Law and History Review (2025), **43**, 239–257
doi:10.1017/S0738248025101065

ORIGINAL ARTICLE

Ku Klux Klan Violence and the Problem of Evidence

Stephanie McCurry

Columbia University, New York, USA
Email: sm4041@columbia.edu

Abstract

This article offers a forensic analysis of one key archive of sexual violence: The official record of a congressional investigation of the Ku Klux Klan and federal trials of Klan members in the years immediately after the American Civil War. The 13 volumes constitute the single most important source of victim testimony on white supremacist violence and are used widely by historians. It also presents daunting problems of interpretation particularly with respect to sexual violence. This analysis challenges historians' traditional accounts of the Klan as overly reliant on the Republican party narrative that it constituted the terrorist arm of the Democratic party intent on suppressing black men's new constitutional right to vote.

As I argue here, the Klan's campaign of terror aimed at something far more, as the routine deployment of sexual violence against women reveals. Sexual regulation was the very core of white supremacy. The representation of the Klan in the official record—its signature acts, motives, and victims—was shaped not by the patterns of the violence itself but by the objectives of the investigation in the battle over public opinion and political strategy. In time and place, I argue, the narrow framing of Klan violence around electoral politics involved real costs to black women victims of the Klan with respect to the protection of their civil and political—or human—rights.

This article offers a forensic analysis of one key archive of sexual violence: Thirteen volumes of evidence published as the official record of a congressional investigation of the first Ku Klux Klan in the United States in the years immediately following the Civil War.[1] It is a record of a post-conflict society, although one in which peace was elusive, as was often the case after civil wars. It is also a record of a transitional justice initiative, although one that precedes the language of international law and was conducted by victors under conditions of

[1] *Report of the Joint Select Committee To Inquire Into the Condition of Affairs in the Late Insurrectionary States*, 13 vols. (Washington: Government Printing Office, 1872) (hereafter *Klan Report*).

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https://doi.org/10.1017/S0738248025101065 Published online by Cambridge University Press

military occupation. As the transcripts show, the archive itself was a site of epistemic conflict intended to shape public understanding, policy, law, and history.

As an official record, the Klan one is rare indeed in the United States with the government's studied refusal to face the legacy of slavery or need for redress. Unlike other post-conflict societies, there has been no attempt to produce an official body count of black victims in the Civil War or its aftermath.[2] The body of evidence contained in the thirteen volumes thus constitutes the single most important repository of material on white supremacist violence in the post-Civil War US. It is a rare and valuable source of victim testimony used widely by historians of Reconstruction.

But the value of the archive obscures its limits. As a record "vulnerable to the political winds of state interest," it has implications particularly for historical knowledge of sexual violence against women. Viewed that way it calls into question traditional accounts of the Klan by historians overly reliant on the narrative advanced by the Republican majority on the committee: That "the Klan," as Allen Trelease put it, "became … a terrorist arm of the Democratic party" intent on suppressing black men's new constitutional right to vote.[3] But the Klan's campaign of terror aimed at something far more, as the resort to sexual violence reveals. Indeed, as I argue, the representation of the Klan—its signature acts, motives, and identity of its victims—was shaped not by the patterns of the violence itself but by the objectives of the investigation in the battle over public opinion, military action, and legal strategy. In time and place, the narrow framing of Klan violence around electoral politics involved real costs to black women victims with respect to the protection of their civil and political—or human—rights.[4]

The purpose here is not to prove the extent of sexual violence against black women, which has been abundantly elucidated by generations of feminist historians of slavery and its aftermath.[5] It is, rather, to build on that work to

[2] To date, the only effort has been by a private organization, the Equal Justice Initiative (hereafter EJI): https://eji.org/report/reconstruction-in-america/.

[3] Allen W. Trelease, *White Terror: The Ku Klux Klan Conspiracy and Southern Reconstruction* (New York: Harper & Row, 1971; reprinted 1999, 2022), xivii, and 392, where he acknowledges the "political bias in the committee's proceeding" while confirming the "vast fund of information" produced as "the main source of information for the present study." Trelease remains the only monographic study of the first KKK; Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863–1877* (New York: Harper & Row, 1988), 342, 425–26.

[4] Fionnuala Ní Aoláin and Nahla Valji, "Scholarly Debates and Contested Meanings of WPS," in *The Oxford handbook of Women, Peace, and Security*, eds. Sarah E. Davies and Jacqui True (Oxford: Oxford University Press, 2019), 53–66; Catherine A. MacKinnon, *Are Women Human?* (Cambridge, MA: Harvard University Press, 2006).

[5] Key contributions include Darlene Clark Hine, "Rape and the Inner Lives of Black Women in the Middle West," *Signs: Journal of Women in Culture and Society* 14, No. 4 (1989): 912–20 and on era of slavery and emancipation: Deborah Gray White, *Ar'n't I a Woman? Female Slaves in the Plantation South* (New York: W. W. Norton, 1999); Thavolia Glymph, *Out of the House of Bondage: The Transformation of the Plantation Household* (Cambridge: Cambridge University Press, 2008); Hannah Rosen, *Terror in the Heart of Freedom* (Chapel Hill: University of North Carolina Press, 2009). On the first Klan particularly see Lisa Cardyn, "Sexualized Racism/Gendered Violence: Outraging the Body Politic in the Reconstruction South," *Michigan Law Review* 100, No. 4 (2002): 675–867 and Kidada Williams, *I Saw*

https://doi.org/10.1017/S0738248025101065 Published online by Cambridge University Press

show how, in one important instance—the campaign of terror waged by the Reconstruction-era Ku Klux Klan—the evidence of that violence was systematically suppressed or under-reported in the archival record with lasting implications for how the history of the Klan is understood.

The Conflict

On April 20, 1871, the 42nd U.S. Congress formed a Joint Select Committee (JSC) of 21 members drawn from the Senate (7) and House of Representatives (14). The committee was bipartisan, comprised of Republicans (13) and Democrats (8), reflecting the balance of power in Congress. Its stated purpose was broad: "To inquire into the condition of the late insurrectionary States, so far as regards the execution of the laws, and the safety of the lives and property of the citizens of the United States."[6]

The "States" of that charge referred to the Confederate States of America, which had recently lost a secessionist war to establish a state committed to enslavement as the natural condition of people of African descent.[7] The cost of defeat was military occupation and total, uncompensated, emancipation. The "condition" of those states, as Congress knew, was one of lawlessness and terror propelled by white southerners unreconciled to the new order of free labor and formal equality under the law. The citizens whose lives and property were most at risk were the four million black people now possessed of civil and political rights under the terms of the Fourteenth and Fifteenth amendments to the U.S. Constitution.

The investigation opened at a critical moment in the history of the U.S. White southerners had reacted to defeat and emancipation with violence at every turn. As government officials attempted to comprehend the landscape, massacres in New Orleans and Memphis in 1866 gripped the nation's attention.[8] Efforts to introduce basic rights of free people—marital and parental rights and contract rights of free labor—were met with a wave of violence so overwhelming that in 1866 Congress launched its first investigation and the Commissioner of the Freedmen's Bureau, Oliver Otis Howard, ordered his subordinates to compile monthly reports of "murders and outrages."[9] Protections of the Civil Rights Act of 1866 proved impossible to enforce in state courts which remained in the hands of white judges and juries. Empowered by President Andrew Johnson's public denunciation of the

Death Coming: A History of Terror and Survival in the War against Reconstruction (New York: Bloomsbury, 2023).

[6] *Klan Report*, vol. 1, 597–627.

[7] Stephanie McCurry, *Confederate Reckoning: Power and Politics in the Civil War South* (Cambridge, MA: Harvard University Press, 2010).

[8] Rosen, *Terror in the Heart of Freedom*; Foner, *Reconstruction*, 262–64.

[9] William A. Blair, *The Record of Murders and Outrages* (Chapel Hill: University of North Carolina Press, 2021), 30; *Journal of the Joint Committee on Reconstruction* (Washington: Government Printing Office, 1915), accessed March 26, 2025, https://www.loc.gov/item/15026030/; Stephanie McCurry, "Reconstructing Belonging," in *Intimate States*, eds. Margot Canaday, Nancy F. Cott, and Robert O. Self (Chicago: University of Chicago Press, 2021), 19–40.

https://doi.org/10.1017/S0738248025101065 Published online by Cambridge University Press

Fourteenth Amendment as a complete violation of white peoples' liberties, legislatures in virtually every southern state refused to ratify.

In response Congressional Republicans moved in a radical direction, overriding presidential vetoes to pass three Reconstruction Acts that put the southern states back under military government. The last of those acts extended the right to vote and hold office to black men in the South, which transformed the electorate of those states, adding more than one million men.[10] Theirs was a principled *and* partisan decision, a radical redefinition of American democracy, enacted under military rule.

As black men went to the polls, the violence escalated and took a more organized form. Facing the loss of political power, white vigilantes identifying as the Ku Klux Klan unleashed a campaign of terror in the South. Klan activity predated the elections of 1867–1868, as did paramilitary violence against black citizens. As W.E.B. Du Bois points out, "the outrages were committed before the suffrage was conferred upon the blacks." It had first been identified in 1866, one of many local groups operating under various names. But within a few years, most adopted the identity of the KKK and worked in loose association across state lines. After the presidential election of 1868 and the campaign of racist terror that accompanied it, the Klan was understood as a paramilitary organization enacting through violence the national Democratic party's commitment to "white man's government."[11]

We have no proper count of the victims, but by one estimate, the Reconstruction-era Klan murdered 2000 black people and maimed, raped, mutilated, tortured, wounded, and terrorized a vastly larger number. It is surely an undercount: a federal attorney in Texas reported that number murdered in his state alone.[12] One army officer described Klan activity as "a carnival of crime." The new Attorney General, Amos Akerman, went further: "I doubt whether from the beginning of the world until now a community nominally civilized has been so fully under the domination of systematic and organized depravity."[13]

The Investigation and Trials

The decision to open an investigation in 1871 emerged in a moment of poisonous partisanship. For the Republican majority, it responded both to the escalation of violence against black people in violation of their constitutional

[10] W. E. B. Du Bois, *Black Reconstruction in America, 1860–1880* (1935; reprint, New York: Atheneum, 1992), 370.

[11] Du Bois, *Black Reconstruction*, 672; Trelease, *White Terror*, xlvii, and ch. 1. Bradley D. Proctor, "'The K.K.K. Alphabet': Secret Communication and Coordination of the Reconstruction-Era Ku Klux Klan in the Carolinas," *Journal of the Civil War Era* 8, No. 3 (2018): 455–87.

[12] The number is from EJI: https://eji.org/report/reconstruction-in-america/. Du Bois cites numbers from the Klan report but others, vastly larger, from a range of sources; Du Bois, *Black Reconstruction*, 676–77.

[13] *Klan Report*, vol. 5, 1601; William McFeely, "Amos T. Akerman: The Lawyer and Racial Justice," in *Region, Race and Reconstruction*, eds. J. Morgan Kousser and James McPherson (New York: Oxford University Press, 1982), 395–416.

https://doi.org/10.1017/S0738248025101065 Published online by Cambridge University Press

rights and to the threat the Klan posed in suppressing the Republican vote in the southern states.

Between June 1871 and February 1872, the JSC conducted hearings in Washington, DC and localities throughout the South. It heard testimony of 586 witnesses, collected official reports, and commissioned compilations of data. The committee also produced two final reports: an official majority one and a longer minority one of "the Committee on alleged Outrages" as Democrats titled theirs.[14]

The JSC investigation was not the only government response to Klan violence, but ran parallel to, and in some coordination with, actions of the executive branch that culminated in a series of trials in federal courts. In March 1871, President Ulysses S. Grant dispatched an army officer and cavalry unit to investigate one particularly terrorized area of South Carolina. The officer, Colonel Lewis Merrill, was the single most important person connecting the parts of the federal response.[15] Two months later, Attorney General Akerman and the (newly formed) Department of Justice (DOJ) deployed undercover Secret Service detectives and dispatched federal attorneys to bring Klan perpetrators to justice.[16] In this, they deployed new statutory power, a series of Enforcement Acts, the final of which was called the Ku Klux Klan Act.[17] That law passed the house on the day Congress approved the JSC. Debates suggest that some representatives voted to open the investigation precisely to preclude enforcement of the Klan Act by the military.[18]

Like the charge to the JSC, the Enforcement Acts were expansive.[19] The first, as the title announces, sought to "Enforce the Right of Citizens…to Vote" against state authorities or conspiracies of private citizens, but also to protect "any right or privilege granted …by the Constitution or laws of the US." The third awarded the President power to suspend the privilege of habeas corpus when necessary to suppress "insurrection…or overthrow rebellion." Finally, the Acts awarded jurisdiction to *federal* courts to try Klan perpetrators, making this the first federal hate crime legislation in US history. It is the basis of one of the statutes used to bring former President Donald Trump to trial over the events of January 6, 2021.[20]

In October 1871, as the congressional committee continued to hold hearings, President Grant suspended habeas corpus in nine counties in South Carolina.[21]

[14] *Klan Report*, vol. 1, 1–100, 289–588.

[15] *Klan Report*, vol. 5, 1599–606.

[16] Robert J. Kaczoroski, *The Politics of Judicial Interpretation* (1985; reprint, New York: Fordham University Press, 2005); Jed Shugerman, "The Creation of the Department of Justice: Professionalization Without Civil Rights or Civil Service," *Stanford Law Review* 66, no. 1 (2014): 121; Charles Lane, *Freedom's Detective* (New York: Hanover Square Press, 2019).

[17] *U.S. Statutes at Large*, 16: 140–46; 17: 13–15.

[18] Isabelle Harris [now Grant], "To Inquire into the Condition of Affairs in the Late Insurrectionary States," (Senior Thesis, Columbia University, 2020), 18 (in possession of the author).

[19] "Congress shall have power to enforce this act."

[20] Section 6 of the 1870 Act (the general federal civil rights conspiracy charge)–now 18 USC 241–provided one of the counts in the Trump DC indictment.

[21] Amanda L. Tyler, *Habeas Corpus in Wartime* (New York: Oxford University Press, 2017), 199–208.

https://doi.org/10.1017/S0738248025101065 Published online by Cambridge University Press

The army, led by Colonel Merrill, arrested masses of Klan members. The following month, the first defendants were brought to trial in US Circuit Court for South Carolina.[22]

At its penultimate meeting, the JSC acted to create—and curate—the archive. Members voted to adopt "a general report" and send it to the House and Senate as the official "report of this joint committee." They ordered the printing of the report and all testimony taken in hearings. They had previously voted to include the "views of the minority" and reports of the recent federal trials in North Carolina and South Carolina, which Chairman Scott had requested from the Attorney General. Full transcripts of the trials were included in the records sent for printing as the committee's final act.[23] Shortly after, the Government Printing Office published what constitutes the official record of the investigation: *Report of the Joint Select Committee to Inquire Into the Condition of Affairs in the Late Insurrectionary States*, 13 vols. (Washington: Government Printing Office, 1872).

The Archive and the Problem of Evidence

The Klan investigation was the biggest government inquiry of its time and exerted outsize influence over public understanding at the time and since.[24] The archive, which totals more than 8000 pages, is now digitized and searchable. It also presents daunting problems of interpretation that turn on matters of both presence and silence in the archival record.

Like all archives, the content of this one was shaped by the political context and purposes of its creation, which is to say the logic and goals of the investigating body.[25] It is typical of its genre— nineteenth century Anglo-American government reports with "court-like practices of determining facts in line with parliamentary or congressional traditions." Indeed, the JSC resolved to conduct examination of witnesses "by the legal rules of evidence in courts of justice in the United States."[26] The bipartisan nature of the investigation makes it an interesting case of the problem of evidence of sexual violence in conflict zones, as does the dual record of investigation and trials.

In thinking about this archive, it is worth heeding Ann Stoler's warnings about commissions of inquiry that they are often appointed in lieu of action; Michel Rolph Trouillot's to be alert to the moments at which silences enter the process of historical production; and Ranajit Guha's about the systematic disinterest in "small voices of history" of compilers of state archives and writers of statist histories. All issue valuable cautions about what any archive holds and what it

[22] Lou Falkner Williams, *The Great South Carolina Ku Klux Klan Trials, 1871–1872* (Athens, GA: University of Georgia Press, 1996).

[23] *Klan Report*, vol. 1,. 627, 625–26, 624–25, vol. 2, 417 [NC Trials], vol. 5, 1611 [SC Trials]. Volumes also include short transcript of trials in Mississippi, vol. 12, 936–87.

[24] Cardyn, "Sexualized Racism," 675–867.

[25] Yael Sternhell, *War on Record: The Archive and the Afterlife of the Civil War* (New Haven, CT: Harvard University Press, 2023), 5.

[26] Oz Frankel, *States of Inquiry: Social Investigations and Print Culture in Nineteenth Century Britain and the United States* (Baltimore: Johns Hopkins University Press, 2006), 13; *Klan Report*, vol. 1, 592.

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can yield.[27] A cohort of black feminist scholars has impressed upon us the intractable problems of archives of enslavement. Anyone working in this area has to be aware of the systematic asymmetry of the archival record.[28]

We have not had much critical thinking about the Klan archive. To date, there is no institutional history of the JSC.[29] We have little knowledge of what went on in the background: The organization of hearings, witness selection and preparation, fights over admission of evidence, the criterion for inclusion in the volumes, or the system of organization adopted.[30] It was not unusual to publish government reports but those take up one volume. The decision to include trial records is particularly inexplicable given Congress's lack of oversight of the DOJ process. The Committee kept a journal, but it conveys little beyond motions and votes. To borrow a phrase, we have no "archive of the archive."[31]

There is never one archive of any conflict and there exist multiple sources beyond this on white supremacist violence in Reconstruction. But the JSC was the official investigatory body, its findings were published by action of the committee and presented as a full and accurate record of the Klan's reign of terror. But it was not. The representation of Klan violence was fundamentally shaped by the purpose of the investigation, which was not to protect "the lives and property" of all black citizens but more narrowly, as the Enforcement Act of 1870 made clear, to protect black men's right to vote.[32] To the extent that evidence of sexual violence against black women found its way into the record, it was subsumed or turned to serve the greater objective.

How the political inquiry shaped the evidence

Amid the mountain of information in the Klan archive, one can readily discern the partisan scripts. For neither party was sexual violence against black women germane to the main case.

That much is clear from the witness list. In total, 586 people were called to testify to the JSC, the majority (eighty per cent) by Republicans. Witnesses included northern-born army officers, Freedmen's Bureau officials, and school teachers; alleged Klan leaders, prominent white southern politicians and judges; black leaders and poor, formerly enslaved, black men and women. It was a diverse list that spoke to a range of experiences with the Klan.

[27] Ann Laura Stoler, "Colonial Archives and the Arts of Governance," *Archival Science* 2 (2002): 87–109; Michel-Rolph Trouillot, *Silencing the Past* (Boston, MA: Beacon Press, 1995); Ranajit Guha, "The Small Voice of History," in *Subaltern Studies IX*, eds. Shaid Amin and Dipesh Chakrabarty (New York: Oxford University Press, 1996), 1–12.

[28] Saidiya Hartman, "Venus in Two Acts," *Small Axe* 12, no. 2 (2008); 1–14; Christina Sharpe, *Monstrous Intimacies: Making Post-slavery subjects* (Durham, NC: Duke University Press, 2010); Marissa Fuentes, *Dispossessed Lives* : Enslaved Women, Violence, and the Archive (Philadelphia: University of Pennsylvania Press, 2016).

[29] This is the overall contribution of Harris, "To Inquire into the Condition of Affairs."

[30] *Klan Report*, vol. 1, 594, 606–7, 614, 619.

[31] Sternhell, *War on Record*, 10.

[32] *An Act to Enforce the right of Citizens of the United States to Vote …and for Other Purposes*, accessed March 26, 2025, https://www.senate.gov/artandhistory/history/resources/pdf/EnforcementAct_1870.pdf.

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At first glance, the list appears to align with the broad charge of the JSC to gather evidence and seek justice for black victims of Klan violence. But in fact, fully two-thirds of all witnesses were white men. Black witnesses were called but at much lower rates (thirty-four per cent) and exclusively by one party. Democrats were not interested in hearing from victims, Republicans were, but primarily from black men. In total, only thirty-four black women appeared as witnesses—most (23/34) summoned in their identity as wives, widows, mothers, and daughters of Klan victims. In other words, Republicans called the people from whom they wanted to hear.[33]

Transcripts of the hearings also reveal distinctly partisan lines of questioning. In hearings in DC, the Republican chairman, Senator John Scott, questioned prominent white witnesses (including suspected Klan leaders) about the Invisible Empire, aka the KKK, its organization, prescript, oath of secrecy, membership, and motives. In hearings in the southern states, subcommittees of three questioned victims about the identity of perpetrators and the cause of attacks: Did they say it was because you had voted for the Republican ticket or were a radical, Republican members asked. They also questioned army officers and DOJ attorneys about the failure of efforts to bring perpetrators to justice in state court.[34]

Democrats, led by Senator Frank Blair, questioned witnesses about the threat militant black organizations like the Union League posed to white citizens, particularly white women, and about the incompetence and corruption of new Republican-majority state governments. Nathan Bedford Forrest, the "reputed leader," testified that the Klan formed for "self-protection" against Loyal Leagues and "insolent negroes;" that "Ladies were ravished by some of these negroes;" that the Klu Klux had always been an "organization got up to protect the weak…with no political intention at all."[35]

The narratives elicited were embedded in the respective reports. In theirs Democrats cast the Klan as either (or both) a figment of Republicans' fevered imagination or a protective association organized to resist the Union League and protect white women from rape by black men.[36] Republicans reached a radically different conclusion: That the Klan was real; that it constituted a widespread political conspiracy; that the object of the conspiracy was to deprive black men of their newly acquired right to vote; and that the conspiracy warranted federal intervention. Whatever its original intent, the Klan had "become a political organization whose purpose…is to put the democratic party up and the radical party down, to oppose the amendments to the Constitution,

[33] Statistics on the identity of witnesses were produced using the index of testifiers for each state (which includes the racial designation "col"). Statistics on Republicans/Democrats share of witnesses were arrived at by matching names in volumes with the identity of the member opening the questioning (party calling witness questioned first).

[34] Much of the testimony was excerpted in the Majority Report. See *Klan Report*, vol. 1, 1–100, 5–16 for one example; In South Carolina, vol. 3, 68–85 for another.

[35] *Klan Report*, vol. 1, 6–7, 54.

[36] *Klan Report*, vol. 1, 289: "the atrocious measures by which millions of white people have been put at the mercy of the semi-barbarous negroes of the South,"; 542.

https://doi.org/10.1017/S0738248025101065 Published online by Cambridge University Press

to have a white man's government" and "to oppose and reject the principles of the radical party."[37]

In the Republican narrative, the black voter was the citizen whose rights required protection: "Having the rights of a citizen and a voter, neither … can be abrogated by whipping *him*… [or inflicting] outrage upon *his* wife and children."[38] The Klan victim and subject of federal protection was thus gendered male: As black women had no right to vote, violence against them was of far less import.

Trace evidence of sexual violence against women

With that came a selective account or distortion of the Klan's reign of terror strictly associated with elections. Take Colonel Merrill's testimony in Yorkville, South Carolina, in the summer of 1871. Merrill had as detailed a view as any person at the time. York County was the epicenter of the Klan's rampages. He had been stationed there since March, and his report on attacks was read into the record. The list was small, he said, "compared to the whole number of acts of violence committed in this county;" "By far the greatest number of cases … were never reported to me at all."[39]

Still, his was a horrific account of Klan violence in one place. He estimated the number of "whippings, beatings, and personal violence" in the county at 300–400. Attacks ranged from daylight military-style raids on a county treasurer's office, to execution-style assassinations of Republican politicians, black militia leaders, and voters, to the burning of black schools and churches. Merrill reported a great deal of election-related violence but also brutal attacks on black women, like the one on Sam Simmrell's wife who was "whipped and ravished at same time they whipped him," and on Amzi Rainey's wife in which "his daughter was raped at the same time." About a third of the victims Merrill named were black women, many of sexual violence at the hands of Klansmen.[40] His account explodes any narrow conception of the white supremacist politics at stake in the Klan's reign of terror. And it left no doubt about the use of sexual violence as a routine instrument of political terror.

But that evidence barely registered. Merrill's investigation was crucial to witness lists both for committee hearings and subsequent trials in US Circuit Court for South Carolina. The South Carolina subcommittee called many of the victims he named but not Harriett Simril or any rape victim. We know very

[37] *Klan Report*, vol. 1, 85.

[38] *Klan Report*, vol. 1, 99.

[39] *Klan Report*, vol 5, 1464.

[40] *Klan Report*, vol. 5, 1474–5, 1481. Shawn Leigh Alexander mistakenly lists "Harriet Simril" as witness to the congressional committee; her testimony was in federal district court. See Alexander, *Reconstruction Violence and the Ku Klux Klan Hearings* (Boston, MA: Beford/St. Martin's, 2015), 45. Merrill further testified to the impossibility of bringing charges in state court because "the best men of the community," including judges were members of the Klan themselves, *Klan Report*, vol. 5, 1482. "I am now of the opinion that I never conceived of such as state of social disorganization being possible in any civilized community as exists in this county now." *Klan Report*, vol. 5, 1463–7, quotation 1482.

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little about how witnesses were selected or prepared. But judging from the witness list and transcripts of the hearings, it appears that evidence of rape or other crimes of sexual violence was not solicited, actively suppressed, and above all, subsumed by the broader political project of the inquiry. As in so many other conflicts, domestic and international, sexual violence against women was seriously undocumented.

Women's own reluctance to report sexual violence is widely acknowledged. A few women witnesses (eight) did offer first-person accounts of rape, gang rape, and genital mutilation perpetrated by Klan members during attacks on their homes.[41] But most said nothing and most reports we have were volunteered by male witnesses, who also testified to acts of sexual violence *on other men*, including barbaric acts of castration.[42] The traces of sexual violence against women in the archive emerged inadvertently, unbidden.

Harriet Hernandes' testimony is a case in point. She was subpoenaed to appear at Spartanburg, South Carolina, to testify about the attack on her husband. But once sworn in, she bore powerful witness to the way the Klan spread terror through the whole community. They came twice, she said, "between midnight and day," heavily armed and disguised with horns and things over their faces. The first time, not finding her husband, they threatened her and left. But the second time, they said they would shoot her brains out if she didn't tell where he was. Then, they seized her and her fifteen-year-old daughter Lucy out of bed, struck them with pistols, "dragged and beat them along" over fences and brush piles. Asked why they were doing this, they said because her husband "voted the radical ticket."

With that information solicited and on record, Hernandes then forced the committee to hear what else the Klan did to the women and children. They whipped nearly all of them in the neighborhood she said, so that they "can't live like humans no how." Asked "does this fear extend to … whole families," she said more—"yes, sir … I do not know how bad they did serve some of them. They did them scandalous…." The veiled reference to rape is there. Hernandes knew the men who attacked her and why. Romeo Martin came after her, she said, because she refused to work for him; she and her husband had rented land and were working for themselves. "Missus Williams," kin to the Martins, had warned her she would "be Ku Kluxed for that." The Democrat, Philadelph Van Trump, was quick on the uptake: "[T]hey had said they would Ku-Klux you because you would not work for them." "Yes, sir," she answered.[43]

Hernandes' testimony messed up the Republican script. Klu Kluxers' sexual abuse of women and girls was designed to shatter the fragile security black families had built since emancipation and demonstrate their utter vulnerability. It delivered a powerful message: No black person was safe even in their own

[41] Ellen Parton ("committed rape upon me") *Klan Report*, vol. 11, 38, a rare case of woman telling her own story without ambiguity or embarrassment; Hannah Tutson, *Klan Report*, vol. 13, 59–64.

[42] *Klan Report*, vol. 6, 356.

[43] *Klan Report,* vol 3, 585–91. On black women victims' insistence on bearing witness despite murderous intimidation, see Kidada E. Williams, *They Left Great Marks on Me* (New York: New York University Press, 2012).

https://doi.org/10.1017/S0738248025101065 Published online by Cambridge University Press

homes; they could terrorize with impunity and would punish any violation of the racial order, no matter how small. As Hernandes told it, the Klan aimed not just at voter suppression but the violent re-inscription of racial hierarchy, including on the bodies of black women they knew well. Indeed, the perpetrators were often men known to their victims. Again and again women identified them, despite their outrageous costumes, because as Lucy McMillan said, [I] had known them "all my life." She knew it was Bob McMillan's sons who attacked her. Asked by Van Trump how she came to be named McMillan, she said simply, "I was a slave of Robert McMillan, I always belonged to him …. I work with these boys every day. One of them I raised from a child." The violence of slavery she suffered at the hands of that family included the loss of her husband, "taken away from me and carried off 12 years ago."[44] The Klan practiced an excruciatingly intimate kind of violence predicated on the terror of slavery.

The "monstrous intimacies" of slavery, as Christina Sharpe put it, set an explosive charge under every negotiation of the terms of freedom.[45] It was apparent in the patterns of Klan violence and underreporting of it, particularly with respect to the rape of black women, which had been a crime unknown to law in the slaveholding states. Hernandes' circumspection was typical. It was a crime spoken of in euphemism: violation of chastity, sleep with, ravished, ill-treat, did scandalously, forcible connection, outraged, and so on.[46] Of the thirty-four women who testified, only a couple ventured the risk to their lives, reputation, and family dignity to report it at all.

Hannah Tutson was one. Her first-person account is among the most reproduced of witness testimonies, which is misleading because it is also exceedingly rare (perhaps even singular) in the JSC record.[47] In hearings in Jacksonville, Florida, she described the brutal rape perpetrated on her by a gang of five Ku Kluxers in the Spring of 1871. "Are you the wife of Sam Tutson," the committee asked. "Were you home when he was whipped?" But what came to light was another story entirely. She was the target. The Klan had tried to force her off the land she and her husband had bought two years before. "I am going to die on this land," she told them the first time, "no law is going to move me from here except Tallahassee law." Outraged by her defiance, they came back: "We came to dispossess you," they said.[48] As in so many cases, the perpetrators' motive was grossly material, a strike against the success of black people at building wealth and independence after slavery.[49]

But if that was the motive, the violence was sexual. The Ku Kluxers jerked Hannah Tutson and her husband out of bed, slinging the baby out of her arms

[44] *Klan Report*, vol. 5, 1574; vol. 4, 604–11.

[45] Sharpe, *Monstrous Intimacies*.

[46] Terms included in list used in a digital search of the volumes.

[47] Alexander, *Reconstruction Violence*, 39–44.

[48] *Klan Report*, vol. 13, 59–64.

[49] Williams, *I Saw Death Coming*, 150–82. Economic historians confirm the pattern: see Ellora Delanencourt, Chi Hyun Kim, Moritz Kuhn, and Moritz Schularick, "Wealth of Two Nations: The U.S. Racial Wealth Gap, 1860–2020," *NBER Working Paper Series* no. 30101 (June 2022), accessed March 26, 2025, https://www.nber.org/papers/w30101.

https://doi.org/10.1017/S0738248025101065 Published online by Cambridge University Press

and across the room, then dragged them both, like "dumb beasts," she said, about a quarter mile from the cabin. They separated the couple, then "pulled off all my linen." They whipped her raw, stomped her, and abused her verbally—but one of the men also raped her. She did not use the word. Every time the party went off, she said George McCrea would "act scandalously…and treat me shamefully…get his knees between my legs … [and] have to do with me" right there. Asked if she gave way to him, she answered "no sir, …I was stark naked. I tell you, men, he pulled my womb down so that sometimes now I can hardly walk." In speaking to the ongoing damage to her body and self, Tutson offered a prime example of what the historian Kidada Williams means when she says that black victims had to live with, and not just through, the violence inflicted by the Klan.[50]

Hannah Tutson risked a great deal in going on the record. She displayed her brutalized body to her neighbors as evidence of the crime, named her rapist, and tried to take him to court. But he was the deputy sheriff and put her in jail for "speaking false." Still, when called by the US Marshall, she walked into the meeting room in Jacksonville, Florida, faced a panel of powerful white men and entered her testimony into the record—a lone clear voice, six single-spaced pages in a body of evidence of more than 8000 pages.[51]

What is captured in the official record is surely a faint trace of the tsunami of sexual violence perpetrated by the Klan in their seven-year reign of terror. But it is enough to establish that they deployed it routinely as an instrument of terror against men and women. Almost a quarter of testifiers (male and female, black and white) reference sexualized forms of violence that ranged from the most common practice of stripping and whipping victims, to genital mutilation, castration, rape, gang rape, and lynching in retaliation for accusations of rape.

The stripping of victims before they were whipped was a practice so ubiquitous it has hardly registered as *sexual* violence. Caroline Benson, a forty-eight-year-old mother, described how they just "jibbetted them [her clothes] off, like Paper" in the public road. Coerced stripping was a form of the same. Formerly enslaved women hardly mistook the intent: It was a reassertion of slaveholders' power, designed to return them to the powerlessness of people owned as property. The shame element was key—"you cannot help yourself." Jane Surratt's husband mentioned they were "nearly naked" when they were whipped, but his wife kept that detail to herself.[52]

Klansmen also orchestrated perverse spectacles of sexual humiliation and degradation. They stripped William Champion, a white man, and made him kiss the anus of Clem Bowden, a black man, so as to put them "on n——— equality," they said. They also forced Champion into a charade of sex with Bowden's wife, compelling him to kiss her posterior and private parts (as he put it) and tried to force him to have "sexual connection" with her. Clem Bowden did not mention that in his testimony. The whole performance was a sick parody of the "social

[50] Williams, *They Left Great Marks on Me*.

[51] Also candid account by Parton but in sworn deposition in relation to Meridian massacre/election riot, *Klan Report*, vol. 11, 38.

[52] *Klan Report*, vol. 6, 368–88, 375–77, 386; vol. 3, 524–26.

https://doi.org/10.1017/S0738248025101065 Published online by Cambridge University Press

equality" white supremacists cast as the inevitable consequence of black men's Fourteenth and Fifteenth Amendment rights. Bowden was guilty of activism in local Republican politics, Champion of race treason for joining the Union League "as their equal," as Van Trump put it. The deployment of sexual violence to terrorize men is an unacknowledged element of Klan tactics.[53] Such spectacles of sexual power were common and revealing.[54] Some have an overtly pornographic cast; some are plainly sadistic. But whatever the psychology of the perpetrators, as one legal historian has noted, one of "the most striking features" of Klan "offensives was their pervasively sexualized character."[55]

The assault on black women and children and the routine deployment of sexual violence suggest that the Klan's reign of terror aimed at something far more than dispossessing black men of the right to vote. As a Georgia revenue agent admitted, they can't see equality as simply equality before the law. It has to be about the parlor or the bed. "They lash themselves into a fury about it."[56] James Rives, a white lawyer, and minority witness showed how this worked in a long disquisition on "miscegenation" in the context of justifying a mob attack on a number of black women living openly with white men. "There was nothing political in this matter, was there?" Blair, a Democrat, asked: Answer: "No Sir." But the sexual politics was, if anything, more explosive than matters of votes and elections. When asked if "sexual commerce between the races" was so uncommon as to merit Klan reprisal Rives explained that white men and black women "have frequent intercourse…but that [to] live together as these parties did, is a thing of rare occurrence." Chairman Scott saw red at the hypocrisy: But sex between the races has been "going on for generations here," he asked, so why do Democrats denounce "negro equality," to which Rives responded by reference to the difference between prostitution and marriage.[57] The Klan hardly meant to punish white men for asserting their right to the bodies of black women; what they targeted was any relationship that assumed the form or legality of marriage. All the former slave states had passed bans on intermarriage immediately upon emancipation.[58] But when they were struck down, as in Mississippi, white enforcers turned to violence to turn that civil right into a murder sentence.

Republicans on the JSC worried most about the suppression of the Republican vote. But, as the Klan knew, sexual regulation was the very core of white supremacy, and then, as now, it required the policing and enforcing of racial boundaries through sexual violence.[59] Democrats on the committee drove

[53] *Klan Report*, vol. 3, 379, 365–73; Thomas A. Foster, *Rethinking Rufus* (Athens, GA: University of Georgia Press, 2019).

[54] For other cases see *Klan Report*, vol 6, 368–90.

[55] Lisa Cardyn, "Sexual Terror in the Reconstruction South," in *Battle Scars: Gender and Gender and Sexuality in the American Civil War*, eds. Catherine Clinton and Nina Silber (New York: Oxford University Press, 2006), 141.

[56] *Klan Report*, vol. 6, 529.

[57] *Klan Report*, vol. 11, 558–59.

[58] Peggy Pascoe, *What Comes Naturally* (New York: Oxford University Press, 2009); McCurry, "Reconstructing Belonging."

[59] On sexual regulation and 'race' see Judith Surkis, *Sex, Law, and Sovereignty in French Algeria, 1830–1930* (Ithaca, NY: Cornell University Press, 2019).

https://doi.org/10.1017/S0738248025101065 Published online by Cambridge University Press

that case home, justifying Klan violence with a deluge of testimony about white women's fear of rape at the hands of black men. If you search this archive for the term rape, this is mostly what you get: Second or third hand allegations, often sensational, about rape or attempted rape of white women and girls punished by castration and/or lynching of black men.[60] Historians associate that murderous narrative with the later Jim Crow era, so it is shocking to see how soon after emancipation it took hold and how white women (called as minority witnesses) incited the blood lust.[61] Already by 1871, white southerners used rape as a war cry. The representation of sexual violence was at the heart of the epistemic conflict JSC transcripts record.

As all of this suggests, Klan violence was so horrific and indiscriminate it defies typology. The matrix of motives and frequency of attacks on women and children collapses even the best efforts to separate the "extraordinary" violence of the Klan aimed at controlling elections, from the ordinary, everyday violence of the same men in their roles as enslavers-turned-employers, Justices of the Peace, or covetous neighbors. Disguised in the ritual rigamarole of Ku-Kluxers, they targeted people for any and every violation of the white supremacist order. Black men and women were brutalized and murdered because they were too successful or too arrogant, bought land a white man wanted, complained about a white child stealing their watermelon crop, had served in the Union army, refused to sleep with a particular man, talked back to a white woman, stopped to breastfeed their child while working, or cut into their illegal distilling ring. Clinton Fisk, a leading Freedman's Bureau official, described it as a war on "loyalty, freedom, and justice."[62]

Typologies break down particularly around the matter of intimate violence against women, which was both underreported and suppressed in the record. In this respect, the Klan archive confirms a pattern identified more recently in the Women Peace and Security literature on Human Rights and International Law: The way the continuity of violence against women in peace (domestic violence) and war makes it difficult to ever recognize it as a crime or enforce protocols against it. In her book, *Are Women Human?* Catherine Mackinnon drives home the precarity of women's claim to human rights. Women's "enforced inequality" is the bedrock reality of all societies, including liberal ones that recognize human rights, she writes; "no state effectively guarantees women's human rights within its borders."[63]

In a former slaveholding society like the US South, the distinction between the violence of war and of peace is particularly difficult to draw. The ownership of four million people body and soul, and white men's unfettered sexual access to the bodies of enslaved women, created a culture of violent impunity no law

[60] For one example, see *Klan Report,* vol. 8, 264.

[61] Jacqueline Dowd Hall, "The Mind that Burns in Each Body," in *The Powers of Desire*, eds. Ann Snitow and Christine Stansell (New York: Monthly Review Press, 1983), 328–49; Glenda Gilmore, *Gender and Jim Crow* (Chapel Hill: University of North Carolina Press, 1996); Crystal Feimster, *Southern Horrors* (Cambridge, MA: Harvard University Press, 2011).

[62] On typology see Williams, *They Left Great Marks*; *Klan Report*, vol. 1, 265.

[63] MacKinnon, *Are Women Human?*, 149, 39.

https://doi.org/10.1017/S0738248025101065 Published online by Cambridge University Press

could stop. The petty sovereignty of masters—the "kinglets" as Du Bois called them—knew no limit.[64] In the hands of the Klan, sexual violence was an instrument of expropriation, displacement, racial "purity," and dignitary violation. For Klansmen as for white men since 1865, it represented a violent reassertion of a now criminalized "right" of sexual access against black women with new power to refuse and resist.

In the part of the archive comprised by the JSC investigation that sexual politics went unnamed in the Republicans' attempt to make Klan violence all about the vote. But in the Reconstruction South, there was nothing more explosively political than the personal and sexual—and the range of crimes and victims and forms and gravity of the violence far exceeded anything deriving from party political electoral contests.

The Trials

The record of the federal trials is a small but revealing part of the Klan archive because, though using some of the same raw material as Republicans on the JSC, federal prosecutors took a different approach to the issue of sexual violence. Although attorneys faced the requirement of matching indictments to evidence, some of the most direct testimony of the Klan's sexual violence against women emerged during the trials, precisely *because* prosecution strategy required it. Still, analysis shows that the pattern of subsuming evidence held even as lawyers consciously included it as a way of enforcing women's constitutional right to equal protection under the law—a case of the exception that proves the rule.

The Department of Justice indicted Klan members in federal court in a number of southern states, but only three sets of trial records—those for North Carolina, South Carolina, and Mississippi—were included in the record published the following year.[65] The South Carolina trials garner outsize attention because it was the only state in which President Grant suspended the writ of habeas corpus *and* because the trial record is published and easily available.[66] The five cases the DOJ successfully prosecuted in that state in 1871 followed the failure of the grand jury to indict in the previous term, despite a deluge of evidence: David Corbin, the US Attorney for South Carolina said "I would have been compelled to hang my grandfather upon that evidence."[67] The complicity of the state justice system and impunity with which the Klan operated in upcountry South Carolina prompted the DOJ to act.[68] The Klan cases were the first effort at federal criminal civil rights enforcement in the United

[64] Du Bois, *Black Reconstruction*, 52.

[65] Klan Report, vol. 2, starting 417 [NC], vol. 5, 1612 [SC], vol. 2, 936 [Miss].

[66] *Klan Report*, vol. 5, 1615–990. The vast majority of federal court trial records are accessible only in the National Archives.

[67] Klan Report, vol. 3, 79; Kaczorowski, *Politics of Judicial Interpretation*, 71.

[68] As Merrill reported the Grand Jury which failed to indict included at least three Klan members. He accused South Carolina circuit judge Thomas of orchestrating a "cover up" of failure to indict. Merrill's January 1872 report covered this in detail. He sent his report to Secretary of War who forwarded it to JSC Chair Scott.

https://doi.org/10.1017/S0738248025101065 Published online by Cambridge University Press

States by the new DOJ and a first test of the constitutionality of Reconstruction-era civil rights legislation, including the federal government's expanded enforcement powers and functions. As a leading legal historian put it, it was in federal courts that questions about the meaning of the reconstructed constitution were first adjudicated. The first case certified to the Supreme Court about the scope of the Fourteenth and Fifteenth Amendments, *United States v. Avery*, originated in the South Carolina Klan trials.[69]

The DOJ knew they faced serious challenges, whatever their trial strategy. In selecting cases and witnesses, AG Akerman and US Attorney Corbin built on Colonel Merrill's reports but also on evidence gathered in their own investigation which included the deployment of undercover federal agents to infiltrate Klan dens.[70] After suspension and mass arrests, Klansmen's crumbling impunity triggered a wave of surrenders and plea deals, and the DOJ executed a classic rollup, turning low-level defendants into informants and state witnesses. When it presented its case, the Grand Jury returned true bills against 169 men and declared itself "shocked beyond measure [at the] number and character of atrocities committed, producing a state of terror especially against colored people."[71]

One of the trickiest questions Akerman and Corbin faced was how to write the indictments. With little or no prior federal court guidance, they cast a wide net to test the power of the Enforcement Acts with respect to the civil and political rights secured in the Fourteenth and Fifteenth Amendments. They expressed frustration with the vagueness of the language in the amendments and the acts, but as Akerman put it "a few experiments will demonstrate where the dangers are."[72]

The first case prosecutors chose was *United States v. Crosby*, for the murder of Jim Rainey, a former Union soldier and black militia leader murdered by the Klan in March 1871. The case also involved a brutal attack on Amzi Rainey during which his wife was beaten and his daughter raped, as Merrill had reported to the JSC. Daniel Chamberlain, associate counsel, referred specifically to that crime—they "next ravish his daughter"—in opening arguments. There is reason to believe federal prosecutors led with that case to show the savagery of the Klan against the whole community, including women and children also entitled to federal protection of their civil rights. But what were those rights? As historian Lou Falkner Williams has argued, *Crosby* attempted to make the case that the Fourteenth Amendment incorporated the Bill of Rights and with it all the rights and protections secured to citizens in the first ten amendments to the Constitution. Since the conspiracy provisions of the First Enforcement Act protected only the right to vote, "incorporation" was a method by which to "bring

[69] Kaczorowski, *Politics of Judicial Interpretation*, 93, and for the longer history, Daniel Richman, "Making Federal Cases" (manuscript in possession of author).The Supreme Court did not take the case.

[70] Lane, *Freedom's Detective*. For Akerman and Corbin meeting with Merrill, *Klan Report*, vol. 5, 1602. For assertions at trial that Gunn was an undercover informant, vol 5, 1696–97.

[71] *Klan Report*, vol. 5, 1613.

[72] Kaczorowski, *Politics of Judicial Interpretation*, 97; Lou Falkner Williams, "The South Carolina Ku Klux Klan Trials and Enforcement of Federal Rights," *Civil War History* 39, no. 1, (1993): 55.

https://doi.org/10.1017/S0738248025101065 Published online by Cambridge University Press

the women and children under the protection of the federal government."[73] It was a risky strategy.

United States v. Crosby was an eleven-count indictment. Only two counts survived pretrial motions to quash—and both charged conspiracy to deprive Rainey of the right to vote on the statutory grounds of the (first) Enforcement Act. Defense lawyers succeeded on all other counts, including the three involving Fourth and Fourteenth Amendment protections (against illegal search and seizure and equal protection of the laws) that would extend federal protection to black women victims.[74] This was the constitutional battle defense counsel was hired to wage. Indeed, Klan members were represented by the best and most expensive defense lawyers in the country—Henry Stanbery (former AG under President Johnson), and Senator Reverdy Johnson (another former AG and lawyer for President Johnson in his impeachment trial). The money was raised by a public defense fund led by Wade Hampton, former slaveholder, Klan leader, later Red Shirt-segregationist governor, and avowed white supremacist.[75]

Stanbery and Johnson mounted an aggressive defense of the states' rights legal tradition, exploiting ambiguity in the language of the new amendments to eviscerate a new broad nationalist interpretation of the federally enforceable civil rights of US citizens, effectively denying that anything fundamental had been altered in federal-state relations by the Civil War and emancipation. "Great God! Have we forgotten altogether that we are citizens of States, and that we have States to protect us? I would fight to the last ditch against Federal usurpation," Stanbery thundered. Corbin insisted that "the Fourteenth Amendment changes all that theory" and restricts the states from violating citizens' rights. But he lost. Defense's winning arguments aligned completely with Democrats' narrative in the JSC report. Arguing for the first time before a jury with black members, Stanbery threatened them to know their place: "I warn you colored men… If you attempt to make a step in advance of the white man, your doom is sealed."[76]

The two judges presiding in the case, George S. Bryan and Hugh L. Bond, sustained defense motions on every count except conspiracy to violate the right to vote. DOJ attorneys anticipated trouble with Bryan, a native South Carolinian district court judge, pre-war appointee, and known Democrat. But Bond was a new circuit court judge appointed by President Grant, a Republican and advocate of equal rights committed to the enforcement of federal laws. Bond split with Bryan on two issues but joined him in quashing the Fourth

[73] Williams, "The South Carolina Ku Klux Klan Trials," 52. See Akerman's first set of instructions to federal prosecutors, "Circular Relative to Rights of Citizens to Vote in the Several States," and a year later "Circular Relative to the Enforcement of the Fourteenth Amendment," Kaczorowski, *Politics of Judicial Interpretation*, 64.

[74] *Klan Report*, vol. 5, 1643–45.

[75] Williams, "South Carolina Ku Klux Klan Trials," 55; Kaczorowski, *Politics of Judicial Interpretation*, 99; on fundraising, see Gunn testimony in *Klan Report*, vol. 5, 1696.

[76] *Klan Report*, vol. 5, 1629, 1671, 1814; Kaczorowski, *Politics of Judicial Interpretation*, 46. The Supreme Court would soon "lend its hand to the forces of reaction": See Kellen Funk, "Equity's Federalism," *Notre Dame Law Review* 97, no. 5 (2022): 2057–72.

https://doi.org/10.1017/S0738248025101065 Published online by Cambridge University Press

Amendment charges and Bill of Rights protections. The bench rulings underscore the weight of states' rights precedence, notwithstanding the alleged re-founding of the Civil War era. With Klan members as government witnesses, it was not difficult to convict on conspiracy charges, and Corbin and Chamberlain prosecuted successfully in this and subsequent cases. With guilty pleas on those charges, the case of *United States v. Crosby* closed.[77] But as a first test of the constitutional scope of the Enforcement Acts in the wake of the Fourteenth and Fifteenth Amendments' ratification, the case was a wipeout for the prosecution.[78]

US attorneys did not give up. Corbin and Chamberlain revised indictments but continued to introduce evidence of sexual violence against women in court, even though they couldn't prosecute on it directly. In this, their priorities were quite different from the JSC. They called Amzi Rainey as a witness in their next case, asking specifically about "what they did to your daughter." But the most important push came when Corbin opened the case of *United States v. Mitchell* with the broadest possible account of the Klan's savagery: We shall show you, he said, that the conspirators perpetrated "a great number of outrages," that "they not only whipped and beat colored men entitled to vote, but they whipped and ravished women in pursuance of their general conspiracy."[79] Then, he called Harriet Simril as a witness and—finally—a black woman's detailed first-person account of rape was put on record.

Black witnesses knew they risked their lives in testifying against the Klan.[80] But on the stand, under oath, with Bond and Bryan on the bench and Stanbery and Johnson for the defense, in direct examination by Corbin, Harriet Simril laid out in horrifying detail the brutal gang rape perpetrated on her by three members of the York County Klan. Asked "Do you know the men who ravished you?" she identified them by name, a dangerous thing to do: "Yes, sir … Ches McCollum, Thom McCollum, and this big Jim Harper." Amid threatening talk about her husband voting the Republican ticket, she described how they dragged her into the road "and ravished me out there." Asked how many of them there were, she answered "there was three." Question: "One right after the other?" Answer. "Yes, sir." She also relayed the conversation on the part of her tormenters, but it was omitted from the record because it was "of too obscene … to permit of publication." The defense waived cross-examination. Corbin also called a Klan informer to give a detailed account of the sexual torture of a young white woman terrorized and mutilated by a group who poured tar and lime into "her privates."[81]

[77] Kaczorowski, *Politics of Judicial Interpretation*, 53–59, 103–4; Williams, "South Carolina Ku Klux Klan Trials"; *Klan Report*, vol. 5; Peggy Cooper Davis, Aderson Francois, and Colin Starger, "The Persistence of the Confederate Narrative," *Tennessee Law Review* 84 (2017): 301–63.

[78] The Supreme Court declined to take this case which explains why this and other Klan trials do not figure in the legal history literature on the constitutional history of the amendments.

[79] *Klan Report,* vol. 5, 1746, 1838.

[80] As one US Attorney wrote to AG Williams. Richman, "Federal Case," 55.

[81] *Klan Report*, vol. 5, 1861–62, 1865.

https://doi.org/10.1017/S0738248025101065 Published online by Cambridge University Press

Some of the most direct evidence of the Klan's use of sexual violence as a tool of political terror and crimes against black women thus entered the archival record as part of trial transcripts.

But the proof problem continued even as the prosecution insisted on introducing the evidence. Because Rainey had only hearsay knowledge of his daughter's rape, Corbin did not probe further. In response to another attempt, defense counsel objected—"Has that anything to do with the indictment?"—to which Corbin answered "it has directly." But the prosecution struggled to tie the Klan's crimes against women to the charged crime of conspiracy as defined in the Enforcement Acts. Chamberlain tried valiantly in the closing argument in the case in which Simril testified. Addressing jury members as formerly enslaved people, he spoke graphically of the proslavery "constitutional liberty" that Klan members and defense counsel embraced, and the freedom and equality—the black radicalism—against which they struck. It was all of a piece he tried to say: "When they whipped Mary Robertson it was to make her tell where her husband was; when they ravished Jane Simril [sic] it was to punish her as well as to gratify their lusts, and to punish her because she would not tell where her Radical husband was."[82] This was the case they had to make in court.

Congressmen and senators, federal attorneys, military officers, and all the others who investigated the Klan knew the organization aimed to maintain the supremacy of the white race in every realm of life, personal and political. In that campaign of racial terror sexual violence was both a tool and an end. But in the investigation and trials, Republican politicians and US Attorneys circled the narrow question of conspiracy to suppress the right to vote, the majority report advanced that interpretation of Klan motives and objectives, and leading historians of Reconstruction have agreed, generally presenting the KKK as the military arm of the Democratic party.

The DOJ claimed the verdict of the trials would demonstrate the administration of justice and "the rights of newly enfranchised citizens." But of women's right to protection from sexual violence at the hands of enraged Klansmen, Republicans on the JSC congressmen were not interested, and the indictments had nothing to say. Which makes it all the more significant that the attorneys insisted on getting that knowledge on the record nonetheless. It "will go forth to the world in the public prints" they said.[83]

Acknowledgments. For critical feedback and assistance I would like to thank the co-conveners of the project workshops, Rosemary Byrne and Jane Ohlmeyer; my colleagues at Columbia Law School, Daniel Richman, Kellen Funk and Sarah Seo; Isabelle Grant of the Columbia History Department; and the members of my writing group, Caroline Elkins, Karuna Mantena, Susan Pedersen, and Camille Robcis.

[82] *Klan Report*, vol. 5, 1865, 1913.

[83] *Klan Report,* vol. 5, 1913.

Cite this article: Stephanie McCurry, "Ku Klux Klan Violence and the Problem of Evidence," *Law and History Review* 43 (2025): 239–257. https://doi.org/10.1017/S0738248025101065

https://doi.org/10.1017/S0738248025101065 Published online by Cambridge University Press