Black Trials and American Citizenship

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I'm pleased and honored to be here this afternoon. As Rogan noted, my book *Black Trials* tells a story about American conceptions of race and citizenship, or race and national identity, through a series of stories about legal cases involving black Americans—a series of linked narratives about a cultural phenomenon that I call "black trials." The cases I discuss span the colonial era to the present. I begin with that of Joseph Hanno, a free black man accused of murder in 1721 in Puritan Boston, put on trial just as smallpox was descending upon the town, and I end with that of Mumia Abu-Jamal, a black radical currently in prison for killing a police officer in downtown Philadelphia, whose case has been something of a cause célèbre of the American left. Today, what I'd like to do is spell out the main views about race, citizenship, and the cultural significance of trials that formed the conceptual backbone of my book, and I'd like to say a few words about the goals I hoped to achieve through my particular approach to historical writing. I'll begin by reading two pages from the story of a trial that took place in New York to provide an immediate sense of what some of the narrative portions of my book are like and then to indicate the significance one of my recurrent themes.

The year is 1741, and we might imagine that we're in lower Manhattan, at the bottom of a scrubby ravine, and that all is still and quiet. We're in a rough hewn cemetery, known as the "Negro Burial Ground," where thousands of men and women lie buried beyond the city boundaries marked by Wall Street. On the plateau above us is the English Commons, with its poorhouse, prison, and military barracks. New Yorkers graze livestock there, and the British empire displays its power. To our left is Pot-bakers Hill, and to our right, a mill wheel grinds saltpeter into a coarse white powder. And just beyond us is the Collect, long since lost beneath the skyscrapers around civic center, but which at the time was an important freshwater pond that flowed in two directions, toward the Hudson and East rivers. The passage I'll read takes place beside its banks. It concerns the death of two conspirators in what was known as the Great Negro Plot, a slave conspiracy to burn down Manhattan, kill its white masters, and cede the port to Spain (with which England was at war). Once uncovered, the plot resulted in a series of criminal trials, a group of grisly executions, including the burning alive of about a dozen black conspirators at the stake, and a fascinating mass delusion, which I'll describe here. I should note that the passage is rather graphic.

They hung there together, the corpses of two men—one black, the other white—bound in chains, swinging from a tree near the water's edge. The black man was named Caesar, though he also was known as John Gwin, and he had been the slave of the baker John Vaarck. The white man in the red coat was a shoemaker and tavern owner named John Hughson. In life, the two had spent countless hours in Hughson's alehouse by the Hudson, talking, drinking, eating, celebrating—and plotting. Now in death, they were to have one last, extraordinary moment of fellowship.

Caesar had been sentenced to die for stealing silver coins, candlesticks, and linens from Robert Hogg's store off Jew's Alley on March 1, 1741. That same evening, Prince, a fellow slave

known to Caesar, had stolen about five pounds of goods from Abraham Meyers Cohen. The two thieves stored their loot with Caesar's white lover, Peggy Kerry, a twenty-two-year-old prostitute known around town as the "Newfoundland Irish Beauty." Peggy lived in Hughson's tavern, and recently had borne Caesar's child (the morning after the robberies, Caesar opened his bag and gave Peggy a child's whistle, a ring, and a locket with four diamonds).

But Caesar and Prince were suspected of being involved in something far more dangerous. They were tried together on May 1, and sentenced to be hanged not only for the robbery, but also for involvement in a larger plot. On May 11, they were executed. According to Daniel Horsmanden, one of the presiding judges, Caesar had "died very stubbornly," and kept silent, providing authorities with nothing other than the pleasure of watching him die. Once his neck was broken, Caesar's deep-black body was lifted high near the powder house, and hung in chains for all the public to view, a practice known as gibbeting.

Caesar's white friend was in deep trouble, too. He would be executed on June 12 and, like Caesar, he was to be gibbeted. But unlike Caesar, when Hughson was brought from the jail, he predicted that "some remarkable sign" would prove his innocence. As he rode toward the gallows in a cart, he carried his six-foot frame rod-straight, ceaselessly scanning the horizon, and held his chained hands as high as he could, a finger pointing upward (Hughson's wife, who also was executed that day, already stood near the gallows "like a lifeless trunk, with the rope around her neck"). Normally a pale man, Hughson had two bright red spots on his cheeks, each "about the bigness of a shilling." But the execution went as planned, and the Hughsons were launched into eternity without incident.

After the execution, authorities gibbeted Hughson's body alongside Caesar's, and one month later, both corpses still hanging in public view, they were joined by another recently executed slave named York. There they were, swaying together, "blind and blackening" in the heat, as one nineteenth-century writer, quoting Byron, later described the scene, "in full view" of the tranquil bay of the Collect, "a ghastly spectacle to the fisherman as they plied their vocation near by."

Then, a strange transformation took place, one that "drew numbers of all ranks, who had curiosity, to the gibbets, for several days running, in order to be convinced by their own eyes." The two bodies had appeared to change color. The white man had become black, and the black man, white. Caesar's face had been bleached by the sun and wind, and his body had turned pale. As for Hughson, it was said that his face, hands, neck, and feet had turned "a deep shining black," that the hair of his beard and neck was "curling like the wool of a negro's beard and head," and that his face seemed to have assumed "the symmetry of a Negro beauty," with his "nose broad and flat, the nostrils open and extended, the mouth wide, lips full and thick."

New Yorkers gawked at the "wondrous phenomenons," and many "were ready to resolve them into miracles."

The bodies then began to bloat. "The sun at this time had great power," wrote Judge Horsmanden, and in the heat, "Hughson's body dripped and distilled very much, as it needs must, from the great fermentation and abundance of matter within him." Eventually, Hughson's corpse, "unable long to contain its load, burst and discharged pail fulls of blood and corruption"

(the stench was so great that, thenceforth, fisherman "shunned the locality"). "If his corpse becoming monstrous in size, and his complexion … as black as the devil, can be deemed remarkable signs or tokens of his innocence," Judge Horsmanden could not resist musing, "then some may imagine it happened according to his expectation."

The story of the rebellious slave Caesar and the tavern-owner John Hughson is a grim one—it's a story about killing; even the weird transformation of the two male bodies has all the brutality of surrealism brought to life—and I intended it to be so when I wrote it. I wanted *Black Trials* to be an engaging read, centered around dramatic stories generated by the adversarial conflict of legal cases in the Anglo-American, common law tradition. But I wanted even more for the book to live up to the less obvious meaning behind a line from Walt Whitman that I had in mind during my research and writing and that I took as my epigram. The epigram is "out of the cradle endlessly rocking," the title of one of Whitman's great poems from the 1871 edition of *Leaves of Grass*. I chose it in part because of what it suggested about the development of American ideals over time, for its resonance with the idea of history: to suggest that the story of race and civic belonging in the United States is the story of a recurrent cultural pattern, a rocking, that was set early in our country's life, in its cradle, with the birth of a slaveholding society in the late seventeenth century. But the epigram has a more personal meaning as well, which I'd like to mention here, though I don't in the book.

The poem "Out of the Cradle Endlessly Rocking" is a "reminiscence" of a moment in Whitman's young life that marked the birth of his artistic consciousness, and precisely in being that, it also is Whitman's effort to fulfill a call he made in "Democratic Vistas," his powerful essay about American culture and national identity. American poets, Whitman announced, should seek to write "great poems of death," and so by meditating on death, bind Americans ever more tightly to the cosmic whole that engenders life. For Whitman, the perception and literary representation of death, "the sweetest of all songs," "the key," was the force behind his forward-looking poetic assertion of self and national identity. My most personal goal in *Black Trials* was to write a history, a reminiscence, influenced by the techniques of literature, that was an extended meditation on group civic death, the exclusion of black America from the circle of civic belonging (as well as the literal individual deaths by which it was often enforced, such as those of Caesar and Hughson). I didn't approach this out of a morbid impulse, but from a desire to better understand the language and the positive principles of citizenship our society ought to cultivate for its future progress—a depiction of death as an effort to nourish liberal civic life.

In that effort, I divided the history of black trials into five traditional periods, each with its characteristic conflicts and terms of debate about citizenship. The first spans the birth of a true slaveholding society in North America, with its attendant cultural anxieties about race, until just before the War for Independence, with its broad ideological pressures for human liberty. The cases I examine from this time in my book—trials that involve the push and pull of civic life and death—include those of Joseph Hanno, executed in Puritan Boston in 1721; the Great Negro Plot of 1741; and *Somerset's Case*, a 1772 decision by Lord Mansfield of the Court of King's Bench that was long said to have "ended slavery in England." The second period includes the early national and antebellum years, especially those of evangelical Christian reform. Here, I examine the story of a Baptist school teacher in Connecticut named Prudence Crandall, who in the early 1830s sought to establish an all-black female academy, with predictable results; the litigation

over the slave ship *Amistad*, about which there was a Hollywood film a few years back; and the case of a group of fugitive slaves who escaped from Kentucky in the wagon of a devout stationmaster of the Underground Railroad, known as *Jones v. Van Zandt*. The third period runs from the start of the Civil War through the early twentieth century, that is from the end of slavery through the collapse of Reconstruction. For these years, I examine the trial of John Brown for his raid on Harpers Ferry, which I place in the context of the infamous Supreme Court decision in *Dred Scott*; the federal prosecution of members of the Ku Klux Klan in upcountry South Carolina in the early 1870s, a great moment in the postwar reconstruction effort; and *The Civil Rights Cases* of 1883, in which the Supreme Court struck down the Civil Rights Act of 1875 (a precursor to the Civil Rights Act of 1964), which I discuss along with the 1896 case of *Plessy v. Ferguson*, which announced the doctrine of "separate but equal" essential to Jim Crow. To explore the ideologically diverse struggle against segregation and racial inequality from the early twentieth century until the end of the Civil Rights Movement (whose guiding spirit we acknowledge this week), I examine the case of the Scottsboro Boys, who were defended on false charges of rape in Alabama by the legal arm of the American Communist Party; *Brown v. Board of Education*, a locus classicus of postwar liberalism; and the prosecution of militant Black Panther leader Huey Newton for killing a police officer in Oakland. I now believe we are in a fifth historical period that began roughly in the early 1990s characterized especially by the decline of robust theories of racial caste, and I examine this new era through the Supreme Court nomination hearings of Justice Clarence Thomas and the murder case of Mumia Abu-Jamal.

One of the notable features of the cases I examine in *Black Trials* is that many do not involve the sort of great constitutional questions that often form the heart of legal-historical studies of citizenship. Some certainly do, such as *Plessy v. Ferguson*. But legal cases need not be constitutional to be central to the legal history of civic belonging. Take that of O. J. Simpson, which has clear importance for the history of black citizenship, but no doctrinal significance at all. About half of the cases I examine are of this latter type. What binds the cases of my book together is not a shared story of legal doctrine, say a story of the Fourteenth Amendment, but the fact all played a vital role in the *cultural* debate about black citizenship, that they were freighted with symbolic public meaning. My goal in *Black Trials* was to recreate the symbolic charge of the cases through a form of Geertzian thick description, in which recovery, representation, and interpretation blend into one. The foundation of my effort was extensive archival research in which I sought to uncover the thousands of minute details about past legal events needed to create narratives that have the feel of life, such as the color of the coat John Hughson was wearing when he was hanged (the coat was red), or the names of the specific crops a black family attacked by the KKK in upcountry South Carolina grew after the Civil War. I also hoped that such details would help rescue certain forgotten black lives from obscurity, like that of the rebel Caesar. In addition to my own archival research, my narrative reconstruction relied on the work of other historians who already had written about the cases I was describing or about issues that illuminated them (this includes the work of your colleague William Wiecek).

Historical narratives are not simply straightforward representations of events, and I believe that narrative reconstruction of the past generally should be based in a strong interpretive frame to guide the historian in their selection of materials. That framework should be explicit in the mind of the writer, and so I'd like to say a few words about my own. In particular, I'd like to suggest three ideas I think should be central to thinking about black citizenship and African American

legal history: first, the concept of a "people of law" as an implicit foundation of our national culture of civic belonging; second, the status of trials as civic rituals, in the anthropological sense, that actively define the symbolic relation between blacks and the very concept of law; and third, the existence of popular jurisprudential pluralism in the United States.

As I explain in *Black Trials*, I believe that from the colonial era to our own time, the history of American citizenship has rested on the need for minority groups seeking full civic membership to be widely perceived as a "people of law." In this respect, my views about citizenship are guided by the writings of political scientist Rogers Smith, especially his concept of a "civic myth" or a "myth of civic identity" (a book I have forthcoming from NYU about law, citizenship, and anthropology was written explicitly in dialogue with Smith's *Civic Ideals*). A civic myth, according to Smith, is a widely shared story that serves as the basis of national identity. It's an underlying civic principle that describes why a group of people constitutes a nation, who can belong to the nation and who cannot, and what the nation's values and aims are. Significantly, the myth informs not only law and legal decisions but also social and cultural life, serving as a symbolic bridge between the two. A good example can be found in South Africa under apartheid. There, one dominant civic myth, not only enshrined in legislation but also manifest in even the smallest social interactions across the lines of race, described the nation as a gift from God to whites, whose ancestors had made a arduous, Exodus-like trek across the continent.

The concept of a "people of law"—one of the unstated but central civic myths in the United States—has deep roots in the Judeo-Christian tradition. It's associated most closely with the Hebrews of the ancient Near East, who entered into a covenant with their one God and pledged to obey his strict, complex system of rules. Scholars believe that this commitment to the law of a monotheistic God dramatically distinguished the Hebrews from the peoples around them, such as the Babylonians, who believed their fates to be governed by a host of capricious individual deities to whom they paid tribute. Even more, it was by accepting the Law as the measure of their moral aspiration that the Hebrews were transformed from a collection of seminomadic tribes into a people and, ultimately, a nation. To live within the nation of Israel was to observe the Law, and thus to be a part of a people of law. This notion of group identity based on common legal commitment—not only as a legal issue, but as a matter of civic culture and individual cultural expression—has been central to the civic and religious life of the West. While the distinction was later made in the Christian tradition between a people of law and a people of grace, Christians too ultimately describe themselves as a people of law, pledging devotion to a new covenant growing out of the Old Testament while at the same time transforming and superceding it. Muslims have a related term, usually translated as "people of the book."

Today, the status denoted by the phrase a "people of law" is an unspoken but prevailing requirement for civic membership in multi-ethnic constitutional democracies. In such societies—the United States and Great Britain are good examples, and Europe may become one as its political integration proceeds—full civic membership is based not on racial descent, but on allegiance to the state. For this reason, their citizens are described as "a people" only for rhetorical effect (when politicians speak of the American people, it's a very different matter from speaking about the German *Volk*); they instead are described as a nation, a community defined by shared legal values, a commitment to law and legality expressed symbolically, within cultural

life. For this reason—and here lies a key issue for the history of black citizenship—those groups thought to lack a capacity for law are typically viewed as internal exiles, a people part. Minority groups collectively seeking full citizenship in the United States thus typically have been obliged to struggle in diverse ways to overcome a perception of their legal incapacity. Beyond the African-American context, where I believe it has been of special importance, take the doubts many Americans once had that Indians were capable of holding title to real property or the suspicions long held about the dual legal loyalties of Catholics.

This brings me to the second feature of my interpretive frame. One of the primary contexts in which the cultural judgment about African American legal capacity has been rendered—a judgment about whether black Americans are a people of law and so entitled to full civic membership—has been the particular type of legal case that I call a "black trial." Not every case involving a black litigant or a criminal defendant is a black trial. Black trials instead are a subset of legal cases that, for complex reasons particular to each instance, have helped define the status of blacks in American civic life by symbolically defining their relationship to the concept of law. This symbolic definition takes place, I believe, because black trials function as civic rituals.

For anthropologists, rituals are symbolic actions undertaken in relation to basic social values and status relationships or, more broadly, in "relation to the sacred." Ritual *acts* express the underlying principles of a community through discrete behaviors, such as a man's tipping his hat when a woman of the same or higher social standing passes on the street. Ritual *events* are ritual actions on a much larger scale. In ritual events, members of a group come together to depict the values that structure their lives, often presenting those values in the form of a narrative, and to define the character of their community and their individual places within it. Rituals are not merely passive representations of collective ideals, but rather performances that actively establish an individual's status in relation to those ideals and the group they define. By reenacting the biblical story of the Last Supper, for instance, the celebration of the Eucharist affirms that the members of a church are one in Christ. In telling the story of black trials, I approached them as civic ritual events. I sought to show the way in which they symbolically defined the relation between blacks and the concept of law, the ideal of legality, for instance through the ritual of public executions like that of Caesar (I also sought to show the way such rituals sometimes enabled the return of the repressed, as in the "wondrous phenomenon" of color that took place beside the Collect pond).

This brings me to the third and final issue to the history of black citizenship, namely the existence of popular jurisprudential pluralism. In America, law has never been a single, undisputed idea. Throughout our history, there has been dramatic disagreement not only about how to understand particular laws but also how to understand the nature of law itself, the broad legal principles that define the essence of our national identity (in anthropological terms, the sacred). Such competing jurisprudential perspectives have been embraced not simply by intellectuals or those whose lives are devoted to thinking about ideas. As the historian Robert Westbrook at the University of Rochester has written, political theory is not the province only of professional thinkers. Everyday people express theoretical and philosophical positions about society in what they say and, even more important, in the way they live and the culture they produce, commitments that are no less meaningful for being conceptually unarticulated. Popular jurisprudential diversity is central to the way black trials exercise their symbolic power, because

in the context of that diversity, the central if implicit question of black trials—whether black Americans are a people of law—has been inseparable from the broader public question of what law is. To ask one necessarily has been to ask the other, and so the struggle over the race and citizenship in black trials also has been a conflict over the meaning of America itself.

American views of law have fallen into three broad traditions, at times overlapping, and always evolving, each of which has spoken in its own distinct way to the issue of black legal capacity. The first—and I'm painting with a broad brush—is the rich, historically varied philosophy of political liberalism, whose proponents understand the United States to be a nation dedicated to universalist principles fundamentally opposed to civic exclusion based on race. The second is that of racial caste, whose historical adherents viewed society not as a gathering of individuals, but rather as a community of stratified groups divided according to principles of racial purity and pollution. The caste vision of civic life, no less than the liberal, has been central to American history and formed a basic part of how Americans have understood their national identity. The third tradition is that of Christianity. Proponents of this tradition describe the United States as a Christian nation and believe the law its citizens are ultimately bound to follow is embodied in the works and teachings of Jesus or in the codes of the Old Testament as recast by the New. Christians have spoken in a range of voices about the civic status of blacks (for hundreds of years, many believed Africans were the descendants of Ham and cursed to perpetual servitude), but I focus my attention on the egalitarian Christian vision nurtured in the great antebellum reform movements, based on the principle that all are one in the body of Christ.

It's the conflict between these three visions of law as they clash in the civic rituals of black trials that forms the historical backbone of my book and that binds the individual legal stories I tell together into a single story of civic change over time. The story—the overarching history of American citizenship as told through the history black trials—is roughly this. During the course of American history, advocates of black civic inclusion used the rhetorical weapons of Christian and liberal jurisprudence to oppose the caste vision of black legal incapacity born of American slavery. Over centuries, black Americans and their allies won this fight, destroying caste theories of citizenship, a victory of which our society can justly be proud. The terms of that victory, however, not only drew a liberal notion of citizenship more deeply into the heart of American national identity, but also marginalized the Christian legal vision that had long been central to the fight against caste and that often was a source of strength for liberals to achieve their own political vision. Moreover, as I note in the conclusion of my book, the liberal victory left the language Americans typically use to discuss black citizenship in a period of rhetorical decadence—that is, we now have a way of speaking that has yet to catch up with and apprehend current civic realities, especially the demise of robust theories of caste. This rhetoric lag hinders our progress toward full black inclusion on the basis of liberal civic principles.

To suggest how I incorporate the interpretive frame and the larger historical narrative I describe into *Black Trials* itself, I'd like now to read from a chapter about the prosecution of the Ku Klux Klan after the Civil War, a story whose ritual function concerning blacks and the concept of law I seek to depict as a conflict between liberal and caste theories of citizenship. I'd like again to note that this material is rather brutal, and that it involves some depiction of sexual violence. The title of the chapter is "Original Purity."

The hooded men rode for law and honor, breaking into homes at night while their victims slept. One evening, they came for Clem Bowden and his wife, Minerva. It was October 19, 1870, in Spartanburg County, South Carolina. A farmer, a carpenter, and a black man, Bowden, sixty-one years old, lived a few miles northwest of Limestone Springs. "I myself worked about," he would explain months later to three visiting congressmen. "I was clearing up a plantation, and starting it."

As the congressmen listened, a stenographer recorded Bowden's story. They had traveled here, to the South Carolina upcountry, in July 1871, as part of a committee investigating the activities of a secret paramilitary group called the Ku Klux Klan. Their charge: to "inquire into the condition of affairs in the late insurrectionary States, so far as regards the execution of the laws, and the safety of the lives and property of the citizens of the United States."

"Begin at the beginning," instructed the committee chairman, Senator John Scott of Pennsylvania, "and tell us the occurrence."

"When they first came to me I was in a chair asleep, and had not stripped," Bowden began. "My family had laid down on the bed. The first thing I heard was the report of pistols, and men going around my house, and then they ran against the door, and by the time a portion of them got around on the other side to the other door, and ran against it and burst it open. … They came in the house and laid hold of me. … They went to the bed and pulled my wife out."

At the same time the men were seizing Clem and Minerva Bowden, another mob was breaking into the home of William Champion, a white man. Champion was a farmer and a miller, a trial judge, a Republican—and, like Clem Bowden, one of the township managers of the upcoming gubernatorial election. "Go on and state if, at any time, you have been visited by any men in disguise," asked Senator Scott, "and, if so, what they did and said to you, and all that occurred."

"Yes," Champion replied, "but I hate to tell it."

The stenographer took down the white man's words, and his story became public record, forever binding his life to that of Clem and Minerva Bowden. Their collective story is a horrific portrait of civic violence—but, as we will see, it also was not unusual. It mirrored the experience of thousands of blacks across the South following the surrender at Appomattox as white southerners sought to resist and subvert the liberal civic principles of three new provisions of the federal Constitution: the Reconstruction Amendments.

"Come out here!" the men shouted in the moonlit night, swearing and firing into the air as they broke down Clem Bowden's door. Bursting inside, more than two dozen strong, they ordered one of Bowden's daughters to kindle a light, and searched the home for weapons (they found none). While dogs barked furiously, they dragged Clem and Minerva Bowden outside.

The men marched the Bowdens three-quarters of a mile away, to the home of Daniel Lipscomb, who was sharecropping on the land of his former master, "Major" Lee Linder. The seventy-five-year-old Lipscomb had been a "favorite servant" of the major for twenty years. During the war, he brought Linder "the bulliest crop he ever had on his place" and hauled two loads of coal for

him a day. “I never made a step in my tracks to get away the whole time of the war,” Lipscomb said proudly. “I attended to my business.” So high was his master’s regard that Lipscomb had been entrusted to hold and deliver as much as $1,000 of the major’s money at a time.

The old man, having been dragged out of his home, too, was standing in front of his door with a rope around his neck. He was guarded by eight men, shortly joined by the mob that has assaulted the Bowdens. Some wore masks, but others showed their faces. One of the more brazen, Columbus Petty, has visited Major Linder’s home earlier that evening. Lipscomb knew “Clum” well. He had “raised him up from a child,” and recently had been “electioneering for him to court my young mistress, and talked for him.” (The young Miss Linder rebuffed the suggestion. “Uncle,” she told Lipscomb, using the more respectful diminutive by which whites referred to older black men. “I wouldn’t notice him any more than I would a cat.”)

While the Bowdens watched, the mob accused Lipscomb of being a Republican, a “rattler,” a member of the party of Lincoln and the Union. “I’ll not deny my principles,” Lipscomb replied, with a courage that today seems almost unimaginable. “I’ll make you deny them,” said Clum Petty, who then beat Lipscomb so fiercely that his arm would swell to twice its normal size. “My fingers on this arm will never get right in the world,” he would tell the Senate committee. “My fingers have no feeling.” Stripping off Lipscomb’s clothes, the mob took turns whipping him over the head and across his entire body, cutting deep welts into his flesh. One kicked Lipscomb so hard in the gut that, months later, he would still be incontinent. The mob finally kicked Lipscomb back toward his door and then dragged the Bowdens to a field a half-mile away.

The men had blindfolded Clem Bowden with his coat and put an ox halter chain around his neck. At the field, they kicked up his shirt, pulled down his pants, and made him lie on the ground. With strips of brush, and limbs torns from trees, they began beating him so hard he thought he might die (but “through the Merciful Master I did get away,” he testified). The mob accused Bowden of trying to form a company of armed black militia in the area, a charge he denied. They accused him of being appointed one of the managers of the upcoming election—“I told them I supposed I was.” They warned that if he participated in the election, they would come back and kill him. They asked whether he would cast his vote for the Republican candidate for governor, Robert K. Scott—“I told them if I voted at all, I would.” They accused him of declaring that he would “commence on the white people at the cradle, and kill from that up”—“I told them I had never thought of such a thing, and I never had.” One of the men cut off part of Bowden’s left ear with two or three licks of his knife, cursing all the while.

Another crowd of whites, about fifty men, was approaching. Thinking they had come to rescue the Bowdens, those holding them scattered and formed a battle line, ready to fight. But they soon discovered that the new group was part of the same conspiracy, and had brought with them a new captive, William Champion. Clem Bowden knew “Buster” Champion well. “I went to mill with him,” he would tell the committee, “and he was also teaching a Sunday school. We were sort of engaged in teaching the Sunday school close to my house, and he was going to change into a two-day school; two days in the week.” Champion also knew local blacks through his participation in the Union League, a Republican club, and was known to have read legal books to former slaves, advising them of their property rights. Among the local Democratic elite, of course, he was a man of “rather low repute.” Among his other transgressions, real or imagined,

he was alleged to have said that whites in the area "might just as well come to social equality with the negro first as last, and invite them to eat at their tables and sleep in their beds; if they did not they would be made to do it by the bayonet."

Champion had been dragged from his home much as the Bowdens had. "You damned radical son of bitch!" the mob shouted, tearing through his house, guns firing. Rufus Erwin, who happened to be staying with Champion that night, took a shot directly under the collarbone. The mob warned Champion to start praying. "I told them," Champion said, "that I was praying all I could." The men led him to the field where their compatriots had taken Clem and Minerva Bowden. There, the mob blindfolded him, took down his pants, and whipped him "as much as I was able to bear," all the while shouting "you damned old radical son of bitch!" The beating was so severe that by the time Champion could remove his shirt, it was "stiff with blood," and his back "was black, and so sore that I could scarcely go anywhere for days."

Just as Champion was about to faint, the beating stopped. The men made him kiss Bowden's head. They held open Bowden's buttocks and forced Champion to kiss his anus, making Bowden "tell them when his mouth was at the place." They then forced him to kiss Minerva Bowden's "private parts," and ordered him to "have sexual connection with her" (when Champion told the mob that "they knew, of course, I could not do that," some "begged" him to do so, while others beat him). "How do you like that for nigger equality?" the men shouted. "I told them," Champion said, "it was pretty tough." After the men removed Champion's blindfold, they forced him to whip Clem Bowden. They then forced Clem Bowden, with what little strength he had left, to whip William Champion. In the meantime, the men beat Minerva Bowden "until she was helpless," accusing her of boasting that she wanted to kill a Democrat, and admonishing her "that she might have taught her husband better than to be a radical."

About three weeks after the beating, Champion received a note marked "Headquarters Ku-Klux Clan, Algood, SC" "Mr. Buster Champion," the note read, "We have been told that our visit to you was not a sufficient hint. We now notify you to leave the country within thirty days from the reception of this notice, or abide the consequences." Champion remained in the area, but like other Republicans, black and white, he slept in the woods at night, terrified for his life. Daniel Lipscomb went into hiding as well, lying out at night in the hail and rain, losing most of his crop of potatoes, cabbages, and molsases. As for the Bowdens, when they returned home that night, they were so badly hurt that they "could not kindle up a fire to warm ourselves by, if our children had not been there to kindle it for us." They left their home immediately, traveling thirteen miles despite their injuries, and lost most of their crop of corn and cotton. Beginning in February, Clem and Minerva Bowden began to sleep apart. Clem stayed at the edge of town, while Minerva and the children kept their distance, afraid to stay with their husband and father "for fear of being destroyed."

I'd like to conclude my remarks now with a few words about my approach to narrative. I'd like specifically to speak about my desire to present African American legal history with as firm a grounding in everyday detail as the archives allow, to fill my book with minute, mundane items like a red coat, a crop of molasses, and the language of common speech ("I wouldn't notice him any more than I would a cat"). I believe a concern for literary particulars can serve a dual purpose. For one, it can act as a bridge between academic and popular audiences; it's human to

be drawn to narrative, and filling a historical narrative with details brings it to life and can expand its circle of readers. But I did not explicitly seek to reach a broad readership with my book, and my concern to incorporate the particularity of past experience into the stories I reconstruct was equally driven by theoretical and methodological commitments. Specifically, I believe that issues of broad jurisprudential significance can be found in the most minute social and cultural phenomena of human experience, and that one task of a narrative, cultural history of law is to bring together macro-level ideas with micro-level details of the past. The purpose of this approach to historical thick description is to present conceptual argument not only explicitly, through direct analysis, but rather implicitly, carried forward within the symbols generated by highly crafted narrative that rests on the raw material of an archive.

In *Black Trials*, for instance, my narratives are linked together, both singularly and across time, by a lattice-work of civic symbols and tropes that are meant to operate in a conceptual as much as a literary fashion. The gift of a single piece of silk ribbon from a master to his slave; the flowing white beard that John Brown was often depicted as wearing at the time of his death (though he did not); the dreadlocks of Mumia Abu-Jamal—all are symbolic incarnations of contrasting visions of race, law, and American identity (the gift of ribbon, a symbol of a caste world of white dominance and charity; the beard, one of Old Testament prophesy and Christian civic redemption; the dreadlocks, a symbol of a particular vision of natural law). The fundamental building blocks of the symbolic lattice-work holding *Black Trials* together are images of death and life, which parallel the basic conflict in black history between civic exclusion and civic hope. But I would like to mention one more, one perhaps especially relevant in the spirit of Martin Luther King Day: that of names—the ultimate human particular. Through the use of names and their transformation, I sought in *Black Trials* to trace the rise of black Americans coming to legal voice within the jurisprudential ideals of a liberal society—coming to life in a society that once consigned them to civic exile. In addition, by simply listing the names of black and whites caught up in central legal rituals from the American past, as I do in many of my narratives, I tried to offer the individual dignity that comes from remembrance, the mere fact of acknowledging that this person *lived*, an acknowledgement of individual lives I believe is central to a healthy liberal political culture.

Here is passage representative passage, from the end of my chapter on the Great Negro Plot in New York:

Caesar was the first to face punishment, hanged on May 11 and then gibbeted. Other victims followed, conviction upon conviction, as authorities began to sweep the streets of blacks, overcrowding the jails: burned alive in a valley "between Windmill Hill and Pot-Baker's Hill," near the Negro Burial Ground, hanged, or deported to points throughout the Atlantic. Some of those arrested or punished were white, whose motives probably had been some combination of money and resentment of their superiors: John and Sarah Hughson, the first, were hanged, as was Peggy Kerry, and fourteen others were expelled from the province. But most were black. Their names are worth recalling. Burned alive: Albany, Ben, Caesar, Cuff, Curacoa Dick, Cuffee, Cook (also known as Acco and Maph), Francis, Harry the Doctor, Quak, Quash, Robin, and Will. Hanged: Caesar, two slaves named Cato, two named Fortune, two named Prince, Toby, Frank, Galloway, Harry, Othello, Quack, Toney, Tom, Venture, Juan, and York. Among seventy-two deported to the West Indies, Madeira, Hispaniola, Cape Francois, St. Thomas,

Suriname, Portugal, Newfoundland, and elsewhere: Antonio, Bastian (also known as Tom Peal), Bridgewater, Braveboy, Cambridge, Dundee, Deptford, Emanuel, Jasper, Jupiter, Pablo, Pompey, Quamino, Tickle, and Titus.

By focusing narrative attention on the particulars of such men and women, on their names—on Caesar, Quash, Prince, and York, or on Clem and Minerva Bowden—and by emphasizing the radical particularity and difference of the past, I believe historians can provide the materials for creating a new civic culture in the wake of both the successes and the failures of the Civil Rights Movement. The narrative apprehension and contemplation of the black American legal past can help us navigate our way forward, assisting us in creating a civic rhetoric appropriate for our own distinctive time, and strengthening the cultural foundations of the liberal rule of law for an inclusive society. This is a common effort, in which all liberal scholars are engaged, through our many different works, and for listening to this meditation on my own, thank you.