LAWYERING IN THE LION'S MOUTH: THE STORY OF S. D. REDMOND AND *PRUITT V. STATE*

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INTRODUCTION

Sidney Dillon Redmond, or S.D. Redmond as he often styled himself, was a prominent African American living in Jackson, Mississippi in the first half of the twentieth century. Largely

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forgotten now,[1] he was an accomplished physician, businessman, politician, and lawyer. In this latter capacity, he represented clients in an assortment of matters, but one case in particular severely challenged his many talents. That case, like Redmond, has been largely forgotten.[2]

This Article uncovers the story of Redmond's representation of an impoverished African American farmer convicted and sentenced to death in 1931 for conspiracy to murder a child he allegedly fathered in a consensual relationship with a married white woman. His accuser, who claimed the relationship existed and that the child was his, was the woman herself. She also confessed to poisoning her own baby, contending that the defendant had urged her to do so. To appeal the defendant's conviction, Redmond produced a remarkable brief. In it, he paid careful lip service to white Mississippian's racial assumptions, all the while crafting arguments undermining those assumptions. In other words, he sought to persuade Mississippi's Supreme Court justices to overturn his client's conviction in a racially charged case with purposeful "yeses . . . grins" and agreement with white racial biases.

This is a true tale of "lawyering in the lion's mouth," in a case with facts that rivaled the fictional "southern gothic" of Redmond's day. Part One of this Article introduces Redmond and the troubling facts of the case. Part Two analyzes the arguments Redmond presented in his brief to the Mississippi Supreme Court. In doing so, I closely examine his treatment of the racial assumptions of the white justices who would be reading his brief. Part Three explores the court's response to Redmond's arguments. Most of the justices chose to believe the prosecution's strange and gothic tale rather than engage with Redmond's arguments, for

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[1] *But see* J. CLAY SMITH, JR., EMANCIPATION: THE MAKING OF THE BLACK LAWYER, 1844-1944, at 298-99 (1993) (profiling Redmond).

[2] The case is *Pruitt v. State*, 139 So. 861 (Miss. 1932). It gets a passing mention in a few books, but has not otherwise been discussed. *See, e.g.*, ALEX A. ALSTON JR. & JAMES L. DICKERSON, DEVIL'S SANCTUARY: AN EYEWITNESS HISTORY OF MISSISSIPPI HATE CRIMES 160-63 (2009) (recounting facts stated in the Mississippi Supreme Court's opinion); PATRICIA SULLIVAN, LIFT EVERY VOICE: THE NAACP AND THE MAKING OF THE CIVIL RIGHTS MOVEMENT 179 (2009) (devoting a paragraph to summarizing the case); NEIL R. MCMILLEN, DARK JOURNEY: BLACK MISSISSIPPIANS IN THE AGE OF JIM CROW 326 n.66 (1989) (passing reference). A Westlaw search indicates that no law review article has ever cited the case.

reasons I discuss. Part Four demonstrates that Redmond's brief was nonetheless a remarkable act of "lawyering in the lion's mouth," which ultimately produced the commutation described in Part Five, which describes the aftermath of the case. As a whole, the case deserves to be resurrected and remembered for its display of the powers of racial assumptions, and the strategies Redmond and others like him had to craft to prevail against race prejudice.

I. THE LAWYER AND THE CASE

A. The Lawyer

Sidney Dillon Redmond was not a typical Mississippi lawyer of the 1930s. He was African American, and the state had only a handful of African American lawyers.[3] Not only was Redmond a lawyer, but he had already had a long career as a doctor and surgeon—one of two African American doctors in Jackson, Mississippi.[4] In addition, he was a successful businessman and property owner; in fact, he was reputedly the wealthiest African American in the State of Mississippi, and one of the wealthiest in the country.[5] Redmond's wealth stemmed largely from investments and property holdings,[6] built up from scratch after a boyhood of poverty and hardship.[7] Despite his impoverished background and improbable rise, he married into Mississippi's African American elite by wedding Ida Revels, daughter of Mississippi's Reconstruction era African American Senator, Hiram R. Revels.[8] Redmond also wielded as much political power as an African American in Mississippi could through his leadership

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[3] A 1930 article counted fourteen African American lawyers admitted to practice in Mississippi, including Redmond. *See* Irvin C. Mollinson, *Negro Lawyers in Mississippi*, 15 J. NEGRO HIST. 38, 40-41 (1930).

[4] CHARLES H. WILSON, SR., GOD! MAKE ME A MAN 38-39 (1950) (biography of Redmond).

[5] *Id.* at 57.

[6] D. W. WOODARD, NEGRO PROGRESS IN A MISSISSIPPI TOWN: BEING A STUDY OF CONDITIONS IN JACKSON, MISSISSIPPI 5 (1909), *available at* https://archive.org/details/negroprogressinm00wood.

[7] *See id.*; *see also* WILSON, *supra* note 4, at 7-8, 15-17, 20-24.

[8] *See* WILSON, *supra* note 4, at 55. After Ida died, Redmond went on to marry "Miss Johnnie Grace King . . . the granddaughter of the late Senator Horace H. King who was once an Alabama Senator." *Id.* at 56.

positions in the "black and tan" faction of the Republican Party.[9] His political activities included involvement in then-common (and legal) patronage, office-selling, and even bribery.[10] Once these activities became illegal, Redmond reportedly forswore them, saying, "Gentlemen, I am through, no more patronage for me."[11]

Success and political prominence put Redmond in a delicate position. The Klan sent him death threats in 1921.[12] He was twice the subject of disbarment proceedings. Redmond avoided disbarment, and was cleared entirely of the charges leveled at him in the proceedings.[13] Following the conclusion of the proceedings, he chose to remain in Mississippi after many of his fellow African American Mississippians petitioned him to stay.[14]

Perhaps it was mere coincidence, but Redmond was busy rattling Mississippi's power structure about the time his second round of disbarment and legal troubles began in 1926.[15] Redmond and another African American attorney, T.G. Ewing,[16] had set

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[9] *See* RALPH J. BUNCHE, THE POLITICAL STATUS OF THE NEGRO IN THE AGE OF FDR 536-39 (Dewey W. Grantham ed., 1973); *see generally* Neil R. McMillen, *Perry W. Howard, Boss of Black-and-Tan Republicanism in Mississippi, 1924-1960*, 48 J. S. HIST. 205 (1982).

[10] McMillen, *supra* note 9, at 213.

[11] *Id.*

[12] In 1921, Redmond sent Dr. Du Bois a copy of a threatening letter from the Klan. Letter from S. D. Redmond to W. E. B. Du Bois (Oct. 20, 1921) *in* 1 W. E. B. DU BOIS PAPERS, SPECIAL COLLECTIONS AND UNIVERSITY ARCHIVES, UNIVERSITY OF MASSACHUSETTS AMHERST LIBRARIES, *available at* http://credo.library.umass.edu/view/full/mums312-b018-i305. The letter warned that the senders would "tar and feather" Redmond, or "give [him] a dose of a stone around your neck and some pearl river [sic] bottom" if he did not leave town. Letter from Ku Klux Klan to S. D. Redmond (Oct. 16, 1921) *in* 1 W. E. B. DU BOIS PAPERS, SPECIAL COLLECTIONS AND UNIVERSITY ARCHIVES, UNIVERSITY OF MASSACHUSETTS AMHERST LIBRARIES, *available at* http://credo.library.umass.edu/view/full/mums312-b018-i386. Successful African Americans often risked white violence fueled by resentment or a sense that the black person was insufficiently humble. *See* LEON F. LITWACK, TROUBLE IN MIND: BLACK SOUTHERNERS IN THE AGE OF JIM CROW 151, 154 (1998).

[13] *See Ex parte* Redmond, 125 So. 833 (Miss. 1930) (reversing disbarment decree); *Ex parte* Redmond, 82 So. 513 (Miss. 1919) (reversing demurrer from appeal for reinstatement); *see also* J. CLAY SMITH, JR., EMANCIPATION: THE MAKING OF THE BLACK LAWYER, 1844-1944, at 298-99 (1993) (describing racially fraught contempt, disbarment, and criminal actions brought against Redmond, all of which he overcame).

[14] MCMILLEN, *supra* note 2, at 168 ("a reported 30,000 blacks petitioned him not to leave").

[15] *See* SMITH, *supra* note 13, at 298.

[16] *See id.* (discussing Ewing's career and difficulties in Mississippi).

about investigating voter registration and jury empanelment statistics for Mississippi African Americans in November 1926.[17] At the same time, Redmond's Harvard Law-educated son, Sidney Revels Redmond, had joined his father's law practice.[18] Both Redmonds were involved with the prosecution of a peonage trial, further threatening Mississippi's status quo.[19] The peonage case arose from Redmond's involvement with an investigating panel charged with evaluating the management of the Mississippi River Flood: Redmond reported the detention of refugees on plantations, and charged that mules had been rescued from flood waters while African Americans had been left imperiled.[20] In short, Redmond could be a trouble-maker.

Yet, Redmond was also a wily survivor. Although he never mistook his relative power and wealth as a sign of safety, he was ahead of his time in understanding the uses of personal

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[17] *See* Letter from W. E. B. Du Bois to S. D. Redmond (Oct. 25, 1926) 1 W. E. B. DU BOIS PAPERS, SPECIAL COLLECTIONS AND UNIVERSITY ARCHIVES, UNIVERSITY OF MASSACHUSETTS AMHERST LIBRARIES, *available at* http://credo.library.umass.edu/view/full/mums312-b035-i321; Letter from G. S. Goodman to S. D. Redmond (Nov. 15, 1926) *in* 1 W. E. B. DU BOIS PAPERS, SPECIAL COLLECTIONS AND UNIVERSITY ARCHIVES, UNIVERSITY OF MASSACHUSETTS AMHERST LIBRARIES, *available at* http://credo.library.umass.edu/view/full/mums312-b035-i322; Letter from Meridian Miss. Treasury Dep't to S. D. Redmond (Nov. 15, 1926) *in* 1 W. E. B. DU BOIS PAPERS, SPECIAL COLLECTIONS AND UNIVERSITY ARCHIVES, UNIVERSITY OF MASSACHUSETTS AMHERST LIBRARIES, *available at* http://credo.library.umass.edu/view/full/mums312-b035-i323; Telegram from J. C. Overton to S. D. Redmond (Nov. 17, 1926) *in* 1 W. E. B. DU BOIS PAPERS, SPECIAL COLLECTIONS AND UNIVERSITY ARCHIVES, UNIVERSITY OF MASSACHUSETTS AMHERST LIBRARIES, *available at* http://credo.library.umass.edu/view/full/mums312-b035-i324; Letter from G. M. R. Husbands to S. D. Redmond (Nov. 17, 1926) *in* 1 W. E. B. DU BOIS PAPERS, SPECIAL COLLECTIONS AND UNIVERSITY ARCHIVES, UNIVERSITY OF MASSACHUSETTS AMHERST LIBRARIES, *available at* http://credo.library.umass.edu/view/full/mums312-b035-i325.

[18] A Harvard-educated African American lawyer might have been too much for Mississippi's bar to bear. Notably, charges were filed against the younger Redmond, but dropped "on the condition that he leave Mississippi and practice elsewhere." *See* SMITH, *supra* note 13, at 298. Sidney Revels Redmond moved on to St. Louis, Missouri, where he became a prominent civil rights attorney. Ironically, he was a leading force in the desegregation battle's opening salvos: he represented Lloyd Gaines in his bid for admission to Missouri's segregated law school. *See* GARY M. LAVERGNE, BEFORE BROWN: HEMAN MARION SWEATT, THURGOOD MARSHALL, AND THE LONG ROAD TO JUSTICE 41-44 (2010).

[19] *See* SMITH, *supra* note 13, at 298.

[20] *See* PETE DANIEL, THE SHADOW OF SLAVERY: PEONAGE IN THE SOUTH, 1901-1969, at 153-54 (1972) (Illini Books ed. 1990).

connections and media. In 1919, he wrote to Dr. W.E.B. Du Bois of an attack on "several of the leading colored citizens of Macon, Miss[issippi]." Redmond's report disclosed that the victims included professors and a merchant, whom whites accused of "advis[ing] the Negroes to organize and demand better pay for their services," and "for saying 'yes' and 'no' to white folk." Redmond recognized the limits of local recourse in a situation in which the white assailants included "a banker, a deputy sheriff and the city marshall," but he also knew that other tactics might be available. Thus, he wrote to Du Bois—a man with better access to national media than Redmond—to suggest "that you may turn on a little of the blessed sunlight of publicity on the damnable situation."[21] This incident demonstrates that Redmond understood the importance of exposing discriminatory practices in the northern press decades before Gunnar Myrdal and national civil rights organizations adopted that tactic.[22]

Redmond somehow seemed able to get powerful whites to help him. When he first arrived in Jackson to start his medical practice, no one would rent office space to him. Eventually, a leading white citizen, Ramsey Wharton, arranged for his office space on a floor he shared with white professionals.[23] This pattern of alliance with powerful whites continued during his disbarment and contempt travails, when Louis M. Jiggitts, an elite white lawyer, represented Redmond.

Jiggitts was a University of Mississippi graduate, Rhodes Scholar, and bar association leader. He was prominent in the

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[21] *See* Letter from S. D. Redmond to W. E. B. Du Bois (June 10, 1919) *in* 1 W. E. B. DU BOIS PAPERS, SPECIAL COLLECTIONS AND UNIVERSITY ARCHIVES, UNIVERSITY OF MASSACHUSETTS AMHERST LIBRARIES, *available at* http://credo.library.umass.edu/view/full/mums312-b015-i137. Redmond's caution was realistic. In September 1919, an African American farmhand in Georgia who tried to "organize black workers to refuse to work for 60 cents a day" was "overpowered by three white men" who "tied his arms together, forced him to jump into a river, and then riddled his body with bullets as he struggled for air." *See* W. FITZHUGH BRUNDAGE, LYNCHING IN THE NEW SOUTH: GEORGIA AND VIRGINIA, 1880-1930 56 (1993).

[22] *See* GENE ROBERTS & HANK KLIBANOFF, THE RACE BEAT: THE PRESS, THE CIVIL RIGHTS STRUGGLE, AND THE AWAKENING OF A NATION 5-6, 406-07 (2006).

[23] *See* THOMAS J. WARD, BLACK PHYSICIANS IN THE JIM CROW SOUTH 109 (2003); *see also* WILSON, *supra* note 4, at 32-33.

national Democratic Party.[24] Jiggitts was no liberal; to the contrary, he took many of the standard Southern white positions of the day, albeit in gracefully written terms in national fora, such as the Washington Post. In one of a series of Washington Post pieces about the South, Jiggitts declared: "We don't need and we won't tolerate agitators from other sections. In the first place, we have our own crackpots and rainbow chasers to contend with, to say nothing of our uplifters, futile little fellows full of futile ideas."[25] In a similar vein, Jiggitts decried lynching but argued vigorously against "foist[ing] a Federal anti-lynching bill upon the South," which he viewed as "an insult."[26] In another entry in the series, Jiggitts insisted that, "[r]egardless of what the agitators may cry out, the Negro does get justice before the courts of the South, the few cases of injustice being the exceptions that prove the rule."[27]

How Jiggitts came to Redmond's defense is unclear, but the two collaborated on several cases thereafter, including two controversial criminal cases in which representation of the defendant would have been unpopular. One, *Carraway v. State*,[28] involved an African American man accused of raping a white woman. Another, *Pruitt v. State*,[29] involved far more complex and delicate circumstances.

B. The Case

To begin with, there were hardships for a Depression-era African American attorney operating within Mississippi's white-dominated judicial system, and asserting that this system had wronged an African American client was particularly difficult.[30]

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[24] *See* MARTHA H. SWAIN, PAT HARRISON: THE NEW DEAL YEARS 101, 198 (1978); V. A. Griffith, *Mississippi Reports and Reporters*, 22 MISS. L.J. 37, 45 (1950).

[25] Louis M. Jiggitts, *The South's Problems, Part III: Farm Tenancy; Lynching*, WASH. POST, Mar. 19, 1939, at B9 (copy on file with author).

[26] *Id.*

[27] Louis M. Jiggitts, *The South's Problems, Part V: Races. Health. Poverty.*, WASH. POST, Apr. 2, 1939, at B9 (copy on file with author).

[28] The case generated a succession of appeals and decisions. *See generally* Carraway v. State, 154 So. 306 (Miss. 1934); Carraway v. State, 148 So. 340 (Miss. 1933); Carraway v. State, 141 So. 342 (Miss. 1932).

[29] Pruitt v. State, 139 So. 861 (Miss. 1932).

[30] *See* David Kenneth Pye, *Complex Relations: An African-American Attorney Navigates Jim Crow Atlanta*, 91 GA. HIST. Q. 453, 460 (2007) (quoting NAACP veteran

These difficulties were compounded for Redmond. He had just gotten past the second disbarment action, and his client was an African American convicted by an all-white jury that took just ten minutes to return its verdict.[31] Still worse, his client was accused of violating three taboos: adultery, miscegenation, and infanticide.

The alleged crime occurred in February 1931 in Lauderdale County, Mississippi. A white married woman named Luella Williamson had a new baby, though a court later was unsure whether it was "three or four" months old.[32] Perhaps the court was uncertain because Luella kept the child largely hidden from public view. Things changed when her husband Frank and an African American named Ervin Pruitt were arrested for stealing cotton seed.[33] This minor criminal incident brought official attention to the Williamson household; swiftly thereafter, rumors circulated that Luella's new baby, James Walton Williamson, was not "white" like his parents.[34]

After word of the rumor spread amongst the Williamsons' neighbors, a mass meeting of some 100 people gathered and selected an "indignation committee" to visit the Williamsons, view the baby, and report back its "findings."[35] The committee "reported that [the child] obviously had negro blood."[36] The committee members told Frank Williamson that "the community objected to . . . raising the baby with the other children in the home."[37] That is, the community expected the Williamsons to banish the infant from their home, or themselves be banished from the community.[38]

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saying that "[taking] the pleadings of a black who had been wronged . . . was just something none of us could imagine").

[31] *See Negro to Hang*, MERIDIAN STAR, Aug. 29, 1931, at A1 (copy on file with author).

[32] *Pruitt*, 139 So. at 862. The *Meridian Star* reported that the infant was two-and-a-half months old when he died. *See Charge White Mother and Negro Kill Baby*, MERIDIAN STAR, Feb. 28, 1931, at A1 (copy on file with author).

[33] *See Mississippi Is Aroused Over Strange Case*, CHI. DEFENDER, Mar. 7, 1931, at 13 (copy on file with author).

[34] *Pruitt*, 139 So. at 862-63.

[35] *See Charge White Mother and Negro Kill Baby*, *supra* note 32, at A1.

[36] *Id.*

[37] *Pruitt*, 139 So. at 863.

[38] Appellant's Statement, Brief, and Argument at 4, Pruitt v. State, 139 So. 861 (Miss. 1932) (No. 29750) (quoting Dr. Pruitt's testimony) (copy on file with author). The

Neither the committee nor its demands were unusual in the cases in which the taboo against interracial intimacy between black men and white women was violated. Sociologists writing in 1941 described cases in which communities responded to such situations by sending a group of citizens to the offending household and threatening banishment, or arranging for a biracial infant to be sent to live with a black family.[39] What may have been unusual was Frank Williamson's response. He flatly asserted that the child was his. Going further, he said that "he did not feel disposed to conform to the demand of the committee."[40]

In the meantime, Luella's father heard rumors concerning the child's parentage when he visited a lawyer to arrange for Frank Williamson's defense on the cottonseed stealing charges that had brought the matter to light in the first place.[41] The next day, Luella's parents appeared at the Williamson home. In the words of Luella's mother, they wanted to determine whether the baby was "a half-breed negro."[42] Luella brought the baby to them in the barn. They inspected the baby, and concluded he was "mulatto." Luella denied this, claiming that the baby had a birthmark.[43] Luella's parents persisted, and threatened to test the baby's blood to "prove" he was not white. Like the "indignation committee," they told their daughter that the baby could not live with Luella's other children. [44]

Soon thereafter on that same day, Luella's parents and husband were talking outside when they heard Luella scream from inside the house. They ran to see what was the matter, and found the child suffering from being "badly burned" about his "mouth, throat, tongue, and lips."[45] They summoned Dr. Pruitt,[46]

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committee consisted of Dr. Pruitt, his cousin Will Pruitt, Thomas Chisholm, Charlie Caldwell, Brat Frazier, and Spurgeon Clay.

[39] ALLISON DAVIS ET AL., DEEP SOUTH: A SOCIAL ANTHROPOLOGICAL STUDY OF CASTE AND CLASS 28-31 (Univ. S.C. Press 2009) (1941).

[40] *Pruitt*, 139 So. at 863.

[41] *See Jurors Say Poison Dose Kills Baby*, MERIDIAN STAR, Mar. 1, 1931, at 1 (copy on file with author). The jurors referred to in the headline were inquest jurors. *Id.*

[42] *Id.*

[43] *See Charge White Mother and Negro Kill Baby*, *supra* note 32, at A1.

[44] *See Jurors Say Poison Dose Kills Baby*, *supra* note 41, at 1.

[45] *Pruitt*, 139 So. at 863.

[46] This was the same Dr. Pruitt who was a member of the "indignation committee" that had recently visited the Williamsons. *Id.*

who told them to take the baby to the hospital. Luella reportedly did not want to do so, saying that the baby would be dead before they arrived.[47] The child died en route, "about twelve miles from the Kemper county line at or near Suqualena."[48]

The dead infant was brought to police headquarters in Meridian.[49] There was initially confusion over who did what to the child. Luella's mother was jailed for a time, as local authorities "didn't know who they would get, whether it was Mrs. Williamson, or Mr. Warren, or Frank Williamson. They wanted somebody who poisoned the baby."[50] By February 28, both Luella and Ervin Pruitt were in jail, charged with causing the baby's death. Luella had confessed to the crime and implicated Ervin Pruitt the day before; however, Pruitt "stoutly denied" the allegations when the district attorney had Luella repeat her confession in Pruitt's presence.[51]

It is hard to know whether Luella freely confessed or whether some or all aspects of her story were pressed upon her or suggested by her parents or the authorities.[52] The *Meridian Star* reported that she confessed at about 5:00 p.m. on February 27, in the presence of the Lauderdale County prosecutor, a man named John T. Powell, and her mother.[53] The court's opinion treated her admission of the relationship as Luella's voluntary acknowledgement of willingness to "debase" herself. Frank Williamson was unlikely to have suggested the story, as he resisted the suggestion that the relationship existed, and his eventual testimony at trial undermined rather than corroborated her story. Rumor had it that Luella's parents put her up to the

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[47] *See Jurors Say Poison Dose Kills Baby*, *supra* note 41, at 1, 2. This was according to the testimony of the Williamson's neighbor, Sam Ezell, who was among the neighbors who accompanied the Williamsons to the hospital. *Id.*

[48] *Pruitt*, 139 So. at 862.

[49] *See Charge White Mother and Negro Kill Baby*, *supra* note 32, at A1.

[50] Appellant's Statement, Brief, and Argument, *supra* note 38, at 7 (quoting Dr. Pruitt's testimony).

[51] *Id.*

[52] Luella was without counsel when she confessed in the presence of the Lauderdale County prosecutor, a Collinsville resident named John T. Powell, and her mother, Mrs. Jabe Warren. *Charge White Mother and Negro Kill Baby, supra* note 32, at A1.

[53] *Id.*

story, and may have even poisoned the baby themselves or pressured Luella to poison it. [54]

By March 1, a coroner's jury had declared the baby "died as a result of poison administered by [its mother] and others."[55] Neither Luella nor Pruitt requested a preliminary trial; instead, both spent the summer in jail.[56] Initially, hundreds of people swamped the jail with requests to visit Luella, driving the jailer to publicly declare that officials would only allow visits from Luella's relatives and lawyers.[57]

Five months later, a grand jury formally indicted Luella and Pruitt for murder on August 13, 1931.[58] The long delay apparently was forced by the grand jury's meeting schedule,[59] but it nonetheless seems odd. The judge had the power to empanel a grand jury if he deemed it necessary,[60] and a rush to judgment was then the more usual order of business in racially charged cases. For example, in a 1934 murder case in adjacent Kemper County, authorities arrested three African American men, physically coerced their confessions, and tried and condemned them to death within a week of their alleged crime of murdering a white planter.[61] The delay is especially puzzling given that Pruitt's case involved alleged interracial intimacy. Granted, Luella made no claim that Pruitt had forced himself upon her, but "Blacks accused of assaulting white women in Mississippi were

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[54] *See* Letter from Jesse O. Thomas, Field Director, Nat'l Urban League S. Field Office, to Walter White, Secretary, Nat'l Ass'n for the Advancement of Colored People, (Sept. 15, 1931) (copy on file with author) (stating "the grandmother is alleged to have encouraged her daughter to poison the baby because there was obviously Negro blood in it").

[55] *Jurors Say Poison Dose Kills Baby, supra* note 41, at 1.

[56] *Id.*

[57] *Permit Lawyers or Kin to See Woman,* MERIDIAN STAR, Mar. 5, 1931, at 1.

[58] Pruitt v. State, 139 So. 861, 862 (1932).

[59] *See Jurors Say Poison Dose Kills Baby, supra* note 41, at 1.

[60] *Id.*

[61] Brown v. Mississippi, 297 U.S. 278, 281 (1936); *see also* RICHARD C. CORTNER, A SCOTTSBORO CASE IN MISSISSIPPI: THE SUPREME COURT AND *BROWN V. MISSISSIPPI* 11 (1986); Robert W. Horton, *Not Too Much for a Negro*, THE NATION, Dec. 11, 1935, at 674-76.

rarely afforded the luxury of a trial."[62] When they did have trials, they tended to be rushed, mob-ringed proceedings.[63]

Despite the slow production of formal charges, Ervin Pruitt was swiftly tried once Luella pled guilty in late August 1931 to murdering her child.[64] The proceedings against Pruitt began the next day.[65] Luella was to be the star witness. The gist of her testimony was her claim that Pruitt demanded that she kill the baby using strychnine he forcibly pressed upon her. According to Luella, he did so because the community's agitation over the baby's race made him fear being "mobbed." [66]

Pruitt's fear of "mobbing" is the only corroborated aspect of Luella's story. Luella's husband, Frank, testified that Pruitt expressed this fear to him in a conversation on their way home after they were released from jail for stealing cottonseed.[67] In addition, such a fear would not have been unrealistic. Mississippi had a long history of lynching; from 1889-1945, the state "led the nation in total lynchings, number per capita, number of female victims, number of victims taken from police custody, and amount of public support for vigilantism."[68] In his study of Indianola, Mississippi in 1937, John Dollard wrote that "[e]very Negro in the South knows that he is under a kind of sentence of death; he does not know when his turn will come, it may never come, but it may also be at any time."[69]

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[62] DAVID M. OSHINSKY, WORSE THAN SLAVERY: PARCHMAN FARM AND THE ORDEAL OF JIM CROW JUSTICE 104 (1996).

[63] *Id.* at 104-05 (describing an illustrative case in which six hours elapsed between indictment and conviction and sentencing).

[64] *Life Term for Woman of Kemper,* MERIDIAN STAR, Aug. 27, 1931, at A1. Apparently Luella's plea hearing and sentencing were delayed while the judge awaited the prosecution's sentencing recommendation. *Id.*

[65] *Id.*

[66] Pruitt v. State, 139 So. 861, 863 (Miss. 1932).

[67] Brief for Appellant at 13, Pruitt v. State, 139 So. 861 (Miss. 1932) (No. 29750) (copy on file with author). Specifically, Frank testified that Pruitt told him the white folks were going to mob him for "having this baby by a white lady." *Pruitt,* 139 So. at 863-64. Apparently, Frank understood Pruitt to be referring to rumors, and did not, himself, think Pruitt was the child's father. Brief for Appellant, *supra*, at 13-14.

[68] *See* Steven Hoelscher, *Making Place, Making Race: Performances of Whiteness in the Jim Crow South,* 93 ANNALS ASS'N OF AM. GEOGRAPHERS 657, 674 (2003).

[69] *Id.* at 675.

Just a few months before, in September 1930, there had been a double lynching in the Kemper County town of Scooba.[70] A "masked mob" of twenty to thirty men had taken from deputies two African Americans accused of robbing a young white couple and threatening to "use" the woman; they attempted to torture confessions from the two by repeatedly stringing them up and then letting them back down to talk. Neither confessed, and the evidence against them actually was thin to non-existent, nor did either of them have a bad reputation. The mob killed them both.[71] The lynchers were not prosecuted.[72] Despite the dearth of evidence against the two victims, a white Scooba official reportedly was convinced of their guilt and felt it incumbent to remark "with alarm an increase of intimate relations between white women and Negro men and advocated the establishment of a red light district, with white and Negro women, in which only white men would be allowed."[73]

With that tragedy and aftermath fresh in his mind, Pruitt would have been foolish not to wonder if rumors that he and Luella had been intimate meant that "his time" had come. The absence of mob reaction throughout the entire ordeal apart from the 100-person gathering that appointed the "indignation committee" in fact seems unusual. It suggests three possibilities, more than one of which may have been true. One possibility is that Pruitt enjoyed some sort of protective connection to powerful whites in the community.[74] Another possibility is that the community and its officials actually harbored doubts about the race of Luella's baby. A third possibility is that the community and its officials doubted Luella's veracity.

Whatever doubts may have existed about Luella's story, she was the only real witness against Pruitt, so she testified

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[70] ARTHUR F. RAPER, THE TRAGEDY OF LYNCHING 85 (Dover 2003) (1933).

[71] *Id.* at 85-88. Raper reported that a white salesman passing by the scene admonished the mob and suggested the two might be innocent, or could be tried in court, but that the mob threatened him. *Id.* at 87. The mob's chosen means of torture mirrors that used by Kemper county authorities in 1934. *See* Brown v. Mississippi, 297 U.S. 278, 285-86 (1936) (severely criticizing the practice as torture and invalidating confessions obtained with it). One wonders who was imitating whom.

[72] RAPER, *supra* note 70, at 88.

[73] *Id.* at 90.

[74] Thanks go to my colleague Serena Williams for this suggestion.

extensively at his trial. According to her, "appellant gave to her the white powder which she gave to the child, telling her it was strychnine to be given to the child to produce its death."[75] More specifically,

> She testified that she was at home at night in bed with the baby, and that Ervin Pruitt came into the room and "throwed his gun on me and said that he was going to kill me, and so he had some stuff there and he told me if I did not give the stuff to the baby that he was going to kill me and all the family and he told me that if I did not, he–he said that he was just going to kill all of us right then."[76]

"The stuff" Pruitt allegedly gave Luella was "a white powder wrapped up in a blue piece of paper, . . . that Ervin Pruitt told her . . . was strychnine."[77]

Luella's story had several fantastical elements, the first of which was the claim that her child died of strychnine poisoning. Although strychnine is, indeed, a "crystalline white powder," dermal contact with it would have injured Luella.[78] Moreover, doctors who testified at Pruitt's trial stated "that, if strychnine had been used, the child would not have lived more than forty-five minutes, and that it could not have been strychnine, but was some kind of caustic poison."[79] At trial, Dr. Pruitt testified that the baby's symptoms were consistent with "having taken a dose of some caustic poison . . . that Red Devil Lye, caustic potash, or caustic soda would burn like the burn the baby had in its mouth and on its lips and tongue."[80]

Redmond was convinced that the baby had been poisoned with "Red Devil Lye," a caustic agent.[81] Lye was a commonplace

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[75] Pruitt v. State, 139 So. 861, 865 (Miss. 1932).

[76] *Id.* at 863.

[77] *Id.*

[78] *See Facts About Strychnine,* CENTERS FOR DISEASE CONTROL AND PREVENTION, http://www.bt.cdc.gov/agent/strychnine/basics/facts.asp (last visited Feb. 25, 2014).

[79] *Pruitt*, 139 So. at 863.

[80] Brief for Appellant, *supra* note 67, at 7.

[81] *Id.* (noting Dr. Pruitt's testimony that Red Devil Lye was likely present in the home). Jiggitts' brief arguing exceptions to the Supreme Court's decision spelled out the theory. It stated: "the husband of Luella Williamson was a bootlegger, . . . it was customary for bootleggers to keep red devil lye. . . . Red devil lye is a caustic, and it is much more probable that the infant died of swallowing red devil lye than of any other

item in rural Mississippi,[82] and accidental lye poisoning was a frequent occurrence.[83] This was especially true for children of the rural poor,[84] which was likely the class to which Luella and her husband belonged. Moreover, as Jiggitts pointed out in his brief taking exceptions to the Mississippi Supreme Court's opinion, "[i]t was shown in the record that the husband of Luella Williamson was a bootlegger, and that it was customary for bootleggers to keep red devil lye, which was presumably used in the manufacture of whiskey."[85] The significant anomaly posed by James Walton Williamson's death was the fact the he was under age one, and too young to have independently, accidentally ingested the substance.[86]

Luella's story rang false in other ways. When she confessed in February, she said that Pruitt gave her the poison six weeks earlier.[87] This would have been when the baby was practically a newborn, and unknown to the community, which is inconsistent with her claim that Pruitt wanted her to kill the baby so that he would not be mobbed. By trial, Luella could not say when the dramatic encounter with Pruitt occurred. At first, she "declined" to name the date, then "she said she thought it was the night before, but reiterated that she did not know, and could not say as to the exact night he was there."[88] In fact, her husband Frank contradicted her account with positive testimony that "he never

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substance." Appellant's Exceptions at 27, Pruitt v. State, 139 So. 861 (Miss. 1932) (No. 29750) (copy on file with author).

[82] H.W. Brown & Glenn Kiser, *Epidemiology of Lye Poisoning in the United States,* 32 AM. J. OF PUB. HEALTH 822, 827 (Aug. 1942) (attributing higher rate of lye poisoning in rural populations to "the habits of house cleaning and soap making of rural southern inhabitants").

[83] Melissa Deakins Stang, *Parting the Curtain on Lye Poisoning in "A Worn Path,"* 1 EUDORA WELTY REV. 14-17 (2009); Jean M. Martin & Jay M. Arena, *Lye Poisoning and Stricture of the Esophagus,* S. MED. J. 286, 287 (Mar. 1939) (discussing frequency of lye poisoning in southern children). Powdered lye was similar in appearance to salt or sugar, and accidental ingestion of lye solutions was "common" because they could be "mistaken for milk or sugar water." *See* Brown & Kiser, *supra* note 82, at 829.

[84] *See* Brown & Kiser, *supra* note 82, at 829.

[85] Appellant's Exceptions, *supra* note 81, at 27.

[86] *Compare* Pruitt v. State, 139 So. 861, 862 (Miss. 1932) (placing the infant's age at four months or less) *with* Brown & Kiser, *supra* note 82, at 830 ("greatest incidence of lye poisoning is in children from 1 to 5 years of age . . . . It is rarely encountered in children under 1 year of age").

[87] *Charge White Mother and Negro Kill Baby, supra* note 32, at 1.

[88] *Pruitt*, 139 So. at 863.

did see Pruitt come to his house after he stopped and talked with him in front of his gate on February 23, 1931; that he and his wife and children were there all night together; that he would have known it, he felt, had Pruitt come back."[89] Such testimony supported Redmond's assertion that "[t]he evidence was too improbable, unreasonable, and fantastic to support a verdict of guilty on a charge of murder."[90]

In fact, much trial testimony either undermined or contradicted Luella's story. Not only did medical testimony definitively rule out strychnine, but witnesses established that Ervin Pruitt gave himself up on the cottonseed charge and was in jail[91] on the two days and nights preceding the child's death.[92]

These problems did not bother the jury that heard the case against Pruitt. After ten minutes of deliberations on Saturday, August 29, the jury found him guilty. The verdict was announced to a courtroom packed with white and black spectators, with deputies stationed throughout the room to prevent trouble. The deputies whisked Pruitt to the county jail immediately after the verdict.[93]

Court resumed on Monday, and the judge formally sentenced him to death. Pruitt "mumb[led] a few words so low that they were hardly understood," saying "that he had not been able to tell all the circumstances and conditions that existed in connection with the charge against him."[94] His date of execution by hanging was to be October 16, 1931.[95]

C. Accepting the Representation: "Some One Should Do It"

It is difficult to assess the quality of Pruitt's representation at trial. *The Meridian Star* consistently characterized Pruitt's trial

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[89] Brief for Appellant, *supra* note 67, at 12.

[90] *Id.* at Table of Contents.

[91] He may well have done this to gain some safety from any mob that might result from the community's feelings about the Williamson child.

[92] *See Pruitt,* 139 So. at 863 (Pruitt was in jail on February 22, released the 23rd, and returned on the 24th); *Charge White Mother and Negro Kill Baby, supra* note 32, at 2 (baby died on February 26); Brief for Appellant, *supra* note 67, at 11, 13-14.

[93] *Negro to Hang, supra* note 31, at 1.

[94] *Order Negro to Hang Here October 16,* MERIDIAN STAR, Sept. 1, 1931, at 1. It seems highly unlikely that these were Pruitt's actual words.

[95] *Id.*

lawyers as zealous advocates for their client. The court had appointed Francis Dwyer and J.M. Travis to represent Pruitt; the newspaper described them as fighting "hard and brilliantly, contesting every inch of ground."[96] Redmond's local contact told him "the lawyers were about the cheapest in town, tho [sic] they attempted to put up a pretty good fight, in a way."[97] Nonetheless, they did not ask for a special venire, nor did they seek to remove the case to another court.[98] The trial was short, having started on Friday afternoon and marked by "rapid progress" to closing arguments on Saturday afternoon.[99] To be sure, they may have been appointed only a day before the trial, as the newspaper reported their appointment on August 27.[100] Perhaps the best that could be done was to preserve Pruitt's ability to appeal the case. They succeeded in doing so, with a seventeen-count motion for a new trial,[101] and a subsequent notice of appeal, which stayed his execution.[102]

The National Urban League office in Atlanta, Georgia informed Walter White of the NAACP of the case on September

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[96] *Id.*

[97] Letter from R.B. Mathews. Physician and Surgeon, to S.D. Redmond, Attorney at Law (Sept. 18, 1931) (on file with author). Redmond reported to Walter White that Mathews described the attorneys as "third-rate lawyers" and said that "it is considered that they merely went through the form, that there was no heart nor fight in it." Letter from S.D. Redmond to Walter White, Secretary, Nat'l Ass'n for the Advancement of Colored People (Sept. 18, 1931) (on file with author).

[98] *See Life Term for Woman of Kemper, supra* note 64, at 1.

[99] *See Negro's Fate Soon to Be in Jury Hands,* MERIDIAN STAR, Aug. 29, 1931, at 1.

[100] *See Life Term for Woman of Kemper, supra* note 64, at 1. Other courts of the era made last minute appointments in racially charged capital cases. *See* Brown v. Mississippi, 297 U.S. 278, 279 (1936) (detailing a Kemper County capital murder trial that began the day after appointment); Powell v. Alabama, 287 U.S. 45, 57 (1932) (detailing inexact and last-minute appointment of counsel in a capital rape case).

[101] *Order Negro to Hang Here October 16, supra* note 94, at 1.

[102] *See* Letter from S.D. Redmond to Walter White, Secretary, Nat'l Ass'n for the Advancement of Colored People (Sept. 18, 1931) (on file with author). Just what happened to Dwyer and Travis's intentions to continue their representation of Pruitt is unclear. Late in the appeals and commutation process, Dwyer and Travis claimed they had tried to enter appearances in the appeal; however, Redmond disputed that claim. *See* Letter from S.D. Redmond to Roy Wilkins, Assistant Secretary, Nat'l Ass'n for the Advancement of Colored People, at 3-4 (Apr. 16, 1932) (on file with author). Upon Redmond's request, Dwyer and Travis agreed to try to help with the effort to commute Pruitt's sentence. *Id.* at 3.

15, 1931—just a month before Pruitt's execution date.[103] The Atlanta Field Secretary despaired that the situation was one "about which I don't suppose anything can be done," but tempered his resignation with the suggestion that "it should be investigated."[104] Apparently, he hoped that new evidence could be found to generate grounds for a new trial.[105]

On September 17, White fired off a barrage of inquiries to Redmond, ending his letter by asking whether Redmond would be interested in taking the case.[106] Redmond quickly investigated the case by contacting Dr. F.B. Matthews of Meridian, and reported his findings to White the next day.[107] Redmond cautiously opined that "the chances are very good for a reversal . . . should a respectable showing be made."[108] He closed by indicating that he "would accept employment in the case."[109]

Outspoken as he was, Redmond was neither a sunny optimist nor a brash crusader. In fact, he observed that the case would require "a very great sacrifice" from him, "in more ways than one, but some one [*sic*] should do it."[110] Redmond was willing to be that person, but for a price: he wanted $1,000.00 because "in a case of that kind a lawyer should get a better fee than the service is actually worth since he must suffer in many other ways."[111]

Redmond was not being melodramatic. He knew from his own past experience how dangerous such a case could be. In April 1920, he wrote to Dr. W.E.B. Du Bois of the predicament of a

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[103] *See* Letter from Jesse O. Thomas, Southern Field Director, National Urban League to Walter White, Secretary, Nat'l Ass'n for the Advancement of Colored People (Sept. 15, 1931) (on file with author).

[104] *See id.*

[105] *See id.*

[106] *See* Letter from Walter White, Secretary, Nat'l Ass'n for the Advancement of Colored People, to S.D. Redmond (Sept. 17, 1931) (on file with author).

[107] Redmond limited his opinion carefully, stating that "I would not like to express what might be termed a real opinion . . . but discussing it merely on the basis of newspaper reports and my conversation to-day with . . . Matthews." *See* Letter from S.D. Redmond to Walter White, Secretary, Nat'l Ass'n for the Advancement of Colored People (Sept 18, 1931) (on file with author).

[108] *See id.*

[109] *See id.*

[110] *See* Letter from S.D. Redmond to Walter White, Secretary, Nat'l Ass'n for the Advancement of Colored People (Sept. 24, 1931) (on file with author).

[111] *See* Letter from S.D. Redmond to Walter White, Secretary, Nat'l Ass'n for the Advancement of Colored People (Sept. 26, 1931) (on file with author).

minister arrested for "selling *The Crisis*" because it reported "on the Negro soldiers in Europe." The authorities deemed such reporting to be "literature calculated to stir up race prejudice," which, Redmond explained, "ha[d] been made a misdemeanor" in Mississippi. Worse, the authorities' response to the alleged misdemeanor was anything but muted: the minister was subjected to a heavy bond, and subsequently fined and sentenced "to the county farms for six months." Redmond and others sought to help the minister, but were told they and their client would be lynched if they sought, or obtained, his release. Redmond's postscript to Du Bois summarized the dilemma: "we know how to proceed here, but we might get him killed."[112]

If circulating stories about African Americans serving in the armed forces was incendiary, then taking a case involving alleged consensual interracial sex was akin to handling a hair-trigger bomb. More than a decade later, lawyers defending Willie McGee on charges of raping a white woman dared not press a defense that the defendant and complainant may have been conducting a consensual affair. As McGee's trial lawyer Dixon Pyles put it: "if you introduced this thing down there—that court room was packed—[it] would have started a riot, would have had no appreciable difference in the outcome of the jury. They wouldn't have believed it. . . . You don't know how high a feeling can get in a community like that down there."[113]

Dixon Pyles was a white man defending his client in the mid-1940s, and Redmond confronted this challenge a decade earlier. Nonetheless, by letter dated October 2 of that year, he accepted the case for a $500.00 fee, promising to "do my best for him." He added a handwritten postscript: "Please don't let it get into the press that the NAACP is behind the case until the case is decided as it might prejudice matters here against Pruitt. You

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[112] Letter from S.D. Redmond to W.E.B. Du Bois (Apr. 17, 1920), *in* 1 W. E. B. DU BOIS PAPERS, SPECIAL COLLECTIONS AND UNIVERSITY ARCHIVES, UNIVERSITY OF MASSACHUSETTS AMHERST LIBRARIES, *available at* http://credo.library.umass.edu/view/full/mums312-b016-i144.

[113] ALEX HEARD, THE EYES OF WILLIE MCGEE, A TRAGEDY OF RACE, SEX, AND SECRETS IN THE JIM CROW SOUTH, 85 (2010) (alterations are Heard's) (quoting defense attorney Dixon Pyles).

understand."[114] Redmond left unstated what he probably remembered from his 1919 experience with the Reverend arrested for selling the NAACP's newspaper: if word of the organization's involvement got out, he could be "mobbed," himself.

II. REDMOND'S BRIEF: GRAPPLING WITH SOUTHERN GOTHIC

Maintaining his client's and his own safety was only one of the challenges Redmond faced in his representation of Ervin Pruitt. Here was a case involving adultery, miscegenation, and infanticide: not only were the elements of the story fantastical and gothic, they were also taboo. The safest argument for both Pruitt and Redmond was to deny that any adulterous miscegenation ever took place, but Redmond would have to account for the community's firm belief that Luella and Pruitt had been intimate and the baby was the "mixed race" product of their union.

Redmond wrote his brief in less than a month, and sent a copy to Walter White with a letter dated October 31, 1931. Probably understating the circumstances, Redmond stated: "I have worked mighty hard on this case."[115] White's NAACP associate assigned to review the brief deemed it "not as workmanlike a piece of brief writing as we have prepared by Mr. Margold, Mr. Marshall, or Mr. Spingarn, [but] exhaustive and good enough for the purpose. It makes out a good case for the reversal of Pruitt's conviction."[116]

Even in less charged contexts, Redmond appears to have been an idiosyncratic brief writer. A lawyer who trained with him in the late 1920's recalled proofreading a 1,135 page long brief

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[114] *See* Letter from S.D. Redmond to Walter White, Secretary, Nat'l Ass'n for the Advancement of Colored People (Oct. 2, 1931) (on file with author).

[115] *See* Letter from S.D. Redmond to Walter White, Secretary, Nat'l Ass'n for the Advancement of Colored People (Oct. 31, 1931) (copy on file with author). This statement was the prelude to protracted haggling over Redmond's fees, and misunderstandings on both sides of the Redmond-NAACP relationship. Correspondence between Redmond and White frequently had an exasperated tone, with Redmond seeming to argue over every dollar possible, while the NAACP seemed insensitive, or at least tone deaf, to the unique challenges Redmond faced in general, and in Pruitt's case in particular.

[116] *See* Memorandum from Mr. Andrews to Mr. White (Nov. 9, 1931) (copy on file with author).

that Redmond authored for a personal injury case.[117] No doubt part of Redmond's idiosyncrasy stemmed from his unusual background: he did not learn to read until he was thirteen, then made up for lost time by reading voraciously and ultimately pursuing careers in teaching, medicine, and then law, gathering several advanced degrees along the way of his self-financed education.[118] Most importantly, Redmond was a toughened, wily survivor—and a success story, at that—in a legal and cultural environment consciously designed to thwart African Americans at every possible turn. Thus, what the NAACP seems not to have fully grasped was that Redmond knew how to work the levers of power in a society in which those levers were firmly in white hands. If his methods were somewhat unorthodox, they were suited to an unorthodox job.

Redmond's brief was long, and covered many arguments. His Table of Contents listed twenty-one grounds for reversal of Pruitt's conviction, though the argument section of his brief appears to cover fewer, and several of the grounds overlapped. Grouping the arguments thematically reveals three primary strands: (1) fact and logic based arguments, (2) technical arguments that I will ignore, and (3) race arguments. Redmond's key factual and logical arguments supported his race arguments. Those arguments, in turn, encompassed two crucial, yet contradictory, tactics: Redmond simultaneously acknowledged, but also challenged the existence of "the color line," all the while following the strictures of race etiquette in the Jim Crow South. In other words, he lawyered "in the lion's mouth," using superficial "yeses" to white supremacy in the hopes that the justices considering the appeal would "swoller" his arguments and save Pruitt's life.

A. The Ethos-Based Appeal: Acknowledging the Color Line

Redmond could not ignore the super-charged nature of his client's case, and the fact that he risked adding fuel to the fire

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[117] Interview with Percy Greene, in Jackson, Miss. (Dec. 14, 1972), at 7, *available at* http://digilib.usm.edu/cdm/ref/collection/coh/id/2744 (on file with author). Green recalled working on this task along with Redmond's Harvard law-trained son, Sidney Revels Redmond. *Id.*

[118] *See supra* note 4 at 15-17, 25-29, 46-48.

simply by daring to represent Pruitt. Although the first portion of his brief exhaustively treated the facts of the case, his first statement after the fact section acknowledged racial matters as whites believed them to be in Jim Crow Mississippi.

He began with an understatement: "This is no ordinary case." He continued: "[W]e must ask to be permitted to be perfectly frank in this matter, and . . . we know that your Honors desire us to be."[119] Redmond bluntly asserted that "[t]he most unique feature about this whole case is, that the defendant still lives."[120] After this somewhat daring reference to lynching, Redmond made an ethos-based argument[121] calculated to appease the white justices, saying:

> We have a most unpleasant task, one from which ordinarily we would naturally shrink, in view of time honored interdictions and public sentiment, and for the further reason that I am just as much opposed to sex relations between the races as any white person in Mississippi, for I believe that the best interests of both races will be best conserved by the maintenance of complete social separation. In the language of the late Booker T. Washington: "In all things that are purely social we can be as separate as the fingers yet one as the hand in all things essential to our mutual progress."[122]

Perhaps Redmond sincerely subscribed to at least some of this statement, but that is beside the point. The statement was crucial to establishing his credibility with the justices and holding their attention; in 1931, white authorities in Mississippi would have been in no mood to consider the moral acceptability of interracial relationships. The quotation from Booker T. Washington's "Atlanta Compromise" speech was as tactical as its originator meant it to be: this was the most famous line in Washington's 1895 Atlanta Exposition speech, which as a whole

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[119] Brief for Appellant, *supra* note 67, at 14.

[120] *Id.*

[121] Classical rhetoric divided arguments into three kinds: logos (based on logic), pathos (based on emotion), and ethos (based on character and trustworthiness of the speaker). *See* Linda L. Berger, *Studying and Teaching Law as Rhetoric: A Place to Stand,* 16 J. LEG. WRITING INST. 3, 48 (2010).

[122] *See* Brief for Appellant, *supra* note 67, at 14.

was crafted to emphasize and champion African Americans' economic progress without threatening whites.[123]

Having assured his white audience on this score, Redmond adapted ethos tactics to help the justices visualize themselves ruling for Pruitt. Instead of focusing upon his own trustworthiness, he set the court itself up as a trustworthy, fair adjudicator on racial matters. At first glance, this unusual rhetorical move reads awkwardly, for it is drenched in fawning tones. Asserting that his client had not been intimate with a white woman, Redmond wrote:

> [I]t is with alacrity that I appear before Your Honors in his behalf, for you have demonstrated to the world on many occasions that you are immune to local sentiment and that your opinions are influenced by neither color, station, nor creed. I am proud to say that before this great Tribunal the ex-slave and his progeny can get just as full and complete justice as anywhere in the land. A recent instance of this disposition on the part of this Honorable Court is shown in the case of *Byrd v. State*. . . . So it is with an abiding faith in your proven lofty sense of justice and the belief that there has been a flagrant miscarriage of justice that we submit this argument.[124]

Redmond's reference to *Byrd v. State* was particularly shrewd.[125] The 1929 decision reversed a murder conviction for an African American charged with murdering a white man. The conviction was based exclusively on the word of a single witness, the white man's half-brother.[126] The court based its reversal on a logical analysis of the many improbabilities in the witness's story, both on its face and in light of testimony from an assortment of reputable defense witnesses. The court found that the evidence showed that decedent and his half-brother were the aggressors in the incident that led to the decedent's death, and that the defendant had merely defended himself when fired upon by the white assailants. The court declared:

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[123] *See* ROBERT J. NORRELL, UP FROM HISTORY: THE LIFE OF BOOKER T. WASHINGTON 123-26, 141 (2009) (analyzing the speech in light of Washington's aims).

[124] Brief for Appellant, *supra* note 67, at 15.

[125] 123 So. 867 (Miss. 1929).

[126] *Id.*

> we cannot escape the conclusion that, if this had been a case where a white man had killed a white man, or a negro had killed a negro, or a white man had killed a negro, there would never have been a conviction. We therefore reversed the verdict and judgment; and . . . we order the defendant discharged.[127]

For 1929, this was a remarkable decision, as Redmond well knew. It amounted to *not* taking the word of a white man in a case against an African American accused of a crime against a white person. Moreover, it directly admitted that race made a difference in how a jury perceived cases in which white witnesses testified against African American defendants. Despite Redmond's lavish praise, the *Byrd* opinion was an outlier, and an early sign of things to come from its author, Virgil Griffith.[128]

Redmond may have sensed Griffith's dawning progressivism and tailored his argument to appeal to him. After authoring *Byrd*, Griffith nodded in the direction of recognizing African American rights before the courts without actively ruling for them. In 1929, he firmly disavowed use of racial pejoratives by white witnesses in criminal cases against African American defendants, saying in *Gore v. State*:

> That no man shall be convicted upon an appeal to the race issue is a firm and settled proposition in this court. And it is no new proposition for the first time announced and upheld here in any recent case. It has been, in words as clear as human language could make it, pronounced and reaffirmed here for more than a generation, and will continue so to be, as we have no doubt, so long as good government shall be an

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[127] *Id*. at 870-71.

[128] Justice Griffith served on the Mississippi Supreme Court from 1929 to 1949. JAMES B. LLOYD, LIVES OF MISSISSIPPI AUTHORS 207 (1981), *available at* http://books.google.com/books?id=RfXGJBB1HvoC&pg=PA207&dq=justice+virgil+griffith&hl=en&sa=X&ei=EztT5XsA_L46QGA36mdCg&ved=0CEwQ6AEwBDgK#v=onepage&q=justice%20virgil%20griffith&f=false. A contemporaneous source curiously described him as "a man of small stature, but large brain, and is the kind of man who never turns his back on friend or foe." JOHN H. LANG, HISTORY OF HARRISON COUNTY, MISSISSIPPI 152 (1935), *available at* http://genealogytrails.com/miss/harrison/bios_g_h.htm (visited on Feb. 9, 2014). Many years later, Judge Coleman of the Fifth Circuit lauded Griffith as an "eminent judge , . . . [and] an unexcelled analyst whose habit was to write with all the clarity of a Holmes or a Lincoln." Davis v. United States, 409 F.2d 1095, 1099 (5th Cir. 1969).

> abiding passion among that vast majority which constitutes the better class of our people.[129]

Nonetheless, Griffith let the defendant's conviction stand because he saw no prejudice in the use of pejoratives in a case in which the jurors could see for themselves that the defendant was African American.[130]

Likewise, in the unreported case of *Roe v. State*, Griffith disapproved of a white sheriff's use of force soon before extracting a confession from a seventeen year old African American, but found the confession admissible because he believed authorities explicitly gave the defendant a chance to retract the confession, which the defendant did not take.[131] The defendant's affirmation of his confession troubled Griffith because there was nonetheless "strong and cogent proof of an alibi in this case, much stronger than the usual defense of that nature." Still, he found that "the case was one for the jury, and so being we have no discretion except to affirm."[132]

Byrd suggested that Justice Griffith's strong sense of fair play could move him to rule for African American defendants incriminated by untrustworthy white witnesses, but *Gore* and *Roe* suggested he was not easily swayed even when discomfited. Griffith's track record thus suggested that Redmond needed to arouse in Griffith enough discomfort with Pruitt's conviction that he would be unwilling to affirm it and could somehow persuade his fellow justices to agree with him; merely pointing to facts that did not quite add up, or even a prosecutor's appeals to race, would not be enough. Citing and praising *Byrd* was nonetheless a starting point, and a way of reminding Griffith of his own good instincts for justice and fair play.

Vying for Griffith's favor might account for the fact heaviness of Redmond's brief. The brief's statement of the case spans almost fourteen pages, and the brief's argument section includes long, verbatim extracts from trial testimony. To modern eyes, these long runs of reprinted testimony appear unartful. Whatever aesthetic

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[129] Gore v. State, 124 So. 361, 361 (Miss. 1929).
[130] *Id.*
[131] Roe v. State, 131 So. 114, 114 (Miss. 1930).
[132] *Id.*

failings of Redmond's brief, the effect was to retry the case on paper. By Griffith's own standards stated in *Roe*, the case might have been "one for the jury,"[133] but Redmond had to ensure that the justices saw the factual peculiarities and inconsistencies in the case against Pruitt.

B. Playing the Color Line: Redmond's Race-Based Arguments

Pruitt's case put Redmond in the difficult position of challenging Jim Crow conventions while simultaneously observing them. The absurdity of this delicate task might account for the weary, sometimes exasperated tone of his correspondence with the NAACP. On December 18, 1931, Redmond seems to have reached his wit's end over his protracted fee haggling with that organization. Doubtless trying to throw his political weight into the negotiations, he typed a four page letter on Mississippi Republican State Executive Committee letterhead.[134] Among other things, he complained that "a fee of $500.00 in the Supreme Court in the Pruitt case was – just half pay, and hardly that, in view of the nature of the case in Mississippi."[135] He lamented that he would probably lose business for handling the case, which he characterized as "just about the most unpopular thing on earth that I could do here."[136] He was certainly right in the sense that the case could not be handled without treading sensitive ground.

The simplest of Redmond's race-based arguments was that the District Attorney's tactics aroused "hatred or race prejudice."[137] Although the court likely needed no reminding, he started with the admonition that "[w]e cannot forget that the defendant is a Negro and that the other parties, among whom is a

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[133] *Byrd* and another case, *Brown v. State*, 121 So. 297 (Miss. 1929), limited reversal of jury convictions to three types of cases: (1) verdicts unsupported by competent evidence, (2) verdicts unsupported by any reasonably believable proof, and (3) verdicts against the weight of overwhelming evidence. *See* Williams Yellow Pine Co. v. Henley, 125 So. 552, 554 (Miss. 1930). Redmond attempted to put Pruitt's case into all three categories.

[134] The letterhead indicated that Redmond was the Chairman of the Committee. Letter from S.D. Redmond to Walter White, Secretary of the NAACP, (Dec. 18, 1931), *in Papers of the NAACP* (copy on file with author).

[135] *Id.*

[136] *Id.*

[137] Brief for Appellant, *supra* note 119, at 37.

woman, are white."[138] In this context, Redmond argued, the prosecutor's closing remarks telling the jury that Pruitt "ma[de] eyes" at Mrs. Williamson while she testified was "sufficient to convict this Negro under the influence of local sentiment."[139] Redmond argued that "it had the effect of the red flag waved before the bull"; he called it "a clear, open, strong, and most effective appeal to race prejudice."[140]

Redmond likewise argued that Pruitt's case was prejudiced because "the district attorney constantly attempt[ed] to show . . . that defendant was a Negro and was the father of a child by Mrs. Luella Williamson, a white woman, and . . . referr[ed] to them as such."[141] Redmond cited numerous cases buttressing his contention that referring to a defendant's race was prejudicial and could be grounds for reversible error,[142] but he must have known the argument was weak given that the case inextricably turned on racialized motives for killing the baby, whether the motives were Luella's or Pruitt's. Moreover, the precedents he cited had been narrowed over time; references to race would only overturn verdicts when they were designed "to array race against race."[143]

For his part, Redmond also emphasized the parties' races, but never conceded that Luella Williamson and Ervin Pruitt had an

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[138] *Id.*

[139] *Id.*

[140] *Id.*

[141] *Id.* at 40.

[142] There were many such cases Redmond could cite. As a 1932 American Law Reports annotation dryly put it, "[l]anguage which has been held to be a sufficient ground for a new trial or a reversal as an improper appeal to racial prejudice against negroes has most frequently been used by the prosecuting attorney in criminal prosecutions against negroes." *See* A.S. Frank, *Counsel's Appeal to Racial, Religious, Social, or Political Prejudices or Prejudice Against Corporations as Grounds for a New Trial or Reversal,* 78 A.L.R. 1438 (1932) (Part 2). Redmond cited *Harris v. State*, 113 So. 318 (Ala. Ct. App. 1927) (reversing conviction of African American defendant incriminated by a white prosecuting witness because prosecutor referred to defendant's race), and *Tannehill v. State*, 48 So. 662 (Ala. 1901) (prosecutor's closing remarks asserted that African American alibi witnesses were inherently unworthy of belief). *Harris* gave him a recent precedent, and *Tannehill* gave him a strongly worded statement that a court's duty to accord defendants a fair trial "is emphasized when a colored man is placed upon trial before a jury of white men." *Tannehill*, 48 So. at 662.

[143] *See* Royal Dumas, *The Muddled Mettle of Jurisprudence: Race and Procedure in Alabama's Appellate Courts, 1901-1930,* 55 ALA. L. REV. 417, 431 (2006) (student-authored comment). Although Redmond did not cite the narrowing cases, his argument was tailored to fit within them.

adulterous relationship, let alone a baby. It is unclear if Redmond sincerely believed the two had not been intimate; early in the brief, he let slip the statement that "the evidence tends to show that [Pruitt] had had sexual relations with a white woman."[144] Later in the brief, Redmond characterized the evidence on this point as "an abundance of inuendoes [*sic*]– nothing but innuendoes [*sic*]."[145] As for the baby, Redmond stoutly argued: "[i]t is by no means conclusive that Pruitt was the father."[146]

Redmond squared this assertion with Luella's testimony by suggesting that

> Mrs. Williamson gave birth to a child that appeared a little dark it is said and Pruitt having been working on the Williamson farm the child was laid at his door, and Mrs. Williamson receiving such a storm of protest from every angle because a dark child had been born into her family was worked into such an insane frenzy seeing that the child was dark and Pruitt was dark and he being the only dark person around, she said he was the father of the child, and after telling her friends that she seemingly felt that the only thing to do was to kill the dark child and get rid of it and say that Pruitt forced her to do it, and thereby leave her an eventual loop hold [sic] of escape if she could convict Pruitt.[147]

Redmond's theory was both necessary and dangerous. It was necessary because the child's alleged parentage was the cornerstone of the state's case, and because it was likely the court would never rule for Pruitt if the justices thought he had been

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[144] Brief for Appellant, *supra* note 119, at 15.

[145] *Id.* at 44.

[146] *Id.* at 50.

[147] *Id.* This 137-word sentence scores a 0 on the Flesch Readability scale. It is possible that Redmond purposely drafted it this way, as his theory was both compliant with, and subversive to, dominant racial conventions. The sentence blurts out the theory in a rush, as if he must articulate it but does not want the reader to fully understand what he is saying: if the justices dwelt too long on it, they would realize that the theory undermined central tenets of White Supremacism and Jim Crow. *See infra* Part II.D.1.The argument may also have been what we now call a "dog whistle"—a thinly "coded" allusion—to upper class whites' belief that lower class whites often tried escaping from punishment or disgrace by blaming African Americans. *See* JAMES GOODMAN, STORIES OF SCOTTSBORO 166 (1994) (quoting Tennessee's Commission on Interracial Cooperation Chair claiming that this was "a very common method for a low grade of white people").

intimate with a white woman. It was dangerous because explaining just how it was that "the child was dark" but not Pruitt's would require delicate maneuvers around several key tenets of white supremacism: the purity of white womanhood, the purity of the white race, and the notion that African Americans and Caucasians were distinct and identifiable groups. In short, Redmond's argument implicitly challenged the notion that a color line existed at all, even while he cast the argument in terms that observed the strictures of that line.

C. On the Purity of White Womanhood

The Deep South's stereotyped, accepted view of white womanhood at the time is captured by a toast offered in Carl Carmer's *Stars Fell on Alabama*. The toast was this: "To Woman, lovely woman of the Southland, as pure and as chaste as this sparkling water, as cold as this gleaming ice, we lift this cup, and we pledge our hearts and our lives to the protection of her virtue and chastity."[148]

This view of white womanhood made the thought of consensual interracial intimacy unfathomable to at least certain classes of whites. Even in the case of a prostitute, courts held that "the reputation of a white woman for unchastity . . . [did] not comprehend a reputation for the practice of her lewdness with members of the negro race."[149] This idea remained well-entrenched in the early 1930s, and played a role in the prosecution of the African Americans accused of raping two lower class white women in Scottsboro, Alabama. Prosecutors "were certain" no white woman would consent to interracial intimacy, even if the woman in question had a reputation for promiscuity.[150]

Given how deeply entrenched this view was, Luella's "confession" that Pruitt had fathered her child and that their intimacy was consensual was highly unusual. Modern

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[148] CARL CARMER, STARS FELL ON ALABAMA 15 (1934), *quoted in* JOHN DOLLARD, CASTE AND CLASS IN A SOUTHERN TOWN 136 n.4 (Anchor Books 3d ed. 1957).

[149] Story v. State, 59 So. 480, 482 (Ala. 1912).

[150] *Id.* (characterizing a white prostitute who would practice her trade with black men as hopelessly depraved, and "voluntary submission of her person to the embraces of the other race" as a "great sacrifice"); JAMES GOODMAN, STORIES OF SCOTTSBORO 218-19 (1994).

commentators have suggested that white women caught in interracial relationships often "cried rape" to save their reputations rather than admit to consensual racial intimacy.[151] As it was, Luella's confession of voluntariness (which was believed) placed Pruitt in the same peril as a man accused of rape, for African American males could face severe consequences for interracial intimacy.

Denying Luella's claims also held perils for both Pruitt and Redmond. Denying a white woman's word was in itself dangerous, and denying a white woman's word while simultaneously charging her with consensual miscegenation normally would have been the height of recklessness for an African American lawyer in Mississippi in 1931.[152]

A sociological study published in 1941 makes clear Redmond's dilemma. The norms of deference permitted "no circumstance[s]" in which he could "contradict a white person except as a very humble offering of his opinion. . . . In no event may he say or even insinuate that a white is lying. If the white is wrong, it can only be a mistake, never a deliberate untruth."[153]

Redmond scrupulously observed these norms. He denied the existence of a relationship, but never directly called Luella a liar. Instead, he characterized her as "a proud [C]aucasian woman, taught all her life to look down upon and consider Negroes as the lowest of God's creation," who was driven to kill her child by "those who pointed the finger of scorn" at her.[154] "[O]verwhelmed," she "lost her mental balance."[155] Although Redmond argued that

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[151] *See* Leandra Zarnow, *Braving Jim Crow to Save Willie McGee: Bella Abzug, the Legal Left, and Civil Rights Innovation, 1948-1951,* 33 LAW & SOC. INQ. 1003, 1009 (2008) (discussing theory that white women could "take back" interracial relationships and reclaim "lily white innocence" by crying rape).

[152] *See* LEON LITWACK, TROUBLE IN MIND: BLACK SOUTHERNERS IN THE AGE OF JIM CROW 251 (1998) ("The principal problem facing a black attorney . . . was how he could defend his clients without violating the prevailing racial etiquette that dictated a Negro's 'place.'"); *id.* at 38-51 (discussing imperative to defer to whites); GUNNAR MYRDAL, AN AMERICAN DILEMMA 612 (1962) (African Americans constrained by "rule" that whites were never to be contradicted, and unpleasant subjects were never to be directly raised). *But cf.* BERTRAM WILBUR DOYLE, THE ETIQUETTE OF RACE RELATIONS IN THE SOUTH 170 (1937) ("[T]he surest method of retreating from a difficult position is to express himself in ways that show he meant no offense.").

[153] ALLISON DAVIS ET AL., DEEP SOUTH 23 (UNIV. S.C. PRESS 2009) (1941).

[154] Brief for Appellant, *supra* note 119, at 19-20.

[155] *Id.* at 19.

she later recovered her mental balance sufficiently to accuse Pruitt, he also argued that "Mrs. Williamson being in a demented state of mind, the chances are that there were never any intimacy whatsoever between her and Pruitt, and that she is suffering from a mere hallucination."[156]

Redmond's characterizations of Luella contrast sharply with those of white lawyers. In his brief taking exceptions from the majority's judgment, Louis Jiggitts called Luella "feebleminded."[157] Most remarkably, the lawyer who wrote the state's brief in opposition to Pruitt's appeal later characterized Luella as "of very low mentality . . . almost if not quite an imbecile."[158] One African American newspaper referred to her as "ofay,"[159] a "disparaging term for a white person."[160] The majority of the justices chose to believe Luella's assertion that she had been intimate with Pruitt, although they excused it somewhat on the theory that Pruitt had exerted some sort of mysterious influence upon her. Thus, "[s]he had consented to become abased, and subjected to his lecherous embraces, and had gone the limit of degradation with him."[161] The court excoriated Luella not only for "murdering her own offspring," and for "infidelity to her husband," but also for "infidelity to her race."[162]

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[156] *Id.* at 50.

[157] Appellant's Exceptions at 28, *Pruitt,* 139 So. 861 (Miss. 1932) (No. 29750) (copy on file with author).

[158] Letter from William A. Shipman to Governor Sennett Conner (Apr., 12, 1932) (supporting commutation of Pruitt's sentence) (on file with author). This phrasing calls to mind Justice Holmes' infamous opinion in *Buck v. Bell*, 274 U.S. 200, 207 (1927). Modern discussions of *Buck* have uncovered the association some made between promiscuity and imbecility at the time Shipman wrote his letter. *See, e.g.,* Stephen J. Gould, *Carrie Buck's Daughter,* 93 NAT. HIST. 14 (July 1984).

[159] *Ofay Murdered Baby; Black Pa Gets Punished,* THE AFRO AMERICAN, Apr. 23, 1932, *available at* http://news.google.com/newspapers?nid=1532&dat=19320423&id=c4k9AAAAIBAJ&sjid=aisMAAAAIBAJ&pg=2521,3992452.

[160] THE AM. HERITAGE DICTIONARY 1219 (4th ed. 2009). The word's possible origins make its use intriguingly apposite to Pruitt's case: one theory is that it came from the "Yoruba *ofe*, a word that was said in order to protect oneself from danger. The term was then transferred to white people, regarded as a danger to Black people throughout the wretched days of slavery and beyond." *Id.*

[161] Pruitt v. State, 139 So. 861, 865 (Miss. 1932).

[162] *Id.*

D. Of White Racial Purity and Binary Racial Categories: Challenging the Color Line

Even as Redmond's treatment of Luella carefully toed the color line, he challenged the line in his arguments that explained why her "bronze baby" might have looked "dark" but was nonetheless white. His first argument was that the witnesses who testified that the child was not white were not competent to do so. His second argument was that a variety of medical conditions could darken white skin. Both arguments subverted Jim Crow norms. In fact, segregation and White Supremacy both depended upon the very two propositions he was challenging: first, that race could reliably be ascertained, and, second, that persons could be divided neatly into two racial categories: white, and non-white. As scholar Mark Smith puts it:

> When all was said and done, white southerners lived in a binary world where, to their way of feeling, black and white were absolute. . . . Whites convinced themselves that they had learned to sense race. . . . That lack of doubt and the sensory basis supporting it, fiction though it was, proved absolutely essential to the segregated order.[163]

1. On Telling White From Black

White southerners generally believed themselves to be able to identify correctly who was, and was not, white. Testimony in *Wilson v. State*, a 1924 Alabama miscegenation case involving a married white man allegedly having an affair with an African American female illustrates this certainty. One witness, the spouse of the white male, testified:

> "You can tell by her looks she is a negro."
>
> And in reply to a question by defendant's counsel, "Do you know whether or not her father or mother have any negro at all in them, of your own knowledge?"

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[163] MARK M. SMITH, HOW RACE IS MADE 95 (2006).

> She answered: "Why certainly, by looking at her. I do not know who they are. I could not swear how that is, by looking at her, I know."[164]

Another prosecution witness expressed similar certainty about racial identification. On cross-examination defendant's counsel asked,

> "How much negro has Skip in her?" to which witness replied, "Skip Lewis is a full-blooded negro, best of my opinion."
>
> He was then asked, "What is a full-blooded negro?" and answered: "Supposed to be all negro.
>
> Q. What is that? A. No white parents, 100 per cent. negro."
>
> And in answer to the question, "Were her parents Africans, or Americans, or what," witness stated: "I could not say; I know she is a negro.
>
> Q. Do you know how much negro blood the defendant has in her, if any? A. I know she has a great part of it.
>
> Q. How much? A. She is a negro, I know that.
>
> Q. How do you know she has a great amount of negro blood in her? A. By her color, and by hearing her say she was colored.[165]

Both witnesses bolstered their conclusions by testifying that they knew the defendant "associated with" African Americans. In a strictly segregated world, that would seem a somewhat logical basis for certainty, but, in each case, the "I just know" tone of each witness is readily apparent.

Notably, the *Wilson* court rejected the argument that such testimony was problematic. Pointing out the impracticability of requiring elaborate genealogical evidence, the court stated, "the rule born of necessity should and does permit a witness, if he knows such to be the fact, to testify that a person is a negro, or is a white person . . . ."[166] This confidence seems misplaced in a society

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[164] Wilson v. State, 101 So. 417, 419 (Ala. Ct. App. 1924).
[165] *Id.* at 420.
[166] *Id.* at 421.

where "[t]he word 'white' defined means member of the white or Caucasian race, and the word 'colored' means, not only negroes, but persons who are of the mixed blood."[167] Ironically, the very existence of "one-drop" rules "acknowledged the visual instability of race" by implicitly positing "that race could not, in fact, be seen."[168]

The self-affirming circularity of this approach is evident in other cases. For example, four years after hearing *Wilson*, the Alabama Court of Appeals considered appeals from a miscegenation case involving an allegedly African American man and a white woman. The court assumed the man was of "mixed race," which was particularly problematic because Alabama law invalidated all interracial marriages but provided for criminal prosecution only if the non-white partner was at least "an octoroon."[169] Witnesses might testify

> that a man is a negro or a white man . . . if he knows the [racial] type and is not testifying to a mere conclusion. But when there is an admixture of the white and negro races, it is not competent for a witness to testify to his conclusion that the man is a negro within the third degree.[170]

Despite this momentary caution, the court's discussion of the evidence makes clear its overriding assumption that race is a tangible quality that can somehow be "known." Among other things, the court noted that the jury could see and judge a party's race for itself, either in person or with a photograph. It also "was proper to prove that defendant's grandfather had 'kinky hair,'" because "[t]his is one of the determining characteristics of the negro." The same reasoning applied to "questions involving the

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[167] Moreau v. Grandich, 75 So. 434, 435 (Miss. 1917) (also noting that person with less than one-eighth "negro blood" would not be considered "white")

[168] SMITH, *supra* note 163, at 7.

[169] Weaver v. State, 116 So. 893, 895 (Ala. Ct. App. 1928). Apparently prosecution was not required for marriages in which a partner had a lesser percentage of African American blood because there could be no felonious intent in those cases. *Id.* Reading between the lines, the court seems to have implied that one could be mistaken about one's own race, which is a startling admission given segregation's premises concerning the certainty of the color line. *Cf.* Gray v. State, 4 Oh. 353, 354 (1831) (noting "the difficulty of defining and of ascertaining the degree of duskiness which renders a person" non-white).

[170] *Weaver,* 116 So. at 895.

nose and other features." In sum, it was "proper in a case of this kind to prove the race of defendant by description of any or all the characteristics belonging to the negro race."[171]

Redmond couched his challenge to this attitude of certainty in terms the Mississippi Supreme Court might hear and accept. Although he asserted the daring proposition that racial identification was a matter for expert ethnological testimony,[172] he prefaced that argument with a more practical appeal based on the witnesses' actual testimony about the child's race. Specifically, he pointed to the way in which all of the lay occurrence witnesses framed their testimony about race as an opinion.[173] Moreover, he argued the witnesses' incompetence in terms comporting with the white South's beliefs about racial identification. He did so by noting that the witnesses had not even been qualified as lay experts because "[t]he record does not show that any of the witnesses had even ever seen a Negro or mulatto before."[174] Finally, adhering to the doctrines developed by such cases as *Wilson* and *Weaver,* he suggested that the best evidence would be a visual proffer of the person in question, or that "a picture would have been the best substitute" given that the baby was dead.[175]

As *Weaver* demonstrated, whites would admit that racial identification could confound them when confronted by a person of "mixed race." Redmond had ample reason to know this. He himself was "of mixed ancestry,"[176] and his own brother-in-law, Perry Howard, was "extremely fair [and] . . . blue-eyed."[177] Their political associate, W. L. Mhoon, also had a very light

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[171] *Id.* at 895. As in *Wilson,* the evidentiary fallback was proof of the party's associations with African American persons or frequenting of spaces segregated for African American use. *Id.*

[172] Brief for Appellant, *supra* note 119, at 42.

[173] *Id.* Redmond's brief set forth their exact words: "'in my judgment'; . . . 'my own judgment' . . . 'it looked to be,'" and the memorable phrasing of Luella's father, "'according to my judgment I think that it was a nigger.'" *Id.* Notably, Redmond did not shrink from exposing the latter man's frequent use of racial epithets in his testimony. He probably saw the hostility he expressed as an aid to proving his theory that Luella killed her child either in shame, or under pressure from her parents' reaction to the situation.

[174] *Id.*

[175] *Id.* at 43.

[176] NEIL R. MCMILLEN, DARK JOURNEY 20 (1989).

[177] *Id.*

complexion.[178] Redmond probably knew that Walter White, the new NAACP secretary with whom he corresponded on the *Pruitt* case, was "blond-haired, blue-eyed," and so light skinned that he successfully passed for white "to go south to investigate lynchings."[179]

Turning the idea of passing on its head, Redmond slyly pointed out the case of a Caucasian man of high repute[180] who might be mistakenly identified as black. He pointed to the case of "Viscount Rothemer [*sic*] of London," whose picture had recently appeared in *Time* Magazine, and asserted that, "[just to look at this picture, Viscount Rothemer [*sic*] would never be taken to be a white man."[181] Redmond tactfully added: "The Viscount is doubtless only the victim of" a glandular condition.[182]

Perhaps drawing upon, or confident in, his past career as a physician, Redmond elaborated a medicalized explanation for why a white child might appear "over-pigmented or bronzed."[183] Indeed, Redmond's many references to the Williamson infant as "bronzed," or a "bronze baby," sprang from—or were designed to echo—his medical theory. Specifically, he cited then-prominent[184] Dr. Charles E. De M. Sajous, who theorized that white persons may experience "bronzing" as a result of "disease of or injury to . . . adrenal [glands]," or "many [other] diseases."[185] Redmond continued: "Dr. Sajous says . . . that in these cases we often have cyanosis (or dark color) and the child's hair is lusterless and the lips of bluish color and the child always has cold as in the instant case."[186]

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[178] *Id.*

[179] GOODMAN, *supra* note 147, at 34-35.

[180] Years later, the repute might not have been so high in America, as Rothermere became a Nazi sympathizer. *See* WILLIAM L. SHIRER, BERLIN DIARY: THE JOURNAL OF A FOREIGN CORRESPONDENT, 1934-1941 28 (Johns Hopkins Paperbacks ed. 2002).

[181] Brief for Appellant, *supra* note 119, at 51.

[182] *Id.*

[183] *Id.*

[184] *See Dr. Sajous Dead; Famous Physician,* N.Y. TIMES, Apr. 28, 1929 ("the leading American student of the ductless glands and their influences in the human body for thirty years"; his endocrinology text "is . . . the outstanding work in the field"), *available through* Proquest Historical Newspapers *(*copy on file with author).

[185] Brief for Appellant, *supra* note 119, at 51-52.

[186] *Id.* at 52 (underlining in the original). Luella's father testified at Pruitt's trial that the Williamson baby "looked perfectly well, except a little cold" just before Luella screamed and they found the baby in distress. *Id.* at 8.

Pausing momentarily to suggest that heart valve problems might also account for the baby's "dark appearance," Redmond mined his glandular theory for maximum effect by dwelling on a case described in Dr. Lewellys Barker's a medical textbook.[187] As Redmond put it: "Dr. Baker [*sic*] quotes an awfully depressed white man . . . who had developed negroid features as a result of acromegaly."[188] Redmond described the man's condition as "disfiguring," dwelt upon his "dark color and broad lips," and quoted Barker's statement that the man had "'several times broken down and cried in public places, because there his thick lips and unshapen jaws, he feels certain, are the cause of unfriendly comment.'" The quotation from Barker continued with a description of the man's condition as "'trouble,'" an "'affliction,'" and the cause of lost ambition and confidence that had once been "'natural to him.'"[189]

The reference to a case of adult-onset adrenal disease might seem irrelevant to an argument about racial misidentification of the Williamson infant, but it was actually clever work. Under cover of medical science, Redmond simultaneously asserted the Williamson infant was white, excused the community, witnesses, jury, and judge for mistaking the child's race and exposed the flawed conceptual boundaries that underpinned Jim Crow, all in terms that could appeal to even a thoroughgoing white supremacist. Redmond managed this hat trick by arguing that diseases might "darken" or "bronze" white skin, or superimpose "negroid" features upon a white face. The result would not only confound accurate racial categorization of the afflicted person, but it would operate as a psychological as well as physiological affliction upon the sufferer. This medicalized explanation for the witnesses' impression that the Williamson baby was African American played upon (and played variations on) eugenicist and

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[187] Redmond was citing LEWELLYS F. BARKER, 1 ENDOCRINOLOGY AND METABOLISM 841 (1922).

[188] Brief for Appellant, *supra* note 119, at 52. "Acromegaly" is defined as "[a] chronic disease of adults marked by enlargement of the bones of the extremities, face and jaw that is caused by overactivity of the pituitary gland." THE AM. HERITAGE DICT. 16 (4th ed. 2009).

[189] Brief for Appellant, *supra* note 119, at 52.

supremacist rhetoric that associated African Americans with disease, loathsome conditions, and other undesirable traits.[190]

Most importantly, the story of Dr. Barker's sad case study allowed Redmond to connect his racial misidentification theory with his overall theory of the case that Luella killed her baby out of mental strain. Immediately after describing the misery of a white man mistaken for an African American, Redmond pronounced:

> Then in view of all this distress and pain by a white man because of his thick lips and negroid features, Your Honors can very readily see the desperation and hysterical state of mind into which a highly nervous white woman might drift by such a development in her baby.[191]

Redmond followed this suggestion with the cool observation—as if to say it could happen to any white person at any time—"Dr. Sajous says that this bronzing of the skin may be present in many diseases."[192] Having put his powerful white readers in a position to wonder what it would be like to be mistaken for African American,[193] Redmond further pressed his theory of the case, turning it into an indictment of the color line and its brutal effects. He wrote,

Then may we not ask:

> Is every white child that happens to have a little ductless gland affliction; that happens to be born with a little too much pigment according to certain standards, to be slain by its morose and hysterical mother who might lose her standing in society, and feel that she might lose her standing in society, and feel that she might escape the infanticide by charging it to the mere threats of some defenseless Colored man.[194]

Redmond ended his brief with a strange tale of a Havana, Cuba orphanage with a bell-ringing box affixed to a revolving door that simultaneously alerted authorities of a foundling left at the

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[190] *See* SMITH, *supra* note 163, at 63-65, 80-83.

[191] Brief for Appellant, *supra* note 119, at 52.

[192] *Id.*

[193] Redmond also might have been hoping the justices might take the next step and wonder what it would be like actually to *be* African American.

[194] Brief for Appellant, *supra* note 119, at 52-53.

door, and allowed parents leaving the baby in the box to depart before "one of the nurses who sleep in the room into which this door revolves gets up immediately and turns the door and takes charge of" the foundling.[195] Fantastical as Redmond's story sounds, it was real: the *New York Times* had once reported the existence of just such an institution with just such a door in Havana.[196] Redmond used the story to argue that the Williamson baby's sad death would not have occurred

> [i]f Mrs. Williamson could only have disposed of her baby in this way and saved her home as she thought from conflagration, foreclosure, safeguarded the lives of her other children from the hand of an incendiarist, appeased the wrath of the indignant and in some other way disposed of this baby and lightened the remorse and heart aches of her down-cast parents.[197]

Redmond chose to let that reflection be his argument's landing point, never stating or suggesting another solution obvious in our own day, which would be to keep the child, neither murdering nor abandoning it. Perhaps a cross-racial household, or one which might be perceived as such, was as unimaginable to Redmond as it was to the indignation committee that visited the Williamson house. Nonetheless, Redmond would have known better than to suggest such a possibility to the justices. Indeed, his alternative "happy ending" follows precisely the indignation committee's recommendation. In so doing, Redmond's argument echoed the story Lillian Smith told of her parents' adoption, then disavowal, of a young girl whom the community first thought was

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[195] *Id.* at 53.

[196] *See How Cuban Orphans Live,* N.Y. TIMES, Mar. 25, 1900, *available through* Proquest Historical Newspapers (copy on file with author). Redmond did not cite the *Times* article, but claimed to have visited the orphanage himself. It is possible he saw the orphanage and its door, as he "travelled extensively." *See* WILSON, *supra* note 118, at 49-54. However, Wilson's book does not specify travels to Havana, and it seems possible Redmond may have been reluctant to face the evidentiary problems of getting a news article into the record through an appellate argument, and one from a northern paper, at that. Baby boxes recently have resurfaced in Europe, but are controversial. *See* PHILIP REEVES, *All Things Considered: Spread of 'Baby Boxes' Alarms Europeans* (NPR radio broadcast Feb. 18, 2013) (transcript *available at* http://www.npr.org/2013/02/18/172336348/spread-of-baby-boxes-alarms-europeans).

[197] Brief for Appellant, *supra* note 119, at 54.

white and then concluded was African American. After a brief stay at the Smith home while she was thought to be white, the Smiths sent her away and told Lillian that her "sister" could not live with them or be her sister because "'a colored child cannot live in our home.'"[198]

III. THE COURT'S STORY: SOUTHERN GOTHIC

Redmond argued Pruitt's case in late January of 1932. Apparently, he reported to Roy Wilkins that his argument stood a good chance of success.[199] He was wrong. The majority of the court's justices could not bring themselves to rule for Pruitt. On March 7, 1932, the Mississippi Supreme Court affirmed the sentence, and set Pruitt's date for execution by hanging for April 15, 1932.[200] Nonetheless, Redmond's efforts were not in vain. Justices Virgil Griffith and William Dozier Anderson dissented.

Their dissent was tersely yet forcefully stated, which suggests that Redmond's brief was effective, even if the dissenters would not openly endorse Redmond's arguments.[201] The dissenters would only say that the prosecution's corroborating evidence was insufficient, and Luella's story "so unreasonable and improbable as to be unbelievable."[202] As for anything else, the dissenters saw "no good purpose that would be answered by setting out more fully the reasons on which [they] base[d] th[eir] dissent."[203] Still, the dissenters emphasized the strength of their conclusion by suggesting not only that the conviction be overturned, but that Pruitt be "discharge[d]."[204]

The majority rejected Redmond's arguments in the briefest of terms, with little explanation. In response to his ethnological arguments, the court simply stated that "[i]t is quite well settled that persons familiar with the negro race, as to the mixture of negro with white blood, may testify concerning the same."[205] The

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198 LILLIAN SMITH, KILLERS OF THE DREAM 346-47 (1949).

199 Memorandum To Mr. White From Mr. Wilkins (Feb. 4, 1932) (on file with author).

200 Pruitt v. State, 139 So. 861, 866 (Miss. 1932).

201 *Id.* (Anderson and Griffith, JJ., dissenting).

202 *Id.*

203 *Id.*

204 *Id.*

205 *Id.* at 864.

court cited two treatises and one 1859 North Carolina case in support of this assertion,[206] and ignored the "mixed race" nuances of Redmond's argument and the Alabama cases he cited. For the court, it was good enough that the jury heard from lay witnesses who lived in a state "where the white and the negro race are about equally divided in population . . . ."[207] This terse and thinly supported analysis of the issue plainly suggests the majority did not want to meaningfully engage with Redmond's argument.

The majority likewise brushed away the inconsistencies and other factual problems in Luella's tale. Instead, the court made the testimony sound more solid than it was, saying: "After a most careful examination of this record, we are bound to say there is not a line or syllable of testimony contradicting this statement to be found therein."[208] Given that the brunt of Luella's testimony against Pruitt centered on the alleged nighttime encounter at which only she, Pruitt, and the now deceased baby were present, the implication that the testimony would be accepted absent contradiction amounted to penalizing Pruitt for exercising his right to refrain from testifying.

The court justified its position by stating that "[i]t has long been settled in this state, beyond peradventure, that the testimony of an accomplice alone, uncorroborated, is sufficient to sustain a verdict of guilty."[209] Nonetheless, the court's analysis of this issue was both thin and tenuous. The court cited a number of precedents,[210] only two of which were twentieth century decisions.

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[206] *Id.* (citing "1 Wharton's Criminal Evidence, page 843; Underhill's Criminal Evidence, § 53; and State v. Jacobs, 51 N. C. 284"). *Jacobs* addressed "whether the witness Pritchett was competent to testify as an expert, that the defendant was a descendant of an African ancestor." State v. Jacobs, 51 N.C. 284, 286 (1859). The per curiam ante-bellum opinion actually held that expertise would be required to detect "the existence of any thing less than one-fourth of African blood in a subject," thereby tending to support Redmond's argument. *Id.* at 288. The Mississippi Supreme Court apparently relied on the North Carolina court's application of that holding to the facts before it, as it had found that Pritchett possessed the necessary expertise by virtue of his twelve years' experience as a planter and owner-manager of slaves and his avowed "attention to and . . . observation of the effects of the intermixture of negro or African blood with the white and Indian races." *Id.* (opinion and syllabus reciting the facts).

[207] *Pruitt,* 139 So. at 864.

[208] *Id.* at 865.

[209] *Id.*

[210] These were: Keithler v. State, 18 Miss. (10 S. & M.) 192 (1848); Dick v. State, 30 Miss. 593 (1856); Strawhern v. State, 37 Miss. 422 (1859); George v. State, 39 Miss. 570

Neither of the two modern cases offered strong support for the court's assertion. In fact, one of them implied that insupportable accomplice testimony might not suffice for conviction.[211]

On these grounds, the majority of the justices of the Mississippi Supreme Court accepted Luella's story and voted to affirm Pruitt's conviction and death sentence. Despite the myriad possibilities posed by the death of James Walton Williamson, including those Redmond offered in his brief, the justices were not inclined to explore the problems and inconsistencies in Luella's story. In fact, the bizarre aspects of her tale seemed to confirm its veracity for the justices, as if the case was "southern gothic"[212] come true.

Many elements of southern gothic—horror, violence, psychological aberration, and "the legacy of slavery and racial discrimination"[213]—were, in fact, present in Pruitt's case. Most obviously, the thought that a mother could poison her own infant is simultaneously gothic and repugnant: "in cases of infanticide, law tends to construct the mother as 'mad or bad' because no good or sane mother would kill her child."[214]

Although Redmond's brief pressed the theory that Luella was "mad," the Mississippi Supreme Court concluded she was "bad." Moreover, she was bad precisely because she was a white woman who had been engaged in an illicit relationship with an African American man. As the court put it: "She confessed murdering her own offspring, her infidelity to her husband, and her infidelity to

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(1860); Fitzcox v. State, 52 Miss. 923 (1876); White v. State, 52 Miss. 216 (1876); Wilson v. State, 16 So. 304 (Miss. 1894); Matthews v. State, 114 So. 816 (Miss. 1927); and Gates v. State, 135 So. 189 (Miss. 1931).

[211] *See Matthews,* 114 So. at 817. *Gates* held without explanation that uncorroborated accomplice testimony would suffice for conviction, but did so in the context of a case with "ample corroboration to support the testimony . . . ." *Gates,* 135 So. at 190.

[212] The southern "gothic" literary tradition was flourishing when the majority wrote its 1932 *Pruitt* decision. Two of the most lurid examples of the genre virtually coincided with the case: in 1931 Erskine Caldwell published *Tobacco Road* and William Faulkner published *Sanctuary*. *See* ALLAN LLOYD-SMITH, AMERICAN GOTHIC FICTION: AN INTRODUCTION 19 (2004). Faulkner's less sensationalistic *Light in August* was published in 1932. *Id.*

[213] *Id.* at 28.

[214] Susan Ayres, *[N]ot a Story to Pass On: Constructing Mothers Who Kill*, 15 HASTINGS WOMEN'S L.J. 39, 58-59 (2004).

her race."[215] In nearly the next breath, the court described Luella as "confessedly a bad woman, and confessedly a murderess."[216]

In fact, the court seemed as unable to fathom Luella's alleged consensual intercourse with Pruitt as her murder of her three month old child; the justices assumed that no southern white woman was "so depraved as to 'bestow her favors on a black man.'"[217] After all, they came of age in a culture in which whites "claimed consensual sex between a black man and a white woman to be unimaginable, expounding upon white women's revulsion at the thought."[218] Thus, the court's tale of the relationship took on a gothic tone, with intertwined elements of grotesque and looming violence: "they had been *intimate;* . . . they both knew that the neighborhood was aroused about the *mongrel* baby; . . . there were rumblings . . . and *threats of a mob*."[219] The court's parallel phrasing made clear the linkage between interracial intimacy, grotesque, "mongrel" offspring, and mob violence.

For the majority, the explanation lay in a gothic, psychological twist on the then-familiar image of the black male "beast." The majority mused that "[Pruitt] must have had a powerful influence upon the woman . . . . [S]o far as she was concerned, Ervin Pruitt's was the master mind. She had consented to become abased, and subjected to his lecherous embraces, and had gone the limit of degradation with him."[220] With this account in mind, the justices flatly rejected the possibility that her story was "unreasonable," let alone untrue. Any other conclusion required "leav[ing] the path of logic and hav[ing] recourse to a vivid imagination[.]"[221]

Yet, this account of the relationship wavered in its characterization of Luella. According to the justices, she was simultaneously depraved, but lacked agency in her "abasement" and "degradation." Luella's lower class status probably made it easier for the justices to consider her depraved than it would

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[215] Pruitt v. State, 139 So. 861, 865 (Miss. 1932).

[216] *Id.*

[217] MCMILLEN, supra note 2, at 15.

[218] MARTHA HODES, WHITE WOMEN, BLACK MEN: ILLICIT SEX IN THE NINETEENTH CENTURY SOUTH 178 (1997).

[219] *Pruitt,* 139 So. at 865 (emphasis added).

[220] *Id.*

[221] *Id.*

otherwise have been, but the characterization is nonetheless unusual. By the turn of the century, "[d]ominant ideas about white female purity now came to include poor women more overtly, as those who expounded upon the threat of black men took care to include lower-class women in their most sweeping statements."[222] Even when a white woman was assumed to be depraved, her relationship with an African American male could nonetheless lead to a lynching of that man, as if the case involved rape.[223] Indeed, there is evidence that white women caught in consensual interracial relationships often covered themselves by accusing their partners of rape, or were pressured or coerced into doing so.[224] Thus, the majority of the justices could not imagine her intimacies with him in terms unbound from rape: for them, Pruitt must have been "powerful," "lecherous," and able to "master" Luella.

Most importantly, the justices' story helped them to restore and reimpose the color line on the case. As Martha Hodes has explained:

> To white Southerners who wished to preserve racial hierarchy in the absence of slavery, it was crucial that both elite and nonelite white women minded the boundaries of the color line and gave birth only to white children. Without slavery to differentiate blacks from poor whites, it was equally important that ideas about the purity of white women included poor women. For to characterize all white women as pure had an important effect: it made sex between a black man and a white woman by definition rape, because a "pure" white woman, no matter how poor, could not possibly (in white minds) desire sex with a black man.[225]

IV. LAWYERING IN THE LION'S MOUTH

Despite the loss of the appeal, Redmond's brief is a remarkable document. In it, he managed to challenge the Deep South's color line while carefully observing the color line's rules. Ironically, this maneuver resembles what Grace Elizabeth Hale

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[222] HODES, *supra* note 218, at 201.
[223] *Id.* at 201-02.
[224] *Id.* at 192-93.
[225] *Id.* at 202.

has called "'miscegenated' style," meaning he took whites' racial beliefs and used them as a source of transformative power.[226] In so doing, he "paradoxically subverted white [judges'] expectations."[227]

Not only the style, but the substance, of his argument paralleled the work of other "miscegenist stylists." Around the time that Redmond wrote the brief, Harlem Renaissance writers were challenging mainstream whites' notions of racial identity with narratives about passing.[228] Hale argues that "[p]assing and mimicking and masking—the creation with more or less self-consciousness of a 'miscegenated' style—became by the late 1920s the ultimate resistance to the racial polarities whites set at the center of modern American life."[229] If that was true for writers in New York City, it was that much more so for Redmond, an African American man in Jackson, Mississippi.

Although Redmond's rhetoric in his *Pruitt* brief toes the color line and conforms with the racial etiquette of his day, his pragmatism should not be mistaken for "Uncle Tomism." Redmond did not find white supremacism acceptable, and he spoke strongly at times against it, sometimes jeopardizing his economic status and career in the process. He protested unfair treatment by white judges during his court appearances.[230] He protested the treatment of African Americans imperiled by the Mississippi River flood.[231] He protested the absence of African Americans from Mississippi voting rolls,[232] and said "'[t]he Negro's status in Southern politics is dark as Hell and smells like cheese.'"[233] He was furious that African Americans had been largely closed out of Works Progress Administration and other New Deal programs in Mississippi. Sparse political appointments, wage stagnation, and limited educational opportunities and funding, for African Americans likewise angered him.[234] When

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[226] *See* GRACE ELIZABETH HALE, MAKING WHITENESS: THE CULTURE OF SEGREGATION IN THE SOUTH, 1890-1940 38 (1999).

[227] *Id.*

[228] *Id.* at 38-41.

[229] *Id.* at 40.

[230] SMITH, *supra* note 1, at 298-99.

[231] DANIEL, *supra* note 20, at 153, 155, 162, 165.

[232] BUNCHE, *supra* note 9, at 435-36.

[233] *Id.* at 435.

[234] *Id.* at 564-65.

Mississippi bar authorities thwarted the bar admission of his protégé, Percy Greene, he was also "angered [and] perturbed over that."[235]

Simply put, Redmond knew how to work with whites, but he had his limits. His brother-in-law, Perry Howard, was a master practitioner at "'staying in' with the white folks": he was shrewd, but also was known for "his humility in the presence of whites, and his tractability among whites . . . ."[236] By all accounts, Redmond was an equally shrewd politician, but he broke openly with Howard at around the same time he took up Pruitt's representation, "calling him 'the greatest impediment conceivable to Negroes . . . .'"[237] Although Redmond made this break in the context of advancing his own political status, he was specific in his charges that Howard had "'surrendered to the lily whites.'"[238]

Redmond was not about to surrender on Pruitt's behalf. Instead, his elaborate deference to the white justices, white women, and white feelings in his *Pruitt* brief cloaked subversive arguments. Not only did Redmond imply that the color line was a permeable artifice, but he also implied that maintaining the artifice exacted a heavy price. At the end of the day, Redmond's theory of the case was as much a Southern gothic as was the court's; the difference was that the court's gothic was a fantastical tale, and Redmond's was a parable of the madness of racialized thinking. Taken literally, he was arguing that Luella was driven mad by twin forces of race and racism—and that the final sacrifice to be made to these forces would be Pruitt's life.

V. AFTERMATH

Fortunately for Pruitt, the NAACP and S.D. Redmond rallied support behind his case. Redmond and Louis Jiggitts filed exceptions to the Mississippi Supreme Court's opinion, but

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[235] Interview with Percy Greene, *supra* note 117 at 8.

[236] BUNCHE, *supra* note 9, at 81.

[237] McMillen, *supra* note 9, at 221. In one contemporaneous news account, the quotation is that Howard was an impediment to *voters,* not Negroes. *See Perry Howard Is Not A Citizen of Mississippi,* THE AFRO-AMERICAN, Oct. 3, 1931, *available at* Google Newspapers, http://news.google.com/newspapers?nid=1532&dat=19311003&id=V4k9AAAAIBAJ&sjid=aisMAAAAIBAJ&pg=1881,476225. However, that statement makes no sense.

[238] *Perry Howard Is Not A Citizen, supra* note 237.

Redmond's primary efforts were directed towards obtaining clemency from the Governor. In Mississippi in 1932, this was no small task, as "the standards for clemency were . . . capricious and corrupt."[239] For example, prisoners seeking clemency from Parchman Prison needed support from Parchman officials, as well as letters from "the 'best' white opinion of the town."[240]

Redmond appears to have known how to work the system. Within three days of learning that the NAACP wished him to pursue clemency for Pruitt, he advised the NAACP to "lin[e] [its] forces up" for a swift letter-writing campaign to begin the moment the court ruled on exceptions to its opinion, which might happen "just a few days before execution." Redmond had already obtained promises for supporting letters from the Attorney Generals who had briefed the case for the state. He also wrote to the trial court judge and prosecutor to request letters from them. [241]

On April 13, two days before Pruitt's execution date, Redmond wrote to Roy Wilkins to report that a commutation looked likely. He reported that the petition filed on Pruitt's behalf included the signatures of "more than 200 white people of Meridian," including one from someone politically connected to the Governor, as well as Meridian's Episcopal Bishop.[242] Although the trial prosecutor would not support the effort, the trial court judge did.[243]

On April 15, 1932, Governor Conner granted Pruitt the first commutation he ever gave, changing his death sentence to life

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[239] OSHINSKY, *supra* note 62, at 180.

[240] *Id.*

[241] Letter from S.D. Redmond to Roy Wilkins, Mar. 28, 1932, *microformed on* Papers of the NAACP, Part 8, Series A.

[242] Letter from S.D. Redmond to Roy Wilkins, Apr. 13, 1932; Letter from S.D. Redmond to Roy Wilkins, Apr. 14, 1932 (copies on file with author). It is unclear if Redmond, or R.B. Eleazer of the Committee on Interracial Cooperation, captured the Bishop's interest and support. *See* Letter from R.B. Eleazer to Roy Wilkins, Apr. 8, 1932 (copy on file with author). Eleazer's letter even goes so far as to suggest that Pruitt's original defense counsel, Dwyer, had prepared a brief and petition for Pruitt but had been displaced by Redmond. *Id.* When the NAACP questioned Redmond about this, he reacted with hurt and anger. Letter from S.D. Redmond to Roy Wilkins, Apr. 16, 1932 (copy on file with author). Wilkins seems to have accepted Redmond's account of what happened, and that Dwyer's post-trial role had been limited. *See* Letter from Roy Wilkins to S.D. Redmond, Apr. 20, 1932 (copy on file with author).

[243] Letter from S.D. Redmond to Roy Wilkins, Apr. 16, 1932 (copy on file with author).

imprisonment,[244] just one day before he was to have been executed.[245] The *Meridian Star* reported that "Jailer McGee went to Pruitt's cell and, calling him to the steel barred door said: 'Pruitt, the Lord and the governor have been good to you; you are not going to be hanged tomorrow.'"[246] The jailer allegedly advised Pruitt to "work hard and conduct himself in every way in accordance with the prison rules" for the remainder of his life sentence, and Pruitt "replied that he would follow the jailer's advice the very best he knew how."[247]

The *Meridian Star* made no mention of Redmond's efforts on Pruitt's behalf, instead crediting white attorney "Francis Dwyer of the Meridian bar" as "[o]ne of those most active in presenting Pruitt's case to the governor," even stating that Dwyer appeared before the state supreme court on appeal.[248] Nonetheless, Redmond's work was instrumental to Pruitt's fate, as Governor Conner cited "the recommendation of two supreme court justices who declined to affirm the death sentence" as one of the key factors in his decision to commute Pruitt's sentence.[249]

The 1940 Federal Census suggests that Luella Williamson remained incarcerated.[250] Research yields no further paper traces of the lives of Ervin Pruitt and Luella Williamson. This is not surprising. The two were marginal people leading marginal lives in an impoverished state during the Great Depression. Nonetheless, a possible trace of them and their story remains: outside of Moscow, Mississippi, Pruit Hand Road intersects with Williamson Road,[251] both likely marking the boundaries of where

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[244] *Pruitt Beats Noose as Death Sentence is Changed to Life,* THE CHI. DEFENDER, Apr. 23, 1932, at 13, *available at* Proquest Historical Newspapers (copy on file with author).

[245] *See Conner Commutes Negro's Death Sentence,* MERIDIAN STAR, Apr. 14, 1931, at 1.

[246] *Id.*

[247] *Id.*

[248] *Id.*

[249] *Id.*

[250] FEDERAL CENSUS BUREAU, 1940 FEDERAL CENSUS, *Record for Beat 5, Miss. St. Pen.*, Sheet No. 5B (copy on file with author).

[251] *See* http://maps.google.com/maps?rls=com.microsoft:en-us:IE-SearchBox&oe=&q=williamson+road+kemper+county+mississippi&um=1&ie=UTF-8&hq=&hnear=0x8883891c3ef8ebbb:0x2dcad13e13be25b5,Williamson+Rd,+MS+39325&gl=us&sa=X&ei=20wpULeICILw0gHQlYDYDA&ved=0CAkQ8gEwAA. "Hand" was the surname of one of the neighbor witnesses who testified in the case. *Charge White*

they lived, and where James Walton Williamson died, eighty-one years ago.

Mother and Negro Kill Baby, MERIDIAN STAR, Feb. 28, 1931, at 1, 2 (copy on file with author).