THE LEGIBLE CITIZEN: RACE MAKING AND CLASSIFICATION IN JIM CROW LOUISIANA, 1955-1965

By

Michell Chresfield

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Professor Sarah Igo

Professor Daniel Sharfstein

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I. Introduction

In 1982 a 48-year-old woman named Susie Guillory Phipps asked a court to order the Louisiana Bureau of Vital Statistics to issue a birth certificate listing her as "white." Four years earlier, while preparing for a trip to South America, Phipps' passport application was denied on the grounds that she entered incorrect information regarding her racial designation.[1] Although Phipps thought she and her family were white the clerk processing her application indicated that her birth certificate listed her as "colored." This revelation ignited a legal battle that would eventually make its way to the Supreme Court as newspapers across the country took up a discussion over of the meaning of race. The trial also brought attention to Louisiana's statute on racial classification which stated:

> In signifying race, a person having one-thirty second or less of Negro blood shall not be deemed, described, or designated by any public official in the State of Louisiana as "colored," a "mulatto," a "black," a "negro," a "griffe," an "Afro-American," a "quadroon," a "mestizo," a "colored person," or a "person of color."[2]

To defend their position, the Bureau claimed that Phipps' great-great-great-great grandmother was an African slave. Despite this, in her testimony before the court Phipps was adamant in claiming, "I am white. I am all white. I was raised a white child. I went to white schools. I married white twice."[3] Many of the newspapers that covered Phipps' story became enamored by the oddity of someone who for all intents and purposes looked white, yet was listed as black. Headlines from periodicals such as the *New York Times*, the *Chicago Tribune*, and the *International Herald Tribune* made mention of what they saw as the inherent disconnect between Phipps' physical appearance and the racial designation assigned to her. In January of 1983 *Ebony*

[1] Stephanie Rose Bird, *Light, Bright, and Damned Near White: Biracial and Triracial Culture in America* (West Port: Praeger, 2009), 14.
[2] La. Rev. Statute Ann §42:267 (West 1983)
[3] "What Makes You Black: Vague Definition of Race is the Basis for Court Battles," *Ebony*, January 1983, 114-118.

magazine ran a picture of the fair skinned Phipps under a headline asking, "What Makes You Black?" The article explored the meaning of race and how racial categories were assigned noting the inconsistency in racial assignments. The article pointed out that while courts generally conceded to the community knowledge regarding an individual's racial identity, the Phipps case was particularly troublesome because although she asserted her white identity, other relatives recognized the Phipps family as black. How then could racial determinations be made in the presence of differing community opinions and in the absence of a scientific definition of race?[4] The Phipps case is illustrative of two important themes regarding the meaning of racial identity in the twentieth century: that race is a natural and stable identity and thus subject to classification, and that race is a social construct whose classification often does not fit how people come to see themselves.

Racial classifications not only inform how individuals conceptualize their own self-identity but also how the state comes to see and understand its citizens.[5] For instance, federal and state-level actors use vital statistics to understand the actions of the citizenry as they pertain to births, deaths, marriages, divorces, as well as common diseases. Individual citizens also request these documents to determine heirs, obtain employment, and prove citizenship, demonstrating just how embedded the use of vital records are in our society. Because the motivations individuals can differ from those of our governing bodies, their study provides a useful opportunity to ask questions about the expansiveness of state administrative power while also exploring contests over the authority to make classifications.[6]

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[4] "What Makes You Black," 116.

[5] James Scott, *Seeing Like A State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1998), 83.

[6] While this paper focuses primarily on the state of Louisiana, as I hope to make clear in the next section, Louisiana's ability to so effective policy the color through vital records is owed to the creation of web of administrative organization that implicated federal and state level governments in the same classification projects.

Racial determination trials, which in the twentieth century have come to rely increasingly on vital records, are one instance in which the individual and the state are in competition to determine who has the power to ascribe racial identity. In these trials the court functions as a mediator between the legislature, administrative officials of the state, and the individual citizen. The rulings of the court are an opportunity to understand its deference to the power of certain agencies and individuals to function as identity makers. Additionally, these trials illuminate the importance of expertise and epistemological certainty in determining race.[7]

Regardless of the disciplinary base, scholarship on race and the law generally recognizes the role of the courts as an active agent in the construction of racial identity. Furthermore, this scholarship recognizes race as a concept that is historically specific. Legal scholars have been particularly concerned with exploring the law's role in the social construction of race.[8] Although at times extremely unwelcoming to litigants of color, the court system has been especially influential in determining the means by which an individual could claim whiteness.[9] In the antebellum period racial determination trials helped create a record that future descendants could draw upon to claim their own whiteness, a matter of extreme importance during a time where states kept little or no documentation on persons of color.[10] After emancipation the courts used racial determination trials to define citizenship in racialized terms.[11] Racial determination trials allow legal scholars to explore the community understandings of racial identity that became

[7] Virginia Dominguez, *White by Definition: Social Classification in Creole Louisiana* (New Brunswick: Rutgers University Press, 1986), 9.
[8] For more on how legal historians have explored the idea of race as a social construct see Daniel J. Sharfstein. "The Secret History of Race in the United States,"*112 Yale Law Journal* (2003): 1473-1509. For examples of legal histories that take this approach see Ian Haney Lopez, *White by Law: The Legal Construction of Race* (New York: New York University Press, 2006); Walter Johnson, "The Slave Trader, the White Slave, and the Politics of Racial Determination in the 1850s," *Journal of American History 87*, no.3 (June 2000): 13-38.
[9] Johnson, "The Slave Trader," 20-23.
[10] Kathleen M. Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill: University of Chapel Hill Press, 1999), 220.
[11] For more on racial determination trials and citizenship see Ariela Gross, *What Blood Won't Tell: A History of Race on Trial* (Cambridge: Harvard University Press, 2008); Evelyn Nakano Glenn, *Unequal Freedom: How Race and Gender Shaped American Citizenship and Labor* (Cambridge: Harvard University Press, 2004).

codified through legal trials. Their scholarship argues that the court trials represent the triumph of lay expertise in race making.[12] This study seeks to move beyond a strict focus on the social and judicial construction of race by focusing on the twentieth century, a period in which bureaucracies emerge as the new manufacturers of racial identity. Much of the legal scholarship on racial determination focuses on the nineteenth century, before vital recording keeping and the state bureaucratic network were fully formed. The change in periodization allows one to better understand the contemporaneous development of formalized measures for racial classifications and state bureaucracies. To that end, this paper builds on the scholarship of legal historians by looking at the new role of the law once the policing of the color line was ceded to state bureaucracies.

This paper draws both methodologically and conceptually from scholarship that more fully takes up the question of how race making functions as part of a broader project in white supremacy and "state-making."[13] More representative of scholarship coming from historians and political scientists, the significant contribution of these scholars is a new attention to bureaucrats. For instance, Peggy Pascoe's treatment of marriage registrars and their ability to make policy in much the same manner as the court and the legislature illustrates how marriage licensing was a means to monitor racial interactions.[14] This paper seeks to give a more expanded attention to the administrative state by examining the function of the Louisiana Bureau of Health. Beyond marriage licensing, the work here attempts to look at how surveillance of both birth and death functioned as a means of producing race.

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[12] Gross, *What Blood Won't Tell,* 8.
[13] Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (Oxford: Oxford University Press, 2009), 8-9. For other examples of this scholarship see Michelle Brattain, "Miscegenation and Competing Definitions of Race in Twentieth-Century Louisiana," *Journal of Southern History 71,* no.3 (Aug. 2005): 621-658; Gregory Michael Dorr, *Segregation's Science: Eugenics and Society in Virginia* (Charlottesville: University of Virginia Press, 2008); Julie Novkov, *Racial Union: Law, Intimacy, and the White State and Alabama, 1865-1964* (Ann Harbor, University of Michigan Press, 2008).
[14] Pascoe, *What Comes Naturally*, 133, 138, and 143.

In as much as this paper is about the state's role as a producer of race, it is also in part about the construction of the bureaucratic network. As such, it draws from the work of scholars of nation-making and nationalism and, to a lesser degree, historians of the social sciences. A central argument of scholarship on nation-making is that identities such as race and gender are used to define citizenship and the boundaries of the nation.[15] The representative works of this field explore how states developed coercive power, an administrative grid, and specialized and detailed knowledge.[16] For instance, statistical developments and efforts to count and classify people are central themes in scholarship on the history of the social sciences.[17] While this paper draws on scholarship from Ian Hacking and Theodore Porter, it also differs slightly in that these scholars are primarily interested in how counting and classification started and the categories that developed while this paper is more interested in what happens after the categories are already in existence and how the state actors utilized them to achieve specific objectives.[18]

This study aims to explore the courtroom cases brought against Louisiana's Bureau of Health to gain an understanding of how the state used its administrative function to act as an arbiter of race identity. The centrality of race to the court proceedings is the primary reason racial determination cases are important. The historical records of these cases reveal the ways in which individuals, the legislature, bureaucratic agencies, and the judiciary have all drawn upon the theme of race as determinable in order to claim why *they* should have the power to make determinations.

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[15] See Benedict Anderson, *Imagined Communities: Reflections on the Spread and Origin of Nationalism* (New Haven: Yale University Press, 2006); Jacqueline Stevens, *Reproducing the State* (Princeton: Princeton University Press, 1999).
[16] Scott. *Seeing Like A State*, 83.
[17] Ian Hacking calls this "moral science" and it represents the idea that statistical information is used to control the moral nature of the state. Ian Hacking, "Biopower and the Avalanche of Printed Numbers," *Humanities in Society 5*, no. 3(1982): 281.
[18] Geoffrey C. Bowker and Susan Leigh Star, *Sorting Things Out: Classifications and its Consequences* (New Bakersfield: MIT Press, 1999), 48.

The paper is divided into two main sections. In the first section I discuss the emergence of vital statistics, one of modern society's principal objects of classification. Classifications do not happen on their own however, there is always some entity or individual responsible for constructing their meaning. To that end, the first section also focuses on the bureaucratic agencies of New Orleans, specifically Deputy Registrar Naomi Drake, who oversaw the vital statistics program for close to seventeen years. The second section of the paper examines three legal cases decided in the New Orleans Central District Court between 1955 and 1965. In these cases the litigants were all prompted to request their vital records in order to obtain employment, access survivor's benefits, and adopt a child. My goal is to show that rather than undermine the need for vital records, these cases served to reify their importance as both a means to verify racial identity and as an indispensable tool of the administrative state.

II. In the Interest of the State: Vital Statistics and the Louisiana Bureau of Health

The act of classifying and sorting is so ubiquitous that people often lose sight of the ways in which these actions pervade everyday life.[19] While many consider the practice of making categories neutral, it is actually a highly contested and politicized activity, particularly when it concerns racial classifications. Used as a means to monitor diversity initiatives and develop race specific health programs, racial classification persists as an accepted part of society. Yet in all its ubiquity the divisive nature of classifications, particularly those concerning race, is often lost. Vital statistics emerged out of this same tradition as other forms of classification. They function as a means of sorting people by producing difference.[20] Because difference making operates out

[19] For more of a discussion on classifying see, Geoffrey C. Bowker and Susan Leigh Star, Sorting Things Out: Classifications and its Consequences,(New Bakersfield: MIT Press, 1999), 80.
[20] Ian Hacking, "Making up People," in *Reconstructing Individualism: Autonomy, Individuality, and the Social in Western Thought*, ed. Thomas Heller (Stanford: Stanford University Press, 1986), 230.

of the recognition of what is normal, vital statistics started as a means of differentiating populations to assess normal life expectancy.

Classifications do not just exist; they are always mediated by some entity or individual with an interest in the maintenance of separation. This section focuses on the emergence of Naomi Drake as deputy registrar of vital statistics. For close to eighteen years she was the primary vital records officer for the city of New Orleans. During her tenure dozens of cases came before the courts in which plaintiffs sought writs of mandamus forcing Drake through her role as deputy registrar to release various records. At her termination hearing in 1966 her superiors accused her of being "an autocrat within the classified service"[21] for allowing her wishes to supplant those of her agency, Drake represents the sovereign character of bureaucrats.[22] The relationship between vital statistics and the state agents are an important first step to understanding how racial determination came to be so important in the mid-twentieth century. The two subsections that follow trace the development of vital statistics from neutral public health tool to, in the hands of Naomi Drake's, a mechanism for the maintenance of white supremacy.

A. Vital Records and the Emergence of the Bureaucratic State

Vital records are the official record of live births, deaths, fetal deaths, marriages, divorces, and annulments. As an instrument for epistemological and organizational use, vital statistics are a fairly recent phenomenon.[23] Early records of life events were made by churches and limited to christenings, marriages, and burials. An important driving force behind the formalization of recording practices was the recognition that vital records proved an important

[21] *Naomi M. Drake v. Department of Health*, 188 So.2d 92 (1966).
[22] Pascoe, *What Comes Naturally*, 133.
[23] Alice M. Hetzel, "U.S. Vital Statistics System: Major Activities and Developments 1950-1995" National Center For Health Statistics (Washington: Government Printing Office: 1997), 8.

avenue by which citizens could legitimate claims to certain legal rights. During the mid-17th century the Massachusetts legislature passed the first statute making vital records the exclusive responsibility of a government official.[24] In 1819 the state legislature passed a statute ordering the parish of Orleans to keep vital records. The statute established what constituted a proper vital record making the parish of Orleans the first in Louisiana to make official recordation of births and deaths compulsory.[25] Almost six decades later, the legislature recognized the State Board of Health as an entity assigned the task of recording vital statistics. Although records remained the duty of officers elected by local boards, in 1890 the president of the Board of Health was authorized to appoint a deputy registrar of births, marriages, and deaths for New Orleans.[26] As the 19th century closed and researchers began to make links between unsanitary conditions and death, Louisiana expanded their efforts to keep better records. Medical professionals and welfare societies took an increased interest in public health but without laws making reporting compulsory throughout the state, various parishes attempted to incentivize citizen participation, even offering residents twenty-five cents for every complete report made.[27]

The twentieth century marks the final processes of specialization and expansion of vital recording practices. In 1908 the Louisiana legislature made vital reporting compulsory for the entire state. Despite this progress, the largely rural make-up of Louisiana made vital statistics a source of contention and embarrassment for state leaders well into the middle of the twentieth

[24] Walter F. Wilcox, ''Studies in American Demography,'' (New York, 1940): 195. The Massachusetts statute is significant because it differentiated between church events: baptisms, marriages, and burials and state events: births, marriage, and death.
[25] The statute required that births be registered within eight days—six months when mid-wives were involved. Declarations were to be made by the father in the presence of two witnesses. Lastly the record had to include the following information: day, hour, and place of birth; name and sex of the child; profession and residence of the parents, and the name of the witnesses. Paul M. Eakin, *Guide to Public Vital Statistics in Louisiana* The Louisiana Historical Association and Works Progress Administration Publication Dec 1942, xii.
[26] La. A. 1878, #110. The act of 1900 represents the full bureaucratic formation of Louisiana as the legislature passed an additional act that recognized state and local boards of health and authorized these entities to keep reports and tabulations on vital statistics. La. A. 1900, #162.
[27] Eakin, *Public Guide to Vital Statistics in Louisiana*, 4.

century.[28] As epidemics and disease continued to take their toll on Louisiana residents, officials in the Department of Health grew more concerned about their inability to collect adequate vital information; many speculated that the problem seemed to stem from a lack of personnel and a hierarchy for making reports.[29] In 1918 the legislature passed La. Act 257, which created the position of a local registrar who was responsible for reporting to the State Bureau of Health the numbers of births and deaths. This act also created a Bureau of Vital Statistics that would regulate the procedures for making vital records.[30] The 1918 statute is also significant because it is the first time that "race" was listed as a category that serves a vital statistical purpose. The creation of the National Health Survey in 1935 allowed various local, state, and national agencies to collate information. The new network provided demographers and epidemiologists with a better understanding of disease across populations. This partnership not only produced a centralized space for governments to collect information about the nation, but the program allowed states to understand their health status via other states and work collaboratively to remedy health disparities. The creation of a formalized relationship between states and the federal government represents the final step in the construction of a full bureaucratic network to facilitate vital statistics collection.

Despite these advances, Louisiana stilled lagged behind the rest of the country when it came to vital record collection. As of 1940 twelve percent of births in the state still went unrecorded. This is not to mention the many records that were incomplete. According to news reports, Louisiana ranked among the states with the least complete vital records.[31] Administrators in the health department attributed the deficiencies to negligence on the part of physicians and

[28] Ibid., xii
[29] Ibid., 8.
[30] La. A., 1918, #257, sec. 1-4.
[31] "Health Director Now In Charge of Health Reports" *St. Martin's Banner* November 20, 1941.

mid-wives who often sent incomplete records to the registrar or either failed to do them altogether.[32] To remedy this problem the Bureau of Health, through the authority of the state legislature, required physicians and mid-wives to register before they could obtain a license to practice in the state. The thought being that the threat of license revocation would compel health professionals to make better records. Over the years they expanded the compulsory registering to include clergy and funeral home directors thereby tightening their web of control.

As the early history of vital records makes clear, this new enterprise derived largely from a desire to make legal claims to property, track the growth of populations, and monitor disease. The subversive use of vital records as a means of racial classification was not the original intent for their deployment but came about to facilitate the political project of maintaining segregation in Jim Crow Louisiana. Racial classification provided those committed to white supremacy with an effect method to preserve the status quo. As the civil rights movement of the 1950s and 1960s gained greater momentum the practices of racial classification helped sustain the *othering* of African Americans, as the black-white binary gained even greater traction. As states developed better means to codify citizens they came to increasingly rely on state agents to maintain those separations.

B. Naomi Drake and the Louisiana Bureau of Health

In "Making up People," Ian Hacking posits that the process of classification is best imagined as two forces, what he calls "vectors," competing for the authority to construct categories. The first vector he sees as functioning by "labeling from above," through the actions of experts invested with the authority to label people. The second vector he describes as the

[32] *Jonesville Booster* February 6, 1942.

"autonomous behavior of the individual" that challenges the categories of the expert.[33] This section examines the ascendency of Naomi Drake to one of the most powerful bureaucratic positions in the state of Louisiana. I hope to shed light on her personal motivations and how they came to shape her labeling techniques.

Naomi Drake represents the intersection of the state's interest in racial classification and a personal commitment to racial separatism. In 1949 Drake's appointment made her the first woman to hold a top position in a vital statistics agency. The next year she was one of just six women holding such a position.[34] The absence of women in the top levels of state administration lies in sharp contrast to the prevalence of female registrars at the local level. In many of the trials in which local registrars are featured, they are represented as overwhelmingly female and attribute their effectiveness to their roles as women and their ability to know "who is who" in the community. Naomi Drake's ascension to deputy registrar is very different from that of her colleagues. Having completed only one year in a stenographer-secretary course at Farrell's Business School, Drake worked her way up to deputy registrar in various clerical positions. Her most recent position before her promotion was secretary to the bureau's director. Although her professional origins were humble, Drake took great pride in the social connections her job allowed her. She was a member of various women's and professional organizations and was particularly concerned with promoting more female professionals. As president of the New Orleans Business and Professional Women's Club, she developed programs to provide

[33] Ian Hacking, "Making Up People," in *Reconstructing Individualism: Autonomy, Individuality, and the Social in Western Thought* ed. Thomas Heller (Stanford: Stanford University Press, 1986), 232.
[34] "Municipal Employees Club Elects First Woman Chief" *The Times-Picayune* April 23, 1950, 70.

vocational training and financial assistance to young women hoping to start careers in New Orleans.[35]

Both Drake's social and professional life underscores her concern with the moral degradation of society. As a society woman she made various presentations to students on the dangers of alcohol and promiscuity. Drake's response to illegitimacy serves as the best example of her personal beliefs spilling over into her professional life. For example, in 1956 Drake, through her role as the deputy registrar, implemented the birth card, a pocket size document meant to protect children from the embarrassment of having been born out of wedlock. The card made no mention of parentage and only included boxes for the sex, date, and place of birth of the card holder.[36] While illegitimacy in general outraged Drake, she was most disparaging of violations of social order when it came to the color line. It was alleged at her termination in 1966 that she was especially hostile towards unmarried white women who birthed black children. On one occasion when confronted with this transgression, documents allege that Drake called the mother into her office and accused her children of being "adulterous bastards."[37] When engaging with citizens Drake was able to utilize a host of statutory and administrative regulations to support her scrutiny of social interactions in New Orleans. One particularly important act for this purpose was Louisiana Act 80 of 1942, called the State Vital Statistics Act. This act expanded the purview of the Bureau of Vital Statistics to include adoptions, stillbirths, and annulments. Not was the Bureau charged with recording these events, but through additional legislation that

[35] Ibid.
[36] "Social Workers Want New Orleans Type 'Birth Card' Widely Used" *Times Picayune* November 11, 1956.
[37] James O' Byrne "Many Feared Naomi Drake and Powerful Racial Whim" *Times Picayune* August1983.

made vital records necessary to approve adoptions, the dissolution of marriages, and entrance into school, the Bureau became a gatekeeper to events previously lacking strict regulation.[38]

III. Cases

As the previous section makes clear, Naomi Drake's interest in the racial classification of Louisiana's citizens grew out of her interest in maintaining white supremacy in Louisiana. However, it is important to note that as much as her actions were also influenced by the broader moment of racial unrest growing out of the civil rights movement and the backlash to *Brown v. Board,* a decision that put segregationists on the defensive for the first time in Jim Crow's long history. As Drake went about the business of policing the color line she used the power of the state and the legitimacy of vital records to rebuff challenges to her authority. However, when citizens did challenge her, they did so by asserting both their right and their ability to ascribe their own racial identity. In the three trials that follow, each of the litigants challenged the power of the administrative state by calling into question the power of the state to make racial designations. These cases are exemplary of the "autonomous" behavior of the individuals who wished to defy the categorization set up for them.

A. *Robert Green v. The City of New Orleans*

Prior to the mid-nineteenth century, adoptions were one of many processes that were private and largely unregulated. As the twentieth century opened, fears grew that adoption could be potentially disastrous if the participants were not properly vetted to weed out mental and emotional debilities. Issues such as feeble mindedness and illegitimacy could undermine kinship

[38] Act 80 regulated how vital records were used in legal proceedings, ruling that, "Each certificate, as provided for in this act, filed within six months after the time proscribed for their filing, shall be prima facie evidence of the facts therein stated." La. A., 1942 #80.

ties and in turn the making of good citizens.[39] During this time professional organizations took more of an interest in the adoption process, realizing the specialized knowledge necessary to help build kinship ties. The state also took a greater concern in adoption by passing laws deciding who could adopt and under what circumstances.

In 1951 the Louisiana legislature took such a step when it passed a law forbidding interracial adoptions.[40] Creating family ties across the color line was no doubt something the legislature wanted to prevent. However, with the amount of interracial unions, many of them resulting in illegitimate and abandoned children, the law had a second function of denying mixed-race identity and by extension interracial intimacy. The placement of mixed-race children was often predicated on their phenotypic display; they were placed with whatever race they most closely resembled and assigned that racial classification, thereby denying their other ancestry. These decisions were frequently made by individuals in the community who knew the person in question. In these cases the court deferred to the "lay expertise" of the community, resting on the assumption that these individuals were in a place to know.[41]

Although outward appearance often dictated the familial possibilities available to a child of mixed ancestry, sometimes science and the courts were also asked to weigh-in on racial determinations. Scientific experts became more central to racial determination trials in the twentieth century following mainstream acceptance of eugenics.[42] Although eugenics fell into disrepute following the Nazi atrocities of WWII, other branches of science like anthropology and

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[39] Ellen Herman, *Kinship by Design: A History of Adoption in the Modern United States* (Chicago: University of Chicago Press, 2008) 1.
[40] La. Rev. Stat. Ann. § 9.422
[41] Ariela Gross discusses "lay expertise" as an aspect of 19th century racial determination trials. Because visible recognition relied on common sense, judges and juries saw themselves less as the makers of race and more as recognizing what was already there. See Ariela Gross, *What Blood Won't Tell: A History of Race on Trial in America*, (Cambridge: Harvard University Press, 2008); and Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (Oxford: Oxford University Press, 2009).
[42] Pascoe, *What Comes Naturally*, 120-121.

biology still concerned themselves with the classification and characteristics of the races. Courts relied on these scientists for their ability to use specialized knowledge and training reach conclusive decisions. Cases involving bi-racial or multi-racial children typically involved a scientific expert who claimed the ability to accurately discern the child's *true* racial identity. Many times these experts were on the side of the defendants, called by the Board of Health in support of their claims, at other times they were on the side of the plaintiffs. In both instances their presence represents the deference given to scientific expertise in matters pertaining to race.

One case in which scientific knowledge was pitted against the state involved the case of Jacqueline Ann Henley, a purportedly mixed-race child who was at the center of a racial determination trial in 1956. The suit was initiated by her adoptive parents Robert and Lillie Mae Green who filed a writ of mandamus against the city of New Orleans requesting that they change the designation on Jacqueline's birth certificate from "white" to "colored." This case is unique because out of the thirty-eight cases brought against Naomi Drake during her tenure as deputy registrar, Green's is perhaps the only case requesting a change in designation from "white" to "black."[43] The suit that developed underscores the variable nature of racial determinations that are a common theme in many of these trials. Yet despite the capricious nature of racial classification, the courts in this trial maintained that as the guardians of the social welfare, they were supremely invested in ensuring that individuals were classified in a way that ensured the maintenance of social boundaries.

Jacqueline Henley was born to Ruby Henley on November 2, 1950. An unwed mother of limited means, Ruby gave birth to Jacqueline at the Charity Hospital of New Orleans, an institution generally reserved for low-income patients. Shortly before Jacqueline's second

[43] Randall Kennedy," Interracial Intimacies: Sex, Marriage, Identity, and Adoption," *Harvard BlackLetter Law Journal* 57(2001): 217

birthday Ruby died of a brain tumor. Prior her death however, Ruby gave custody of her daughter to her sister Carole McBride. Sensing that the child was "Negro," McBride contacted the Department of Welfare telling them that Jacqueline could no longer stay with her family because "she was too dark."[44] Apparently her neighbors had begun to comment on the brown complexion of the child and McBride feared the embarrassment that would result from the child's continued presence.[45] Jacqueline was taken from McBride's care and placed in a foster home for Negro children. It was there that Jacqueline encountered the Greens who wanted to adopt her, however they were prevented from doing so because she had been classified as "white."

With Louisiana's de-facto "one drop" rule, which essentially meant that an individual needed only a "traceable" amount of black ancestry to be declared black, all the Greens' lawyer had to do was prove that Jacqueline had a black father. Thus in trying their case they set out to suggest that it was at least conceivable that Ruby Henley, a white woman, could be capable of having intimate associations with blacks. Prior to Jacqueline's birth Ruby worked as a waitress at a local "Negro saloon."[46] Burton Klein, council for the Greens alleged that Jacqueline's father was a black man named Herbert Stanton, a regular patron of the bar and a close friend of Ruby's. During his testimony Stanton admitted to knowing Ruby but for fear of criminal prosecution denied any intimate relationship—even when confronted with letters he had written to her with such lines as "I'll always love you" and "I miss you so."[47] Attempting to sully the deceased woman's reputation was a particularly controversial tactic considering societal mores regarding black and white co-mingling, not to mention statues passed in 1908, 1910 and 1951 that

[44] *Robert Green v. The City of New Orleans*, 88 So. 2d 76(1956)
[45] 88 So. 2d 76 (1956)
[46] 88 So. 2d 76 (1956)
[47] If found guilty of participation in an interracial union punishments carried up to a thousand dollar fine and a possible prison sentence.

outlawed interracial marriage and cohabitation. By using this tactic the lawyers were most likely attempting to draw on the negative social connotations of blackness. If they could prove Henley associated with blacks, then it was less impossible to believe that she had intimate relations with them and worse, had a black child.

Klein sought to use his depiction of Ruby Henley to trouble the idea of strict social segregation amongst the races while also calling into question the presumptions of agents collecting vital information. As mentioned above, Louisiana's 1918 statute expanded the bureaucratic network of the state, yet it also listed the necessary contents of a birth record to make it "legal, social and sanitary," among which was the race of both parents.[48] Emma Smith, the nurse who took the information for Jacqueline's birth certificate never asked any information about the child's father. Specifically, Smith testified that no inquiry was made regarding the racial identity of the father, despite the fact that the child appeared to have brown skin. She testified that in instances in which children were born to white women the race of the father is assumed to be that of the mother.[49] This practice not only speaks about the stigma placed on cross-racial associations but also indicates an unintended function of vital records. In addition to creating a record for Jacqueline and her mother, the birth record created a racial identity for an unknown father and upheld the perceived separation of blacks and whites that Louisiana segregationists were so anxious to maintain.[50]

Left with a document they presumed to be incorrect yet authorized with the ability to serve as *prime facie* evidence, the plaintiff called anthropologist Dr. Arden King to testify to Jacqueline's true racial identity. After completing a physical examination of the child, King

[48] These things include: place and date of birth, full name and sex of the child, whether it's a single or multiple birth, whether legitimate or illegitimate, the name, race, age, and occupation of the father and mother, as well as the number of children born to the mother.
[49] 88 So. 2d 76
[50] Louisiana statute of 1942 stated that "birth records serve as prime facie evidence of the facts stated therein"

concluded that her lips, ears, and pigmentation marked her as a person of African descent. However, King ultimately concluded that Jacqueline was too young to have her racial identity conclusively determined; while Jacqueline "most likely" had Negro blood, she could also have blood other than white that was not Negro.[51] In the end, the child would need to be reexamined when she was older in order for King to make a final conclusion. Under the auspices of scientific expertise racial determinations gained no more accuracy or definitiveness than they had when they were left up to personal acquaintances.

In essence, the decision for the judges was whether to trust the authority of the birth record or the scientific expert. Counsel for the city of New Orleans and the Board of Health argued that because Ruby Henley was white it was most certainly likely that Jacqueline's father was also white. As the primary witness for the defense, Drake testified that the records taken at the time of the birth became the actual birth record. Perhaps sensing they lacked a strong case the defendants rested on the established jurisprudence that there must be "no doubt at all" regarding Jacqueline Henley's racial identity, and since the plaintiffs had not proven beyond a doubt that Jacqueline had a black parent, the record should serve as proof of her racial identity.[52] Given that King could not say for sure that Jacqueline was black, the Court ruled in the favor of the city, a ruling that was upheld on appeal. That the court even considered the birth record in the same light as scientific expertise speaks to the progress of vital records as a legitimate and central aspect of the governmental apparatus.[53] It also speaks to the implausibility of defining race.

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[51] 88 So. 2d 76, See also Randall Kennedy's discussion of the Green case in Randall Kennedy, *Interracial Intimacies: Sex Marriage, Identity, and Adoption* (New York: Vintage, 2004).

[52] The term "no doubt at all" refers to the burden of proof that must be met by the plaintiff before the court will authorize the change of racial categorization in a vital record. Cases which utilize and cite this are *Sunseri v. Cassagne* 191 La. 290, 185 So. 15.; and *State ex rel. Treadway v. Louisiana State Board of* Health La. App. 1952, 56 So. 2d 249

[53] Vital records gained increased recognition post-WWII. During the war when the defense industries limited jobs to those who could prove American citizenship, agencies across the nation saw increased requests for citizens for documentation.

The majority opinion of the court illuminates the magnitude of importance the court placed on vital records. Judge Regan, writing for the majority, acknowledged the sanctity of state documents and vital records to the "welfare of the community" stating that, "the registration of a birthright must be given as much sanctity in the law as the registration of a property right."[54] Despite the possible inaccuracy of the document, the court found that its very existence as a government document was enough to affirm its veracity. King's inability to conclude the race of the child also contributed to the court siding with the state. The likening of anthropology to an exact science that promised concrete conclusions supported by data and empirically driven studies undermined the scientist's credibility when he admitted he could not make a conclusive determination.

Not everyone was left unconvinced by King's testimony, Judge Janvier wrote a dissenting opinion expressing his belief that he held "no doubt at all…that the father was a Negro."[55] Sharing a concern for the [racial] welfare of the community similar to that voiced in the majority opinion, Javier believed that both the child and the community would be harmed if Jacqueline were not allowed to pursue proper social relations stating that "[He could not] condemn this little girl to the humiliation and embarrassment which must ensure if this incorrect entry is to stand…there will result the most unfortunate situation that the little girl registered as white will continue to associate with Negroes."[56].

In the end however, it was less about what was good for Jacqueline and more about maintaining strict racial separation through segregation, a myth that Jacqueline's existence brought into troubling crisis. Racial identity as a mixed-race person was not yet legitimized in

[54] *Robert Green v. City of New Orleans (Department of Public Health)* 88 So. 2d 76 (1956)
[55] 88 So. 2d 76 (1956)
[56] 88 So. 2d 76 (1956)

this society, despite the long persistence of interracial unions in Louisiana. In essence, Jacqueline was forced to pick an identity; unfortunately, while the apparatus of the state provide her with one path to a white identity, her physical appearance troubled a clear determination. In the majority opinion the courts did not yield to "common knowledge" and decide on the basis of her physical appearance, instead they rested on the authority of the state to make the decision.

B. Estelle Rodi v. The City of New Orleans et. al

Passing, which generally involves the act of concealing a more marginal identity in exchange for membership in the majority society, is prevalent in studies of American history and race relations. While a majority of individuals who passed in Louisiana were Creoles, many did not recognize themselves as such but nevertheless sought to increase their economic opportunities by assuming a white identity, recognizing the limited job prospects for blacks in Jim Crow Louisiana.[57] In a socio-historical study of passing in Louisiana, Arthé Anthony interviewed many respondents, all of whom intimately knew someone who passed. Anthony's study illuminates the unique experience of passing in Louisiana. While many Louisiana Creoles relocated to other areas of the country to assume a new identity, oftentimes individuals choosing to pass simply relocated to another parish. Those who moved out of their home-state generally broke ties with their family, erasing all traces of their initial racial classification. Those who stayed occupied a more middling existence in which they often "worked white," assuming a white identity for the purposes of employment while "living black" amongst their family.[58] While examinations of passing have illuminated all kinds of theories about race-hating and denial, they are also an important opportunity to think about the practical one might choose to

[57] Arthé A. Anthony, "'Lost Boundaries': Racial Passing and Poverty in Segregated New Orleans," Louisiana History, 36(1995): 291-292.
[58] Anthony, "Lost Boundaries," 294.

pass as white. In a society that reserved only the most menial of jobs for black Americans, for those who were able, assuming another identity often meant the difference between poverty and middle-class. Yet despite the practical need to assume another identity, the close proximity of "passing" city to home city, as well as the way in which passing in Louisiana functioned as an "open-secret," the maintenance of this identity was almost impossible once it was challenged.

One year after the Green case, the city of New Orleans and Naomi Drake found themselves in court yet again. This case involved Estelle Rodi Soulet who was suing to have her father's death certificate changed from "colored" to "white." Soulet claimed that her father, who she knew to be a white man, had been mislabeled by the Bureau of Vital Statistics as "colored." The Bureau alleged that Steve Rodi was a black man passing for white. This case illustrates that one's racial designation has broad repercussions on their economic status. In much the same way that vital records have an important role in the adoption process, they are also important tool used to allow descendants of a deceased person to make property claims. Soulet became a widow in the early stages of the trial making her doubly embroiled in the outcome because not only did the death certificate hold up the execution of her father's will, but if Steve Rodi was declared black that would have invalidated her marriage under Louisiana's miscegenation statute. Estelle would thus be prohibited from claiming her late husband's estate. Attorney Sam Zelden represented the widow in this matter and had the case amended to only include Estelle as the plaintiff and not her father, despite this change, the trial still centered on Steve Rodi and if in fact he had been passing for white.

The legal argument utilized by the plaintiff is interesting because it directly challenges the autonomy of administrative figures in state governments, particularly registrars charged with the creation and maintenance of vital records. Rodi-Soulet and her attorney understood quite well

the race making project Naomi Drake was conducting and they set out to challenge her ability to do so. Zelden claimed that La. Act 181 of 1942 and La. Act 237 of 1950 were unconstitutional under the Fourteenth Amendment because they invested the Board of Health with the "arbitrary power to classify certificates of deaths and births" as well as the ability to alter and change those certificates; counsel also cited the lack of a fixed rule or standard to make changes to vital records that often left changes to the "unrestricted judgment and discretion of the person designated by the Board of Health to act."[59] By that reasoning, Zelden accused the Board of essentially taking Estelle Rodi Soulet's property without due process of the law. By "arbitrarily" and secretly changing her racial designation they had invalidated her marriage contract and made her ineligible to receive any assets from her husband's estate.

While employed as the deputy registrar Naomi Drake utilized many secret surveillance techniques that allowed her to effectively police the color line, re-casting race whenever she felt the line was in danger of being overtaken. One method was the "flag list," a list the names of families suspected of passing or having black relatives. To collect this information Drake had her aides comb through obituaries and funeral programs looking for proof that the deceased had family members with commonly black names or whose arrangements were made through predominantly black funeral homes or cemeteries.[60] When Steve Rodi died, his nephew Patrick Denease provided the attending physician with the information for the death certificate. That a family member and not a person representing some professional knowledge or a recognized agent of the state helped produce the vital record remained an important issue for the defendants, despite the fact that the attending physician testified that he also thought Rodi was white. After

[59]Prior to the 1950 statute Act 257 of 1918 was in place and this statute prohibited a change in vital records except through judgment of a court. *State ex rel. Estelle Rodi Wife of Theophile Soulet v. City of New Orleans et al.* Docket #339-509.
[60] O, Byrne, *Times Picayune* August 1983.

the funeral home director signed off on the certificate it was then sent to Naomi Drake's office where it was flagged for inaccuracy. Drake's testimony revealed, both "Rodi" and "Denease" (in various iterations), were part of a list kept by the vital statistics office that tracked families suspected of passing.[61]

Naomi Drake did not act alone in her racial surveillance tactics but employed a wealth of other state agencies and officers. Once she established that a record might be inaccurate she usually sent the case to the Office of Genealogical Research for further investigation. In the trial state genealogists uncovered the documentation that showed Estelle's mother and grandmother were black. Drake also admitted in court records to travelling to Pointe-a-la-Hache, Steve Rodi's home town, to interview witnesses about the family's racial identity. In doing so Drake sought to emphasize to the court the importance she placed on her job as registrar. She believed it was the most important job of the registrar to create "accurate" records which would also serve to police the boundaries of race stating, that "chaos would result in the community if every registrants own report were unalterably determinate of his own race."[62]

During the trail, counsel for the city produced various genealogical records such as census records, birth certificates, death certificates, and marriage licenses to show that Rodi had a long line of black ancestors. They strengthened their defense of Naomi Drake's actions by calling witnesses to testify that they knew and accepted the Rodi family as Negros.[63] One piece of evidence used against them, emblematic of the circumstantial conditions under which race was assigned, was that the Rodi family were residents of Plaquemine parish, known for having so many black residents that it was given the moniker "Coon Town." The final point for the city

[61] Docket #339-509.
[62] Docket #339-509
[63] Dr. J.T. Reeves, a private physician, testified that he treated Steve Rodi and his family in the "colored" waiting room in his office.

rested on the fact that a relative, and a lay person no less, had participated in creating the death certificate. As a family member whose last name was also on the flag list, counsel for the defendant's argued that the nephew was attempting to establish a paper trial to support the Rodi family's claim to whiteness.[64]

Because the decision to pass held both violent and life shattering consequences if the secret got out, individuals often concealed the fact that they were passing from their children, although other relatives like a mother or cousin might know someone had chosen to pass.[65] Knowing that many practiced subterfuge to prevent their family's secret from getting out determining exactly how much Rodi's nephew knew about his family's racial background was an important task for both the plaintiff and the defense. It is certainly a possibility that Patrick Denease knew that his uncle's family was passing and in filling out the death certificate was attempting to keep the deception going. It is also quite possible that Patrick Denease knew nothing of his uncle's passing and believed himself and his relatives to be white people. Nevertheless, both sides were heavily invested in the authority to determine whiteness and were committed to the legal battle for that authority.

In their final decision the court concluded that the burden of proof that rested with Estelle Rodi had not been met and issued judgment on behalf of the city of New Orleans. In their decision they took seriously the earlier charge that legislative authority had been unconstitutionally wielded to a non-elected agent. The court acknowledged, "Where a statute attempts to delegate authority to make fundamental decisions on what is best for the public

[64] Docket #339-509

[65] Anatole Broyard was a renowned writer and critic for *The New York Times*. In the aftermath of his death it was revealed that he had been passing for white. He also had chosen to keep his racial identity a secret from his children. His daughter writes about these experiences in Bliss Broyard *One Drop: My Father's Hidden Life-A Story of Race and Family Secrets*, (New York: Back Bay Books, 2007).

welfare and there are no standards or uniform requirements" there is an unconstitutional delegation of power. Yet found that, "when a statute merely authorizes a registrar or a board to reach a conclusion of facts" that does not constitute a delegation of legislative authority, regardless of the impact on society or the views of the agent. As if to indemnify themselves against future allegations of double talk the judges concluded that, "even if the Bureau did not have the right to make the change originally… since the change was made properly" then the decision of the Bureau should be upheld.[66]

It is possible that in the aftermath of the Rodi decision the officials in the Board of Health began to realize that Naomi Drake was a potential liability. Not only did they appoint an assistant registrar to oversee Drake but they established a board of legal advisors to review decisions regarding vital records.[67] Complaints against Drake accumulated throughout the 1950s as people accused her of rude behavior and withholding vital records. She is also believed to have initiated at least one criminal case in which she accused a Plaquemine parish woman of filing a false document in regards to her racial identity. Drake nevertheless maintained employment and continued her surveillance techniques drawing upon her authority as a state administrator. While her tenacity as a careful researcher had much influence on the way she came to pervade the lives of Louisiana citizens, she was aided by the expansion of the administrative state. As the state expanded it became increasingly impossible for citizens to avoid Drake's surveillance. As many residents went about their daily lives marrying, changing jobs, and entering schools, they were compelled to utilize the apparatus of the state to attain proper documentation. Yet Drake's despotism made seemingly colorblind activities particularly racialized. In the midst of civil rights protest following Baton Rouge's bus boycott in 1953, and Montgomery's highly publicized

[66] Docket #339-509
[67] "Board of Health Names Registrar," *Times Picayune*, October 9, 1956.

boycott two years later, white supremacy seemed to be slipping in Louisiana and elsewhere across the nation.[68] It is at this moment that the state of Louisiana and members of its agencies committed to white supremacy pushed to maintain careful surveillance of their controlling interest in its citizens—their race.

C. Ralph Dupas v. The City of New Orleans

Representing one of the last cases during Naomi Drake's tenure as deputy registrar, *Ralph Dupas v. City of New Orleans* is perhaps one of the most publicized racial determination trials of her career, having received coverage in many of the national media outlets including the *Chicago Defender* and the *New York Times*. Dupas, a light-heavyweight fighter and a second-level contender for the title at the time of the court proceedings, brought suit against the city of New Orleans to obtain a delayed birth certificate that classified him as "white." His case started in the district court in 1957, eventually making its way to the Louisiana Supreme Court. The media attention further highlights the absurdity of racial classifications as the boxing commission, the courts, and the public all weighed in on Ralph Dupas' racial identity, all reaching different conclusions.

Dupas, who was considered by all a native son of Louisiana, was scheduled to fight Vince Martinez in April of 1957. Two weeks before his fight, Lucretia Gravolet, the seventy-four year old registrar in charge of Plaquemine parish went to the Louisiana boxing commission claiming to have information that proved Ralph Dupas was of black ancestry.[69] The previous year Ralph's brother Peter was amongst sixteen people arrested in nearby St. Bernard's parish on charges of intermarrying. No doubt the investigation into Peter's ancestry contributed to the

[68] The Baton Rouge bus boycott was a galvanizing force for civil rights activism in the state of Louisiana. Soon after the success, mass protests sprung up across the state. For more on the Civil Rights in Louisiana see Adam Fairclough, *Race and Democracy: The Civil Rights Struggle in Louisiana, 1918-1972* (Athens: University of Georgia Press, 1995).
[69] Harry Trimborn, "Ralph Dupas Requested to Show Proof of Race" *Daily Defender* May 1, 1957. P3.

interest in his older and more famous brother. Because the Louisiana legislature outlawed interracial sporting events in 1956, if it were proven that he was in fact black, Dupas' match against Martinez would have had to be cancelled. The allegation of his racial ancestry was taken so seriously and carried such financial repercussions for those involved that promoters threatened to seek an injunction against the commission in order to prevent them from calling off the fight.[70]

The case for the city of New Orleans and Naomi Drake rested on their assertion that Ralph Dupas was actually Ralph Duplessis, a "negro" born in the parish of Plaquemines. Due to the notoriety of the case and the impending event, members of the commission met in the week prior to the fight to consider the evidence gathered by the Department of Health. Unable to reach a definitive conclusion the commission approved the Martinez fight to go on as scheduled but decided that Dupas would have to present them with a birth certificate before he could fight in any future interracial matches. Unfortunately, Naomi Drake refused to release a certificate, thereby necessitating that Dupas sue the city of New Orleans.[71]

Ralph Dupas was the first of eleven children born to Peter and Evelyn Foto Dupas on October 14, 1935. In testimony before Judge Rene Vicosa, Evelyn Dupas said that her son's birth was early and as common in those instances was not attended by either a physician or a midwife. Ralph was, however, baptized by his parents at St. Peter and Paul church in New Orleans in November of that same year. Additionally, Sam Zelden, Ralph's attorney, cited as evidence the fact that four of Ralph's brothers and sisters, all born to the same parents as Ralph, were issued birth certificates listing them as white. Despite being described in news coverage as "darker than many blacks in New Orleans," Dupas claimed to have always regarded himself as white and was

[70] "Courts to Hold Hearing on Dupas Racial Inquiry," *Chicago Daily Tribune,* March 30, 1957. B4.
[71] Trimborn, *Daily Defender* May 1, 1957. P3.

able to attend white schools with all his brothers and sisters.[72] During his trial two witnesses testified to the fact that Ralph was born in New Orleans to Evelyn Dupas. Additionally, both Peter and Evelyn Dupas testified to the birth of their son and their status as residents of Orleans parish, not Plaquemines as alleged by the defendants.

The accusation leveled against Dupas was damaging for a number of reasons, the most central being the economic impact on his boxing career. Due to Louisiana's law against segregated sporting events, most mixed-race fights were scheduled in northern towns or other southern cities without the ban. For instance, in 1958 when Dupas fought light-heavyweight champion Joe Brown, the match was set for Houston, Texas. Although the state allowed an interracial match, the seating was segregated and many African American spectators were not even allowed inside the arena.[73] Despite the opportunity to fight in other locales, out-of-state fights generally failed to draw the same numbers as local fights for obvious reasons relating to the market and the notoriety of the boxer. In contrast, Dupas was a fan favorite amongst white boxing fans in New Orleans and his fights regularly produced record ticket sales. The threat of losing revenue so early in his career was doubtlessly a major concern for a young man who booked his first match at fourteen so he could support his family.[74] The most damaging part of the accusation was that by all public proclamations, Dupas adamantly believed he was white. After announcing his decision to pursue legal action Dupas lamented to news reporters saying, "I am white. I don't know why I have to prove it." This statement undergirds a major aspect of classifications systems that one loses sight of when focusing solely on how they are manipulated by social structures—classifications have powerful influence over how individuals see

[72] "Courts to Hold Hearing on Dupas Racial Inquiry" *Chicago Daily Tribune,* March 30, 1957. B4.
[73] "Dupas Seeks to Take Title from Brown," *Register-Republic*, May 7, 1958
[74] John Reid, "Ralph Dupas: Hall of Famer Dupas dies at 72 He won title bout in New Orleans 45 years ago" Times Picayune, 2008

themselves. This is particularly true when it concerns race. Being white in Jim Crow Louisiana did not just mean the ability to escape the oppressive forces of segregation, once assigned an identity the individual naturally becomes implicated in the structures of that identity. To be suddenly cast in a new category most likely produced a cognitive dissonance the twenty-one year old found difficult to confront.

Ralph was not the only person to affirm his white identity; witness after witness testified on his behalf that they knew he was white. The testimony persuaded Judge Rene Vicosa who decided in Ralph's favor. Perhaps the biggest contributing factor to this decision was the judge's apparent contempt for Naomi Drake. Ralph's attorney was Sam Zelden, the same attorney who represented Estelle Rodi Soulet a year earlier. Zelden made it a special point to question Drake's penchant for secrecy. A particular sticking point was that Drake changed the birth certificates of Ralph's younger brothers and sisters from "white" to "negro." Each of the nine changes occurred without any notification to the parties involved. Judge Vicosa was particularly taken aback by Drake's dictatorial actions, assuring her that "even the Russians wouldn't try that."[75] One could imagine that the judgment against her would have persuaded the dogmatic Drake to reconsider her stance on racial classification, yet this was not the case as she dedicated herself more fervently to the task of proving Dupas' true racial identity.

As they had done numerous times, the Board of Health appealed the lower court's decision. To gather evidence for her case Drake traveled to Plaquemine parish and the city of Devant to interview witnesses. During their investigation they found numerous witnesses who identified Peter and Evelyn Dupas as the Duplessises. Drake was then able to provide what they

[75] "Dupas Race Case Recessed to Oct.1" *The Milwaukee Journal*. August 30, 1957.

perceived to be their strongest evidence, a birth certificate of a Ralph Duplessis born November 11, 1935 to Pierre Theodore Duplessis and Evelyn Duplessis.[76]

At the new trial Ralph's maternal relatives provided the most damaging testimony in his case. Christopher Duplessis, who the court records describe as "unstable" took the stand to testify that he was Dupas' uncle. This provided a very awkward moment for Ralph's defense as this witness was visibly and self-admittedly black. On the stand Christopher testified that he was Evelyn's brother and that he knew the family was "Negro."[77] This particular testimony made all the national outlets with headlines such as "Negro Witness says He's Dupas' Uncle" and "Tan Fellow Claims Kinship with Dupas." Ralph's grandmother Josephine St. Ann Duplessis was next on the witness list and took the opportunity to do some damage control. Duplessis claimed that Evelyn was not her biological daughter, but was in fact the child of an unknown man who left Evelyn in her care while he went to run an errand. Duplessis said she took in Evelyn and raised her as her own, never telling her or the other children of Evelyn's true origins. The grandmother's claim seemed far-fetched to say the least. She did not have any documentation to support her story. To refute her claim, the city submitted a baptismal record from St. Thomas church that listed Josephine St. Ann and Marthurin Klebert Duplessis as Evelyn's natural parents.[78]

And then there was Lucretia Gravolet, the registrar for Plaquemines parish who leveled the initial accusations against Dupas saying, "You are a Negro, I know you are a Negro, Now put me in jail if you don't like it."[79] Gravolet claimed she knew both Evelyn and Peter and witnessed their courtship. When asked about her signing off on the birth certificate, Gravolet admitted that

[76] *Dupas v. City of New Orleans* 240 La. 820, 125 So. 2d 375
[77] *Dupas v. City of New* Orleans 240 La. 820, 125 So. 2d 375
[78] *Dupas v. City of New* Orleans 240 La. 820, 125 So. 2d 375
[79] "Attorney Says Race of Birth Certificate Unavailable: Questions of Fighter's Race Still Sizzling," *The Morning Advocate* March 30, 1957 5C

her eighteen-year-old son would often sign her signature in her absence. Zelden immediately attacked the legitimacy of a document not signed by the agent the 1918 and 1942 statute sanctioned to do so. Although the court conceded that the son, Benedict Gravolet was not properly authorized to sign vital records, the court nevertheless concluded that Gravolet was authorized to appoint her son as her assistant and her testimony established her credibility in such a way that they did not deny she had done so.[80] Despite the fact that documentary evidence was not properly obtained, the city had a compelling case by way of familial testimony and vital records data to challenge Dupas' claim to white ancestry.[81]

Jacqueline St. Ann's story about taking in the abandoned Evelyn might have been a clever cover-story to conceal her daughter's decision to pass for white. Perhaps she understood the financial pressures of her family and how her grandson's successful career could mitigate those circumstances. If his parents had chosen to pass, Ralph was adamant that he was white. Dupas allegedly vowed to spend every dime he had to prove he was white, believing that the allegations were a malicious attempt to jeopardize his success.[82] In 1960 when the case made it to the Louisiana Supreme Court, they too sided with Drake and refused to change Ralph's racial designation. Despite what being recognized as white meant to Ralph personally, at least he was no longer barred from interracial sporting events in Louisiana. That ban had been lifted two years earlier.

IV. Conclusion

Naomi Drake's role as deputy registrar came to an end in 1965 when Nicholas Accardo president of the Board of Health sent Drake a letter informing her she was being terminated. In

[80] In making their decision the court cited Act 257 of 1918: "And when it appears necessary for the convenience of the people in any rural district, the Local Registrar is hereby authorized, with the approval of the State Registrar to appoint one of more suitable persons to act as sub-registrars, who shall be authorized to receive certificates."
[81] *Dupas v. City of New Orleans* 240 La. 820, 125 So. 2d 375
[82] Dupas Hearing Delayed Until October, Times Picayune, August 30, 1957

Accardo cited "rude treatment," "lack of courtesy, and "lack of leadership" amongst the primary reasons for seeking Drake's termination.[83] He also accused her of creating bad public relations for the Bureau because of her insensitive behavior towards citizens.[84] During the hearing regarding her termination witnesses that Drake had come into contact with over the years, many of whom she had accused of having black ancestry, agreed to testify only on the condition that their names be stricken from the record.[85]

Despite numerous examples that would justify Drake's dismissal, perhaps the most probably reason for her termination was the obvious realization that the nation was moving in another direction after the passage of landmark civil rights legislation in 1964 and 1965. Louisiana's Joint Legislative Committee on Segregation had been disbanded in 1959, African Americans were voting in increasing numbers throughout the south and the Justice Department was taking a more active stance in monitoring civil rights violations. All of this created an atmosphere in Louisiana that lessened the desire for a Naomi Drake. Although not all were opposed to her principles, The Genealogical Society of New Orleans was very pleased with Drake during her tenure as deputy registrar commenting on her "conscientious sincerity" and "responsible attitude toward the work entrusted to her."[86] Nevertheless, the nation had embarked on a new social and political project and there was no longer a network available to support racial classification and surveillance to segregationist ends.

As an exercise in power, Naomi Drake was only nominally successful. In as much as Drake thought she was protecting the sanctity of natural identities so did the plaintiffs in these cases. Her attempts to limit their social mobility or access to political rights did not change how

[83] James H. McGillis. "Health Board Official Fired" *Times Picayune* March 23, 1965.
[84]"Health Board Gets New Rules," *Times Picayune* October 10, 1966.
[85] James O'Byrne "Many Feared Naomi Drake and Powerful Racial Whim" *Times Picayune* August 1983.
[86] "Mrs. Drake Get Confidence Vote," *Times Picayune*, April, 24, 1965

these people truly saw themselves. Jacqueline Henley was adopted by a couple from Chicago and became an ophthalmologist,[87] while Ralph Dupas went on to fight in a highly publicized bout against Sugar Ray Robinson.[88] Both Estelle Roti and Susie Phipps lived out their days in Louisiana close to family and relatives who most likely envisioned their racial identity in much the same way that they did. Although Naomi Drake was ultimately successful in legally defining the racial designation of these individuals, their lives openly and constantly challenged the categorization placed upon them.

As evidenced by the Susie Phipps case which started this paper, disputes and the state's role in determining racial identity did not end with Naomi Drake. After her departure the Board of Health still employed personnel in the Bureau of Vital Statistics to flag files, and they still made changes to records without notifying those individuals concerned.[89] For example, in 1966 the Board of Health issued regulations that authorized the registrar to investigate irregularities in birth records and authorized the registrar to suspend the issuance of any certificates in question pending clarification.[90] Susie Phipps spent forty thousand dollars in an unsuccessful effort to become officially recognized as a white woman. What she, and the other individuals involved in these racial determinations reveal is that classifications have meaning; they derive their power from the social meaning ascribed in the difference making. In each of the cases where the plaintiffs stepped forward to challenge the ability of a power structure to place them in a social category at odds with how they saw themselves. Their legal battles represent their willingness to go the distance in affirming that belief. Yet it also indicates how entrenched classification

[87] Randall Kennedy," Interracial Intimacies: Sex, Marriage, Identity, and Adoption," Harvard BlackLetter Law Journal 57(2001): 240.
[88] John Reid, "Ralph Dupas: Hall of Famer Dupas dies at 72 He won title bout in New Orleans 45 years ago" Times Picayune, 2008
[89] Dominguez, *White by Definition*, 39-40.
[90] Brattain, "Miscegenation and Competing Definitions of Race in Twentieth-Century Louisiana," 630.

systems are in our society. There was never an opportunity for these individuals to claim an identity outside the black/white binary. In fact, the ability to even challenge the categorization at all required them to use categories already present and endowed with the social meaning they were operating against. However, it is important to remember that as the social and political atmosphere changes, so do the types of classifications.[91]

[91] Geoffrey C. Bowker and Susan Leigh Star, Sorting Things Out: Classifications and its Consequences, (New Bakersfield: MIT Press, 1999), 50.