

Ex Ante

AMAZING GRACE

JAMES G. BASKER of Columbia University, aided by a host of assistants and colleagues, spent the better part of a decade compiling and annotating hundreds of poems about slavery written between 1660 and 1810. A few of Basker's poets were slaves themselves, but there were, he observes, "potentially more, their identities veiled for now behind the dozens of 'Anonymous' poems scattered throughout the book." Most of the writers, though, were white Englishmen. A few were lawyers as well, including Daniel Bliss, whose work receives the following treatment from Basker:

The unrhymed but lyrical lines of this inscription for a slave in Concord, Massachusetts, open questions both about American history and about the proper form of epitaph poetry itself. Composed by the lawyer and Tory sympathizer Daniel Bliss, the epitaph commemorates the African John Jack in unsentimental terms and exposes the hypocrisy of Americans clamoring for liberty while holding slaves. The lines achieved the status of literary text in 1775 when a British soldier copied them down and sent them to be reprinted in a London newspaper. Years later the gravestone itself became the focus of a local abolitionist group who decorated it and held ceremonies at the site.

*God wills us free; man wills us slaves.
I will as God wills; God's will be done*



John Jack at rest (center) in the Sleepy Hollow Cemetery in Concord, Massachusetts, where Ralph Waldo Emerson, Henry David Thoreau, Nathaniel Hawthorne, and Louisa May Alcott also are buried. Photo courtesy of Patricia A. Hopkins.

-Here lies the body of-

-JOHN JACK-

*A native of Africa who died
March 1773, aged about 60 years.
Tho' born in a land of slavery
He was born free.
Tho' he lived in a land of liberty,
He lived a slave.
Till by his honest, tho' stolen labors,
He acquired the source of slavery.
Which gave him his freedom;
Tho' not long before
Death, the grand tyrant,
Gave him his final emancipation,
And set him on a footing with kings.
Tho' a slave to vice,
He practiced those virtues
Without which kings are but slaves.*

James G. Basker ed., *AMAZING GRACE: AN ANTHOLOGY OF POEMS ABOUT SLAVERY 1660-1810* at 202 (Yale 2002); George Tolman, *JOHN JACK, THE SLAVE, AND DANIEL BLISS, THE TORY* (Patriot Press 1901-02); www.concordnet.org/dpw/hiway/html/cemetery%20-%20sleepy%20hollow.htm.

FRANKENSTEINS OF DEMOCRACY

“IT IS ONE OF THE HAPPY INCIDENTS of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.” So spoke Justice Louis Brandeis in his famous dissent in *New State Ice Co. v. Liebmann*.

In recent years, some states – most prominently Mississippi and West Virginia – have engaged in some judicial experimentation with respect to deterrence and retribution: damages awards in the tens and hundreds of millions of dollars in products liability cases. For one Mississippi judge this exercise in Brandeisian courage has turned out to have the added benefits of being both fun and funny. In an affidavit filed in *Cosey v. Bullard* – a 1998 asbestos case that settled after a jury awarded \$48.5 million to the first twelve of 1700 plaintiffs and the trial judge informed the defendants that if they failed to settle all of the plaintiffs’ claims he would re-seat the same jury to hear all 1700 – a defense attorney described the following scene:

It was during this time that Judge [Lamar] Pickard [of Jefferson County, Mississippi] related a story to the assembled plaintiffs: he said that after the compensatory verdict was rendered, another lawyer not affiliated with this case contacted him and asked Judge Pickard if he felt like he had just caught a ten pound bass. Judge Pickard said he had replied to the lawyer that he did not feel like he had caught a ten pound bass, but rather he felt like he had been in the boat with someone who had just caught a ten pound bass.

While representatives of plaintiffs and

defendants debated the pros and cons of this approach, defendants – the businesses (mostly) on whom the Mississippi courts had been experimenting – decided that they would rather not be rats in a laboratory of democracy. They enlisted the U.S. Chamber of Commerce to conduct an experiment of its own: a novel advertising and publicity campaign launched last May to warn businesses about the dangers of operating in Mississippi and thereby exposing themselves to the Mississippi courts. (See the Chamber’s advertisement on the facing page.)

Facing a campaign with the potential to trigger a national commercial boycott of Mississippi, the state came to a sudden realization about laboratory work that Brandeis had neglected in the early 20th century, but that Mary Shelley had not in the early 19th. As she explained through the story of Victor Frankenstein and his monster, experiments can run out of control and return to haunt the experimenter. In effect, defendants were demanding of Mississippi the same thing that the monster sought from Frankenstein: “Oh, [Mississippi], be not equitable to every other and trample upon me alone, to whom thy justice, and even thy clemency and affection, is most due.”

Reasonable people might disagree about the relative merits of the Mississippi and Chamber of Commerce positions and procedures, but state lawmakers liked the idea of being lab rats about as much as the Chamber’s members did. During a special session dedicated to civil justice reform, House Bill 19 was passed by the Mississippi legislature on November 26 and signed by Governor Ronnie Musgrove on December 3. Here is how Musgrove describes the new law:

There were also a lot of people who didn’t think civil justice reform could, or would, ever be signed into law by a Mississippi governor. ... The call to the Legislature was clear. My position on the need for fair and balanced reform was also clear ... I started this special