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THE TRIAL OF CINQUÉ—STEVEN SPIELBERG’S *AMISTAD*

JONATHAN K. VAN PATTEN[†]

The trial of Cinqué and his African companions was a real event that was immortalized in Steven Spielberg’s 1997 film Amistad. This historical drama brought the story of those aboard the Amistad and their subsequent trial to the attention of the public. This article places the trial in context, re-examines the proceedings, and analyzes the portrayal of the events to understand what the trial means for us today.

I. INTRODUCTION

The story begins with a cliché: it was a dark and stormy night. Immediately, however, we are drawn into a narrative of violence with the taking control of the slave ship *La Amistad* by Africans, who had been kidnapped from Sierra Leone

Copyright © 2021. All rights reserved by Jonathan K. Van Patten and the *South Dakota Law Review*.

[†] Professor of Law, Emeritus, The University of South Dakota Knutson School of Law. I thank Derek Nelsen (USD Class of 2009) for his always careful reading of my drafts and Thad Titze (Class of 2020) for his sorting out the foundational quotes from Spielberg’s *AMISTAD* and for his advice and counsel. I also wish to acknowledge the influence of Professor Emeritus Frank Pommersheim, my friend and colleague. Long before diversity seemingly became the *raison d’être* of higher education, we had come to the faculty at the USD School of Law through amazingly different paths. Frank grew up in Queens, New York, graduated from Colgate University and Columbia Law School, and came to South Dakota in 1973 to take a position at the newly-formed Sinte Gleska University on the Rosebud Indian Reservation. Michael Ewald, *Professor Frank Pommersheim Retires after 35 Years*, UNIV. S.D. <https://www.usd.edu/law/the-south-dakotan-lawyer/professor-frank-pommersheim-retires-after-35-years> (last visited Oct. 10, 2021) (celebrating Frank Pommersheim). Although originally intending this to be a short stay, he remained there until he joined the USD Law faculty in 1984. *See id.* (celebrating Frank Pommersheim). Frank developed in ways that might not have been foreseen from the distant vantage point of the law school classroom at Columbia, an institution for which he would express mixed emotions. At the outset, our differences were substantial and, yet, I came to appreciate his wisdom and advice. I took his class in Indian Law and learned that much of what I thought I knew was not applicable in that realm. Almost a parallel universe, except that it was real and situated close by. Frank’s own *BRAID OF FEATHERS: AMERICAN INDIAN LAW AND CONTEMPORARY TRIBAL LIFE* (1997) and *BROKEN LANDSCAPE: INDIANS, INDIAN TRIBES, AND THE CONSTITUTION* (2009) helped me to understand that world, as best I could. Although there is still much that separates us politically, I have come to value his opinion. Like our mutual friend, Professor Emeritus Christine Hutton, his voice has been an indispensable part of the conscience of the Law School. Recently, we greeted each other in the faculty suite after a meeting. We laughed about our ironic maxim: if Frank and VP agree, it must be true. We shared agreement on a surprising number of questions, at least on matters concerning the Law School and legal education. There is a good lesson in that. Frank usually argued from principle, not from circumstance. *See* RICHARD M. WEAVER, *THE ETHICS OF RHETORIC* (1953) (arguing that Abraham Lincoln, who often argued from principle (genus), and not Edmund Burke, who argued from circumstance, was the true conservative, which is surprising because Weaver was a man from the South); Jonathan K. Van Patten, *Themes and Persuasion*, 56 S.D. L. REV. 256, 264-79 (2011) [hereinafter *Themes and Persuasion*] (summarizing the five basic categories of argument). It is a probably why we have found ourselves in agreement as often as we have. Frank has also shaped my thinking about this story of the displacement of an indigenous people from their homeland and the attempt to regain their freedom through the uncertain processes of law and procedure in nineteenth century America. It is a fascinating tale that has much to teach us. “So let us not talk falsely now. The hour is getting late.” Bob Dylan, *All Along the Watchtower* (© 1968 Dwarf Music).

and sold into slavery.¹ Horrific conditions on the ship and the prospect of long-term captivity, or worse, left no alternative. Through sheer will and grit, a nail was pulled from a plank and used to unlock iron shackles. The fierce storm provided cover for the stealth-like movement from the jail below to control of the ship above. Retribution was violent and swift, except for two, José Ruiz and Pedro Montes, who were spared to navigate the ship back to Africa.² The mercy proved to be a mistake. Although the ship sailed east toward the sun by day, Montes turned it north throughout the night.³ The zig-zag course eventually brought the ship off the coast of Long Island, New York. It was there that the ship and its passengers were taken into custody by the coast guard.⁴ The American captors took the side of Ruiz and Montes, who told of the rebellion, and the Africans were shackled once again.⁵

The ship was towed to the harbor at New London, Connecticut, where an initial inquest was conducted by Federal Judge Andrew T. Judson.⁶ The judge ordered the federal marshal to take the Africans to New Haven, Connecticut, where there was a jail large enough to quarter them.⁷ For the moment, they had traded one hellish prison for another, this time courtesy of the United States.⁸ The judge also asked a grand jury of the Circuit Court in Hartford, Connecticut, to decide if the Africans should be tried for murder and piracy.⁹ Eventually, others sought to intervene and make property claims, while others used the case to promote the cause of abolitionism.¹⁰ The year was 1839, and this meant that the case could have implications on a national or even international scale. In order to make sense of the various claims made in the case, it is necessary to give a brief account of how the Africans came to be on the ship *La Amistad* and the legal significance of that journey.

II. THE STORY OF THE *AMISTAD* REBELLION AND ITS LEGAL AND POLITICAL CONSEQUENCES

The question of where to begin any story is a challenge. It has consequences for where you end up, where you stop along the way, who you see, who you do not see, and what shapes and moves the story as it unfolds.¹¹ The story must have

1. This was the opening scene as portrayed by director Steven Spielberg in his movie, *AMISTAD* (DreamWorks Pictures 1997).

2. MARCUS REDIKER, *THE AMISTAD REBELLION: AN ATLANTIC ODYSSEY OF SLAVERY AND FREEDOM* 81 (2012).

3. *Id.* at 82.

4. *Id.* at 91-92.

5. *Id.* at 96.

6. *Id.* at 96-99.

7. *Id.* at 99; DAVID BRION DAVIS, *INHUMAN BONDAGE: THE RISE AND FALL OF SLAVERY IN THE NEW WORLD* 16 (2006).

8. REDIKER, *supra* note 2, at 108-10.

9. DAVIS, *supra* note 7, at 16.

10. *Id.* at 16-19.

11. See, e.g., Jonathan K. Van Patten, *The Trial of Tom Robinson*, 61 S.D. L. REV. 51, 54 (2016) [hereinafter *The Trial of Tom Robinson*] (“Any account of the trial of Tom Robinson must begin with the

a context and a theme.¹² Sometimes, it will begin with who committed the first wrong. But that may be subject to dispute. Although actions often speak louder than words, thoughts and emotions are the motivators of actions. These inner influences are mostly hidden, until they are not. This makes the question of origins problematic.

Identifying the wrong in this case—slavery—is not difficult, yet understanding its pervasive and enduring influence remains an enigma, with age-old paradoxes:

The inherent contradiction of slavery lay not in its cruelty or economic exploitation, but in the underlying conception of man as a conveyable possession with no more autonomy of will and consciousness than a domestic animal. This conception raised a host of problems and was seldom acted upon without compromise. Occasionally men recognized that the institution was dangerous to the security of the state, that it provided some masters with too much idleness and too much power, that slaves were men and should be treated with consideration.¹³

The contradiction between man as property and man as a human being could never be satisfactorily resolved. Both could not be right.¹⁴ But that does not mean that the problem would be settled as a simple matter of logic, theology, or politics. Indeed, the reality for most of history has been that human beings were kidnapped, bought, sold, inherited, subjected to forced labor, and worse.¹⁵

Slavery had ancient roots, both in practice and in theory.¹⁶ There are references to it from the time of Noah,¹⁷ and it was widely practiced throughout ancient Mesopotamia, Egypt, Greece, and, later, Rome.¹⁸ “[F]rom the ancient world we find no assertion that slavery was an intolerable evil that should be eradicated by any civilized nation.”¹⁹ And yet, ancient slavery practices were not without criticism: “But this does not mean that the Bible and classical literature

question of where to begin. In the narrow sense, it began with the accusation that Tom Robinson, a black man, raped a white woman, Mayella Ewell. But, one cannot make sense of the trial that followed without some understanding of the context in which this played out in rural Alabama in 1935. If you take the long view, the trial of Tom Robinson started much earlier. One might say it started when the first slaves were transported to the ‘New World.’ Aptly described as America’s ‘original sin,’ this matter will simply not go away. Nor should it.”)

12. See Jonathan K. Van Patten, *Storytelling for Lawyers*, 57 S.D. L. REV. 239, 241-44 (2012) (noting the importance of themes); *Themes and Persuasion*, *supra* note †, at 256 (defining themes).

13. DAVID BRION DAVIS, *THE PROBLEM OF SLAVERY IN WESTERN CULTURE* 62 (1966) [hereinafter *THE PROBLEM OF SLAVERY IN WESTERN CULTURE*].

14. See, e.g., HARRY V. JAFFA, *CRISIS OF THE HOUSE DIVIDED: AN INTERPRETATION OF THE ISSUES IN THE LINCOLN-DOUGLAS DEBATES* 313 (1959) (“The attempt to legitimize the extension of slavery was impossible without denying the Negro’s humanity or without denying the moral right of humanity or both.”).

15. See generally DAVID BRION DAVIS, *SLAVERY AND HUMAN PROGRESS* (1984) (probing the connection between progress and slavery).

16. *THE PROBLEM OF SLAVERY IN WESTERN CULTURE*, *supra* note 13, at 62-90.

17. *Genesis* 9:20-27.

18. DAVIS, *supra* note 7, at 32-37.

19. *THE PROBLEM OF SLAVERY IN WESTERN CULTURE*, *supra* note 13, at 62.

had no bearing on the later antislavery movements.”²⁰ The basis for a critique of slavery was there, but it was more like a recessive gene that would not become dominant until much later.²¹

The eventual acceptance of the proposition that all human beings are endowed with certain natural rights finally began to emerge and yet was still a contested proposition at the time of the *Amistad* case.²² This conflict was embedded in the founding, which contained both antislavery principles and pro-slavery compromises.²³ The Declaration of Independence was a statement of principles fundamental to the creation of the new American regime.²⁴ The Northwest Ordinance, which functioned as the constitution for the territories, provided the basic pattern for how the republic would be extended and prohibited slavery in any newly acquired territories.²⁵ Compromise on the slavery question, however, was the price of Union, and it was reflected in the Constitution of 1787.²⁶ The antislavery principles in that document are less evident but important nonetheless.²⁷ Congress could not prohibit the slave trade until 1808, but it could do so (and did) thereafter.²⁸ In the long run, the compromises were relatively short-lived, although they had lasting consequences.²⁹ Other concessions to slavery were politically necessary, but were limited in time and scope.³⁰ The Civil War would result in the abolition of slavery and provide, through the Thirteenth, Fourteenth, and Fifteenth Amendments, the basis for a second American founding.³¹

20. *Id.* at 63.

21. See generally DAVID BRION DAVIS, *THE PROBLEM OF SLAVERY IN THE AGE OF EMANCIPATION* (2014) [hereinafter *THE AGE OF EMANCIPATION*] (describing the abolitionist movement that shaped a remarkable transformation of public opinion on the morality of slavery).

22. See generally DAVID BRION DAVIS, *THE PROBLEM OF SLAVERY IN THE AGE OF REVOLUTION, 1770-1823*, Back Cover Review, (1975) (exploring “the growing consciousness, during a half century of revolutionary change, of the oldest and most extreme form of human exploitation.”).

23. See *The Trial of Tom Robinson*, *supra* note 11, at 55-57 (noting the slavery-related compromises in the Declaration of Independence and the Constitution).

24. See Jonathan K. Van Patten, *In the End Is the Beginning: An Inquiry Into the Meaning of the Religion Clauses*, 27 ST. LOUIS U. L.J. 1, 36-43 (1983) (discussing the importance and meaning of the Declaration of Independence).

25. *Id.* at 60-63.

26. *The Trial of Tom Robinson*, *supra* note 11, at 55-56.

27. See THOMAS G. WEST, *THE POLITICAL THEORY OF THE AMERICAN FOUNDING: NATURAL RIGHTS, PUBLIC POLICY, AND THE MORAL CONDITIONS OF FREEDOM* 59-65 (2017) (considering political theories); THOMAS G. WEST, *VINDICATING THE FOUNDERS: RACE, SEX, CLASS, AND JUSTICE IN THE ORIGINS OF AMERICA* 1-36 (1997) [hereinafter *VINDICATING THE FOUNDERS*] (discussing slavery in America). See generally HERBERT J. STORING, *WHAT COUNTRY HAVE I?: POLITICAL WRITINGS BY BLACK AMERICANS* (1970) (providing a glimpse of African American perspective after an agitating decade).

28. U.S. CONST. art. V.

29. See *The Trial of Tom Robinson*, *supra* note 11, at 57 (acknowledging effects of slavery).

30. U.S. CONST. art. IV, § 2. Known as the Fugitive Slave clause, it does not mention slavery. *VINDICATING THE FOUNDERS*, *supra* note 27, at 17.

31. See generally ERIC FONER, *THE SECOND FOUNDING: HOW THE CIVIL WAR AND RECONSTRUCTION REMADE THE CONSTITUTION* (2019) (describing the second founding).

America was by no means the only antislavery force during the nineteenth century. Great Britain had an empire on which, at the time, the sun did not set.³² The British struggle against slavery had a different history because the practice was largely felt in the empire, not at home. Divestiture of ownership of slaves did not have the same consequences as it did in the American South. In any event, this was not an easy fight. William Wilberforce, and others, waged a decades-long battle, explicitly on Christian principles,³³ against the practice of slavery, and eventually prevailed:

[In 1807], the slave trade was finally outlawed. The battle was not over. Wilberforce spent the remainder of his life working to ensure that the promise of abolition was fulfilled. Enforcement in England and its empire was difficult, since what was illegal remained possible (and highly profitable) for those willing to break the laws. For generations, the British Royal Navy scoured the oceans, searching for and intercepting ships that carried their illegal human cargo.³⁴

This is an important proposition. Enforcement was difficult because, although illegal, the slave trade “remained possible (and highly profitable) for those willing to break the laws.”³⁵ It would be naïve, however, to hold that enforcement during the nineteenth century was hindered by a lack of modern technology (although it was if one indulges in ahistorical arguments). The campaign against alcohol during Prohibition and the efforts to curtail drug trade or sex trafficking in modern times are sufficient proof of the limits of enforcement.

At the time of the *Amistad* seizure by a United States naval vessel, the matter of slavery was addressed by various laws, treaties, and “understandings.” In the United States, although there still was no national consensus, slavery had been prohibited in the Northwest Territories and abolished or limited in most of the northern states.³⁶ The international slave trade had been outlawed by both the United States and Great Britain.³⁷ Spain, by treaty with Great Britain, had provided that “any Africans imported into Cuba after May 1820 were supposed to be legally free.”³⁸ Spain’s enforcement of that commitment, however, was

32. ANDREW ROBERTS, *A HISTORY OF THE ENGLISH-SPEAKING PEOPLES SINCE 1900*, at 1-4 (2007).

33. See ERIC METAXAS, *SEVEN MEN: AND THE SECRET OF THEIR GREATNESS* 32-33 (2016) (discussing Great Britain and slavery during this time); see also *THE AGE OF EMANCIPATION*, *supra* note 21, at 262 (“But the eschatological achievement [of emancipation in Britain] confirmed the evangelical faith of Wilberforce and others that the very existence of slavery had provided Protestant Christianity with an epic stage for vindicating itself as the most liberating force in human history. Abolishing slavery became a way for a nation to accumulate ‘moral capital,’ overcoming self-centered materialism and responding to the Enlightenment’s sweeping attacks on institutional religion.”).

34. METAXAS, *supra* note 33, at 54-55.

35. *Id.* at 54.

36. Ordinance of 1787: The Northwest Territorial Government, *reprinted in The Organic Laws of the United States*, 1 U.S.C. LVII, LVIX (2012); DAVIS, *supra* note 7, at 15.

37. DAVIS, *supra* note 7, at 13.

38. *Id.*

notoriously lax.³⁹ “Though racial slavery had been legal throughout the Western Hemisphere in 1775, by 1840, it flourished only in Brazil, the southern United States, Cuba, and Puerto Rico (and to a certain degree in the French and Dutch Caribbean).”⁴⁰

A. FROM SIERRA LEONE TO CUBA: THE JOURNEY BEGINS

In early 1839, Joseph Cinqué,⁴¹ a twenty-five-year-old free man with a wife and three children, was seized by black strangers while working on a road near his village in Sierra Leone.⁴² He was sold by his original captors to another and then to a Spaniard, Pedro Blanco, who was operating a slave trade in the coastal town of Lomboko.⁴³ In Lomboko, captives from the area were gathered and inspected.⁴⁴ Because of the illegality of the slave trade, the preparation of the slaves for travel had to be conducted in secrecy.⁴⁵ Loading of slaves and provisions onto slave ships had to be done with stealth and quickness.⁴⁶ Cinqué and approximately six hundred other Africans were put on a Portuguese ship, the *Teçora*, which departed Sierra Leone for Cuba.⁴⁷

39. *Id.* For example, notwithstanding existing Spanish treaties and laws, an African transported to Cuba would assume “legal” slave status under the law of Cuba. *Id.*

40. *Id.* at 15.

41. His original Mendean name was Sengbeh; he was named Joseph Cinqué by the Spaniards (pronounced “seen’-kay”); AMISTAD, *supra* note 1. Cinqué was played by actor Djimon Hounsou with an intensity that was bracing and authentic. The film is worth watching for his performance alone.

42. DAVIS, *supra* note 7, at 12; REDIKER, *supra* note 2, at 43.

43. REDIKER, *supra* note 2, at 23, 43.

44. *Id.* at 44-45. The process at slave trader’s “factory” was degrading and brutal:

As the various small traders . . . arrived with their human coffles at Blanco’s place of business, they stripped every man, woman, and child “perfectly naked.” All were closely inspected “from head to foot”; no part was spared The soundness of limbs for would-be plantation workers was crucial, so arms and legs were squeezed, tugged, flexed, and rotated. “Every joint was made to crack; hips, armpits, and groins were also examined.” Buyers looked carefully into each person’s mouth; missing teeth would mean a reduced payment to the seller. Likewise with eyesight: a squint . . . decreased the purchase price. Buyers even demanded that the captives speak in order to evaluate voice. They scrutinized every finger and toe, knowing that the struggle against enslavement included self-mutilation: “in order to unfit himself for service,” a man might “cut off his first finger.” Women, even little girls . . . were subjected to a special set of indignities. Rejects might be killed, or be sold to local masters.

Id.

45. *Id.* at 47.

46. *Id.* at 47-48. However, even “British, Dutch, French, Portuguese, and American vessels called at Lomboko, most of them in defiance of their own nation’s laws.” *Id.* at 49.

47. *Id.* at 49.

Aboard the *Teçora*, conditions were horrific.⁴⁸ The cabin below was overcrowded and under-spaced.⁴⁹ Food, mostly rice, was adequate, but there was very little to drink.⁵⁰ With “seasickness, disease, overcrowding, and the pungent ‘smell of bondage[,]’” conditions below deck were beyond description.⁵¹ Many died.⁵² Perhaps the only positive was a bonding of the survivors, which would serve them well for the ordeal ahead.⁵³

The Africans aboard the *Amistad* had been kidnapped.⁵⁴ This is beyond dispute. They had names; they had families; they had a future in Africa, whatever that might have been. It was theirs, not someone else’s, and the loss of an autonomous future was a major consequence of what slavery meant. And not just one’s future. It was potentially their children’s and their children’s children’s future.⁵⁵ And so, the story of this trial began with a crime. In this case, however, the defendants were the victims of that crime.

B. FROM CUBA TO THE UNITED STATES: THE JOURNEY MAKES UNEXPECTED TURNS

The destination of Cuba had a purpose. From there, the illegal slave trade could emerge into the open, as if Cuba could provide a justification for the Africans to be bought and sold.⁵⁶ It also served as a sickbay to allow the survivors of “the middle passage” to recover before their eventual sale.⁵⁷ Shortly thereafter, Ruiz arrived at the barracks where Cinqué and his companions were detained. He inspected the Africans closely and purchased Cinqué and forty-eight other men on behalf of his uncle for the purpose of resale in Puerto Principe (about three

48. The description in this paragraph is intentionally understated. A sanitized description would be Thomas Hobbes’s classic formulation of the state of nature: “continual feare, and danger of violent death; And the life . . . solitary, poore, nasty, brutish, and short.” THOMAS HOBBS, *LEVIATHAN* 104 (Everyman’s Library ed. 1950). Except that this was far worse than what Hobbes could ever have imagined. For a more complete narrative, see REDIKER, *supra* note 2, at 52-59; WILLIAM A. OWENS, *BLACK MUTINY: THE REVOLT ON THE SCHOONER AMISTAD* 23-37 (Black Classics Press ed. 1997). The movie, *AMISTAD*, specifically acknowledges *BLACK MUTINY* as its foundational source material. Spielberg’s depiction captures some of the brutality and gruesomeness, but it could never have been suitable for any audience without mercifully pulling its punches. Even so, the *Teçora* scenes are very difficult to watch.

49. REDIKER, *supra* note 2, at 52-54.

50. *Id.* at 58.

51. *Id.* “In Brazil, slavers were sometimes burned after the voyage because it was impossible to eradicate the odor. Perhaps this was the fate of the *Teçora*.” *Id.*

52. *Id.* at 58-59.

53. *Id.* at 59-60.

54. *Id.* at 21-31; OWENS, *supra* note 48, at 5-22; DAVIS, *supra* note 7, at 12-13.

55. See generally ALEX HALEY, *ROOTS: THE SAGA OF AN AMERICAN FAMILY* (1976) (portraying a semi-fictional account of seven generations of the author’s family, beginning with Kunta Kinte, a seventeen-year-old African captured and sold into slavery and transported to America and following his life and the lives of his descendants down to the author).

56. REDIKER, *supra* note 2, at 60. This story is also well-chronicled in OWENS, *supra* note 48, at 30-52.

57. REDIKER, *supra* note 2, at 60.

hundred miles east of Havana).⁵⁸ Montes bought four children in a different place and, together with Ruiz, they booked passage, with their “cargo,” on the ironically named vessel “*La Amistad*.”⁵⁹

Conditions aboard the *Amistad* were in some ways worse than on the *Teçora*:

Unlike the *Teçora*, the *Amistad* did not have a lower deck, where the enslaved would be jammed together overnight and in bad weather. It was a single-deck vessel with a hold, which measured six feet six inches from the top of the keel to the underside of the main deck above, with headroom diminishing on both sides as the hull curved upward to meet the outer edges. The bulky cargo already stored in the hold left limited room for the human freight, which was jumbled in with, and on top of, the hogsheads, casks, and boxes. The enslaved, crammed below deck, had very little headroom.

Indeed, the hold was so crowded that half of the captives would have to be quartered on the main deck and forced to sleep in the open, overnight, in chains for the three-day voyage. The rest were fettered and kept below. Because the *Amistad* had made numerous voyages in the coastal slave trade, its timbers retained the smell of previous terrified passengers, a condition made worse by the lack of ventilation. The prisoners would sit in the dark, stuffy, cramped hold for long hours at a time, in a painful crouch, enveloped by, and themselves exuding, the sharp odor of bondage.⁶⁰

Although the voyage was planned for a three-day passage, the captain held back on provisions of food and water as a contingency in the event of bad weather or the necessity of taking evasive action from British ships.⁶¹ When a few of the Africans sought on their own to alleviate their thirst, they were caught and flogged as a lesson for anyone else who might be tempted to do likewise.⁶² “Tensions aboard the schooner escalated amid the hunger, thirst, violence, torture, and blood. As the Africans later announced, ‘They would not take it.’”⁶³

This all came to a head when the cook, Celestino, made gestures to Cinqué that the Africans would be killed.⁶⁴ This taunt resonated with the Africans, who believed that the white men who came in ships to Africa were cannibals.⁶⁵ Cinqué and the other leaders in the group made plans to rise up, seize the vessel, and sail

58. *Id.* at 61-62.

59. *Id.* at 62-65. *La Amistad*, a Spanish name, means “Friendship.” *Id.* at 64.

60. *Id.* at 67-68.

61. *Id.* at 69-70.

62. *Id.* at 70-71.

63. *Id.* at 71.

64. *Id.* at 71-72.

65. *Id.* at 72.

it back to their homeland.⁶⁶ Although there was a big storm that night, it had calmed down, and at 4:00 a.m., in the darkness and quiet, the Africans loosed their shackles and moved to the main deck. They went first for Celestino and clubbed him to death. Next, they engaged the rest of the crew in a pitched battle, eventually killing and then beheading the captain.⁶⁷ The rebellion succeeded:

The goal of warfare was not death, but rather capture of people and place, and both were quickly achieved aboard the vessel. The social world of the *Amistad* had been turned upside down. The captain and cook had been killed, the sailors had been forced to jump overboard, and the slaveholders were now prisoners. Those who had once been slaves had won their freedom in a desperate armed gamble.⁶⁸

Of course, there was the very practical problem of what to do next. There were no good answers, but the Africans decided to sail back to their homeland with Montes, “who had once been a sea captain and therefore knew navigation,” to accomplish this.⁶⁹ There was immediate pushback, however:

Cuban authorities, as soon as they learned of the revolt from the sailors who jumped overboard and made it to shore, assumed that [the Africans would not attempt to sail back to Sierra Leone]. They dispatched a ship of war, the *Cubano*, to search for the *Amistad*, thinking that the Africans would run the vessel aground on the north coast of Cuba and go ashore as maroons. They would not, or could not, remain at sea. Yet this is precisely what the *Amistad* rebels decided to do, outthinking the government of the slaveholders and wagering that they could provide affirmative answers to the big questions facing them. For a disparate group of people who had grown up in non-seafaring societies and had had nothing to do with deep-sea sailing vessels until they were engulfed in the twin catastrophe of enslavement and Atlantic shipment, it was a bold and daring decision.⁷⁰

The bold decision had one flaw. Their own navigational skills were limited to guidance from the position of the sun. The rising sun that had been behind them as they came westward on the *Teçora* would now be ahead of them on the return back. Montes, however, had his own plan. He would sail, as instructed, toward the rising sun, but slowly, with the sails loose. And he would tack back to the west and north at night, where he was more likely to encounter other vessels.⁷¹

66. *Id.* at 73-75.

67. *Id.* at 75-79.

68. *Id.* at 79.

69. *Id.* at 81.

70. *Id.*

71. *Id.* at 81-82.

The Africans did not trust Montes, and rightly so The first time Montes reversed course, they sensed something was wrong and worried that he was secretly taking the *Amistad* back to Havana. They held a “consultation” . . . and decided to kill both him and Ruiz. It would be better to go it alone than risk the treachery of the white men.

The *Amistad* had provisions for two weeks, at most, and the lack of water was a problem that would plague the entire voyage. They went ashore every few days, under peril of capture, and filled their limited containers as best they could. “They spent more than a month sailing around a relatively small geographic area in the Bahamas in search of water.”⁷²

“Encounters with other vessels at sea were fairly common and always terrifying.”⁷³ The movie shows one such eerie encounter at night.⁷⁴ The voyage in the Caribbean also endured severe tropical storms.⁷⁵ As the water situation became dire, Montes and Ruiz asked the Africans if they should head toward the United States, which they said was not a slavery country.⁷⁶ They eventually came to a place near Long Island, New York, where they anchored about a mile offshore.⁷⁷ A small party went ashore for water and the initial contacts with whites seemed positive.⁷⁸ But then a naval survey vessel, the *Washington*, showed up and towed the *Amistad* across Long Island Sound to New London, Connecticut.⁷⁹ And thus began the series of legal proceedings described briefly at the beginning of this article.

As these proceedings began to take shape, the scene then shifted to a conversation between two abolitionists, Lewis Tappan and Theodore Joadson,⁸⁰ who were evaluating the case for its potential use in support of the antislavery cause:

Joadson: The ship is *Amistad*. It’s too small to be a transatlantic slaver.

Tappan: So, they’re plantation slaves, then? West Indians?

Joadson: Not necessarily. At least they certainly don’t look it. Not from the glimpse I caught of them on their way to jail. They have these . . . scars.

Tappan: Scars?

When the time came for the killing, Montes fell upon his knees and begged again for his life, pleading for his children and family. The influential Burna probably supported him. A majority of the rebels relented again, and let Montes live.

Id. at 82.

72. *Id.* at 83.

73. *Id.* at 84.

74. *AMISTAD*, *supra* note 1, beginning at 10:35.

75. *REDIKER*, *supra* note 2, at 84.

76. *Id.* at 86.

77. *Id.* at 87.

78. *Id.* at 88.

79. *Id.* at 91-96.

80. Tappan was a real historical figure, a leading supporter of the abolitionist cause. Joadson (played by Morgan Freeman) is a fictional character. Ann Hornaday, *Revising movie history: Film: ‘Amistad’ breaks with Hollywood stereotypes in its account of what happened to a boatload of Africans bound for slavery*, *BALT. SUN* (Nov. 30, 1997, 12:00 AM), <https://www.baltimoresun.com/news/bs-xpm-1997-11-30-1997334068-story.html>. His role was crucial for storytelling purposes, as he served as the voice of conscience to sharpen the narrative and to move the action along, similar to his role as “Red” in *THE SHAWSHANK REDEMPTION* (Castle Rock Entertainment, 10th Anniversary ed. 2004). It is a rare Morgan Freeman movie in which he is not the dominant actor. Cinqué (Djimon Hounsou) dominated, as he should have for that role.

Joadson: Yeah. They were first obtained by officers of a survey brig off the coast of Long Island. They were conveyed to New Haven—under what authority, I don't know—and given over to the local constabulary. About forty of them, including four or five children. The arraignment is day after tomorrow. I can only assume that the charge is murder.

Tappan: I'll see what I can do about that. Perhaps a writ for illegal arrest and detainment to stall things. [Joadson holding newspaper with headline that reads "MASSACRE AT SEA – A DIFFICULT SLAVE CASE" replaced by Tappan with another newspaper and headline that read "FREEDOM FIGHT AT SEA"]

At the very least, make sure they have good counsel.⁸¹

C. THE INITIAL LEGAL CLAIMS

The case opened in the courtroom of the Federal District Court in Hartford, Connecticut:

Bailiff: Hear ye! Hear ye! In the matter of the court of the United States of America in this, the year of our Lord, 1839, the Honorable Andrew T. Judson presiding.

[Judge Judson walked in, not from chambers, but through the main entrance like everyone else. This took him through the crowd of Africans, who were also present in the courtroom, speaking in their native language and unaware of who had just passed through their midst. Judson was obviously very uncomfortable with the situation and was relieved to finally assumed his place above everyone at the bench].

Holabird: If it please, Your Honor.

Judge Judson: The bench recognizes District Attorney Holabird.

Holabird: I would like to present the Court, Your Honor, with the charges of piracy and murder

Tappan [interrupting]: Your Honor, I have a petition for a writ of habeas corpus.

Holabird: Your Honor, I was speaking.

Tappan: Yes, I know, Mr. Holabird. You were reading charges, which, whatever they might be, will be rendered moot by this writ.

Holabird: That petition for a writ, Mr. Tappan—if indeed, that's what it is—is moot, unless and until an actual writ by some higher court, by some miracle, is granted.

Judson: Mr. Holabird is correct.

81. AMISTAD, *supra* note 1, beginning at 20:58.

Holabird: And if you would, sir, while I know it is your custom, please kindly refrain from impersonating a lawyer, which you patently are not. As I was saying, Your Honor . . .

Secretary of State Forsyth [interrupting]: Your Honor.

Judson [rising, with obvious deference]: Mr. Secretary.

Forsyth: Your Honor, I am here on behalf of the President of the United States, representing the claims of Queen Isabella of Spain, as concerns our mutual treaty on the high seas of 1795.

Judson: You have my attention, sir.

Forsyth: Thank you. These slaves, Your Honor, are by rights the property of Spain, and as such, under Article 9 of said treaty, are to be returned posthaste. Said treaty taking precedence over all other claims and jurisdictions . . .

Gedney [interrupting]: Them slaves belong to me and my mate, Your Majesty.

Judson: Who be you two gentlemen?

Gedney: [Reading] We, Thomas R. Gedney and Richard W. Meade, whilst commissioned U.S. Naval officers, stand before this court as private citizens, and do hereby claim salvage on the high seas of the Spanish ship *La Amistad* and all her cargo.

Judson: You wish to make this claim above that of the Queen of Spain?

Meade: Where was she, pray, when we was fightin' the winds to bring this vessel in, Your Excellen . . . uh, Honor.

Spanish Ambassador: Her Majesty, the Queen of Spain, was busy ruling a country. . . .

Attorney for Ruiz and Montez: Your Honor! Here are the true owners of these slaves. On their behalf I am in possession of a receipt for purchase executed in Havana, Cuba, June 26, 1839. I do hereby call upon this court to immediately surrender . . . these goods! And that ship out there to my clients, José Ruiz . . . and . . . [Montes, whispering "Pedro Montes"] Pedro Montes.⁸²

Meanwhile, Tappan and Joadson were obliged to watch.

D. THE HIRING OF A LAWYER AND THE THEORY OF THE CASE

Immediately after the hearing, Tappan and Joadson were approached by a young lawyer, Roger S. Baldwin, who had also attended the hearing. Baldwin seemed at first like a hustler, anxious to attach himself to a potentially high-profile case. Baldwin pitched the matter as a property matter, which did not fit at all with Tappan's view of the case. And that seemed to be the end of it.⁸³

82. *Id.* beginning at 23:22.

83. *Id.* beginning at 26:48.

When we first see Tappan's and Joadson's first choice for counsel, John Quincy Adams, former President of the United States and now a member of Congress, he was apparently asleep during a session of the House of Representatives.⁸⁴ When he was approached to take the case, he was more than awake, as his gratuitous swipe at President Martin Van Buren demonstrated.⁸⁵ So, the pitch was made:

Joadson: As an advocate for the abolition of slavery, will you help us?

Adams: I'm neither friend nor foe to the abolitionist cause. No, I won't help you.

Joadson: I know you, Mr. President. I know you and your presidency as well as any man, and your father's. You were a child at his side when he helped invent America. You, in turn, have devoted your life to refining that noble invention. There remains but one task undone. One vital task the Founding Fathers left to their sons, before their thirteen colonies could precisely be called United States. And that task, sir, as you well know, is crushing slavery. Your record confirms you're an abolitionist, sir, even if you won't. And whether or not you admit it, you belong with us.

Adams: You're quite the scholar, Mr. Joadson, aren't ya? Quite the historian. Let me tell you something about that quality, if I might. Without an accompanying mastery of at least one-tenth its measure of grace, such erudition is worthless, sir. Now you take it from one who knows If you gentlemen will excuse me.

Tappan: We know we aimed high coming to see you, sir, but

Adams: Well aim lower. Find yourselves someone whose inspiration blossoms the more you lose.⁸⁶

84. *Id.* beginning at 28:10. When we first see him, he appeared to be in his dotage, almost in need of a caretaker. This impression, however, was part of his persona, as Adams proved by the end of this conversation that he was fully aware of the situation and what he believed. Anthony Hopkins, a British actor, was perfectly cast in this role, for which he won an Academy Award for Best Supporting Actor. Adams, the sixth President of the United States and now a member of Congress, was suspected of listening to his opponents' plans across the room while feigning sleep. See Emily Belz, *Smackdown in Statutory Hall*, HILL (Oct. 16, 2007, 4:11 PM), <https://www.thehill.com/capital-living/23960-smackdown-in-statuary-hall> (mentioning the "whisper effect" on the previous House Floor, now known as Statutory Hall).

85. AMISTAD, *supra* note 1, beginning at 30:32.

Tell me sir, you really think Van Buren cares about the whims of an eleven-year-old girl who wears a tiara? 'Cause I can assure you, sir, having been over there [*i.e.*, the White House], only one thing occupies his thoughts this time of the year, being all things to all people, which, of course, being nothing to no one. In other words, getting himself reelected.

Id.

86. *Id.* beginning at 31:11.

The rebuff was abrupt and, frankly, rude. But the parting shot contained, nevertheless, surprising wisdom. Find someone “whose inspiration blossoms the more you lose.”⁸⁷ In other words, find a lawyer who is a fighter, who is not afraid to lose, because that was what it would take to win this one.

Tappan and Joadson returned to reconsider Baldwin, who remained available and, apparently, unafraid to lose.⁸⁸ Discussion followed over lunch with the hungry lawyer and the fit issues remained:

Baldwin: I’m a little confused by something. What are they worth to you?

Tappan: We’re discussing the case, not its expense.

Baldwin: Oh, the case, of course. Well, the case is much simpler than you think, Mr. Tappan. It’s like anything isn’t it—land, livestock, heirlooms, what have you.

Tappan: Livestock [with disgust].

Baldwin: Yes. Consider, the only way one may sell or purchase slaves is if they are born slaves, as on the plantation. I’m right, aren’t I?

Joadson: Yes.

Baldwin: So, are they?

Tappan: Are they?

Baldwin: Yes. Born slaves, as on a plantation.

Joadson: No, we’re not certain, but we very much doubt it.

Baldwin: Let’s say they are, and if they are, then they are possessions, and no more deserving of a criminal trial than a bookcase or a plow. Then we can all go home, can’t we. On the other hand, let’s say they aren’t slaves. If they aren’t slaves then they were illegally acquired, weren’t they? Forget mutiny, forget piracy, forget murder and all the rest. Those are subsequent, irrelevant occurrences. Ignore everything but the pre-eminent issue at hand. The wrongful transfer of stolen goods. Either way, we win.⁸⁹

Baldwin explored the slavery paradox, without self-limiting blinders, as a good lawyer would do. Either the defendants were slaves, and thus possessions, in which case, they could not be prosecuted, or they were not slaves and thus had been illegally acquired. Though his language and argument were a bit off-putting,

87. *Id.*

88. Spielberg’s storytelling makes Baldwin into a young, inexperienced lawyer, who was more interested in money than in principle. Roger Sherman Baldwin was more than that. He was the maternal grandson of notable founder father, Roger Sherman, who was the only person to sign the Declaration of Independence, the Articles of Confederation, and the Constitution of the United States. Douglas O. Linder, *Roger S. Baldwin*, FAMOUS TRIALS, <https://www.famous-trials.com/amistad/1217-ami-bbal> (last visited Nov. 5, 2021). He supported the abolitionist cause as early as 1831, very ably represented the Africans in the Amistad case, and later served as Governor of Connecticut and represented Connecticut in the United States Senate. *Id.* Matthew McConaughey was very well cast as the ambitious lawyer, who matured as he learned from the battles in this case.

89. AMISTAD, *supra* note 1, beginning at 33:12.

it identified the paradox with tolerable precision. In addition, he identified the technical legal point that the Africans could only be considered slaves if they were born in Cuba. Although it was unknown whether they were born there, it did not appear to have been the case. This legal point suggested a path to success.

The discussion then moved from tactics to strategy. Here was where the differences between the lawyer and the abolitionist become most apparent:

Tappan: Sir, this war must be waged on the battlefield of righteousness.

Baldwin: The what?

Tappan: It would be against everything I stand for to let this deteriorate into an exercise in the vagaries of legal minutia.

Baldwin: Well, I don't know what you're talking about, Mr. Tappan, but I'm talking about the heart of the matter.⁹⁰

Tappan: As am I. It is our destiny, as abolitionists and as Christians, to save these people. These are people, Mr. Baldwin, not livestock. Did Christ hire a lawyer to get him off on technicalities? He went to the cross, nobly. You know why? To make a statement. To make a statement, as must we.

Baldwin: But Christ lost . . .

Tappan: No, sir, he did not.⁹¹

E. WHAT DO THE DEFENDANTS WANT?

Spielberg finally lets us hear what the Africans were saying among themselves, and the first sequence was not encouraging.⁹² They were fighting for space, for turf within the confines of the jail. Baldwin visited them and attempted to figure out the case.⁹³ "I need to know where you are from."⁹⁴ He brought with him a Yale professor, a linguist who might have been helpful in communicating with his clients.⁹⁵ The linguist, however, appeared to be of no use.⁹⁶ The Africans

90. For Baldwin, a lawyer, the heart of the matter was an argument based on circumstance; for Tappan, an abolitionist, the heart of the matter was an argument based on definition or genus (the nature of the thing). See generally EDWARD P.J. CORBETT, *CLASSICAL RHETORIC FOR THE MODERN STUDENT* (Oxford Univ. Press, 2d ed. 1980) (discussing vital components of classical rhetoric).

91. AMISTAD, *supra* note 1, beginning at 34:22. The reader can decide who got the better of that exchange. My own opinion is that they are both right, but I would choose Baldwin to be my lawyer and Tappan to be a financial supporter. See generally Jonathan K. Van Patten, *The Trial of Jesus*, 65 S.D. L. REV. 285 (2020) (discussing the trial of Jesus). Baldwin also brings the discussion back to how he will be paid. "In order to do a better job than the attorney who represented the Son of God, I'll require two and a half dollars a day." AMISTAD, *supra* note 1, beginning at 35:30.

92. AMISTAD, *supra* note 1, beginning at 35:49.

93. *Id.*

94. *Id.* at 38:40.

95. *Id.*

96. Here, Spielberg's storytelling is off. He used a character actor, Austin Pendleton (probably best known as the stuttering lawyer in MY COUSIN VINNY (20th Century Fox 1992)), who skillfully portrayed the professor as a useless fool. Okay, perhaps, for some purposes, but not for this story. In reality, the linguist, Professor Josiah Gibbs, was a hero. He solved the language problem through a simple common-sense test (identifying how to count in their language and then walking around public areas until someone

understood that this was not working and walked away in frustration.⁹⁷ Baldwin later attempted basic communication through drawing pictures to figure out where they were from.⁹⁸ Not much could be accomplished through these means.

F. THE TRIAL RESUMES

Despite Baldwin's theory of the case as a property matter, the trial of the Africans was clearly one for murder, and the prosecution had the early advantage. The prosecutor piled it on with what must have been his customary melodrama:

Holabird: Then, in the quietude of the night after the Spaniards attended their vespers and were deep in virtuous sleep, the savages broke loose their collars, stole onto the deck like creatures of prey, where they fell upon the unsuspecting crew with these sabres and cane knives. I cannot overstate the inhumanity of their acts, the savagery, the bloodshed. Unsated by the mere deaths of their victims, they went on to mutilate at least one of them; to dismember him; the simple cook, a Creole. Their own kind. But for the bravery of Señors Ruiz and Montes, who fought their way to the stern and steered the *Amistad* to these shores under constant threat of like fate, we might never have heard of this massacre, this bloodbath. But for their bravery, these villains most certainly would have escaped justice. But they've not. They've not.⁹⁹

It was then the turn of Baldwin to respond. Disrespectfully nicknamed the "Dung-Scraper" by his clients, who sensed, with some dread, that he spoke on their behalf, Baldwin's initial words were not encouraging:

Baldwin: Do you know the difference between a cow and a cabbage? A brick and a bear? Or how about a polecat and a president? Well, the Spanish government hopes you don't have much more common sense than that and I'll tell you why. This case isn't about murder, mayhem or massacres. It's not about anything that dramatic. This case is about knowing the difference between here and there. I want to show you something.¹⁰⁰

But then Baldwin seemed to right himself and get on track:

Baldwin: [To one of the Africans] Open your mouth.
[turning to the Judge and jury] Of course, he doesn't understand what I'm saying. He doesn't speak English.

responded). Once someone who spoke the language was identified, the defense could begin to take shape. Communication with the client was essential; in this case, absolutely essential.

97. *AMISTAD*, *supra* note 1, beginning at 39:40.

98. *Id.* beginning at 47:48.

99. *Id.* beginning at 40:34. Overlaying this argument by counsel is a running commentary by Cinqué and others, revealing their impressions of what was going on. If not for the stakes at trial, this would have been humorous.

100. *Id.* beginning at 42:03.

[Then back to one of the Africans] *Abra su boca*. [Spanish] [Then to the judge and jury] Doesn't he understand that? I thought he was born on a Cuban plantation? That's what they're all saying.

Holabird: Perhaps he simply doesn't like you, Mr. Baldwin.

Baldwin: Well, he wouldn't be the first, Mr. Holabird. [Smiling. And the African smiles back] What, did he learn this on some Cuban plantation, this decorative effect? Cuban plantation! [To the Africans] Stand up. Stand up! Hey. *Levantate. Levantate. Levantate*. [Motions and stands up from a seated position] Stand up. Ahh! Thank you. Your Honor, I speak more Spanish, and I was born in Philadelphia.

Holabird: Your Honor, on Spanish plantations, slaves always choose to live surrounded by their own ways and simple languages. Pray tell, what need they know of Spanish? "Fetch? Carry? Stop?" Oftimes, gestures suffice for slaves, as indeed for any other beast of burden.¹⁰¹

The lawyer for Ruiz and Montes then offered a written bill of sale to substantiate their claim of ownership. And Judge Judson seemed all but ready to rule:

Judson: Mr. Baldwin, you've proffered to this court this morning a good deal of—I'll be kind—circumstantial evidence. Have you, in addition, anything, say in the order of actual documentation, that might refute this one [holding up the bill of sale], and in so doing, more compellingly support your claims?

Baldwin: I'm sure I could manufacture some as easily as they have, Your Honor.

Judson: What you're saying is, then, you don't. Is that correct?

Baldwin: I have them. [Motions to the Africans].

Judson: I'm afraid that does not impress me.¹⁰²

The post-mortem after the hearing was gloomy. But Baldwin was a fighter, and his inspiration began to blossom. In the depths, he visited Cinqué to figure out what was going on. Where was Cinqué from? Africa. "This . . . is how far I've come."¹⁰³ So Baldwin visited the *Amistad* and discovered the true manifest of the cargo.¹⁰⁴ And now, he was ready to go back to court with evidence:

Baldwin: These papers—and I shall ask you to examine them—are portions of a ship's manifest I retrieved from the

101. *Id.* beginning at 42:52. This last remark, reflecting the overt racism of William Holabird, United States Attorney for the District of Connecticut, is breathtaking.

102. *Id.* beginning at 45:05. I myself have heard the equivalent. The Court: "Mr. Van Patten, is that all you've got?" This does not bode well unless Baldwin can change the argument.

103. *Id.* beginning at 49:44.

104. *Id.* beginning at 54:04.

Amistad yesterday eve. At first glance, perhaps, they may appear to bolster the prosecution's case. You see, they list cargo. Cargo bearing the very Spanish names Messrs. Ruiz and Montes insist represent my clients, hand-scrawled in the margins. But no, this is not the manifest of the *Amistad* at all. Look. This is part of the cargo manifest of a Portuguese vessel, the notorious transatlantic slave ship the *Teçora*. The *Teçora*. [Africans begin muttering]. And I can bring you as many witnesses as you wish, Mr. Holabird, to corroborate this. Their clients trade primarily off the coast of West Africa, the Ivory Coast, Sierra Leone. I know what you're thinking. Sierra Leone is a protectorate of the British Crown. Slavery is outlawed there. Its principal port, in fact, has been rechristened "Freetown." How, then, can the Portuguese-flag-flying *Teçora* engage in the slave trades in these waters? I'll tell you how. In a word . . . illegally. Now whatever these men say from this point on clearly matters not because this proves them liars. My clients' journey did not begin in Havana, as they claim and keep claiming more and more emphatically. No, my clients' journey . . . [looking at Cinqué] began much, much further away.¹⁰⁵

After court, we then see Tappan and Joadson congratulating Baldwin, although perhaps prematurely. But it had gone well, and they expected a positive ruling from the court.

The narrative then cuts to young Queen Isabella in Spain, who was reading a letter composed for her signature (and beyond her understanding), asserting that common interests with the United States should favor their claim. "The Africans must never go free."¹⁰⁶ Meanwhile, there is another cut to a private conversation between Secretary of State John Forsyth and Van Buren regarding the political implications of the developing story. In addition to its introduction to the Van Buren administration's position, it supplied a humorous example of the potential for manipulation of an inept political figure, who appeared to be in his dotage:

[Ledger] Hammond: [dismissive of the Queen of Spain]

What you need to concern yourself with is what this matter means here, not an ocean away.

President Van Buren: I wish someone would tell me what it means. Ledger, you yourself said it was meaningless.

Hammond: Well, not anymore.

Secretary Forsyth: John Calhoun paid me a visit.

Van Buren: Oh, God.

Forsyth: To explain to me why this case is of much greater import—much greater symbolism, to use his word—to the South than the North. Now, if the Africans are executed, the

105. *Id.* beginning at 54:16.

106. *Id.* beginning at 57:45.

abolitionists will certainly make good use of it. And yes, they will make some converts. If, on the other hand, they are freed, if that happens, Calhoun assures me that the Southern states will so ally themselves against you that you can forget about reelection.

Van Buren: Over this?

Forsyth: It's worse than that.

Van Buren: Worse? What could be worse than that?

Forsyth: Calhoun believes, and I am not sure I can entirely disagree with him, that this could take us all one long step closer to civil war.

Van Buren: This?

Forsyth: Yes, Mr. President. But all is not lost. Yes, the jury appears disposed towards freeing them, but juries can be dismissed.

Van Buren: They can?

Forsyth: But I believe we must go further and remove the judge.

Van Buren: We can do that?

Forsyth: He could be prevailed upon to recuse himself for any number of reasons. And with that in mind, I've taken the liberty of exploring possible replacements, and I've found one I strongly believe to be better. He's young, which means he has a career before him rather than behind, which means he has yet to feel the hankering for magnanimous last gestures for the sake of posterity. And he is monumentally insecure, particularly about his Catholic heritage.

Van Buren: Eh, he's Catholic?

Forsyth: His grandfather was Catholic, which young Mr. Coglin has striven all his days to keep quiet.¹⁰⁷

In other words, the trial seemed to be going poorly for the prosecution, which could lead to embarrassment for the Van Buren administration. And just like that, we then see Van Buren meeting with young Judge Jeremy Coglin to take over the case. Ah, there are no coincidences. When Baldwin learned of the appointment of a new judge, he was furious.¹⁰⁸ But they were not done yet.

107. *Id.* beginning at 58:05. Forsyth, a slaveholder from Georgia, served as Secretary of State for Presidents Jackson and Van Buren. Spielberg's storytelling here gets creative. There was no young Judge Coglin to replace Judge Judson. He is a fictional character. See *Factual Mistakes in The Amistad*, IMAGES OF AM., <https://www.jacknilan.com/imagesofamerica/amistadmis.html>, #14 (last visited Nov. 5, 2021) (noting that Judge Coglin was "an invention."). Judge Judson actually made the decision that in the movie was pronounced by the fictional Judge Coglin. OWENS, *supra* note 48, at 237-38; REDIKER, *supra* note 2, at 147-48.

108. AMISTAD, *supra* note 1, beginning at 1:00:12.

G. WHAT IS THEIR STORY?

Joadson then went to see Adams again. Adams had been following the case from afar. “How did that young lawyer take the news [of the judge’s replacement]?” he asked.¹⁰⁹ In stride. “The thing is, sir, he did everything right. He proved the case.”¹¹⁰ Adams observed, “Well, he’ll just have to do it again then, won’t he? But like most things, it should be easier the second time around.”¹¹¹ But here is the catch, and why Joadson had come again to ask Adams once again to take the case: “Well, I’m afraid it doesn’t matter what he does now, sir. Rumor has it our next judge was handpicked by Van Buren himself.”¹¹² “No.” [sarcasm by Adams].¹¹³ “Well, I’m embarrassed to admit that I was under the misconception that our executive and judicial branches were separate.”¹¹⁴ “So now you know.”¹¹⁵ But Joadson did not give up: “Mr. President, if it was you handling the case . . . what would you do?”¹¹⁶ A good move because it brought Adams back from critic to adviser.

Adams: Well, when I was an attorney, a long time ago, young man, I realized after much trial and error, that in a courtroom, whoever tells the best story wins. In unlawyer-like fashion, I give you that scrap of wisdom free of charge.

Joadson: I’m much obliged for your time, sir. [He turns to leave].

Adams: What is their story, by the way?

Joadson: Sir?

Adams: What is their story?

Joadson: Why, they’re, um . . . from West Africa.

Adams: No. What is their *story*? Mr. Joadson, you’re from where originally?

Joadson: Why, Georgia, sir.

Adams: Georgia.

Joadson: Yes, sir.

Adams: Does that pretty much sum up what you are? A Georgian? Is that your story? No. You’re an ex-slave, who’s devoted his life to the abolition of slavery, and overcoming great obstacles and hardships along the way, I should imagine. That’s your story, isn’t it? You and this young so-called lawyer have proven you know *what* they are. They’re Africans.

109. *Id.* beginning at 1:01:08.

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

Congratulations. What you don't know, and as far as I can tell haven't bothered in the least to discover, is *who* they are. Right?¹¹⁷

Although one might doubt the historical authenticity of that trial lawyer wisdom from Adams,¹¹⁸ it was excellent advice. Now redirected to what to look for, the lawyer must still discover their story, and this could not occur until there was better communication.

H. FINDING A TRANSLATOR

Inspired by Adams's gratuitous advice, the defense team began in earnest to learn the Africans' story. But how, given their complete unfamiliarity with their language? It was here that Professor Gibbs, the linguist, began to demonstrate his expertise with a simple technique. After learning rudimentary counting from one to ten in the Mende language, Baldwin and Joadson walked around the dock and eventually located Ensign James Covey, a Mende native who had been rescued from a slave ship by the British.¹¹⁹ Now Baldwin could talk with his clients. With Covey, Baldwin met with Cinqué.¹²⁰

Covey: "You and he will talk to each other through me."¹²¹ Cinqué was guarded, but he listened as Covey explained his British uniform and how he came to be speaking with Cinqué in his cell. Baldwin explained the difficulties with a new judge and said he would need Cinqué's help. "When we go to court, I need you to speak."¹²² Cinqué was understandably reluctant. Baldwin pressed on: "They say you're the big man here."¹²³ "I am not," replied Cinqué. Baldwin pushed back: "What's this I hear about a lion?"¹²⁴ Cinqué told how he had killed a terrifying lion with a rock. "I received the gratitude of everyone in the village They treated me as if I was a prince But I knew I didn't deserve it Understand? I'm not a big man, just a lucky one."¹²⁵ Baldwin replied: "I might agree with you, Cinqué, except you're forgetting something. The other lion. The *Amistad*, Cinqué, the insurrection. That, too, was an accident? I hardly think so."¹²⁶ Cinqué replied: "That wasn't bravery. Any man would do the same to get back to his family. You yourself would do it."¹²⁷ Baldwin: "Cinqué, I need you

117. *Id.* beginning at 1:02:33 (emphasis in the voice inflection of actor Anthony Hopkins).

118. This wisdom surely did not originate from JIM M. PERDUE, *WINNING WITH STORIES: USING THE NARRATIVE TO PERSUADE IN TRIALS, SPEECHES & LECTURES* (2006), but it is slightly jarring to hear it so clearly from the mouth of a lawyer/politician over one hundred fifty years prior. In any event, it remains excellent advice for us all.

119. REDIKER, *supra* note 2, at 11-12; AMISTAD, *supra* note 1, beginning at 1:06:15.

120. This is how the diligent lawyer succeeds. Keep grinding until a path appears.

121. AMISTAD, *supra* note 1.

122. *Id.* beginning at 1:09:34.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

to tell me how you got here.”¹²⁸ And this caused Cinqué to recall the even more gruesome events on the *Teçora*.¹²⁹

I. THE TRIAL RESUMES WITH A NEW JUDGE

Cinqué’s narrative of how he came from Africa segued into his testimony in court.¹³⁰ William Holabird followed with cross-examination:

Holabird: Do your people routinely slaughter their slaves in the manner that you just so vividly described to us? Of course they don’t. What would be the point of that? Killing your own slaves is rather like burning down your own house or hut, isn’t it? How do you explain that paradox?

Cinqué: I don’t understand what you mean.

Holabird: Sure you do. As does everyone here. The behavior you attribute to your tormentors—your victims, to be more precise—and therefore every other aspect of your testimony, makes no sense. Not even to you. But thank you for it. Like all good works of fiction, it was entertaining. Nothing more.¹³¹

Baldwin had a rebuttal witness to answer Holabird’s asserted paradox. Captain Fitzgerald, an officer in the British navy, whose primary task had been to patrol the Ivory Coast of Africa to suppress the illegal slave trade, took the stand:

Baldwin: [T]he abduction of free men from the British protectorate of Sierra Leone and their illegal transportation to the New World, as described by Cinqué, is not unheard of, is it?

Fitzgerald: Not even unusual, regrettably.

Baldwin: Well, what, if anything, in his account of his ordeal do you find believable?

Fitzgerald: His description of the slave fortress, for one thing. There is such a place.

Secretary of State Forsyth: You’ve seen it?

Fitzgerald: No, sir. We’ve not managed to locate it, but there is overwhelming evidence that it is real.

Forsyth: What evidence, exactly? Rumor?

Fitzgerald: Reports.

Forsyth: By “reports” you mean of the variety Cinqué shared with us today?

Fitzgerald: It’s existence, sir, has been reported.

128. *Id.*

129. *Id.* beginning at 1:16:58. Again, it was a narrative of complete degradation: loss of human dignity and unspeakable horrors. It was a vision of hell. There are no words.

130. *Id.* beginning at 1:26:01.

131. *Id.* beginning at 1:28:26.

Baldwin: Cinqué describes the cold-blooded murder of a significant portion of the people on board the *Teçora*. Mr. Holabird sees this as a paradox. Do you, sir?

Fitzgerald: Often when slavers are intercepted, or believe they may be, they simply throw all their prisoners overboard and thereby rid themselves of the evidence of their crime.

Baldwin: Drown hundreds of people?

Fitzgerald: Yes.

Holabird: It hardly seems a lucrative business to me, this slave-trading. Going to all that trouble rounding everybody up only to throw them overboard.

Fitzgerald: No, it's very lucrative.

Baldwin: If only we could corroborate Cinqué's story somehow with . . . with evidence of some kind.

Fitzgerald: The inventory.

Baldwin: This? From the *Teçora*?

Fitzgerald: If you look, there's a notation made on May the 10th, correcting the number of slaves on board, reducing their number by fifty.

Baldwin: What does that mean?

Fitzgerald: [I]f you look at it in conjunction with Cinqué's testimony, I would say that it means this: The *Teçora* crew, having greatly underestimated the amount of provisions required for their journey, solved the problem by throwing fifty people overboard.

Holabird: I'm looking at the same inventory, Captain, and I'm sorry, I don't see where it says, "This morning, we threw fifty slaves overboard," on May 10th or any other day.

Fitzgerald: As of course you would not.

Holabird: I do see that the cargo weight changed. They reduced the poundage, I see, but that is all.

Fitzgerald: It's simple. Ghastly arithmetic.

Holabird: Well, for you, perhaps. I may need a quill and parchment and a better imagination.

Fitzgerald: And what poundage do you imagine the entry may refer to, sir? A mast and sails, perhaps.¹³²

At this point, Cinqué could not contain his emotions any longer. He began chanting out loud: "Give us. Us. Free. Give. Us. Free. Give us. Us free."¹³³ He eventually stood, still shackled, with pleading hands outstretched, and

132. *Id.* beginning at 1:29:52.

133. *Id.* beginning at 1:33:56.

continued: “Give us. Us free! Give us free.”¹³⁴ A most memorable scene to end the court session for the day.¹³⁵

After court, back at the jail, the mood was subdued. Cinqué noticed his friend, Yamba, leafing through a book. It was an illustrated Bible. Yamba attempted to make sense of it with Cinqué.¹³⁶ Running parallel with this scene, we observe someone entering a church to pray. It eventually became apparent that this person was Judge Coglin, the new judge in the case.¹³⁷ The impending decision was weighing heavily on everyone.

J. THE DECISION

The next morning, the Africans are prepared for court. Shackled and chained as usual as they trudged toward the court, they were observed by townspeople as if they were exotic creatures. But it was also clear that they had supporters.¹³⁸ The courtroom was packed, and everyone breathlessly awaited the judge’s decision.

Judge Coglin: After careful review and thorough reflection, I find it impossible to deny the power of the government’s position. There is no doubt in my mind that District Attorney Holabird, Her Catholic Majesty, Isabella of Spain, and her trusted

134. *Id.*

135. In addition to the visual power of this scene, composer John Williams accentuated the building tension in a minor key and rhythmic percussion that moved to a wordless choir in a major key, underscoring the fundamental truth of the moment, and then gently diminishing the sound to a whisper as the courtroom returned to normal. Like any good movie score, it moves you without knowing that you have been moved.

136. *Id.* beginning at 1:35:54.

Cinqué: You don’t have to pretend to be interested in that. Nobody’s watching but me.

Yamba: I’m not pretending. I’m beginning to understand it. Their people have suffered more than ours. Their lives were full of suffering. Then he [pointing at picture of Jesus] was born and everything changed.

Cinqué: Who is he?

Yamba: I don’t know, but everywhere he goes he is followed by the sun. Here he is healing people with his hands. Protecting them, being given children.

Cinqué: What’s this? [looking at another picture]

Yamba: He could also walk across the sea. But then something happened. He was captured. Accused of some crime. Here he is with his hands tied.

Cinqué: He must have done something.

Yamba: Why? What did we do? Whatever it was, it was serious enough to kill him for it. Do you want to see how they killed him?

Cinqué: This is just a story, Yamba.

Yamba: But look. That’s not the end of it. His people took his body down from this . . . thing . . . this [makes sign of the cross in the air] they took him into a cave. They wrapped him in a cloth, like we do. They thought he was dead, but he appeared before his people again and spoke to them. Then, finally, he rose into the sky. This is where the soul goes when you die here. This is where we’re going when they kill us. It doesn’t look so bad.

Id. The scene also connects the suffering of Jesus with the suffering of the innocent Africans.

137. *Id.* beginning at 1:36:16.

138. *Id.* beginning at 1:39:48.

minister, Señor Calderon, have all proceeded with the utmost faith in the soundness of their case. I also believe that Señors Ruiz and Montes may have misrepresented the origin of the prisoners, an issue which weighs crucially upon their fate and that of the Spaniards as well.

Were they born in Africa? But since the answer to that fundamental question shall so heavily govern every determination of this court, I ask it again. Were they born in Africa? I believe they were.

[There is murmuring as the audience began to understand where this decision was going]. As such, Her Catholic Majesty's claims of ownership have no merit. Neither, of course, do those for salvage made by Lieutenants Meade and Gedney. [Shouts beginning]. I hereby order the immediate arrest and detention of Señors Ruiz and Montes [Shouts and cheering now] by federal marshals on the charge of slave-trading. [Cheers and applause] The release of the Africans and their conveyance by this government, at her earliest convenience and expense, back to their homes in Africa! [Celebration].¹³⁹

Indeed, pandemonium ensued. The Africans finally began to comprehend what had just happened. And they joined in with jubilation, chanting, and tears.¹⁴⁰

The scene then cut quickly to a formal dinner at the White House, where news of the judge's decision had cast a slight pall on the evening. The Spanish Ambassador, Señor Calderon, expressed his dismay with the American justice system:

Señor Calderon: What's most bewildering to Her Majesty is this arrogant independence of the American courts. After all, if you cannot rule the courts, you cannot rule.

President Van Buren: Señor Calderon, as any true American will tell you, it's the independence of our courts that keeps us free.¹⁴¹

Was this declaration genuine or a typical politician's rationalization? With Van Buren, at his best a glad-hander and at his worst a "deer in the headlights," it was hard to tell. At the very least, it was coherent. In any event, the mood grew more tense as Senator John C. Calhoun arrived at the dinner and proceeded to lecture the President, hinting at Civil War:

[T]here's a growing number of people in this part of the country that regard us in the South as not only geographically beneath them. They ignore the fact that slavery is so interwoven into the fabric of this society, that to destroy it would be to destroy us as a people. It's immoral. That's all they know. Therefore, so

139. *Id.* beginning at 1:40:59.

140. *Id.* beginning at 1:44:50.

141. *Id.* beginning at 1:45:46.

are we. Immoral and inferior. We are inferior in one area. We're not as proficient in the art of gain. We're not as wealthy as our northern neighbors. We're still struggling. Take away our life's blood now Well, we all know what happens then. North and South. They become the masters, and we the slaves. But not without a fight!¹⁴²

Van Buren tried to defuse the situation with an attempt at humor. Calhoun continued, addressing Señor Calderon, but looking directly at Van Buren:

Ask yourself, Señor Calderon, what court wants to be responsible for the spark that ignites the firestorm? What president wants to be in office when it comes crashing down around him? Certainly no court before this one. Certainly no president before this one. So, judge us not too harshly, sir . . . because the real determination our courts and our president must make is not whether this ragtag group of Africans raised swords against their enemy, but rather, must we?¹⁴³

Van Buren, more comfortable with the ceremonial aspects of the job, was no match for Calhoun here. Hoping to avoid the conflict threatened by Calhoun, Van Buren folded and appealed the decision made by the trial judge.

K. THE APPEAL TO THE UNITED STATES SUPREME COURT

The next scene revealed the consequences of Van Buren's decision to appeal. First, we see Tappan and Joadson arriving at the jail. Tappan put a positive spin on the report: "Well, of course, it's bad news, but the truth is they may be more valuable to our struggle in death than in life. Martyrdom, Mr. Joadson. From the dawn of Christianity, we have seen no stronger power for change."¹⁴⁴ Tappan was okay with martyrdom by others for the cause. Ouch, the idealist had a cynical side as well. His Christian values went only so far. Joadson was offended and shot back: "What is true, Mr. Tappan, and believe me when I tell you I've seen this is that there are some men whose hatred of slavery is stronger than anything, except for the slave himself."¹⁴⁵ Joadson left to break the news to the Africans. Tappan appeared no more in the movie.

When this news reached Baldwin, his elation from the judge's decision quickly left him. Ah, the ups and downs of litigation. Worse, now he had to explain this to Cinqué, and his inexperience showed:

Baldwin: Our president, our big, big man, has appealed the decision to our Supreme Court.

Cinqué: What does that mean?

142. *Id.* beginning at 1:46:55.

143. *Id.* beginning at 1:48:24.

144. *Id.* beginning at 1:49:48.

145. *Id.* beginning at 1:50:18.

Baldwin: [Hesitates, then quickly] We have to try the case again.

Covey: [Hesitates, then translates].

Baldwin: Now, I know it's hard to understand, Cinqué. I don't understand, for that matter.

Cinqué: You said there would be a judgment and if we won the judgment, we would go free.

Baldwin: No, no, no, no. What I said is that we won it at the state level.

Cinqué: No, no, no. That's what you said!

Baldwin: What I said was that if we won it at the state level we then go on.

Cinqué: That's what you said!

Baldwin: All right, yeah. Yes, I said it. I said it, but I shouldn't have. What I should have said—

Covey: I can't translate that.

Baldwin: You can't translate what?

Covey: I can't translate "should."

Baldwin: There is no word in Mende for "should"?

Covey: No. Either you do something or you don't do it.

Baldwin: All right. What I meant to say—what I meant to say?

Covey: Not in the way you mean it. [Cinqué shouting and walking away].

Baldwin: Try and understand me¹⁴⁶

This did not end well. Cinqué went off in a rage, shouting in Mende: "What kind of place is this? Where you almost mean what you say? Where laws almost work? How can you live like that?"¹⁴⁷ He stopped talking to Baldwin, and only after dogged effort did this fractured relationship mend. Loss of trust was not easy to fix. Baldwin wrote Adams and pleaded for him to join the litigation team.

Adams finally joined the case. He appeared at the jail to meet Baldwin face-to-face and to observe Cinqué. Initially, Adams worked on the case at his home, while Cinqué would send suggestions and questions through Covey. Although irritated by these intrusions, Adams recognized one kernel that would grow into an argument. If the treaty was between the United States and Spain, how was it

146. *Id.* beginning at 1:51:18.

147. *Id.* beginning at 1:53:20. Actually, it was worse than that. Not only did the cause of the Africans prevail in the district court, they would prevail in the court of appeals as well. REDIKER, *supra* note 2, at 183. But the Van Buren administration did not like that answer either and it pressed on to the Supreme Court. *Id.* Already at the limits of commercial viability for a movie of this length, Spielberg's storytelling had to compress this part of the process considerably. And yet, this part of the story, with its brilliant imagery of the Africans in celebration and Cinqué, then enraged, did not stumble, despite very little dialogue, at least what we could understand. Cinqué's critique of the situation was compelling, even though I do not know a single word of Mende. AMISTAD, *supra* note 1, beginning at 1:53:20.

applicable to the Africans who were citizens of neither country? The argument was not a clear winner, but it suggested a path to victory.¹⁴⁸

Later, at his office, he met with Cinqué face-to-face and ordered his shackles to be removed.¹⁴⁹ Adams showed Cinqué his greenhouse. Cinqué noticed an African violet plant and lifted the glass jar to sniff the flowers, which reminded him of his home.¹⁵⁰ A fragrant reminder of what had been missed. And then they sat down to discuss what would happen next:

Adams: Now, you understand you're going to the Supreme Court. Do you know why?

Cinqué: It is the place where they finally kill us.

Adams: No. Well, yes, that may be true, too. That's not what I meant. No, there is another reason and a more important reason. Although I'll admit that, uh, perhaps more so to us than you . . . Cinqué, do you know who I am? Has anyone told you about me?

Cinqué: Yes.

Adams: What have they told you?

Cinqué: That you are a chief.

Adams: I was a chief, yes.

Cinqué: A chief cannot become anything less than a chief, even in death.

Adams: Oh, how I wish such were true here, Cinqué. You've no idea. One tries to govern wisely, strongly, but . . . One tries to govern in a way that betters the lives of one's villagers. One tries to . . . kill the lion. Unfortunately, one isn't always wise enough or strong enough. Time passes . . . and the moment is gone. Now, listen, Cinqué. Listen. We're about . . . we're about to bring your case before the highest court in our land. We're about to do battle with a lion that is threatening to rip our country in two. And all we have on our side is a rock. Of course, you didn't ask to be at the center of this historic conflagration any more than I did, but we find ourselves here, nonetheless, by some mysterious mix of circumstances and the whole world watching. So, what are we to do?

. . . .

Cinqué, look. I'm being honest with you. Anything less would be disrespectful. I'm telling you, I'm preparing you, I suppose I'm explaining to you, that the test ahead of us is an exceptionally difficult one.

148. AMISTAD, *supra* note 1, beginning at 1:58:32.

149. *Id.* beginning at 2:01:56. There is no evidence that this meeting ever occurred. See *Factual Mistakes in The Amistad*, *supra* note 107, at 9 ("Until the U.S. Supreme Court's ruling, Cinqué spent every day of his life in America locked up.").

150. AMISTAD, *supra* note 1, beginning at 2:03:12.

Cinqué: We won't be going in there alone.

Adams: Alone? Indeed not. No. We have right at our side. We have righteousness at our side. We have Mr. Baldwin over there.

Cinqué: I meant my ancestors. I will call into the past, far back to the beginning of time, and beg them to come and help me at the judgment. I will reach back and draw them into me. And they must come, for at this moment, I am the whole reason they have existed at all.¹⁵¹

Adams, the experienced lawyer, tried to prepare Cinqué for the difficulty of what lay ahead. "Anything less would be disrespectful."¹⁵² Indeed, but how to do this? Through the language of metaphor and story. They had to face another lion, a lion that was "threatening to tear [the] country in two."¹⁵³ Cinqué added his perspective, which turned out to be prescient. "We won't be going in there alone."¹⁵⁴ Cinqué would call upon his ancestors to come as well. And they must come, for he was then the sole reason they existed. Like a metaphorical DNA connection, where the past is no longer past, it is a past that has power in the present. And Adams will harness that past as well.

And so, they go to the Supreme Court for one more battle. The scene opened as Adams prepared to present the final argument to the Court:

Adams: Your Honors, I derive much consolation from the fact that my colleague, Mr. Baldwin here, has argued the case in so able and so complete a manner as to leave me scarcely anything to say.¹⁵⁵ However . . . why are we here? How is it that a simple, plain property issue should now find itself so ennobled as to be argued before the Supreme Court of the United States of America? I mean, do we fear the lower courts, which found for us easily, somehow missed the truth? Is that it? Or is it, rather, our great and consuming fear of civil war, that has allowed us to heap symbolism upon a simple case that never asked for it? And now would have us disregard truth even as it stands before us, tall and proud as a mountain. The truth . . . in truth has been driven from this case like a slave. Flogged from court to court, wretched and destitute. And not by any great legal acumen on the part of the opposition, I might add. But through the long, powerful arm of the executive office. Yes, this is no mere property case, gentlemen. This is the most important case ever to come before

151. *Id.* beginning at 2:03:39.

152. *Id.*

153. *Id.*

154. *Id.*

155. Despite this remark, Adams had plenty to say. His actual argument lasted about seven and one-half hours, over two days. REDIKER, *supra* note 2, at 188. There was no way Spielberg or his screenwriter, David Franzoni, could have condensed this to anything workable for the movie. Adams's argument portrayed here is much shorter, and much better.

this Court. Because what it in fact concerns is the very nature of man.¹⁵⁶

Mr. Baldwin had ably covered the law of the case. Adams addressed the moral center of the case. What was that center? The executive branch had attempted, out of political cowardice, to recast the narrative and raise the specter of civil war. In so doing, it had made this “the most important case to come before the Court.”¹⁵⁷ Why? Because it squarely raised the very nature of man. That is, what is a man? Are slaves men?

Adams then addressed the separation of powers issue regarding the relationship between the executive and the judicial branches:

Adams: These are transcriptions of letters written between our secretary of state, John Forsyth, and the Queen of Spain, Isabella the Second. Now, I ask that you accept their perusal as part of your deliberations. Thank you, sir. I would not touch on them now except to notice a curious phrase which is much repeated. The Queen again and again refers to our incompetent courts. Now what, I wonder, would be more to her liking? Huh? A court that finds against the Africans? Well, I think not. And here is the fine point of it. What Her Majesty wants is a court that behaves just like her courts. The courts this eleven-year-old child plays with in her magical kingdom called Spain. A court that will do what it is told. A court that can be toyed with like a doll. A court, as it happens, of which our own president, Martin Van Buren, would be most proud. Thank you.¹⁵⁸

The Van Buren administration had attempted to treat the courts as if they were a mere extension of policy, in effect an executive branch. “A court that will do what it is told.” And it would continue to do so until it received the answer it wanted. And the answer it wanted was hinted at in one of its own publications.

Adams: [T]his is a publication of the office of the President. It’s called “The Executive Review,” and I’m sure you all read it. At least I’m sure the President hopes you all read it. This is a recent issue, and there’s an article in here, written by “a keen mind of the South,” who . . . my former vice-president, John Calhoun, perhaps. Could it be? Who asserts that “there has never existed a civilized society in which one segment did not thrive upon the labor of another. As far back as one chooses to look, to ancient times, to Biblical times, history bears this out. In Eden, where only two were created. Even there, one was pronounced subordinate to the other. Slavery has always been with us, and is neither sinful nor immoral. Rather, as war and antagonism are the

156. AMISTAD, *supra* note 1, beginning at 2:08:35.

157. *Id.*

158. *Id.* beginning at 2:10:30.

natural states of man, so, too, slavery, as natural as it is inevitable.”¹⁵⁹

Slavery was natural and thus inevitable, according to Calhoun.¹⁶⁰ War and antagonism are also natural and evitable, but not good.¹⁶¹ The Van Buren administration's endorsement of this position is shocking.

Adams: Well, gentlemen, I must say I differ with the keen minds of the South, and with our President, who apparently shares their views, offering that the natural state of mankind is instead—and I know this is a controversial idea—is freedom. Is freedom. And the proof is the length to which a man, woman or child will go to regain it, once taken. He will break loose his chains. He will . . . decimate his enemies. He will try and try and try, against all odds, against all prejudices, to get home. Cinqué, would you stand up, if you would, so everyone can see you. This man is black. We can all see that. But can we also see as easily that which is equally true? That he is the only true hero in this room. Now, if he were white, he wouldn't be standing before this court, fighting for his life. If he were white and his enslavers were British, he wouldn't be able to stand, so heavy the weight of the medals and honors we would bestow upon him. Songs would be written about him. The great authors of our times would fill books about him. His story would be told and retold, in our classrooms. Our children, because we would make sure of it, would know his name as well as they know Patrick Henry's. Yet, if the South is right, what are we to do with that embarrassing, annoying document, “The Declaration of Independence”? What of its conceits? “All men created equal, inalienable rights, life, liberty,” and so on and so forth? What on earth are we to do with this? I have a modest suggestion. [Adams rips the article he was reading from in two and tosses the pages on Holabird's desk.]¹⁶²

We are back to the slavery paradox. Either the Africans are human beings, or they are chattels, property. Both propositions cannot be right. And, as President Abraham Lincoln would later say (quoting from the Bible), “a house divided against itself cannot stand.”¹⁶³ Adams was not correct, however, when he asserted

159. *Id.* beginning at 2:11:53.

160. Speaking of Eden, Calhoun's views sound more than the voice of the serpent. If you eat of the apple, “your eyes shall be opened, and you shall be as gods, knowing both good and evil.” *Genesis* 3:5. Slavery was the forbidden fruit. And this knowledge of evil, as with Adam and Eve, did not bring good fortune. In the Lincoln-Douglas Debates, Abraham Lincoln referred to slavery as the forbidden fruit. JAFFA, *supra* note 14, at 305. It is appropriate to note here that, as this is being written, the country has just celebrated its newest national holiday, Juneteenth or June 19, in recognition of the end of slavery.

161. In *Genesis* 4:7, there is a discussion about whether one has a choice to not choose evil. This discussion is expanded in JOHN STEINBECK, *EAST OF EDEN* 290-307 (Viking ed. 2003). If one has the power to choose between good and evil, then “natural” is not inevitable.

162. AMISTAD, *supra* note 1, beginning at 2:13:10.

163. *House Divided Speech*, ABRAHAM LINCOLN ONLINE, <http://www.abrahamlincolnonline.org/lincoln/speeches/house.htm> (last visited Nov. 6, 2021). See Mark

that freedom, not slavery, was the natural state of mankind. No, in the state of nature, life is “solitary, poore, nasty, brutish, and short.”¹⁶⁴ But, the point here was not what was natural, but what was right. And a choice between the two propositions had to be made.

Adams: The other night I was talking with my friend Cinqué.¹⁶⁵ He was over at my place, and we were out in the greenhouse together. He was explaining to me how when a member of the Mende—that’s his people—how when a member of the Mende encounters a situation where there appears no hope at all, he invokes his ancestors. Tradition. See, the Mende believe that if one can summon the spirit of one’s ancestors, then they have never left. And the wisdom and strength they fathered and inspired will come to his aid.¹⁶⁶

So, how do we choose? Although seeming to go outside of the law and outside of the Constitution, Adams invoked the wisdom of the Mende people, who believed that when there appeared to be no hope at all, they would summon the spirit of one’s ancestors. And this, of course, brought the discussion back within the legal framework of the case. How would our ancestors guide us here? At this point, Adams began walking past and observing the busts in the courtroom:

Adams: James Madison, Alexander Hamilton, Benjamin Franklin, Thomas Jefferson, George Washington, [and, finally, his father] John Adams.¹⁶⁷ [And then, turning to address the Court]. We have long resisted asking you for guidance. Perhaps we have feared in doing so, we might acknowledge that our individuality, which we so, so revere, is not entirely our own. Perhaps we feared an appeal to you might be taken for weakness. But we have come to understand, finally, that this is not so. We understand now [Looking at Cinqué]. We’ve been made to understand, and to embrace the understanding that who we *are* . . . *is* who we *were*. We desperately need your strength and wisdom to triumph over our fears, our prejudices, ourselves. Give us the courage to do what is right. And if it means civil war, then

3:25 (“And if a house be divided against itself, that house cannot stand.”); *see also* *Matthew* 12:25 (noting that a house divided cannot stand); *Luke* 11:17 (mentioning again that a house divided cannot stand).

164. HOBBS, *supra* note 48, 104.

165. This is part of the Spielberg storytelling. The John Quincy Adams/Cinqué part of the story was wonderful. It tied the story together; it allowed each player to utter lines that were not possible without the presence of the other. And it shaped Adams’s argument before the Court in a way that could not have occurred without the prior interaction. “How do you persuade them?” “I used your words.” AMISTAD, *supra* note 1, beginning at 2:21:25. Storytelling, properly employed, reflects a greater truth.

166. *Id.* beginning at 2:15:48.

167. How utterly cool is that. Perhaps my favorite visual in the whole movie, he played a card that only he could have played, but he did so with just the right touch. Not, “Do you know who I am? I’m the son of a President, and a President in my own right, so let me tell you” That would have been an argument from resumé, not from principle. The argument from resumé often works in politics, but not before the highest court in the land, or so we would like to believe. By playing it the way he did, Adams did not upset that belief. *Id.* beginning at 2:16:44.

let it come. And when it does, may it be, finally, the last battle of the American Revolution. That's all I have to say.¹⁶⁸

Although this is nothing like the argument that Adams gave, it was much better for this story. We have refrained, perhaps out of fear, from asking for guidance. We have left this problem to the political realm and have not been able to solve it. It has been, since the beginning, the central dilemma of our nation. We have let this problem rule us, and it will not go away. We also understand that the deadlock has been exploited by those who have played to our fears. But we now understand that our ancestors, our founding fathers, have provided us with the wisdom to break that impasse. "Give us the courage to do what is right. If this means civil war, then let it come." Let this be "the last battle of the American Revolution."¹⁶⁹ Amen.

And then there was the wait, which is often the hardest part. Self-reflection, soul-searching, doubt. "What could I, or should I, or would I have done differently?" In the actual case, it took sixteen days between the argument and the decision.¹⁷⁰ Mercifully, Spielberg did not make us wait that long.

The decision (per Justice Joseph Story, was announced in the film by former Supreme Court Justice Harry Blackmun)¹⁷¹:

Story: In the case of the United States of America versus the Amistad Africans, it is the opinion of this Court that our treaty of 1795 with Spain, on which the prosecution has primarily based its arguments, is inapplicable. While it is clearly stipulated in Article 9 that—and I quote—"seized ships and cargo are to be returned entirely to their proprietary"—the end of quote—it has not been shown to the Court's satisfaction that these particular Africans fit that description. We are then left with the alternative: that they are not slaves and therefore cannot be considered merchandise but are, rather, free individuals, with certain legal and moral rights, including the right to engage in insurrection against those who would deny them their freedom. And therefore, over one dissent, it is the Court's judgment that the defendants are to be released from custody at once and, if they so choose, to be returned to their homes in Africa. [We see the gavel strike and shackles come off Cinqué's hands to mark what had just happened].¹⁷²

168. *Id.* (emphasis in the voice inflection).

169. *Id.*

170. REDIKER, *supra* note 2, at 190.

171. As long as there are remaining accolades to be noted, let it be said, this performance by a professional, but not a professional actor, worked well enough. Of course, the role of a Supreme Court justice was not a stretch for Justice Blackmun. In any event, he did well. The close-in focus on his craggy face was a good decision and his voice carried the scene well. We should all be so lucky to be filmed by Spielberg.

172. AMISTAD, *supra* note 1, beginning at 2:19:30.

Simple justice. The Africans are not cargo and therefore are not covered by the treaty with Spain. How could the decision have garnered seven votes,¹⁷³ with so many Justices from the South, including the Chief Justice, Roger Taney, sitting on this case? The decision was a narrow one. “These particular Africans” were not slaves. They had been detained illegally, and, as free individuals, they had legal and moral rights, including the right of “insurrection” against their captors.¹⁷⁴ The earlier suggestion to Adams by Cinqué had blossomed like an African violet.

After the decision was announced, Adams greeted Cinqué:

“Adams: Well?

Cinqué: What did you say to them? What words did you use to persuade them?

Adams: Yours.”¹⁷⁵

Cinqué reached out to shake Adams’s hand. Adams took it, nodded with a wry smile, and then turned to take one last look at the empty court bench.¹⁷⁶ He knew that it would be his last case. Cinqué greeted Joadson and passed on to him the lion’s tooth that Cinqué’s wife had given him for protection. Finally, Cinqué

173. While the Court at this time had nine members, Justice Phillip P. Barbour of Virginia died in his sleep after the first day of argument and thus the decision of the Court was seven to one. REDIKER, *supra* note 2, at 188.

174. The actual decision is not so inflammatory as to mention a right of insurrection, but it is clear enough from this portion of the Court’s opinion:

If then, these negroes are not slaves, but are kidnapped Africans, who, by the laws of Spain itself, are entitled to their freedom, and were kidnapped and illegally carried to Cuba, and illegally detained and restrained on board the Amistad; there is no pretence to say, that they are pirates or robbers. We may lament the dreadful acts, by which they asserted their liberty, and took possession of the Amistad, and endeavored to regain their native country; but they cannot be deemed pirates or robbers in the sense of the law of nations, or the treaty with Spain, or the laws of Spain itself; at least so far as those laws have been brought to our knowledge. Nor do the libels of Ruiz or Montez assert them to be such.

....

It is also a most important consideration in the present case, which ought not to be lost sight of, that, supposing these African negroes not to be slaves, but kidnapped, and free negroes, the treaty with Spain cannot be obligatory upon them; and the United States are bound to respect their rights as much as those of Spanish subjects. The conflict of rights between the parties under such circumstances, becomes positive and inevitable, and must be decided upon the eternal principles of justice and international law. If the contest were about any goods on board of this ship, to which American citizens asserted a title, which was denied by the Spanish claimants, there could be no doubt of the right to such American citizens to litigate their claims before any competent American tribunal, notwithstanding the treaty with Spain. A fortiori, the doctrine must apply where human life and human liberty are in issue; and constitute the very essence of the controversy. The treaty with Spain never could have intended to take away the equal rights of all foreigners, who should contest their claims before any of our Courts, to equal justice; or to deprive such foreigners of the protection given them by other treaties, or by the general law of nations. Upon the merits of the case, then, there does not seem to us to be any ground for doubt, that these negroes ought to be deemed free; and that the Spanish treaty interposes no obstacle to the just assertion of their rights.

United States v. The Amistad, 40 U.S. (15 Pet.) 518, 593-96 (1841) (emphasis added).

175. AMISTAD, *supra* note 1, beginning at 2:21:25.

176. *Id.* beginning at 2:21:50.

and Baldwin shook hands. Reconciled, as brothers, Cinqué thanked him, naming him in English. Baldwin did the same in Mende.¹⁷⁷ Justice was delayed, but not denied. Their work was done there.

L. THE JOURNEY RETURNS TO SIERRA LEONE

Although the outcome of the court case was satisfying, there could be no Hollywood ending to this story. We see the Lomboko fortress being reduced to rubble and experience the happiness of the release of captives. But as the Africans sail back, the music is somber, reflective.¹⁷⁸ The return to their homeland was bittersweet; it had been changed through its own civil war. Cinqué's village had been destroyed and his family gone, likely sold into slavery.¹⁷⁹ Whether this fate would have been different if Cinqué had not been kidnapped and taken away, one cannot say. We can say that he was deprived of the opportunity to alter that fate. That loss was real.¹⁸⁰

III. WHAT DOES THIS STORY TEACH US?

What do we learn from the lawyers? Adams appeared to be in his declining years. He was openly mocked in the House of Representatives; he was privately disparaged when the Van Buren administration's lawyers were discussing the news of his entry into the case. It was a big mistake to underestimate him. He brought great judgment and experience to the case. He recognized early on that the fight would be a protracted one. He recommended hiring a lawyer who would not give up, a fighter with resiliency, what we might call a grinder. He also emphasized the importance of a story. "Whoever tells the best story wins." And the story, in this case, was not about what, but who. Who were the Africans? Ultimately, this became the winning argument. They were free individuals who had been kidnapped in Africa. Because of this, they were not subject to the treaty with Spain. As free individuals, they had legal rights, which the courts were bound to respect.¹⁸¹ While Adams's response to Cinqué's questions was gruff, abrupt, his experience allowed him to ponder one suggestion that could be fashioned into

177. *Id.* beginning at 2:22:54.

178. Spielberg used his longtime collaborator, John Williams, for the underlying music. It is an effective, moving score, especially the contralto solo at the beginning and the end. The children's chorus provided a joyful contrast. The Copland-esque harmonies and the solo trumpet were quintessential American sounds used to underscore the fundamental messages of the narrative.

179. REDIKER, *supra* note 2, at 220-21.

180. This might be a genuine case for reparations, if one could somehow find the perpetrators and order compensation to the victims. The problem is that the passage of time makes that increasingly difficult in any practical sense.

181. *Compare* United States v. The Amistad, 40 U.S. (15 Pet.) 518, 593-96 (1841) (stating that, because these are free individuals, "the United States are bound to respect their rights . . ."), with Dred Scott v. Sandford, 60 U.S. (19 How.) 393, 407 (1857), *superseded by constitutional amendment*, U.S. CONST. amend. XIV (highlighting Chief Justice Taney's abhorrent line that African-Americans "had no rights that the white man was bound to respect").

a winner. By the end, Adams was truly listening to his client's invocation of his ancestors, leading to the splendid visual in the courtroom as the argument neared its climax. Communication and trust are grounded in listening. This is key to the attorney-client relationship.

Baldwin cared, but that was not enough, as he stumbled early on. But he learned and became effective as he grew, albeit with a major misstep that had to be addressed and fixed. The miscommunication occurred, in part, because of the language barrier, but it was more inexperience than anything else. He had not prepared his client for the bad news. Visualization of what lay ahead would have helped. The more experienced Adams was much better at controlling client expectations.

We see first-hand the importance of story in the case. The Africans were taken from their families, their community, their homeland, transported across the ocean under unspeakable conditions, and sold into slavery. This was a crime of horrific magnitude. Who gave Ruiz and Montes the right to do this? There was no right whatsoever; it was pure power. And this narrative won the day in the courts at all levels, even with a Southern-leaning Supreme Court.

This article has noted that the demands of storytelling will at times pull the narrative away from what really happened. With many details, this is inevitable. The Africans took the ship in the still darkness of the night. There needed to be light so that the audience could see the action. The solution was to create a storm, which brought not only lightning, but also strobe-like contrast to intensify the conflict. The result was a dramatic opening to the movie. There is also an inherent problem of what to leave out of the story. It is impossible to tell the complete story of an event that occurred over two years within the confines of a two-and-a-half-hour movie. What must be excluded is just as important as what to include. It was best, for example, to go from the elation and celebration of victory in the trial court to the rage and depression over the appeal to the Supreme Court. The court of appeals had to be skipped. At what point does the storytelling become a distortion of reality and made into something that it was not?

Morgan Freeman's Mr. Joadson provides an illustration of the good side to this question. Joadson did not exist. It wasn't that he couldn't have existed. There were free blacks in the abolitionist movement. Frederick Douglass, for example. Each scene with Joadson had the purpose of moving the story along (and much better than if it were done solo through letters or soliloquies). Plus, the casting was just right. Morgan Freeman could never be a cardboard character. His presence alone changed the dynamic. When he spoke, the dialogue was strengthened. Likewise, Cinqué was not a prop. He was a leader; he had intelligence; he had charisma. Adams and Cinqué, however, never met. But why not put them together and see what happens? They had things to teach each other, and through that, to teach us. Both the addition of Joadson and the enlargement of Cinqué's role contributed enormously to the storytelling.

Storytelling does not have to be factual to teach us important truths. The greatest civil rights story is probably Harper Lee's *To Kill a Mockingbird*, a

novel.¹⁸² As a work of fiction, the account of a heroic lawyer who defended an innocent client against several nasty villains taught us as much about the nature of justice as any book on the subject. It has inspired many lawyers and made us want to be better persons. That is the power of story. *Amistad* is also the vessel for many important truths. It helps us to understand our own troubled history.

“Give us free!” This was a magnificent moment, both in storytelling and in filmmaking.¹⁸³ Freedom is infectious, and Cinqué had caught it. He didn’t have to come to America to catch it. He had it in Sierra Leone, but the good life in a village was always imperiled by lions, slave traders, and the like. He had lost it through the criminal activity of the slave trade. He had regained it, temporarily, through rebellion, but this was short-lived. Ultimately, freedom came through the legal process, although that was in doubt until the very end. One of the hardest things for a lawyer to do is to tell the client that the system failed in their case. In the end, the legal system acquitted itself pretty well here. This was a case about the rule of law and the power that it can have on those who take the judicial oath seriously.¹⁸⁴ Judge Coglein, handpicked by Forsyth, became a real judge, as he reflected and then did his duty under the law.

This was a story about justice. Legally, it was a narrow victory. Not on account of the seven to one vote. That was decisive enough. But the ground of the decision did not deal a death blow to slavery. It is one of history’s ironies that progress often comes from defeat rather than victory. In this instance, it would take a real setback, like *Dred Scott v. Sandford*,¹⁸⁵ to move the issue past the political standoff. And then it was not through a legal victory, but rather a more decisive military and political victory to save the American republic.¹⁸⁶

We also learn about political cowardice and courage. Van Buren was at best a reed shaking in the wind as he sought reelection and finally succumbed to the threat of civil war. Adams, who had been avoiding the issue, finally entered the fray. He told the Court that for far too long we had allowed our fears to keep us from doing right. It had paralyzed our politics, and there would be no end to this stalemate until we met it directly and honestly. This was a flaw from the beginning that had to be addressed. If the consequence of that was a civil war, so be it. And may it prove to be, finally, the last battle of the American Revolution. Bold words, perhaps, but necessary ones, nonetheless. In any event, the decision was a narrow

182. HARPER LEE, *TO KILL A MOCKINGBIRD* (1960); *see also* *TO KILL A MOCKINGBIRD* (Universal Studios 1962) (adapting Harper Lee’s book).

183. *AMISTAD*, *supra* note 1, beginning at 1:34:04. In addition to the great visual of Cinqué in the courtroom, there is the perfect swell of John Williams’s wordless chorus to complete the scene.

184. *See* 28 U.S.C. § 453 (2012).

I, [name], do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge all the duties incumbent upon me as _____ under the Constitution and the laws of the United States. So help me God.

Id.

185. 60 U.S. (19 How.) 393.

186. *See generally* FONER, *supra* note 31 (explaining the second founding).

one and, although it was decisive for the Africans, it merely postponed the undertaking of the final battle.

It was important for Cinqué and his comrades to win this case. We are inspired by their courage, perseverance, and sense of moral right. It was important not to lose this case. It helped to prepare for the next battle, and when it did come in the form of *Dred Scott*, the setback was not as devastating. *United States v. The Amistad*¹⁸⁷ gave hope to the advocates of freedom and human dignity. Spielberg's *Amistad* gives us similar hope today.

IV. CONCLUSION

E pluribus unum. Out of many, one. This maxim referred to the thirteen colonies, which, after a false step with the Articles of Confederation, had become one Union under the Constitution of 1787. But in a more fundamental sense, this was not true, at least not at the beginning. That same Constitution gave support to a different view—out of many, two. That is, North and South, free soil and slave. And this conflict did not dissipate over time. It only intensified.

Adams told Cinqué that “[w]e’re about to do battle with a lion that is threatening to rip our country in two. And all we have on our side is a rock.”¹⁸⁸ It turned out to be a powerful rock. The rule of law is grounded in a written Constitution. The impasse that had paralyzed American politics since the founding came to a head in the *Amistad* case. And while it would not, nor could not, settle the matter, it was an important step toward a resolution. Behind the rock was also the wisdom of the founding. Flawed as it was, it nonetheless pointed the way through the principles of the Declaration of Independence.¹⁸⁹ It would take a Civil War and the Civil War amendments to move the realization of those principles forward. But there remains much to be done.¹⁹⁰

The Civil War was not the last battle of the American Revolution. The problems of Reconstruction and, later, Jim Crow and the separate but equal regime are cautionary evidence of that. The Civil Rights movement of the 1950s and ‘60s might be viewed as another battle in that same Revolution. Perhaps we have not yet seen that last battle.

187. 40 U.S. (15 Pet.) 518 (1841).

188. *AMISTAD*, *supra* note 1, beginning at 2:05:45.

189. JAFFA, *supra* note 14, at 225 (“The work of the Founding Fathers was excellent and noble, but it was incomplete.”). The completion, according to Abraham Lincoln, would come through fulfilling the principles of the Declaration.

I have never had a feeling politically that did not spring from the sentiments embodied in the Declaration of Independence It was not the mere matter of the separation of the colonies from the mother land; but something in that Declaration giving liberty, not alone to the people of this country, but hope to the world for all future time.

IV ABRAHAM LINCOLN, *THE COLLECTED WORKS OF ABRAHAM LINCOLN* 240 (Roy Basler ed. 1953).

190. C. VANN WOODWARD, *THE BURDEN OF SOUTHERN HISTORY* 84-86 (1960).