Beyond the Vote: Black Women's Klan Testimonies in the Context of the Federal South Carolina Ku Klux Klan Trials, 1871-1872

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Introduction

> "The Ku Klux is no fable. I cannot say it exists everywhere at the South but it does exist in many places, and is the most atrocious organization that the civilized part of the world has ever known. Your blood would be curdled if you knew one tenth of what I know about the upper part of South Carolina." –Attorney General Amos T. Akerman, November 20, 1871.[1]

As Amos Tappan Akerman, United States Attorney General from 1870 through 1871, explained, the "Ku Klux" committed egregious acts against Black men, women, and children across the South during Reconstruction. The degree to which the first Ku Klux Klan—not to be confused with the Ku Klux Klan of the early 1900s—was a uniform entity or a formally established organization has long been debated.[2] Yet there is no question about the extreme violence perpetrated by white Southern men connected to the Ku-Klux organization against newly freed Black Americans and some of their white Republican allies in the South during the Reconstruction period.

After the Confederacy's 1865 defeat in the Civil War, the Southern states were forced to abandon a society built on race-based slavery. Moreover, through 1868's Fourteenth Amendment, Black Americans became citizens of the United States with, at least on paper, "equal protection of the laws."[3] By 1870, the Fifteenth Amendment had extended federal protection to Black men of one of the most important citizenship rights, voting. Many white Southerners deplored these radical changes to American society. As newly freed Black Americans made significant social and political gains during the early Reconstruction era—like

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[1] Amos T. Akerman to Hon. James Jackson, November 20, 1871, *in* Amos Tappan Akerman Letter Books, 1871-76, Book 1, Albert and Shirley Small Special Collections Library, University of Virginia. Hereafter cited as Akerman Papers.

[2] In Elaine Frantz Parsons' *Ku-Klux: The Birth of the Klan During Reconstruction*, Parsons questions Allen Trelease, the leading historian of the first Klan, and his presentation of the Reconstruction-era Klan as a widespread, well-established organization. Frantz Parsons believes that the Klan is better characterized as a set of local networks.

[3] U.S. Const. amend. XIV, § 1.

winning elected federal office—many white Southern men channeled their frustration into extreme violence.

South Carolina witnessed some of the most intense racial violence of the Reconstruction era. By 1868, South Carolina Republicans had seized political power in the state, as Black male voters, who overwhelmingly voted Republican, accounted for about 60% of the electorate. Republicans swept the 1868 elections, electing Republican Robert K. Scott as governor, winning a solid Republican majority in the state Senate, and even gaining a Black Republican majority in the state's lower house. White South Carolina Democrats, however, were determined to retake political power in the 1870 elections, rebranding themselves as the Union Reform Party in a desperate bid to attract Black supporters. This strategy ultimately failed, and Republicans triumphed again in South Carolina in 1870, with nearly all Blacks voting Republican and all whites voting Democratic.[4]

By 1870, the Ku-Klux organization had begun a campaign of terror in South Carolina, especially in the upcountry region, against Black (and some white) Republicans.[5] In York County, South Carolina from November 1870 to September 1871, Klan terrorists raided Black-occupied homes on practically a nightly basis, systematically moving from one neighborhood to another.[6] By March 1871, Major Lewis Merrill, an army official sent by President Ulysses S. Grant to South Carolina to assess and collect information about South Carolina's racial violence, had procured evidence of eleven murders and more than 600 whippings in York County alone.[7] In the spring of 1871, an estimated 1,800 of the 2,300 adult white males in York County had

[4] Lou Falkner Williams, *The Great South Carolina Ku Klux Klan Trials, 1871-1872* (Athens: University of Georgia Press, 1996), 8-16.
[5] Williams, *The Great*, 16.
[6] Allen Trelease, *White Terror: The Ku Klux Klan Conspiracy and Southern Reconstruction* (Baton Rouge: Louisiana State University Press, 1999), 365.
[7] Williams, *The Great*, 45.

joined the Klan.[8] While York County may have been an extreme example, Klan violence was an everyday occurrence in many parts of South Carolina, especially the upcountry, by 1870.

Republican-appointed federal officials in Washington made various efforts to halt the Klan's violence, particularly in South Carolina. The passage of the Reconstruction Acts of 1867, which split the former Confederacy (except for Tennessee) into five military zones, marked the beginning of a period known as congressional or radical Reconstruction.[9] During this period, the Republican-majority Congress seized control of Reconstruction policies from President Andrew Johnson, greatly expanding the federal government's commitment to enforcing and protecting newly freed Black Americans' rights in the South. The Enforcement Acts of 1870 and 1871 were particularly important pieces of congressional legislation for expanding the federal government's ability to prosecute crimes resulting from racial violence, with a special emphasis on addressing crimes relating to voting and election procedures.[10] In 1871, a sub-committee of a joint congressional committee, consisting of seven Senators and fourteen Representatives of both political parties, traveled throughout the Southern states, investigating the Ku-Klux organization on the ground and taking testimony from victims, suspected Klan perpetrators, local officials, and military personnel.[11] Their final product, the Report of the Joint Select Committee to Inquire into the Condition of Affairs in the Late Insurrectionary States, was published in 1872, containing thirteen volumes and nearly 10,000 pages.[12] South Carolina alone accounted for three full volumes. On October 17, 1871, President Grant suspended the writ of habeas corpus in nine

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[8] Trelease, *White Terror*, 363.
[9] Eric Foner, *A Short History of Reconstruction, 1863-1877* (New York: Harper Perennial Modern Classics, 2015), 124.
[10] Trelease, *White Terror*, 384-387.
[11] Trelease, *White Terror*, 392.
[12] U.S. Congress, Joint Select Committee on the Condition of Affairs in the Late Insurrectionary States, *Report of the Joint Select Committee Appointed to Inquire into the Condition of Affairs in the Late Insurrectionary States* (Washington, D.C., Government Printing Office, 1872), http://archive.org/details/insurrectionstate03goverich. Hereafter cited as the *Joint Select Committee Report*.

South Carolina upcountry counties and initiated the federal Ku Klux Klan trials in the state.[13] Federal Klan prosecutions took place across the South in 1871—large-scale federal Klan trials in North Carolina, for example, had started early that year—but only in South Carolina did President Grant utilize the Ku Klux Klan Act (the Third Enforcement Act) of April 1871 to make mass arrests.[14]

As the leading historian on the topic, Lou Falkner Williams, explains, the South Carolina Ku Klux Klan trials of 1871-72 were exceptional not just because President Grant suspended the writ of habeas corpus; these are also particularly noteworthy for federal prosecutors' novel interpretation and presentation of the Fourteenth Amendment in order to protect freedpeople. Especially in some of the early cases during these trials, federal prosecutors aimed to establish a version of what is today known as the incorporation doctrine—making certain Bill of Rights amendments applicable at the state level through the Fourteenth Amendment—so that, through the Enforcement Acts, the federal government could ensure protection of a wide range of freedpeople's rights when state governments failed to do so.[15] Ultimately, the Fourth Federal Circuit Court rejected the prosecution's novel readings of the Fourteenth Amendments, as did the Supreme Court in both its 1873 *U.S. v. Cruikshank* and 1876 *Slaughter-House Cases* decisions.[16] Thus, the South Carolina trials, combined with Supreme Court decisions, undercut the federal government's ability to protect newly freed Black Americans' rights in the long term.[17] By the

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[13] Williams, *The Great*, 46-47.
[14] Trelease, *White Terror*, 401.
[15] Lou Falkner Williams, "The South Carolina Ku Klux Klan Trials and Enforcement of Federal Rights, 1871-1872," *Civil War History* 39, no. 1 (March 1993): 52, https://doi.org/10.1353/cwh.1993.0070.
[16] Robert J. Kaczorowski, *The Politics of Judicial Interpretation: The Federal Courts, Department of Justice, and Civil Rights, 1866-1876* (New York: Fordham University Press, 2005), xvi.
[17] Chapters 7-9 of Robert Kaczorowski's *The Politics of Judicial Interpretation* offer an in-depth analysis of the *Cruikshank* and *Slaughter-Houses Cases* decisions and their implications for Reconstruction, specifically federal enforcement.
Kaczorowski, *The Politics*, 108-188.

summer of 1873, President Grant officially ended federal prosecutions of the Ku-Klux organization throughout the South, even ordering all those who had been convicted and incarcerated by the federal government for Ku-Klux crimes to be pardoned.[18]

To thoroughly evaluate the consequences of the Fourth Federal Circuit Court's limited reading of the Fourteenth Amendment during the South Carolina Klan trials, this thesis will begin by exploring the impacts of Klan violence on a set of, at first glance, unexpected actors: Black South Carolinian women. With the exception of Lou Falkner Williams, historians of the South Carolina Klan trials have focused mostly on the Klan's Black male victims.[19] While they may have been less frequently recorded as official witnesses or victims of Klan violence than Black men, Black South Carolinian women gave powerful testimony to both the South Carolina congressional sub-committee and the South Carolina Klan trials prosecutors about their unique experiences with Klan violence.[20] Only by fully evaluating the specific reasons why Black women in South Carolina were attacked and the long-term impacts of Klan violence on Black women can historians fully and fairly capture what was at stake for *all* freedpeople when federal enforcement in South Carolina failed to establish legal doctrine and precedents for prosecuting a wide range of the Klan's crimes against freedpeople.

One reason why Reconstruction-era Republican officials tended to marginalize the experiences of Black women was because of the gendered nature of voting and official political party affiliation in this era. Black South Carolinian men, unlike Black women, were eligible voters through the Fifteenth Amendment, making them most easily and directly recognized as the main targets of Ku-Klux violence, which was often connected, at least indirectly, to the

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[18] Herbert Shapiro, "The Ku Klux Klan During Reconstruction: The South Carolina Episode," *The Journal of Negro History* 49, no. 1 (1964): 46, https://doi.org/10.2307/2716475.
[19] Williams, "The South Carolina," 53.
[20] Williams, *The Great,* 64.

Democratic Party. As mentioned earlier, the three Enforcement Acts that Congress passed in response to white Southern racial violence were mainly designed to expand federal protection of Black voters and Black voting rights, which, of course, impacted men most directly. For example, once the federal government began prosecutorial efforts in South Carolina in 1871, prosecutors mainly relied on the Enforcement Act of 1870, which asserted that "all citizens of the United States who are or shall be otherwise qualified by law to vote at any election […] shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude."[21] In a different way, Klan-affiliated Democrats, as well as Democrats sympathetic to the Klan, manifested their own political responses to the Klan as they sought to defend it. Democratic officials presented the Klan as a reactionary, protective political organization responding to the proliferation of predominately Black Republican Union Leagues (often referred to as "loyal leagues") in the South. In the minority report (congressional Democrats' report) of the joint select committee's final report, Democratic officials asserted that: "The Loyal Leagues were organized in 1867, long before Ku-Kluxism reared its lawless head in South Carolina."[22] While many testimonies featured in the joint select committee report offer examples of Klan violence that lacked clear voting or electoral motivations, both Republican and Democratic officials chiefly focused their responses to or defenses of the Klan on these categories of crimes, which often did not capture the experiences of Black female victims.

Relatively few scholars have studied the first Klan, and most who have written about the first Klan have concentrated on its political connection to the Democratic Party. During the

[21] U.S. Congress, *First Enforcement Act*, May 31, 1870, in United States, Benn Pitman and Louis F. Post, *Proceedings in the Ku Klux trials at Columbia, SC in the United States Circuit Court, November term, 1871,* Printed from government copy, Columbia, SC: Republican Printing Company, 812-821. Hereafter cited as *Klan Trial Proceedings.*

[22] *Joint Select Committee Report,* 1: 527.

Progressive Era, numerous Dunning School scholars, such as Paul Haworth, used racist assumptions to depict Reconstruction-era Klan violence as inevitable due to the North's forceful support of "negro equality and negro rule" in the South.[23] It was not until Allen Trelease's 1971 *White Terror: The Ku Klux Klan Conspiracy and Southern Reconstruction* that the first Klan was fully and comprehensively studied. In great detail, Trelease traced the Klan from its 1865 inception in Tennessee through the era of vigorous federal responses to the Klan in the early 1870s. Trelease repeatedly highlighted the connections between the Klan in specific Southern states and the agenda of the local and national Democratic Party.[24] In her 2015 book *Ku-Klux: The Birth of the Klan During Reconstruction*, Elaine Frantz Parsons brought analytical frameworks from cultural history and Black studies to her evaluation of the first Klan, and she questioned Trelease's representation of the first Klan as a widespread, relatively well-established organization.[25] Nonetheless, *White Terror's* persistent place as the leading source on the Reconstruction-era Klan is underscored by its re-release in February 2023, more than fifty years after its original publication.

A handful of scholars have made use of the joint select committee's 1872 report to offer gendered analyses of Klan violence. Kidada Williams, in 2012's *They Left Great Marks on Me: African American Testimonies of Racial Violence from Emancipation to World War I*, argues that Black individuals' decision to testify about racial violence, including Black women's testimonies about sexual violence, constituted an important part of their "individual recover[ies]" after slavery and their collective, active resistance to white supremacy.[26] Williams' most recent book,

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[23] Paul Leland Haworth, *Reconstruction and Union, 1865-1912* (London: Williams & Norate, 1912).
[24] Trelease, *White Terror*.
[25] Elaine Frantz Parsons, *Ku-Klux: The Birth of the Klan During Reconstruction* (Chapel Hill: The University of North Carolina Press, 2015).
[26] Kidada E. Williams, *They Left Great Marks on Me: African American Testimonies of Racial Violence from Emancipation to World War I* (New York: New York University Press, 2012).

I Saw Death Coming: A History of Terror and Survival in the War Against Reconstruction, focuses more narrowly on Reconstruction, using African Americans' testimony to challenge many white Southerners' account of the "failure" of Reconstruction (which eventually developed into the Lost Cause myth), asserting instead that: "It [Reconstruction] did not simply fail, white conservatives overthrew it."[27] *I Saw Death Coming* also highlights Black women's roles in locating, protecting, and building their families in the post-Civil War era despite living in environments of extreme racial violence. Hannah Rosén, in *Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Postemancipation South*, uses these testimonies to discuss the meaning of sexual violence during Reconstruction, arguing that Black victims' (particularly Black women's) testimonies directly challenged the racist gender norms infused into these acts of sexual violence.[28] Similarly, Lisa Cardyn, in her article "Sexualized Racism/Gendered Violence: Outraging the Body Politic in the Reconstruction South," has examined Klan sexual violence and its relationship to justice, citizenship, and sexual propriety during Reconstruction.[29] Cardyn's work highlights the long-term consequences of failed legal protections for Black female (and male) victims of Klan sexual assault, arguing that, "The case of the Reconstruction-era klans suggests that, contrary to the promise of the Fourteenth Amendment and the acts designed to enforce it, American citizens had no right to be free of sexual violence, whether or not it was motivated by race."[30] All of these works are critical for exploring the impacts of gender on Reconstruction-era Klan violence, though none of these

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[27] Kidada E. Williams, *I Saw Death Coming: A History of Terror and Survival in the War Against Reconstruction* (New York: Bloomsbury Publishing, 2023), xi-xxv.
[28] Hannah Rosén, *Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Postemancipation South* (Chapel Hill: University of North Carolina Press, 2009).
[29] Lisa Cardyn, "Sexualized Racism/Gendered Violence: Outraging the Body Politic in the Reconstruction South," *Michigan Law Review* 100, no. 4 (February 2002): 861, https://repository.law.umich.edu/mlr/vol100/iss4/2.
[30] Cardyn, "Sexualized Racism," 856.

authors have put this gendered analysis of the testimonies into direct conversation with the South Carolina Klan trials.

Historians covering the early Reconstruction period have made at least brief mention of the South Carolina Klan trials of 1871-72, and they have differed in their evaluation of these trials' successes; they have not, typically, stressed the role of gender in these trials. Robert Kaczorowski, in his legal history of Reconstruction, *The Politics of Judicial Interpretation: The Federal Courts, Department of Justice, and Civil Rights, 1866-76*, and Allen Trelease's *White Terror* both depicted these trials as representing the peak of federal enforcement of Black civil rights during Reconstruction and as successful, at least in the short term, in quelling Klan violence in South Carolina.[31] Other historians have expressed skepticism of the trials' success, even in the short term, in protecting Black rights. Herbert Shapiro has agreed that the federal trials in South Carolina effectively defeated the Klan for a time, but he has also argued that the trials undermined Northern support for federal intervention and empowered white Southern conservatives.[32] Kermit Hall has emphasized that these Republican-led Klan prosecutions were motivated by partisan political gain rather than a desire for true justice, and he has depicted Republicans officials' approaches to the judicial system as surprisingly conservative and "tradition-minded," stances that hindered their ability to use the law to safeguard Black rights.[33] In one of the harshest evaluations of these trials, Richard Zuczek makes the case that, more than anything else, the federal trials in South Carolina underscored the weaknesses of federal

[31] Trelease, *White Terror*, 399-418; Kaczorowski, *The Politics*, 62-79.
[32] Shapiro, "The Ku Klux," 34–55.
[33] Kermit L. Hall, "Political Power and Constitutional Legitimacy: The South Carolina Ku Klux Klan Trials, 1871-1872," *Emory Law Journal* 33, no. 4 (1984): 921–52, https://heinonline.org/HOL/P?h=hein.journals/emlj33&i=941.

enforcement, ultimately damaging Republican Reconstruction policies more than they defeated the Klan.[34]

Lou Falkner Williams is one of the only historians of the South Carolina Klan trials to emphasize their stakes for Black women and children. Like Kaczorowski and Shapiro, Falkner Williams recognizes the significance and success of the trials in the short term, calling them "the national government's most determined effort, aside from the Thirteenth Amendment itself, to use constitutional amendments and federal statutes to change the political and social structure of the South."[35] At the same time, Falkner Williams views the South Carolina Klan trials, in the long term, as a "microcosm" of the overall failure of Reconstruction to secure civil and political rights for Black Americans. In discussing the November 1871 term, the first of these South Carolina trials' two terms, Falkner Williams stresses the missed opportunity for securing all freedpeople's citizenship rights, including those of women and children, who were not typically understood to be the main targets of the Ku-Klux.[36]

Using Black women's testimonies about Klan violence in South Carolina, this thesis highlights the fundamental problems with contemporary federal officials and prosecutors' chief focus on the Klan's electoral or voting crimes. Of course, the Klan violence contemporary Republicans most directly aimed to suppress and prosecute—partisan intimidation or violence against Southern Black male voters—was more than deserving of immense federal action of its own. Yet analysis of Black South Carolinian women's testimonies reveals that the first Klan's violence went well beyond crimes related to voting or political party association. The insights these women's testimonies provide about the nature of Klan violence help us better evaluate both

[34]Richard Zuczek, "The Federal Government's Attack on the Ku Klux Klan: A Reassessment," *The South Carolina Historical Magazine* 97, no. 1 (1996): 47–64, https://www.jstor.org/stable/27570136.
[35] Williams, *The Great,* 2.
[36] Williams, *The Great,* 60-85.

the dangers of Klan violence itself during this period and federal Republican officials' responses to the Klan, including the South Carolina Klan trials.

In that vein, Chapter One of this study uses victims' testimony from the joint congressional committee report and the South Carolina Klan trials to explore the range of reasons why Black South Carolinian women were targeted by Klansmen. While these testimonies contain many examples of Klan violence against Black women that were motivated by their Black husbands' or male relatives' political party affiliations, they also highlight an array of motivations for Klan attacks beyond the narrow categories of voting or electoral crimes. Occasionally, these motivations were directly linked to Black women's newly won rights that lay completely outside of the realm of voting, partisan or electoral rights. Chapter Two explores Black women's experiences with Klan raids in the long term, emphasizing that, no matter what motivated a Klan raid, Black women had immense, long-lasting burdens when it came to caring for their families and carrying on with their day-to-day lives in the aftermath of intense violence and destruction. The serious limitations of the state and federal criminal justice systems during this period only added to Black women's burdens after a raid. Lastly, Chapter Three includes an analysis of Attorney General Akerman's papers that forges new understanding of his personal priorities in prosecuting Klan violence around the time of the South Carolina Klan trials, as well as the larger priorities of the Department of Justice. Chapter Three then provides a close study of the pre-trial proceedings in one specific case from the South Carolina Klan trials: *U.S v. Allen Crosby*. The *Crosby* case saw federal prosecutors' most prominent effort to enshrine the legal doctrine of incorporation into federal law and, thus, potentially expand federal legal precedents for responding to Klan violence beyond the traditionally male realms of voting and elections crimes. Ultimately, Chapter Three demonstrates that even federal prosecutors' most radical

attempts at securing justice for freedpeople continued to be limited by both prosecutors and the federal court's narrow definition and understanding of the nature of Klan violence.

Focusing on female Klan victims' experiences in Reconstruction-era South Carolina underscores what was at stake for *all* freedpeople, not just Black women, as a result of the limited judicial interpretation of the Fourteenth Amendment that emerged from the South Carolina Klan trials. Unlike Black men, Black women did not gain the right to vote soon after the Civil War, but their transition from chattel slavery to birthright citizenship was radical in its own right. A singular emphasis on the Klan's partisan or electoral violence and subsequent legal responses to these types of crimes diminishes how deeply and intensely the Klan targeted every right possessed by freedpeople in the post-slavery American South and all aspects of freedpeople's lives. As Akerman asserted, the Ku Klux was certainly no "fable." Yet, even if their failure was not always purposeful, Reconstruction-era contemporaries—including attorneys in Akerman's own Department of Justice—failed to use the law to address and properly prioritize the range of motivations behind Klan violence. The handful of Black South Carolinian women who took the risk of testifying helped lay bare the full scope and depth of the Klan's motives and brutality.

Chapter One: Motivations for Klan Violence Against Black Women in South Carolina

> "Because men that voted radical tickets they [the Klan] took the spite out on the women when they could get at them." –Harriet Hernandez, July 10, 1871.[37]

The words of Harriet Hernandez, a Black woman who testified to the congressional sub-committee in Spartanburg, South Carolina, paint a grim picture of the motivations behind Klan violence against Black female victims: violent acts against women allowed Klansmen to take out their frustrations with Black men who overwhelmingly voted Republican. In Hernandez's telling, Black women were not the initial or primary targets of Klansmen; instead, violence against women was an indirect way for Klan members to attack Black men. Hernandez's chilling statement about the nature of Klan violence against Black women is substantiated by the fact that Klansmen often targeted people in their homes, meaning that the family members of Black men—typically Black women and children—were situationally vulnerable to becoming victims of Klan violence.[38] Other Black women and men's testimonies to the South Carolina sub-committee offer several examples of incidents in which Black women were attacked explicitly because of their husbands' or male relatives' political party affiliations and voting records.

Lou Falkner Williams understands Klan violence against Black women in South Carolina primarily as a means of reaffirming white male authority by attacking Black male political power in the post-Civil War era.[39] In this sense, Black women like Harriet Hernandez were collateral damage in the fight between white male Ku-Klux attackers desperate to maintain the unimpeded political power they had enjoyed during the antebellum period and Black men like Mr.

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[37] *Joint Select Committee Report*, 3: 586.
[38] Laura F. Edwards, *Gendered Strife & Confusion: The Political Culture of Reconstruction* (Urbana: University of Illinois Press, 1997), 197.
[39] Williams, *The Great*, 35-36.

Hernandez who sought to exercise their newly won right to cast ballots.[40] Scholars like Lisa Cardyn have gone farther than Falkner Williams, arguing that Klan attacks on Black women, specifically those involving instances of sexual violence, indicated that women were more than unintended victims of violent attacks intended to suppress Black men's expanding voting rights. Cardyn argues that white Southern men's "loss" of a whole range of rights previously exclusive to them—the rights to bear arms, vote, own property and land, and control their families, which during the antebellum period had included not only white women and children but also enslaved peoples—damaged their gendered and racial self-identities and motivated many Klan attacks, encouraging both implicit and explicit acts of sexual violence against Black women (and men).[41] Momentarily, at least, sexual violence against Black women allowed white attackers to reclaim a sense of absolute power over Black women that resembled the power they had enjoyed under the regime of slavery. In this sense, Black women were as much direct Klan targets as Black men; white Southern men no longer controlled Black women, and Ku-Klux attackers' horrific acts of sexual violence represented their attempts to reverse the changes wrought by the war and the abolition of slavery.[42]

In this chapter, I use 1871 congressional and South Carolina Klan trial testimonies to explore the reasons for which the Klan attacked Black women. Having claimed freedom through the Civil War and acquired citizenship through the Civil Rights Act of 1866 and the Fourteenth Amendment, Southern Black women and men quickly began the process of gaining territorial, familial, and economic independence. Nonetheless, as Eric Foner highlights, racial violence

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[40] Falkner Williams, *The Great*, 36-37.
[41] Cardyn, "Sexualized Racism," 813-816.
[42] Under slavery, despite what laws of the state might say, Southern white slaveholding men enjoyed a degree of power over enslaved Black women that made sexual violence commonplace and rarely legally punishable. For more details on Southern state laws as a principal vehicle for maintaining the hegemony of the slaveholding ruling class in antebellum society, see Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Vintage, 1976), 25-49.

attacked the autonomy of newly freed Black Americans at every step.[43] Black women's testimonies are especially powerful sources for capturing the wide array of freedpeople's basic rights, which Klansmen attempted to undermine. In the first section of this chapter, I delve into what Harriet Hernandez's first-hand account and Lou Falkner Williams's secondary analysis suggest: because Klan raids typically occurred in private homes, Black women were often attacked *by proxy* as family members of Black men affiliated with the Republican Party. While both Falkner Williams and Hernandez suggest that attacks on Black women happened primarily because white attackers sought to punish their Black male relatives' voting decisions, I use South Carolina Black women's testimonies to highlight equally important motivations—such as the right to bear arms or lead Black religious groups—that motivated Klansmen to attack Black men's female relatives. In the second half of the chapter, I draw on Cardyn's analysis of Klan sexual violence against Black women motivated directly by Black women's new rights. I look beyond sexual violence, however, arguing that all types of Klan violence against Black women–sexual or not–were motivated (at least partially) by Black women's new citizenship rights, whose existence challenged the white social order that Ku-Klux attackers sought to restore. Simply put, in many instances, attacks on Black women were about much more than Black male voting rights.

A. Black Women Attacked in Retribution for Black Men Exercising a Range of New Rights

In her testimony for the prosecution in *U.S. v. Mitchell and Whitesides*, Harriet Simril described how the Ku-Klux had come to her home three times because of her husband and "old man['s]"–meaning father's–political party affiliations. One of these three raids was particularly horrific; Simril testified that, when her husband was not there, three Ku-Klux attackers took her

[43] Foner, *A Short*, 35-54.

outside and "dragged [her] into the big road, and they ravished [her] out there"—"ravished" most likely being a euphemism for rape. To underscore the gravity of this incident, Simril repeated some of the profane language the Klan attackers used during this sexual assault, though the court reporter chose not to transcribe it because it was "too obscene a nature." The prosecution's questioning during the trial revealed only one distinguishable motive behind these raids: the political beliefs of Simril's husband and father. Simril explained that both her husband and father were "radicals"—Republicans—and that the Ku-Klux attackers had expressed a desire for her father to become a Democrat, to which, Simril recounted, her father responded that "he would rather quit all politics." As presented by the prosecution, nothing about Harriet Simril's actions explicitly motivated this instance of horrific Klan violence and sexual assault. Instead, the attack on Harriet Simril represented an indirect way for these Klan members to undermine her husband and father's political party membership.[44]

A Klan raid in Spartanburg County that left Wallace Fowler dead underscores how the Klan targeted an array of chiefly male citizenship rights, such as the right to bear arms, rather than only the right to vote. Charlotte Fowler, Wallace Fowler's wife, testified on July 6, 1871 about a Klan raid on the couple's home. Charlotte was an older woman, estimating that she was about seventy years old. She was sick in bed with one of her grandchildren when a handful of attackers began banging on their door. When Wallace opened the door, one of the men almost immediately shot him with a pistol, killing him. In elaborating on what happened next and whom she suspected the attackers to be, Charlotte presented multiple possibilities for the Ku-Klux attackers' motivations. First, Charlotte explained how, immediately after they shot Wallace, the Ku-Klux attackers came back into the house asking her to "make up a light." Then, one of the

[44] *Klan Trial Proceedings,* 501-503.

Ku-Klux attackers asked Charlotte to hand over any guns in the home; Charlotte responded that Wallace had never owned any guns, in slavery or in freedom. This exchange suggests that the raid had been at least partially motivated by the attackers' suspicions that Wallace possessed arms.[45]

Charlotte Fowler's testimony also suggested that the Klansmen's motivations were connected to changing social and labor interactions and norms between white and Black people after the war. Charlotte explained to the committee how her husband had been an exceptionally well-regarded man in their community; "everybody," she recalled, "liked him but one man, and that was Mr. Thompson." John Thompson was a young white man, and, according to Charlotte, his dislike for Wallace stemmed, in part, from an incident the previous year. Wallace, she told the committee, had been planting watermelons and suspected that "two little white boys," one of whom was the son of Thompson, had been stealing them. Charlotte believed that Wallace's suspicion of Thompson's son angered Thompson, possibly motivating this Klan raid. A third motive for this raid, connected to the second, also had to do with changing racial dynamics after the war. Charlotte explained how a man named Mr. Jones had come to South Carolina from the North and "turned […] off" many white tenants, replacing them with Black tenants, including Wallace Fowler. Many of the white people kicked off Mr. Jones's land were relatives of Thompson. Thus, Charlotte's testimony reveals how Jones's decision to replace whites with Blacks on his land as well as the watermelon incident between Wallace Fowler and Thompson—two events that reflect changing racial norms, especially about labor and land, in the South after the war— deeply angered Thompson, most likely motivating Thompson to kill Wallace Fowler and attack his family.[46]

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[45] *Joint Select Committee Report,* 3: 386-92.
[46] *Joint Select Committee Report,* 3: 386-92.

Only after prompting from the sub-committee did Charlotte Fowler bring up motivations for this raid related to party politics or voting. Not until the very end of her testimony—when a sub-committee member asked: "Did your old man belong to any party?"—did Charlotte Fowler even mention her husband's political party affiliations. Charlotte explained that Wallace was a "pretty strong radical" who had voted in the last election, though he had never made speeches or held any leadership positions within the local Republican community. From Charlotte's personal experience as a victim of this raid and the wife of Wallace, she did not view party politics as relevant to the Klan attackers' murder of Wallace Fowler. Instead, every possible motive for the raid that Charlotte elaborated on lay outside the realm of party politics, ranging from issues related to the right to bear arms to access to land in post-slavery South Carolina.[47]

Harriet Postle's testimony also underscores how Klan attacks targeting Black men could not always be neatly tied to party politics. In one of the South Carolina Klan trials, *U.S. v. Mitchell and Whitesides*, both Harriet and Isaac A. Postle testified for the prosecution about a Klan raid on their home. Isaac A. Postle, whose alias was Isaac the Apostle, was a local Black preacher. When Ku-Klux terrorists attacked the Postle home, Isaac went into hiding. The Ku-Klux attackers were clearly there for Isaac, repeatedly questioning Harriet about his whereabouts. Eventually, unable to locate Isaac, the Klansmen turned the brunt of their anger towards Harriet and some of her young children. Harriet recounted sitting in a chair when one of the Ku-Klux attackers "just jerked the chair and threw me over, while my babe was in my arms, and I fell with my babe to the floor, when one of them clapped his foot upon the child, and another had his foot on me; I begged him, for the Lord's sake, to save my child."[48]

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[47] *Joint Select Committee Report*, 3: 391-92.
[48] *Klan Trial Proceedings*, 689-90.

Isaac's testimony made clear that the Klansmen who attacked his home and his family were motivated by a desire to suppress Black religious activity. When the Ku-Klux attackers eventually located Isaac, they took him out of the house and into the woods, where they whipped him and asked him about the content of his preaching. Specifically, they asked Isaac whether he encouraged members of his congregation to burn gin houses and barns; Isaac repeatedly denied that he had done so. As Eric Foner explains, religion was an area in which Black Southerners possessed greater autonomy than in other areas of life under slavery, and they possessed even more religious independence following emancipation. Within Southern Black communities during Reconstruction, Black preachers functioned as respected leaders, often infusing their sermons with messages of justice and Black autonomy, and they participated in Black-led political activities.[49] It is likely that the power Isaac Postle held as a preacher within his community concerned and threatened these Ku-Klux attackers, prompting them to believe he had the influence to coordinate a local arson attack. Even if Postle's political party affiliation at least partially motivated this raid, it is evident that other factors—namely Postle's power as a preacher and prominent Black community leader—drew the Klan to the Postle home.[50]

As the testimonies of these three women and their male relatives illuminate, the Klan targeted Black men for reasons outside the narrow scope of voting or political party affiliation. Black men claimed an array of new rights and sought to act in new spheres of society during the Reconstruction era in South Carolina. Klan members worked to discourage Black men from exercising even the most basic of their rights, using violence or the threat of it to diminish them. Unfortunately, the Klan's targeting of Black men in their homes made women like Harriet Postle and Charlotte Fowler just as much direct victims of Klan violence as their husbands.

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[49] Foner, *A Short History*, 40-45.
[50] *Klan Trial Proceedings*, 689-699.

B. The Klan Explicitly Targeting Black Women

In addition to proving that Klan attacks were motivated by reasons beyond Black men's support for the Republican Party, Black South Carolinian women's testimonies also demonstrate that a desire to restrict Black women's rights motivated Klan raids. Black women, unlike Black men, lacked the right to vote in the early 1870s, yet their status in Southern society had nevertheless also been drastically transformed. Utilizing the testimonies of three women, this section highlights incidents in which Black women were explicitly targeted by the Klan. Examining what made these Black South Carolinian women vulnerable to Klan violence in the post-slavery South reveals how Klan terror aimed to impede not just Black male political party activity but to fundamentally undermine Black men and women's most basic rights as freedpeople. In an environment as charged and tense as South Carolina in the years immediately after the fall of slavery, the everyday and the personal—where formerly enslaved people lived, or whom they worked for—often became just as controversial as voting.

On July 8, 1871, Jane and Jackson Surratt testified to the congressional sub-committee in Spartanburg, South Carolina about their experiences during two Klan raids. From Jackson Surratt's testimony, it appears that party politics directly motivated at least the first of the two Klan attacks on Jackson and Jane's home. Jackson Surratt recounted how the Ku-Klux attackers had asked him during the first attack if he voted "radical." When Jackson answered in the affirmative, the Ku-Klux attackers started badgering him with questions about why he voted "radical" and whether, for example, "'the radical party promise[d] to kill all us democrats?'"[51]

The couple's congressional testimony about the second raid on their home suggested that a second motivation inspired this instance of Klan violence: Jane Surratt's occupational standing.

[51] *Joint Select Committee Report,* 3: 520-526.

As Jane Surratt described the second Klan raid on her home, six or seven Klansmen took Jane, her daughter, and her son outside where they whipped them. Jackson was temporarily able to escape from the Klan attackers during this second raid. With Jackson gone, the Ku-Klux attackers interrogated Jane and her two children about their work. Jane Surratt recounted that the Klansmen repeatedly asked her whether she worked; she insisted repeatedly that she did. Nonetheless, it appears that Jane Surratt had some occupational limitations, as indicated by her statement to the sub-committee that, for unstated reasons, she was unable to do "hard work." Moreover, one of the Ku-Klux attackers told Surratt's daughter and son that they "didn't make a good hand last spring," suggesting that Jane's children were not living up to these Klansmen's expectations for farm laborers. Jackson Surratt's testimony also mentioned the Klansmen's work-related accusations; he testified that the Ku-Klux attackers said that his wife and daughter "had not made good hands in the farm." Putting together Jackson and Jane Surratt's testimony about this second Klan raid on their home, it is evident that the Ku-Klux attackers expressed clear and serious disappointments with the work effort and abilities of Jane Surratt and her two children. Thus, while Jackson Surratt's voting decisions may have initially drawn the Klan to the Surratt home, Jane Surratt's and her children's failure to live up to these Klansmen's standards as laborers also fueled the Klansmen's violence. With slavery gone, white Southerners could no longer completely control the Surratts' choices about time and work, and this reality contributed to their decision to attack the family.[52]

[52] Stephanie McCurry elaborates on the fundamentally changed nature of plantation work in the post-war South, and freedpeople and former slaveowners' drastically different expectations for this new system. She explains: "Planters […] were forced into a radical experiment in how to grow cotton with laborers who were no longer enslaved and whose right to make free contracts the federal government was, for the first time, pledged to protect. Freed people had their own deeply alternative visions of a future, individual and collective, that would preclude the need to sell their labor to their old masters."
Stephanie McCurry, *Women's War: Fighting and Surviving the American Civil War* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2019), 160; *Joint Select Committee Report,* 3: 520-526.

Similarly, two attacks on the home of Harriet Hernandez were also at least partially motivated by Black male voting rights. Harriet Hernandez was a thirty-three-year-old married woman who testified to the sub-committee in Spartanburg, South Carolina on July 10, 1871. In her testimony, Hernandez stated that Klansmen had targeted her family in response to her husband's voting habits. When the committee members asked Harriet why the Klan had attacked her family, Hernandez explained that they had expressed a desire to kill her husband. The Ku-Klux attackers asked whether her husband had voted "radical," and she disclosed that he had. Moreover, when asked more generally about why Black men and women in her neighborhood were afraid of the Klan, Hernandez explained: "Because men that voted radical tickets [the Ku Klux] took the spite out on the women when they could get at them." Hernandez's personal experience with Klan violence, as well as her commentary about the Black community's understanding of Klan violence in her area, suggests that these two raids on her home were partially motivated by her husband's political party affiliation and voting record.[53]

However, as in the case of the Surratts, Klansmen's desire to control the labor of Black women also motivated this attack on the Hernandez family. During a long line of questioning before the sub-committee, Harriet Hernandez explained how one of the white men she suspected to have participated in the second Klan raid, Augustus Williams, had wanted her to work for his family, and how she had told him that she could not because she was already working for someone else. Furthermore, Hernandez testified that, prior to the second raid, Williams had verbally threatened her after she refused to work for his family, stating that he would have her "Ku-Kluxed." These circumstances (particularly the threat) suggest that Harriet's own rights, which gave her the ability to choose her employer and refuse certain work, motivated this Klan

[53] *Joint Select Committee Report,* 3: 585-591. Harriet's last name is spelled as both "Hernandez" and "Hernandes" in the Joint Select Committee Report.

raid. Williams used the warning of Klan violence to try to force Hernandez into work. It seems that, when this initial strategy proved unsuccessful, he turned to actual violence in the form of a Klan raid against Hernandez. More generally, the testimonies of both Jane Surratt and Harriet Hernandez indicate that white Southern Klansmen often felt threatened by the newfound occupational autonomy that Black women enjoyed during the Reconstruction era and sought to use violent raids on Black families to control the labor of these women.[54]

In the case of Lucy McMillan, congressional testimony suggests that the Klan attackers who destroyed her home sought to undermine McMillan's post-emancipation economic opportunities and mobility. In Spartanburg, South Carolina on July 10, 1871, McMillan explained to the congressional sub-committee that she was forty-five or forty-six years old. McMillan was a single woman as, about twelve years prior, her husband was "taken away from [her] and carried off" for undisclosed reasons. She told the sub-committee that the Klan had burned down her house while she was sleeping outside one night. In responding to the sub-committee's questions about the motivations behind this attack, Lucy explained her connection to some of the suspected Ku-Klux attackers, namely John and Kennedy McMillan. Bob McMillan—the owner of Lucy's burned-down house and Lucy's former slaveowner—was the father of Kennedy McMillan and the brother of John McMillan. Thus, this attack was carried out by two men who, because their family previously owned her, shared Lucy's last name and with whom Lucy had lived for twelve years. Lucy even recounted raising Kennedy McMillan, one of the suspected Ku-Klux attackers, when he was a young boy. Lucy believed that the raid was chiefly motivated by John and Kennedy McMillan's belief that she had been bragging about her landownership. As Lucy testified: "I said to John [McMillan] that I wanted to rent land enough from Bob McMillan for

[54] *Joint Select Committee Report,* 3: 585-591.

me and my daughter to tend on this side of the river. He reported me that I said I would have all the land on this side of the river before I left."[55]

Lucy McMillan's testimony illuminates the refusal of white Southern slaveholders turned Klan members to accept freedpeople's fundamental occupational and economic rights in the Reconstruction era. As Lucy told the committee, the McMillan children, namely Kennedy and Marcus (who, according to Lucy, was not a part of this raid), "always pretended to like us" when Lucy was a slave in their home but "never afterward." Likely alluding to the paternalism that many Southern white slaveholding families expressed toward the Black people they enslaved, Lucy explained that only when she was the chattel property of the McMillans, forced to labor and care for them, did they have any reason to pretend to like her.[56] Further highlighting the duplicity of the McMillans' previous "care" for her, Lucy explained to the committee that John and Kennedy were angry that she now rented a home on Bob McMillan's land and was trying to rent more land from him—actions which highlighted her relatively greater power and autonomy compared to slavery. In the post-slavery South, Lucy McMillan's changing circumstances—professionally, socially, and economically—clearly threatened and angered white men like John and Kennedy McMillan. These men then turned to extreme violence, in this case, arson, to try to reassert their dominance over this Black woman.[57]

Southern whites no longer directly regulated almost every aspect of the lives and choices of Black women like Jane Surratt, Harriet Hernandez, and Lucy McMillan, as they were entitled to

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[55] *Joint Select Committee Report,* 4: 604-611.
[56] For an in-depth discussion of American slaveholders' unique use of paternalism to maintain their hegemony, see Genovese, *Roll, Jordan, Roll*, 3-97. Emphasizing the proximity of many freedpeople to their former owners in the South, in Chapter Three of *Women's War*, Stephanie McCurry offers insights into the all-encompassing burdens that Black Southern women bore as they sought to define their freedom and gain basic independence from former slaveowners in the immediate aftermath of the destruction of paternalist slavery. As McCurry asserts: "Emancipation was an excruciatingly intimate process for all parties." See McCurry, *Women's War,* 124-203.
[57] *Joint Select Committee Report,* 4: 604-611.

do under slavery. During the Reconstruction period, Black women possessed, at least in theory, increased mobility and more autonomy in almost all aspects of their lives. By merely taking advantage of the most basic of their new citizenship rights—the right to control the form of their labor or choose their employer—these Black women directly challenged Ku-Klux attackers' desired version of Southern society and, in turn, became personally vulnerable to horrific Klan violence.

As Harriet Hernandez implied in the quotation that opens this chapter, Klansmen often sought to undermine the newfound voting rights of Black men in the South by attacking their female relations. There were many instances in South Carolina that perfectly fit this blueprint. Nonetheless, this blueprint was complicated by the testimony of some Black women in South Carolina in two important ways. First, Klan raids that involved Black women as victims were not solely motivated by Black men's voting rights; a much wider range of Black men's rights were targeted by the Klan. Second, Black women were often direct targets of the Klan despite their lack of voting rights. Together, all of these motivations reveal that Klansmen sought to undermine both Black men and women's most basic rights and freedoms, especially when these rights and freedoms interfered with the type of dominance many of these white men had enjoyed during the antebellum period. Thus, Black women's testimonies highlight the plight of long-ignored victims of Klan violence while also undercutting any claims that the Klan was solely, or even predominately, a political party terrorist group. Klansmen attacked Black men, women, and children in order to undermine an endless array of freedpeople's rights in post-slavery South Carolina.

Chapter Two: Klan Violence Impacts and Legal Justice Burdens for Black Women in South Carolina

> *Question*. Why did you not sue these men for burning this house?
> *Answer*. I don't know how to sue them; I came down here and reported them. I didn't know anything about suing.
> *Question*. Who did you report them to?
> *Answer*. Mr. Fleming, I believe, is his name.
> […]
> *Question*. What did Mr. Fleming say?
> *Answer*. He told me that he would arrest them.
> *Question.* Did he do it?
> *Answer*. No, sir.
> *Question*. Is he [Mr. Fleming] a government officer?
> Answer. I don't know. They told me to go to him.
> […]
> *Question*. Did you ever ask him [Mr. Fleming] why he did not arrest them?
> *Answer*. No, sir
> *Question*. You didn't care?
> *Answer*. Yes, sir. I did care, but I didn't think anything was done, and I gave it up.
>
> –Excerpt of sub-committee questioning of Lucy McMillan, July 10, 1871.[58]

Using the testimony of two women, Lucy McMillan and Eliza Chalk, this chapter focuses on Black South Carolinian female victims' experiences in the aftermath of Klan raids. These two women were chosen because, unlike the handful of other Black female testifiers in South Carolina, they had a chance to elaborate to the sub-committee or federal prosecutors on the long-term, rather than solely immediate, impacts of Klan violence. While these two women had their own unique, particularly appalling experiences with the Klan, they faced similar long-term challenges in the wake of Klan attacks. Together, their testimonies highlight that, even if the Klan's initial motivation for attacking these women had to do with exclusively male voting rights, the aftermath of Klan violence struck these women on deeply personal, intimate levels. Klan violence indefinitely destabilized these women's most basic and essential rights: health,

[58] *Joint Select Committee Report,* 4: 609-610.

family, safety, and justice. Moreover, both women sought justice through the legal system, yet it proved fundamentally difficult to obtain. Thus, the burden of needing to continually engage with an unhelpful criminal justice system only added to these women's already immense and all-encompassing hardships in the aftermath of Klan raids.

The South Carolina state criminal justice system was limited in its ability to address Klan violence in this era, especially violence against Black women. Eric Foner notes that state criminal justice systems across the South during the early Reconstruction period were controlled almost entirely by white officials—from the police force to judges—who rarely even considered prosecuting whites accused of violating Black people's rights.[59] Moreover, Lou Falkner Williams has shown that, during 1870 and 1871, the South Carolina state criminal justice system utterly failed Black victims of Klan violence. Many of South Carolina's local trial justices (magistrates) were white Democrats involved in Klan activities, and the few Republican magistrates in the state were often threatened or intimidated when they tried to treat freedmen the same as white men. To be sure, newly freed Black Americans across the South made significant efforts beginning immediately after the war to use the criminal justice system, especially state civil courts, to defend their rights; nevertheless, Black South Carolinians' mere choice to report Klan crimes to the proper authorities in South Carolina remained a dangerous, risky move.[60] Notably, in detailing the fundamental problems with the South Carolina state criminal justice system for Black people during early Reconstruction, Lou Falkner Williams describes the

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[59] Foner, *A Short*, 95.

[60] Offering an in-depth examination of civil cases involving Black litigants in Alabama, Arkansas, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, and Virginia between 1865 and 1920, Melissa Milewski argues that "even as federal and state courts made important rulings upholding discrimination […] state courts continued to allow black Southerners to litigate—and win—certain kinds of civil cases. […] Throughout the South, African Americans litigated—and won—cases against whites over contracts, wills, transactions, and personal injuries." Melissa Milewski, "From Slave to Litigant: African Americans in Court in the Postwar South, 1865—1920," *Law and History Review* 30, no. 3 (2012): 727, https://www.jstor.org/stable/23489550.
Williams, *The Great*, 37-39.

difficulties "blacks" or "freedmen" had in seeking criminal justice.[61] Falkner Williams' concentration on freed*men*'s relation with the state criminal justice system speaks to how—even if Black victims could overcome the numerous obstacles that made it difficult for them to obtain justice within the state criminal justice system—South Carolina Klan cases almost always focused on violations of electoral or partisan rights, which involved Black men most directly.

The federal criminal justice system proved to be an equally unstable resource for Black Americans during this era, especially for Black women. Reconstruction marked a radical new chapter for American federalism, and one important new development involved the expanded size and increased power of the federal judiciary.[62] Prior to the Civil War, state courts, rather than federal courts, were the main arenas in which citizens could seek redress of their grievances.[63] After the war, freedpeople, like all other citizens and federal officials, were learning as they went about the new role of the federal judiciary, including its abilities and limitations when it came to addressing Klan violence.[64] Quickly, however, it became evident

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[61] Williams, *The Great*, 37-39.

[62] As legal historian William M. Wiecek asserts: "In no comparable period of [the United States'] history have the federal courts, lower and Supreme, enjoyed as great an expansion of their jurisdiction as they did in the years of Reconstruction, 1863 to 1876." Wiecek's article outlines five specific ways federal courts' jurisdiction expanded in this period. First, Congress permitted many cases that started in state courts to be removed and, instead, tried in federal courts. Second, Congress expanded the federal courts' habeas corpus powers. Third, Congress's establishment of the United States Court of Claims to handle claims against the federal government allowed appeals from this new Court to go to the Supreme Court. Fourth, Congress passed new bankruptcy laws, which led to various insolvency business matters now dealt with in federal courts instead of state courts. Lastly, Congress expanded federal jurisdiction over "federal questions" leading to many appeals from state courts entering federal courts.
William M. Wiecek, "The Reconstruction of Federal Judicial Power, 1863-1875," *The American Journal of Legal History* 13, no. 4 (1969): 333–34, https://doi.org/10.2307/844183.

[63] William S. McFeely, "Amos T. Akerman: The Lawyer and Racial Justice," in *Region, Race, and Reconstruction: Essays in Honor of C. Vann Woodward*, ed. J. Morgan Kousser and James M. McPherson (New York: Oxford University Press, 1982), 405.

[64] In examining the failures of the federal government's enforcement of the Fifteenth Amendment during this period, William Gillette outlines a range of serious limitations and internal problems within the newly expanded federal judiciary. For example, Gillette notes the minimal knowledge and skills of federal prosecutorial officials, the dearth of federal judges, judicial districts, and clerical staff—which resulted in hundreds of indictments that never went to trial—the partisan biases of many federal judges, and the ambiguous language of the Enforcement Acts, which made it unclear when and to what extent the federal government could intervene in state elections. Thus, freedpeople in South Carolina not only had to quickly learn about an entirely new system while transitioning out of slavery, but

that, despite its radical changes, the federal criminal justice system, as with the state system, was still inherently limited in terms of gender. During the federal Klan trials in South Carolina beginning in late 1871, the names of victims on indictments were typically those of Black men, even though some of the most extreme cases of Klan violence, as detailed in Chapter One, included Black women and children as victims.[65] As many of the laws that federal prosecutors used to charge Klansmen during these trials had to do with voting and electoral rights, prosecutors focused on Black men as the Klan's official victims. For example, in *U.S. v. Allen Crosby,* the case on which Chapter Three of this thesis focuses, the indictment only listed Amzi Rainey— and not his wife or young daughters, who were also violently attacked-—as a victim.[66] Thus, at both the state and federal levels, the legal system was seriously limited in its ability to aid Black female victims of Klan violence.

This chapter shows that the immense physical, psychological, occupational, and familial burdens that Black women shouldered in the aftermath of Klan violence were only exacerbated by the limitations of the state and federal criminal justice systems in South Carolina. For Lucy McMillan and Eliza Chalk, knowledge of how to report Klan crimes or whom to report them to, fears over personal safety if they reported Klan crimes, and lack of basic support in reporting Klan crimes to the proper officials only added to the already immense hardships they bore in the aftermath of Klan raids. In Chapter One, this study has shown that Klan violence against Black women was motivated by concerns well beyond Black men's voting rights. Chapter Two takes

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they were also working within a system that suffered from fundamental constraints and problems of its own. William Gillette, *Retreat from Reconstruction, 1869–1879* (Baton Rouge: LSU Press, 1982), 25-55.

[65] Reviewing all the available court documents from the five cases considered for trial during the November 1871 term of the federal South Carolina Klan trials—*U.S. v. Allen Crosby et al*, *U.S. v. Robert Hayes Mitchell, U.S. v. John W. Mitchell and Thomas B. Whitesides*, *U.S. v. John S. Millar*, and *U.S. v. Edward T. Avery*—all the names of victims on indictments or in pre-trial and trial motions and arguments were those of Black male victims. To be sure, Black female victims did often testify for the prosecution about their direct experiences with Klan violence, but they were never *officially* recognized as victims on the court documents. *Klan Trial Proceedings,* 825-32.

[66] *Klan Trial Proceedings*, 825-832.

this idea even further: no matter what motivated Klan violence against Black women, Black women's long-term experiences with Klan violence underscored the need for federal responses that addressed grievances far removed from voting or partisan politics.

A. Unfamiliarity with the Criminal Justice System

Lucy McMillan's property was destroyed, and her life itself was fundamentally altered as a result of the Klan attack she suffered. As detailed in Chapter One, Lucy McMillan's home, which was rented to her by her former owner, was burned down by her former owner's son and brother in a Klan raid. Lucy McMillan testified that she and her young daughter Caroline were sleeping outside—due to reports of heightened Klan activity in her area—on the night of the incident, meaning neither of them were in the home when it burned down. McMillan explained that, after losing their home to Klan terror, she and her daughter Caroline had to move into town, where Lucy began "washing and living" as she could and residing "with a woman down on the road." This Klan attack forced Lucy to start her life over again—to find whatever work and shelter she could come by in a new area while caring for her young child.[67]

The sub-committee's questioning of Lucy McMillan also revealed her lack of knowledge about and assistance in navigating the legal system, even though she clearly wanted to seek criminal justice for this Klan attack. After hearing Lucy McMillan recount the Klan's destruction of her home, sub-committee members began questioning her about what she did afterwards. In a presumptuous manner, one member asked McMillan: "Why did you not sue these men for burning this house?" Lucy replied: "I don't know how to sue them; I came down here and reported them. I didn't know anything about suing." Though unfamiliar with the legal practice of bringing a lawsuit, McMillan explained that she had made other efforts to seek justice in the

[67] *Joint Select Committee Report,* 4: 604-611.

aftermath of her home's destruction. Lucy told the committee that, two days after the arson attack, she had reported the crime to a man named Mr. Fleming, who said he would arrest the Ku-Klux attackers.[68]

In further responding to the sub-committee's questions about her reporting of this Klan crime, Lucy highlighted the larger issue of freedpeople's struggles in navigating the complex legal system of South Carolina. The sub-committee seemed slightly confused by Lucy's decision to report the crime only to this Mr. Fleming, who never ended up arresting anyone. The sub-committee then asked Lucy: "Did you not know you could put those men in the penitentiary?"—suggesting that Lucy had, but did not effectively make use of, sufficient evidence to have these men arrested and sent to jail. Lucy proclaimed: "I didn't have sense enough to know anything about the law; I did not know anything about it, but they told me to go to that man [Mr. Fleming]." Lucy McMillan used the resources known and available to her to try to hold her attackers legally accountable. The legal action that the sub-committee assumed would have been most effective—initiating a case that could send these men to the "penitentiary"—was not a manner of redress with which Lucy McMillan was familiar with or had adequate support to utilize. Thus, Lucy's testimony revealed not only the challenges Lucy faced in seeking legal justice but also federal officials' lack of awareness and naive assumptions that freedwomen like Lucy would naturally possess adequate knowledge or support in seeking legal redress for Klan violence.[69]

B. The Risk of Reporting Klan Violence

Eliza Chalk, a mixed-race woman, testified about a series of horrendous episodes of Klan violence that permanently impacted multiple members of her family. To the sub-committee,

[68] *Joint Select Committee Report,* 4: 604-611.
[69] *Joint Select Committee Report,* 4: 604-611.

Eliza Chalk detailed a Klan raid on her home in Union County which left one of her sons seriously injured and two others jailed. Historian Elaine Frantz Parsons helps contextualize this series of Klan attacks; the first Klan raid on Eliza Chalk's home occurred in the aftermath of a clash between white and Black militias in Union County, which escalated racial tensions in the region and triggered an uptick in Klan violence against Black people.[70] Eliza Chalk explained how, on the night of January 1, 1871, a group of Ku-Klux attackers came to her home—known colloquially as the Yellow House— and shot through one of the windows. This incident led to one of her sons, Thomas, being seriously injured and her two other sons, Joe and Alfred, as well as her nephew being taken to the county jail. Joe and Alfred were jailed on dubious charges related to their supposed involvement in a local murder, for which they were never tried. Another raid on a member of Chalk's family took place later in January 1871. Five Klan attackers raided the Union County jail, removed five prisoners, including Eliza Chalk's son Joe, and shot them, killing two. As Chalk told the committee, after shooting Joe "six times" the Klansmen "hunted them all up and put them in jail again."[71]

Eliza Chalk played a critical role in supporting and caring for her son Joe in the aftermath of these raids. Eliza Chalk's description of the multiple gunshots inflicted on Joe underscored the intense physical toll this attack took on Joe, leaving him seriously injured and still imprisoned. Eliza Chalk served as Joe's primary caretaker after this attack, going "to the jail every morning and carry[ing] [Joe's] breakfast and dress[ing] his wounds." Chalk's testimony also highlighted her immense emotional and psychological burdens in the aftermath of the raids. Chalk explained that it was so painful to see Joe jailed and badly hurt that she had trouble speaking to him. Eliza Chalk testified: "I never asked him [Joe] any questions, because when I went up to the jail my

[70] Frantz Parsons, *Ku-Klux*, 243-255.
[71] *Joint Select Committee Report,* 4: 1128-1142.

feelings would be so much hurt when he would say anything I would commence crying, and I never said anything to him nor asked him anything." Unfortunately, the emotional trauma Chalk experienced likely only grew when, on February 12, 1871—in a third Ku-Klux raid targeting members of Eliza Chalk's family—Klansmen attacked the county jail once more, abducting and killing a group of Black men, including Joe Vanlue.[72]

These Klan raids also permanently impacted another of Eliza Chalk's sons, Thomas Vanlue. During the first Klan raid at the Yellow House, Thomas Vanlue was left with a serious, debilitating injury. Thomas described "lay[ing] from the wound they gave [him] for eleven weeks, and could not bear [his] foot to the ground." Moreover, Thomas told the sub-committee that he had not been able to work a single day since the accident. When the sub-committee asked him, "Who are you living with?" Thomas told them, "No, one; I am doing the best I can with my family—with my mother," suggesting that he had become indefinitely dependent on his mother for care and housing. For both Thomas and Joe Vanlue, these Klan raids were physically life-altering events. Out of necessity and familial bond, much of the emotional toll and burden of caring for, feeding, and housing these wounded men fell on their mother, Eliza Chalk.[73]

Eliza Chalk's process of seeking justice against the Klansmen who attacked and killed multiple members of her family was difficult from the outset, as she experienced obstacles in even attempting to report these crimes. Eliza Chalk explained to the sub-committee her and her sons' consistent fear of retaliation in the form of another Ku-Klux attack. This fear was why, Chalk explained, for a long time after the Klan raid on the Union County jail, neither her son Joe

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[72] Elaine Frantz Parsons has detailed the horrendous Klan raid that led to Joe Vanlue's (also spelled Vanlew) death. On February 12, 1871, a large group of costumed Ku-Klux men—with estimates ranging from eighty to fifteen hundred—arrived on horseback, broke into the Union County jail, abducted ten jailed men, and took them out of town, where they were hanged and shot.
Frantz Parsons, *Ku-Klux,* 256.
Joint Select Committee Report, 4: 1128-1135.

[73] *Joint Select Committee Report,* 4: 1128-1135; 1155-1158.

nor the other two surviving victims revealed the names of their attackers despite the fact that, as Eliza Chalk asserted, "[Joe and the other two victims] said they knew every man" that was involved. Chalk and her sons' fear of another raid was likely heightened by the fact that at least one of the suspected Ku-Klux attackers remained in proximity to the surviving jailed victims; as Eliza Chalk testified, one of the men that likely shot Joe Vanlue during the initial Klan jail raid was Tom Hughes, who was the county jail keeper. From the testimony available, it seems that Eliza Chalk did not have a chance to even begin the formal process of seeking criminal justice by reporting these crimes to the proper officials. Instead, as her and her family were dealing with a slew of psychological, financial, and medical problems, fear of further reprisals impeded her ability to hold these attackers accountable.[74]

Kidada Williams' analysis helps the modern reader see that Eliza Chalk and Lucy McMillan's decisions to give testimony were noble acts of resistance to violent white supremacy.[75] Through their testimony, these women embraced the notion that, as newly-minted citizens of the United States, they had the right to formal, legal protection from horrific violence, assault, and property destruction. Reporting the details of these instances of Klan violence to a federal congressional committee or prosecutor was the first step in the process of seeking redress.

As powerful as these two women's testimonies are, they also highlight the fundamental obstacles they faced in seeking legal justice in the aftermath of Klan violence. The difficulties in obtaining criminal justice stemmed from many causes: the state criminal justice system actively discriminating against Black South Carolinians, federal Klan statutes chiefly emphasizing electoral or voting rights, and the lack of support that freedpeople received in seeking formal

[74] *Joint Select Committee Report*, 4: 1128-1135.
[75] Williams, *They Left Great*, 5.

criminal justice after transitioning from chattel slavery to citizenship at the exact moment that the federal government, including the judiciary, was undergoing vast transitions of its own. Moreover, even if freedpeople were quickly becoming aware of and educated about the legal justice system in the post-Civil War era, this did not mean the system could be trusted or that officials would side with them, especially at the state level in a place like South Carolina. Eliza Chalk's words—"I didn't have sense enough to know anything about the law"—give a sobering first-hand account of how this was affecting some Black female victims, causing them to think that they themselves had some personal responsibility for the problems and obstacles that were part of a much larger system outside of their control.

At least indirectly, the South Carolina Klan trials offered a chance for the federal government to overcome the series of conflated problems with the criminal justice system distinctively burdening Black women. These trials, specifically prosecutors' attempts to implement a version of the incorporation doctrine, represented an opportunity for federal action to address more than Klan crimes targeting Black men's voting rights. The trials were the federal government's most concerted effort to respond to and legally hold accountable the wider range of reasons for why the Klan attacked freedpeople across South Carolina and beyond.

Chapter Three: *U.S. v. Allen Crosby* and the Missed Opportunity to Federally Address the Full Range of Klan Crimes

> "If our perverse fellow - citizens subject the Government to the necessity of either permitting the guilty to persecute the innocent, or punishing the guilty by extraordinary means, I am for the latter." —Amos T. Akerman, November 8, 1871.[76]

On paper, the US legal system experienced fundamental changes during the early stages of Reconstruction, most importantly the three new amendments—the Thirteenth, Fourteenth, and Fifteenth Amendments—passed by Congress and added to the US Constitution by 1870. Historian Eric Foner and others have gone so far as to argue that these amendments constituted America's "second founding."[77] In particular, the Fourteenth Amendment radically transformed citizenship at both the state and national levels. Section One of the five-section Fourteenth Amendment, passed in 1866 and ratified on July 9, 1868, established a race-neutral concept of birthright citizenship in the US Constitution and enabled federal intervention when state laws violated "equal protection," "due process," and "privileges or immunities" for all citizens.[78] At least in theory, through the Fourteenth Amendment, African Americans were assured freedom and full, equal citizenship protected by federal oversight.

The South Carolina Ku Klux Klan trials of 1871 and 1872 represented the peak of federal prosecution of Klan violence in the South using the Fourteenth and Fifteenth Amendments. Attorney General Akerman, in conjunction with Major Merrill, determined the Klan's terror in South Carolina by 1871 to be indicative of a rebellion, prompting President Grant to suspend the

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[76] Akerman to Hon. Foster Blodgett, November 8, 1871, Akerman Papers.
[77] Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* (New York, N.Y.: W.W. Norton & Company, 2019), 7.
[78] Foner, *The Second*, 71; U.S. Const. amend. XIV, § 1. As the case, *U.S. v. Allen Crosby*, explored in this chapter will make evident, there exists a long, complex debate over the exact meaning of the Fourteenth Amendment, especially when it comes to the degree and areas in which federal intervention at the state level is constitutional. This debate is ongoing and one this thesis will not attempt to join. For one of the many works of legal history dedicated entirely to the Fourteenth Amendment, see William E. Nelson, *The Fourteenth Amendment: From Political Principle to Judicial Doctrine* (Cambridge, Mass: Harvard University Press, 1988).

writ of habeas corpus in nine South Carolina counties on October 17, 1871.[79] The first wave of these trials began in the Fourth Federal Circuit Court in Columbia, South Carolina on November 27, 1871 with the Hon. Hugh L. Bond of Maryland, Circuit Judge, presiding, and the Hon. George S. Bryan of Charleston, South Carolina, District Judge, sitting with him.[80] Federal prosecutor Daniel T. Corbin crafted the prosecution's strategy during the South Carolina trials, and the sheer number of Klan perpetrators presented him with a significant challenge.[81] By late 1871, 195 people were imprisoned in York County alone for Klan violence, and more than 500 people had voluntarily surrendered.[82] Acting with Akerman's approval, Corbin tried only defendants who had "been leaders in the conspiracies, or to have been concerned in acts of deep criminality, and such as have contributed intelligence and social influence to these conspiracies."[83] Ultimately, federal prosecution in South Carolina produced forty-nine guilty pleas and four convictions after trial during the November 1871 term.[84] Prosecutors mainly relied on the First Enforcement Act of 1870—"An Act to Enforce the Right of Citizens of the United States to Vote in the Several States of this Union, and for Other Purposes"—for their authority to try these cases, highlighting the conspiracy provisions of the Act's sixth section, which made it a felony for two or more people to "conspire together" to attempt to "violate any provision of this Act."[85] After Major Merrill located a copy of the Klan constitution, which explicitly stated the Klan's commitment to rejecting Republican principles, section six's conspiracy provision became relatively easy for federal prosecutors to use in South Carolina.[86]

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[79] McFeely, "Amos T. Akerman," 408.
[80] *Klan Trial Proceedings,* 5.
[81] Williams "The South Carolina Ku Klux Klan Trials," 48.
[82] Trelease, *White Terror,* 404.
[83] "Amos T. Akerman to D. T. Corbin, 10 November 1871," *The Walt Whitman Archive,* Gen. ed. Matt Cohen, Ed Folsom, and Kenneth M. Price, https://www.whitmanarchive.org.
[84] Kaczorowski, *The Politics,* 72.
[85] U.S. Congress, First Enforcement Act, May 31, 1870, in *Klan Trial Proceedings*, 812-821.
[86] Williams, *The Great,* 78.

Using Akerman's papers as context for the Republican-controlled Department of Justice's policies and priorities in responding to Klan violence, this chapter offers a case study of the pre-trial proceedings in *U.S. v. Allen Crosby.* As highlighted earlier, in different ways, Klansmen, Democrats, and Republicans saw the Klan as primarily a political organization, committing crimes—or, in the view of Klansmen and Klan-sympathetic or affiliated Democrats, necessary acts—of electoral and partisan intimidation, terror, and violence in at least indirect connection to the Democratic Party.[87] In some ways, Republican officials continued with this trend of emphasizing the electoral crimes of the Klan during the South Carolina Klan trials; acting on the advice of Attorney General Akerman, the federal government mainly relied on the Enforcement Acts—statutes largely concerned with voting and elections—to prosecute the Klan. At the same time, as Akerman's personal correspondence reveals, Akerman saw defeating the Klan as a true moral imperative. Federal prosecutors on the ground in South Carolina, too, sought to do more than merely punish the voting or electoral crimes of Klansmen. In *U.S. v. Allen Crosby*, they tried to establish precedent that would allow the federal government, through the Fourteenth Amendment, to ensure long-term protection of a much wider range of freedpeople's political and civil rights.[88] Thus, *Crosby* represented the federal government's most radical attempt, within the already radical effort to protect freedpeople's rights that was the South Carolina Klan trials, to expand federal legal responses to address Klan violence beyond crimes directly related to voting and electoral activity.

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[87] In Part V of her article "Sexualized Racism/Gendered Violence," Lisa Cardyn explains that many Klansmen viewed themselves as part of an extralegal, vigilante group. Like all vigilante groups, the Klan was, at least implicitly, premised on the right of citizens in a democracy to rebel in times of unfairness or tyranny. Klan members believed they were valiantly rebelling against tyrannical, corrupt Reconstruction national and state governments. Cardyn, "Sexualized Racism/Gendered Violence," 781-812.

[88] Williams, "The South Carolina," 51-55.

In explaining why the prosecution's strategy failed in the *Crosby* case, I contend that—despite Akerman and South Carolina federal prosecutors' attempts to move beyond only protecting freedpeople's rights to vote or belong to a political party—prosecutors continued to prioritize, at the expense of other Klan crimes, the Klan's violation of Black men's voting rights. To be sure, it was ultimately Democratic, Klan-sympathetic defense lawyers and the Fourth Federal Circuit Court judges that, respectively, argued against and rejected the prosecution's attempt at establishing a legal precedent that would ensure wide-ranging protections of freedpeople's rights. Nonetheless, both the prosecution's arguments in the pre-trial proceedings of *Crosby* as well as the priorities of the contemporary Department of Justice help modern readers see that highly-placed Republican officials and on-the-ground prosecutors shared a limited conception of how to hold the Klan accountable. In the end, these limitations meant that federal legal precedents for responding to Klan violence continued to fail to capture the full scope of Klan violence motivations, which Black South Carolinian women's testimonies make glaringly evident.

A. Akerman and the Department of Justice

As the highest federal legal authority in the executive branch from 1870 until late 1871, Attorney General Akerman displayed a surprising eagerness to use the three new Reconstruction amendments, as well as subsequent federal statutes, to protect a wide range of freedpeople's civil and political rights in the midst of extreme Klan violence.[89] For Akerman, holding the Klan

[89] Akerman's fervent commitment to using federal resources to protect freedpeople's rights was surprising. Akerman spent most of his life in the South, where he owned slaves, and—while he did oppose secession—he served in the Confederate Army as a colonel for eighteen months. Only after the Civil War did Akerman join the Republican Party in Georgia; subsequently, in June 1870, President Grant appointed him Attorney General. It is believed that Akerman's personal experience with the Klan in Georgia inspired his disgust with the organization, his turn towards the Republican Party, and his eagerness to carry out large-scale federal prosecutions of Klan affiliates. For more details on Akerman's life and career, see Kaczorowski, *The Politics*, 62-79 or McFeely, "Amos T. Akerman," 395-415.

[89] Trelease, *White Terror*, 385.

legally accountable, especially in places like South Carolina, was a true moral necessity.[90] On November 18th, 1871, Akerman wrote that he "[felt] greatly saddened" by the violence and racial tensions that permeated the South. He explained that the situation in the South "ha[d] revealed a perversion of moral sentiment among the Southern whites" and that "[w]ithout a thorough moral renovation, society there for many years will be ___ [sic] I can hardly bring myself to say savage, but certainly far from Christian."[91] Writing to a correspondent in Chester, South Carolina on November 22, 1871, Akerman analogized racial violence in the South to a contagious disease: "One of the worst features of the lawlessness in the South is the cunning with which it veils itself, and endeavors sometimes successfully, to impose even on intelligent men in its immediate neighborhood."[92] Justifying fervent federal enforcement, Akerman asserted that: "Ultimately, these measures will promote the peace and prosperity of the South. The present medicine is harsh, but needed to overcome the disease. If the disease were allowed to run its course, it would render society intolerable for many years to come."[93] The South Carolina congressional investigation and Klan trials targeted this disease in one of the most contagious areas; in a letter from November 8, 1871, Akerman asserted: "The proceedings in South Carolina have been energetic; but not more so than the case required."[94]

As genuine as Akerman's moral disgust for the full range of the Klan's crimes may have been, it seems that intense Reconstruction-era partisan divides clouded and limited Republicans' federal enforcement strategy. As the United States entered the period of postwar Reconstruction, the deep-seated and fundamental sectional and political tensions that had led to the Civil War

[90] Akerman resigned suddenly in December 1871 from his role as Attorney General. Robert Kaczorowski details some of the potential reasons for his resignation. Kaczorowski, *The Politics*, 62-79.
[91] Akerman to Gen. Alfred H. Terry, November 18, 1871, Akerman Papers.
[92] Akerman to Hon. William M. Thomas, November 22, 1871, Akerman Papers.
[93] Akerman to Hon. William M. Thomas, November 22, 1871, Akerman Papers.
[94] Akerman to Hon. Foster Blodgett, November 8, 1871, Akerman Papers.

continued. While slavery was officially outlawed, beginning immediately after the war, many white Southerners fought at every turn to hinder any and all attempts at racial progress or equality. For example, by 1865, South Carolina's state legislature had enacted Black Codes, a series of laws applicable only to Black men and women, which, among many other things, required Blacks to pay a significant tax if they wanted to participate in any occupation besides farming or domestic service.[95] Especially after 1867, when Republican congressional officials seized control of Reconstruction from the executive branch and imposed new conditions on the Southern states' re-entry into the Union, Democratic and Republican ideals were fundamentally and constantly coming into conflict with one another. This context helps explain the significance of the fact that the Reconstruction Amendments and Enforcement Acts—the most important measures for bringing Klan terrorists to justice—were adopted by Congress along strictly partisan lines. Their implementation also became deeply partisan, and Democratic and Republican judges, unsurprisingly, gave these laws vastly different readings.[96] During the South Carolina trials, including *U.S. v Allen Crosby*, the presiding federal district judge, Judge Bryan, was a Democrat and former slave owner who was known to be adamantly opposed to federal prosecutions of the Klan.[97] The fundamentally opposing priorities of national Republicans and Southern Democrats in this period significantly limited the federal government's progress in targeting the Klan's violations of almost any of freedpeople's rights.

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[95] Foner, *A Short History*, 92-93.
[96] Kaczorowski, *The Politics*, 50-60.
[97] As *U.S. v. Allen Crosby* took place in the Fourth Federal Circuit Court, federal circuit judge Bond also presided over the case, though Kaczorowski has noted that federal enforcement depended much more on district than on circuit judges, who typically had busier caseloads and had to travel more. Furthermore, while President Grant appointed Judge Bond to the Fourth Federal Circuit because of Bond's commitment to enforcing freedpeople's civil rights, Bond's time on the court quickly made it evident that he, like Bryan, favored a brand of federalism based on the principles of states' rights.
Kaczorowski, *The Politics*, 50-60.

The Republican Party also possessed partisan priorities of its own during this period that may have limited its most radical enforcement strategies in the South. Historian Kermit Hall has argued that, beyond seeking justice for freedpeople or maintaining law and order, the South Carolina Klan trials performed a critical partisan political function for Republicans. Hall has asserted that the trials represented a coordinated attempt to maintain the national Republican Party's control in the South: "The federal government turned the courtroom into a forum of constitutional experimentation in the service of political objectives."[98] Even Akerman—who saw a moral imperative to federal Klan prosecution—had serious doubts that *any* federal legal action could properly crush the Klan. In a private letter from November 9, 1871 addressed to a friend in New York, Akerman wrote:

> It is manifest that the local law is utterly unable to cope with the [Klan] criminals. Indeed, it seems to me that it is too much even for the United States to undertake to inflict adequate penalties through the courts. Suppose that we have from five thousand to ten thousand cases, (and I have no doubt that at least the former number and perhaps the latter could be brought to light) we have the judicial force to try only a small fraction of the number. Really these combinations amount to war, and cannot be effectually crushed on any other theory.[99]

Akerman was quite pessimistic that any feasible level of federal enforcement could successfully quell Klan violence. Thus, it is plausible that, as Hall has implied, Akerman nonetheless went ahead with the trials because he recognized the importance of federal prosecutions for the image and success of the Republican Party in the South as opposed to just the moral imperative of prosecuting the full scope of Klan crimes.

It is uncertain whether or to what degree these partisan interests and clashes significantly undermined the prosecution's strategy during the South Carolina Klan trials, specifically the *Crosby* case. One thing, however, is more than certain: the prosecution's failed strategy meant

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[98] Hall, "Political Power," 928.
[99] Akerman to B.D. Silliman Esq., November 9, 1871, Akerman Papers.

that Klan crimes and violence that could not neatly fit into the narrow category of offenses directly related to voting or elections, including many crimes committed against Black South Carolinian women, would continue not to have explicit federal legal precedents for prosecuting. Close examination of the arguments from the pre-trial proceedings of the *Crosby* case illuminates what exactly this prosecutorial attempt looked like and how the Court came to reject it.

B. The Pre-Trial Proceedings

As in the case of many raids in South Carolina, the political party affiliation of the official victim in the *Crosby* case, Amzi Rainey, seems to have motivated the Klan to attack his home. In a particularly brutal, large-scale Klan raid in York County, South Carolina in February 1871, "four or five disguised men" attacked Rainey's home during the night. Many of Rainey's family members, including his wife and young children, were present during the raid. Upon breaking into Rainey's home, the disguised men "struck [Amzi Rainey's wife] four of five licks before they said a word." Rainey recounted in his testimony that, early in the raid, his young daughter shouted, "'Don't kill my pappy; please don't kill my pappy.'" One of the Klansmen responded by shooting her. In one room in the home, another one of Rainey's daughters was raped by an unknown Klansmen. The Klansmen eventually forced Amzi Rainey outside of his home and made him promise never to vote the "radical ticket" again, to which he agreed. By this point in the raid, Amzi Rainey estimated that twenty-five disguised Klansmen were present. Amzi's Rainey's political affiliations initially drew the Klan to his home, and his entire family, his wife and young children, became victims of horrific violence and abuse.[100]

[100] *Joint Select Committee*: 5, 1744-46.

In framing *Crosby*'s eleven-count indictment, federal prosecutors attempted to hold the Klan accountable for the full range of their crimes against Amzi Rainey and his family through a version of the novel legal concept of incorporation—making certain Bill of Rights amendments enforceable at the state level through the Fourteenth Amendment. On the eighth count of the original indictment, prosecutors used the First Enforcement Act to charge Crosby and six other Klansmen with a conspiracy to deny Rainey's Fourth Amendment "right to be secure in his person, houses, papers and effects, against unreasonable searches and seizures."[101] Although this count constituted only a small portion of the charges levied, federal prosecutors were attempting something radical—well beyond protecting just Amzi Rainey's Fifteenth Amendment right to vote—in arguing for the incorporation of the Fourth Amendment through the Fourteenth Amendment. At least implicitly, this count of the indictment allowed federal officials to seek justice for Amzi Rainey's family members, his wife and daughters, who were also victims of this Klan raid that had occurred in their home.[102] If prosecutors could set a precedent for incorporating certain Bill of Rights amendments at the state level through the Fourteenth Amendment, they could greatly expand federal protection of Black men, women and children's civil rights in addition to Black men's rights to vote or be publicly affiliated with a political party.

In defending incorporation before the Court, Corbin and South Carolina attorney general Daniel H. Chamberlain argued that the Civil War had fundamentally transformed the reach and

[101] *Klan Trial Proceedings*, 831. In *U.S. v. Allen Crosby*, the prosecution attempted an early version of the incorporation doctrine through the "privileges or immunities" clause of Section 1 of the Fourteenth Amendment. The Supreme Court's 1876 *Slaughterhouse Cases* decision essentially rendered the "privileges or immunities" clause unusable for the purposes of incorporation for many decades thereafter. Justices writing for the Supreme Court in opinions that did eventually deem constitutional the incorporation of certain Bill of Rights protections at the state level have mainly relied on the "due process" clause of the Fourteenth Amendment, as well as the Fifteenth Amendment.

[102] Williams, *The Great*, 62.

power of the American federal government. During pre-trial remarks, Corbin claimed that the expansion of federal powers through the Fourteenth Amendment was consistent with American founding principles. Corbin explained that, during the American Revolution, the founding fathers had sought to protect the people "from the National Government," which was why the Bill of Rights was necessary. The Fourteenth Amendment, in Corbin's telling, was simply taking this concept a step further, guaranteeing that citizens' rights would now also be "secured, as against the State Governments, and Congress shall enforce this provision, this new amendment of the Constitution, by appropriate legislation." Corbin also alluded specifically to Klan violence and Southern states' unwillingness to protect freedpeople's rights when he stated: "After the revolution we have recently had, it is seen that the States are disposed to encroach upon the rights of the newly enfranchised citizens." Referring to the incorporation of the Fourth Amendment specifically, Chamberlain explained that, "The Constitution of the country secures you the right to be secure against unreasonable searches and seizures. […] Large classes of the citizens of the United States are not secure, and we denounce a penalty against those who shall conspire to rob you of these constitutional rights."[103]

Corbin and Chamberlain's language was meaningful: calling the Civil War a "revolution" highlighted the need for American legal and constitutional policy to change in response to radical transformations in American society that had left a newly freed population vulnerable. At the same time, the prosecutors also inherently limited their own arguments for incorporation by focusing specifically on states' infringement of "newly *enfranchised* [italics added]" citizens' rights—this only included Black men, as Black women had not yet gained the vote. Thus, the

[103] *Klan Trial Proceedings*, 57; 62.

prosecution's attempt at incorporation appeared chiefly concerned with voting-related crimes of the Klan even before defense counsel attacked it, and the Court ultimately rejected it.

Defense counsel denied that the war and its immediate aftermath had changed American federalism in revolutionary ways. Democrats, clearly viewing *Crosby* as a precedent-setting case, had raised $10,000 to hire the prestigious Senator Reverdy Johnson of Maryland and Henry Stanbery of Ohio as defense counsel for the seven Klan defendants.[104] Johnson and Stanbery vigorously attacked all eleven counts of the indictment. In response to the eighth count, Johnson criticized Corbin's belief that the Fourteenth Amendment represented a necessary expansion of federal power. Johnson provided his own brief version of American history, claiming that the founding fathers "had seen, and seen by their experiences as colonies, that the most dangerous government in the world is a centralized and consolidated [federal] government" like that of Great Britain.[105] Thus, Johnson argued that all the Fourteenth Amendment did was give freedmen citizenship; it did not drastically expand the powers of the federal government. A relatively weak federal government was, in Johnson's telling, part of the nation's history and founding purpose.

Likely in response to Corbin's argument that the Fourteenth Amendment gave the federal government the ability to secure freedmen's voting rights, Johnson claimed that "the fourteenth amendment does not interfere at all with the rights of suffrage," and that, just as the founders had intended, "The States, over that right, are sovereign, as the Constitution, in its original frame, left them."[106] Stanbery also spoke fervently in defense of state sovereignty, claiming that it was "well established doctrine" that the Bill of Rights was solely a "restriction

[104] Kaczorowski, *The Politics*, 48.
[105] *Klan Trial Proceedings*, 69.
[106] *Klan Trial Proceedings*, 73.

upon the Federal authority" and that "We live in the States; we are protected by the States. […] [State law] is over me, above me, and around me. Great God! have we forgotten altogether that we are citizens of States, and that we have States to protect us?"[107] In rejecting incorporation, Johnson and Stanbery emphatically argued against the premise that the Civil War and the passage of the Fourteenth Amendment had altered the traditional understanding of American federalism or made any type of federal intervention in the states necessary for protecting citizens' civil or political rights.

On December 7, 1871, the Court granted the defense's motion to quash nine of the eleven counts of the indictment, including the portion of the eighth count which was based on the Fourth Amendment's search and seizure provisions. The Court narrowed the indictment to two counts: the first count, which charged the defendants with a general conspiracy against Black voters under the Enforcement Act of 1870, and the eleventh count, which alleged a conspiracy against Rainey under the Ku Klux Klan Act of 1871.[108] Ultimately, *U.S. v. Allen Crosby* never went to trial, as defense counsel entered a guilty plea on the two remaining counts.[109] In response to the eighth count and Corbin's attempt at incorporation specifically, Judge Bond and Judge Bryan concluded that the Fourth Amendment, and the Bill of Rights more generally, "ha[d] long been decided to be a mere restriction upon the [federal government] itself" that could not "be said to come within the meaning of the words of the Act [the Enforcement Act of 1870] 'right, privilege or immunity granted or secured by the Constitution of the United States.'"[110] Accepting Johnson and Stanbery's arguments, the Court rejected the prosecution's contention that the

[107] *Klan Trial Proceedings*, 31.
[108] *Klan Trial Proceedings*, 89-107.
[109] Williams, *The Great*, 74.
[110] *Klan Trial Proceedings*, 91-92.

Fourteenth Amendment had fundamentally altered American federalism in a way that expanded the reach of the federal government.

In rejecting a version of incorporation in *U.S. v. Allen Crosby*, the Fourth Circuit judges also rejected a critical attempt to expand federal protection of a much wider range of freedpeople's rights than only Black men's voting rights. To be sure, federal prosecutors trying Klansmen in South Carolina continued their efforts to convince Judge Bond and Judge Bryan of the constitutionality of incorporation; in the first Klan case that went to trial, *U.S. v. Robert Hayes Mitchell*, prosecutors initially included a count which stated that the Fourteenth Amendment guaranteed the Second Amendment right to keep and bear arms.[111] However, Judge Bond refused to address this count, and it was removed from the indictment before the trial began.[112] Shortly thereafter, in 1873's *Slaughter-House* and 1876's *Cruikshank* decisions, the Supreme Court also rejected attempts at incorporation, leaving the federal government with extremely limited jurisdiction for enforcing any of freedpeople's rights when the states failed to do so.[113]

Black women's testimony helps the modern reader see what federal prosecutors missed in crafting their courtroom strategies during the South Carolina Klan trials, the apex of federal efforts to suppress the Klan. The testimonies of Black South Carolinian women analyzed in Chapters One and Two make evident that even when raids were chiefly motivated by Black men's political party affiliations, Klansmen possessed numerous motivations for attacking Black individuals and families that often did not have a direct relationship to voting or elections. Likewise, Black South Carolinian women's testimony underscore the fact that, even if a raid was

[111] Williams *The Great*, 75.
[112] Williams, *The Great*, 75.
[113] Kaczorowski, *The Politics*, 140-188.

solely motivated by a Black man's voting record, its consequences and aftermath struck at the very core of Black individuals' livelihoods, day-to-day functioning, health, and wellbeing.

To be sure, federal prosecutors under Akerman deserve credit for attempting something truly radical with their legal strategies in South Carolina. So too do Republican officials in this era as high up as President Grant, who made the ultimate call to suspend the writ of habeas corpus in nine South Carolina counties, enabling mass arrests of Klansmen and the opening of courtrooms for these federal prosecutorial strategies to be tested. Yet, though it was ultimately the Fourth Federal Circuit Court that rejected this novel use of a version of the incorporation doctrine, federal prosecutors also limited their own attempts by continuing to prioritize the Klan's violations of the rights of enfranchised, and thus male, citizens. As Black women's testimonies reveal, Klan violence against Black men, women, and children was often about much more than voting rights. It seems that even the best-intentioned prosecutors did not fully understand this reality.

Conclusion

On July 27, 1871 in Yorkville, South Carolina, a Black woman named Lucretia "Crecy" Adams was sworn in and examined by the South Carolina sub-committee. Like many other testifiers, Adams, who reported being nineteen years old at the time, explained to the sub-committee how the Klan came to her and her husband's home in early 1871. Nothing violent happened when the Klan first came, as the Klansmen were looking for other people and were relatively courteous to Adams, telling her she "needn't be scared" and that they "were not after [her]."[114]

Quickly, however, the sub-committee's questioning revealed how Adams' experience with the Klan turned violent for a set of complex reasons. Adams recounted how, shortly after the initial raid, she had quarreled with her husband, ultimately making the decision to separate from him after finding out he had been seeing another woman. Adams' husband clearly did not approve of her decision to separate from him, beating her and, in Adams' words, telling her she would be "damned if he wouldn't send the Ku-Klux on me Saturday." That Saturday, the Klan did indeed return to the place Adams was then living with her aunt, whipping her and telling her, "If [she] didn't go back home again Saturday, they would come around Friday night and kill [her]." While the Klansmen told her they attacked her because she had not been working, Adams strongly believed her husband had some part in encouraging the Klan's attack, claiming that "he knew the Ku-Klux, and told me himself he allowed to make them whip me." One of the suspected Klansmen, Bob Faulkner, even said to Adams during this violent raid: "'You've got to go back to your husband.'"[115]

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[114] *Joint Select Committee Report,* 5: 1577-1580.
[115] *Joint Select Committee Report,* 5: 1577-1580.

As unusual as the likely motivation—Adams' husband's anger with her choice to leave their marriage—for this episode of Klan violence, it is perhaps the best example of how far outside the realm of electoral politics Klan terror strayed and struck. Based on Crecy's testimony, the Klansmen's motivations for this incident of violence against Crecy were far removed from her husband's political party association or voting patterns. Crecy's testimony relates to important ideas about power and gender relations found in historical studies of the intersection of gender and race in the postwar South.[116] In the immediate context of this thesis, the most important point about Crecy's experience with the Klan was that it was deeply personal, striking at something as intimate and fundamental as a woman's ability to leave a marriage.

Under Akerman, the Department of Justice's first attorney general, the federal government made the most concerted efforts of the Reconstruction era to hold Klansmen legally accountable across the South, especially in South Carolina, for some of their most egregious crimes. And while it is easy to point to numbers—the percentages of cases won or Klansmen indicted—to evaluate the national government's "success," perhaps even the most well-

[116] Laura Edwards explores this topic in *Gendered Strife & Confusion*, especially Chapter 5: "'Privilege' and 'Protection': Civil and Political Rights." Edwards's book focuses on Southern African Americans' bold moves to enter the public arena after the Civil War. As Edward explains, even most Republican officials continued to view Black people through a racist, deeply paternalist lens after the war. Thus, many African Americans took matters into their own hands when it came to fighting for racial equality. One especially effective strategy in their efforts to obtain public power was focusing on Black families. As family was a critical unit of white Southern antebellum society, it provided a relatively effective terrain from which African Americans could advocate for at least some necessary civil rights and political power. Nevertheless, this strategy's reliance on the Southern, white tradition of marriage and families—inherently gendered concepts that positioned public power within the male sphere—came with drawbacks for Black women. According to Edwards, "The rights of freedom gave black men new power that enabled them to remove the women and children in their families from the exploitative grasp of whites. Black women, by implication, would also experience a new measure of control over their bodies and their lives, but through the protective efforts of their menfolk. Indeed, many African American leaders referred to political rights in terms of their manhood." The case of Crecy Adams seems to take Edwards' concept even further, highlighting an unusual moment in which an African American man's limited new public power through the institution of marriage could be advanced through an alliance with white men at the expense of a Black woman's autonomy. Edwards, *Gendered Strife,* 184-217.

intentioned Reconstruction-era Republican officials (as well as some present-day scholars of the South Carolina Klan trials) were looking at the wrong metrics. The Thirteenth, Fourteenth, and Fifteenth Amendments and subsequent federal statutes—most importantly the Enforcement Acts—enabled the Justice Department's unprecedented legal action in South Carolina in 1871. Yet, as this thesis has emphasized, these new federal legal powers remained limited in their protection of freedpeople, and not just because of the work of Democratic defense lawyers and the states' rights oriented Fourth Federal Circuit Court judges in South Carolina. Federal officials relied on federal legislation chiefly designed to protect citizens' voting rights and political party affiliation, so much so that, even when attempting to address Klan crimes beyond these categories through a version of the legal doctrine of incorporation, most evidently in the pre-trial proceedings of *U.S. v. Allen Crosby,* federal prosecutors nonetheless fell back on familiar ideas about what constituted the primary nature of Klan violence: voting crimes against Black men.

In 2020, as the Black Lives Matter movement gained national attention in the US in the wake of the murder of George Floyd, an article by Bryan Greene entitled "Created 150 Years Ago, the Justice Department's First Mission Was to Protect Black Rights" was published in the Smithsonian Magazine. In his article, Greene draws on Lou Falkner Williams and William McFeely's studies of Akerman's role in the South Carolina Klan trials to argue that the Department of Justice's work under Akerman made 1870-1871 the most consequential period for the federal government's enforcement of Black civil rights, specifically Black voting rights, until at least the 1950s.[117]

[117] Bryan Greene, "Created 150 Years Ago, the Justice Department's First Mission Was to Protect Black Rights," Smithsonian Magazine, accessed March 21, 2023, https://www.smithsonianmag.com/history/created-150-years-ago-justice-departments-first-mission-was-protect-black-rights-180975232/.

If we agree with Greene that Akerman and his Department of Justice colleagues were (and remain to this day) uniquely committed to enforcing Black civil rights in the context of American legal history, then the Black women who testified in South Carolina in the summer of 1870 show us how necessary it is to significantly push the bounds and depths of what we consider adequate federal legal protections. In the Introduction of *White Terror,* Allen Trelease remarked: "The overriding purpose of the Ku Klux movement, no matter how decentralized, was the maintenance or restoration of white supremacy in every walk of life."[118] As the testimonies of Black South Carolinian women help reveal, the Reconstruction-era amendments and federal statutes did not fully capture or respond to the scope of the Klan's white supremacist terror. Only when legal statutes account for the depth of white supremacist violence—which, unfortunately, is still very much a part of American society today—can we truly praise the civil rights protections built into American federal law.

[118] Trelease, *White Terror,* xlvi.

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