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## Documenting Bankrupted Slaves

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# Documenting Bankrupted Slaves

*Rafael I. Pardo\**

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## INTRODUCTION

*Bankrupted Slaves* tells a story about institutional complicity in antebellum slavery—that is, the story of how the federal government in the 1840s and 1850s became the owner and seller of thousands of slaves belonging to financially distressed slaveowners who sought forgiveness of debt through the federal bankruptcy process.<sup>1</sup> Relying on archival court records that have not been systematically analyzed by other scholars,<sup>2</sup> *Bankrupted Slaves* analyzes how the Bankruptcy Act of 1841 (the “1841 Act” or “the Act”)<sup>3</sup> and the domestic slave trade inevitably collided to create the bankruptcy slave trade,<sup>4</sup> focusing the analysis through a case study of the Eastern District of Louisiana (the “Eastern District”), which was home to New Orleans, antebellum America’s

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1. Rafael I. Pardo, *Bankrupted Slaves*, 71 VAND. L. REV. 1071 (2018).

2. *Id.* at 1111–15.

3. Act of Aug. 19, 1841, ch. 9, 5 Stat. 440 (repealed 1843).

4. See Pardo, *supra* note 1, at 1093–1105.

largest slave market.<sup>5</sup> This Article describes the methods used in *Bankrupted Slaves* to document the history of the Eastern District's bankruptcy slave trade and sets forth statistical tables documenting that trade.

#### I. METHODOLOGY FOR DOCUMENTING BANKRUPTCY FILINGS UNDER THE 1841 ACT

In *Bankrupted Slaves*, some of the discussion examines the ratio of bankruptcy cases filed under the 1841 Act in federal judicial districts located in the slave states and the District of Columbia to the total nonslave adult population in those districts.<sup>6</sup> This Part explains the methodology used to document the number of bankruptcy filings for purposes of calculating that ratio.

For researchers interested in determining the number of 1841 Act filings, one can initially start by looking at the two documents issued by the House of Representatives several years after the Act had been repealed (the "House Documents"), one in 1846 (the "1846 House Document") and the other in 1847 (the "1847 House Document").<sup>7</sup> These documents provide various bankruptcy case statistics by federal judicial district. The statistics are first presented as individual district tables, most of them accompanied by explanatory notation by the party who submitted the statistics to Congress (usually, the clerk of the federal district court).<sup>8</sup> A summary table compiling the statistics for each individual district in the report then follows the individual district tables.<sup>9</sup> For a variety of reasons, as will be discussed in greater detail below, the House Documents have a variety of deficiencies, including coverage gaps and inaccuracies, thus making the documents less than ideal for calculating bankruptcy filings under the 1841 Act.

Theoretically, a better source for documenting case statistics would be the case files themselves and the accompanying court records, such as docket and minute books.<sup>10</sup> Unfortunately, some of those records have either been lost or destroyed.<sup>11</sup> Moreover, financial and time constraints present a serious challenge in reviewing all the existing records. Accordingly, the best researchers can do is to embrace

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5. *See id.* at 1104–65.

6. *See id.* at 1109–10.

7. H.R. DOC. NO. 29-99 (1847); H.R. DOC. NO. 29-223 (1846).

8. *See* H.R. DOC. NO. 29-99, at 2–7; H.R. DOC. NO. 29-223, at 3–29.

9. *See* H.R. DOC. NO. 29-99, at 8; H.R. DOC. NO. 29-223, at 30–31.

10. *See, e.g.*, Pardo, *supra* note 1, at 1111–15 (discussing 1841 Act case files and related court records from the Eastern District of Louisiana).

11. *See id.* at 1107 n.206.

an incrementalist approach. As more and more research examines these primary sources, we can continue to shore up the deficiencies in the government statistics. In the meantime, we must settle for using a combination of both types of sources, always keeping in mind that such statistics must be viewed with caution given inherent inaccuracies.

During the entire period of the 1841 Act's operative effect (i.e., from February 1, 1842, to March 3, 1843),<sup>12</sup> the nation consisted of twenty-six states, the District of Columbia, and three territories.<sup>13</sup> Among the nonterritorial jurisdictions, there was a total of thirty-eight federal judicial districts.<sup>14</sup> Nineteen of those judicial districts had boundaries coextensive with the state (or district in the case of the District of Columbia) to which Congress had assigned them (the "coextensive districts").<sup>15</sup> For example, the District of Maine consisted of all of the counties within the State of Maine,<sup>16</sup> and the District of the District of Columbia consisted of all of the counties within the District of Columbia.<sup>17</sup> The other nineteen districts had boundaries smaller than the state to which Congress had assigned them (the "non-

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12. *Compare* Act of Aug. 19, 1841, ch. 9, § 17, 5 Stat. 440, 449 (establishing effective date of February 1, 1842, for the 1841 Act), *with* Act of Mar. 3, 1843, ch. 82, 5 Stat. 614 (repealing the 1841 Act).

13. In support of this and the other propositions in this Article regarding the organization of the nation, and for ease of reference, I point the reader to the 1840 census, which was organized by federal judicial district and by territorial district, *see* DEP'T OF STATE, COMPENDIUM OF THE ENUMERATION OF THE INHABITANTS AND STATISTICS OF THE UNITED STATES (Washington, D.C., Thomas Allen 1841), with one exception, *compare id.* at 40–43 (reporting data for North Carolina by state rather than by federal judicial district), *with* Act of Apr. 29, 1802, ch. 31, § 7, 2 Stat. 156, 162 (dividing North Carolina into three districts: the Albemarle District, the Pamptico District, and the Cape Fear District) (current version at 28 U.S.C. § 113 (2012)). The three federal territories in which territorial courts administered the 1841 Act were (1) the Territory of Florida, which joined the Union as a state in 1845; (2) the Territory of Iowa, a portion of which joined the Union as a state in 1846; and (3) the Territory of Wisconsin, a portion of which joined the Union as a state in 1848.

14. Importantly, Congress did not alter the composition of any of these federal judicial districts during the 1841 Act's effective period. While Congress would reorganize, split, or consolidate many of these districts in subsequent years, it did so only twice in the 1840s, *see* Act of Aug. 11, 1848, ch. 151, § 1, 9 Stat. 280, 280 (dividing the District of Georgia into the Northern and Southern Districts of Georgia) (current version at 28 U.S.C. § 90 (2012)); Act of Feb. 13, 1845, ch. 5, 5 Stat. 722 (consolidating the Eastern and Western Districts of Louisiana into the District of Louisiana) (current version at 28 U.S.C. § 98 (2012)), well after the 1841 Act's repeal in 1843, *see* 5 Stat. at 614.

15. Those nineteen coextensive districts were the Districts of Arkansas, Connecticut, Delaware, the District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, Ohio, Rhode Island, South Carolina, and Vermont.

16. *See* DEP'T OF STATE, *supra* note 13, at 4.

17. *See id.* at 100.

coextensive districts”), with those districts dispersed across eight states.<sup>18</sup>

The House Documents report bankruptcy statistics for fifteen of the nineteen coextensive districts,<sup>19</sup> and for twelve of the nineteen non-coextensive districts,<sup>20</sup> for a total of twenty-seven judicial districts. Put another way, the House Documents lack data on eleven of the thirty-eight federal judicial districts in the nonterritorial jurisdictions.<sup>21</sup> Some of the literature on the 1841 Act—specifically, a book-length study by Edward Balleisen and an article-length study by Karen Gross and her coauthors (the “Gross Study”)<sup>22</sup>—has commented on the coverage gap in the government’s statistics. That commentary, however, has included some problematic errors that should be clarified for the benefit of future research on this topic.<sup>23</sup>

18. Those eight states, each followed by its federal judicial districts in parentheses, were: Alabama (Northern, Middle, and Southern Districts), Louisiana (Eastern and Western Districts), Mississippi (Northern and Southern Districts), New York (Northern and Southern Districts), North Carolina (Albemarle, Pamptico, and Cape Fear Districts), Pennsylvania (Eastern and Western Districts), Tennessee (Eastern, Middle, and Western Districts), and Virginia (Eastern and Western Districts).

19. See H.R. DOC. NO. 29-99, at 8 (1847) (reporting bankruptcy statistics for the Districts of Ohio, Rhode Island, and Vermont); H.R. DOC. NO. 29-223, at 30–31 (1846) (reporting bankruptcy statistics for the Districts of Arkansas, Connecticut, the District of Columbia, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, and South Carolina).

20. See H.R. DOC. NO. 29-99, at 8 (reporting bankruptcy statistics for the Eastern District of Louisiana, the Western District of Pennsylvania, and the Western District of Tennessee); H.R. DOC. NO. 29-223, at 30–31 (reporting bankruptcy statistics for the Eastern District of Pennsylvania, the Eastern District of Virginia, the Middle District of Tennessee, the Northern District of Alabama, the Northern District of New York, the Southern District of Alabama, the Southern District of Mississippi, the Southern District of New York, and the Western District of Virginia).

21. Those districts are (1) the Albemarle District of North Carolina, (2) the Cape Fear District of North Carolina, (3) the District of Delaware, (4) the District of Georgia, (5) the District of Indiana, (6) the District of Missouri, (7) the Eastern District of Tennessee, (8) the Middle District of Alabama, (9) the Northern District of Mississippi, (10) the Pamptico District of North Carolina, and (11) the Western District of Louisiana. The Senate document reporting interim statistics on 1841 Act cases, however, does provide filing statistics for the Districts of Delaware, Georgia, Indiana, and Missouri, as well as for the Eastern District of Tennessee. See S. DOC. NO. 27-19, at 16, 19, 74, 151–52, 176 (1842).

22. EDWARD J. BALLEISEN, *NAVIGATING FAILURE: BANKRUPTCY AND COMMERCIAL SOCIETY IN ANTEBELLUM AMERICA* (2001); Karen Gross et al., *Ladies in Red: Learning from America's First Female Bankrupts*, 40 AM. J. LEGAL HIST. 1 (1996). For a discussion of this scholarship, see Pardo, *supra* note 1, at 1094–96.

23. Along these lines, when critically commenting on the coverage gap in the government’s bankruptcy filing statistics for the 1841 Act, the Gross Study singles out the work of legal historian Charles Warren, which relies on those statistics. See, e.g., Gross et al., *supra* note 22, at 27–28, 27 n.141, 28 nn.145–46 (citing CHARLES WARREN, *BANKRUPTCY IN UNITED STATES HISTORY* 76–78 (1935)). As part of this critique, the Gross Study emphasizes the importance of setting the record straight for the benefit of future researchers. See *id.* at 22 n.111 (“Other scholars have picked up on and quoted Professor Warren’s observations about the Bankruptcy Acts of 1800 and 1841. So, by correcting Professor Warren’s telling of bankruptcy’s story, we are alerting other scholars to be careful about their use of *Bankruptcy in United States History*.”).

Balleisen misdescribes the House Documents on three counts. First, he describes them as “statistics . . . from thirty-three federal districts.”<sup>24</sup> While the 1846 House Document appears to list statistics for twenty-seven districts,<sup>25</sup> that document failed to consolidate the statistics for the District of Columbia’s two counties<sup>26</sup> into a single statistic for the District of the District of Columbia.<sup>27</sup> Accordingly, when adjusting for that discrepancy, and adding the six districts from the 1847 House Document,<sup>28</sup> the House Documents jointly report bankruptcy statistics for thirty-two districts.<sup>29</sup>

The other two misdescriptions relate to the districts Balleisen describes as having missing data. He states that statistics from the House Documents “exclude *eight districts* that did not send tallies to the secretary of state—Delaware, North Carolina, Georgia, Indiana, the eastern district of Tennessee, the northern district of Mississippi, Missouri, and the western district of Louisiana.”<sup>30</sup> But as previously noted, the House Documents exclude data on *eleven nonterritorial districts*.<sup>31</sup> Balleisen’s error stems from two factors. First, he does not account for Congress’s organization of North Carolina into three federal judicial districts.<sup>32</sup> Second, he does not account for Congress’s organization of Alabama into three federal judicial districts, including the Middle District of Alabama.<sup>33</sup> Thus, by failing to identify the three North Carolina districts (but mentioning North Carolina) and the Middle District of Alabama, Balleisen undercounts by three districts the number of districts in nonterritorial jurisdictions for which the government did not report bankruptcy filing data. He also does not account for the fact that the Territory of Florida consisted of five judicial

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24. BALLEISEN, *supra* note 22, at 234 n.2; *see also id.* at 262 n.39 (referring to statistics from “the thirty-three reporting districts” in the House Documents).

25. *See* H.R. DOC. NO. 29-223, at 30–31.

26. *See supra* note 17 and accompanying text.

27. *See* H.R. DOC. NO. 29-223, at 31.

28. *See* H.R. DOC. NO. 29-99, at 8 (1847).

29. It should also be noted that five of those thirty-two districts consisted of territorial districts (i.e., Iowa, Wisconsin, and the East, South, and West Districts of Florida). *See* H.R. DOC. NO. 29-223, at 31.

30. BALLEISEN, *supra* note 22, at 234 n.2 (emphasis added); *see also id.* at 262 n.39 (stating that the House Documents “exclude statistics from eight federal districts”); *id.* at 267 n.6 (referring to “the lack of statistics for eight federal districts”).

31. *See supra* note 21 and accompanying text.

32. *See supra* note 13; *see also In re Johnson*, 13 F. Cas. 719 (C.C.D. Cape Fear N.C. 1842) (No. 7,368) (holding that the Albemarle, Cape Fear, and Pamptico Districts of North Carolina constituted individual federal judicial districts for purposes of determining compliance with the 1841 Act’s venue provision).

33. *See* Act of Feb. 6, 1839, ch. 20, § 1, 5 Stat. 315, 315 (current version at 28 U.S.C. § 81 (2012)).

districts,<sup>34</sup> and thus fails to mention the statistical coverage gap in the House Documents with regard to that territory.<sup>35</sup>

The Gross Study, in analyzing the coverage gap in the government's statistics on bankruptcy filings under the 1841 Act, commits severe errors. The study begins by stating that, "[a]ccording to Department of State figures, there were 33,739 filings under the Act of 1841 ('State Department figures')." <sup>36</sup> In support of that proposition, the Gross Study cites to Charles Warren's *Bankruptcy in United States History*.<sup>37</sup> Warren, in the page cited by the Gross Study, does state that "33,739 persons took advantage of [the 1841 Act's] benefits."<sup>38</sup> The Gross Study then examines the support that Warren provided for his assertion, noting the following: "His footnote references a speech of Senator Lafayette Foster dated December 8 [sic], 1862 to which were appended the Secretary of State's filing figures. *The government figures themselves appear at 27th Cong., 2d Sess., Senate Doc. No. 19.*"<sup>39</sup>

This observation by the Gross Study is the starting point for analyzing the severe errors in the study's analysis of the coverage gap in the government statistics. The study is correct in its assertion that Warren relied on a floor statement by Senator Foster.<sup>40</sup> It should be noted that Senator Foster made the floor statement on December 18, 1862.<sup>41</sup> Furthermore, it is unclear what the Gross Study meant by its statement that the government statistics "were appended"<sup>42</sup> to Senator

34. See DEP'T OF STATE, *supra* note 13, at 96 (reporting population statistics for free white males in the five districts of Florida: West Florida, Middle Florida, East Florida, South Florida, and Apalachicola District); see also Charles D. Farris, *The Courts of Territorial Florida*, 19 FLA. HIST. Q. 346, 357 (1941) ("Congress always required each judge to hold terms of court at one place in his district. These 'district seats' were St. Augustine, Pensacola, Tallahassee, Key West, and either Apalachicola or St. Joseph, for the Eastern, Western, Middle, Southern, and Apalachicola Districts, respectively.").

35. See H.R. DOC. NO. 29-99 (1847) (failing to provide any Florida Territory bankruptcy filing statistics); H.R. DOC. NO. 29-223, at 23-25, 31 (1846) (providing Florida Territory bankruptcy filing statistics only for the Eastern, Southern, and Western Districts).

36. Gross et al., *supra* note 22, at 27.

37. *Id.* at 27 n.141 (citing CHARLES WARREN, *BANKRUPTCY IN UNITED STATES HISTORY* 81 (1935)).

38. CHARLES WARREN, *BANKRUPTCY IN UNITED STATES HISTORY* 81 (Beard Books 1999) (1935).

39. Gross et al., *supra* note 22, at 27 n.141 (emphasis added).

40. See WARREN, *supra* note 38, at 178 n.42 ("Speech of Foster, *supra*."); see also *id.* at 177 n.40 ("See speech of Lafayette S. Foster of Connecticut in the Senate, December 8 [sic], 1862." (citing merely to the number of the Congress and its session number, but failing to cite any source where Senator Foster's floor statement can be located)).

41. See CONG. GLOBE, 37th Cong., 3d Sess. 124 (1862) (statement of Sen. Foster). Warren misidentifies the date of Senator Foster's statement as having occurred on December 8, 1862, see *supra* note 40, which either the Gross Study failed to notice or noticed but failed to correct the record, see *supra* text accompanying note 39.

42. Gross et al., *supra* note 22, at 27 n.141.

Foster's speech. In his speech, Senator Foster did explicitly mention bankruptcy filing statistics for the 1841 Act, commenting that "[a]dvantage of its provisions was taken, so far as applications for the benefits of it are concerned, in twenty-seven States and Territories of the Union, by 33,739 persons."<sup>43</sup> But the *Congressional Globe* does not reproduce any of the government's bankruptcy statistics following Senator Foster's floor statement or on the last page corresponding to December 18, 1862.<sup>44</sup> All of this brings us to the source that the Gross Study identifies as setting forth the government statistics on filings under the 1841 Act.

Recall that the Gross Study unequivocally states that the government statistics appear in a Senate document published during the second session of the 27th Congress.<sup>45</sup> Crucially, this Senate document ("Senate Document 19")<sup>46</sup> reports *interim statistics* on cases under the 1841 Act—that is, statistics reported at a time when the 1841 Act was still in effect.<sup>47</sup> In other words, additional cases would be filed before the Act's repeal, thereby generating more bankruptcy case statistics. Some of those additional statistics would make their way into the 1846 House Document and the 1847 House Document, which are the government documents that come closest to providing *final statistics* (albeit incomplete and to some extent inaccurate) on cases under the 1841 Act. Various statements from the Gross Study reveal that its authors did not consult Senate Document 19, that they did consult the 1846 House Document, and that they had no knowledge of the existence of the 1847 House Document.

First, consider the claim that the Gross Study's authors did not consult Senate Document 19. In critiquing the coverage gap in the government statistics, the authors observe, "We examined 1,705 files in

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43. CONG. GLOBE, 37th Cong., 3d Sess. 124. Warren clearly misstates a figure and a date mentioned by Senator Foster in his speech. Compare WARREN, *supra* note 38, at 81 ("At all events, 33,739 persons took advantage of its benefits, of whom only 765 were refused discharge (with 1,468 [sic] still pending in 1862 [sic])."), with CONG. GLOBE, 37th Cong., 3d Sess. 124:

[T]he returns made by the Secretary of State to the Senate were not made up to the 1st of February, 1843, and the number, as I have before stated, of applications made were 33,739; 765 were refused, and, at the date mentioned [i.e., February 1, 1843], 4,468 were still pending, not acted upon by the courts.

(emphasis added).

44. See CONG. GLOBE, 37th Cong., 3d Sess. 126, 128 (1862).

45. See *supra* note 39 and accompanying text. Warren likewise refers to this document. See WARREN, *supra* note 38, at 177–78 n.40 ("See also *Senate Document No. 19*, containing reports by Secretary of State, dated December 27, 1842, January 3, 9, 1843, *27th Cong., 2d Sess.*").

46. See S. DOC. NO. 27-19, at 1 (1842).

47. See Act of Aug. 19, 1841, ch. 9, 5 Stat. 440, *repealed by* Act of Mar. 3, 1843, ch. 82, 5 Stat. 614. The initial Senate Document and its subsequently appended parts were ordered to be printed, respectively, on December 28, 1842, and January 6, 10, 18, and 23, 1843. See S. DOC. NO. 27-19, at 1, 21, 63, 159, 171.



Vermont and 342 files in Rhode Island, and the State Department figures show no filings in these two states.”<sup>48</sup> Contrary to this observation, Senate Document 19 *does include* interim filing statistics for both states.<sup>49</sup> The authors further state (1) that “the State Department figures list 3,478 files in Maine,”<sup>50</sup> (2) that “the State Department figures reveal 2,737 [sic] files in Kentucky,”<sup>51</sup> and (3) that “5,598 files from the Northern District of New York . . . were reported in the State Department figures.”<sup>52</sup> The figures reported in Senate Document 19 contradict all three of these statements—to wit, that document reports 2,879 bankruptcy petitions filed in the District of Maine, 1,800 bankruptcy petitions filed in the District of Kentucky, and 4,076 bankruptcy petitions in the Northern District of New York.<sup>53</sup> Based on these irregularities, it is abundantly clear that the Gross Study did not consult Senate Document 19.

It is further apparent from various statements in the Gross Study that its authors consulted the 1846 House Document. First and foremost, it should be kept in mind that the Gross Study does not once cite to either House Document. Nonetheless, it seems a fair inference that the authors did consult the 1846 House Document based on their following observations:

- that there were “5,598 files from the Northern District of New York”;<sup>54</sup>
- that despite having “examined 1,705 files in Vermont and 342 files in Rhode Island, . . . the State Department figures show no filings in these two states”;<sup>55</sup>
- that despite having “reviewed 763 files in Louisiana . . . , the State Department files [sic] show no filings in this location”;<sup>56</sup>
- that “the State Department figures list 3,478 files in Maine”;<sup>57</sup> and

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48. Gross et al., *supra* note 22, at 27.

49. See S. DOC. NO. 27-19, at 23 (reproducing letter from the clerk of the U.S. Circuit and District Courts of Vermont, dated December 22, 1842, which reports that 1,540 bankruptcy petitions had been filed); *id.* at 171–72 (reproducing letter from the clerk of the U.S. District Court for the District of Rhode Island, dated January 12, 1843, which reports that 303 bankruptcy petitions had been filed).

50. Gross et al., *supra* note 22, at 27.

51. *Id.* at 27–28.

52. *Id.* at 27.

53. S. DOC. NO. 27-19, at 2, 60, 69.

54. Gross et al., *supra* note 22, at 27.

55. *Id.*

56. *Id.* For a discussion of the ambiguity in the Gross Study’s statement that the authors “reviewed 763 files in Louisiana,” see Pardo, *supra* note 1, at 1114 & n.243.

57. Gross et al., *supra* note 22, at 27.

- that “the State Department figures reveal 2,737 [sic] files in Kentucky.”<sup>58</sup>

The 1846 House Document’s summary table reports that there were 5,598 filings in the Northern District of New York, 3,478 filings in the District of Maine, and 2,373 filings in the District of Kentucky.<sup>59</sup> Moreover, that summary table and the rest of the document fail to include any statistics for the Districts of Vermont and Rhode Island, as well as for the Eastern District of Louisiana.<sup>60</sup> Given these similarities, with the exception of the Gross Study misstating the number of filings reported by the 1846 House Document for the District of Kentucky,<sup>61</sup> it seems very likely that the study’s authors consulted that document.

Finally, consider my claim that the Gross Study’s authors had no knowledge of the existence of the 1847 House Document. Recall their statements that the government statistics did not include data from the Districts of Vermont and Rhode Island, as well as from the Eastern District of Louisiana.<sup>62</sup> While that was true for the 1846 House Document,<sup>63</sup> it was *not* the case for the 1847 House Document. That document consists solely of eight pages: the second page presents an individual table reporting statistics for the District of Vermont; the third page presents an individual table reporting statistics for the District of Rhode Island; the seventh page presents an individual table reporting statistics for the Eastern District of Louisiana; and the eighth page presents a summary table for the six judicial districts for which the document provides statistics.<sup>64</sup> Given the abbreviated nature of the report, and given that half of it pertains to the districts that the Gross Study’s authors referred to as having missing data, it would strain credulity to think that they had knowledge of the 1847 House Document.

Having clarified the extent of the statistical coverage gap in the 1846 and 1847 House Documents, irregularities and inaccuracies in those documents should also be noted. First, consider one irregularity with respect to how the 1847 House Document reports the number of bankruptcy filings in the respective judicial districts. In that document, and the 1846 House Document, the individual statistical tables for each district and the summary statistical tables for all of the districts contain a category indicating the “[n]umber of applicants for relief under the

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58. *Id.* at 27–28.

59. See H.R. DOC. NO. 29-223, at 30 (1846).

60. See *id.* at 30–31.

61. Compare *supra* text accompanying note 58, with *supra* text accompanying note 59.

62. See *supra* notes 55–56 and accompanying text.

63. See *supra* note 60 and accompanying text.

64. H.R. DOC. NO. 29-99, at 2, 3, 7, 8 (1847).

[A]ct” (the “applicant category”).<sup>65</sup> In the 1847 House Document, a note by the clerk of the U.S. District Court for the Eastern District of Louisiana explains that the number he reported for that category, 818, represents the total number of *individuals* who petitioned for bankruptcy relief, rather than the number of *petitions* that those individuals filed, which he reported as 759, attributable to the fact that the 1841 Act permitted partners in trade to file jointly for relief (i.e., with a single petition).<sup>66</sup>

While none of the other individual statistical tables in the 1847 House Document indicate what number was reported in the applicant category (i.e., the total number of individuals who petitioned for relief versus the total number of petitions filed), the individual statistical table in the 1846 House Document for the District of Connecticut sets forth a note by the district court clerk explaining that he reported the number of *petitions* filed.<sup>67</sup> Moreover, based on a review of other court records from the 1841 Act, it is clear that some of the statistics reported for the applicant category in the 1846 House Document definitely refer to the number of *petitions* filed rather than the number of *individuals* who sought relief.<sup>68</sup> Accordingly, when juxtaposing these examples with

65. *E.g.*, H.R. DOC. NO. 29-99, at 2, 8; H.R. DOC. NO. 29-223, at 30.

66. *See* H.R. DOC. NO. 29-99, at 7 & n.\*; *see also* Pardo, *supra* note 1, at 1117 n.257 (discussing joint cases under the 1841 Act).

67. *See* H.R. DOC. NO. 29-223, at 6 & n.\*. Additionally, an extract from a letter written by the clerk of the U.S. District Court for the Northern District of New York indicates that he reported the “number of cases in bankruptcy,” *see id.* at 40 (emphasis added), which is tantamount to the number of petitions filed given that the filing of a petition commenced a single case (whether or not that petition involved a single filer or joint filers), *see, e.g.*, 1 U.S. DIST. COURT FOR THE E. DIST. OF LA., BANKRUPTCY ACT OF 1841 DOCKETS, 1842–1843, at 100 (located in Record Group (RG) 21, The National Archives at Fort Worth, Texas) [hereinafter EDLA DOCKETS] (assigning a single case number, 100, to the case commenced by the joint petition filed by P. Brander, H.F. McKenna, and H.M. Wright). Somewhat disconcertingly, the number of cases reported in the clerk’s letter differs by one from the number reported both in the individual statistical table for the Northern District of New York and in the summary statistical table. *Compare* H.R. DOC. NO. 29-223, at 40 (“In this district, the whole number of cases in bankruptcy was *five thousand five hundred and ninety-seven.*”), *with id.* at 7, 30 (reporting 5,598 in the applicant category for the Northern District of New York).

68. For example, the docket book corresponding to the 1841 Act cases filed in the Northern District of Alabama, *see Bankruptcy Act of 1841 Dockets, 1842–1849*, NAT’L ARCHIVES CATALOG, <https://catalog.archives.gov/id/4510565> (last visited Aug. 5, 2017) [<https://perma.cc/9YAK-VRYY>], lists case number 821 as the last 1841 Act case filed in the district, by Enoch Parker, whom the district court declared to be a bankrupt in November 1843 and to whom the court granted a discharge. U.S. DIST. COURT FOR THE N. DIST. OF ALA., BANKRUPTCY ACT OF 1841 DOCKETS, 1842–1849 (located in Record Group (RG) 21, The National Archives at Atlanta, Georgia) [hereinafter NDAL DOCKET]. The individual statistical table for the Northern District of Alabama and the summary statistical table that appear in the 1846 House Document both report the number 821 for the applicant category. H.R. DOC. NO. 29-223, at 15, 30. Importantly, the Northern District of Alabama docket book includes cases filed by joint petitioners, such as the case of Dewoody and Hobbs (number 272), both of whom the district court declared to be bankrupts in November 1842 and to whom the court granted a discharge. *See* NDAL DOCKET, *supra*. If the district court’s clerk

that of the Eastern District of Louisiana, it becomes clear that researchers need to be attentive and careful in describing these data.<sup>69</sup>

Finally, as researchers have personally examined bankruptcy case files from the 1841 Act, evidence has come to light that the number of cases for certain jurisdictions does not match the numbers reported in the 1846 and 1847 House Documents. For example, the number of case files reviewed by the Gross Study in the Districts of Maine and Kentucky exceed those set forth in the 1846 House Document.<sup>70</sup> Or, for another example, my examination of the bankruptcy case files and associated court records from the Eastern District of Louisiana has indicated that 763 cases were commenced in that district under the 1841 Act,<sup>71</sup> rather than the 759 cases indicated by the district court clerk in the 1847 House Document.<sup>72</sup>

With all of these omissions, irregularities, and inconsistencies in mind, I have adopted the following approach to calculating the number of bankruptcy filings (i.e., petitions) under the 1841 Act. First, if a researcher or the National Archives Catalog has documented the number of bankruptcy cases filed in a district, I have used that as the best indicator of the number of filed cases for that district. Second, if such documentation does not exist, I have then looked to the government's *final statistics* set forth in the 1846 and 1847 House Documents. Last, if those documents do not report statistics for a particular judicial district, I have then looked to the government's *interim statistics* set forth in Senate Document 19. Using these statistics will have the effect of *undercounting* the number of bankruptcy filings.<sup>73</sup>

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had reported the number of *individuals* to the Department of State, then the number appearing in the applicant category would have been higher, as the Dewoody-and-Hobbs example illustrates.

69. For example, Balleisen states that, “[a]ccording to statistics compiled by the secretary of state from thirty-three federal districts, 41,108 *individuals* found their way onto the nation’s bankruptcy dockets in 1842 and 1843.” BALLEISEN, *supra* note 22, at 234 n.2 (emphasis added). His figure totals the sum of the numbers listed in the applicant category in the statistical summary tables from both the 1846 and 1847 House Documents. See H.R. DOC. NO. 29-99, at 8 (setting forth numbers in the applicant category that, when added together, total 7,369); H.R. DOC. NO. 29-223, at 30–31 (setting forth numbers in the applicant category that total 33,739). But given the irregularity arising from the petition-individual dichotomy that I have described, it is clear that some, if not most, of the government’s statistics reported for the applicant category *undercount* the number of individuals who sought relief under the 1841 Act.

70. Compare Gross et al., *supra* note 22, at 27–28 (reporting review of 3,502 case files from the District of Maine and 2,454 case files from the District of Kentucky), with H.R. DOC. NO. 29-223, at 30 (reporting 3,478 applicants in the District of Maine and 2,373 applicants in the District of Kentucky).

71. See *infra* note 182.

72. See *supra* note 66 and accompanying text; see also *supra* note 67 (discussing how the number of filed petitions equals the number of commenced cases).

73. See *supra* notes 46–47 and accompanying text.

Pursuant to these protocols, Table 1 reports the number of bankruptcy filings under the 1841 Act in each nonterritorial federal judicial district, followed by an indication of the source from which the statistic has been obtained. The reader must absolutely keep in mind that these figures represent a rough approximation of the number of bankruptcy filings and thus cannot be viewed as a precise measurement.

TABLE 1: NUMBER OF BANKRUPTCY FILINGS BY  
NONTERRITORIAL FEDERAL JUDICIAL DISTRICT

District	Filings	Source
N.D. Ala.	821	1846 House Document
M.D. Ala.	643	Author Examination <sup>74</sup>
S.D. Ala.	718	1846 House Document
D. Ark.	178	1846 House Document
D. Conn.	1,536	Researcher Examination <sup>75</sup>
D. Del.	94	Researcher Examination <sup>76</sup>
D.D.C.	281	1846 House Document
D. Ga.	305	Author Examination <sup>77</sup>
D. Ill.	1,592	1846 House Document
D. Ind.	1,221	Researcher Examination <sup>78</sup>

74. U.S. DIST. COURT FOR THE MIDDLE DIST. OF ALA., BANKRUPTCY ACT OF 1841 DECREES, 1842–1844 (located in Record Group (RG) 21, The National Archives at Atlanta, Georgia).

75. See James K. Owens, *Documenting Regional Business History: The Bankruptcy Acts of 1800 and 1841*, 21 PROLOGUE 179, 185 n.21 (1989).

76. See E-mail from Jennifer Audsley-Moore, Archivist, Nat'l Archives at Kan. City, to author (July 7, 2017, 04:34 PM EDT) (on file with author). Senate Document 19 reports an interim filing statistic for the District of Delaware. See S. DOC. NO. 27-19, at 16 (1842) (reporting seventy-four applications).

77. U.S. DIST. COURT FOR THE DIST. OF GA., BANKRUPTCY ACT OF 1841 DOCKETS, 1842–1862 (located in Record Group (RG) 21, The National Archives at Atlanta, Georgia). Coauthored work on the history of the federal courts reports that there were “302 petitioners” under the 1841 Act in the “Southern District of Georgia Court sitting in Savannah.” PETER CHARLES HOFFER ET AL., *THE FEDERAL COURTS: AN ESSENTIAL HISTORY* 113 (2016). The reference to the Southern District of Georgia is incorrect given that Congress did not divide the District of Georgia into the Northern and Southern Districts until 1848. See *supra* note 14. My review of the District of Georgia’s docket book for 1841 Act cases reveals 305 distinct entries.

78. See E-mail from Jennifer Audsley-Moore to author, *supra* note 76. Senate Document 19 reports an interim filing statistic for the District of Indiana. See S. DOC. NO. 27-19, at 74 (reporting 946 applications).

TABLE 1 (CONTINUED): NUMBER OF BANKRUPTCY FILINGS BY  
NONTERRITORIAL FEDERAL JUDICIAL DISTRICT

District	Filings	Source
D. Ky.	2,454	Researcher Examination <sup>79</sup>
E.D. La.	763	Author Examination <sup>80</sup>
W.D. La.	114	National Archives Catalog <sup>81</sup>
D. Me.	3,502	Researcher Examination <sup>82</sup>
D. Md.	490	1846 House Document
D. Mass.	3,257	Researcher Examination <sup>83</sup>
D. Mich.	671	1846 House Document
N.D. Miss.	—	—
S.D. Miss.	872	1846 House Document
D. Mo.	1,143	Senate Document 19 <sup>84</sup>

79. Gross et al., *supra* note 22, at 28.

80. *See infra* note 182.

81. *Bankruptcy Act of 1841 Case Files, 1842–1844*, NAT'L ARCHIVES CATALOG, <https://catalog.archives.gov/id/23811272> (last visited Aug. 5, 2017) [<https://perma.cc/9V5F-7CBF>].

82. Gross et al., *supra* note 22, at 27.

83. *See* Owens, *supra* note 75, at 185 n.21.

84. In his letter to Secretary of State Daniel Webster, dated January 5, 1843, *see* S. DOC. NO. 27-19, at 174 (1842), Judge Wells of the U.S. District Court for the District of Missouri stated, “Eleven hundred and forty-three petitions have been filed—of these four only were under the provisions for involuntary bankruptcy, and three of these were dismissed.” *Id.* at 176; *cf. Ex parte Christy*, 44 U.S. (3 How.) 292, 323 (1845) (Catron, J., concurring in part and dissenting in part) (noting that “twelve hundred cases” under the 1841 Act had been filed in “the District Court of Missouri”). Toward the beginning of his letter, Judge Wells stated that he was “deeply and solemnly impressed with the opinion that the bankrupt act, or at least that part which provides for cases of voluntary bankruptcy, is clearly unconstitutional.” S. DOC. NO. 27-19, at 175 (emphasis added). Judge Wells had previously ruled that the 1841 Act “so far as it undertakes to discharge a debtor from debts contracted before the passage of the act, without payment, and to discharge his future acquisitions of property from liability to those debts, without the consent of a given majority of his creditors, [is] unconstitutional.” *In re Klein*, 14 F. Cas. 719, 730 (D. Mo.) (No. 7,866), *rev'd*, 14 F. Cas. 716 (C.C.D. Mo. 1843) (No. 7,865). (Although the citation to *Klein* indicates that the trial court decision and the reversal on appeal both occurred in 1843, as set forth in the *Federal Reporter*, it should be noted that Senate Document 19 states that Judge Wells’s opinion was delivered during the district court’s September 1842 term. *See* S. DOC. NO. 27-19, at 176.)

Upon reversing Judge Wells’s decision, Circuit Justice Catron, who found the 1841 Act to be constitutional, instructed that “the petitioner (Klein) be discharged from his debts, and receive his certificate” and further that “[t]he same order [wa]s directed in the case of Christopher Rhodes.” *In re Klein*, 14 F. Cas. at 719. It is unclear whether Judge Wells took further action with respect to the more than one thousand voluntary petitions that had been filed in the district. After all, Congress provided that any unresolved bankruptcy cases at the time of the 1841 Act’s repeal would

TABLE 1 (CONTINUED): NUMBER OF BANKRUPTCY FILINGS BY  
NONTERRITORIAL FEDERAL JUDICIAL DISTRICT

District	Filings	Source
D.N.H.	1,792	1846 House Document
D.N.J.	810	1846 House Document
N.D.N.Y.	5,598 <sup>85</sup>	1846 House Document
S.D.N.Y.	2,550	1846 House Document
Albemarle D.N.C.	139	Researcher Examination <sup>86</sup>
Cape Fear D.N.C.	—	—
Pamptico D.N.C.	—	—
D. Ohio	2,057	1846 House Document
E.D. Pa.	1,799	1846 House Document
W.D. Pa.	1,968	1847 House Document
D.R.I.	342	1847 House Document
D.S.C.	277	1846 House Document
E.D. Tenn.	533	Senate Document 19
M.D. Tenn.	1,313	1846 House Document
W.D. Tenn.	497	1847 House Document
D. Vt.	1,705	Researcher Examination <sup>87</sup>
E.D. Va.	1,189	1846 House Document
W.D. Va.	1,566	1846 House Document
<b>Total Filings</b>	<b>44,790</b>	

remain unaffected and could “be continued to . . . final consummation.” Act of Mar. 3, 1843, ch. 82, 5 Stat. 614, 614. *But see* BALLEISEN, *supra* note 22, at 259 n.18 (“By the time circuit court judge Catron overruled Wells on appeal in April 1843, Congress had repealed the 1841 act. Thus Wells’s action essentially prevented residents of Missouri from obtaining bankruptcy relief.”). Unfortunately, the 1841 Act case files from the District of Missouri have either been lost or destroyed. *See* E-mail from Jennifer Audsley-Moore, Archivist, Nat’l Archives at Kan. City, to author (Apr. 19, 2017, 10:41 AM EDT) (on file with author).

85. *But see supra* note 67.

86. *See* E-mail from Jennifer Audsley-Moore to author, *supra* note 76.

87. Gross et al., *supra* note 22, at 27.

## II. CITATION METHOD, RESEARCH METHODOLOGY, AND CODING PROTOCOLS FOR THE PRIMARY SOURCES IN *BANKRUPTED SLAVES*

This Part describes the method for citing the primary sources consulted for *Bankrupted Slaves*, the research methodology used to analyze those sources, and the coding protocols for documenting the number of slaves sold in the Eastern District by the U.S. Marshal.

### A. Citation Method

When documenting history, it is crucial that historians precisely identify each primary source that they have deployed to validate their historical accounts by way of example and illustration. Doing so enables readers to critically assess the credibility and weight of the evidence presented by the historian. Without being able to engage in such an assessment, readers are left in the dark, wondering whether any biases and agendas may have underlain the creation of the source material. Depending on the existence and extent of such biases and agendas, the reader might ultimately discount the objectivity of the evidence to one degree or another, which in turn would affect the overall assessment of the historian's interpretation of the historical record.

These principles especially resonate when historians use court records as primary sources. Quite often, those records will consist of documents filed by parties to litigation or some other judicial process having litigation-like characteristics. Given the adversarial nature of litigation, parties have incentives to frame the content of some, if not most, of the documents that they file with the court in the light most favorable to them and in the light least favorable to their adversaries.<sup>88</sup> Of course, such incentives may be tempered by legal constraints, such as judicial sanctions for lack of candor or insufficient legal authority justifying one's position, as well as by nonlegal constraints, such as concerns over the relational and reputational effects of litigant behavior. But these tempering factors do not fully negate the

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88. Cf. WALTER JOHNSON, *SOUL BY SOUL: LIFE INSIDE THE ANTEBELLUM SLAVE MARKET* 183 (1999) ("Legal testimony has a partisan purpose and cannot be taken as a transparent account of what happened in a given situation."). To document the experiences of slaves in the New Orleans slave market, Walter Johnson has "relied heavily on the docket records of approximately two hundred cases of disputed slave sales that came before the Louisiana Supreme Court in the nineteenth century." *Id.* at 12. He cautions the reader that these documents are "[h]ighly formalized and [were] recorded amidst heated debate at a distance of time and space from the events they describe." *Id.* But even if the creators of the records had completely fabricated their content, Johnson emphasizes that those records would still have historical value, for "lies, especially sworn lies given in support of high-stakes legal action, must be believable in order to be worth telling" and thus would "describe the circumstances of a specific sale in the terms of a shared account of what was *likely* to happen in the slave market." *Id.*



adversarial dynamic that fosters biases and agendas. Accordingly, any history that centers on court records should exactly identify them so that the reader can determine whether their content can be accepted at face value or whether some evidentiary discounting is warranted.

The foregoing observations apply with full force to court records from bankruptcy cases under the 1841 Act. Such cases involved a variety of parties: bankrupts, creditors, assignees, and the U.S. Marshal and his deputies, among others.<sup>89</sup> Moreover, the disputes in such cases encompassed a wide range of matters involving various adversarial permutations and shifting allegiances—such as (1) an assignee’s objection to a bankrupt’s discharge petition,<sup>90</sup> (2) a creditor’s objection to a bankrupt’s discharge petition,<sup>91</sup> (3) a third party’s objection to the sale of estate property by the assignee,<sup>92</sup> and (4) an assignee’s litigation against secured creditors,<sup>93</sup> to name a few.<sup>94</sup> Given the dynamic nature of the litigant behavior that generated the court records found in the 1841 Act case files, it is imperative to cite with precision the court records used to tell a story about that bankruptcy regime.<sup>95</sup>

Unfortunately, the extant scholarship on the 1841 Act that is court-record centric is less than optimal on this front.<sup>96</sup> The Gross Study makes no effort to cite to any specific court record from the 1841 Act.

89. For a discussion of the key provisions of the 1841 Act, see Pardo, *supra* note 1, at 1082–91.

90. See, e.g., Opposition of Assignee to the Discharge, *In re* Morrell, No. 19 (E.D. La. June 14, 1842).

91. See, e.g., Opposition to Discharge and Certificate by H. Boker & Jno Watson & Co., *In re* Morrell, No. 19 (E.D. La. June 13, 1842).

92. See, e.g., Injunction of Lucy Ann Huyler Against John M Bach & A S Robertson Marshal, *In re* Morrell, No. 19 (E.D. La. July 29, 1842).

93. See, e.g., Petition of L Hermann Assignee to Raise & Cancel Mortgages, *In re* Bowles, No. 56 (E.D. La. Oct. 22, 1842).

94. Other disputes could have involved: (1) one creditor objecting to the validity of another creditor’s claim, see, e.g., BANKR. D. MASS. R. IX (1842) (repealed), *reprinted in* P.W. CHANDLER, THE BANKRUPT LAW OF THE UNITED STATES 43 (Boston, James H. Weeks 1842); (2) a creditor objecting to a debtor’s bankruptcy petition, see, e.g., BANKR. D. KY. R. XLVI (1842) (repealed), *reprinted in* RULES, REGULATIONS, AND FORMS OF PROCEEDINGS, IN MATTERS OF BANKRUPTCY, IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE KENTUCKY DISTRICT 33 (Frankfort, Wm. M. Todd 1842); and (3) a bankrupt objecting to the assignee’s determination of the estate property that constituted exempt property to which the bankrupt was entitled, see, e.g., BANKR. D.N.C. R. 49 (1842) (repealed), *reprinted in* RULES AND REGULATIONS IN BANKRUPTCY, ADOPTED BY THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF NORTH CAROLINA 8 (Fayetteville, Edward J. Hale 1842). The list goes on and on.

95. Cf. Jonathan Remy Nash & Rafael I. Pardo, *Does Ideology Matter in Bankruptcy? Voting Behavior on the Courts of Appeals*, 53 WM. & MARY L. REV. 919, 935 (2012) (“The heterogeneity and permutations of litigants and disputes throughout the life of a bankruptcy case demand careful attention in designing an empirical study of the voting behavior of circuit court judges who decide bankruptcy appeals.”).

96. See *supra* note 22 and accompanying text.

Instead, it cursorily states in a footnote that “[a]ll the information about the women debtors, unless specifically identified, is derived from documents within the actual bankruptcy files.”<sup>97</sup> In presenting demographic information about the women who were bankrupts under the 1841 Act, the Gross Study provides both aggregate statistics and individual examples.<sup>98</sup> In the former instance, the Gross Study does not discuss coding methodologies describing the type of court documents from which the data are derived.<sup>99</sup> Moreover, when discussing individual examples, the Gross Study does not provide citations indicating the sources pertaining to those examples.<sup>100</sup>

On the other hand, Balleisen does acknowledge that certain documents from the 1841 Act case files might require evidentiary discounting.<sup>101</sup> He further recognizes a litigation dynamic at play in bankruptcy cases, but without acknowledging the agendas and biases that may inhere in certain court documents as a result of that dynamic.<sup>102</sup> Balleisen alternates between providing specific citations to

97. Gross et al., *supra* note 22, at 10 n.53.

98. *See id.* at 11–21.

99. *See, e.g., id.* at 18 (presenting summary statistics on the number of creditors without discussing methodology for coding that information).

100. For example, in observing that some bankrupt women under the 1841 Act “owed money for slaves,” the Gross Study describes Ann Stone, who “owed her children \$125.00 for a slave named Harriet,” without providing any citation in support of the proposition. *Id.* at 18. In fact, the Gross Study repeatedly refers to Ann Stone as an example, but without providing any citation to the sources from which the information about her was derived. *See id.* at 16–19 & 19 n.91. Ann Stone’s bankruptcy case was administered in the Eastern District of Louisiana. *See* NEW-ORLEANS COM. BULL., Dec. 22, 1842, at 1 (“Notice is hereby given, that Ann Stone has filed in this Court her petition to be declared a bankrupt . . .”); *cf.* Gross et al. *supra* note 22, app. 2 at 40 (indicating that Ann Stone’s bankruptcy case was administered in Louisiana). Importantly, the file for that case is quite voluminous, consisting of 153 pages. *See* E-mail from Jennifer Audsley-Moore, Archivist, Nat’l Archives at Kan. City, to author (July 21, 2017, 04:31 PM EDT) (on file with author).

101. *See, e.g.,* BALLEISEN, *supra* note 22, at 237 n.3:

Extracting the “causes” of failure from bankruptcy case-files presents analytical challenges . . . . By no means . . . did every petitioner follow these instructions [for filling out schedules of assets and liabilities] to the letter. In such instances, inferring [sic] the reasons for a particular failure becomes extremely difficult. And even with relatively complete asset and debt schedules, one sees only snapshots of bankrupts’ economic situations, which may indicate nothing about such crucial issues as their initial capital base or the roots of their pecuniary difficulties.;

*id.* at 56 (“The details surrounding these deals are murky in Wheeler’s bankruptcy petition, because, as the butcher lamented in a preface to his list of assets, he had never been aware of their particulars.”).

102. *See id.* at 237 n.3:

Furthermore, in 17 percent of the bankruptcy petitions processed by Judge Betts’s court, creditors objected to the proceedings, asking the judge not to grant discharges. In these instances, creditors regularly subpoenaed depositions from bankrupts, their employees, and their business associates, while applicants frequently responded by

court records and providing a generic citation to a case file without identifying any specific court record.<sup>103</sup>

In telling the story of the Eastern District's bankruptcy slave trade in *Bankrupted Slaves*, I present both summary statistics and individual examples, with the overwhelming majority of this information derived from court records from the 1841 Act case files of the U.S. District Court for the Eastern District of Louisiana. When presenting summary statistics, I describe the methodology for generating those data and cite to specific sources as examples of the types of sources that were systematically reviewed and coded. When presenting individual examples to illustrate aspects of the bankruptcy slave trade, I cite to the specific source from which the example is derived. I cite all sources pursuant to the citation system established by *The Bluebook*, including its rule for citing court records.<sup>104</sup> The information required by that rule helps facilitate identification of both the party who created the source and the procedural posture of the filing, thereby paving the way for the reader's independent assessment of the weight and credibility of the historical record.

Through this discussion, it has been my hope to reveal the need for a fine-grained approach to source identification in historiography that is court-record centric. The remainder of this Part thoroughly details the research methodology employed with respect to the quantitative and qualitative sources examined for *Bankrupted Slaves* and concludes by describing the coding protocols used to provide an empirical account of the number of slaves sold pursuant to the Eastern District's bankruptcy slave trade.

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calling witnesses of their own. This testimony provides a wealth of additional evidence about the roots of failure.

103. For examples of Balleisen's citations to specific court records, see *id.* at 256 nn.68–71, 73, 79. For an example of Balleisen's generic citation to a case file, consider the following. In describing the "handful of artisans among New York City bankrupts . . . [who engaged in] speculative temptations," Balleisen provides several examples, including that of the "bookbinder Charles Starr, [whose] harebrained manufacturing scheme in Poughkeepsie served as the main cause of insolvency." *Id.* at 54. Balleisen proceeds to describe that scheme in an entire paragraph that consists, in part, of quoted language. See *id.* at 56. Only one endnote appears in the entire paragraph, at the very end. See *id.* In its entirety, the endnote consists of the following reference: "C-F 2103," *id.* at 245 n.19, a reference to the 1841 Act case file (numbered 2103) from the U.S. District Court for the Southern District of New York, see *id.* at 233 (describing "C-F" abbreviation used in the endnotes of *Navigating Failure*).

104. See THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. 10.8.3, at 113 (Columbia Law Review Ass'n et al. eds., 20th ed. 2015).

*B. Research Methodology: Quantitative Sources*

In his historical research on the 1841 Act, Balleisen has discussed the importance of record linkage, which “presupposes that when historians use two different sources to compile information about a particular individual, both sources convey information about the same person.”<sup>105</sup> His work, in part, relies on linking records from bankruptcy cases commenced under the 1841 Act in the U.S. District Court for the Southern District of New York and credit reports produced by R.G. Dun & Co.<sup>106</sup> Like that work, the research in *Bankrupted Slaves* links information from bankruptcy court records with information from nonbankruptcy records—the difference here being that the nonbankruptcy records are legal notices published in newspapers rather than individual credit reports. *Bankrupted Slaves* also links information from the bankruptcy sales record books maintained by the U.S. Marshal for the Eastern District (the “Eastern District sales books”)<sup>107</sup> with information obtained from the documents filed in the bankruptcy cases before the U.S. District Court for the Eastern District of Louisiana (the “Eastern District case files”).<sup>108</sup> As described below, the level of detail provided in these various sources robustly facilitates “positive identifications of historical subjects”<sup>109</sup> and thus should assuage concerns regarding the use of multiple sources to create a composite picture of the bankruptcy slave trade.

To tell the quantitative story about the bankruptcy slave trade, *Bankrupted Slaves* largely relies on the information derived from the Eastern District sales books. Those records consist of two bound volumes that provide reports by the U.S. Marshal of property sold by him<sup>110</sup> in court-ordered bankruptcy sales.<sup>111</sup> The reports are arranged

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105. BALLEISEN, *supra* note 22, at 231.

106. *Id.*

107. U.S. DIST. COURT FOR THE E. DIST. OF LA., BANKRUPTCY ACT OF 1841 SALES RECORD BOOKS, 1842–1853 (located in Record Group (RG) 21, The National Archives at Fort Worth, Texas) [hereinafter EDLA SALES BOOKS]. For a general description of the Eastern District sales books, see Pardo, *supra* note 1, at 1111–12.

108. U.S. DIST. COURT FOR THE E. DIST. OF LA., BANKRUPTCY ACT OF 1841 CASE FILES, 1842–1843 (located in Record Group (RG) 21, The National Archives at Kansas City, Missouri). For a general description of Eastern District case files, see Pardo, *supra* note 1, at 1112.

109. BALLEISEN, *supra* note 22, at 231.

110. I use male pronouns throughout this Article and in *Bankrupted Slaves* when referring to the U.S. Marshal given that all of the U.S. Marshals in the Eastern District of Louisiana during the relevant time period were men. See Pardo, *supra* note 1, at 1162.

111. See *Bankruptcy Act of 1841 Sales Record Books, 1842–1853*, NAT'L ARCHIVES CATALOG, <https://catalog.archives.gov/id/4513390> (last visited June 26, 2017) [<https://perma.cc/LKU6-S34Y>].

in rough (but not exact) chronological order by date of sale,<sup>112</sup> and they are generally uniform in both the type of information provided and its presentation.

Each report essentially consists of three sections. The first section sets forth a caption for the report and the report's title. The left side of the caption identifies the name of the assignee administering the case in which the asset sale took place and the name of the bankrupt or bankrupts.<sup>113</sup> The right side of the caption identifies the court with jurisdiction over the bankruptcy case,<sup>114</sup> and it sometimes identifies the number assigned to the bankruptcy case.<sup>115</sup> The beginning of the title of each report is always the same (other than slight variation in capitalization from report to report)—specifically, “Account Sales of Property assigned.” The remainder of the title sets forth some, and sometimes all, of the following information regarding the asset sale: (1) the name of the U.S. Marshal conducting the sale, (2) the sale date (and on rare occasions the sale time),<sup>116</sup> and (3) the sale location.

The second section of the sale reports consists of (1) descriptions of the property sold by the U.S. Marshal; (2) the names of the individuals who purchased the property; (3) the amount paid by the

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112. For example, the report appearing on page 145 of the first volume of the Eastern District sales books corresponds to the asset sale conducted by the U.S. Marshal on December 8, 1842, in the joint case of Charles Deblanc and Edward Durrive. *See* Account Sales, *In re* Deblanc & Durrive, No. 394 (E.D. La. Dec. 8, 1842). The report appearing on page 177 of the same volume, however, corresponds to the asset sale conducted by the U.S. Marshal on September 26, 1842, in the joint case of James Durst and William A. Beecher. *See* Account Sales, *In re* Durst & Beecher, No. 281 (E.D. La. Sept. 26, 1842).

113. The left side of the caption generally took the following form (albeit with slight variations regarding capitalization): “[name of the assignee] assignee of the Estate of [name of bankrupt] Bankrupt” in an individually filed case; or “[name of the assignee] assignee of the Estate of [name of bankrupts] Bankrupts” in a jointly filed case.

114. The court, of course, is the U.S. District Court for the Eastern District of Louisiana. With slight variations, each report identified that court. *See, e.g.*, Account Sales, *In re* Bernard, No. 395 (E.D. La. Dec. 24, 1843) (identifying the court as “the District Court of the United States Eastern District of Louisiana”); Account Sales, *In re* Cucullu, No. 464 (E.D. La. Mar. 3, 1843) (identifying the court as “the District Court of the U.S. Eastern district of Louisiana,” with the second reference to “district” not capitalized); Account Sales, *In re* Buckner, No. 312 (E.D. La. Dec. 30, 1842) [hereinafter Buckner Account Sales] (identifying the court as “the United States District Court Eastern District of Louisiana”). It should be noted that Congress reorganized Louisiana into a single judicial district in 1845. *See supra* note 14. Accordingly, some references in this Article may indicate the court as the U.S. District Court for the District of Louisiana. *E.g.*, Account Sales, *In re* Banks, No. 353 (D. La. July 22, 1846) (identifying the court as “the District Court of the United States for the District of Louisiana”).

115. For bankruptcy sale reports that do not identify the case number, see, for example, Account Sales, *In re* Brady & McCombs, No. 365 (E.D. La. Apr. 6, 1843); Buckner Account Sales, *supra* note 114; and Account Sales, *In re* Delpuch, No. 276 (E.D. La. Dec. 10, 1842) [hereinafter Delpuch Account Sales].

116. For bankruptcy sale reports that set forth the time of sale, see, for example, Account Sales, *In re* Gloyd, No. 578 (E.D. La. Nov. 10, 1845) [hereinafter Gloyd Account Sales]; and Account Sales, *In re* Hunt, No. 452 (E.D. La. June 17, 1845) [hereinafter Hunt Account Sales].

purchasers for the property, including a sum total for all the property sold; and (4) on rare occasions, the sale terms (i.e., whether the property was sold on a cash basis, credit basis, or a combination thereof).<sup>117</sup> After this information, the second section sets forth the charges, almost always itemized,<sup>118</sup> assessed by the U.S. Marshal against the estate for expenses incurred in connection with conducting the asset sale, including advertising costs and the U.S. Marshal's sale commission.<sup>119</sup> The second section also provides a sum total for the charges and calculates the net proceeds from the sale by subtracting the total sale charges from the total sale proceeds. Finally, in its third section, each report concludes with either the U.S. Marshal's signature or the signature of one of his deputies (on behalf of the U.S. Marshal).<sup>120</sup>

One of the bankruptcy sale reports from *In re Jonau*, reproduced below in Figure 1, illustrates how the above-referenced information can be gleaned from the reports and how those reports sometimes have information gaps. The first section of the *Jonau* report indicates that J.E. Faures was the assignee administering Jonau's case (i.e., case number seventy-eight) and that the U.S. Marshal, Algernon Sidney Robertson, conducted the asset sale on June 3, 1842. Notably, the first section fails to indicate the sale location and time.

The second section of the report indicates that the U.S. Marshal sold four slaves—Slave Bob, Slave Mathilde and her child, and Slave Marcelitte—and no other property. Three individuals purchased the four slaves. Charles Ytasse purchased Slave Bob for \$155; Raymond Deveze purchased Slave Mathilde and her child for \$590; and Mme. Charles Gabrielle purchased Slave Marcelitte for \$370.<sup>121</sup> The report, however, does not indicate the terms on which the slaves were sold to the purchasers (i.e., for cash, on credit, or a combination thereof). The gross proceeds from the *Jonau* slave sale totaled \$1,115. The costs

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117. For bankruptcy sale reports that set forth the sale terms, see, for example, Hunt Account Sales, *supra* note 116 (stating "Terms of Sale cash"); and Account Sales, *In re Armant*, No. 688 (E.D. La. Apr. 27, 1844) (stating "Terms Cash").

118. For a bankruptcy sale report that does not itemize the various charges assessed by the U.S. Marshal, see Account Sales, *In re Brown*, No. 400 (E.D. La. Dec. 4, 1851).

119. See H.R. DOC. NO. 29-99, at 7 n. § (1847) (discussing "the costs, fees, and expenses arising from the bankruptcies" in the Eastern District, including "the commissions to the marshal for the sale of property" and "advertisements").

120. For an example of a bankruptcy sale report signed by a Deputy U.S. Marshal, see Account Sales, *In re Bridge*, No. 259 (E.D. La. Sept. 13, 1842), in which J.E. Layet, the Deputy U.S. Marshal, signs for A. Sidney Robertson, the U.S. Marshal.

121. In this regard, the Eastern District sales books kept by the U.S. Marshal are just as horrific as those kept by slave traders: "In the traders' tables, human beings were fully fungible: any slave, anywhere, could be compared to any other, anywhere else. That was commodification: the distant and different translated into money value and resolved into a single scale of relative prices . . . ." JOHNSON, *supra* note 88, at 58.

associated with this sale totaled \$38.23, which included the U.S. Marshal's commission on sales in the amount of \$24.23. As such, the net proceeds from the bankruptcy slave sale in *In re Jonau* were \$1,076.77. Finally, the U.S. Marshal's signature appears at the end of the report.

FIGURE 1: BANKRUPTCY SALE REPORT FROM *IN RE JONAU*

28

J. C. Parnis, assignee of J. B. Cotton Bank of the United States  
 to the effect of J. Jonau & Co., bankrupt, District of Louisiana  
 Bankrupt.

Account Sales of Property sold  
 in the above entitled case, and sold by Stephen Sidney Robinson  
 to J. Marshall on the 3<sup>rd</sup> of June 1852 by virtue of an order of Court

Names of Purchasers	Property Sold	Dollars & Cts.
Charles Yasse	Slave Job	155.
Raymond Dreyer	Slave Natchez when Child	576.
W. Charles Sabatier	Slave Marcellite	576.
		Dollars 1115.
<u>Charges</u>		
Marshals Fees	for opposition	2.
	Advertising	4.
	Execution Mart	3.
	Commission on Sales	24.23
		\$38.23
	Net Proceeds	Dollars 1076.77

J. C. P. Assignee

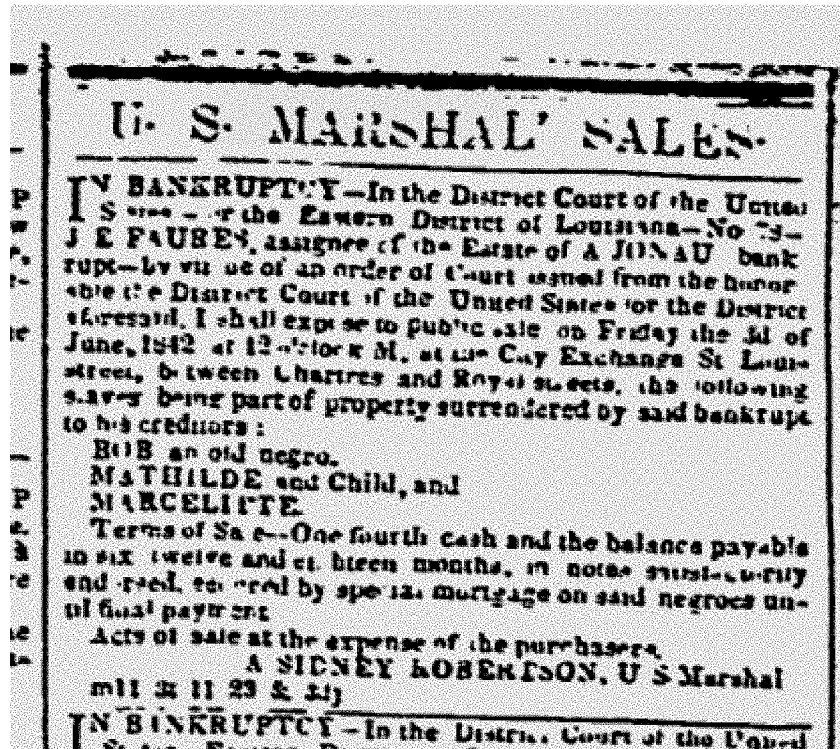
Stephen Sidney Robinson  
 United States Marshal  
 for the Eastern District of Louisiana

To fill the information gaps in the bankruptcy sale reports, various New Orleans papers were consulted—specifically, the *Daily Picayune*, the *New-Orleans Commercial Bulletin*, and the *New-Orleans Bee*.<sup>122</sup> As previously noted, the *Jonau* report did not indicate (1) the sale time, (2) the sale location, or (3) the sale terms. That information,

122. For background information on these newspapers, see ROBERT C. REINDERS, *END OF AN ERA: NEW ORLEANS, 1850-1860*, at 227-28, 232 (1964).

however, appears in the notice published in the *Commercial Bulletin* on June 3, 1842, the date of the sale.

FIGURE 2: NOTICE OF U.S. MARSHAL SALE IN *IN RE JONAU*



As depicted in Figure 2, the notice indicates that the sale would take place at “12 o’clock . . . at the City Exchange St. Louis street, between Chartres and Royal streets.”<sup>123</sup> Moreover, it specifies that the slaves could be purchased with a cash down payment equal to a quarter of the purchase price, with the outstanding balance financed on a secured basis—namely, the purchased slaves would serve as collateral for the extended credit in the event of default by the purchaser.<sup>124</sup> This example<sup>125</sup> thus reveals that the legal notices appearing in the New

123. NEW-ORLEANS COM. BULL., June 3, 1842, at 4.

124. *Id.* (stating the sale terms to be “[o]ne fourth cash and the balance payable in six twelve and eighteen months, in notes satisfactorily endorsed, secured by special mortgage on said negroes until final payment”).

125. Another example of detail enhancement regards the description of the slaves. Sometimes, the legal notices set forth details about the slaves (e.g., gender, age, occupation, health condition) that do not appear in the bankruptcy sale reports. Returning to the example of the *Jonau* report, that report describes one of the slaves as “Slave Bob,” *see supra* Figure 1, whereas the legal notice



Orleans newspapers can be mined for information that enhances the level of detail contained in the bankruptcy sale reports.<sup>126</sup>

Before turning to a discussion about the sources relied upon to tell the qualitative story of bankruptcy slave sales, it is worth noting a key limitation that results from primarily relying upon the Eastern District sales books, in conjunction with the New Orleans newspaper advertisements, to tell the quantitative story about such sales. The process of searching for advertisements corresponding to the reports from the Eastern District sales books revealed three types of advertisements clearly indicating that those books do not contain reports for every bankruptcy asset sale that took place in the Eastern District: (1) notice by the U.S. Marshal of a bankruptcy slave sale, for which no corresponding report exists in the Eastern District sales books; (2) notice of a bankruptcy-related slave sale to be conducted by a sheriff of a state district court, for which no corresponding report exists in the Eastern District sales books; and (3) notice by private auctioneers for bankruptcy asset sales that they would conduct, for which no

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in the *New-Orleans Commercial Bulletin* describes him as “BOB an old negro,” see *supra* Figure 2. Thus, in this instance, the legal notice provides additional information that conveys a rough sense about Bob’s age.

126. Cf. RICHARD C. WADE, *SLAVERY IN THE CITIES: THE SOUTH 1820–1860*, at 285–86 (paperback ed. 1967):

But it would not have been possible to tell this story without the voluminous files of early local newspapers. Every city had several, both dailies and weeklies, which provide indispensable narratives of events in each place. Moreover, their advertisements and announcements often reveal a great deal of everyday information usually not preserved in any other way.;

Judith Kelleher Schafer, *New Orleans Slavery in 1850 as Seen in Advertisements*, 47 J.S. HIST. 33, 56 (1981) (“New Orleans newspaper advertisements of 1850 reflect almost every conceivable abuse of the slave and few mitigating circumstances . . .”).

In her study of New Orleans slavery in 1850 through the lens of that city’s newspaper advertisements, Judith Schafer reports that “78 percent of all [slave] auctions were occasioned by some legal procedure,” including bankruptcy. Schafer, *supra*, at 41. Aside from this brief reference, her study does not mention or describe the bankruptcy slave sale. The question arises whether an 1850 advertisement for such a sale prompted Schafer’s reference to bankruptcy. The Eastern District sales books do not contain any report for a bankruptcy slave sale conducted in 1850. The earliest report for a bankruptcy slave sale from the 1850s corresponds to one that took place at the end of 1851. See *Account Sales*, *supra* note 118. As discussed below, the Eastern District sales books do not include reports on all bankruptcy asset sales, including bankruptcy slave sales—although the omissions are likely very few. While a bankruptcy slave sale may have been advertised in 1850 for which a corresponding report does not exist in the Eastern District sales books, see *infra* notes 129–143 and accompanying text, it is possible that Schafer used the term “bankruptcy” loosely, as other historians have, see BALLEISEN, *supra* note 22, at 234 n.3 (“Unless the specific context requires reference to technical distinctions in nineteenth-century American law, I . . . use ‘bankrupt’ and ‘insolvent’ interchangeably, just as nineteenth-century Americans did in their everyday speech.”), and that she was referring to a slave sale occasioned by a bankruptcy-like legal procedure, such as the cession of property, a form of debt relief available to Louisiana debtors under the state’s Civil Code, see Pardo, *supra* note 1, at 1101 (discussing cession of property).

corresponding report exists in the Eastern District sales books.<sup>127</sup> To be sure, these gaps raise concerns about how comprehensive the Eastern District sales books might be in their coverage. But for the reasons set forth below, these concerns can be assuaged to a certain degree.

The first type of notice potentially implicates the thoroughness and diligence of the U.S. Marshal in maintaining records of the bankruptcy asset sales conducted by him. One way to address this concern would be to examine individually each case file and search for individual records indicating that an asset sale, conducted by the U.S. Marshal, had taken place (e.g., an assignee's report). Upon finding evidence of such a sale, one could then seek to cross-reference that information with the reports contained in the Eastern District sales books. If those books did not contain a corresponding report, that would potentially constitute an instance in which the U.S. Marshal had not been thorough and diligent in maintaining records of his bankruptcy asset sales. I say "potentially" because the possibility exists that the U.S. Marshal recorded the sale, but that the report fails to appear in the sales books. Specifically, I recall from my review of the Eastern District sales books that a few of the reports appeared on individual unbound pages that were smaller than the oversized, bound folio pages of the Eastern District sales books,<sup>128</sup> and that they had been placed loosely within those books. Thus, it could be that a loose report completed by the U.S. Marshal may have slipped out of the sales books, or that such a report may have been reviewed by court personnel (e.g., the clerk of court, an assignee, or a commissioner) who failed to return it to the sales books.

In any event, combing through each of the case files to verify the comprehensiveness of the Eastern District sales books was not a task that could be accomplished for purposes of *Bankrupted Slaves* given financial and time constraints. The case files consist of twenty-five linear feet and one linear inch of records contained in forty-eight legal archives boxes and three flat storage boxes for oversized materials.<sup>129</sup> To review the case files in the manner described would not have been feasible at this juncture. Moreover, this cross-referencing approach would have had limitations given that the Eastern District case files

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127. It should also be noted that some Louisiana debtors filed for relief under the state's insolvency law before the 1841 Act took effect and then subsequently sought bankruptcy relief. In those instances, the debtor's property—including any slaves—surrendered at the time that he or she sought state insolvency relief would have been sold through the state-law process. See Pardo, *supra* note 1, at 1101–02.

128. See *supra* notes 110–111 and accompanying text.

129. See *Bankruptcy Act of 1841 Case Files, 1842–1843*, NAT'L ARCHIVES CATALOG, <https://catalog.archives.gov/id/4513381> (last visited Mar. 1, 2018) [<https://perma.cc/B55N-5SU5>].

are incomplete. My limited review of those files (discussed further below),<sup>130</sup> which are organized chronologically by case number with the records for each case contained within a numbered file folder,<sup>131</sup> revealed that certain files did not contain any records, which were marked as missing on the folder. In such instances, one would not be able to check the completeness of the Eastern District sales books in the manner described.

As previously mentioned, I limited my search for advertisements corresponding to reports from the Eastern District sales books to three New Orleans newspapers—the *Commercial Bulletin*, the *Daily Picayune*, and the *New-Orleans Bee*. All three newspapers are available digitally, the *Bee* and the *Bulletin* through the Google Newspaper Archive,<sup>132</sup> and the *Daily Picayune* through ProQuest Civil War Era.<sup>133</sup> I reviewed the available daily issues of each of these sources during the relevant time period of this study to find legal notices corresponding to (1) the bankruptcy slave sales and (2) the cases associated with those sales. Accordingly, my review entailed searching the newspapers for notices by the U.S. Marshal regarding bankruptcy slave sales and notices by the clerk or deputy clerk of court regarding the various petitions that had been filed in bankruptcy cases and on which the court would hold a hearing (e.g., a debtor's petition to be declared a bankrupt, a bankrupt's petition for a discharge, or an assignee's petition to sell estate property). With regard to notices by the U.S. Marshal announcing a bankruptcy slave sale, only once did I come across a notice that did not have a corresponding report in the Eastern District sales books.

On September 1, 1842, the *Commercial Bulletin* published nine notices by the U.S. Marshal announcing bankruptcy asset sales,<sup>134</sup> four of which involved the sale of slaves later that month. Of those four notices, the first one (from the top of the page) announced that Elizabeth would be sold at the asset sale of Isaac Bridge's estate, scheduled for the thirteenth.<sup>135</sup> The second notice announced a sale

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130. See *infra* note 162 and accompanying text.

131. See *Bankruptcy Act of 1841 Case Files, 1842–1843*, *supra* note 129; see also Act of Aug. 19, 1841, ch. 9, § 13, 5 Stat. 440, 448 (stating “[t]hat the proceedings in all cases in bankruptcy . . . shall be carefully filed, kept, and numbered, in the office of the court”) (repealed 1843).

132. *Google Newspaper Archive*, GOOGLE NEWS, <https://news.google.com/newspapers> (last visited Mar. 1, 2018) [<https://perma.cc/5P3E-9FRH>].

133. *ProQuest Civil War Era*, PROQUEST, <http://www.proquest.com/products-services/cwe.html> (last visited Mar. 1, 2018) [<https://perma.cc/D6ZV-RVMC>].

134. See NEW-ORLEANS COM. BULL., Sept. 1, 1842, at 3 (publishing two notices by the U.S. Marshal for bankruptcy asset sales); *id.* at 4 (publishing seven notices by the U.S. Marshal for bankruptcy asset sales).

135. *Id.* at 4.

scheduled for the twelfth in the joint case of David Hadden and J.A. Hall, at which three slaves, “[a]ll of them acclimated,”<sup>136</sup> would be sold.<sup>137</sup> The third notice announced the sale of ten slaves, including a mother and her three children (ages ten, seven, and seven months), in the joint case of Joachim Kohn, C.J. Daron, and Carl Kohn, with the sale scheduled for the seventeenth.<sup>138</sup> The fourth and final notice announced that the U.S. Marshal would sell on the tenth, from the estate of James Grice, a male slave and a half interest in another male slave.<sup>139</sup>

While corresponding reports can be found in the Eastern District sales books for the bankruptcy slave sales in *In re Bridge*,<sup>140</sup> *In re Hadden & Hall*,<sup>141</sup> and *In re Grice*,<sup>142</sup> no such report can be found for the bankruptcy slave sale in *In re Kohn, Daron & Kohn*. The Eastern District sales books do contain reports on bankruptcy asset sales in *In re Kohn, Daron & Kohn*, but those sales did not take place on September 17, 1842, and did not involve the sale of slaves.<sup>143</sup> Thus, the extensive research conducted for *Bankrupted Slaves* uncovered only one instance of a newspaper advertisement for a bankruptcy slave sale for which no corresponding report exists in the Eastern District sales books. This should mitigate some of the concern regarding the U.S. Marshal’s thoroughness and diligence in memorializing the occurrence of bankruptcy slave sales conducted by him.<sup>144</sup>

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136. For a discussion of the meaning of acclimation in the context of slavery, see, for example, JOHNSON, *supra* note 88, at 139; JOE GRAY TAYLOR, NEGRO SLAVERY IN LOUISIANA 23 (1963).

137. NEW-ORLEANS COM. BULL., Sept. 1, 1842, at 4.

138. *Id.*

139. *Id.*

140. Account Sales, *supra* note 120.

141. Account Sales, *In re Hadden & Hall*, No. 239 (E.D. La. Sept. 12, 1842).

142. Account Sales, *In re Grice*, No. 184 (E.D. La. Sept. 10, 1842).

143. See Account Sales, *In re Kohn, Daron & Kohn*, No. 199 (D. La. May 3, 1845); Account Sales, *In re Kohn, Daron & Kohn*, No. 199 (E.D. La. Apr. 4, 1844); Account Sales, *In re Kohn, Daron & Kohn*, No. 199 (E.D. La. May 6, 1843); Account Sales, *In re Kohn, Daron & Kohn*, No. 199 (E.D. La. Dec. 30, 1842); Account Sales, *In re Kohn, Daron & Kohn*, No. 199 (E.D. La. Sept. 1, 1842).

144. A caveat on this point is in order. New Orleans had newspapers in circulation in addition to the *Bee*, *Commercial Bulletin*, and *Daily Picayune* during this time period. See BENJAMIN MOORE NORMAN, NORMAN’S NEW ORLEANS AND ENVIRONS 174 (Matthew J. Schott ed., La. State Univ. Press 1976) (1845) (noting in 1845 that “[t]here are eight daily papers published in New Orleans”); REINDERS, *supra* note 122, at 226–37 (discussing New Orleans newspapers in circulation during the 1850s and providing details on their origins). The possibility exists that there could have been advertisements of bankruptcy slave sales in those newspapers for which no corresponding reports exist in the Eastern District sales books and that this study would have failed to unearth these discrepancies by virtue of the fact that those newspapers were not examined.

To be sure, evidence exists that the U.S. Marshal placed notices of bankruptcy slave sales in newspapers other than the *Bee*, *Commercial Bulletin*, and *Daily Picayune*. Recall that the second section of the U.S. Marshal’s sale reports set forth the costs incurred in connection with a given asset sale, with those costs usually itemized, including advertisement costs. See *supra* notes 118–

The other types of notices raising concerns about the Eastern District sales books' extent of coverage are notices by the state district court sheriff of a bankruptcy-related slave sale to be conducted through state judicial process and notices by private auctioneers for bankruptcy asset sales to be conducted by them. Given that that the U.S. Marshal would not conduct such sales, there would be no reason for reports of those sales to appear in the Eastern District sales books. As such, these types of notices do not trigger concerns regarding the thoroughness and diligence of the U.S. Marshal. But they do beg the question of how widespread bankruptcy slave sales conducted by someone other than the U.S. Marshal may have been.

While I made no systematic effort to search for these types of notices, I discovered several in my review of the New Orleans newspapers. Coincidentally, the one example discovered of a notice by a state district court sheriff arose in relation to the *In re Kohn, Daron & Kohn* case. On December 9, 1842, the *Commercial Bulletin* published a notice by J.L. Thielen, sheriff of the District Court of the First Judicial District of the State of Louisiana,<sup>145</sup> announcing the sale of two slaves seized in connection with a state court lawsuit initiated by H.C. Cammack, in his capacity as assignee in *In re Kohn, Daron & Kohn*, against Pierre Daron,<sup>146</sup> perhaps a relative of one of the *Kohn*

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119 and accompanying text. Sometimes, as illustrated in the *Jonau* report, see *supra* Figure 1, the report would set forth a line item for "Advertising" without providing further detail. On other occasions, however, the U.S. Marshal's report would further itemize the advertising costs, identifying the newspapers in which the advertisements had been published and the respective costs. Some of these reports reveal advertisements in New Orleans newspapers that were not reviewed for this study—for example, newspapers that the U.S. Marshal referred to in his reports as the *Herald*, the *Jeffersonian*, the *Jeffersonian Republican*, the *Republican*, and the *Tropic* (some of which may be the same newspaper). But even though there were instances in which he had arranged for advertising in newspapers not consulted in this study, for the overwhelming majority of those instances, he also advertised in one of the newspapers consulted in this study (i.e., the *Bee*, the *Commercial Bulletin*, and the *Daily Picayune*). See, e.g., Gloyd Account Sales, *supra* note 116 (itemizing an eighteen-dollar charge for advertising in the *Jeffersonian Republican*, a nine-dollar charge for advertising in the *Bee*, and a nine-dollar charge for advertising in the *Bulletin*); Account Sales, *In re Botts*, No. 545 (E.D. La. Nov. 11, 1843) (itemizing a thirty-dollar charge for advertising in the *Republican* and a thirty-dollar charge for advertising in the *Bee*); Account Sales, *In re Armant*, No. 704 (E.D. La. June 8, 1843) (itemizing a six-dollar charge for advertising in the *Herald* and a six-dollar charge for advertising in the *Bee*); Account Sales, *In re Forstall*, No. 393 (E.D. La. Jan. 3, 1843) (itemizing a twelve-dollar charge for advertising in the *Tropic* and a twelve-dollar charge for advertising in the *Daily Picayune*); Delpeuch Account Sales, *supra* note 115 (itemizing a forty-nine-dollar charge for advertising in the *Jeffersonian* and a sixty-six-dollar charge for advertising in the *Bee*). Accordingly, for those instances, the opportunity existed for the discovery of missing reports on bankruptcy slave sales for which notices had been published.

145. Cf. REINDERS, *supra* note 122, at 74 ("The parish sheriff was the agent for the district court, not, as in common law states, an investigating and enforcing official.").

146. See NEW-ORLEANS COM. BULL., Dec. 9, 1842, at 4.

bankrupts.<sup>147</sup> The notice stated that Henrietta, who was thirty-seven years old, would be sold with Louis, her thirteen-year-old child.<sup>148</sup>

In this example, we witness that a bankruptcy assignee, Cammack, used the state court system to force a judicial sale of slaves, and we might infer that he subsequently distributed the recovered proceeds to creditors in the *Kohn* case.<sup>149</sup> None of this necessarily means that Henrietta and Louis fell within the category of “bankrupted slaves” as defined in *Bankrupted Slaves*—that is, slaves “subjected to sale through the federal bankruptcy process as a result of the desire of their indebted owners to attain financial freedom from the debts that drove them into bankruptcy.”<sup>150</sup> Evidence exists that some bankrupts, like Arthur Morrell, sought to place their slaves beyond the reach of their creditors.<sup>151</sup> It very well could be that one of the *Kohn* bankrupts (likely C.J. Daron) owned Henrietta and Louis and fraudulently transferred them to Pierre Daron. But it could also be that Pierre Daron owed money to the *Kohn* bankrupts at the time they were declared bankrupt; that Cammack, the assignee, sued Pierre Daron in state court to recover the debt; and that Cammack, having obtained a judgment on the debt, had some of Daron’s assets, the two slaves, seized to be sold to satisfy the judgment. In this latter example, none of the *Kohn* bankrupts would have had a property interest in Henrietta and Louis as of the date of their bankruptcy decree, and thus the slaves would not have been bankrupted slaves. To be clear, though, the bankruptcy process would have been instrumental in setting off a series of events that ultimately resulted in the sale of two human beings.

The state court sale associated with the *Kohn* case undoubtedly suggests that the Eastern District sales books do not provide a full accounting of bankruptcy slave sales. That said, given that the extensive research for *Bankrupted Slaves* uncovered only one such

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147. See *supra* text accompanying note 138 (noting that the *Kohn* bankrupts were Joachim Kohn, C.J. Daron, and Carl Kohn).

148. NEW-ORLEANS COM. BULL., Dec. 9, 1842, at 4. The slave identified as Henrietta in the state-court sale associated with the *Kohn* bankruptcy case appears to be different than the slave identified as Henrietta in the *Kohn* bankruptcy slave sale. See *supra* text accompanying note 138 (describing the notice in the *Kohn* bankruptcy slave sale). As already mentioned, the former was thirty-seven and was to be sold with her thirteen-year-old child, Louis. See *supra* text accompanying note 148. On the other hand, in the newspaper notice announcing the *Kohn* bankruptcy slave sale, the U.S. Marshal described Henrietta, who was to be sold at that sale, to be “aged about 15 years.” NEW-ORLEANS COM. BULL., Sept. 1, 1842, at 4.

149. One might be able to discover whether Cammack, in fact, obtained such proceeds for distribution by searching the *Kohn* case file for the assignee’s reports, if any are available, and then examining those reports for the mention of proceeds obtained through the state-court litigation. Unfortunately, because of financial and time constraints, an opportunity did not arise during the research for *Bankrupted Slaves* to examine the *Kohn* case file.

150. Pardo, *supra* note 1, at 1078–79.

151. See *id.* at 1074–77.

example, I suspect that there were only a trivial amount of bankruptcy slave sales through the state court system.

Finally, notices announcing bankruptcy asset sales conducted by private auctioneers possibly suggest that the Eastern District sales books do not provide complete coverage of bankruptcy slave sales. I did not systematically search for this type of notice. Rather, I haphazardly came across three such notices, all of them appearing in the *Commercial Bulletin*. First, a notice on March 19, 1842, stated that R.B. Sykes, one of New Orleans's prominent auctioneers,<sup>152</sup> would sell the following month, on April 6, "by an order from . . . the United States District Court for the Eastern District of Louisiana, and under the direction of . . . [the] assignee of the creditors of Loyal Case, . . . property, surrendered by said insolvent to his creditors," which consisted solely of various real estate parcels (i.e., lots of ground).<sup>153</sup> A second notice, this one appearing on July 21, 1842, stated that P. Cenas, from the auctioneering firm of Hewlett & Cenas,<sup>154</sup> would sell on the following day, pursuant to the federal district court's order, property from the bankruptcy estate of James Denegre, none consisting of slaves.<sup>155</sup> Finally, a notice on August 13, 1842, announced that the auctioneer J. Levy would sell a week later the one-half interest of bankrupt Charles Clegg in a variety of nonslave property pursuant to "an order from the honorable the U S District Court, Eastern District of Louisiana, dated the 9th day of July, 1842."<sup>156</sup>

Notably, none of these examples involved a slave sale. Nevertheless, the distinct possibility exists that slaves may have been sold at bankruptcy asset sales conducted by private auctioneers. These examples reinforce the point that the U.S. Marshal did not always conduct bankruptcy asset sales, with the result that a corresponding report would not appear in the Eastern District sales books. As such,

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152. See DAILY PICAYUNE (New Orleans), Apr. 3, 1863, at 1:

Our old friend, R. B. Sykes, the well-known auctioneer, died at an early hour this morning, and his funeral will take place this afternoon. . . . [H]e, during his long career as an auctioneer, commanded an extensive and lucrative business, and was particularly distinguished for his large sales of groceries, provisions, &c.

153. NEW-ORLEANS COM. BULL., Mar. 19, 1842, at 1. Given that Louisiana law deemed slaves to be real property, rather than personal property, see *id.* at 1108 n.212, I have specified that the real estate parcels surrendered by Case were lots of ground. The index listing the name and case number of the individuals whose bankruptcy cases were commenced in the Eastern District (the "Eastern District name index"), see Pardo, *supra* note 1, at 1113 n.232 (discussing the Eastern District name index), confirms that Loyal Case was a bankrupt in the Eastern District whose case number was thirteen.

154. See *Piernas v. Milliet*, 10 La. Ann. 286, 286 (1855) (describing Hewlett & Cenas as "auctioneers").

155. NEW-ORLEANS COM. BULL., July 21, 1842, at 2.

156. NEW-ORLEANS COM. BULL., Aug. 13, 1842, at 2.

relying on the Eastern District sales books to tell the story of bankruptcy slave sales will likely result in an incomplete account. Even so, as revealed in *Bankrupted Slaves*, the abundant quantitative data paint a robust picture of what bankruptcy slave sales entailed.<sup>157</sup> Moreover, given the underinclusive nature of the Eastern District sales books, including any additional data missing from those books would have the effect of painting a more dire picture.

### C. Research Methodology: Qualitative Sources

Statistics, no matter how illuminating in and of themselves, cannot tell a complete story.<sup>158</sup> For example, knowing that James, Arthur Morrell's slave, spent nearly eleven years as a bankrupted slave tells us nothing about why he remained unsold for such a long period of time.<sup>159</sup> Only by looking beyond the Eastern District sales books and digging deeper into the historical record do we discover Morrell's attempts to keep James beyond the reach of creditors and learn about James's efforts to elude capture and sale.<sup>160</sup> Accordingly, to better understand the qualitative nature of the bankruptcy slave sale,<sup>161</sup> I surveyed some of the Eastern District bankruptcy case files—specifically, records from thirty-six of the eighty-eight cases for which the Eastern District sales books contain a report involving a bankruptcy slave sale.<sup>162</sup>

The index listing the name and case number of the individuals whose bankruptcy cases were commenced in the Eastern District (the “Eastern District name index”)<sup>163</sup> and the docket books corresponding to the bankruptcy cases filed in the Eastern District (the “Eastern District docket books”)<sup>164</sup> were instrumental in locating the case files

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157. See Pardo, *supra* note 1, at 1119–40.

158. In his history of the mass killings in Europe committed by Germany and the Soviet Union before and during World War II, Timothy Snyder reminds us that “[t]he sheer numbers of the victims can blunt our sense of the individuality of each one.” TIMOTHY SNYDER, *BLOODLANDS: EUROPE BETWEEN HITLER AND STALIN*, at xv (2010). Thus, in order to ensure that statistics do not drown out the individuality of victims of atrocity, it becomes imperative to marshal source material that, to the extent possible, speaks to the qualitative experiences of the victims, whether through their voices or through those of the perpetrators and witnesses. See *id.* at xvii–xviii.

159. See Pardo, *supra* note 1, at 1165.

160. See *id.* at 1075–77.

161. Cf. Thomas D. Russell, *South Carolina's Largest Slave Auctioneering Firm*, 68 CHI.-KENT L. REV. 1241, 1255 (1993) (“The sale books record nothing of slaves' reactions to their sale.”).

162. Financial and time constraints limited me from reviewing more case files for *Bankrupted Slaves*.

163. U.S. DIST. COURT FOR THE E. DIST. OF LA., BANKRUPTCY ACT OF 1841 MINUTES, 2/1843–1/1861 (located in Record Group (RG) 21, The National Archives at Fort Worth, Texas) [hereinafter EDLA MINUTES].

164. EDLA DOCKETS, *supra* note 67.



corresponding to the reports from the Eastern District sales books. Recall that the case files are organized chronologically by case number with the records for each case contained within a numbered file folder.<sup>165</sup> At first blush, it would appear to be a fairly straightforward task to locate the appropriate case file based on the debtor name and case number provided in the U.S. Marshal's asset sale report. While for the overwhelming majority of asset reports it was as simple as that, there were some instances in which locating the proper case files required reference to the Eastern District name index and docket books.

To set a backdrop for the more complex search procedures, let us begin with a simple and easy example—that is, where the information in the U.S. Marshal's asset sale report was sufficient by itself to lead to the correct case file. In the *Jonau* report,<sup>166</sup> the U.S. Marshal listed: (1) the assignee as “J. E. Faures”; (2) the debtor as “A. Jonau”; (3) the case number as “No 78”; and (4) the slaves to be sold as “Slave Bob,” “Slave Mathilde & her child,” and “Slave Marcelitte.”<sup>167</sup> Based on the case number listed in the report, the hope would be that the number would correspond to the bankruptcy case file that is numbered seventy-eight. And, in fact, the records in that case file correspond to the U.S. Marshal's sale report. One of those records is the assignee's petition to sell the slaves identified in the U.S. Marshal's report.<sup>168</sup> The petition's cover is reproduced below in Figure 3.

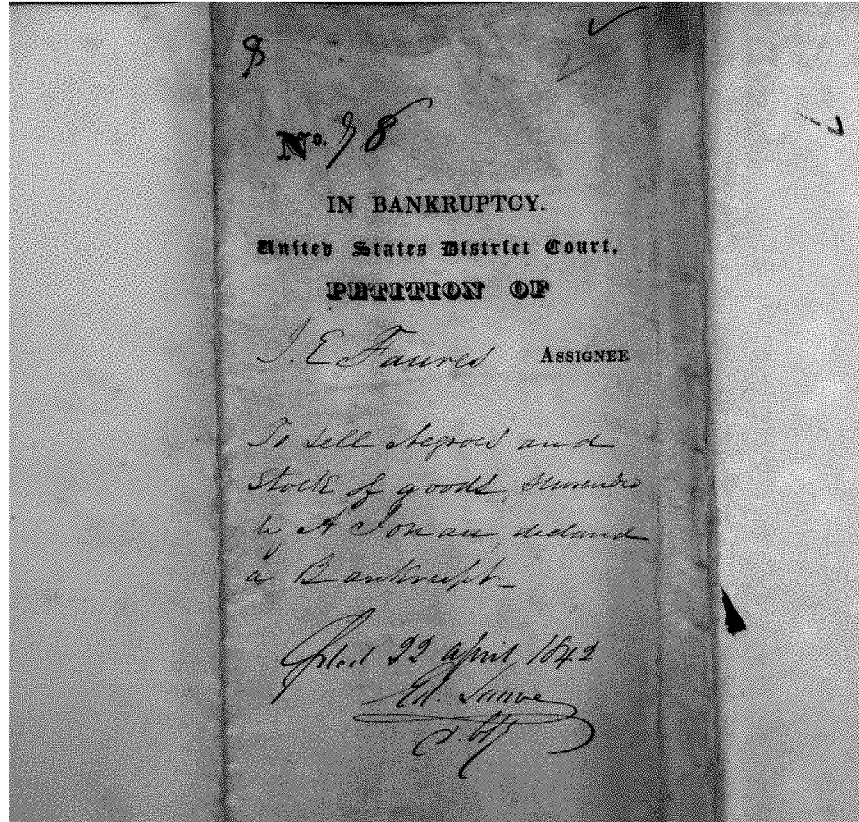
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165. See *supra* note 131 and accompanying text.

166. See *supra* Figure 1.

167. Account Sales, *In re Jonau*, No. 78 (E.D. La. June 3, 1842).

168. Petition of J.E. Faures Assignee to Sell Negroes and Stock of Goods, Surrendered by A Jonau, Declared a Bankrupt, *In re Jonau*, No. 78 (E.D. La. Apr. 22, 1842) [hereinafter Faures Petition].

FIGURE 3: COVER OF ASSIGNEE'S SALE PETITION FROM *IN RE JONAU*

The cover of the petition contains various pieces of information indicating that the case file corresponds to the U.S. Marshal's report. The top of the cover sets forth the case number, seventy-eight, which has been filled in next to the preprinted "No." that sits above the preprinted title for the cover. That preprinted title consists of the printed words "In Bankruptcy. United States District Court, Petition of," followed by a blank space and then the printed word "Assignee."<sup>169</sup>

169. After passage of the 1841 Act, "[legal] stationers . . . printed . . . blank forms that attorneys or bankrupts might use in lieu of writing out the prescribed text of petitions or motions." BALLEISEN, *supra* note 22, at 144. The cover of the assignee's sale petition in *In re Jonau* illustrates one such form, as does the first page of the petition, which consists of extensive preprinted words, including some specific to the Eastern District (i.e., "To the Honorable the Judge of the United States District Court, for the Eastern District of Louisiana"). See Faures Petition, *supra* note 168.

The bankruptcy materials prepared by legal stationers appear to have been readily available for purchase by the general public in New Orleans. For example, a *Commercial Bulletin* advertisement on June 3, 1842, announced the sale of books, including "A COMMENTARY ON THE BANKRUPT LAW OF 1841, showing its operation and effect . . . to which is annexed the law

The name of the assignee in *In re Jonau*, J.E. Faures, has been handwritten in the blank space preceding the word "Assignee." The remainder of the cover consists of handwriting indicating the nature of the relief sought by the assignee: "To sell Negroes and Stock of goods, surrendered by A Jonau, declared a Bankrupt." Finally, below the description of the petition, additional handwriting indicates that Faures filed the petition on April 22, 1842, with that notation followed by the signature of Ed. Lauve, the Deputy Clerk of Court for the Eastern District.

We see, then, that the sale petition cover sets forth (1) the same case number as the U.S. Marshal's sale report; (2) the same assignee as the sale report; (3) the same debtor as the sale report; and (4) a petition filing date that precedes the date of the U.S. Marshal's bankruptcy slave sale. With this information alone, one can be highly confident that the case file has been properly identified as the one corresponding to the U.S. Marshal's sale report. Better yet, though, the content of the petition and its accompanying schedule leave no doubt that the case file correctly corresponds to the sale report.

The first page of the assignee's sale petition identifies the bankrupt as "Antoine Jonau of New Orleans," and further notes "that the said Antoine Jonau at the time of his Bankruptcy was seized and possessed of the estate and property in the schedule hereto annexed, marked A."<sup>170</sup> The annexed Schedule A, reproduced in Figure 4, is completely handwritten and titled "Schedule of the negroes surrendered by Antoine Jonau, declared bankrupt, for the benefit of his creditors."<sup>171</sup>

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and *appendix of Forms* and a table of Fees." NEW-ORLEANS COM. BULL., June 3, 1842, at 1 (emphasis added). The advertisement was placed by a "BENJ LEVY, cor Camp and Gravier sts." *Id.* Presumably, that reference was to a Benjamin Levy whose bookstore was located at the corner of Camp and Gravier Streets in New Orleans. If so, the very gentlemen who sought to sell bankruptcy books to the New Orleans public also sought bankruptcy relief for himself. A *New-Orleans Bee* notice from May 2, 1843, announced that the U.S. Marshal would conduct a bankruptcy asset sale on May 8 "at the store occupied by Benjamin Levy, corner Camp and Gravier streets, and on the following days until concluded . . . property surrendered by said Levy to his creditors." NEW-ORLEANS BEE, May 2, 1843, at 4. The property to be sold included "[a] large assortment of School, Law and Medical Books." *Id.* Oh, the irony! Hopefully, Levy had an opportunity to consult one of the copies of the bankruptcy books in his store's inventory before surrendering them to the assignee.

170. Faures Petition, *supra* note 168, at 2 sched. A.

171. *Id.*

FIGURE 4: SCHEDULE A TO ASSIGNEE'S SALE PETITION  
FROM *IN RE JONAU*

(2) Schedule of the property considered by Edouard  
Jonau, Assignee bankrupt, for the benefit of his  
creditors.

Slave Bob - old negro - value of	\$200.00
Slave Mathilde & boy - her child - value	800.00
Slave Marcelite	300.00
	<hr/>
Also a stock of goods in store	\$1,300.00
valued at - (on 24 February 1842) -	\$3,947.72

is not sold - statement of said stock of  
goods - value by said Ed. Jonau in this  
Court.

Also the lease of the store in which said  
stock of goods is situated at the corner of  
Bienville & Gallatin streets in the  
1<sup>st</sup> Municipality - expiring - 1<sup>st</sup> Nov. 1842  
at \$50 per month.

Just as in the U.S. Marshal's asset sale report,<sup>172</sup> Schedule A identifies four slaves for sale: "Slave Bob," "Slaves Mathilde & boy—her child," and "Slave Marcelite."<sup>173</sup> But the schedule also provides information that was not present in the report, such as the first name of the bankrupt, Antoine. The schedule describes Bob as "an old negro," thus conveying a rough sense about his age.<sup>174</sup> The schedule identifies the gender of Mathilde's child, a boy. It also provides a valuation for the

172. See Account Sales, *supra* note 167 (identifying "Slave Bob," "Slave Mathilde & her child," and "Slave Marcelitte" as property sold).

173. Faures Petition, *supra* note 168, at 2 sched. A. The schedule also indicates nonslave property available for sale—specifically, (1) "a stock of goods in store valued at—(on 24 February 1842)—\$3,947.72"; and (2) "the Lease of the store in which said stock is in — situated at the corner of Bienville & Gallatin streets in the 1st Municipality — expiring — 1st Nov. 1842 at \$50 per month." *Id.* The U.S. Marshal sold the nonslave property at an earlier date than the slaves. Compare Account Sales, *In re Jonau*, No. 78 (E.D. La. May 21, 1842) (reporting sale of goods and lease for a gross total of \$1,467.18 and a net total of \$1,245.66), with Account Sales, *supra* note 167 (reporting sale of four slaves for a gross total of \$1,115.00 and a net total of \$1,076.77).

174. The *Commercial Bulletin* notice regarding the *Jonau* slave sale also described Bob as "an old negro." See *supra* Figure 2.

slaves, but it does not identify the source of the valuation (i.e., whether the assignee, the bankrupt, or some other individual).<sup>175</sup> Thus, not only does the assignee's sale petition provide ironclad evidence of a positively identified bankruptcy case file,<sup>176</sup> but it also provides qualitative (not to mention quantitative) details absent from the U.S. Marshal's sale report.

Record linkage between an asset sale report and the records in the corresponding case file sometimes proved more difficult than the above-referenced example. Omissions and errors regarding the case number in the asset sale report required consultation of other sources to track down the appropriate case file. For example, when the U.S. Marshal memorialized the asset sale that he conducted in *In re Buckner* on December 30, 1842, at which he sold "Slave Jack," his report failed to include the case number.<sup>177</sup> However, the Eastern District name index and the sale notice published in the *Commercial Bulletin* both indicate that the case number assigned to *In re Buckner* is 312,<sup>178</sup> thereby enabling one to locate the corresponding case file. Or for an example of an error in the reported case number, the U.S. Marshal erroneously indicated in his report and in his notice in the *Commercial Bulletin* that the case number for George Whitman, in whose case the U.S. Marshal conducted a bankruptcy slave sale on April 24, 1843, was 363.<sup>179</sup> The Eastern District name index, however, listed case number 363 as corresponding to Samuel M. Stewart and case number 303 as corresponding to George Whitman.<sup>180</sup> Consultation of the records in the

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175. Faures Petition, *supra* note 168, at 2 sched. A. Bob sold for approximately 78% (\$155/\$200) of his estimated value; Mathilde and her child sold for approximately 74% (\$590/\$800) of their estimated value; and Marcelitte sold for approximately 123% (\$370/\$300) of her estimated value. See Account Sales, *supra* note 167; see also *supra* text accompanying note 121 (discussing sale report from *In re Jonau*).

176. There are other records further corroborating that the correct bankruptcy case file was identified using the U.S. Marshal's report from the *Jonau* bankruptcy slave sale. One such record is the Eastern District name index, which lists only one bankrupt with the last name of Jonau. That entry lists "A" as the first initial for the bankrupt, and "78" as the bankrupt's case number. See EDLA MINUTES, *supra* note 163. The slam-dunk corroborating record, however, is a copy of the U.S. Marshal's report that he filed with the clerk of court eight days after conducting the bankruptcy slave sale. See A. Sidney Robertson U.S. Marshal Acct Sales Jonau Slaves, *In re Jonau*, No. 78 (E.D. La. June 11, 1842). Given the existence of that record, the reader may wonder why I went through the trouble of using the assignee's sale petition as the exemplar for demonstrating record linkage between a U.S. Marshal's report and a particular case file. The fact of the matter is that many of the bankruptcy case files that I reviewed did not contain copies of the U.S. Marshal's report. Accordingly, more often than not, I had to rely on other records, such as assignees' sale petitions, to establish that I had identified the corresponding case file.

177. See *Buckner Account Sales*, *supra* note 114.

178. See EDLA MINUTES, *supra* note 163; NEW-ORLEANS COM. BULL., Dec. 8, 1842, at 4.

179. See Account Sales, *In re Whitman*, No. 303 (E.D. La. Apr. 24, 1843); NEW-ORLEANS COM. BULL., Apr. 24, 1843, at 3.

180. See EDLA MINUTES, *supra* note 163.

Eastern District case file that is numbered 303 confirmed that the court had assigned that number to George Whitman's case.<sup>181</sup> As these examples illustrate, the Eastern District name index proved to be instrumental in facilitating record linkage when there were errors or omissions regarding the case numbers in the U.S. Marshal's sale reports.<sup>182</sup>

#### *D. Coding Protocols for the Number of Slaves Sold*

In considering the account presented in *Bankrupted Slaves* of the victims of bankruptcy slave sales, the reader should keep in mind that this accounting, while extensive, will necessarily have been incomplete given the scope of coverage provided by the Eastern District sales books maintained by the U.S. Marshal.<sup>183</sup> In other words, the picture presented in *Bankrupted Slaves* understates the extent of victimization. Additionally, the conservative coding protocols used to document the number of slaves sold in Eastern District bankruptcy slave sales further undercount the number of victims. Those protocols will now be discussed.

The baseline protocol for documenting the number of slaves sold was simply to count the number of slaves appearing in the U.S. Marshal's asset sale report,<sup>184</sup> or, if the report did not individually list each slave sold, to rely on the number of sold slaves provided in the report.<sup>185</sup> Various scenarios arose, however, in which I did not include

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181. See, e.g., Petition of George Whitman . . . to Be Declared a Bankrupt, *In re Whitman*, No. 303 (E.D. La. July 12, 1842) (setting forth "No. 303" on the cover of Whitman's bankruptcy petition).

182. It should be noted that the Eastern District name index itself at times had omissions or errors. For the 763 cases filed in the Eastern District, see *Bankruptcy Act of 1841 Case Files*, *supra* note 129 (noting that Eastern District case files are "[a]rranged numerically by case number, 1–763"), the Eastern District name index listed 760 case numbers. The index, however, failed to list names and case numbers for three individuals: (1) Louis J. Pollock, (2) Nelson A. Young, and (3) John Shaw Kennedy. The names of and case numbers for Pollock and Young were obtained by reference to the Eastern District docket books, and the name and case number for Kennedy were obtained by reference to the corresponding case file. There were also instances in which the name index incorrectly listed the case number, with the result that the same case number was listed for separately filed cases. In such instances, the correct case number could be identified using the Eastern District docket book. Compare, e.g., EDLA MINUTES, *supra* note 163 (listing case number "33" for the separately filed cases of C.B. Beverly and Luis Spotorno), with 1 EDLA DOCKETS, *supra* note 67, at 32–33 (listing case number "32" for C.B. Beverly and case number "33" for Luis Spotorno).

183. See *supra* Section II.B (discussing the scope of coverage of the Eastern District sales books).

184. For example, recall the *Jonau* report, in which the U.S. Marshal individually identified the four slaves whom he sold. See *supra* Figure 1.

185. For example, in one report, the U.S. Marshal described, in relevant part, the first item of property sold as follows: "One sugar plantation situated in the Parish of St. John the Baptist . . . together with 19 slaves belonging to the Partnership, two other slaves, the private property of

in the dataset information from the U.S. Marshal's reports indicating the sale of slaves.<sup>186</sup>

One scenario involved the sale of fractional interests in slaves. All of the bankruptcy slave sales documented in *Bankrupted Slaves* involved the sale of a bankrupt's ownership interest in a slave or slaves, with the overwhelming majority of those interests constituting a full ownership interest. For some bankruptcy slave sales, however, the U.S. Marshal reported that he had sold a fractional ownership interest in a slave or slaves.<sup>187</sup> Sometimes, that fractional ownership interest was the only interest in a slave sold by the U.S. Marshal.<sup>188</sup> At other sales, the U.S. Marshal sold both full ownership interests and fractional interests in slaves.<sup>189</sup> I excluded such fractional interests from the dataset variable for the number of slaves sold by the U.S. Marshal. Accordingly, the statistics presented in *Bankrupted Slaves* understate the number of black men, women, and children who constituted victims of the bankruptcy slave trade.

Another scenario involving the exclusion of information from the U.S. Marshal's report occurred in a single bankruptcy slave sale in which a purchaser of one of the slaves returned her. On May 23, 1842, in the case of Justus Vairin and James Kelly, the U.S. Marshal, Algernon Sidney Robertson, sold three slaves—Alfred, Betsy, and Lucinda—each to a separate purchaser.<sup>190</sup> While Robertson's report indicates that J.U. Lavillebeuvre purchased Betsy for \$370, immediately following the tally of the gross proceeds generated by the asset sale (i.e., \$5,172.50), Robertson deducted \$370 from that amount, before deducting the customary charges for the sale costs incurred by him.<sup>191</sup> In an explanatory note, Robertson described the \$370 deduction as follows: "Less Slave Betsy returned by J. U. Lavillebeuvre Esq on

Julien Bossie and twelve other slaves the private property of Widow B. Bossie . . ." 1 EDLA SALES BOOKS, *supra* note 107, at 160.

186. For a discussion of the dataset used in *Bankrupted Slaves*, see Pardo, *supra* note 1, at 1115–19.

187. For a discussion of various types of divided property interests in slaves, see Thomas D. Russell, *A New Image of the Slave Auction: An Empirical Look at the Role of Law in Slave Sales and a Conceptual Reevaluation of Slave Property*, 18 CARDOZO L. REV. 473, 504–19 (1996).

188. The Eastern District sales books contain two reports indicating that the only interest in a slave sold by the U.S. Marshal was a fractional ownership interest. See Account Sales, *In re Stewart & Macy*, No. 613 (E.D. La. June 21, 1843) (reporting the sale of a "one third interest" in nine slaves, with no other assets sold); Account Sales, *In re Pilcher*, No. 230 (E.D. La. Dec. 1, 1842) (reporting the sale of a "half interest in 20 negroes," in addition to the sale of nonslave assets).

189. See, e.g., Account Sales, *In re Fortier*, No. 567 (E.D. La. June 13, 1843) (reporting the sale of nonslave assets, "the undivided 1/4th of 100 Slaves," and "Slave Jane"); Account Sales, *supra* note 142 (reporting the sale of "Slave Burrell aged about 36 years" and "the half Interest of Slave Robinson," with no other assets sold).

190. Account Sales, *In re Vairin & Kelly*, No. 89 (E.D. La. May 23, 1842).

191. *Id.*

account of her being sickly & readvertised for sale at the request of R Nugent, assignee.”<sup>192</sup> The return of Betsy by Lavillebeuvre to Robertson and the accompanying \$370 refund suggests that Robertson deemed her sale not to be final.<sup>193</sup> Accordingly, the observation in the dataset for the bankruptcy slave sale in *In re Vairin & Kelly* on May 23, 1842, indicates that the U.S. Marshal sold two slaves (not three) at that sale.<sup>194</sup>

The *Vairin & Kelly* scenario involving the purchaser’s return of a slave is to be distinguished from situations in which the U.S. Marshal resold slaves as a result of the purchaser’s failure to comply with the terms of the bankruptcy slave sale. For example, in *In re Huie*, the U.S. Marshal sold “Slave Joe” to John B. Anderson on December 17, 1842, for seventy-five dollars.<sup>195</sup> According to the sale notice in the *Commercial Bulletin*, which described Joe as “a negro man, aged about 65 years,” the U.S. Marshal would sell Joe on a cash basis.<sup>196</sup> Apparently, Anderson failed to pay the purchase price, as suggested by a sale notice in the *Daily Picayune*, which announced an asset sale in *In re Huie* at which the U.S. Marshal would sell various assets, including “[a] negro man named *Joe*, aged about sixty-five years.”<sup>197</sup>

192. *Id.*

193. For further discussion regarding the post-sale return of slaves, see Pardo, *supra* note 1, at 1152 n.441.

194. In a subsequent asset sale in *In re Vairin & Kelly*, the U.S. Marshal sold Betsy for \$135. Account Sales, *In re Vairin & Kelly*, No. 89 (E.D. La. July 22, 1842). It should be noted that the title to the U.S. Marshal’s report includes a question mark following the sale day, thus casting doubt as to the exact day in July 1842 when the U.S. Marshal conducted the sale. *See id.* (setting forth report title as “Account Sales of Property assigned in the above entitled case, and sold by Algernon Sidney Robertson U.S. Marshal on 23? July 1842 by virtue of an order of Court”). However, the amended report filed by Richard Nugent, the assignee in *Vairin & Kelly*, provides an accounting of the sales, receipts, and expenditures in the case, and indicates that Nugent received \$135 on July 22, 1842, from the sale of Slave Betsy. *See* Amended Report of Assignee, *In re Vairin & Kelly*, No. 89 (E.D. La. Dec. 9, 1842). On this basis, the date of the subsequent bankruptcy slave sale in *In re Vairin & Kelly* has been recorded as July 22, 1842.

195. Account Sales, *In re Huie*, No. 258 (E.D. La. Dec. 17, 1842).

196. NEW-ORLEANS COM. BULL., Dec. 3, 1842, at 4.

197. DAILY PICAYUNE (New Orleans), May 22, 1844, at 4. Financial and time constraints precluded consultation of the *Huie* case file to ascertain why Anderson failed to comply with the sale terms. One of the reports filed by the assignee in *In re Vairin & Kelly*, however, provides insight into the types of difficulties that purchasers might have encountered in satisfying their payment obligations. Recall that the U.S. Marshal sold three slaves at the first bankruptcy slave sale in that case, including Alfred. *See supra* text accompanying note 190. The U.S. Marshal’s report indicates that George Lynch purchased Alfred for the price of \$550 on May 23, 1842. Account Sales, *supra* note 190. The assignee’s amended report, in addition to providing this same information, also notes the following regarding Lynch’s payment: “This amount was received in a check on the City Bank before it could be presented the Bank suspended the money was discounted at 11 PerCent.” Amended Report of Assignee, *supra* note 194, at 1. Ultimately, the assignee received only \$489.70 from the sale of Slave Alfred. *Id.* That amount represents approximately 89% of the original purchase price of \$550, thus reflecting the 11% discount referenced by the assignee in his report. Despite Lynch’s failure to pay the full purchase price, no indication exists that Alfred was resold—unlike Joe in *In re Huie*.



The notice further stated that the property would be “[s]old for account and risk of former purchasers, who did not comply with the terms of sale.”<sup>198</sup> On May 29, 1844, the U.S. Marshal resold Joe for eighty-five dollars.<sup>199</sup>

Given that Anderson, Joe’s original purchaser in *Huie*, would seemingly have been held accountable for any difference between the price that he had agreed to pay for Joe and the price that the subsequent purchaser ultimately paid for Joe,<sup>200</sup> the original sale of Joe seems to have been final (unlike the sale of Betsy in *Vairin & Kelly*), thus warranting inclusion of Joe’s sale for the observations in the dataset corresponding to the two bankruptcy slave sales in *Huie*. Accordingly, in any situation involving the resale of a slave as a result of the purchaser’s failure to comply with the sale terms,<sup>201</sup> the dataset for *Bankrupted Slaves* includes the resale of slaves.<sup>202</sup>

The bankruptcy slave sale in *In re Gonzales* constitutes the final instance in which the dataset fails to account for a slave listed in a U.S. Marshal’s report. The report in that case lists five slaves in the section identifying the property sold by the U.S. Marshal.<sup>203</sup> The report identifies the last slave as “Felicité (died)” without listing either a purchaser or a price paid for her. Accordingly, the report overwhelmingly implies that Felicité died prior to the asset sale, having lived out her final days as a bankrupted slave owned by the federal government.<sup>204</sup> Although the bankruptcy process played a prominent feature as the bookend to Felicité’s life, the dataset’s observation for the *Gonzales* slave sale does not include her in the number of slaves sold by the U.S. Marshal.

198. DAILY PICAYUNE (New Orleans), May 22, 1844, at 4. In the *Huie* report memorializing the asset sale from December 17, 1842, at which the U.S. Marshal originally sold Joe, a notation in pencil stating “resold” appears above the line connecting (1) the indication of “Slave Joe” as one of the items of property sold and (2) the indication of seventy-five dollars as the price paid for Joe. See Account Sales, *supra* note 195. Similar “resold” notation appears in the report with respect to other sold property. See *id.*

199. Account Sales, *In re Huie*, No. 258 (E.D. La. May 29, 1844).

200. See *supra* text accompanying note 198. Luckily for Anderson, Joe’s subsequent purchaser agreed to pay eighty-five dollars, ten dollars more than Anderson had agreed to pay.

201. Another such situation arose whenever the U.S. Marshal (1) sold a slave on credit, with the extension of credit secured by a mortgage on the slave; and (2) subsequently repossessed and resold the slave as a result of the purchaser’s default. See Pardo, *supra* note 1, at 1157–61 (discussing secured financing for the purchase of bankrupted slaves).

202. Other scholars empirically examining the domestic slave trade have included slave resales in their analyses. See, e.g., Russell, *supra* note 161, at 1273 (calculating the cumulative risk of sale for South Carolina slaves during the four decades preceding the Civil War, and observing that “some slaves were sold more than once, others more than twice”).

203. See Account Sales, *In re Gonzales*, No. 206 (E.D. La. Aug. 3, 1842).

204. Financial and time constraints precluded consultation of the *Gonzales* case file to search for additional details regarding Felicité’s experience as a bankrupted slave.

All of the examples discussed so far have related to instances in which the dataset has excluded information from the U.S. Marshal's reports regarding the number of slaves sold by him. Occasions also arose where other sources—specifically, records from the case files and sale notices from the New Orleans newspapers—indicated that the U.S. Marshal may have sold more slaves than those listed in his reports.

For an example of a discrepancy between a U.S. Marshal report and a case-file record, consider the bankruptcy slave sale in *In re Lefebvre*, at which the U.S. Marshal sold eight slaves according to his report, including two children: “Child Louisa aged 10 Years” and “Slave Mary 1 orphan aged about 7.”<sup>205</sup> In contrast, the assignee's sale petition, which set the wheels in motion for the bankruptcy slave sale, requested that the court enter an order approving the sale of nine slaves, among them three children: “Child Louisa about 4 yrs,” “Mary aged about 7 orphan,” and “Adelaide aged about 1 orphan.”<sup>206</sup> It is unclear why the U.S. Marshal's report does not mention Adelaide among the slaves that he sold. Regardless of the reason, because of the absence of Adelaide from the sale report, the observation in the dataset for the *Lefebvre* bankruptcy slave sale has been coded to indicate that the U.S. Marshal sold only eight slaves.<sup>207</sup>

205. Account Sales, *In re Lefebvre*, No. 252 (E.D. La. Sept. 3, 1842).

206. Petition of M. Marigny Assignee of the Estate of Felix Lefebvre, *In re Lefebvre*, No. 252, at 2 sched. A (E.D. La. July 9, 1842) [hereinafter Marigny Sale Petition]. It should be noted that the assignee's sale petition seems to have a couple of errors. First, the title of the assignee's sale petition omits the letter “v” from the bankrupt's last name. The U.S. Marshal's report, however, includes a “v” in the bankrupt's last name, see Account Sales, *In re Lefebvre*, No. 252 (E.D. La. Sept. 3, 1842), as do (1) the schedules filed by Lefebvre, see Schedule of Felix Lefebvre, *In re Lefebvre*, No. 252 (E.D. La. June 3, 1842); (2) the legal notice in the *Commercial Bulletin* announcing Lefebvre's filing of his bankruptcy petition, see NEW-ORLEANS COM. BULL., June 4, 1842, at 2; and (3) a contemporaneous directory of New Orleans, see NEW ORLEANS DIRECTORY FOR 1842, at 243 (New Orleans, Pitts & Clarke 1842).

It should be noted that the New Orleans directory itself contains errors—for example, listing the last name of the U.S. Marshal, Algernon Sidney Robertson, see Pardo, *supra* note 1, at 1162–63 (discussing U.S. Marshal Robertson), as “Robinson.” NEW ORLEANS DIRECTORY FOR 1842, *supra*, at 352. The directory's publishers acknowledged the potential for such errors. See *id.* at 5:

The various languages spoken in this city, and the impossibility of ascertaining whether all the agents employed in procuring statistics and names in distant parts of the city have done their duty faithfully, open many avenues to mistake and omission which the publishers have had a small chance to prevent.

The assignee's sale petition in *In re Lefebvre* also appears to incorrectly identify Louisa's age as four years old. See Marigny Sale Petition, *supra*, at 2 sched. A. The U.S. Marshal's report identifies Louisa to be “aged about 10 Years,” Account Sales, *supra* note 205, and Lefebvre's inventory of property describes Louisa as “aged about 11 years,” Schedule of Felix Lefebvre, *supra*.

207. The Eastern District sales books indicate that the U.S. Marshal conducted only one other asset sale in the *Lefebvre* case. See 1 EDLA SALES BOOKS, *supra* note 107, at 116. The property sold at that sale did not include any slaves. See Account Sales, *In re Lefebvre*, No. 252 (E.D. La. Aug. 22, 1842).

For an example of a discrepancy between a U.S. Marshal report and a sale notice from a New Orleans newspaper, consider the bankruptcy slave sale in *In re Daniels & Goodman*, at which the U.S. Marshal sold *sixteen* slaves according to his report, including: (1) “Slave Melissa and her four Children, Daniel, William, Sarah & Virgil”; (2) “Slave Victoire”; and (3) “Slave Jane.”<sup>208</sup> The corresponding legal notice in the *New-Orleans Bee* announced that the U.S. Marshal would sell *eighteen* slaves, including: (1) “Melissa, a negress, aged about 40 years, sold together with her 4 children, . . . Daniel, . . . William, . . . Sarah, . . . [and] Virgil”;<sup>209</sup> (2) “Victoire, a negress, aged about 25 years, *and her infant, about 1 year*”;<sup>210</sup> and (3) “Jane, a negress, aged about 18 years, crippled [sic], *and her infant aged about 4 months*.”<sup>211</sup> Thus, while the *Bee* notice indicated that Victoire and Jane would each be sold with an infant child, the U.S. Marshal’s report did not identify these two infants, thereby accounting for the difference of two fewer slaves. Given that the U.S. Marshal identified the sale of children elsewhere in the same report (i.e., Melissa’s four children), the omission of any reference to Victoire’s child or Jane’s child in the report suggested that he did not sell those infants,<sup>212</sup> thus warranting their exclusion from the observation in the dataset for the *Daniels & Goodman* bankruptcy slave sale.

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208. Account Sales, *In re Daniels & Goodman*, No. 427 (E.D. La. Jan. 9, 1843).

209. NEW-ORLEANS BEE, Jan. 9, 1843, at 2.

210. *Id.* (emphasis added).

211. *Id.* (emphasis added).

212. A bankruptcy slave sale report and a *Bee* sale notice from a different case, both overlapping with the similar activity in *Daniels & Goodman*, further bolster the decision to exclude the two children from the observation in the dataset corresponding to the *Daniels & Goodman* sale. In *In re Brown*, the U.S. Marshal reported having sold “Cecilia and child” on January 12, 1843, Account Sales, *In re Brown*, No. 457 (E.D. La. Jan. 12, 1843), three days after the *Daniels & Goodman* sale, *see supra* note 208. The corresponding sale notice in the *Bee*, published on January 9, 1843 (i.e., the same date as the sale notice in *Daniels & Goodman*, *see supra* note 209), announced that the U.S. Marshal would sell various slaves in *In re Brown*, including “Cecelia, aged 18 years, negress, house servant and washerwoman, *and her child 6 months old*.” NEW-ORLEANS BEE, Jan. 9, 1843, at 2 (emphasis added). Just as in the *Daniels & Goodman* sale notice, we witness the description of a woman to be sold with her very young infant in the *Brown* sale notice—to wit, Jane and her four-month-old child in *Daniels & Goodman*, and Cecilia and her six-month-old child in *Brown*. But unlike his report in *Daniels & Goodman*, the U.S. Marshal’s report in *In re Brown* indicates that he sold both the mother and infant. All of this begs the question of what happened to the infants in *Daniels & Goodman*. It could be that the U.S. Marshal did sell them with their mothers but failed to indicate as much in his report. But the omission in light of the mention of other sold children in the *Daniels & Goodman* report and the *Brown* report warrants a coding protocol that does not account for the infants in the *Daniels & Goodman* observation.

III. STATISTICAL TABLES FOR THE EASTERN DISTRICT  
BANKRUPTCY SLAVE TRADE

TABLE 2: DISTRIBUTION OF SLAVES SOLD IN  
EASTERN DISTRICT BANKRUPTCY SLAVE SALES

<b>Number of Slaves Sold Per Sale</b>	<b>Number of Sales</b>	<b>Total Slaves Sold</b>
1	45	45
2	14	28
3	7	21
4	6	24
5	5	25
6	5	30
7	2	14
8	1	8
9	1	9
10	2	20
11	3	33
12	1	12
16	1	16
17	1	17
18	1	18
19	1	19
40	1	40
45	1	45
56	1	56
<b>Column Total</b>	<b>99</b>	<b>480</b>

TABLE 3: NUMBER OF BANKRUPTED SLAVES SOLD IN THE EASTERN DISTRICT BY MONTH AND YEAR, APRIL 1842 THROUGH DECEMBER 1843

Sale Month and Year	Number of Sales	Number of Slaves Sold
April 1842	1	1
May 1842	1	2
June 1842	9	71
July 1842	4	16
August 1842	7	19
September 1842	5	23
October 1842	1	1
November 1842	5	8
December 1842	10	64
January 1843	9	49
February 1843	5	27
March 1843	4	7
April 1843	4	14
May 1843	5	10
June 1843	6	67
July 1843	3	15
August 1843	3	7
September 1843	0	0
October 1843	0	0
November 1843	1	40
December 1843	5	21
<b>Column Total</b>	<b>88</b>	<b>462</b>