Curtains for Jim Crow: Law, Race, and the Texas Railroads

William S. Osborn*

On September 15, 1893, Thomas W. Cain, a black resident of Galveston, was visiting in St. Louis, Missouri. He purchased a ticket for rail travel home and paid an extra fare for a berth in a Pullman car. His trip began without incident. At Longview, Texas, this Pullman car was switched onto an International & Great Northern Railroad Company train bound for Galveston. Upon arrival at Troup, Texas, I. & G. N. trainmaster J. C. Gregory announced to Cain that his presence in the sleeping car with whites violated a new state statute. This statute, the first Texas law regarding segregation on the railways, had passed in the 1891 legislative session. It required separate coaches or compartments for white and black passengers. Trainmaster Gregory instructed Cain to move from his Pullman car to a day coach assigned to blacks only. Cain objected but to no avail. He was refunded $2, this sum being the premium fare calculated for Pullman travel on the remainder of his journey.[1]

* William S. Osborn obtained a B.S. in geology from Brown University in 1981 and a J.D. from the University of Texas School of Law in 1984. He was employed by the Railroad Commission of Texas from 1983 to 1989 and presently practices oil and gas law with the Austin firm of Patman & Osborn.

The author desires to acknowledge the assistance of Connie Menninger of the Kansas History Center at Topeka, archival custodian of certain records of the Atchison, Topeka & Santa Fe Railway Company; Louis Marchiafava of the Houston Metropolitan Research Center, which holds more than four hundred boxes of files from the Santa Fe's Texas legal department dating from 1900 to 1965; the staff of the Texas State Archives; Dr. T. Lindsay Baker, who has given countless hours as a mentor and critic to the author's efforts; noted authors John Miller Morris and Carolyn Osborn; Railroad Commission Librarian Susan Rhyne; George C. Werner, who is one of the foremost experts on the history of Texas railroads; Austin attorneys Joe Osborn and Jim Cousar; former Assistant Attorney General Linward Shivers; and Santa Fe historical expert Matt Zebrowski. Law partner Philip F. Patman provided invaluable editorial comments and encouragement, and partner Ana Maria Marsland provided research assistance. Special thanks to TSHA editors Holly Zumwalt Taylor and Theresa Ann Case for their patience and careful attention to detail. Donna Osborn kindly tolerates the interruption of attention to family affairs provoked by the author's historical interests. Readers with information or photographs pertinent to the subject of Jim Crow and the Texas railroads are invited to contact the author at wosborn@swbell.net or by letter to 515 Congress Avenue, Suite 1704, Austin, Texas 78701.

[1] *Pullman Palace Car Co., et al. v. Cain*, 40 S.W. 220 (Tex. Civ. App., 1897).

Cain filed suit against the I. & G. N. and the Pullman companies in Galveston County District Court and a trial on the merits resulted in a verdict in his favor with an award of $100 for damages. The Pullman Company appealed but found little sympathy in the Texas Court of Civil Appeals, which sustained the award to Cain. The court held that the Pullman Company was liable for damages because it did not fulfill its contract with Cain to provide him with first-class accommodations. Chief Justice Garrett, author of the court's opinion, argued that the Pullman Company could comply with the law by furnishing separate sleeping cars for blacks and whites.[2] This would never happen. The cost of doubling the company's fleet and workforce in the South would have been prohibitive, especially given low patronage of Pullman cars by the black population, which was generally too poor to purchase first-class service. Through the end of the Jim Crow era, trains entering Texas from segregation-free states to the north and west retained integrated sleeping cars, regardless of what legislators in Austin decreed.

One surmises that the justices on the Texas Court of Civil Appeals sympathized with Cain for economic reasons. No doubt they, too, could afford the comfort of first-class accommodations. They likely viewed the railroad's decision to turn a paying customer out of his sleeping car as disconcerting, even if that customer was black. The court was less sympathetic to discrimination complaints of coach passengers, black or white. Just a year before, the same court had affirmed dismissal of a suit brought against the Galveston, Houston & San Antonio Railway Company by a black passenger who had been compelled to travel between Gonzales and Harwood in a day coach that lacked a stove, toilet facilities, and a drinking water tank.[3] Twenty years later the court also affirmed dismissal of a suit brought against the Missouri, Kansas & Texas Railway Company by white passengers forced to ride in the same car with black passengers between Austin and San Marcos when flood damage disrupted regular train service.[4]

In both of these decisions the court's opinions stated that enforcement of the separate coach law was a matter reserved for action by the state. Only the state, it argued, could prescribe penalties against offending

[2] Ibid. The court ruled on the basis of contract law rather than civil rights law on the theory that Cain had paid for a level of service that was promised but not delivered.

[3] *Norwood v. Galveston, Houston & San Antonio Ry. Co.*, 34 S.W. 180 (Tex. Civ. App., 1896). However, see *Henderson v. Galveston, H. & S. A. Ry. Co.*, 38 S.W. 1136 (Tex. Civ. App. 1896). In this latter case, a black minister who had paid for passage from San Antonio to Hondo was compelled to ride in a coach with no toilet facilities. The court found that he was entitled to damages for his pain and humiliation. In the same year and in cases involving the same railroad, the same court ruled against one black plaintiff and for another. The only difference in those cases was in the social status of the black plaintiffs (one being a preacher).

[4] *Weller et ux. v. Missouri, K & T Ry Co. et al.*, 187 S.W. 374 (Tex. Civ. App. 1916).

railway companies, and aggrieved individuals could not use such penalties as a basis for recovering damages. Yet, from the earliest years of the statute, the courts permitted recovery in damages in private suits when black passengers on Pullman cars experienced discrimination.[5] Throughout the Jim Crow era, economic status tended to trump racial status on the Texas railways. Fifty years after the *Cain* case, even the chief enforcer of Jim Crow legislation for the Railroad Commission of Texas found that he lacked the nerve to confront a prosperous black passenger traveling in a Pullman lounge car in order to require her to leave the premises.

As the Thomas Cain incident and other cases cited above suggest, several factors made interpreting and enforcing Texas segregation laws on the rails difficult. First, under certain conditions a number of whites were willing to ignore or moderate the otherwise rigid requirements of Jim Crow legislation. Second, railroad companies serving Texas and the western section of the nation from corporate centers in Chicago or San Francisco often resisted segregation laws in regard to first-class cars, as those laws required them to supply extra equipment and staff. In addition, some white Texans, particularly in the western part of the state, thought segregation of rail transportation unnecessary in their territory. Many West Texas authorities silently refused to enforce state laws designed to address circumstances in the eastern part of Texas. Indeed, the records of railroad companies, the Texas Railroad Commission, and Texas courts demonstrate that, though white Texans generally accepted segregation in principle, race relations on the rails were far more complicated and fluid than the signs marked "White" and "Colored" imply.

Segregation on the railroads, so long an institution in Texas and elsewhere in the South, came to an end in slow and halting steps during the early to mid-twentieth century. An *apartheid* system of transportation was always an expensive proposition for carriers, but the industry's declining fortunes during the twentieth century increasingly pushed railroad corporations to disregard Jim Crow statutes. Landmark court decisions and the need for national unity and economic efficiency during World War II led to the disintegration of Texas's enforcement of segregation on rail travel shortly after the war, a few years sooner than in the states of the Deep South. Vestigial segregation practices enforced by local police authorities remained in place, however, in many Texas railroad depots until the dawn of the Space Age, when media attention brought to bear the power of civic embarrassment on the issue. In the end, the court of public opinion proved more powerful than any court of law in closing the curtains on the Jim Crow era on the Texas railroads.

---

[5] Edward L. Ayers, *The Promise of the New South: Life After Reconstruction* (New York: Oxford University Press, 1992), 141–142.

Between 1868 and 1873, when the state of Texas underwent radical Reconstruction, federal authorities generally did not tolerate segregation of the races, as the Fourteenth Amendment, adopted in 1868, provided that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . nor deny to any within its jurisdiction the equal protection of the laws." But after the withdrawal of the federal occupying force, Republican control of state government ended and discriminatory practices soon resurfaced. Still, because few railroads existed in Texas during the 1870s, the issue of segregation in railcars did not much concern Texans.[6]

In 1875 Congress passed a new civil rights bill, which for the first time clearly provided that all people within the jurisdiction of the United States were entitled to full and equal enjoyment of accommodations, public transportation, theaters, and places of public amusement. The Fourteenth Amendment had not been so specific. By 1883, however, five challenges to this legislation had reached the United States Supreme Court, where they were consolidated and called "The Civil Rights Cases."[7] In these cases the Court ruled eight to one that the new civil rights law was unconstitutional. The Fourteenth Amendment, the Court held, affects only state actions, because the amendment explicitly provides: "No state shall make or enforce any law" that denies equal protection. The majority of the justices considered the federal government powerless to intrude on the regulation of social rights between private citizens; thus, they made a distinction between social and civil rights. According to this view, the owner of a hotel should be entitled to decide to whom to rent a room—the government is not entitled to say to whom a room must be rented. Such a decision was not a state action because the state did not own the hotel. The railroads of that era were, in a sense, traveling hotels operated by private companies, not by states.[8]

Justice John Marshall Harlan was a southerner, but he dissented in the Civil Rights Cases, writing that the majority was sacrificing the "substance and spirit" of the Thirteenth and Fourteenth Amendments. In his view a railroad received a state charter and therefore essentially operated as a public highway, the state even giving it the right to condemn private property to construct its route. But in 1883 he was far outnumbered. His fellow justices on the U.S. Supreme Court left to the states the power to regulate social interactions between individuals, and

[6] Ibid., 136; "Railroads," *The Handbook of Texas Online*, http://www.tsha.utexas.edu/handbook/online/articles/view/RR/eqr1.html [Accessed Jan. 7, 2002].

[7] *Civil Rights Cases*, 109 United States Reports 3 at 13 and 25.

[8] *Civil Rights Cases*, 109 United States Reports 3 at 24 and 25.

the southern states began in earnest to establish laws providing for what was essentially an *apartheid* social system by segregating the races in many areas of public contact.[9] Described by historian C. Vann Woodward as "the most elaborate and formal expression of sovereign white opinion upon the subject," segregation statutes in the various southern states by the end of the nineteenth century extended to schools, residential housing, restaurants, hospitals, orphanages, prisons, bus lines, railroads, funeral homes, and cemeteries.[10] Such extensive control over the geography of society was critical to whites' exercise of dominion over blacks.[11]

Black citizens who lived through this period, who were later interviewed about their experiences with segregation, frequently mentioned the particular humiliation involved in riding Jim Crow railroad cars. They easily recalled being forced to change places in railroad cars, or to leave certain cars entirely, because these incidents occurred in full public view, sometimes with vocal support for the enforcing conductor expressed by the white passengers.[12] Blacks who needed to travel in nineteenth- and twentieth-century Texas were forced to brave that humiliation in exchange for the ease and speed of movement offered by rail travel.

During the 1880s railroad construction in Texas greatly accelerated. The Texas & Pacific built west from Fort Worth and reached El Paso in 1881. A line chartered in the name of the Galveston, Harrisburg & San Antonio Railway linked El Paso with San Antonio in 1883. Three years later the Atchison, Topeka & Santa Fe built south from Oklahoma to its newly purchased subsidiary, the Gulf, Colorado & Santa Fe, which connected Galveston with points in the Midwest. Branch lines linked many of the smaller communities in East Texas. In 1880 Texas had 2,440 miles of mainline track; more than 6,000 miles were added by 1890.[13] The impact of these connections to the outside world on the daily lives of Texans was sudden and dramatic. The new ability to move passengers and freight easily and quickly was just as significant then as the rise of electronic communication via the Internet at the end of the twentieth

[9] *Civil Rights Cases*, 109 United States Reports 3 at 26–62 (quotation on p. 26); David Delaney, *Race, Place, and the Law, 1836–1948* (Austin: University of Texas Press, 1998), 90; Ayers, *The Promise of the New South*, 136.

[10] C. Vann Woodward, *The Strange Career of Jim Crow* (1957; 3rd ed.; New York: Oxford University Press, 1974), 7.

[11] Delaney, *Race, Place, and the Law, 1836–1948*, 6.

[12] Leon F. Litwack, *Trouble in Mind: Black Southerners in the Age of Jim Crow* (New York: Alfred A. Knopf, 1998), 9–10.

[13] George C. Werner, "Railroads," in Ron Tyler, Douglas E. Barnett, Roy R. Barkley, Penelope C. Anderson, and Mark F. Odintz (eds.), *The New Handbook of Texas* (6 vols.; Austin: Texas State Historical Association, 1996), V, 412.

century. The freedom of movement brought about by the railroads was so highly valued that Congress enacted the Interstate Commerce Act in 1887 in order to prevent undue state restrictions on railroad traffic.[14]

By the 1880s a minority of black Texans could afford the luxury of first-class rail travel, which, given the slow speeds of that period, often involved overnight stays on the train. Many white Texans, influenced by Victorian ideas, worried about the sexual charge created when strangers, especially white and black strangers, were temporarily placed in intimate surroundings. At that time, interracial personal relations did not have to end in physical contact to be considered dangerously intimate and therefore damaging to a woman's reputation. Press reports demonstrate that there existed among white Texans no shortage of lurid imaginings about the consequences of racial mixing on sleeping cars.[15]

During this period many Texans were also unhappy with railroad corporations. They accused railway officials of colluding with state and federal officials, discriminating against farmers who sought to transport their agricultural commodities at a fair rate, and paying little heed to local expectations or desires for passenger train schedules or facilities.[16] The anger and bitterness of Texas voters was expressed during the 1891 legislative session, which established the Railroad Commission of Texas. Railroad companies had previously operated with little government supervision, but henceforth they were strictly regulated.[17] Following the example of other southern states, Texas legislators specifically addressed the subject of segregation on the railroads, enacting in the same year a new law that required:

> Each railway company . . . doing business in this state . . . shall provide separate coaches or compartments . . . for the accommodation of white and negro passengers, which separate coaches shall be equal in all points of comfort and convenience . . . each compartment of a railroad coach divided by good and substantial wooden partitions with a door therein shall be deemed a separate coach within the meaning of this law, and each separate coach shall bear in some conspicuous

[14] "Interstate Commerce Act," Feb. 4, 1887, Chapter 104, 24 stat. 379.

[15] Ayers, *The Promise of the New South*, 137–146. See also Mary Frances Berry and John W. Blassingame, *Long Memory: The Black Experience in America* (New York: Oxford University Press, 1982). Berry and Blasingame observe in Chapter Four, "Sex and Racism," that in contrast to white men, black Americans of this era were generally uninterested in pursuing intimate interracial relationships.

[16] In August 1885 the major roads organized the Texas Traffic Association to fix rates. The state attorney general filed suit alleging that collusion to set tariffs was illegal, and the Texas Supreme Court declared this activity unconstitutional in 1888. See Earle B. Young, *Tracks to the Sea: Galveston and Western Railroad Development, 1866–1900* (College Station: Texas A&M University Press, 1999), 92–94.

[17] David F. Prindle, "Railroad Commission," in Tyler, et al. (eds.) *The New Handbook of Texas*, V, 409; George C. Werner, "Railroads," in Tyler, et al. (eds.), *The New Handbook of Texas*, V, 410.

place appropriate words in plain letters indicating the race for which it is set apart.[18]

This was the new statute the I. & G. N. invoked when it ejected Thomas Cain from his sleeping car accommodations.

Among the reasons for the passage of this and similar legislation across the South was a realization by whites that black men and women coming of age in the 1890s were the first generation to reach maturity without having experienced the social controls of slavery firsthand.[19] What the white South wanted was not so much separation as subordination. This can be clearly seen in the fact that, throughout the Jim Crow era, a black nursemaid traveling with a white invalid or a small white child was allowed to ride in the "Whites Only" railway car alongside her charge while a black man or woman traveling alone or with friends or family—in other words, independently—was not.

Railway companies operating overnight service in Texas at the time of the new legislation attempted to avoid the cost of doubling their sleeping car fleets by strictly interpreting the new statute as applicable only to coaches, not to sleeping cars. In practice, however, this policy drew fire. A February 1893 story in the *Galveston Daily News* reported a controversy over the Wagner Sleeping Car Company's policy that black porters working sleeping cars on runs between Houston and Dallas occupy upper berth number "1." One white passenger protested that "a big burly negro porter" had "crawled into the berth immediately above" his wife. The *News* reported speculation that the Texas statute could not be enforced under these circumstances.[20]

The Railroad Commission itself discussed internally whether or not the law only addressed coach travel but publicly sought more widespread observance of the state's segregation laws. One example of the commission's effort is found in a 1903 communication to the general manager of the Fort Worth & Denver City Railway Company concerning a complaint that blacks and whites were allowed to commingle in dining cars. Commission chairman, L. J. Storey, wrote of the complaint, "Technically speaking . . . the law may not include dining cars, but undoubtedly the spirit of the law . . . would seem to demand separate

[18] "Separate Coach Law," Acts 1891, p. 44; Acts 1907, p. 58; G.L. Vol. 10, p. 46. The bill was first proposed in the 1889 session and failed to pass. Norris Wright Cuney, then chairman of the Republican Party of Texas and the state's most influential black politician, wrote a brilliantly prescient letter in opposition to the legislation to certain prominent representatives. See Maud Cuney Hare, *Norris Wright Cuney: A Tribune of the Black People* (New York: Crises, 1913; reprint, New York: Steck-Vaughn Co., 1968), 128–130.

[19] Delaney, *Race, Place, and the Law*, 100; Litwack, *Trouble in Mind*, 214, 238–239.

[20] *Galveston Daily News*, Feb. 4, 1893. Husband and wife abandoned the facilities and "sat up the entire night."

dining car service, as well as separate chair and sleeping car service."[21] Chairman Storey observed that, of course, nobody was compelled to use the dining car service, but passengers expected its availability and did not come prepared with a lunch basket. He mentioned wryly that, while all of the carriers had rules limiting meal service to the dining cars, "generally an extra quarter repeals the rule," meaning that offended whites might not have prepared themselves with extra quarters. He concluded, "Unless the practice is discontinued the Commission will take up the question as to whether or not it has power to correct the abuse."[22]

The Fort Worth & Denver City Railway Company chose not to trifle with the Railroad Commission on this matter, as the agency's good will on rate and tariff questions was of paramount importance to it. Yet, despite railroad officials' desire to please the Railroad Commission, neither this railway company nor any other would ever provide a separate dining car for blacks due to the expense involved. Separate dining times for black and white patrons and later the use of curtains seemed to be the most expedient approach to the issue for railroad officials.

Another example of the Railroad Commission's policy of encouraging rather than requiring compliance with Jim Crow practices is seen in a 1904 letter from Commissioner Storey to the Atchison, Topeka & Santa Fe Railroad Company about a white passenger who was offended that the races were mixed at the waiting room of the company's Cleveland, Texas, depot. The commissioner declared, "[W]hile we do not claim to have the right to force you, where you have two waiting rooms, to designate one for whites and one for colored people, yet it is right that you should do so, and better for all concerned that it should be done, this I am sure you will agree with us."[23] This statement was made a few years before a new Texas statute explicitly required segregation in waiting rooms. Prior to the passage of that statute, the commission relied on the power of suggestion rather than the force of law in its dealings with railroad officials on the issue of segregation in depots.

Texas Railroad Commission records from this time period are replete with letters that freely express the venomous racial prejudices of complainants. For example, one correspondent wrote the following in August 1909 regarding the Santa Fe depot at Arcola:

---

[21] L. J. Storey, Chairman, Railroad Commission of Texas, to F. W. Egan, General Manager, Fort Worth & Denver City Railway Co., Aug. 21, 1903, Letterpress Book 4-2/1087, p. 244 (Archives Division, Texas State Library, Austin; hereinafter cited as TSL).

[22] Ibid.

[23] Chairman L. J. Storey to F. G. Pettibone, general manager, Feb. 23, 1904, Records of Railroad Commission of Texas, Letterpress Book 4-2/1153, p. 158 (TSL).

More than once I have seen this waiting room crowded with coons and if it happened to be cold or raining the white people would have to hold their noses and crowd in too. . . . When the coons occupy a place they are equal, if not better, than the white people, and their importance and impudence swells.[24]

The Railroad Commission forwarded this communication to the Santa Fe, and dryly asked its officials to "remove cause for further complaint."[25]

The Railroad Commission also received letters from black passengers and responded favorably to them. Writing to the Santa Fe's general manager in 1906, the agency concluded:

We think this is a just complaint. The idea of compelling people to ride 218 miles in a car without water cooler or water closet for the benefit of passengers, who are not permitted to enter other cars, is a violation of the purpose and intent of the laws of this state, and the Commission desires to say that this must be remedied. It would not be tolerated for a moment in a car devoted to white passengers and under the laws of this state there can be no difference made as to the necessary comforts on account of race or color.[26]

The agency's position here did not contradict its commitment to segregation; it insisted only on some semblance of equality as to "the necessary comforts," not to a more general equality.

The Louisiana legislature adopted a Jim Crow railroad statute in 1890, one year before Texas did. Homer Plessy, whom the state classified as a black man because one of his great-grandparents was black, challenged the law after a deliberately provoked ejection from a "whites only" railcar. A group desiring to overturn the statute had selected Plessy as a favorable plaintiff, due to his white appearance, in a carefully planned test case. He asserted that a state law forbidding the races to mingle was by its nature a violation of the Fourteenth Amendment because it denied them the "equal protection" of the law. In 1896 the U.S. Supreme Court, with only one dissenting vote, sustained the Louisiana statute on the theory that separate accommodations must be equal. The Court reasoned, as it had in the 1883 Civil Rights Cases, that the Fourteenth Amendment was intended to enforce political equality, not social equality, as the latter could only come by voluntary consent of the individuals involved.[27] During argument of the case, the Court's attention was directed to the fact that the state of Massachusetts, the

[24] Railroad Commission of Texas Letterbook 4-2/1149, Aug. 13, 1909, p. 327 (TSL).

[25] Railroad Commission of Texas Letterbook 4-2/1149, Aug. 13, 1909, p. 327 (TSL).

[26] Railroad Commission of Texas Letterbook 4-2/1071, Mar. 17, 1906, p. 245 (TSL).

[27] *Plessy v. Ferguson*, 163 U.S. 537 at 550 (1896). For background information on the *Plessy* case, see Litwack, *Trouble in Mind*, 243; Ayers, *The Promise of a New South*, 144–145; and Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* (New York: Alfred A Knopf, 1976), 73.

original hotbed of abolitionist sentiment, prescribed or permitted separate schools for blacks and whites, as did the District of Columbia, California, Ohio, Indiana, New York, and Kentucky. Relying on the idea that it is the natural tendency of society to segregate itself socially, the Court's majority held that a state legislature could act "with reference to the established usages, customs and traditions of the people." Justice Henry B. Brown denied that segregation "stamps the colored race with a badge of inferiority," stating: "if this be so . . . it is solely because the colored race chooses to put that construction on it."[28] The single dissenting justice was again John Harlan, who wrote that the decision to legitimize a "separate but equal" framework would "arouse race hate" and "perpetuate a feeling of distrust" between blacks and whites. He predicted, "The thin disguise of equal accommodations for passengers in railroad coaches will not mislead anyone."[29]

Perhaps because the quarters were less confining, segregation in Texas depots was not legally required for almost twenty years after segregation on Texas trains was decreed. At the turn of the century, only three southern states—Mississippi, Louisiana, and Arkansas—had instituted segregation in railroad stations. Within a few years, however, states throughout the Deep South and as far west as Texas and Oklahoma passed such laws. The Texas statute, enacted on May 10, 1909, provided that "[r]ailroad companies shall keep and maintain separate apartments in such depot buildings for the use of white passengers and negro passengers."[30]

For railroad companies, compliance with the new depot segregation law was expensive. The Santa Fe began a significant wave of station replacements in 1910, substituting buildings with two separate spaces for those with only a single waiting room. It was not feasible simply to add a room to an existing facility because the ticket office had to be in the middle of the two waiting rooms in order to serve each side separately. The Railroad Commission recognized the magnitude of the task and gave railway companies several years to meet the requirements of the new statute.[31] The commission also looked the other way when companies operating in West Texas chose to ignore the statute because there were few blacks in that territory.

Historians have noted with interest that no southern state ever compelled segregation in the outdoor waiting area between the depot and

[28] *Plessy v. Ferguson* (1st quotation on p. 550; 2nd quotation on p. 551).

[29] *Plessy v. Ferguson*.

[30] Acts 1909, *2nd Civil Statutes*, p. 401, recodified to *Vernon's Texas Statutes and Codes Annotated*, (Rev. Civ. St. 1911), Article 6693 and Article 6694.

[31] For examples of commission forbearance, see Letterpress Books 4-2/1174, p. 284 (Sanger, Texas depot, May 16, 1911); 4-2/1169, p. 457 (Buckholts, Texas depot, Oct. 20, 1911); and 4-2/1230, p. 117 (Wadsworth, Texas depot, Sept. 8, 1913) (TSL).

A northbound Santa Fe passenger train stops at the depot in Alvin, Texas, alongside a platform crowded with fruits and vegetables ready for loading in the Wells Fargo Express car at the front of the train. Immediately behind it is the "Jim Crow" coach, with occupants surveying the scene. Steam locomotives produced a dirty exhaust, and in the days before air conditioning, those riding toward the front of the train would suffer maximum exposure as it drifted in the windows. In order to give its white passengers a cleaner ride in this era, the Santa Fe customarily placed their cars at the rear of the train. This image traveled through the U.S. Mail as a photo postcard on April 28, 1910. *Postcard courtesy the collection of William S. Osborn.*

the train tracks it served. One scholar, Grace Elizabeth Hale, has commented that the prospect of regulating this realm of activity seemed to baffle white ingenuity.[32] The historical record is replete with photographs of integrated trackside crowds awaiting a segregated train in the shadow of a completely segregated Texas depot. Sometimes the black railway patrons in these images appear deferential to whites, but at other times they stand shoulder-to-shoulder with them. Certainly, the natural tendency of the rural South in public places was to mingle irrespective of race. The laws considered in this study would have been unnecessary if separation of the races in the South was truly natural, as alleged by Justice Brown in the *Plessy* case.

The only known case in which the Texas Railroad Commission held a hearing on a complaint about racial mixing in a Texas depot involved

[32] Grace Elizabeth Hale, *Making Whiteness: The Culture of Segregation in the South, 1890–1940* (New York: Pantheon Press, 1998), 133–135. Hale found the Farm Security Administration photographs from the 1930s helpful in making observations about patterns of racial interaction in public places. The author has collected some 1,500 images of activity along the tracks of the Santa Fe railroad in Texas between 1890 and 1960. A study of this collection clearly supports Hale's premise that the space between the depot and the train or its tracks was never racially segregated.

an area outside of the old South. Perhaps the conflict arose because of the lack of well-defined customs and patterns of racial relations in that region. The rise of cotton cultivation on the Texas High Plains and its expansion after 1920 attracted an influx of migrant black workers. In April 1923 a traveling salesman wrote the Railroad Commission a letter from the Santa Fe depot at Slaton, southeast of Lubbock, complaining that in the men's waiting room, which had a seating capacity of twenty-four, he had counted "17 Negroes, 14 white persons and 6 Mexicana [sic]," and a "conglomeration" in the ladies' waiting room.[33] The company answered by reporting that between May 10 and May 21, 1920, it had sold only twenty-nine tickets to blacks. Officials stated that the permanent population of the Slaton community included only about forty-three blacks out of some four thousand residents.[34]

When the railroad disputed the necessity of separate facilities, the commission held a hearing on the matter in Slaton on July 6, 1923. Commissioner Walter Splawn presided. He heard evidence that the railroad sold less than three tickets to blacks for every twenty-eight tickets sold to whites, and that most of the former group's travel was seasonal and related to the cotton harvest. Commissioner Splawn did not seem to have his heart set on enforcing segregation under these conditions. The Santa Fe's local counsel reported to its Galveston management that the commissioner "was not active or aggressive in developing the testimony."[35] Yet, the fact remained that on the day of the original complaint, blacks had outnumbered whites in the Slaton waiting room, which must have caused an unusual feeling among the whites. The commissioner asked that he be provided a transcript of the hearing within a month. By that deadline the company made a decision to construct a separate waiting room at Slaton for blacks, and it voluntarily added a waiting room for blacks to the Lubbock depot in the same year. None of the company's other Texas stations north of Lubbock had separate waiting rooms for black patrons, nor is there any record of a request from the commission to provide them. Amarillo is the largest community in the area, but neither the Santa Fe, the Rock Island, nor the Fort Worth & Denver City had separate waiting rooms in their depots there in the mid-1920s.[36] The station segregation law never received much consideration in the

[33] J. E. Eaves of Dallas, Texas, to Railroad Commissioner of Texas, Apr. 15, 1923, RG D-4, box 41, folder 5 (Houston Metropolitan Research Center, Houston; hereinafter cited as HMRC).

[34] J. W. Terry of Terry, Cavin & Mills, Galveston, to Hon. W. A. Nabors, Commissioner, Railroad Commission of Texas, June 11, 1923, RG D-4, box 41, folder 5 (HMRC).

[35] Madden, Trulove, Ryburn & Pipkin to Terry, Cavin & Mills, July 6, 1923, RG D-4, box 41, folder 5 (HMRC).

[36] F. A. Lehman, general manager, Panhandle & Santa Fe Ry. Co. to J. W. Terry, Galveston solicitor, Apr. 25, 1923, RG D-4, box 41, folder 5 (HMRC).

Panhandle. The state capitol in Austin was a long way away, and during this time there were not many blacks permanently residing in the Texas High Plains.

The 1920s brought a severe reduction in Texas passenger train travel as people began to purchase automobiles and as the state pumped money into road and highway construction. Intrastate passenger revenues for rail carriers fell precipitously, from $58.1 million in 1920 to $25.9 million in 1929. The onset of the Depression made an already bad situation worse, driving revenue down to a low of $6.5 million in 1933.[37] The administrative headache suffered by the Texas carriers in enforcing segregation was far outweighed by the pain of inexorably declining business, as passengers of all races deserted the rails in favor of automobiles and buses. The railway companies and the Pullman Company that served them responded by making drastic reductions in personnel. Railway labor associations used Jim Crow laws as one weapon in opposing such measures.

In 1939 the Association of Pullman Car Conductors drafted a model statute that forbade the operation of a Pullman car without a Pullman conductor. The association was fighting a financially-motivated move by the company to operate some cars under the exclusive care of Pullman porters. This was a racial as well as a labor issue, because porters were generally black, while supervising conductors were always white. The president of the Conductors Association traveled the South in 1939 pushing his bill and was successful in having it introduced in the legislatures of Arkansas, Tennessee, Florida, and Texas, among others. The Texas version almost passed as Senate Bill 395, but it died in conference committee, smothered by lobbyists for the railroads and the Pullman Company.

B. H. Vroman, assistant to the vice president of the Pullman Company, came to Austin to testify before the House Committee on Labor when it held its hearing on the conductors' bill. He said that the company had carried about 40 million sleeping car passengers in 1920, 17.7 million in 1937, and 15.5 million in 1938. He pointed out that many of the runs in question were on trains that were not generating revenue adequate to pay fixed operating and personnel expenses, which he estimated to be about $9,600 per car a year. Company statistics showed that many of its cars had an average occupancy of only three or four passengers, so if the company were not permitted to enjoy economies of operating expense by leaving the car solely in charge of a porter, its only alternative would be to discontinue service entirely.

[37] "Petition of Common Carrier Railroads for Increase in Specified Roundtrip and Intermediate Passenger Fares," Railroad Passenger Circular No. 162, Railroad Commission of Texas, docket 3522-R, Dec. 29, 1937 (Library, Railroad Commission of Texas, Austin).

Vroman provided a number of examples of runs in danger of cancellation if the bill passed. One of these was the M. K. & T. connection between Houston and Wichita Falls. This service used one Pullman car each way, which with other Pullman cars was under the supervision of a conductor between Houston and Fort Worth. But at Fort Worth, where the car split off for Wichita Falls, it was the only Pullman on a smaller train, and it was staffed by one porter. The segment from Fort Worth to Wichita Falls served an average of just four passengers per day. The same arrangement prevailed on the San Antonio, Uvalde, & Gulf connection between San Antonio and Corpus Christi and some fourteen other city pairs within Texas. Many of these represented the last link in the chain of sleeping car service to smaller communities. Most state senators and representatives came from small communities and could afford to ride in Pullman cars. The company's testimony regarding the potential for loss of service appears to have convinced the conference committee to kill the legislation.[38]

Earlier in the same legislative session House Bill 487 was introduced. It would have forbade the operation of dining cars or club cars without a white steward in charge while white passengers were served.[39] That bill, which was also a labor union move, died in committee. When the legislation was first introduced, Grady Ross, the Santa Fe's Galveston attorney, reported to his supervisors and to Fred Harvey dining company personnel, "This bill seems to carry the Jim Crow idea to the nth degree, and, of course, is quite vicious."[40]

The fight became even more vicious as it shifted from the legislature to the Railroad Commission in the summer of 1939. In August of that year, the commission on its own motion entered an order requiring white conductors on all Pullman cars. This order was stayed for a few weeks to allow a hearing on August 31, 1939. The hearing lasted two days. Although the transcript does not survive, it appears from the text of the resulting order that the testimony included highly charged allegations of threats to white women. The agency's directive included a finding of fact:

> [F]rom the evidence of the lady passengers who testified before this commission, the womanhood of Texas entertains a fear of serious bodily injury or personal

[38] Claude Pollard, Counsel, Railway General Managers Association of Texas to Messrs. Terry, Cavin & Mills, General Attorneys, Gulf, Colorado & Santa Fe Ry. Co., June 17, 1939, RG D-4, box 188, folder 12 (HMRC). This folder contains a considerable amount of material on the controversy.

[39] Grady B. Ross of Terry, Cavin & Mills, Galveston, to W. E. Maxson et al, G. C. & S. F. Railway Co., Feb. 13, 1939, RG D-4, box 188, folder 13 (HMRC).

[40] Grady B. Ross of Terry, Cavin & Mills to W. E. Maxson et. al., G. C. & S. F. Ry. Co., Feb. 13, 1939, RG D-4, box 188, folder 12 (HMRC). This folder also contains a letter, dated Feb. 25, 1939, to Mr. Ross from the Houston counsel for the Southern Pacific Lines, which commented that the proposed new law was "entirely ridiculous."

attack from a negro man and that to subject them as passengers in Pullman cars to the service where there is only a negro porter in charge would be to such passengers . . . an undue and unjust discrimination, prejudice and abuse, . . . each berth is separated from the other berths only by these small curtains, . . . [and] on different occasions Pullman porters while on duty proceeded to drink excessively and become intoxicated.[41]

The order also contains a finding "that every Texan, both man and woman, resents any interference or instructions from a negro man or from a negro porter, and the Commission finds that a negro porter would not attempt to and could not discipline a passenger on a car, nor would he attempt to prevent any misconduct in such car." All in all, the order was a thoroughly racist diatribe that Commissioner Ernest O. Thompson, former mayor of Amarillo, refused to sign, perhaps because Amarillo did not have an entrenched history of segregation. Commissioners Lon Smith and Jerry Sadler apparently came from different traditions. They approved the order on November 4, 1939.[42] A few months later, in March 1940, Sadler entered the Democratic primary for governor to run against Thompson and others. Sadler's memoirs show that he had that move in mind for some months prior to the vote, so possibly his vote for an order of this nature, far out of line with the usual attitude of the agency, can be explained as an anticipatory appeal to the populist and racist sentiment of the Texas electorate.[43]

Segregation in rail transit went practically unchallenged from the beginning of the twentieth century to the depths of the Great Depression. Though constitutional theory held that separate facilities, if equal, were legally acceptable, in truth they were never equal at all, a reality that opened the door to the first successful challenges to segregation laws. On April 20, 1937, a black man named Arthur Mitchell left Chicago on an Illinois Central train holding a first-class ticket for

[41] Final Order, Railroad Commission of Texas, Docket 3669-R, Nov. 4, 1939 (TSL).

[42] Ibid.

[43] Jerry Sadler, *Politics, Fat-Cats & HoneyMoney Boys: The Mem-wars of Jerry Sadler* (Santa Monica, Calif.: Roundtable Publishing, Inc., 1984), 190–192. Adoption of this order provoked immediate litigation by the Pullman Company, sparking a case that went all the way to the U.S. Supreme Court. Suit was filed in U.S. District Court on November 28, 1939, to enjoin enforcement of the order, and the Court entered an injunction. On direct appeal to the U.S. Supreme Court, the case was remanded to Texas state court for the purpose of determining questions of applicable state law. *Railroad Commission of Texas v. The Pullman Company*, 312 U.S. 496 (1941). The case was set for trial before the Fifty-third Judicial District in Austin but was postponed upon the commission's request. The matter drifted without resolution for almost fifteen years, while the injunction prevented the order's enforcement. On May 7, 1955, Austin counsel for the Texas Railroad Association sent a letter to the general managers and attorneys of all member lines reporting that "at long last, as an abdicating King once said," the commission had on April 11 rescinded its order that all sleeping cars be supervised by a white Pullman conductor. See Ireland Graves and Kenneth McCalla to Commissioners Thompson, William J. Murray Jr., and Olin Culberson, Apr. 5, 1955, and Kenneth McCalla to member lines, May 7, 1955, RG D-4, box 188, folder 12 (HMRC).

Pullman car sleeping accommodations to Hot Springs, Arkansas. The next morning, just before the train's arrival in Memphis, a porter moved him to another Pullman car bound for Hot Springs. At Memphis, the car was transferred to a train operated by the Chicago, Rock Island & Pacific Railway Company. As soon as the train crossed the Mississippi River into Arkansas, a Rock Island conductor came to Mitchell and told him that Arkansas's Jim Crow laws required him to leave his Pullman car and ride the rest of the way in a Jim Crow coach. Mitchell resisted, pointing out that he had paid for a first-class ticket to Hot Springs. But the conductor was adamant. He threatened to stop the train and have Mitchell put off if he declined to move, and he made a number of rude remarks to Mitchell. Mitchell moved to a car that was dirty and smelly, had a seat above a hole in the floor that served as a toilet, and lacked access to a washbasin with running water, soap, and towels.[44]

The Rock Island had picked on the wrong man. Mitchell was a United States congressman, elected from a Chicago district in the Democratic Party's "New Deal" national landslide in 1934. President Franklin D. Roosevelt had selected him to give the opening address at the 1936 Democratic National Convention.[45] As soon as he returned home from his ill-fated trip to Hot Springs, Congressman Mitchell filed suit against the railway company in an Illinois court seeking $50,000 in damages. A few months later he also filed a complaint against the company with the Interstate Commerce Commission, asking for a cease and desist order pursuant to the Interstate Commerce Act forbidding interstate railroads from subjecting passengers "to any undue or unreasonable prejudice or discrimination whatsoever."[46]

In a split opinion issued in November 1938, the ICC narrowly sided with the railroad company, finding that the discrimination against Mitchell was "plainly not unjust or undue." There was a strongly worded dissenting opinion by the minority.[47] Mitchell appealed the decision to a Federal District Court in Chicago, which sustained the ICC. He then appealed to the U.S. Supreme Court. Then, as now, the solicitor general of the United States normally represented the ICC before the Court. But Solicitor General Francis Biddle would not swallow the ICC position and instead his office filed a brief in support of Mitchell. He

[44] Catherine A. Barnes, *Journey from Jim Crow: The Desegregation of Southern Transit* (New York: Columbia University Press, 1983), 1, 20.

[45] Sean Dennis Cashman, *African Americans and the Quest for Civil Rights, 1900–1990* (New York: New York University Press, 1991), 52.

[46] 229 Interstate Commerce Commission Reports 703 (1938).

[47] Ibid.

authorized the ICC to file its own brief. Ten southern states banded together to file a brief as "friends of the court."[48] Only seven days after the states filed, Chief Justice Charles Evans Hughes announced the unanimous decision of the Court in Mitchell's favor. But the Court did not rule that segregation was illegal; it determined merely that the Rock Island's failure to offer exactly identical accommodation to both blacks and whites was illegal. Although the Rock Island asserted that there was too little demand for first-class space to justify a separate sleeping car for blacks, the Court was unsympathetic to this argument and held that equality of accommodations was a right of each black individual, regardless of low numbers.[49]

The black press in Texas viewed the decision as half a loaf because it covered interstate Pullman car passage only, but the half was welcomed. The *Houston Informer* gave the story a banner front-page headline, commenting, "The logical consequence will be, in a south that is already too poor to furnish two equal sets of equipment for the two races of the south, the gradual abandonment of segregation." It continued, "If there are any Americans who refuse to ride with Negroes, they should be left the burden of finding other means to gratify their luxurious taste of seclusion."[50] White southern newspaper editors noted that the Court had not overturned segregation, and for that reason they generally accepted the ruling. The Rock Island settled Congressman Mitchell's private suit by paying him $1,250.[51]

It was the railway companies that the ruling really pinched, because they, not the states, were expected to bear the expense of doubling their fleets of cars in southern service to provide separate and equal facilities. The companies rejected this path of action. Instead, they desegregated their first-class interstate service but made various efforts to maintain some degree of separation within cars. The most visible of these was the use of partitions to separate white and black passengers in dining cars.[52]

---

[48] Barnes, *Journey from Jim Crow*, 27–30.

[49] *Mitchell v. U.S.*, 313 U.S. 80 (1941).

[50] "Supreme Court Outlaws Inferior R.R. Accommodations for Negroes—Negroes Entitled to Equal Facilities," *Houston Informer*, May 3, 1941, p. 1.

[51] Barnes, *Journey from Jim Crow*, 30–31.

[52] The Texas lines previously had not permitted blacks to use the dining car until all whites were finished eating. "[W]e will handle colored passengers in dining cars the same as other Texas Lines do, this is, so long as there are any white passengers in the dining car no service will be afforded colored passengers. Fred Harvey has instructed Stewards of dining cars to canvass colored passengers in Jim Crow Car as to what meals they will want and has made arrangements to serve such passengers with coffee and sandwiches, also with regular table d'hôte meals, latter being served to passengers in Jim Crow Car. However, if there are any colored passengers who insist upon going to the dining car they will be accommodated after all white passengers have been served." Operating Bulletin B-1-92236, Office of Trainmaster, Southern Division, Gulf, Colorado & Santa Fe Ry. Co., Sept. 22, 1936 (copy in possession of the author). This policy

Of course, for the average black traveler, who could not afford first-class travel, the Court's opinion had no impact. Coach travelers were still subjected to segregation in separate, often inferior, equipment.

Blacks traveling through Texas in these years suffered the same humiliation experienced by Congressman Mitchell. Few had the nerve to resist. The black professional class, which might have served as a voice for change, was quite small. The 1940 U.S. census found only 2 black architects, 4 black veterinarians, 6 black engineers, 23 black lawyers, 31 black pharmacists, and 164 black doctors in all of Texas.[53]

There were a comparatively larger number of black ministers in the South and West, however, and on June 16, 1941, C. S. Stamps, a black clergyman from Kansas City, Missouri, followed Congressman Mitchell's lead. The Reverend Mr. Stamps purchased a coach ticket for travel that day from Kansas City to Houston. He rode the Santa Fe line to Dallas overnight, and the next morning at Dallas's Union Station attempted to board the Rocket for Houston. This train was a three-unit articulated streamliner that was operated north of Teague by the Rock Island and south of that point by the Burlington-Rock Island. The first unit consisted of a diesel engine, a baggage-mail compartment, and a kitchen. The second unit was a dinette and coach with six tables for four people each in the dinette, and the third unit was a parlor car with twenty-four seats. The Rocket had a scheduled running time of four hours between Dallas and Houston.

On his trip Stamps traveled with another black minister from Wichita, Kansas. When they presented their tickets, the conductor, over their protests, seated them in the baggage compartment, where there were wicker seats for four people. A black man and a black woman with a baby occupied the other two seats on this trip. There were no windows or drinking fountains; nor was there air conditioning or dining service. The seats were located directly adjacent to the diesel engine compartment, so the noise must have been considerable. Stamps endured a miserable ride to Houston and filed a complaint with the ICC asserting discriminatory treatment.[54]

The Rock Island argued to the ICC examiner that the Rocket carried only about ten black passengers per month and reported that it had

---

dated to the turn of the century, when trains were first equipped with dining cars, reflected the will of the Railroad Commission at that time. See Commissioner L. J. Storey to F. W. Egan, general manager, Fort Worth & Denver City Railway Company, Aug. 21, 1903, Railroad Commission of Texas Letterbook 4-2/1087, p. 244 (TSL).

[53] Alwyn Barr, *Black Texas: A History of African Americans in Texas, 1528–1995* (2nd ed.; Norman: University of Oklahoma Press, 1996), 198.

[54] ICC Docket No. 28781, *C. S. Stamps v. Chicago, Rock Island and Pacific Railway Co., et al.*, decided Oct. 26, 1942.

subsequently partitioned off eight seats in each coach section and constructed toilets there for black passengers. Arrangements were made for these passengers to be served meals in their coach seats when whites occupied the diner. The agency concluded that with these changes the accommodations offered were "substantially equal" and it dismissed the complaint.[55]

The greatest cultural change affecting the administration of Jim Crow laws on the railroads came with World War II. Troop traffic dramatically increased the numbers of black passengers riding trains in Texas and throughout the South. United States War Department policy required equal treatment of black and white soldiers.[56] The Railroad Commission received a continual stream of complaints in the early war years about the increased racial mixing caused by troop movements, and its chairman responded in July 1943 by sending a circular letter addressing the situation to all of the large Texas carriers. Chairman Beauford H. Jester, later governor of Texas, acknowledged in this letter that the war effort complicated efforts to prevent the intermingling of the races in the Pullman cars and dining cars of Texas trains, and asked only that the companies "give consideration to making such plans and regulations as will sharply curtail, if not eliminate, the use of Pullman cars and dining cars by Negro passengers on trains in Texas after the war."[57] Curiously, Jester called for curtailing or completely eliminating blacks' access to first-class rail service after the war rather than for providing completely separate facilities. Few then realized that the war would permanently change key aspects of American society.

Before the end of the 1940s, the Railroad Commission's resolve to enforce the state's Jim Crow laws completely collapsed. A study of commission files for this period indicates that the collapse was driven not by black citizen complaints but by the railroads' hostility to the cost of enforcing segregation statutes. Texas was on the western edge of Jim Crow territory, and by the 1940s the western-oriented lines had adopted a form of passive resistance to the state's segregation laws as a matter of financial necessity.

The Santa Fe, the Missouri Pacific, and the M. K. & T. in particular could not justify the duplication of passenger equipment already stretched thin by wartime demands. These companies were inclined to look the other way when a black passenger sat down with whites. In

[55] Ibid.

[56] M. K. & T. Railroad Company of Texas, Circular 381, Office of Superintendent, South Texas District, Smithville, Tex., Aug. 28, 1943 (Railroad Commission of Texas, Jim Crow File, 1939–1947, copy in possession of the author).

[57] Chairman Beauford H. Jester to railway operating officials, July 26, 1943, Railroad Commission of Texas (Jim Crow File, copy in possession of the author).

November 1943 Railroad Commission Engineer C. F. Boulden wrote to F. W. Grace, general manager of the M. K. & T., stating that he had noticed mixed seating of black and white passengers on a coach on the southbound Texas Special, which ran from St. Louis to San Antonio. He reported, "I talked to both conductors about this and each stated that the condition of intermingling Negro and white passengers on the southbound Texas Special is customary, and each seems confused as to his authority to separate the Negroes from the whites." "As a remedy for this condition," he continued," I suggest that, as southbound M-K-T trains approach the Texas state line near Denison, the Negro passengers thereof should, without fail, be invited to occupy the space that is regularly assigned to Negro passengers."[58]

Rather than acquiesce to Boulden's request, Grace suggested a meeting to confer about his company's views on the matter.[59] Boulden may have realized that the M. K. & T. management would not be sympathetic to the commission's concerns, for on the same day that he wrote to Grace he also informed the Oklahoma commission about his findings, stating, "[W]e earnestly solicit your cooperation in helping us to segregate the Negro and white passengers, especially on the M-K-T—Frisco trains that run through your state." He made particular reference to the Texas Special as "the train that seems to give the most trouble" and commented, "During the past year, several race riots and near race riots have been started in Texas when northern Negroes attempted to go beyond their long-established limits." His letter concluded: "I feel that proper enforcement of the separate coach law will be a big step toward keeping down racial disturbances at a time when our nation needs complete unity of its citizenship."[60] Oklahoma commission General Counsel Floyd Green replied immediately. He referred Boulden to the opinion of the U.S. Supreme Court in *E. P. McCabe, et al. v. Santa Fe*, 235 U.S. 151 (1914), which suggested that the Oklahoma Jim Crow statute could not be applied to interstate passengers.[61] Since any person crossing the Texas line from Oklahoma was an interstate passenger, the Oklahoma commission believed that it lacked the jurisdiction to sort the races as Boulden requested and declined to give any assistance.[62]

[58] C. F. Boulden, Railroad Commission of Texas, to F. W. Grace, vice-president and general manager, Missouri-Kansas-Texas lines, Nov. 18, 1943 (Jim Crow File, copy in possession of the author).

[59] F. W. Grace to C. F. Boulden, Railroad Commission of Texas, Nov. 30, 1943 (Jim Crow File, copy in possession of the author).

[60] C. F. Boulden, Railroad Commission of Texas, to State Corporation Commission of Oklahoma, Nov. 30, 1943 (Jim Crow File, copy in possession of the author).

[61] Because of a procedural defect the court dismissed this case, but Chief Justice Hughes was openly hostile to the Oklahoma position.

[62] Floyd Green, Oklahoma Corporation Commission, to C. F. Boulden, Railroad Commission of Texas, Dec. 2, 1943 (Jim Crow File, copy in possession of the author).

In the following year the Missouri Pacific was singled out for its resistance to the law. Joe T. Steadham, chairman of the Texas Joint Railway Labor Legislative Board, filed a formal complaint with the Railroad Commission that on Missouri Pacific Trains 207 and 208 between Texarkana and Longview the company was "serving meals to colored passengers in the dining cars on these trains during the time white passengers are being served meals." There were no partitions in these cars to separate the races, and Steadham urged that the Texas attorney general file suit against the company for violating the Jim Crow laws.[63]

In an internal agency memorandum discussing the legal merits of the complaint, Boulden reported that the railway companies were forbidden to purchase additional equipment due to the wartime emergency needs of the defense industry and proposed that the companies instead be formally requested to use a heavy cloth curtain to separate a few tables for use by blacks, moving the curtain rod as daily needs for space fluctuated. This proposal would, in effect, have segregated interstate passengers (Texarkana being on the state line), and in his memo he acknowledged that his recommendation was illegal in view of the *Mitchell* and *Stamps* cases, both of which he cited and described. Boulden stated that he had recently seen cloth curtains used for this purpose and recommended that the idea be presented to the carriers "as a suggestion only," advising the commissioners privately that the practice could not be compelled in view of legal developments.[64] The chairman of the commission sought guidance from the governor, who responded by asking the attorney general to prepare a memorandum detailing all of the state's segregation laws.[65]

After some debate, the commission resolved to request a formal opinion of the attorney general on the question of allowing blacks and whites to eat in the same dining car. The attorney general responded with an opinion that the statute required separate dining cars, or use of the same car at different times.[66] This result was, of course, completely

[63] Joe T. Steadham, Brotherhood of Railroad Trainmen, to Beauford H. Jester, chairman, Railroad Commission of Texas, May 18, 1944 (Jim Crow File, copy in possession of the author).

[64] C. F. Boulden, Railroad Commission of Texas, to Railroad Commissioners, May 29, 1944, memorandum (Jim Crow File, copy in possession of the author).

[65] L. H. Flewellen, assistant attorney general, to Hon. Coke R. Stevenson, governor, June 6, 1944, memorandum (Jim Crow File, copy in possession of the author).

[66] Texas Attorney General Opinion 0-6424, approved Mar. 6, 1945. The attorney general cited a Pennsylvania court decision that stated, "It is not an unreasonable regulation to seat passengers so as to preserve order and decorum and to prevent contacts and collisions arising from natural or well known customary repugnances, which are likely to breed disturbances by promiscuous sitting . . . if a negro takes a seat beside a white man or his wife or daughter, the law cannot repress the anger or conquer the aversion which some will feel. However unwise it may be to indulge the feeling, human infirmity is not always proof against it. It is much wiser to avert the consequences of this repulsion of race by separation than to punish afterwards the breach of the peace it may have caused."

impractical for the railway companies. They were already operating their passenger service unprofitably in some cases, and the dining car service was particularly expensive. The cost of adding a second dining car with its own staff—just what the Brotherhood of Railroad Trainmen wanted in order to create extra jobs for its members—would be prohibitive, and the commissioners knew that it was out of the question. The best choice left to the commission was a compromise that would give some effect to the spirit of the law. It was curtain time for Jim Crow, in more ways than one.

In October 1945 Boulden wrote to the management of lines entering Texas from the North:

> Because of extenuating circumstances, there has been some laxity in the enforcement of the separate coach law . . . during the recent war period. This is especially true of southbound trains entering Texas from Kansas, Oklahoma, Missouri and Arkansas. Now that the war emergency is over, we are inclined to get back to the full meaning and intent of the Texas statutes.[67]

Boulden continued by acknowledging the difficulty presented by the variable numbers of black and white passengers in coach cars and admitted, "Accordingly, it will be desirable to provide some flexibility in seating arrangements." He proposed that the new streamliner equipment under construction by many of the roads include a buffer coach with two sets of full partitions dividing the car into thirds, such sections to be assigned to either blacks or whites as needs fluctuated.[68]

Western-based companies continued to ignore the Texas agency's requests. The Burlington Rock Island's management must have been particularly chastened by the federal rulings against it in the *Mitchell* and *Stamps* cases; a Railroad Commission inspector who climbed on board the Twin Star Rocket at Houston's Union Station in January 1946 for a look at its equipment found only a "so-called partition" consisting of a panel one foot high and two seats wide on each side of the aisle. Burlington management received a letter from the Railroad Commission asking for the company's "friendly cooperation" in complying with the Texas law.[69] The company responded by installing a full partition with a door in the aisle. That train ran all the way to Minneapolis, and one wonders what the citizens of Minnesota thought about this alteration of their namesake streamliner, if they even realized the purpose of the alteration. The crew

[67] C. F. Boulden, Railroad Commission of Texas, to railway companies, Oct. 17, 1945 (Jim Crow File, copy in possession of the author).

[68] Ibid.

[69] C. F. Boulden, Railroad Commission of Texas, to Barwise & Wallace, general solicitor, Burlington-Rock Island Railroad Co., Jan. 31, 1946 (Jim Crow File, copy in possession of the author).

removed the "white" and "colored" signs whenever the northbound train cleared the Oklahoma line.

March 1946 found Engineer Boulden in Amarillo studying the equipment the Chicago, Rock Island & Pacific Railway Company used for its Trains 51 and 52. The Rock Island had placed curtains in its dining cars and Boulden remarked to the railroad's management, "This is acceptable practice although it is not in strict compliance with the statute." However, Boulden also found curtains used to separate the races in coaches and asked that they be replaced by partitions.[70] Boulden also rode the M. K. & T. between Austin and Dallas that same month, observing in a letter to its general manager that blacks and whites dined together. He requested that curtains be installed to separate the races.[71] Apparently, the Texas carriers were comparing notes with each other on this subject.

In April Boulden inspected the Missouri Pacific Train No. 2 between Austin and Hearne and reported by letter to its general manager, "Negroes and whites were seated together in the dining car with no attempt being made to segregate the two races." He asked for the placement of curtains to block off either two or four tables, and closed with a postscript noting that the statute applied to military personnel also: "A government request for a meal does not abrogate any of the Texas statutes. When in Rome, we must do as the Romans do."[72] By separate letter Boulden criticized the Missouri Pacific's coach partitions for lacking doors. When the Santa Fe ordered new Pullman cars that month for its Texas Chief service from Galveston to Chicago, it specified similar open partitions, with curtains instead of doors.[73]

In May 1946 the M. K. & T. yielded to commission pressure and ordered the installation of curtains in its dining cars, noting that in cases of resistance by black patrons, dining car stewards should "use the utmost diplomacy in endeavoring to have them sit in the seats assigned to them." These instructions, however, included a directive not to refuse service to "some officious colored person who will want to take advantage of what

[70] C. F. Boulden, Railroad Commission of Texas, to F. B. Gibbs, trainmaster, C. R. I. & P. Railway Co., Mar. 22, 1946 (Jim Crow File, copy in possession of the author).

[71] C. F. Boulden, Railroad Commission of Texas, to H. M. Warden, vice president and general manager, M. K. & T. Lines, Mar. 22, 1946 (Jim Crow File, copy in possession of the author).

[72] C. F. Boulden, Railroad Commission of Texas, to A. B. Kelley, general manager, Missouri Pacific Lines, Apr. 27, 1946 (Jim Crow File, copy in possession of the author).

[73] Three coaches numbered 3187 to 3189, with fifty seats each, were delivered in August 1947. One supposes that by then the law was only observed on trains northbound out of Galveston, since Oklahoma authorities declined to order the company to "shuffle" its passengers as they headed south out of that state. For car photographs, see W. David Randall and William M. Ross, *The Official Pullman-Standard Library* (10 vols.; Godfrey, Ill.: Railway Production Classics, 1986), I, 80–84.

they consider their just rights and sit in the body of the car where white passengers are served."[74]

Boulden was heartened by the installation of curtains, but within weeks he found further fault with the line. He wrote to its general manager that on May 28, 1946, he had observed a black woman and boy riding in the lounge car of Train No. 2 between Austin and Temple. The woman was holding a ticket to Petersburg, Virginia, and Boulden averred that she and the boy "could not have reasonably been mistaken for persons of Latin extraction." Boulden might have instructed the conductor to order the woman's removal from the lounge, but he could not seem to summon the nerve to do what he wanted company conductors to do. He stated in his complaint, "It seemed to be the proper procedure to let this Negro woman and boy continue their journey in the lounge car without calling the matter to the attention of these two individuals."[75] He then went on to ask the company for assurance that there would be no further mixing of the races in lounge cars. The company balked at this request. In his reply of June 10, 1946, General Manager H. M. Warden observed curtly that on June 3 the U.S. Supreme Court had ruled in the case of Irene Morgan against the Commonwealth of Virginia that Virginia's segregation laws could not be applied to interstate passengers.[76] Warden stated that, in the opinion of company counsel, the Texas segregation statute also was invalid against interstate passengers. He declared that the company would not enforce it any longer.[77] Word of this resistance spread to other Texas carriers and on July 11, 1946, the general superintendent of the Cotton Belt advised the Railroad Commission that it would decline to provide separate toilets for black and white passengers.[78]

In June 1947 Engineer Boulden responded to a citizen complaint about the mixing of the races on the Santa Fe's "Scout" as it crossed the Texas Panhandle. He stated:

During the past few years, I have been interested in the enforcement of the separate coach laws in Texas, but I find that where a Negro holds an interstate ticket, the Federal laws take precedence and this Negro may sit anywhere he pleases regardless of the Texas statute to the contrary. The railroads in Texas have been

[74] Missouri, Kansas & Texas Railroad Company, Dining Service Department Bulletin L-20, May 3, 1946 (Jim Crow File, copy in possession of the author).

[75] C. F. Boulden, Railroad Commission of Texas, to H. M. Warden, general manager, M. K. & T. Lines, May 29, 1946 (Jim Crow File, copy in possession of the author).

[76] *Morgan v. Virginia*, 328 US 373, 90 LE 1317, 66 S.Ct. 1050 (1946).

[77] H. M. Warden, general manager, M. K. & T. Lines, to C. F. Boulden, Railroad Commission of Texas, June 20, 1946 (Jim Crow File, copy in possession of the author).

[78] K. M. Post, general superintendent, St. Louis Southwestern Railway Lines, to C. F. Boulden, Railroad Commission of Texas, July 11, 1946 (Jim Crow File, copy in possession of the author).

reluctant to give written instructions to their employees regarding enforcement of the separate coach laws, because of the possibility of the railroad company being sued in the Federal Court for discrimination . . . . It seems we have more trouble segregating the Negroes and whites in those interstate trains that cross the corner of Texas. We do not have a great deal of difficulty with this situation "deep in the heart of Texas," because separate coaches are provided, and the Texas Negroes are accustomed to segregation.[79]

So far as can be determined, the Railroad Commission seldom enforced a proceeding against any carrier to compel compliance with Jim Crow laws, and it never referred such a case to the attorney general for prosecution. It could have done so often, but after the U. S. Supreme Court's 1941 opinion in the *Mitchell* case, the commission may have feared that the outcome of such efforts would cause further judicial erosion of its railroad regulatory power, which already had been usurped by the ICC. When in June 1946 the first of the large Texas roads declined to cooperate with the commission's efforts to continue segregation, the others were greatly emboldened. Finally, the foundation for Jim Crow in Texas rail transportation began to crack severely. Within a few years the walls crumbled.

In the immediate post-war years the Santa Fe maintained segregated waiting rooms and ticket windows in its depots, but it relied mostly on local custom to enforce the separation. The company's agent at Killeen found that some black soldiers from nearby Fort Hood refused to comply with that custom and insisted on making their ticket purchases at the "White" window. They were served there.[80] The railroads' refusal to reinstate the old order of Jim Crow segregation after the conclusion of World War II reflected a growing national distaste for the kind of racial control exercised in the South, which to some seemed uncomfortably close in practice to the Nazi theories of racial supremacy that had been overcome at such great cost. Reporters began to ask "why," and the answers caused discomfort. One answer came from Albert Einstein. He told a reporter for the *Chicago Defender*, a nationally circulated black newspaper, "The Negroes were brought here by greediness. And people see in them the wrong they have done to them. There is a general trend in human nature: that people hate most those to whom they have done wrong."[81] Einstein, himself a refugee from Nazi Germany, knew the practice painfully well.

---

[79] C. F. Boulden, Railroad Commissioner of Texas, to John Bode, June 12, 1947 (Jim Crow File, copy in possession of the author).

[80] I. V. Allison to William S. Osborn, Dec. 11, 1993, interview (transcript in possession of the author), 17–19.

[81] Earl Conrad, *Jim Crow America* (New York: Duell, Sloan & Pearce, 1947), 63. Conrad was New York bureau manager for the newspaper at the time that he wrote this book.

In 1950 the U.S. Supreme Court struck the next national blow to southern states' segregation of rail transportation. In May 1942 a black federal employee named Elmer Henderson was denied a seat in a Southern Railway Company diner while traveling from Washington, D.C., to Birmingham, Alabama. In the diner there were two tables behind curtains reserved for blacks. He found the curtains pulled back and the tables occupied by whites. The steward offered to bring him dinner in his Pullman car, but Henderson refused this accommodation. He filed a complaint with the ICC, which decided in his favor, but also found that the railway company had since changed its rules to temporarily reserve segregated tables for blacks at the beginning of the dinner hour. The ICC determined that the new rule met the requirement of the law. Henderson appealed, and a Federal District Court decided in his favor and sent the case back to the ICC. On rehearing, the Southern Railway Company's witness testified that its rules had changed again. It now reserved one table for blacks throughout the entire time a dining car was open, and it planned to replace its curtains with partitions. The company said that one table was 8 percent of the table space in a diner, and black patrons ordered fewer than 5 percent of meals served. Separate but equal once again. The ICC found that this practice fulfilled the requirements of the law. Henderson went back to Federal District Court, which this time sustained the ICC ruling. Now, for the first time in the twentieth century, the stage was set for the U.S. Supreme Court to reconsider its 1896 decision in *Plessy v. Ferguson*. The Court agreed to hear Henderson's case, which was set for argument in April 1950, eight years after the dining car incident from which it began.[82]

The United States Justice Department filed a brief in support of Henderson's position, asserting that separate but equal was a "constitutional anachronism" and that the Court should overturn the 1896 decision that originally encouraged the South on its statutory course of segregation.[83] Henderson's counsel, Belford Lawson, summed up the case against segregation by curtains quite bluntly when he stated, "It was as if you were a pig or some kind of animal."[84] The Court decided for Henderson but declined to overrule *Plessy*. It found that Henderson had not been offered equal facilities and condemned the use of curtains and partitions, which it said emphasized "the artificiality of a difference in treatment which serves only to call attention" to

[82] *Henderson v. U.S.*, 339 U.S. 816 (1950); Robert G. Dixon Jr., "Civil Rights in Transportation and the ICC," *George Washington Law Review*, 31 (Oct., 1962), 208–209.

[83] Barnes, *Journey from Jim Crow*, 73.

[84] Richard Kluger, *Simple Justice* (New York: Alfred A. Knopf, 1976), 277. This is the leading work on the U.S. Supreme Court battle over school desegregation in the 1950s.

the race of those segregated.[85] So the theory of separate but equal remained standing, but the curtains had to come down. The southern roads all desegregated their diners in response to the U.S. Supreme Court ruling. Western-oriented lines such as the Rock Island railroad, having already suffered adverse verdicts in the *Mitchell* and *Stamps* cases, reacted by completely desegregating its trains in 1951. This development was front-page news in the Texas black press.[86]

Nevertheless, most of the lines serving the South retained segregation in their coaches and southern state depots. Carl T. Rowan, a black native of Tennessee who had migrated north to take a position as a reporter with the *Minneapolis Morning Tribune*, was sent on a six thousand-mile investigative journey through the South in early 1951. Charged with reporting on the current state of race relations, he passed through every southern state except Texas. He found that if he made reference to the recent U.S. Supreme Court decision and threatened litigation against the carriers he was allowed to purchase Pullman lodging on overnight interstate trains. All of the depots he entered, however, still had segregated waiting rooms. He attempted on numerous occasions to purchase tickets at the "White" window and was usually refused service, sometimes politely and other times in an ugly fashion. For intrastate travel he was generally restricted to Jim Crow coaches, and he reported on their inferior condition.[87] Local recalcitrance of this nature, often enforced by municipal ordinance, motivated the final battles in the rail desegregation effort.

The next significant step toward Jim Crow's demise occurred on December 14, 1953, when the National Association for the Advancement of Colored People filed a complaint with the ICC against twelve railroads operating in the South, accusing them of continued segregation on their coaches and in their depots. The lines involved that operated in Texas included the St. Louis-San Francisco, the Missouri Pacific, the Kansas City Southern, the Texas & Pacific, and the state subsidiaries of the Atchison, Topeka & Santa Fe.[88] The ICC convened a hearing on the complaint

[85] *Henderson v. U.S.*, 339 U.S. 816 (1950).

[86] *Houston Informer*, Apr. 7, 1951, p. 1. The railroad company's order was quoted in full: "Supplement No. 2 to Circular 1729. Subject: Abolishing Segregation in Passenger Cars . . . In compliance with United States Supreme Court decision . . . patrons shall be accorded accommodations and services without distinction as to race or color in all passenger train cars." Like the Santa Fe, the Rock Island primarily served the western portion of the country.

[87] Carl T. Rowan, *South of Freedom* (New York: Alfred A. Knopf, 1952). This is a fascinating first-person account of a well-educated black man's confrontation with Jim Crow as the era drew to a close. Books such as this helped to convince southerners in some quarters that segregation had prevented regional economic advancement in the post-war era.

[88] The other named railroads were the Southern, the Louisville & Nashville, the Atlantic Coast Line, the Seaboard Air Line, the Illinois Central, and the Gulf, Mobile and Ohio. *National Association for the Advancement of Colored People et al. v. St. Louis-San Francisco Railway Company et al.*, 297 ICC 335 at 338, Nov. 7, 1955.

against the southern railroads on July 27, 1954. Two months earlier, the U.S. Supreme Court had released its decision in *Brown v. Board of Education*, wherein it squarely repudiated the separate but equal doctrine established in 1896. Chief Justice Earl Warren spoke for the Court in *Brown*, condemning the segregation of black school children in an opinion courageous for its time. He stated, "To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone." The Court further declared that "any language in *Plessy v. Ferguson* contrary to this finding is rejected."[89]

This holding generated a great deal of national publicity, and the parties that pushed the ICC to consider the NAACP complaint cited the case often as a significant precedent. Nine of the twelve lines present stipulated that they were still engaged in Jim Crow practices to at least some degree.[90] The Santa Fe, for instance, admitted to the ICC:

> Employees of the Santa Fe are instructed that all Negro coach passengers boarding trains in Texas and Oklahoma are to be directed to the coaches or portions of coaches provided for exclusive occupancy by Negroes. Employees of the Santa Fe are instructed that when trains enter Texas or Oklahoma and specific coaches or portions of coaches are provided on such trains for exclusive occupancy by Negro passengers, they are to advise all Negro coach passengers that such separate space is provided pursuant to the customs and laws of the state but are not to insist that they move to the coaches or portions of coaches provided for persons of their race.[91]

The NAACP offered testimony to prove the point as to the three lines that refused to make such a stipulation of fact (the Illinois Central, the Missouri Pacific, and the Seaboard Air Line). The Justice Department filed a brief in support of the NAACP position, urging the ICC "to declare unequivocally that a Negro passenger is free to travel the length and breadth of this country in the same manner as any other passenger." The ICC considered the case for more than a year and finally issued its opinion in November 1955, when it held that segregation violated the law. The agency completely rejected the separate but equal approach and ordered the railway companies to abandon all of their Jim Crow rules by January 10, 1956.[92]

---

[89] *Brown v. Board of Education*, 347 U.S. 483 at 494–495 (1954).

[90] *National Association for the Advancement of Colored People et al. v. St. Louis-San Francisco Railway Company et al.*, 297 ICC 335 at 338, Nov. 7, 1955.

[91] Ibid.

[92] Barnes, *Journey from Jim Crow*, 98 (quotation), 100. Barnes writes that the Justice Department's intervention greatly influenced the commission. The Eisenhower administration made clear its desire that Jim Crow practices cease, and the president held the power of appointing ICC commissioners. The sitting commissioners may have had some interest in job security.

The ICC decision represented one step in a larger legal, social, and political revolution transforming race relations in the United States during the 1950s and 1960s. One month after the ICC ruling, Rosa Parks refused to yield her seat to a white man on a city bus in Montgomery, Alabama. Her arrest inspired a citywide bus boycott, led by Martin Luther King Jr., that ended a year later when the U.S. Supreme Court declared Alabama's state and local laws requiring segregation on buses illegal.[93] In September 1957 President Dwight D. Eisenhower ordered the 101st Airborne Division to Little Rock, Arkansas, to protect nine black students enrolled at Central High School after Arkansas Gov. Orval Faubus vowed to prevent the school's integration by armed force.[94]

Also at this time, in one of the most compelling media exposures of the era, white Texan author John Howard Griffin artificially darkened his skin and traveled across the Deep South posing as a black man. His experiences, reported in *Sepia* magazine, provided a compelling look at the continued indignities blacks were suffering behind the Jim Crow curtain. *Time* magazine and television reporter Mike Wallace both interviewed Griffin, and he was the subject of a documentary television program in France. For this effrontery Griffin was lynched in effigy on Main Street in his hometown of Mansfield, Texas. Within months, the chronicle of his 1959 journey was published in book form bearing the title *Black Like Me*, which cast a glaring light on the human face of segregation.[95]

As Griffin documented, many white southerners continued to fight the tide of change. Frustrated by the lack of progress despite favorable court opinions, black civil rights activists turned to a new tactic—the sit-in. On January 31, 1960, four black men in Greensboro, North Carolina, attempted to order coffee at a local Greyhound bus station but were refused service. The next day they asked to be served at the lunch counter of the local Woolworth store and were also rebuffed. Others joined them in the following days, and the movement soon spread across the South. A worried Woolworth management soon capitulated and integrated all of its lunch counters.[96] In December 1960 the U.S. Supreme Court ruled it unlawful for restaurants at bus stations to discriminate on the basis of race.[97] The Court's opinion, however, did not address similar practices by restaurants at train stations.

---

[93] Cashman, *African Americans and the Quest for Civil Rights*, 126–130.

[94] Ibid., 137–139. For a thoughtful and progressive white contemporary's perspective on southern attitudes toward desegregation in the 1950s, see Robert Penn Warren, *Segregation: The Inner Conflict in the South* (New York: Random House, 1956).

[95] John Howard Griffin, *Black Like Me* (1960; 2nd ed.; Boston: Houghton Mifflin Co., 1977).

[96] Cashman, *African Americans and the Quest for Civil Rights*, 145–146.

[97] *Boynton v. Virginia*, 364 U.S. 454 (1960). See also Louis H. Pollak, "The Supreme Court and the States: Reflections on Boynton v. Virginia," *California Law Review*, 49 (Mar., 1961), 15.

A Houston police office responds to a criminal trespass complaint submitted by the manager of the restaurant and coffee shop at Houston's Union Station, which had a "whites only" policy. In 1961 a group of students from Texas Southern University, together with others, began a determined effort to break the color barrier by seeking service and submitting to arrest so as to enable a court ruling on the legality of the policy. From the *Houston Forward Times*, July 29, 1961, p. 14. *Courtesy the Center for American History, the University of Texas at Austin, CN 11050.*

Notwithstanding the legal assault on segregation during the 1950s, segregation did not end easily on Texas railroads or in Texas culture. In 1951 no public restaurant in Alvin, located in Brazoria County, would serve black employees of the Santa Fe Railroad, even at the back door. Black railroaders' fellow white employees had to purchase hamburgers "to go" for them.[98] Marscine Simmons began work for the railroad in 1948 in Silsbee, Hardin County. When required to be out overnight on

[98] Harry Hughes to William S. Osborn, Jan. 13, 1995 , interview (transcript in possession of the author), 19–20.

the line from there to terminals at Somerville or Longview in the 1950s, he routinely slept in the caboose since no motel would rent a room to a black person. He did not walk through the front door of a restaurant that served white people until after passage of the 1964 Civil Rights Act, but he was always allowed to walk through the front door of a grocery store to purchase food.[99] The difference was, of course, that, in a restaurant setting, white waiters would have to be subservient to black customers—still a strongly unacceptable social construct in East Texas during the 1950s.[100] Marscine Simmons saw many customs change as he rode the Santa Fe rails over the next few years.

At the dawn of the 1960s, in Texas and throughout the South, vestigial segregation practices remained in place along the railroads, principally in their stations. One thoughtful observer described the practice in these final years as "the sad barbarism of intransigence."[101] The ensuing turn of events in Houston provides a useful lens for examining the social forces that finally ended the Jim Crow era in Texas.

Houston's Union Station had a ninety-four-seat coffee shop and restaurant that served both rail passengers and such others of the public as wandered in, so long as they were white. This restaurant was the site of the final major battleground for complete racial freedom for rail passengers in Texas. Ironically, by this time rail travel was scarcely used by either whites or blacks. First-class or standard business-class passengers traveling any distance from Houston in 1960 generally traveled by air, not train. Houston Mayor Roy Hofheinz ordered desegregation of the city's airport in 1953, and a federal court ordered desegregation of the airport restaurant in 1955, after the city received embarrassing criticism when India's ambassador to the United States was refused a meal there.[102] Foreign dignitaries of color would have had no occasion to visit the Union Station terminal restaurant in 1961, but had they done so, they would have been vehemently refused service, just as were Americans of color.[103] By this time, the Railroad Commission refused to hear complaints about such matters, having almost entirely abdicated its former rail industry oversight responsibilities to the ICC.[104]

---

[99] Marscine Simmons to William S. Osborn, Feb. 15, 2000, interview (transcript in possession of the author), 9, 20–22.

[100] Hale, *Making Whiteness*, 188–189.

[101] Willie Morris, *North Towards Home* (New York: Random House, 1967), 185. Morris was editor of the *Texas Observer* during the early 1960s.

[102] Barr, *Black Texas*, 185.

[103] Public restaurants in Dallas also remained segregated in 1961. See reports of sit-in protests in Houston's *The Informer & Texas Freeman*, Jan. 14, 1961, p. 1.

[104] Former attorney general counsel Linward Shivers, who represented the agency at the time, gave this information over the telephone in response to a letter from the author, dated May 24, 2001. Before responding, Shivers first conferred with Fred Young, former general counsel of the

On February 25, 1961, a group of black students from Texas Southern University and their supporters entered the Houston Union Station restaurant and seated themselves. Operator James D. Burleson refused to serve them, called the police, and filed trespass charges against the fourteen students, who were arrested. At the court hearing that evening Burleson testified: "I refuse to serve Negroes because it would hurt my business. I have a separate table for them in the kitchen." As he told a reporter, "I'm running a white restaurant, not a negro restaurant." The students were released from jail later that evening after posting $10 bail each. The following evening, about seventy students from Texas Southern University quietly filed into the restaurant at about 6 p.m. and asked for service. The police were called again and at 7 p.m. they arrested forty-eight students, who sang "God Bless America . . . my segregated sweet home" and variations on other familiar themes as they were taken into custody. George Washington Jr., counsel to the students, purposefully declined to make arrangements for bail for several days, realizing that the publicity given to his clients' incarceration was favorable to the cause. Although Burleson held his ground and the city fathers refused to force the issue, the students continued to press their point, supported by the black community. Houston police were called to the station to make more arrests in July. On August 11, 1961, seven black Texas Southern students joined a mixed-race group of "Freedom Riders" in seeking service at the coffee shop. Burleson obtained eighteen arrest warrants and once again the offenders were jailed. The accused went to trial in September on a charge of unlawful assembly, and the jury found them guilty. The judge set their fines at $100 each.[105] A few months later, in April 1962, the Texas Court of Criminal Appeals reversed the trial court's decision, noting that one of those convicted had in his possession when arrested a railway ticket for travel to California and was therefore engaged in interstate commerce (the only door to the restaurant opened from the train station).[106]

Texas Railroad Commission, and Walter Wendlandt, former director of the agency's Transportation Division, to confirm his recollection.

[105] For one example of the general pattern of the black media's coverage of the arrests, see *Houston Forward Times*, July 29, 1961 , p. 14. This newspaper, a voice for the Houston black community, sent a reporter and photographer to cover the protests and arrests and carried detailed stories. The coverage on this day described Burleson as "one of the biggest men in Houston. . . . Why, he's so big in his segregated cesspool of filth, that he can stroke a finger and 10 big burly cops will forget all about the murder capitol and rush to his side to arrest three little 'freedom riders' and haul them off to jail." The paper described Burleson as a slave to his prejudice and a coward who was afraid to show his face to the newspaper's photographer. In contrast, mainstream daily newspapers such as the *Houston Post* remained largely silent on the matter at the time. The *Houston Post* did carry a brief story about the controversy on September 6, 1961. It reported the prosecuting district attorney's statement: "[A] man has a right to run his own business as he sees fit." The convicting jury was all white.

[106] *Eddie Douglas Jones, et al. v. The State of Texas*, 355 S.W. 2d 727 (1962).

The 1961 effort by Texas Southern University students to integrate the restaurant at the Houston Union Station was supported by "freedom riders" attempting integration across the south, some of whom are pictured here awaiting arrival of the arresting officer while being interviewed by a black reporter. From the *Houston Forward Times*, July 29, 1961, p. 14. *Courtesy the Center for American History, the University of Texas at Austin, CN 11051.*

Segregation of rail facilities and other public places in Houston did not end until the following year. Ultimately national media attention, and the fear of more of it, finally opened Houston's restaurant doors, including James D. Burleson's coffee shop at Union Station, to all persons. In September 1962 more than fifty thousand people gathered at the Rice University football stadium to hear President John F. Kennedy deliver a speech about the space program. Kennedy told the audience that with the decision to locate the National Aeronautics and Space Administration's manned space-flight control center in Houston, the city would become "the heart of a large scientific and engineering community" and a leader in the nation's effort to put a man on the moon by the end of the decade. He observed that Houston, which was "once the furthest outpost on the old frontier of the West will be the furthest outpost on the new frontier of science and space" and remarked "there is no strife, no prejudice, no national conflict in outer space as yet . . . its conquest deserves the best of all mankind."[107]

[107] John F. Kennedy, "Address at Rice University on the Nation's Space Effort," Sept. 12, 1962, http://www.jfklibrary.org/j091262.htm/. Kennedy first announced the national goal of putting a man on the moon by the end of the decade in an address to a joint session of Congress on May 25, 1961.

Houston embraced a progressive new business image as "Space City"; its professional baseball team was renamed the Astros and the team's stadium was christened the Astrodome. The NASA payroll and contracting budgets provided a welcome boost to the regional economy and local daily newspapers avidly followed the progress of the space program. On May 15, 1963, Houston's hometown astronaut, Gordon "Gordo" Cooper, blasted off on the final flight of the Mercury series and concluded with a successful splashdown. An internationally televised tickertape parade through downtown Houston was planned for May 23 to welcome him home.[108]

A group of more than one hundred Texas Southern University students prepared a special welcome for their returning fellow citizen in the form of picket signs protesting Jim Crow in Cooper's hometown. Word of the plan leaked out and Houston's civic leaders were finally galvanized into action. One of the most prominent of these, Jesse Jones, then president of the Houston Endowment, promised local black community leaders that segregation in the city's downtown restaurants and theaters would end within thirty days provided that the demonstration was canceled. The trade was made and the promise was kept—under an agreed-upon news blackout by the local media.[109] The city fathers would no longer allow the likes of James Burleson to "run a white restaurant." The 1964 Civil Rights Act soon prohibited similar practices by force of law in smaller Texas towns.[110]

The business necessity for Houston to present a positive media image at the dawn of the Space Age accomplished within a month's time what generations of struggle in Texas had not earlier delivered. The final blow to segregation in that community came not from any court of law but from the more powerful court of public opinion in the form of civic embarrassment. It came almost exactly one hundred years after

[108] *Houston Post*, May 23, 1963, p. 1.

[109] Thomas R. Cole, *No Color is My Kind: The Life of Eldrewey Stearns and the Integration of Houston* (Austin: University of Texas Press, 1997), 64–99. See also, F. Kenneth Jensen, "The Houston Sit-In Movement of 1960–1961," in *Black Dixie: Afro-Texan History and Culture in Houston*, eds. Howard Beeth and Cary D. Wintz (College Station: Texas A&M University Press, 1992), 211–222. White Houston residents were not the only Texans who held out against integration in the early 1960s. In 1961 U.S. Attorney General Robert F. Kennedy dispatched FBI agents across the South on an undercover mission to survey for discriminatory practices in the segregation of interstate passengers at bus terminals. Their final report identified many Texas terminals that continued to maintain segregated waiting rooms, including Beaumont, Bryan, Dallas, Fort Worth, Galveston, Kerrville, Lubbock, Paris, Port Arthur, San Angelo, Tyler, and Wichita Falls. For coverage of the report, see Houston's *The Informer & Texas Freeman*, July 29, 1961, p. 1. For a summary of the outcome of the resulting ICC proceeding, see Dixon, "Civil Rights in Transportation and the ICC," 222, n. 127.

[110] The Dallas Union Station restaurant was integrated several months earlier in March 1963. For a comprehensive survey of segregation practices remaining in force across Texas in 1963, see "Texas is Integrating: A Special Report," *Texas Observer* (Austin), June 28, 1963, 9–14.

President Abraham Lincoln issued his January 1, 1863, Emancipation Proclamation that freed all slaves in the rebelling states. Under pressure from the Kennedy administration, large cities elsewhere in the state soon abandoned segregation in public places as economic interests overcame long-established cultural patterns. It was finally curtain time for Jim Crow in Texas.