>1868-1875</th>
<th>1870-1873</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>White Victims</strong> &amp; <strong>White defendants</strong></td>
<td>184</td>
<td>70.2</td>
<td>114</td>
</tr>
<tr>
<td><strong>White Victims</strong> &amp; <strong>Black defendants</strong></td>
<td>51</td>
<td>19.5</td>
<td>17</td>
</tr>
<tr>
<td><strong>Black Victims</strong> &amp; <strong>White defendants</strong></td>
<td>14</td>
<td>5.3</td>
<td>12</td>
</tr>
<tr>
<td><strong>Black Victims</strong> &amp; <strong>Black defendants</strong></td>
<td>13</td>
<td>5.0</td>
<td>12</td>
</tr>
</tbody>
</table>

**Source:** Warren County Circuit Court papers (OCHM).
TABLE 4

<table>
<thead>
<tr>
<th></th>
<th>White Victims</th>
<th>Black Victims</th>
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<tr>
<td></td>
<td>N.</td>
<td>%</td>
</tr>
<tr>
<td>Literate</td>
<td>125</td>
<td>87.4</td>
</tr>
<tr>
<td>Illiterate</td>
<td>18</td>
<td>12.6</td>
</tr>
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</table>

SOURCE: Warren County Circuit Court papers (OCHM); 1870 Population Census for Warren County, Mississippi.

TABLE 5

<table>
<thead>
<tr>
<th></th>
<th>Presidential</th>
<th>Congressional</th>
<th>Conservative</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N.</td>
<td>%</td>
<td>N.</td>
</tr>
<tr>
<td>White Victims</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Literate</td>
<td>21</td>
<td>100</td>
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<tr>
<td>Illiterate</td>
<td>0</td>
<td>0</td>
<td>13</td>
</tr>
<tr>
<td>Black Victims</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Literate</td>
<td>3</td>
<td>37.5</td>
<td>10</td>
</tr>
<tr>
<td>Illiterate</td>
<td>5</td>
<td>62.5</td>
<td>57</td>
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</table>

SOURCE: Warren County Circuit Court papers (OCHM); 1870 Population Census for Warren County, Mississippi.

TABLE 6

LITERACY RATES FOR GRAND JURORS IN WARREN COUNTY

<table>
<thead>
<tr>
<th></th>
<th>Presidential</th>
<th>Congressional</th>
<th>Conservative</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N.</td>
<td>%</td>
<td>N.</td>
</tr>
<tr>
<td>Literate</td>
<td>89</td>
<td>97.8</td>
<td>198</td>
</tr>
<tr>
<td>Illiterate</td>
<td>2</td>
<td>2.2</td>
<td>26</td>
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</tbody>
</table>

SOURCE: Warren County Circuit Court papers (OCHM); 1870 Population Census for Warren County, Mississippi (microfilm); 1880 Population Census for Warren County, Mississippi.
### Table 7
**Value of Property Held by Grand Jurors in Warren County**

<table>
<thead>
<tr>
<th></th>
<th>Presidential</th>
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<th></th>
<th>Conservative</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N.</td>
<td>%</td>
<td>N.</td>
<td>%</td>
<td>N.</td>
<td>%</td>
</tr>
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<td>$0</td>
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<td>24.7</td>
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<td>4.5</td>
<td>27</td>
<td>12.2</td>
<td>10</td>
<td>10.0</td>
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<td>$501-</td>
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<td></td>
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<td></td>
<td></td>
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<tr>
<td>10,000</td>
<td>43</td>
<td>48.3</td>
<td>89</td>
<td>40.1</td>
<td>40</td>
<td>40.0</td>
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<td>$10,001+</td>
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<td>22.5</td>
<td>38</td>
<td>17.1</td>
<td>16</td>
<td>16.0</td>
</tr>
</tbody>
</table>

*Source:* Warren County Circuit Court papers (OCHM); 1870 Population Census for Warren County, Mississippi.