Duty to the Race: African American Fraternal Orders and the Legal Defense of the Right to Organize

Liazos, Ariane.
Ganz, Marshall.

Social Science History, Volume 28, Number 3, Fall 2004, pp. 485-534
(Article)

Published by Duke University Press

Ariane Liazos and Marshall Ganz

Duty to the Race

African American Fraternal Orders and the Legal Defense of the Right to Organize

In 1904, leaders of three major white fraternal orders launched a nationally coordinated legislative and legal campaign to force their black counterparts out of existence, a struggle that spread to at least 29 states and culminated in victories for the African American groups before the U.S. Supreme Court in 1912 and 1929. The organizational structures of the black orders, usually consisting of a tripartite system of local, state, and national lodges, were critical in this successful defense of the legal right to form and operate fraternal organizations. These structures enabled fraternal members and leaders to turn local disputes into national ones, devise strategies based on the interplay of different levels of government, and sustain a discourse that facilitated internal mobilization and minimized external opposition. While most scholarship on resistance to Jim Crow has focused on local activism, the defense mounted by these orders facilitated the development of sophisticated, nationwide networks binding together local fraternal leaders and African American lawyers. These networks became a critical venue for the development of oppositional traditions, organizational infrastructures, and leadership ties that kept resistance alive under Jim Crow and laid the building blocks for future political and civil rights–related work. In particular, these fraternal lawyers, a number of whom went on to work for the NAACP, honed skills in these trials that were also central to the NAACP's legal strategy, especially in learning to tailor cases to achieve federal hearings.

Social Science History 28:3 (fall 2004), 485–534

For images related to this article and others in this special issue, please visit the *Social Science History* Web site at www.history.cmu.edu/ssh-journal/images.html.

In July of 1909, an editorial in the *Atlanta Independent*, a popular weekly African American newspaper, boldly stated the importance of fraternal orders (also known as secret societies) in black communities across the South. In the aftermath of the decline of the Republican Party, the editorial declared, "We have nothing left us for civic and moral development except our secret orders. We have been successfully eliminated from the politics of the South and we have nothing left to help us develop a useful and helpful citizenship except the church and secret societies" (*Atlanta Independent* 1909b). The *Independent*, at times the official organ of three separate black fraternal orders, highlighted the significance of these organizations because it feared they were in grave danger. The white Knights of Pythias in the state had mounted a legal challenge of the black parallel version of their order, hoping to eliminate their African American counterpart entirely.[1] The potential magnitude of the outcome of this case for black Pythians throughout the country drew nationwide attention to events in Georgia and in so doing left a dramatic record of the meaning of fraternal orders for leaders and members in these years. For example, the next month, in August 1909, at their national convention in Kansas City, Missouri, the black Knights of Pythias spent much time discussing the case and garnering support for the Georgia lodges under attack. One speaker asked if "because of the accident of color" the American legal system would allow them "to be denied the privilege of practicing the principles of Friendship, Charity and Benevolence," the main tenets of the Pythians. He noted that although in the past they had often "been dealt with as unorganized individuals," now their "most powerful and most practical organization" was "attacked." He closed with a rallying cry for solidarity: "Let us, with our means and with our might, defend ourselves, for if this right is taken from us, there is no other for which we can demand respect.

> Sure, I must fight if I would reign,
> Increase my courage, Lord.
> I'll bear thy toil, endure thy pain,
> Supported by Thy Word (Williams et al.: 1917: 282).

The tone of these quotations suggests the urgency surrounding the struggle to defend the legality of parallel fraternal orders and also the central role that these organizations played in the civic lives of African Americans. By the turn of the century, fraternal orders had become the most popular form of secular association among African Americans. After the loss of

voting rights and the subsequent disintegration of the Republican Party in the South, fraternal orders and churches remained as the only large-scale, translocal organizations available to most black people. Despite the fact that these fraternal organizations often claimed only to bury their dead and care for widows and orphans, most of their own members and the whites who opposed them understood that they played a much more important role in African American communities. These orders were based on the ritual induction of new members and often focused on communal self-help, collecting dues to provide insurance benefits for members. They also provided a venue for the development of civic skills and a social sensibility that translated into community service and political activism. Many were distinctively African American, created and run entirely by blacks, but others developed as parallel versions of white groups. When such groups denied African Americans membership because of their race, black leaders cited the injustice of their exclusion and formed parallel orders in protest.[2] By the early twentieth century, separate organizations for white and black Pythians, Elks, Odd Fellows, Masons, and Shriners marked the American civic landscape (Skocpol and Oser in this issue; see also Camp and Kent in this issue; Beito 2000; Salvatore 1996; Fahey 1994; Trotter 1990: 198–216; Brown 1989; Rachleff 1984; Muraskin 1975).

For African Americans, use of the name Pythian, Elk, or Shriner was not a matter of imitation so much as an assertion of equality or even superiority. When rebuffed by whites, blacks formed parallel orders to show that they too could live up to fraternal codes of morality and dignity and even to assert that they, better than their white counterparts, embodied fraternal ideals of brotherhood and equality. Membership in fraternal orders contributed to African Americans' sense of respectability and self-worth denied them by white society and of collective pride and control over their own destinies (Salvatore 1996: 59–67). The defense of their right to use these names became a matter of racial pride and assertion of their rights, particularly the right to free assembly, as American citizens. In responding to legal challenges to their orders, African Americans thus defined their struggle not only as a matter concerning fraternal organizations but also more broadly as a fight for the right to organize and a struggle to defend their race.

In 1904, leaders of the white orders launched a nationally coordinated legislative and legal campaign to force their black counterparts out of existence, a fight that continued for over 20 years. Beginning in Mississippi, New

York, and Georgia, the legal conflict spread to at least 29 states, culminating in victories for the African American groups before the U.S. Supreme Court in 1912 and 1929. Although white fraternal leaders initiated such challenges throughout the country, they acquired particular vehemence in the South as part of the larger campaign of repression that disfranchised black citizens and established legal segregation. In a regime as repressive as had developed in the South at the turn of the last century, the right to form organizations was in itself a powerful challenge to the prevailing system. Given that African Americans in this region faced so many defeats in resisting the rise of Jim Crow, their successful defense of their legal right to form fraternal associations was particularly remarkable.

The national scale of the defense mounted by the African American orders was vital for success. Much of the scholarly work on black resistance under Jim Crow focuses either on the everyday acts of resistance or "infrapolitics" (Kelley 1994, 1993) or local examples of more formal opposition, from streetcar boycotts to the work of church and voluntary societies to cases of radical labor organizing (Gilmore 1996; Korstad and Lichtenstein 1988). As important as such examples are to understanding African American experiences in these years, the legal battles of fraternal orders represent a very different, and almost completely ignored, means of political activism built upon sophisticated, national, and coordinated networks binding together local fraternal leaders and African American lawyers. These networks enabled these individuals to share information, learn from each others' experiences, and sustain motivation, to develop what Marshall Ganz (2000) calls "strategic capacity." They facilitated the development of the oppositional traditions, organizational infrastructures, and leadership networks that kept resistance alive under Jim Crow and laid the building blocks for future political and civil rights-related work in the decades to come.

These national networks, vital for achieving legal victories, were rooted in the organizational structure of African American fraternal orders, usually consisting of a tripartite system of local, state, and national lodges that mirrored the structure of the U.S. government. Their translocal character allowed them to transform local conflicts into national ones. Their success in devising national strategies where local strategies failed and mobilizing national resources where local resources proved inadequate illustrates political scientist E. E. Schattschneider's (1975 [1960]) insight that the ability to "socialize" local conflicts can give subordinate groups advantages not avail-

able to them in particular localities. Fraternal leaders, especially the African American lawyers who provided a legal defense, discovered the advantages available to groups able to straddle multiple levels of government (Skocpol 1992), devising a strategy that used federal courts to prevail over local courts and legislatures. These fraternal orders facilitated the development of a national network of African American lawyers able to coordinate litigation in multiple states and across different levels of government. These lawyers, a number of whom went on to work for the NAACP, honed skills in these trials that were also central to the NAACP's legal strategy, especially the ability to tailor cases to achieve federal hearings.

Their access to an organized constituency also enabled African American fraternal leaders to combine internal narratives to mobilize support with external narratives to minimize opposition.[3] This allowed them to avoid the dilemma faced by activists with less-organized constituencies, where arguments used to generate constituent support often simultaneously polarize opponents, as political scientist Jane Mansbridge (1986) demonstrates with regard to the women's movement. Stable associational ties linking officers to members through elections, conventions, and publications allowed leaders to frame their struggle as one of racial militancy and pride, summoning the commitments of energy, resources, and perseverance needed to meet this legal challenge, to fulfill what they believed was their duty to defend their race.

In the public courts, however, their lawyers invoked far less-threatening legal doctrines about associational incorporation and federal jurisdiction. These attorneys were well aware of the critical stance toward the equal protection clause of the Fourteenth Amendment in the legal climate of the day. Although legal historians disagree on the duration of this trend, most agree on the lull in the enforcement of the Civil War amendments before the Supreme Court in the 1910s (Schmidt 1982; Kennedy 1986). Thus, although fraternal lawyers did appeal to their right to equal protection under the Fourteenth Amendment, partly affirming the internal understanding that the assault was motivated by racism, not mere questions of fraud and copyright, in the courts they focused mainly on questions of legal equity.

As a part of our work on the larger Civic Engagement Project, in this article we also demonstrate the value of focusing on organizational history.[4] Although we use court records and some secondary sources, our research draws primarily on publications of the African American fraternal orders

themselves. These rich sources illustrate the central role of organizations, the middle ground between individuals and larger political and societal institutions, through which people can effect change (Weber 1979 [1968]; Perrow 1986 [1972]; McCarthy and Zald 1982; Traugott 1985). Indeed, it was through our examination of the organizational histories, proceedings, and newspapers of African American fraternal orders that we originally learned of their legal struggles. While histories written by white fraternal orders contained only scattered references to these trials, those written by parallel orders recorded the events surrounding their struggles with great detail, closely documenting the actions taken by both white and black groups and proudly celebrating their victories in defending their fraternal orders and their race.

Overview of the Legal Conflict

In the latter half of the nineteenth century, the rise of large-scale business ventures led to the revision of the process and meaning of incorporation. Federal and state legislative bodies had once granted charters to corporations on a case by case basis. During these years, however, due to an increased demand, the process became a matter of administrative routine, especially after the passage of an act by Congress in 1870 and countless similar state-level acts for the granting of federal and state incorporation, respectively. Moreover, although the right to incorporate had once been restricted primarily to businesses providing public services such as banking and transportation, after the Civil War it became common for most private business enterprises at the state level to apply for charters (Trachtenburg 1982: 82–84).

Applying for charters soon became popular among civic organizations as well, particularly fraternal orders. The problem of disgruntled members forming splinter groups with similar names was endemic to fraternalism, white and black. For years, white orders had been suing white offshoots and black orders black offshoots. Securing a charter was one way to claim legitimacy over splinter groups and maintain a solid membership base.[5] Competition with private insurance companies also sparked interest in incorporation. Providing life insurance for members was one of the central functions of fraternal orders. Under assault from commercial competitors as they struggled to deal with the actuarial problems created by aging memberships, fraternal orders hoped to put their life insurance benefits on a firmer footing (Beito 2000: 130–42).[6] Thus, fraternal orders, black and white, were learning the

Table 1 Major white and parallel orders

White order	Parallel order
Ancient Free and Accepted Masons	Ancient Free and Accepted Prince Hall Masons
Independent Order of Odd Fellows	Grand United Order of Odd Fellows
Knights of Pythias	Knights of Pythias of North America, South America, Europe, Asia, Africa, and Australia
Benevolent and Protective Order of Elks	Improved Benevolent and Protective Order of Elks of the World
Ancient Arabic Order of the Nobles of the Mystic Shrine	Ancient Egyptian Arabic Order of the Nobles of the Mystic Shrine

Note: There was also a lawsuit between the Order of Owls and the Afro-American Order of Owls, but the two organizations were much smaller and less prominent. See *Afro-American Order of Owls v. Talbot* (1914).

value of the legal protection provided by incorporation as they competed both with splinter groups and private corporations to maintain the loyalty of their members, the very foundations of their organizations.

It was in this context that white fraternal orders began to use the process of incorporation to challenge the legitimacy of the black parallel orders in these years. The popularity of the parallel Masons, Odd Fellows, Knights of Pythias, Elks, and Shriners among blacks grew so rapidly that some rivaled or even passed their white counterparts in membership and geographic spread (Skocpol and Oser in this issue). This growth became even more visible to whites as many black groups applied for state and national incorporation, drawing attention to the legal status and legitimacy of their orders. Faced with the growing prominence of parallel orders due to expansion and charter applications, white fraternal organizations began a conscious campaign to eliminate them altogether (see Table 1).

White fraternal orders challenged the legal status of black parallel orders through both civil and criminal means. In civil law they opposed the black orders based on what they argued were attempts by blacks to "defraud" the public into thinking the orders were one and the same. They grounded this assertion in two ways. Often they cited the common-law doctrine that one business had the right to sue another if the latter copied the name or other relevant features from the former to steal its customers. If the plaintiff could prove possible damages in the form of a loss of business, the courts would

enjoin the defendant from using the name in question. By the turn of the century, the courts had also held that this principle applied to nonprofit organizations, defining damages more broadly.[7] Charters of incorporation could establish who had claimed the name first, providing a basis for litigation. Alternatively, if a specific act concerning the incorporation of civic groups existed, the white orders could sue on a statutory basis. Thus, in civil law, legal challenges often began when a white group, often already incorporated, appealed to the courts for an injunction against a black parallel order to prevent it from copying the name, rituals, emblems, and so forth of the white organization or from obtaining a charter itself (e.g., *Benevolent and Protective Order of Elks v. Improved Benevolent and Protective Order of Elks of the World* [1908]; *Burrell et al. v. Michaux et al.* [1925].)

In criminal law, white fraternal leaders attacked the parallel orders by securing the enactment of state-level trademark legislation that would deny African American groups the right to use the names and other prominent features of the white orders. These laws, passed by state legislatures and ratified by governors, applied to individuals rather than organizations. While civil actions claiming fraud allowed white groups to enjoin black groups from using their names, trademark laws were part of state penal codes, permitting the misdemeanor arrest of individuals for using the names, emblems, slogans, titles of officers, rituals, pins, buttons, rosettes, insignia, and even colors of fraternal associations to which they did not belong. Unless they had established the legal legitimacy of their orders, these laws left members of African American orders open to arrests. While some laws protected the trademarks of organizations in existence for certain periods of time, others affected only secret societies or listed specific organizations. A 1905 law in New York mentioned not only the Elks, but also the Grand Army of the Republic, Military Order of the Loyal Legion of the United States, Spanish War Veterans, and Patrons of Husbandry. Another in Georgia listed the Odd Fellows, Elks, and Masons.[8]

Regardless of the specific manner in which these laws defined the legitimacy of organizations and despite the fact that they never explicitly mentioned race, it was well known that their intent was to put an end to black parallel orders. Even the newspapers openly reported their real goals. In Georgia, the *Atlanta Constitution* described a 1909 law as prohibiting "the use by negro secret societies of the insignia, ritualistic work, grips, etc., of orders composed of whites," and the *Macon Telegraph* characterized the law

as "calculated to put all Negro societies out of business" (reprinted, respectively, in *Atlanta Independent* 1909d, 1909f).

Some of the parallel orders were more vulnerable to civil and criminal litigation than others. After being denied entry into American branches because of their race, African Americans organized the Prince Hall Masons in the late eighteenth century and the Grand United Order of Odd Fellows in the 1840s by obtaining charters from more tolerant British branches (Grimshaw 1969 [1903]: 67–83; Brooks 1971 [1902]: 12–14). The white Elks, Pythians, and Shriners also denied blacks membership, but because these groups were indigenous to the United States, there were no European counterparts to whom the blacks could appeal. When faced with a white rejection, they obtained the secret rituals by surreptitious means and formed parallel organizations.[9] Such origins left these parallel orders with less legal security than those with British ties, a fact well known to both black and white fraternal members at the time. The civil and criminal trials thus centered on the Pythians, Elks, and Shriners.[10]

These three associations had the ability to respond to this legal challenge successfully because of the resources available to them through the structure of their organizations. The campaign to force parallel orders out of existence was a massive one, with civil and criminal suits in at least 16 states and emblem laws passed in at least 29 states (see Table 2).[11] These events were not isolated or unrelated. In most cases the national bodies of the white orders strategically planned these lawsuits. Even when local groups initiated litigation on their own, the state and/or national levels of their orders paid close attention to the outcome and planned their own future actions accordingly. To defend themselves, the parallel orders also needed to coordinate their actions.

To provide the necessary assistance to local lodges and members under attack, African American fraternal orders relied on the strong ties binding lodges across the nation together into larger state and/or national structures. These ties provided them with networks through which to frame local cases as vitally important to the entire order and to the civil rights of their race. National fraternal leaders also used these networks to raise funds to pay substantial legal fees and to bring together talented African American lawyers from all over the country to formulate a legal strategy. This strategy did not center on the discrimination at the heart of these suits but rather on racially neutral legal questions of incorporation and fair competition. These lawyers in turn also utilized the federated nature of the parallel orders to gain a hear-

Table 2 Legal campaign to eliminate African American parallel orders, 1904–29

Year	Locations	Organizations involved	Legal actions
1904	Mississippi	Elks	charter blocked
1905	New York	multiple groups	legislation enacted
1906	Georgia	Pythians	**civil suit (bl)**
	Georgia	Elks	civil suit (wh)
	New York	Elks	arrests
	Virginia, New Jersey	Elks	**charters granted**
1907	Georgia	Pythians	civil suit (wh)
	Georgia	multiple groups	**legislation failed**
	Tennessee	Elks	civil suits (wh)
	Montana	multiple groups	legislation enacted
	New York, District of Columbia	Elks	**charters granted**
1908	Georgia	Pythians	civil suits (wh)
	New York	Elks	civil suits (wh)
	Montana	Elks	arrest, **civil suits (bl)**
	U.S. Congress, Missouri, Iowa, Illinois, New Jersey, Massachusetts	multiple groups	**legislation failed**
1909	Georgia	multiple groups	legislation enacted
	Georgia, Tennessee, Alabama, Pennsylvania	Pythians	civil suits (wh)
	Tennessee	Elks	civil suits (wh)
	Arkansas	multiple groups	legislation enacted
	Arkansas	Elks	arrests
	North Carolina, Louisiana	Pythians	civil suits (unclear)
	New York	Elks	civil suit (wh)
1910	Georgia, Alabama	Pythians	civil suits (wh)
	Tennessee	Pythians	civil suits (wh), arrests
	Mississippi	Pythians	**civil suits (bl)**
1911	Tennessee, Alabama	Pythians	civil suits (wh)
	Oklahoma	Pythians	**charter granted**
1912	U.S. Supreme Court	Pythians	**overturned GA case**
	U.S. Supreme Court	Pythians	**writ of error granted in TN case**
	Mississippi	Pythians	**civil suits (bl)**
	New York	Elks	civil suits (wh)
1913	Georgia	Pythians	**charter granted**
	Tennessee, Alabama	Pythians	**civil suits (bl)**
	Florida	multiple groups	legislation enacted
1914	Georgia	Shriners	civil trial (wh)
	Tennessee	Pythians	**civil suits (bl)**

Table 2 (continued)

Year	Locations	Organizations involved	Legal actions
1915	Georgia	Shriners	civil suit (wh)
	Florida	Elks	arrests, **case dismissed**
	New York	Elks	arrests
1916	U.S. Supreme Court	Elks	refused to review NY case
	Georgia	Shriners	civil suit (wh)
	New York	Elks	arrests
	Pennsylvania	Elks	civil suit (unclear)
	Illinois	Elks	civil suits (wh)
1917	New York	Elks	arrests
1918	Texas	Shriners	civil suit (wh)
	North Carolina	Shriners	arrest
	Pennsylvania	Elks	**suit dropped**
	Ohio	Elks	restraining order
	California	Shriners	charter blocked
1919	U.S. Supreme Court	Shriners	refused to review GA case
	Arkansas	Shriners	civil suit (wh)
1920	Arkansas	Shriners	civil suit (wh)
	Indiana	Elks	civil suit (wh)
1921	Indiana	Elks	**suit dropped**
1922	Texas	Shriners	civil suit (wh)
	Arkansas	Shriners	**civil suit (bl)**
1925	Texas	Shriners	civil suit (wh)
1926	Texas	Shriners	civil suit (wh)
1927	New York	Elks	**injunction dissolved**
1929	U.S. Supreme Court	Shriners	**overturned TX Shrine case**
???	Arkansas	multiple groups	legislation enacted
???	Mississippi	multiple groups	legislation enacted
???	Pennsylvania	multiple groups	legislation enacted
???	Ohio	multiple groups	legislation enacted
???	Tennessee	multiple groups	legislation enacted
???	North Carolina	Elks	arrests, civil suit (unclear)
???	Ohio	Elks	civil suits (wh)
???	Florida	Shriners	civil suit (unclear)
???	Louisiana	Shriners	civil suit (unclear)

Sources: Compilation of all data found in Williams et al. 1917; Wesley 1955; Dickerson 1981; Walkes 1993; articles in the *Atlanta Independent*; and trial records. There were probably more court cases than these presented here, and there were definitely more emblem laws passed. The history of the Knights of Pythias cites a figure of laws in 29 states by 1909. See Williams et al. 1917: 311.

Note: Legal actions set in boldface type indicate outcomes that favored the black organization; (unclear) means that the sources do not indicate the outcome of the case; (wh) means that the ruling supported the position of the white fraternal order; (bl) means that the ruling supported the position of the black fraternal order.

ing before the Supreme Court, creating an opportunity that they otherwise would not have had to challenge the decisions of local courts and the constitutionality of state legislation.

The Knights of Pythias in Georgia

The legal struggle of the African American Pythians in Georgia was part of a larger assault both on parallel orders throughout the United States and on all types of black organizations in Georgia. The campaign began when the white Pythians passed an official resolution at their Grand Lodge (state-level) meeting in Augusta in 1906, declaring their intent to prevent blacks from using the name Pythian. Their goal, as the title of an article in a black fraternal paper explained, was "To Put the Negro Knights of Pythias out of Business" (*Atlanta Independent* 1906a). Their opportunity came when the African American Knights applied for a state charter. The white Knights sued for an injunction against the Grand Lodge of the black Pythians, claiming that they had an exclusive proprietary right to the name Knights of Pythias. They maintained that the black organization and its leader Charles Creswill were guilty of fraudulently copying the name, thus infringing on the rights of the white organization.[12]

Opponents of African American fraternal orders paid close attention to this legal confrontation, well aware of its potential significance. Within Georgia, with the trials under way, opposition by white orders to black organizations grew. State and local political candidates opposed secret societies and fraternal orders in their platforms, accusing them of secret and unfair labor organizing (Hunter 1997: 210–11, 233). White fraternal organizations also successfully lobbied for the passage of a criminal law intended to put an end to parallel orders and thus prevent blacks from using the name Pythias.[13] Outside Georgia, branches of the white Pythians with similar aims attentively followed the outcome of the proceedings. In Florida, for example, the published reports of the white Pythians explained that they had formed an official committee to follow the case in Georgia to help them decide whether to begin legal action against the black Pythians in their own state (reprint of the *Florida Pythian* in Williams et al. 1917: 327–28). And as the trials in Georgia progressed with decisions favoring the white Pythians, other branches began similar civil cases against their black counterparts in Tennessee, Alabama, North Carolina, Louisiana, Mississippi, and Pennsylvania (see Table 2).

Meanwhile, in Georgia, the movement to destroy black fraternalism escalated to encompass extralegal means and target organizations other than the Pythians. Opposition to all types of black fraternal orders and secret societies, parallel or distinctive, with or without British charters, continued to grow.[14] The African American Elks of Georgia also faced legal challenges, despite the fact that they had only three lodges in the state (*Atlanta Independent* 1909h). Regardless of ties to Great Britain that protected them elsewhere, the Masons and the Odd Fellows were also at risk. When legal means were not available, white antagonists turned to violent methods as well. In 1907, a number of black churches and lodge halls in Early County, Georgia, were bombed with dynamite. The Odd Fellows and the Supreme Circle, a distinctive black group, were targeted. Members of the Odd Fellows were told through anonymous letters that if they "ever met again" they "would be blown to hell" (*Atlanta Independent* 1907a, 1907c). Similar threats and violence intensified, and by 1910 the governor launched an official investigation into reports of murders and the burnings of lodges, schools, churches, and private homes in Columbia County, where black fraternal members were ordered not to assemble again (*Atlanta Independent* 1910b, 1910a). By the next year the violence flared up again, sparked by the controversy surrounding a libel case against a black journalist. George Julian White, editor of the *Broad Axe*, an official publication of the black Knights of Pythias, reprinted an article from a newspaper in Chicago asserting that a black man accused of shooting a white man in Washington, Georgia, had done so because that white man had assaulted his wife. In the ensuing outrage, many black lodges were attacked, their furniture and charters destroyed, while others were burned down. Rumors abounded of threats of lynching and of groups of armed whites forcibly preventing black Pythians from meeting in their lodges (*Atlanta Independent* 1911, 1912a).

The existence of such determined and violent opposition to black fraternalism makes the ability of the African American Pythians to defend themselves by appealing their case all the way to the federal Supreme Court all the more remarkable. Although a judge in Atlanta had initially denied the white Pythians an injunction against the African American order in 1906, the Georgia Supreme Court reversed the ruling on appeal in 1907 and remanded the case for a jury trial. The black Pythians lost in that trial in 1908 but prepared their own appeal to the Georgia Supreme Court, which in 1910 upheld the jury's decision and denied their appeal. Yet the black Pythians again appealed,

this time to the U.S. Supreme Court, which agreed to hear their case in 1912.[15]

The ability to achieve this legal victory, to attain this national hearing, stemmed from the federated structure of the African American Pythian organization. A purely local fraternal order, without ties to any larger state or national organization, would not have had the resources to wage such a legal defense. The Grand Lodge in Atlanta, embedded in a three-tiered structure of local lodges, state Grand Lodges, and a national Supreme Lodge, did. This structure provided the black Pythians in Georgia with access to financial resources and facilitated the mobilization of a legal network. This network of lawyers developed a strategy based on a racially neutral legal defense that minimized external opposition to the order. At the same time the elected officers made use of their own infrastructure to voice a more radical, racialized understanding of the trials to maximize the internal support of members.

Concerns over the costs of the trials illustrate the importance of the translocal nature of the African American Pythian organization. The expenses involved in mounting a defense were a serious financial burden for the black Pythians of Georgia, so much so that early defeats led them to consider changing their name to the Knights of Damon to avoid seemingly imminent arrests for violating the injunction against them or for violating the newly passed state law making it a misdemeanor to use the names or wear the emblems of white orders. At the 1909 national convention of the Supreme Lodge in Kansas City, Georgia grand chancellor Charles Creswill reported on the legal defeats and suggested his lodge might have to change its name (*Atlanta Independent* 1909e, 1909h, 1909i, 1909j).

The matter might have rested there if the national organization had not intervened. Realizing that such a precedent would put the entire national order at risk, Supreme Chancellor S. W. Green and other national leaders encouraged the Pythians in Georgia to stand their ground. Aware of the drain on local resources, the Supreme Lodge made pleas nationally for voluntary contributions to pay legal fees in 1907 and 1908 and sent Supreme Attorney S. A. T. Watkins to Georgia to advise local attorneys in Atlanta in the summer of 1908. Yet these calls for aid resulted in only approximately $600 worth of donations, reflecting what national leaders described as "an utter lack of appreciation for the gravity of the situation" (Williams et al. 1917: 280). As a result, they decided to use funds intended for the construction of a Pythian Temple Sanitarium for the moment and replace them later (ibid.:

289, 306–9, 327, 354). And so at the national convention in 1909, the officers of the Supreme Lodge voted to create an emergency fund, requiring a 10-cent donation from all members of the Knights of Pythias and a 5-cent donation from all members of the Order of Calanthe, its female auxiliary (*Atlanta Independent* 1909g). With such institutionalized support, only days after their defeat at the state supreme court, Grand Chancellor Creswill of Georgia boasted that the Supreme Lodge had promised $16,000 to fund an appeal to the U.S. Supreme Court (*Atlanta Independent* 1910c). Soon after, a number of officers from the Supreme Lodge visited Atlanta to consult with Creswill and show their support (*Atlanta Independent* 1910d). Supreme Attorney Watkins remained after the others left, spending three weeks reviewing all the legal documents and preparing an appeal. He and Creswill then left Atlanta, bound for Washington, D.C., where they paid the necessary fees and filed a petition with the Supreme Court (Williams et al. 1917: 354). What could have ended as a local defeat became a national cause important to the entire order.

As the actions of Supreme Attorney Watkins suggest, the federated structure of the African American Pythians also played a vital role in the development of the network of African American lawyers that mounted the order's legal defense. The black Pythians had access to lawyers, white and black, because like most fraternal orders, they had been involved in litigation arising from internal splits and, most importantly, from insurance claims and counterclaims.[16] Yet while such infighting was one important reason that fraternal orders felt that they needed lawyers, it was not the only one. In 1901, newly elected supreme chancellor S. W. Starks of the black Pythians, for example, likely had additional hopes for the law department and the position of supreme attorney, both created that year. Four years later, in an impassioned speech on the duties of the Pythians with regard to "the race problem" at a national convention, he insisted on the need for "a permanent fund" to retain "competent attorneys and lobbyists" to defend African Americans and tear down "the walls of prejudice" (ibid.: 184–85, 219–20). Such sentiments, expressed even before legal troubles with the white orders began, displayed a clear understanding of the importance of legal support in protecting the rights of black Americans. Thus, when white fraternal organizations began their litigation, the parallel orders were not without significant legal resources.

The man most associated with the law department was S. A. T. Wat-

kins, the lawyer who had orchestrated its creation and acted as its head as supreme attorney from its inception (ibid.: 894). Born in Memphis in 1869, he had served as apprentice to T. F. Cassels, the first black assistant attorney general of Tennessee. In 1893, two years after his admission to the Tennessee bar, Watkins moved to Chicago, where he later established a firm with Franklin A. Denison and James E. White, also African American attorneys with fraternal ties. In 1898, Democratic mayor Carter Harrison Jr. appointed Watkins assistant prosecuting attorney for the city of Chicago, a post he held for many years (Mather 1915: 278; Smith 1993: 31, 338, 376–77). In 1901, after his election as supreme attorney of the Pythians, he became increasingly involved in legal matters concerning the order. When the tensions with the white Pythians began, Watkins assumed an organizing role. By 1911 he had traveled to Pennsylvania, Alabama, Mississippi, and Georgia to consult with local attorneys on cases against the black Pythians (Williams et al. 1917: 351–56).

In coordinating these cases, Watkins worked with at least 10 other black attorneys in six other states tied to fraternal orders as members, officers, and paid advocates and often linked to the world of African American political activism (see Appendix A; a list of all legal cases cited in this article is presented in Appendix B). Some, such as Everett J. Waring, were Howard Law School graduates, while others, such as Watkins, had apprenticed to practicing attorneys. Waring was the first black attorney to be admitted to the Maryland bar in 1885 and the first to argue a case before the U.S. Supreme Court in 1890. He also used the courts to challenge the legality of discriminatory legislation in Maryland as early as 1885 (Smith 1993: 144–45, 178–79). Others, like Willis E. Mollison, were active in the Republican Party. Mollison ran for his party's nomination for secretary of state in Mississippi in 1889 and was appointed district attorney pro tem in Vicksburg in 1892 (ibid.: 292–93).

Yet regardless of the availability of such legal talent, in the South the Pythians often felt compelled to rely on white lawyers to present their cases. Black southerners feared economic reprisal if they used lawyers of their own race, making it often difficult for black lawyers to find clients (ibid.: 12–14). As such, many fraternal orders used white lawyers in court, despite the fact that African American attorneys frequently did the preparatory work for trials. In Georgia, for example, the Pythians hired a white lawyer named C. L. Pettigrew from Atlanta to argue their case even though local black attorney Henry L. Johnson and later Watkins had worked with him in preparing their

defense. Although he appeared as counsel for the Pythians, Watkins hired a respected white lawyer to argue the case before the U.S. Supreme Court, in spite of the fact that Watkins himself had written almost the entire legal brief and clearly was the key strategist (Williams et al. 1917: 306–8, 331–32, 351–56, 372–73, 398–400; *Atlanta Independent* 1906b). Thus, the Pythians used white lawyers to present their cases in court but relied on the skills of a talented network of black attorneys in formulating a defense.

The legal strategy Watkins and the others devised for the Georgia case revealed their skill in balancing the internal demands of the fraternal organization with those of the broader legal climate. As indicated in convention proceedings and fraternal publications, the parallel orders clearly saw this legal attack as a racist violation of the rights guaranteed them in the Fourteenth Amendment. It was in these terms—the defense of the race—that they mobilized the internal financial, political, and human resources needed to conduct a successful defense. When it came to crafting legal strategy, however, the lawyers realized that their chances of winning a case based on appeals for the enforcement the Civil War amendments were slim. Although they did argue that to deny them the right to form parallel orders was to deny their right to equal protection under the law, they did not rest their entire case on this claim. As expected, every court in Georgia rejected this line of argument. In deciding against the black order, the Georgia Supreme Court, for example, asserted that since all "findings against the defendants" had been made "regardless of any consideration of their color," the claim that their right to equal protection had been violated was untrue. Even when the U.S. Supreme Court agreed to review the case two years later, it did not do so based on the enforcement of federal constitutional rights (*Creswill v. Grand Lodge* [1910, 1912]).

Anticipating the inadequacy of claims based on the Fourteenth Amendment, Watkins devised an alternative legal strategy not only to remove the case from the Georgia courts to federal jurisdiction but once there to argue their right to their name without regard to race. The development of this strategy occurred partly by chance, partly by intent. First, when the white Pythians of Georgia, acting on their organizational decision in 1905, moved against their black counterpart, the fact that they were not incorporated in the state barred them from proceeding without making their own national Supreme Lodge, incorporated by Congress in 1890, a party to the suit. The fact that a federally incorporated body was named in a state-level lawsuit pro-

vided the lawyers for the African American Pythians the opportunity for an appeal to the U.S. Supreme Court.[17] The justices agreed with their claim, granting a writ of certiorari and thus accepting jurisdiction and agreeing to review the decision of the lower court.

Second, lawyers for the black Pythians stressed the fact that their order had been founded in 1880, its Supreme Lodge incorporated in Washington, D.C., in 1880, and its first lodge in Georgia formed in 1886. The order currently had over 300,000 members nationally. Yet the white Pythians had not taken legal action until 1906, 26 years after the original founding. This opened the way to a claim based on the equity doctrine of laches (*Creswill v. Grand Lodge* [1912]). Laches meant that if a newer organization infringed upon the rights of an older organization by copying its name or other prominent features, the older organization had to sue within a short period of time or lose the exclusive right to the name or features.

In making such a claim, the lawyers for the African American order demonstrated their expertise in formulating arguments based on notions of fair competition in the marketplace. Although legal historians differ as to the implications of ideas about competition in legal thought of this period, some focusing on its progressive potential and others on its conservative side, they agree on their prominence (Schmidt 1982; Horowitz 1992). In this context, lawyers for the African American Knights argued that to deny them the right to use the name Pythian after they had used it for so long and invested so much would inhibit their ability to compete with other orders for members. The Supreme Court agreed, ruling in 1912 that the white Pythians had simply waited too long to initiate litigation and therefore no longer had the exclusive right to call themselves Pythians.[18] This federal decision dissolved the injunction in Georgia, enabling the African American Pythians finally to receive their state charter in 1913. It became a precedent for lawsuits in other states against the black Pythians, effectively ending the legal attack against them throughout the United States within the next few years (Williams et al. 1917: 397, 401, 417–18).

Although externally they may have argued their case as a matter of incorporation, federal jurisdiction, and laches, internally the black Pythians interpreted their victory as a great moment in defending the rights of African Americans against racial injustice. In Georgia, the *Atlanta Independent* (1912b) declared, "Not since the days of Dred Scott has the Supreme Court of the United States rendered a decision so far reaching in meaning

and so substantially maintain[ing] the manhood rights of colored citizens, as is established" by the Georgia case. Supreme Attorney Watkins stressed the contribution it would make to American jurisprudence. At the 1913 biennial session of the Supreme Lodge, he declared, "This is the first case that I know of where a question affecting the race was presented to the Federal Supreme Court since its existence, where the question was determined in favor of the race" (Williams et al. 1917: 401). Certainly, these claims may seem overstated today, but nevertheless they provide an understanding of the sense of importance associated with this legal victory. In fact, the Supreme Court's decision established the legitimacy of the parallel orders and affirmed a legal strategy to defend that legitimacy that would be used in years to come.

The Elks in New York

While the white Pythians, with a large southern membership, took the lead in challenging their black counterpart in the South, the white Elks (the Benevolent and Protective Order of Elks or BPOE), a more northern order, took the lead against the black Elks (the Improved Benevolent and Protective Order of Elks of the World or IBPOEW). Threats of violence and economic reprisal at the local level had occurred sporadically before any legal action began (Dickerson 1981: 237). Then, perhaps inspired by the success of the lead member of the white Elks in Mississippi in blocking the application for a state charter by the IBPOEW in 1904, the national Grand Lodge of the BPOE proclaimed at its next convention that 1906 would be the year of "the action of prosecutions and legislation against Negro lodges, to put the African imitator out of business" (Ellis 1910: 247, 252).[19] By 1907, the national organization formed a "commission of three" to work for the passage of state-level legislation protecting its name and official emblem and to encourage the prosecution of individuals and organizations using such markers (Wesley 1955: 87).

The BPOE pursued a dual strategy of seeking civil and criminal redress in which the state of New York played a key role. In 1905, the New York legislature passed a trademark bill, the Grattan Law, making it a misdemeanor to wear the badge or button or to use the name, insignia, officer titles, rituals, or ceremonies of the BPOE and a number of other organizations without being a member (ibid.: 68, 129). In 1906, on a complaint by the deputy grand exalted ruler of the national BPOE, the Yonkers police arrested an IBPOEW member for wearing a BPOE emblem and pin.[20] Although the offender received only a

suspended sentence, a second arrest followed a month later in Rochester. The next month, an arrest in New York City resulted in an acquittal (ibid.: 69–70). Despite the mixed outcomes of these arrests, the threat apparently persuaded the leaders of the IBPOEW to move the national convention in 1906 from Brooklyn to Columbus, Ohio (ibid.: 74). Two years later, the BPOE initiated a civil suit against the black Elks in New York, applying for an injunction against their order. These events were not unique to New York. With the passage of similar laws in a number of states, by about 1910 the BPOE had pushed for arrests and begun civil trials in Georgia, Tennessee, North Carolina, Arkansas, Ohio, and Montana (see Table 2).

Some leaders of the IBPOEW hoped to respond to this situation in the same way that the African American Knights of Pythias had—by committing institutional funds to support lodges and members facing trials and by coordinating legal defense through their central organization. Yet they were unable to do so in large part because of an internal schism. The decision to move the national convention from New York to Ohio caused an uproar, resulting in the division of the order into two competing national Grand Lodges that struggled for supremacy from 1906 to 1910 (ibid.: 74–79, 85–86, 92–127; Dickerson 1981: 213–36). The New York faction tried to establish a formal legal defense fund supported by an assessment of 50 cents per member a number of times between 1908 and 1910. The results of these efforts remain unclear, but it seems that all they achieved was the creation of the office of "receiver of monies for legal defense" in 1910 (Wesley 1955: 88–91, 97–99, 119). Also, the IBPOEW never had a single lawyer coordinating efforts as Watkins had for the Pythians. Both factions had their own leading attorneys through 1910. Even after reunification and the establishment of a grand legal adviser in 1913, in the following decade six different men filled the position, no one dominating the office as Watkins had as Pythian supreme attorney (ibid.: 443).

Despite these obstacles, many leaders of the IBPOEW, recognizing the seriousness of this litigation, mobilized significant internal support and legal expertise. Although they did not centralize their strategy for defense in the way that the Pythians had, they were in contact with lawyers, keeping track of cases across the country, offering advice, and in some instances promising aid (examples in ibid.: 122, 129, 132). As in the Pythian cases, initial defeats caused concerns over further arrests and litigation and the resultant legal fees. Some suggested changing their name to avoid confrontations. In response to such sentiments, leaders used national conventions to rally

support for their defense. In 1908, Grand Exalted Ruler William Atkins of the New York faction did so by framing their legal struggle in dramatic terms: "Luther persisted and the reformation arose. Washington persisted and America was set free. . . . Might we not take fresh hope and try on?" He also stressed the importance of the loyalty of all Elks by telling his listeners that this was "no occasion for weakness" and that "the stability of any institution depends on the faithfulness and fidelity of its members" (quoted in ibid.: 90–91).

His plea convinced lodges across the country to retain the name of Elks and battle representatives of the BPOE in court (ibid.). In New York, New Jersey, Washington, D.C., and Virginia, IBPOEW lodges all obtained charters of incorporation in attempts to protect themselves from litigation. Likely due at least in part to opposition by the black Elks and other parallel orders, emblem laws failed to pass in Washington, D.C., Missouri, Iowa, Illinois, New Jersey, and Massachusetts (see Table 2).[21] And in Montana, where such a law passed in 1907, lawyers for the IBPOEW convinced the state supreme court that it violated the Fourteenth Amendment, nullifying the law in the only court ruling decided on the basis of racial discrimination (*State v. Holland* [1908]).

As more trials arose, the lodges of the IBPOEW also developed an impressive network of African American lawyers (see Appendix A). While the Pythian network, coordinated from Chicago, remained closely connected to the South, the Elks network was more nationally balanced, strongest in New York but spread throughout 23 states, reflecting the breadth of the assault. Lawyers for the Elks had equally strong fraternal and political ties. At least 11 were active in local, state, or national politics, and at least 4 also held positions with the emergent NAACP, including D. Macon Webster, the first black attorney to serve on the National Legal Committee. Webster, who took the lead in the trials in New York, was admitted to the bar around 1890 and developed an exceptionally successful corporate practice, using his expertise in import-export law to attract such clients as Tiffany and Company and Lord and Taylor in 1915. Although his corporate clients occupied most of his time, he was also involved in a number of cases concerning civil rights. In the aftermath of a race riot in New York City in 1900, he helped in cases that sought legal redress from the police. Also, in 1911, he aided Booker T. Washington in an incident involving an assault on Washington in retaliation for his alleged propositioning of a white woman (Smith 1993: 400, 421; Carle 2002: 112–13).

Webster's defense of the IBPOEW in New York differed from that of the Pythians in several ways. Since the IBPOEW had no national coordinator comparable to Watkins, the lawyers in New York had much more autonomy. Although they received official permission from the national Grand Lodge, Webster and the rest of the "New York delegation" decided their course of action on their own (Wesley 1955: 122, 129). In choosing to fight the BPOE in the courts, they faced a situation more challenging than the Pythians had. Unlike the white Pythian organization of Georgia, which was not incorporated at the state level, the BPOE of New York had received a charter of incorporation from the state legislature in 1871. While in 1907 the IBPOEW also had obtained a charter in New York under a new nonprofit organization statute, this statute forbade the chartering of an organization that copied the name of one already in existence. The BPOE thus obtained an injunction against the IBPOEW in 1908. While lawyers for the IBPOEW argued that this stipulation did not apply to their clients because adding "Improved" and "of the World" made the names of the two orders substantially different, the courts disagreed and, despite appeals, upheld the injunction in 1909 and again in 1912, basing their decisions on the "legislative intent to repress the deceptive adoption of preexisting corporate names" of state general corporation laws.[22]

The failure of the black defense in the civil trials of New York underscored the importance of legal strategy in a legal system that denied the salience of race. Taking a view similar to that of the courts of Georgia, the court of appeals in New York held that despite the fact that the two groups were of different races, "the question of color" did not "have any legal significance in the litigation." It framed the case as a matter of general principles concerning a "prior right" to the name Elks and whether use of the name Elk had any injurious effect on the white organization such that it would have the "right to injunctive relief." The evidence therefore had to be weighed "as though members of both corporations were all of the same color" (*BPOE v. IBPOEW* [1912]).

In addition, lawyers for the IBPOEW did not use a defense based on laches. While the Black Knights of Pythias was founded in 1880, the IBPOEW was founded almost twenty years later in 1899. The white Pythians had waited more than 20 years to take legal action against their black counterpart, but the BPOE had acted much more quickly. Lawyers for the IBPOEW in all likelihood assumed that laches then would not apply. Also,

because neither the white nor the black Elks in New York who were parties to the suit had received federal charters, the lawyers could not use federal incorporation as the basis for a claim of federal jurisdiction. So in 1913, when the black Elks appealed to the U.S. Supreme Court with only the black and white Elks of New York named in the case, the Court denied a writ of error, claiming that this was not a federal matter. Still, the black Elks tried again in 1916 but again were denied a writ (Wesley 1955: 129, 145).[23]

Regardless of this defeat, the strong opposition mounted by the IBPOEW across the country seems to have made elements of the BPOE reconsider moving forward with lawsuits. While most members and leaders of the BPOE opposed the existence of the IBPOEW, a few were more tolerant of the black Elks and did not support the trials from the start (Dickerson 1981: 245–46). More importantly, leaders of the BPOE seem to have completely underestimated the willingness and ability of the IBPOEW to conduct a legal defense. They simply did not think the black Elks would put up much of a fight. The suits soon became a financial burden for the white Elks, and with the IBPOEW preparing appeals all the way to the Supreme Court, many local lodges and members decided not to pursue the cases further (Wesley 1955: 137; Dickerson 1981: 254, 260–61). At the national level, the leaders of the BPOE seem to have withdrawn support for litigation against the IBPOEW. Yet they were not completely in control of the organization, and so despite a lull in tensions beginning in 1913, a new wave of lawsuits began in 1915 with individuals rather than lodges instigating the cases (see Table 2) (Wesley 1955: 134, 137; Dickerson 1981: 250–51).

It was under these circumstances—older cases still pending in courts across the country, a new wave of arrests, and an injunction in New York—that the IBPOEW again undertook an effort to resolve the conflict. This time, however, the black Elks focused their energies outside the courts. Across the country, local IBPOEW lodges attempted to contact BPOE lodges directly to negotiate solutions, sometime successfully. In Minnesota the African American Elks invited the white Elks to a "harmony banquet" to settle their differences (Wesley 1955: 134; Dickerson 1981: 250). In the meantime, national leaders also took steps to reduce tensions. In 1913, Grand Exalted Ruler T. G. Nutter formed an official committee that secured a meeting with national officers of the BPOE. Although this meeting did not result in an official statement from the national Grand Lodge of the white Elks opposing the litigation, it likely influenced the decision to withdraw support on an unoffi-

cial basis. In 1915 Nutter also suggested that the IBPOEW prevent its own members from wearing BPOE pins. Members of the black Elks often wore BPOE pins because the IBPOEW did not have its own official pin and the BPOE pin was readily available commercially. The next grand exalted ruler, Armond Scott, followed Nutter's example, and by 1917 the national Grand Lodge had passed an internal law forbidding members to wear BPOE pins and formed a committee to create an official pin of their own (Wesley 1955: 133–34, 140, 146–47; Dickerson 1981: 238, 247–50). Scott renewed efforts to contact national leaders of the white Elks, writing several letters to Grand Exalted Ruler Fred Harper of the BPOE. Thus, their approach shifted from a focus on confrontation in the courts to seeking direct contact with the white Elks.

Scott's letters underscore the skill of African American fraternal orders in creating dual narratives. While internally leaders united members through aggressive and rousing speeches, externally they asserted their rights in a far more conciliatory manner. Scott's letters selectively emphasized those aspects of his order that would make it most appealing to the white Elks. While he firmly made clear that the IBPOEW had every right to exist and would not back down from litigation, he presented himself and his order in the least-threatening manner possible. He praised the "wisdom" and "broad-minded attitude" of Harper's leadership of his "splendid" organization and referred to himself as his "humble servant." As for the IBPOEW, Scott wrote that "we are striving, in our weak and humble way, to help better the conditions of our unfortunate people."[24]

A number of interesting contrasts emerge through a comparison of Scott's description of the IBPOEW in these letters with sentiments expressed to African American Elks alone. In the letters, Scott spoke only of the patriotism and service of black Elks in wartime. In speeches at conventions, Scott similarly praised members for their actions in the world war but added that such loyalty was even more impressive because it existed despite "the fact that this race of ours has been continually the victim of caste prejudice and injustice" (Wesley 1955: 143, 150). Additionally, in the letters Scott wrote that their "chief mission" was simply "to dispense charity to . . . less fortunate brothers." In these same years, however, the IBPOEW was already moving toward direct political activism, urging members to vote, endorsing specific candidates as early as 1914, and donating money to the NAACP as early as 1922 (ibid.: 124, 173). Within less than a decade the IBPOEW founded

a commission on civil liberties (later the Civil Liberties Department) entirely devoted to developing a national network of civil rights activism (ibid.: 208, 214–15).

Scott's letters achieved their goal. At the national Grand Lodge meeting of the BPOE in 1918, Harper instructed all state and local lodges to end their litigation, and although a few persisted, they did so without support from their national organization (ibid.: 37–38, 151–52). In large part, the litigation was over (Dickerson 1981: 259). In New York, there were no further arrests, and while injunctions remained on the books, authorities did not enforce them. In 1927, to accommodate the black Elks who wanted to hold their convention there, a New York superior court officially dissolved the injunction with the approval of the white Elks (Wesley 1955: 203; *Atlanta Independent* 1927a, 1927b).[25] By meeting the challenge of the BPOE in the courts and by establishing direct contact with their local and national leaders, the IBPOEW solved their legal troubles and also firmly established their right to exist as an organization.

The Shriners in Georgia and Texas

While the Pythians were celebrating their victory at the Supreme Court—and the Elks were waiting for the outcome of their appeal in New York—a third white order began a major legal challenge to its black counterpart. Although a branch of the African American Masonic family, the black Shriners, unlike the Prince Hall Masons, did not originate with a British charter but were indigenous to the United States.[26] The black Shriners, however, believed that those moving against their order sought to eliminate all forms of black Masonry and simply started with the Shriners as the smallest branch, with only 3,000 members by the mid-1910s (Walkes 1993: 93, 107). And so in 1914 the Yaarab Temple of white Shriners in Atlanta, Georgia, where courts had recently ruled against the black Pythians, sued for an injunction against the Rabban Temple of the black Shriners. As in the Pythian trials, lawyers for the Rabban Temple grounded their defense in racially neutral legal strategies based on common-law understandings of competition, state incorporation laws, and laches (ibid.: 84–85). Yet while there was a 16-year gap between the founding of the black Pythians in Georgia in 1890 and their first lawsuit in 1906, there was only a 6-year gap between the founding of the Shriners in 1908 and their first lawsuit in 1914. The Supreme Court of Georgia thus

decided that laches did not apply, ruling against the Rabban Temple in 1915 and again in an appeal in 1918 (*Faisan v. Adair* [1915, 1918]).

The importance of translocal organization also becomes clear in the defense mounted by the African American Shriners. Unlike most fraternal orders, the Shriners did not have state-level organizations, with only a national Imperial Council binding local temples together. This national body assumed a leading role in the defense of local branches. The lawsuit in Georgia immediately drew the attention of the black Imperial Council, which, realizing that the fate of the national organization was at stake, quickly moved to raise funds and retain legal counsel to defend the order. News of events in Atlanta sparked a flurry of telegrams among national leaders, who began collecting documents related to incorporation and contacting lawyers (Walkes 1993: 83–84). When the Rabban Temple of Atlanta went bankrupt after paying legal fees to take its case to the state supreme court, its members turned to the national leaders for aid (ibid.: 88, 90). The Imperial Council responded by establishing a legal defense fund in 1917, supported with an assessment of one dollar per member (ibid.). Presenting this loss in Georgia as a danger not only to black Shriners but to all of black Masonry as well, the officers unanimously voted to empower the Imperial Council to finance an appeal for the Rabban Temple all the way to the U.S. Supreme Court, even at an estimated cost of $3,000 (ibid.: 92–93, 96–97). They hired the law firm of Denison, Watkins, and White of Chicago to serve as chief defense counsel (ibid.: 88). The Watkins of this firm was none other than S. A. T. Watkins, supreme attorney for the Pythians. As in the Pythian case, Watkins, working with his partner James E. White, focused efforts on an appeal to the U.S. Supreme Court. Despite the denial by the Georgia courts of the existence of any federal questions, the defense committee of the black Shriners was certain that it would be able to make an appeal (ibid.: 97).

The defense committee was mistaken, however, and the Supreme Court refused to hear the case in 1919 (ibid.: 100). Although originally the Yaarab Temple of the white Shrine initiated the lawsuit against the Rabban Temple of the black Shrine, a judge in one of the lower courts in Georgia allowed the members of the Yaarab Temple to sue members of the Rabban Temple as individuals rather than as an organization (ibid.: 85; *Faisan v. Adair* [1915, 1918]). With only individuals suing individuals and no involvement of either federally incorporated Imperial Council, there was no reason for the federal courts to declare jurisdiction.

While we do not know all the details surrounding the choice to alter the plaintiffs, it seems clear that this move reflected a strategic decision on the part of the legal counsel of the white Shrine. With only individuals as parties in the suit, state-level laws protecting incorporated voluntary groups were not applicable. The courts could not found their decision on any statutory basis and instead relied on broader questions of equity and fraud in ruling against the black Shriners (*Faisan v. Adair* [1915, 1918]). The implications of a decision made on such grounds were potentially extremely beneficial for the white Shriners, and they knew this. A 1916 article entitled "Here's Good News: Negro Shrine in Georgia Ordered Out of Business" in the *Crescent*, the official organ of the white Shrine, began by emphasizing that "members of the Shrine, throughout the entire jurisdiction have been anxiously watching the results of the proceedings." It also highlighted the grounds upon which the Georgia courts made their ruling, claiming that they placed "the case above the local laws of our country," which thus meant that "any other state in the Union [could] now proceed the same way—by court proceedings to stamp out the existence of the Negro imitation of the Shrine" (reprinted in Walkes 1993: 93–94). Such hopes for the broad applicability of this precedent continued to be expressed among the white Shriners, notably by Forest Adair, whose name appeared as a party in the lawsuit, at national conventions (ibid.: 111, 115).

Over the next few years, the Imperial Council of the white Shriners focused much attention on broadening the legal attack on their black counterpart. Pleased with the outcome in Georgia in 1918, they began another wave of litigation that spread to California, Texas, Arkansas, Louisiana, Florida, and North Carolina (see Table 2). The Imperial Council discussed strategies for these cases at every national convention from 1919 to 1922 and probably in later years as well. Its members decided to send out a letter to the head of every local temple where a black temple was thought to exist, asking for information on the black Shrine and encouraging litigation. They formed the Committee on Clandestine Shrines to promote the use of the courts to prevent "Negroes and others" from stealing their name, rituals, and emblems. While here and elsewhere the proceedings from their national conventions carefully described these lawsuits as against all copycats, not just African Americans, other Shrine publications, most notably the *Crescent*, expressed more racist motivations. This newspaper often described blacks as "coons" and "niggers" and published derogatory cartoons (ibid.: 104, 111–16, 126–27).

The national leaders of the black Shrine also mobilized their own order in these same years. They levied more assessments on members, made speeches at conventions to garner support, and even traveled around the country to local lodges to plead for funds (ibid.: 101–7). Like the Pythians and the Elks, they networked an impressive team of lawyers, with at least nine local attorneys, mostly Masons, based in cities across the country (see Appendix A). Again, these lawyers were a vital resource in the careful development of a legal strategy. After the refusal of the Supreme Court to review their case in Georgia, the imperial potentate of the African American Shrine met with Watkins and White in Chicago, where they decided to alter the terms of a case pending in Texas in order to secure a federal hearing. White then presented their proposed defense at the next national convention and received strong endorsement to proceed (ibid.: 101).

The case in Texas began in 1918, when a Houston temple of the white Shrine applied for an injunction based on claims of "fraudulent deception" against an African American temple in the same city. Given that the black temple was only a year old, laches would not apply. The next year, Watkins and White, working with local attorneys in Texas, voluntarily added the Imperial Council of the black Shrine as a party to the suit in defense of its local branch. The case remained undecided until March 1922, when a district court in Texas granted a temporary injunction against the Houston lodge of the black Shrine. By December the Imperial Council of the white Shrine also joined the suit, and the courts issued an injunction against the black Imperial Council as well. A federal district court made these injunctions permanent in 1924, a decision upheld by the Court of Civil Appeals in 1925 (*Burrell v. Michaux* [1925, 1926]). As in Georgia, these decisions were made on the basis of general legal principles concerning fair competition rather than specific laws. Unlike the case in Georgia, however, because of the involvement of the Imperial Council of the black Shrine, Watkins and White attained a hearing before the U.S. Supreme Court in 1929, claiming jurisdiction based on the federal incorporation of both Imperial Councils and the Pythian precedent.

Having achieved federal jurisdiction, however, Watkins and White still had to persuade the Supreme Court that the substance of the Texas court decisions was in error. Working with two white attorneys from Boston (one of whom was Moorfield Storey, president of the NAACP), they argued that injunctions against the African American Shriners were racially motivated

and hence violations of their Fourteenth Amendment rights. Aware of the legal and political climate, they likely held more hope in the efficacy of their racially neutral claims about laches and federal jurisdiction. Citing the 1912 Pythian case, they made the same argument of laches: the white Shriners, having known about the existence of the parallel order for years, had lost their right to sue. They also argued that their clients were not trying to defraud anyone into confusing the two organizations and denied that the whites had an exclusive right to the name, asserting that it was widely known and accepted that there were separate black and white orders.

The Court agreed on both counts. They found the white Shriners guilty of laches, which barred them "from asserting an exclusive right, or seeking equitable relief, as against the negro order." And although the justices did not rule in favor of arguments about the Fourteenth Amendment, they were more candid about the importance of race than their predecessors in the 1912 decision. In their ruling, they openly wrote of the role of race, denying any "fraudulent intent" on the part of the African American Shriners, agreeing that both organizations made it clear that they were open only to members of one race (*Ancient Egyptian Arabic Order of Nobles of the Mystic Shrine v. Michaux* [1929]). Overruling the courts in Texas, the U.S. Supreme Court gave the black parallel orders their second Supreme Court victory on the matter, one that marked the end of further litigation against the Shriners.[27]

Conclusions

In the end, the remarkable efforts exerted by the white orders in these failed attempts to put an end to their black counterparts can only be understood in the context of the broader assault on African Americans' rights at the turn of the century. The flood of charter applications that accompanied the rapid growth of the parallel organizations explains the timing. Rousing the animosity toward all black fraternal orders, parallel or distinctive, however, was the fear and hostility many whites felt toward all forms of organized black life. This fear was most evident in the violence that erupted against black institutions in Georgia in the years of the fraternal litigation targeting fraternal lodge halls, parallel and distinctive, churches, schools, and private property. Some justified such opposition to fraternal orders by claiming that they served as covers for criminal activity or for labor practices such as price fix-

ing. There is evidence that at times certain fraternal orders and other secret societies may have in fact served as quasi labor unions (Hunter 1997: 71, 88), although for the most part fraternal leaders vehemently denied such accusations, asserting the apolitical status of their organizations.[28] Regardless of their veracity, however, such claims gained enough prominence in Georgia in particular that by 1910 a mayoral candidate in Atlanta ran on a platform that included a promise to end all labor organizing through secret female fraternal organizations in order to protect "helpless" white women from their domestic help. Only two years later, a Georgia candidate for the U.S. Senate made similar claims (ibid.: 210–11, 223). Again, although there may have been truth in the assertion that individual black fraternal orders were involved in occasional labor disputes, at least some white contemporaries realized that the animosity was part of a much longer-term anxiety about black organizations dating back to what one newspaper called fears of "servile conspiracy and insurrection" by slaves in the antebellum years (*Atlanta Independent* 1912c). Indeed, historians have documented how before the Civil War the widespread fear of slave insurrection resulted in suspicion of nearly all groups of black Americans in Georgia, free or slave, often leading to repression and violence (Mohr 2001: 3–11, 20–35). Years later, when African Americans were explicitly ordered "not to meet in their lodge rooms and churches or assemble together," the message was clear (*Atlanta Independent* 1910b). Thus, the legal assault on black parallel orders, at least in Georgia, was likely part of a much larger desire to limit or even eliminate all organized institutions and forms of assembly in African American communities.

Why then did African Americans, when faced with such a threat, insist on the right to use the same names and rituals of the white orders? Clearly, the right to organize was at stake, but why would blacks have further opened themselves up to such attacks by using these names and rituals? While their lawyers externally framed the legal resistance in terms of laches and jurisdiction, the leaders of the parallel orders understood the cases as having much broader significance, an explanation articulated internally.

As noted, membership in parallel orders provided African Americans with an opportunity to assert a sense of equality and self-worth, to prove that they too could meet the codes of morality and respectability that they felt these organizations embodied. State and national conventions offered one key venue in which members articulated internal understandings of their organi-

zations and their fight to defend them. Conventions were an important part of fraternal life, providing the opportunity for members to gather, solidify translocal ties, and articulate shared values. Here countless leaders made speeches to rally members to the cause of the trials. In his annual address at their national convention in 1920, Caesar R. Blake, the imperial potentate of the black Shriners, described the trials as part of a "life and death struggle" motivated by "intense hatred of our race." He told his listeners that defending their "rights in the courts . . . to exist as a Body of the Mystic Shrine" was their "duty . . . as members of a victimized race" (Walkes 1993: 106). Indeed, all the parallel orders described their legal troubles in striking terms. For the Elks, Grand Exalted Ruler Harry H. Pace spoke of the need for forging a unified front against the litigation, of the need "to fight for every one of our rights, and to go down together like men or stand in a solid phalanx victorious" (Wesley 1955: 124). S. A. T. Watkins connected their struggle to that of the American Revolution, echoing the ideals of 1776 by stating at the Pythian national convention in 1909 that they were "entitled to the blessing of life," to "liberty, the liberty of private and public assemblage and of speech," and "to the pursuit of happiness, the happiness of association and close contact with one's fellowman, without molestation or interference" (Williams et al. 1917: 314).

Fraternal members and leaders also expressed this more radical, internal narrative about the meaning of the litigation through their own publications. The *Atlanta Independent*, for example, provided a window into the fraternal world in these years, and its many editorials concerning the legal battles detailed a very clear understanding of their momentous significance.[29] There, in Georgia, facing immediate danger, African Americans framed their fraternal troubles in even starker terms. They began by making clear that despite claims to the contrary, most blacks recognized that these trials had little to do with the simple exclusive right to the use of certain emblems or rituals. Rather, they were part of "a fight against the Negro people because they are Negroes" (*Atlanta Independent* 1908d). They spoke of these cases as a matter of their "manhood rights," specifically the right to form organizations. Having recently lost their right to vote through legal disfranchisement and having watched the Republican Party in the state become less and less effectual, many blacks realized the increased importance of fraternal orders under such conditions. Moreover, they realized that the loss of one fraternal order

could mean that no other organization was safe. As one editorial (*Atlanta Independent* 1909a) claimed,

> this fight in Georgia against the Knights of Pythias, is a fight against the manhood rights of the race, and is only a beginning of the white man's fight against all Negro societies. If they succeed in stopping us from dispensing charity, benevolence and brotherly love among ourselves according to our own conscience, it will not be long before the same men will go to the courts and see to enjoin us from using the words Methodist and Baptist, and later will enjoin us from calling upon the God of heaven.

In the simplest possible terms, the *Independent* (1909b) made its point: "The Order must be rescued, or we will have no order."[30]

In saving their orders, lodges had to overcome great obstacles. Defending themselves required the ability to raise large amounts of money to pay lawyers and cover additional costs. Leaders of the white fraternal orders realized this and hoped that the costs of the trials alone would bankrupt the African American orders, a well-known technique to run organizations out of business (Walkes 1993: 107). But they were wrong. While a local lodge alone would not have had the financial resources to defend itself, those with ties to a national network of support did. As we have shown, the translocal structure of the national organizations of which they were a part enabled them to turn local disputes into national ones, devise strategies based on the interplay of different levels of government, and sustain a discourse that facilitated internal mobilization and minimized external opposition. Beyond formulating a single strategy, however, this network of fraternal lawyers and leaders with whom they collaborated developed the ability to learn from their mistakes, respond creatively to new challenges, and improvise new approaches, building their strategic capacity. This capability explains how these orders raised the money, how they mobilized the talented attorneys, and how they developed the legal strategy to succeed. In so doing, fraternal orders achieved one of the most remarkable victories, with national ramifications, in resisting the onslaught of discriminatory legislation and legal and social repression marking the rise of Jim Crow.

The relationship that developed between fraternal orders and their paid legal advocates brings to light an important and neglected stage in the development of civil rights activism based on the use of strategic litigation. As

noted, black fraternal orders had remarkable access to networks of African American lawyers across the country, partly because many prominent lawyers were members. In addition to churches (Mack 2002), fraternal orders were one of few sources of institutional business for black lawyers. Their involvement in litigation arising out of organizational contention and insurance disputes enabled men such as George W. F. McMechan and William J. Latham to build successful practices based on the representation of fraternal orders (Carle 2002: 125; Smith 1993: 296). When faced with legal challenges from their white counterparts, these lawyers became a critical resource that could be mobilized in their defense.

Although scholars have carefully documented the NAACP's development of a national litigation strategy on behalf of civil rights, their focus on that organization alone has led many to miss the important role of fraternal orders in facilitating development of national legal networks to coordinate litigation in multiple states and across different levels of government. For example, one legal historian claims that only with the emergence of the NAACP, "for the first time black people were given systematic litigation support" in important cases related to civil rights (Schmidt 1982: 456–57). At the same time, the use of primarily white lawyers by the early NAACP has misled other scholars into thinking this decision reflected a lack of competence or commitment on the part of black lawyers, rather than a strategic choice by NAACP leadership. According to one article, "with most black lawyers caught in a vicious circle of discrimination and inexperience, their usefulness to the fledging NAACP was limited" (Meier and Rudwick 1976: 917). Yet it was in fact the NAACP's decision to rely on pro bono litigation that made it more dependent upon wealthy white lawyers who could afford to work for free (Carle 2002: 144). Fraternal orders, however, with their vast memberships and infrastructures and resultant ability to raise funds, provided an alternative source of institutional support for civil rights litigation. With the resources to pay their attorneys, fraternal orders relied far more heavily on blacks than the NAACP did in these years.

The legal struggles with the white orders were also important for the development of a litigation strategy for civil rights based on the use of the "test case." Test cases are a legal tactic in which lawyers or organizations either search for or intentionally create a lawsuit with the intent of establishing a precedent upon which future cases will be decided. This approach

was central in the NAACP from its founding in 1909. Although the NAACP began a number of test cases in the decade after its creation, the entry of the United States into World War I and the resultant drop in available funds led to a lull in such cases that did not end until the mid-1920s (ibid.: 100–101, 129–30).

During this lull, in 1919 S. A. T. Watkins and his partner James White began orchestrating a test case of their own for the African American Shriners. From the success of black Pythians in Georgia (and perhaps also from the failure of the IBPOEW in New York), they learned about the need to have a federally incorporated party in a lawsuit to gain a federal hearing. From the actions of the white Shriners in Georgia, who decided to sue as individuals rather than as an organization, they learned about the possibility of altering the parties in a lawsuit to limit the opportunity for appeal. With no state or national organizations involved, the black Shrine could not appeal. And so when an opportunity presented itself, they met with the leaders of the black Shriners to tailor a case to gain a federal hearing. By adding the national Imperial Council of the black Shrine as a party to a suit in Texas previously involving only two local temples, they created a test case that achieved a federal hearing, won a victory before the Supreme Court, created a precedent, and thereby ended litigation against the order across the United States.

The outcomes of this test case and the earlier Pythian Supreme Court victory also demonstrated the power of federal protection. The strategy that Watkins and White developed was no secret. White announced their plan at the national meeting of the Imperial Council (Walkes 1993: 101), and the Supreme Court ruling in favor of the black Shriners underscored the potential of test cases and the use of federal courts to seek redress for rights denied at the state or local level. The black Shriners' official history even explicitly argues that the 1929 Supreme Court victory taught all Masons that there were "certain constitutional rights guaranteed to African Americans by the Federal Constitution which cannot be taken away by any state government" (ibid.: 137). Like that of the NAACP, the legal strategy of the fraternal orders relied on the federal government to defend their rights.

Having successfully defended their own right to exist as organizations, fraternal orders continued to contribute financial, organizational, and strategic resources that were crucial to civil rights activism in years to come. Scholarship that has explored the origins of the civil rights movement of the 1950s and 1960s often cites advocacy groups, churches, and black colleges as

incubators of protest (Morris 1984; McAdam 1982). Yet we must also add fraternal orders to this list of institutions. For in the years following their legal victories, many orders encouraged their members to support the work of the NAACP or even to join themselves; others went further and collaborated with the NAACP on specific civil rights cases. The Shriners and the Prince Hall Masons became major financial donors and established formal institutional connections by the 1950s. The Prince Hall Masons' legal research fund, controlled by the NAACP, raised over $142,000 in 1958 alone. Fraternal support to the NAACP was so important that in that same year Thurgood Marshall, himself an Elk and a Mason, publicly declared that without Masonic financial assistance, many of the NAACP's victories before the Supreme Court would not have been possible (Walkes 1998: 57, 61, 1993: 59, 78, 125, 279; Muraskin 1975: 230; Wesley 1955: 173, 214, 411–13). The Elks also began donating money to the NAACP in 1922 and by 1927 undertook a joint project to desegregate the schools of Gary, Indiana, with the NAACP through its Commission on Civil Liberties. This commission, later renamed the Civil Liberties Department, became a central component of the Elks organization and took a lead role in fraternal civil rights activism from the 1930s through the 1950s. The department created a national network of local Elks civil liberties leagues devoted to an expansive list of issues, including antilynching legislation, the elimination of residential and public segregation, equal opportunities in schools and places of work, and voting and "full citizenship" rights. Although the department used a variety of tactics, it concentrated on lobbying the federal government for legislation that would defend blacks throughout the United States, past legal troubles having demonstrated the potential of federal protection. The Elks invited 75 fraternal orders to a two-day convention in Washington, D.C., in 1927. There, they drafted petitions to submit to Congress, declaring the need for fraternal orders to unite their power to help the race by influencing the federal government (Wesley 1955: 213–15, 225, 271, 286, 368). In short, out of their own struggle to defend themselves emerged a renewed conviction that fraternal orders must continue to serve as a vital source of financial and institutional support for civil rights activism in order to fulfill what leaders and members believed was their duty to their race.

Appendix A Fraternal network of African American lawyers

Lawyer	Residence	Law school	Bar	Fraternal membership	Fraternal officer	Political office	Ties to the NAACP
Pythians							
Booth, Benjamin Franklin	Memphis, TN	Apprentice	1886	Pythian, Mason	Grand attorney of TN (KP)	R	
Brown, Edward Austin	Birmingham, AL	Apprentice	1898	Pythian	Grand attorney of AL (KP)		
Johnson, Henry Lincoln	Atlanta, GA	University of Michigan		Elk, Odd Fellow	Grand legal adviser (E)	R–national Republican committeeman, GA; recorder of deeds, DC, 1909	
Latham, William J.	Jackson, MS	Central Tennessee	1902	Pythian	Grand attorney of MS (KP)		
Mollison, Willis E.	Vicksburg, MS	Apprentice	1887	Pythian, Mason, Odd Fellow		R–delegate to Republican National Convention; DA pro tem, Vicksburg, 1892	
Pettie, F. B.	Atlanta, GA			Pythian	Grand attorney of GA (KP)		

Stanton, William Henry	Pittsburgh, PA	Apprentice	1895	Pythian, Elk, Mason, Odd Fellow, True Reformer	Grand attorney of PA (KP); grand legal adviser of PA (E)	R
Taylor, (Nathan S.?)	Greenville, MS	University of Michigan	1915	Pythian	Grand attorney of MS (KP)	U.S. attorney, Illinois, 1928
Turner, J. Thomas	Tennessee			Pythian	Grand attorney of TN (KP)	
Warring, Everett J.	Philadelphia, PA; Baltimore, MD	Howard University	1885			
Watkins, S. A. T.	Chicago, IL	Apprentice	1891	Pythian	Supreme attorney (KP)	D–asst. prosecuting attorney, Chicago, 1898–1907; asst. corp. counsel, 1911; asst. U.S. DA, Chicago, 1919
Elks						
Billups, Pope Barrow	New York, NY	New York University	1917	Elk, Pythian, Odd Fellow, "IBPO of Moose"	Exalted ruler (E); grand lodge attorney (KP); supreme lodge attorney (M)	R–assemblyman, NY State Legislature, 1925

Appendix A (continued)

Lawyer	Residence	Law school	Bar	Fraternal membership	Fraternal officer	Political office	Ties to the NAACP
Booth, Benjamin Franklin	Memphis, TN	Apprentice	1886	Pythian, Mason	Grand attorney of TN (KP)	R	
Ceruti, Edward Burton	Los Angeles, CA	Brooklyn Law School	1912	Elk, Pythian, Mason	Receiver of moneys for legal defense (E); grand legal adviser (E); exalted ruler (E); grand chancellor of CA (KP)		Attorney for southern CA branch office
Church, Robert R.	Memphis, TN			Elk			
Fleming, Thomas Wallace	Cleveland, OH	Cleveland Law School	1906	Elk, Mason	Grand legal adviser (E)	R–Cleveland City Council, 1909, 1917	
Henderson, David E.	Kansas City, KS			Elk		Special asst. to U.S. attorney general	
Howard, Perry Wilbur	Washington, DC; Jackson, MS	Illinois College of Law (De Pauw)	1905	Elk, Pythian, Mason, Odd Fellow, Woodman	Grand legal adviser (E)	R–special asst. to U.S. attorney general, 1921; Republican national committeeman	Involved in fund-raising

James/Jaymes, Sully	Springfield, OH	Boston University; University of Michigan	1901	Elk, Pythian	Grand legal adviser (E)	D–member National Democratic League; recorder of deeds, DC, 1914
Johnson, Henry Lincoln	Atlanta, GA	University of Michigan		Elk, Odd Fellow	Grand legal adviser (E)	R–national Republican committeeman, GA; recorder of deeds, DC, 1909
King, Laudros Melendez	Washington, DC	University of Michigan; Howard University	1898	Elk, Order of Malachites	Founder of Order of Malachites, 1914	R–examiner chancery of municipal court, DC
Lewis, C. Henri	Detroit, MI				Grand legal adviser (E)	
McMechen, George W. F.	Baltimore, MD	Yale University		Elk	Grand legal adviser (E); grand exalted ruler (E)	
Morris, William R.	Minneapolis, MN	Apprentice	1889	Elk, Pythian, Mason, Odd Fellow, PMVP	Grand legal adviser (E); deputy supreme chancellor and brigadier general of uniform rank (KP); associate justice of the supreme court (OF)	

Appendix A (continued)

Lawyer	Residence	Law school	Bar	Fraternal membership	Fraternal officer	Political office	Ties to the NAACP
Norris, Thomas	Dayton, OH			Elk			
Nutter, Thomas Gillis	Charleston, WV	Howard University	1900	Elk, Pythian, Mason	Grand exalted ruler (E); supreme master of the exchequer (KP)	R–WV Legislature, 1918; clerk to state auditor	Member national legal committee; president of local branch
Perry, Rufus Lewis	Brooklyn, NY	New York University	1891			Assistant DA for Kings County	
Rivers, Francis Ellis	New York, NY	Columbia University	1923			R–New York General Assembly, 1930; assistant DA for NY County, 1938	
Scott, Armond W.	Washington, DC	Shaw University		Elk	Grand legal adviser (E); Grand exalted ruler (E)	D(?)–municipal court judge, DC	Speaker in 1937
Stanton, William Henry	Pittsburgh, PA	Apprentice	1895	Elk, Pythian, Mason, Odd Fellow, True Reformer	Grand legal adviser of PA (E); grand attorney of PA (KP)	R	
Thorne, Phillip M.	New York, NY	Yale University	1913	Mason, Knights Templar, Shriner			Member of national legal committee

Weaton, J. Frank	New York, NY			Elk	Grand exalted ruler (E)		
Webster, D. Macon	New York, NY	Columbia University; apprentice		Elk	Member of committee on law and revision		Member of national legal committee
Wetmore, Judson Douglas	Jacksonville, FL; New York, NY	University of Michigan	1899			R	
Shrine							
Broyles, (M. H.?)	Houston, TX						
Ceruti, Edward Burton	Los Angeles, CA	Brooklyn Law School	1912	Mason, Elk, Pythian	Receiver of moneys for legal defense (E); grand legal adviser (E); exalted ruler (E); grand chancellor of CA (KP)		Attorney for southern CA branch office
Crawford, George Williamson	New Haven, CT	Yale University	1905	Mason, Shriner		New Haven Probate Court clerk, 1904–7	
Heathman, William Aaron	Providence, RI	Boston University	1898	Mason, Pythian	Officer in Supreme Lodge of Knights of Pythias	R–accountant for state returning board, 1902–11	

Appendix A (continued)

Lawyer	Residence	Law school	Bar	Fraternal membership	Fraternal officer	Political office	Ties to the NAACP
McGuinn, Warner T.	Baltimore, MD	Howard and Yale Universities	1887	Mason, Elk		R–commissioner for liquor and licenses of Baltimore; Baltimore City Council, 1918	"leader" of Baltimore branch
Perkins, Daniel Webster	Jacksonville, FL	Shaw University		Mason, Pythian, Elk, Odd Fellow, Samaritan, Mosaic Templar, Woodman		R	Branch president, Tampa
Smith, Wilford H.	Galveston, TX	Boston University					
Watkins, S. A. T.	Chicago, IL	Apprentice	1891	Pythian	Supreme attorney (KP)	D–asst. prosecuting attorney, Chicago, 1898–1907; asst. corp. counsel, 1911; asst. U.S. DA, Chicago, 1919	
White, James E.	Chicago, IL	Howard University					

Sources: The biographical information presented here is from Mather 1915; Boris 1927; Green 1979; Meier and Rudwick 1976; Smith 1993; Burroughs 1996; and Carle 2002. Information on the involvement of these lawyers in litigation with white orders is from Williams et al. 1917; Wesley 1955; Walkes 1993; Dickerson 1981; articles in the *Atlanta Independent*; and trial records (see Appendix B). This list is not comprehensive; undoubtedly more lawyers were involved.

Note: E = Improved Benevolent and Protective Order of Elks of the World; KP = Knights of Pythias of North America, South America, Europe, Asia, Africa, and Australia; M = Ancient Free and Accepted Prince Hall Masons; OF = Grand United Order of Odd Fellows.

Appendix B Court cases cited

The Afro-American Order of Owls v. Talbot, 123 Md. 465 (1914).
Ancient Egyptian Arabic Order of Nobles of the Mystic Shrine et al. v. Michaux et al., 279 U.S. 737 (1929).
Benevolent and Protective Order of Elks v. Improved Benevolent and Protective Order of Elks of the World and The Grand Lodge of the Improved Benevolent and Protective Order of Elks of the World, 60 Misc. 223 (N.Y. App. Div., 1908), *affirmed*, 136 A.D. 896 (N.Y. App. Div., 1909), *judgment modified*, 205 N.Y. 459 (Court of Appeals of N.Y., 1912).
Benevolent and Protective Order of Elks of the United States of America et al. v. Improved Benevolent and Protective Order of Elks of the World, 122 Tenn. 141 (1909).
Burrell et al. v. Michaux et al., 273 S.W. 874 (1925), *judgment recommended by Commission of Appeals adopted*, 286 S.W. 176 (1926).
Creswill et al. v. Grand Lodge Knights of Pythias of Georgia, 133 Ga. 837 (1910), *reversed*, 225 U.S. 246 (1912).
Faisan et al. v. Adair et al., 144 Ga. 797 (1915), *affirmed*, 148 Ga. 403 (1918).
Grand Lodge, Knights of Pythias et al. v. Creswill et al., 128 Ga. 775 (1907).
Society of the War of 1812 v. The Society of the War of 1812 in the State of New York, 46 A.D. 568 (N.Y. App. Div., 1900).
State v. Holland, 37 Mont. 393 (1908).
Supreme Lodge Knights of Pythias v. Improved Order Knights of Pythias, 113 Mich. 133 (1897).

Notes

1 Although there were isolated examples in which both types of fraternal orders admitted members of different races (more often on the part of the black orders), for the sake of simplicity we refer to the orders here as either "white" or "African American"/"black," following the markers by which their own members identified them in these years.
2 For examples of requirements that members must be white, see Independent Order of Odd Fellows 1909: 6; Knights of Pythias 1885: 17.
3 We use the term *narrative*, as social movement scholars have come to, to describe the form of ongoing discourse used by movement leaders to interpret new developments in terms both of past experience and of future aspiration, affirming identity, motivating action, and inspiring agency. The interpretation of events internally, intended to sustain movement participation, may or may not differ from the interpretation of events externally, intended to mobilize public support. For more see Ganz 2001.
4 The Civic Engagement Project, a collaborative research effort based at Harvard University and coordinated by Theda Skocpol and Marshall Ganz, inquires into the history, development, and influence of voluntary associations in public life in the United States.

5 While white lodges frequently sued other white lodges viewed as illegitimate, just as black lodges sued other blacks, these intraracial battles never achieved anything near the scope or fervor of the white assault on black parallel orders. Evidence of the problem of splinter groups abounds both in organizational histories and in court records. For an example of splintering within the white Knights of Pythias that resulted in litigation, see *Supreme Lodge Knights of Pythias v. Improved Order Knights of Pythias* (1897). Joseph A. Walkes's history of the black Shriners notes the problem of splintering among both the black and white Knights of Pythias, Odd Fellows, Shriners, and other Masonic orders. See Walkes 1993: 93. Other black organizational histories contain stories of splintering among black orders, frequently over control of endowments and/or leadership struggles. For the African American Elks, see Wesley 1955: 60–63, 72–87, 92–112. For the African American Knights of Pythias, see Williams et al. 1917: 87, 100–105, 115–16, 124–47, 157–59, 175.

6 Although Beito only discusses the push toward state regulation in terms of white groups, similar trends applied to black orders in this period. Their organizational histories provide abundant evidence of the centrality of insurance reforms. See Williams et al. 1917: 124–47, 157–60, 175; Wesley 1955: 113.

7 The precedent most cited in later decisions for cases involving fraternal orders is *The Society of the War of 1812 v. The Society of the War of 1812 in the State of New York* (1900). In this case, the Appellate Division of the Supreme Court of New York sided with the original organization and granted an injunction against the splinter group. Another case often cited, decided by the Supreme Court of Michigan, refused to grant such an injunction, arguing for the legitimacy of splinter groups with distinct memberships, in this case a German-speaking lodge of the Knights of Pythias. See *Supreme Lodge v. Improved Order* (1897).

8 While we were unable to obtain copies of all the laws in their entirety, they are quoted at length in the organizational histories and the records of a number of the court cases. See Wesley 1955: 68, which describes the law from New York; Williams et al. 1917: 311, which describes the law in Georgia, and ibid.: 281–82; *State, v. Holland* (1908); *Benevolent and Protective Order of Elks v. Improved Benevolent and Protective Order of Elks of the World* (1912).

9 For the story of the Elks' founding, see Wesley 1955: 39–41. For the Knights of Pythias, see Williams et al. 1917: 13–15, 62–68, 74–82. The history of the Shrine, a branch of the Prince Hall Masons, claims a different origin. While the black Shriners admit to applying for membership in a white lodge and being rejected, they do not admit to then obtaining the ritual through surreptitious means. Rather, in holding with the tradition of the white Shrine, they claim that the order originated in Arabia and, echoing the story of the Prince Hall Masons' charter from Britain, that they obtained a charter from the original Arabic branch. There seems to be no legitimacy to the Arabic origins of the Shrine, black or white. In fact, the Shrine was indigenous to the United States. For the black Shrine's version of its origins, see Walkes 1993: 15–21.

10 For a statement by the Grand United Order of Odd Fellows proudly declaring the importance of its connections to England and the greater security that it provided, see *Atlanta Independent* 1908c. Nevertheless, despite their ties to Britain, the Masons and the Odd Fellows were not immune from legal attacks. The histories of the Elks and Pythians make scattered references to legal action against the Masons and Odd Fellows. See Wesley 1955: 86; Williams et al. 1917: 311.

11 Although we only have information on emblem laws in 15 states and the District of Columbia, the history of the black Knights of Pythias cites a figure of 29 states by 1909. See Williams et al. 1917: 311.

12 We were not able to obtain the court record from this initial trial. The legal argument of this first trial was later explained in these terms in the court record of an appeal in 1910 to the Supreme Court of Georgia. See *Creswill v. Grand Lodge* (1910).

13 While the first bill failed to pass the Georgia legislature, the second became law sometime in 1909. The history of the black Knights of Pythias describes this law as applying to the Masons, Odd Fellows, Elks, and "other secret organizations with grandfather clause etc. [*sic*]." See Williams et al. 1917: 281–82, 311. Several articles in the *Atlanta Independent*, a black fraternal newspaper, also mention this legislation. See especially *Atlanta Independent* 1909d. Though this article claims the law would apply only to the Elks and the Pythians but not to the Masons or the Odd Fellows, whose names were "slightly different," it is not clear why this would be true given that the Elks and the Pythians also had slight variations in their names. Moreover, as discussed earlier, the Odd Fellows and the Masons had more security through their British origins, but the Elks and Pythians did not.

14 For statements suggesting that the attack against the African American Pythians was about a larger attack on all forms of black fraternalism, see *Atlanta Independent* 1908d, 1909c.

15 For details on these trials, see *Atlanta Independent* 1906c, 1908a, 1910c; *Grand Lodge, Knights of Pythias et al. v. Creswill et al.* (1907); *Creswill. v. Grand Lodge* (1910, 1912).

16 See note 5. Such internal lawsuits continued even during the cases with the white order.

17 The white Pythians added their Supreme Lodge as a plaintiff in *Grand Lodge v. Creswill* (1907).

18 It was unusual for the U.S. Supreme Court to hear a case that involved a finding of fact, in this case the claim of the courts in Georgia that laches did not apply. The Supreme Court explained its willingness to do so as follows: "While this court does not as a general rule review findings of fact of the state court on writ of error, where a Federal right has been denied as a result of a finding of fact and it is contended that there is no evidence to support that finding and the evidence is in the record, the resulting question is open for decision; and where a conclusion of law as to a Federal right and a finding of fact are so intermingled as to require the facts to be analyzed and dissected so as to pass on the Federal question this court has the power to do so." For the U.S. Supreme Court decision see *Creswill v. Grand Lodge* (1912).

19 By the 1950s, a history of the white Elks wrote out the racial motivation of the desire "to protect our name and emblem from abuse by imitation," explaining the litigation and legislation in these years as a general attempt to prevent all copycat groups from using their name and emblems, without any mention of race whatsoever. See Nicholson et al. 1969 [1953]: 217–25.

20 While in the Knights of Pythias the Supreme Lodge was the national level and the Grand Lodge the state level, for the Elks the Grand Lodge was the national head of the order.

21 The history of the Knights of Pythias claims that an emblem law in Missouri was vetoed by the governor because of the protest raised by their order (Williams et al. 1917: 310).

22 The 1912 decision prohibited only the use of the word *Elk*, faulting earlier decisions for going "too far" in prohibiting the use of BPOE colors and officer titles as well (Wesley 1955: 88, 122–23; *BPOE v. IBPOEW* [1908, 1909, 1912]).

23 An additional example of the courts denying the relevance of race to the legal battles between the BPOE and the IBPOEW occurred in Tennessee in 1909, where the state supreme court agued that the "fact that the defendant's membership is composed of colored people will not materially change the result." It then ruled in favor of the BPOE, claiming that "confusion in the two orders will . . . result in great financial detriment to the complainant." See *Benevolent and Protective Order of Elks of the United States of America v. Improved Benvolent and Protective Order of Elks of the World* (1909).

24 These letters are reprinted in their entirety in Dickerson 1981: 252–58.

25 An injunction against the IBPOEW in Tennessee was also legally dissolved with the approval of the white Elks in 1937. See Wesley 1955: 264–76.

26 See note 9 for the origins of the black Shrine.

27 The black Shriners expressed this sentiment that their troubles were over in a letter sent to the Imperial Council of the white Shrine in hopes of reaching an agreement to coexist peacefully outside the courts as well. The white Shrine replied that as far as its Imperial Council was concerned, the Supreme Court's decision had ended all litigation but that it could not control all state branches. See Walkes 1993: 139–42.

28 For one of many denials on the part of black leaders that their fraternal organizations were in any way political or, in this case, connected to organized labor, see *Atlanta Independent* 1907b.

29 The vast majority of the articles in the *Independent* were overwhelmingly supportive of the Pythians. Due to a personal disagreement between its editor, B. J. Davis, and the grand chancellor of the Pythians in Georgia, Charles Creswill, some articles began to take a more critical stance.

30 For additional articles expressing similar sentiments, see *Atlanta Independent* 1908b, 1909c.

References

Atlanta Independent (1906a) "To put the Negro Knights of Pythias out of business." 30 June.
——— (1906b) "Grand Lodge K. of P. meets next Tuesday in Macon." 7 July.
——— (1906c) "Negro 'Knights' may keep the name of secret order." Reprint from Atlanta Georgian. 15 December.
——— (1907a) Anonymous letter from a member of the African American Odd Fellows in Early County. Reprint. 28 December.
——— (1907b) "Dynamiting Negro lodge halls and churches." 28 December.
——— (1907c) "Georgia whites object to Negroes having secret societies." Reprint from New York Sun. 28 December.
——— (1908a) "Negro Pythians lose in court; Order declared fraud by superior court jury." Reprint from Atlanta Constitution. 30 May.
——— (1908b) "Our defeat temporary." 30 May.
——— (1908c) "Secret societies and the law." 13 June.
——— (1908d) "The Knights of Pythias status in the state." 1 August.
——— (1909a) "Will this suicidal policy help the Pythians?" 23 January.
——— (1909b) "Our secret orders must be saved." 3 July.
——— (1909c) "Our friendly societies." 7 August.
——— (1909d) "Governor Brown signs secret order bill." Reprint from Atlanta Constitution. 21 August.
——— (1909e) "Supreme Lodge v. Creswill." 4 September.
——— (1909f) "We have fallen on bad ways." Reprint from Macon Telegraph. 4 September.
——— (1909g) "Supreme Lodge emergency fund." 6 November.
——— (1909h) "The Negro K. of P. in Georgia." 13 November.
——— (1909i) "Ancient order Knights of Damon." 4 December.
——— (1909j) "The Knights of Damon." 4 December.
——— (1910a) "Governor begins investigation of reported strife; Situation akin to 'night riding' alleged to prevail in Columbia County." Reprint from the Georgian. 5 February.
——— (1910b) "Night riders in Georgia." 5 February.
——— (1910c) "The colored Pythians lose." 26 February.
——— (1910d) "Atlanta happenings." 15 March.
——— (1911) "Lest we forget." 2 December.
——— (1912a) "Free speech in Georgia." 27 January.
——— (1912b) "Taft judges all right and the Order of K. of P. lives." 15 June.
——— (1912c) "Negro secret societies." Reprint from Macon Telegraph. 6 July.
——— (1927a) "Elks Grand Lodge will meet in New York City; Injunction is suspended." 28 July.
——— (1927b) "Injunction against Elks in New York permanently vacated." 4 August.

Beito, David T. (2000) From Mutual Aid to the Welfare State: Fraternal Societies and Social Services, 1890–1967. Chapel Hill: University of North Carolina Press.

Boris, Joseph J., ed. (1927) Who's Who in Colored America: A Biographical Dictionary of Notable Living Persons of Negro Descent Living in America. Vol. 1. New York: Who's Who in Colored America Corp.

Brooks, Charles H. (1971 [1902]) The Official History and Manual of the Grand United Order of Odd Fellows in America. New York: Books for Libraries Free Press.

Brown, Elsa Barkley (1989) "Womanist consciousness: Maggie Lena Walker and the Independent Order of Saint Luke." Signs 14: 610–33.

Burroughs, Erika Lynise (1996) "Robert Williams Saunders and a memoir of the Civil Rights movement in Florida." Master's thesis, University of South Florida.

Carle, Susan D. (2002) "Race, class, and legal ethics in the early NAACP (1910–1920)." Law and History Review 20: 97–146.

Dickerson, Charles Edward (1981) "The Benevolent and Protective Order of Elks and the Improved Benevolent and Protective Order of Elks of the World: A comparative study of Euro-American and Afro-American secret societies." Ph.D. diss., University of Rochester.

Ellis, Charles Edward (1910) An Authentic History of the Benevolent and Protective Order of Elks. Chicago: Self-published.

Fahey, David M. (1994) The Black Lodge in White America: "True Reformer Browne" and His Economic Strategy. Dayton, OH: Wright State University Press.

Ganz, Marshall (2000) "Resources and resourcefulness: Strategic capacity and the unionization of California agriculture." American Journal of Sociology 105: 1003–62.

——— (2001) "The power of story in social movements." Working paper. Cambridge, MA: Kennedy School of Government, Harvard University.

Gilmore, Glenda (1996) Gender and Jim Crow: Women and the Politics of White Supremacy in North Carolina, 1896–1920. Chapel Hill: University of North Carolina Press.

Green, Suzanne Ellery (1979) "Black Republicans on the Baltimore City Council, 1890–1931." Maryland Historical Magazine 74: 203–22.

Grimshaw, William H. (1969 [1903]) The Official History of Freemasonry among Colored People in America. New York: Negro Universities Press.

Horowitz, Morton (1992) The Transformation of American Law, 1870–1960: The Crisis of Legal Orthodoxy. New York: Oxford University Press.

Hunter, Tera W. (1997) To 'Joy My Freedom: Southern Black Women's Lives after the Civil War. Cambridge: Harvard University Press.

Independent Order of Odd Fellows (1909) The Constitution and By-Laws of Victory Lodge No. 11. Machias, ME: Union Republican Press.

Kelley, Robin (1993) "'We are not what we seem': Rethinking black working class opposition in the Jim Crow South." Journal of American History 80: 75–112.

——— (1994) Race Rebels: Culture, Politics, and the Black Working Class. New York: Free Press.

Kennedy, Randall (1986) "Race relations, law, and the tradition of celebration: The case of Professor Schmidt." Columbia Law Review 86: 1622–61.

Knights of Pythias (1885) Knights of Pythias of Maine, Grand and Subordinate Constitutions. Portland, ME: William M. Marks.

Korstad, Robert, and Nelson Lichtenstein (1988) "Opportunities lost and found: Labor, radicals, and the early Civil Rights movement." Journal of American History 75: 786–811.

Mack, Kenneth W. (2002) "A social history of everyday practice: Sadie T. M. Alexander and the incorporation of black women into the American legal profession, 1925–1960." Cornell Law Review 87: 1405–75.

Mansbridge, Jane (1986) Why We Lost the ERA. Chicago: University of Chicago Press.

Mather, Frank Lincoln, ed. (1915) Who's Who of the Colored Race: A General Biographical Dictionary of Men and Women of African Descent. Vol. 1. Chicago: Memento Edition.

McAdam, Doug (1982) Political Process and the Development of Black Insurgency, 1930–1970. Chicago: University of Chicago Press.

McCarthy, John D., and Meyer N. Zald (1982) "Resource mobilization and social movements: A spatial theory." American Journal of Sociology 82: 1212–41.

Meier, August, and Elliot Rudwick (1976) "Attorneys black and white: A case study of race relations within the NAACP." Journal of American History 62: 913–46.

Mohr, Clarence (2001) On the Threshold of Freedom: Masters and Slaves in Civil War Georgia. Baton Rouge: Louisiana State University Press.

Morris, Aldon (1984) The Origins of the Civil Rights Movement: Black Communities Organizing for Change. New York: Free Press.

Muraskin, William A. (1975) Middle-Class Blacks in a White Society: Prince Hall Freemasonry in America. Berkeley: University of California Press.

Nicholson, James R., Lee A. Donaldson, and Raymond C. Dobson (1969 [1953]) History of the Order of Elks. Chicago: Grand Secretary's Office of the Benevolent and Protective Order of Elks.

Perrow, Charles (1986 [1972]) Complex Organizations. New York: McGraw Hill.

Rachleff, Peter (1984) Black Labor in the South: Richmond, Virginia, 1865–1890. Philadelphia, PA: Temple University Press.

Salvatore, Nick (1996) We All Got History: The Memory Books of Amos Webber. New York: Times Books.

Schattschneider, E. E. (1975 [1960]) The Semi-Sovereign People. San Diego, CA: Harcourt, Brace, and Jovanovich.

Schmidt, Benno (1982) "Principle and prejudice: The Supreme Court and race in the Progressive Era. Part 1, The heyday of Jim Crow." Columbia Law Review 82: 444–524.

Skocpol, Theda (1992) Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States. Cambridge: Harvard University Press.

Smith, J. Clay, Jr. (1993) Emancipation: The Making of the Black Lawyer, 1844–1944. Philadelphia: University of Pennsylvania Press.

Trachtenberg, Alan (1982) The Incorporation of America: Society and Culture in the Gilded Age. New York: Hill and Wang.

Traugott, Mark (1985) Armies of the Poor: Determinants of Working-Class Participation in the Parisian Insurrection of June 1848. Princeton, NJ: Princeton University Press.

Trotter, Joe William (1990) Coal, Class, and Color: Blacks in Southern West Virginia, 1915–32. Urbana and Chicago: University of Illinois Press.

Walkes, Joseph A. (1993) History of the Shrine, Ancient Egyptian Arabic Order of the Nobles of the Mystic Shrine, Inc., Prince Hall Affiliated: A Pillar of Black Society. Detroit, MI: Ancient Egyptian Arabic Order of the Nobles of the Mystic Shrine of North and South America and Its Jurisdictions.

——— (1998) History of the United Supreme Council Ancient Accepted Scottish Rite of Freemasonry, Prince Hall Affiliation, Northern Jurisdiction, U.S.A., Inc., 1881–1998. Philadelphia, PA: United Supreme Council.

Weber, Max (1979 [1968]) Economy and Society: An Outline of Interpretive Sociology. Guenther Roth and Claus Wittich (eds.) Berkeley: University of California Press.

Wesley, Charles H. (1955) History of the Improved Benevolent and Protective Order of Elks of the World, 1898–1954. Washington, DC: Association for the Study of Negro Life and History.

Williams, E. A., S. W. Green, and Joseph L. Jones (1917) History and Manual of the Colored Knights of Pythias. Nashville, TN: National Baptist Publishing.