# America's First *M'Naghten* Defense and the Origin of the Black Rage Syndrome

Kenneth J. Weiss, MD, and Neha Gupta, MD

The 1843 *M'Naghten* verdict led to reformulation of the British criminal insanity standard, which American jurisdictions noted. In 1846, New York State tried William Freeman for slaying several members of the Van Nest family at their home near Auburn, New York. Mr. Freeman had been obsessed with false imprisonment for horse theft. His defense attorney, former governor William Seward, sought an insanity verdict, citing reaction to racist maltreatment as the cause. Though Mr. Freeman was impaired, a jury found him competent to stand trial. The competency adjudication created confusion in the trial court about the admissibility of medical testimony on criminal responsibility, resulting in exclusion of key psychiatric findings. Meanwhile, the interracial killings caused a sensation in the press, which vilified the defendant. Again, the defense argued that maltreatment created mental illness. A second jury convicted Mr. Freeman and the judge sentenced him to death. Seward filed a Writ of Error, and the New York State Supreme Court reversed the conviction, clarifying competency versus criminal responsibility and proclaiming the M'Naghten Rule as the standard in New York. A century later, attorneys cited Mr. Freeman's dynamics to explain and mitigate the violent actions of some African-Americans. We examine the insanity defense during the 1840s and explore twentieth-century "black rage" reverberations of the *Freeman* case.

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Antebellum America swirled with controversies over slavery, capital punishment, and standards for judging criminal responsibility.[1] Great Britain, too, had struggled with the insanity defense. After insanity acquittals in an assault on Queen Victoria and Prince Albert in 1840 and the killing of Prime Minister Peel's secretary in 1843,[2] British lawmakers narrowed the standard for insanity defenses. United States jurisdictions imported the 1843 M'Naghten Rule. In this article, we review the 1846 insanity trial of William Freeman, after which the appellate court announced the *M'Naghten* standard as the law in New York.[3] Later, we examine the threads of the Freeman trial in the late twentieth century in the form of the "black rage" defense that, in turn, animated discussion of culture and criminal responsibility. We conclude that criminal defenses based principally on racial identity, while a recurrent theme, lack traction in American courts. Because citing the dynamic of rage based on racist maltreatment relates more to impulse control than to cognition, it is unlikely to succeed in *M'Naghten* jurisdictions.

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## Background

Mr. Freeman, a young African/Native American, stood accused in 1846 of killing several members of the Van Nests, a prominent family in Auburn, New York. Auburn was known for the home of Harriet Tubman, escaped slave and leading abolitionist, and for its role in the Underground Railroad.[1] Slavery had been officially abolished in New York in 1827.[4]

The criminal case is of interest for several reasons: the novelty of the insanity standard,[5] the racial polarization surrounding it, and the use of a defense invoking the effects of oppression as raised by defense attorney William Seward and colleagues. New York's Attorney General was John Van Buren, son of former president Martin Van Buren. The star psychiatric defense witness was Dr. Amariah Brigham, from the Utica (NY) Asylum. The case is also notable for the

decision of the New York Supreme Court in untangling present sanity (competency) and sanity at the time of the offense (criminal responsibility).[3,6]

According to the Historical Society of the New York Courts, the *Freeman* case was the "first use of the insanity defense in the United States."[5] There were at least two insanity defenses before 1846, as reported by Isaac Ray.[7,8] The *Freeman* decision, however, was the first American declaration of the M'Naghten Rule. Previously, though insanity was a defense in New York, it was undefined.[9] New Jersey adopted the standard shortly thereafter; citing *Freeman*, the New Jersey Supreme Court stated, "A person who is out of his mind, and does not know at the time that what he is doing is wrong, is not accountable for the acts committed by him while in that state."[10]

### The Defendant

William Freeman was in his early twenties at the time of trial. His father had been a slave, freed before William was born. Two of his sisters were described as mentally impaired, and, at about puberty, William began to be eccentric and then socially withdrawn.[6]

In 1840, a woman's horse disappeared, and Mr. Freeman was accused. He insisted he was innocent and a magistrate released him. The police arrested another black male who indicated that Mr. Freeman had taken the horse. Rearrested, Mr. Freeman escaped from jail in July 1841 and was at large for two weeks. Meanwhile, the second arrestee made a deal for his freedom by helping to convict Mr. Freeman. Consequently, Mr. Freeman was convicted at trial and sentenced to the State Prison at Auburn for five years; the other man "received, as an award for his perjury, a discharge" (Ref. 6, p 19).

Mr. Freeman adapted poorly to his sentence. Continually asserting innocence, he was injured in an altercation with a tradesman in 1841, a head injury that "knocked all the hearing off, so that it never came back again" (Ref. 6, p 20). The tradesman explained the severity of the beating by saying, "A black man's hide is thicker than a white man's, and I meant to make him feel the punishment" (Ref. 6, p 263). Mr. Freeman's deafness progressed, and he became morose, obsessed with the injustice received. He completed his sentence in September 1845. His brother-in-law, John Depuy, came for him and regarded him as deranged, preoccupied with payback for his imprisonment. Dr. Blanchard Fosgate,[11] of Auburn, who examined Mr. Freeman upon release, recalled his condition:

> He left prison conscious of the injustice he had suffered, and had imbibed an idea that he was entitled to pay for his time. This sentiment could not be eradicated from his mind, and on several occasions he applied for warrants against those whom he supposed liable. Remuneration with him was the *one idea* (Ref. 11, pp 409–410, emphasis in original).

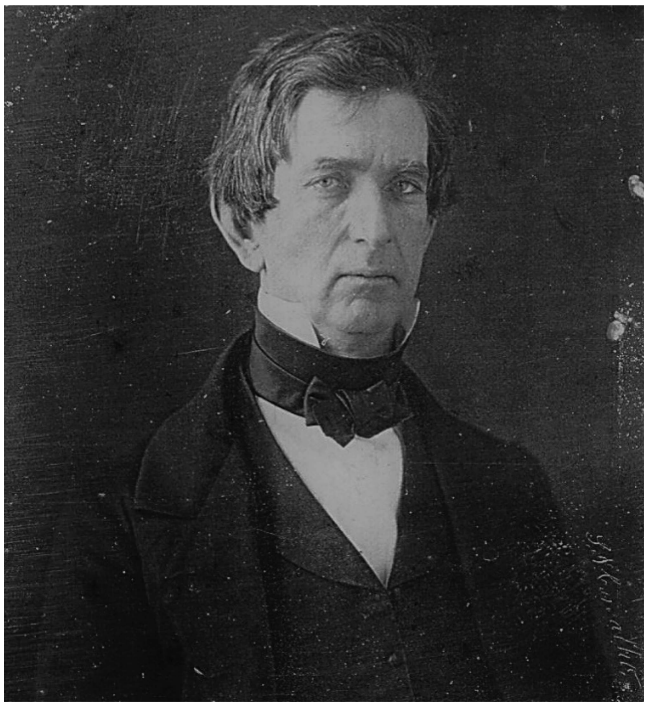


**Figure 1.** William H. Seward, circa 1850. Retrieved from https://en.wikiquote.org/wiki/William_H._Seward#/media/File:William-seward-1849-or-50.jpg.

### The Defense Attorney

William H. Seward (Fig. 1) practiced law in Auburn before and after his two terms as governor and before joining Lincoln's cabinet as Secretary of State. He later lectured against slavery and supported Henry Clay for president. Clay lost to James Polk, and Seward returned to private practice in Auburn.[12] Seward favored Dorothea Dix's idea for specialized facilities for persons with mental illness.[13] He accepted local criminal cases pro bono, notably those of Henry Wyatt, a white man, and William Freeman.[6] Seward utilized a defense of moral insanity (irresistible impulse) in Mr. Wyatt's case, and the jurors could not reach a verdict.[1]

### The Crime and Its Community Impact

Following Mr. Wyatt's trial, on March 12, 1846, tragedy struck Auburn: John Van Nest, his wife

Sarah, and their two-year-old son George were murdered in their home (Fig. 2). Phoebe Wyckoff, Sarah's mother, died from her injuries sustained in her confrontation with the attacker. In the exchange, Ms. Wyckoff lacerated the attacker's hand (Fig. 3). Mr. Freeman, the perpetrator, escaped on a family horse, was apprehended two days after the incident, and identified by eyewitnesses.

News of the bloody and senseless Van Nest murders was traumatic to local citizens. At the funeral, clergy railed against those who would abolish capital punishment, turning on defendants and their counsel: "[B]y adroit counsel, law may be perverted, and jurors bewildered, or melted by sympathy . . ." (Ref. 12, p 104). The trial was set for June 1, 1846.

Seward's law partners feared that Seward, who would retry Mr. Wyatt, would take on Mr. Freeman's case. Nevertheless, Seward appeared in court, entering an insanity plea and requesting a jury trial.[12] Proctor[14] recalls the drama when Seward stepped up as Mr. Freeman's attorney at the arraignment:

> The large court room was packed with an immense crowd of angry people who could hardly restrain their indignation as [Freeman] stood in the bar before them. The officers of the court were palid [sic] with fear lest he should be taken from them by force and hanged in the streets. "Do you plead guilty, or not guilty?" asked the district attorney. . . . Seward arose calm, dignified, and impressive. "If the court please, I enter the plea of not guilty, and that plea is founded on the insanity of the prisoner." An angry murmur ran through the court room, mingled with threats of personal violence to Mr. Seward (Ref. 14, p 20).

**Figure 2.** Freeman Stabbing Child, unknown artist, ca. 1846 (Reprinted, with permission, from Fenimore Art Museum, Cooperstown, NY).

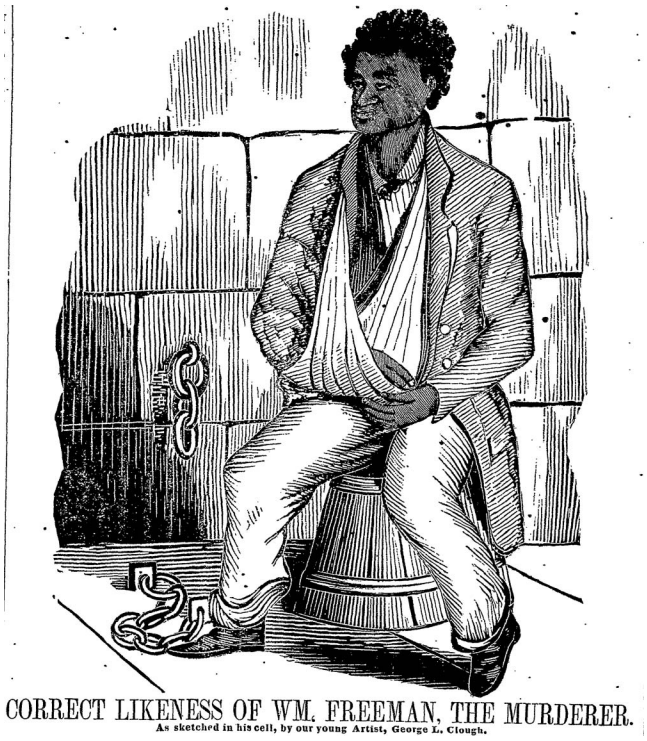



**Figure 3.** William Freeman in jail. Sketch by GL Clough, showing defendant chained to wall and injured right hand (Reprinted, with permission, from *Auburn [NY] Journal and Advertiser*, March 25, 1846, p. 2).

Given the palpable animus, the community expected a conviction and death sentence, as suggested in a contemporaneous painting anticipating the defendant on the gallows (Fig. 4).[1]

## The Trial of William Freeman

In preliminary arguments, the district attorney, Luman Sherwood, opposed an insanity defense for Mr. Freeman. The judge ruled that because an insane person cannot be tried, Mr. Freeman's condition must be evaluated before proceeding. However, the judge did not know how the issue of mental state would be handled, requiring consultation with his "brethren" before deciding (Ref. 6, p 27). Mr. Sherwood suggested that sanity could be determined by an evaluation, with or without the help of physicians, or by a jury. From his interactions with Mr. Freeman, observation, and conversation, he felt the defendant was not insane. Seward, however, believed Mr. Freeman was insane. The court suspended the trial while Mr. Freeman remained in jail.

On June 24, 1846, the court agreed to determine Mr. Freeman's mental state by a jury verdict. Jury

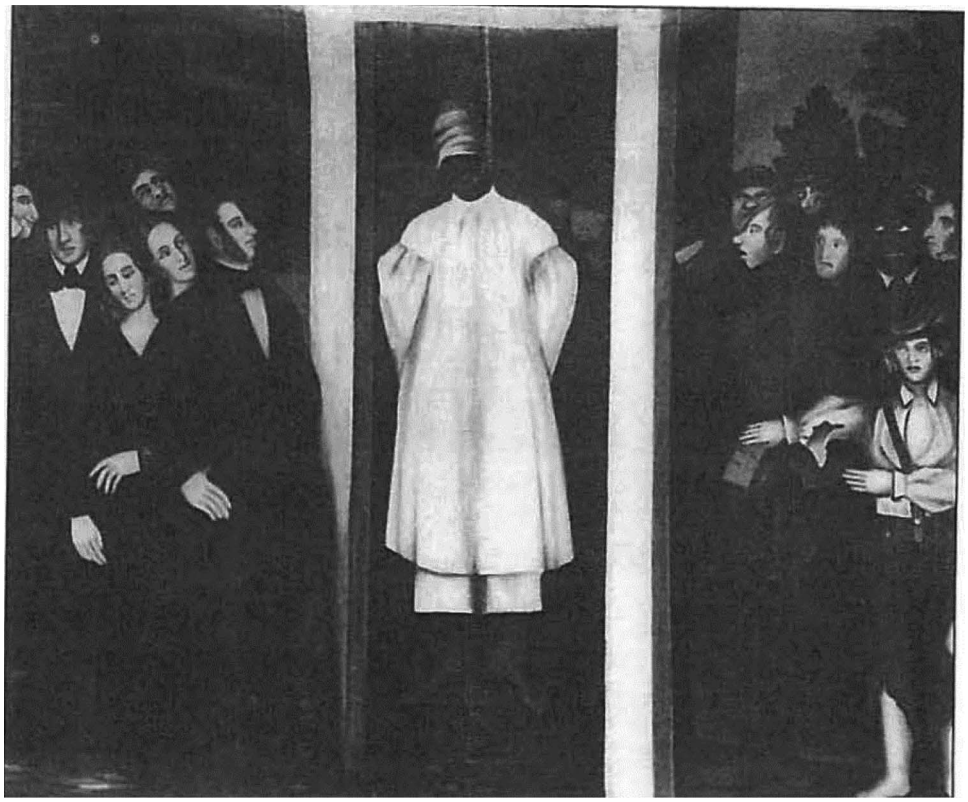


**Figure 4.** Hanging Freeman, unknown artist, ca. 1846 (Reprinted, with permission, from Fenimore Art Museum, Cooperstown, NY).

selection followed, though Seward objected to the process.[6] The trial was to be bifurcated: first, to determine if the defendant was presently insane. Second, if sane, he would be tried on the facts to determine criminal responsibility.

### *Arguments*

On June 25, 1846, Mr. Wright opened for the defense. He said there was no motive for such brutal murders and that insanity was the first consideration. He further noted that Mr. Freeman's family had a history of insanity and therefore Mr. Freeman was predisposed to mental illness. Wright also cited Mr. Freeman's prior conviction for a different crime, and that during this imprisonment he had endured physical injuries: head trauma causing deafness and mental dullness.

Mr. Sherwood, opening for the prosecution, did not regard the issue of insanity as exclusively medical in nature, and said that physicians should not hold the controlling opinions in such matters. He argued that a common man with sound capacity and judgment could determine insanity through personal observations as proficiently as a physician. Angling for a death sentence, Sherwood also noted that Mr. Freeman had planned the assaults of the Van Nest Family by picking specific weapons and a specific time.

### *Evidence*

There was no serious question of whether Mr. Freeman committed the criminal act, only whether it was proper to try the defendant. Seward gathered medical experts to opine on Mr. Freeman's mental state; the prosecution also had experts. They testified both at the competency phase and the guilt phase. Many of the lay and expert observations about the defendant's deficits were the same on both sides, but the interpretations were opposite.[15]

#### *Witnesses*

Dr. Amariah Brigham testified for the defense. He had examined Mr. Freeman several times in the weeks before trial. The doctor noted the defendant's limited intelligence and that the beating he received in prison years earlier left him deaf. Dr. Brigham asked factual questions related to the court and its proceedings, but Mr. Freeman was unable to answer them. He would sometimes respond with "I don't

know" or "a horse," referring to his previous case (Ref. 6, p 54), sometimes laughing inappropriately during the evaluation. Dr. Brigham asked Mr. Freeman about the charges against him to see if understood the wrongfulness of the murders. He testified that the defendant was unable to understand him, despite multiple attempts. The doctor questioned his understanding of being sentenced to death, particularly of being hanged, and whether he had been "crazy" in the past. Mr. Freeman replied that he went crazy in prison, after being struck by a board (Ref. 6, p 54).

Dr. David Dimon, a physician for the prosecution, examined Mr. Freeman six times, concluding he was not insane based on his definition of insanity, namely "some derangement of the intellectual faculties, or of the passions, either general or partial" (Ref. 6, p 68).

#### *Competency Determination*

The judge charged the jury: "The only question for you to determine is whether he is at present insane. If insane for any cause, or upon any subject, he cannot be tried on the indictment" (Ref. 6, p 140). Ambiguity over the term "insanity" arose when the jury was at an 11-to-1 impasse in favor of sanity. The judge, apparently frustrated, restated the charge: "The main question . . . is whether the prisoner knows right from wrong. If he does, then he is to be considered sane" (Ref. 6, p 482). The jury then determined that Mr. Freeman was "sufficiently sane in mind and memory to distinguish between right and wrong" (Ref. 6, p 144), meaning the case would proceed. Seward immediately objected and the court overruled him. Mr. Freeman was considered fit for trial, though the ensuing colloquy might have raised questions:

> After reading the indictment, the District Attorney, in a very loud tone of voice, asked the prisoner if he demanded a trial upon the same, to which the prisoner answered "No." The prisoner was asked if he had counsel, to which he replied "I don't know." The prisoner was then asked if he was able to employ counsel, to which he answered "No." His Honor, the circuit judge, then directed the clerk to enter for the prisoner a plea of "not guilty" (Ref. 6, p 145).

### *Guilt Phase*

A new jury was chosen for the guilt phase. Prosecution and defense attorneys gave lengthy opening arguments, citing previous cases of insanity, with varying standards. There were 72 prosecution and 36 defense witnesses, including eight and nine physicians respectively.[15] The scope of the expert testimony showcased current theories of psychopathology: genetics, child development, psychic trauma, physical injury, and phrenology.[6] There were also discussions of whether the defendant was feigning illness.

Defense attorney Wright argued for a broad definition of insanity, citing Isaac Ray's writings (as Cockburn did in M'Naghten's 1843 defense). Asserting that insanity arises from a diseased brain, he said Mr. Freeman had a "delusion" that the victims had to "pay" him for past wrongs. Wright then took direct aim at the district attorney's version of the insanity standard:

> But, says the learned counsel for the prosecution, when we ask what is insanity, "The law has settled that." Indeed! And how has it been settled? Why, says the district attorney, "any person who knows enough to distinguish right from wrong is sane." But there are many cases, and all of the late cases upon the subject decided in this State, and also in Massachusetts, which show that such is not the law (Ref. 6, p 221).

After quoting from Dr. Ray's book, Wright cited racial prejudice and its deviation from Christian values. Citing the prosecutor's characterization of the defendant as an "unlearned, ignorant, stupid and degraded negro," he reminded the jurors that "God made of one blood all the nations of the earth" (Ref. 6, p 222). The defense proceeded to present testimony from many lay and professional witnesses. Dr. Lansingh Briggs of the State Prison in Auburn, acquainted with Mr. Freeman's obsession with payback, said, "This delusion, in my judgment, is an insane delusion—the delusion of an insane mind" (Ref. 6, p 278).

A problem arose during the testimony of Dr. Charles Van Epps, a defense expert who knew Mr. Freeman as an infant. The court ruled that Van Epps's testimony be restricted to facts discovered prior to July 6, when the previous jury found Mr. Freeman sane. Dr. Van Epps was permitted to conclude, "There is not the least doubt that at the time the prisoner committed the act, he was insane" (Ref. 6, p 291). Dr. Brigham testified again, citing Mr. Freeman's history, delusional thinking, and incurable brain disease.[6] His diagnosis of Mr. Freeman was "homicidal monomania." Dr. Charles Coventry, also from Utica, said his diagnosis was "partial mania with dementia." Explaining that, in most cases of insanity, the ability to distinguish right from wrong is preserved, he testified, "I think [Freeman] has al-

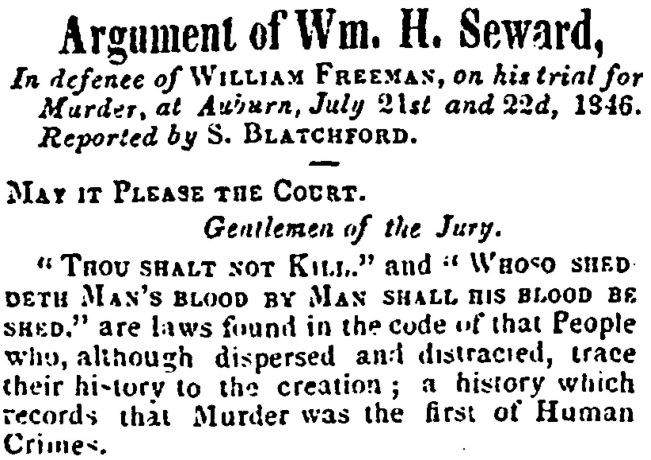
most a total abolition of moral faculties, yet he is not strictly a case of moral insanity, because his intellect is impaired, and his moral faculties entirely gone" (Ref. 6, p 312).

The problem of restricted testimony again arose with defense expert Dr. Thomas Hun, who examined Mr. Freeman on July 15, 1846. The court, barring recitation of facts gathered since July 6, permitted the witness to state, "I could not form any opinion as to whether he was sane or insane on the twelfth day of March. . . . If on the twelfth day of March he appeared as he does now, I would suspect him of being insane then" (Ref. 6, p 314). The balance of Dr. Hun's testimony was based on hypothetical questions (e.g., What would indicate insanity?). Similarly, Dr. James McNaughton's testimony was limited, since he had only observed the prisoner in court: "If he looked as he does now [stupid and foolish] on the twelfth of March, I should have given the same opinion of him then that I do now" (Ref. 6, p 320).

The prosecution called several doctors who testified that the defendant was not insane at the time in question. Dr. Dimon, who had testified earlier, said, "[Freeman] is ignorant and depraved, yet I was unable to discover wherein any of his faculties have been disturbed. . . . I discovered nothing about him indicating insanity" (Ref. 6, p 340). Similarly, Dr. Leander B. Bigelow concluded, "Taking all the evidence in this case together, I am satisfied that he is an ignorant, dull, stupid, morose, and degraded negro, but not insane" (Ref. 6, p 351).

### *Seward's Arguments*

In his argument to the jury, Seward appealed to values, starting with the Biblical injunction against killing (Fig. 5) and describing the defendant's troubled life and path to insanity. He ridiculed the first jury's inability to appreciate his client's deficits, mocking the colloquy between Mr. Freeman and the prosecutor: "The District Attorney . . . asked him whether he wanted a trial, and the poor fool answered, 'No.' Have you counsel? 'No.' And they went through the same mockery . . . and he stood before the court, silent, motionless, and bewildered" (Ref. 6, p 371). He then criticized the procedures in the preliminary trial, for example, that testimony was frivolously excluded, and that the jury had been convened "on the Fourth of July, and under circumstances calculated to convey a malicious and unjust spirit into the Jury Box" (Ref. 6, p 373). The trajectory of Seward's argument was for the jurors to set aside racial prejudice and to extend to the defendant basic Christian values.



**Argument of Wm. H. Seward,**

*In defence of* WILLIAM FREEMAN, *on his trial for Murder, at Auburn, July 21st and 22d, 1846. Reported by* S. BLATCHFORD.

MAY IT PLEASE THE COURT.

*Gentlemen of the Jury.*

"THOU SHALT NOT KILL." and "WHOSO SHEDDETH MAN'S BLOOD BY MAN SHALL HIS BLOOD BE SHED." are laws found in the code of that People who, although dispersed and distracted, trace their history to the creation; a history which records that Murder was the first of Human Crimes.

**Figure 5.** Mr. Seward addresses the jury. (Reprinted, with permission, from *Auburn [NY] Journal and Advertiser,* August 19, 1846, p. 1).

### *Prosecutor's Arguments*

Van Buren asked the jurors to disregard the prisoner's appearance as well as the testimony of doctors: "Criminal irresponsibility is a question of law, not of medicine" (Ref. 6, p 428). Praising the evolution of the jurisprudence of insanity from the time of Cain and Abel through the trials of Hadfield and M'Naghten, he asserted a standard for insanity in a criminal case: "Incapacity to distinguish between right and wrong in regard to the particular act committed, or an inability from disease to resist the commission of the act" (Ref. 6, p 429). He urged the jury to look past the argument that Mr. Freeman was wrongfully imprisoned and entitled to payback; his motive was malice. After praising Dr. Brigham's medical credentials, Van Buren said, "He is as profoundly ignorant of Law as he is familiar with Medicine" (Ref. 6, p 440). He concluded that uncontradicted facts "show, beyond the possibility of doubt, that Freeman knew he was doing wrong, and had full control over his actions" (Ref. 6, p 466), referencing a two-pronged test.

### *Verdict and Sentencing*

Judge Whiting charged the jury on the law of murder and insanity. He recited the dual tests of knowing right from wrong and having sufficient use of reason to control one's passions. Proctor[14] recalls the tension in the community during jury deliberations:

> [T]he courthouse was surrounded by an immense multitude of excited people ready to vociferate the cry "crucify him, crucify him!" It is more than probable, had the jury failed to convict Freeman, the jail would have been stormed and the poor wretch hanged in the streets and perhaps the personal safety of Mr. Seward endangered (Ref. 14, p 26).

The jurors took little time to convict Mr. Freeman. Sentencing, on July 24, 1846, was preceded by an attempted colloquy between Judge Whiting and Mr. Freeman:[16]

Judge—You have been tried for killing [Mr. Van Nest], do you understand that?

Prisoner—Don't know.

Judge—We are now going to sentence you—the jury say you killed him. Do you know what I mean?

Prisoner—I don't know.

Judge—Did you hear what I said? Do you know what I mean? You've been tried for killing him—do you understand that?—do you know that?—the jury say you're guilty; that you did kill him—do you understand that?

[Prisoner—I don't know.]

Judge—Do you know who the jury are?—those men who sit along there (pointing to the jury).—Well, they say you did kill him, and now we are going to sentence you to be hanged. Do you understand that?

Prisoner—Yes.

Judge—Have you any thing to say against it? any thing to tell me about it?

Prisoner—I don't know.

—(Ref. 16, all spelling and punctuation original).

Mr. Freeman, despite these responses, was sentenced to death and returned to jail. Seward sprang into action to correct the outcome.

### *The Appeal and Decision*

Attorneys Seward and Wright submitted a 27-point Bill of Exceptions, listing errors committed during various phases of the trials. Appellate arguments were heard in November 1846.[5]

The New York Supreme Court of Judicature announced a decision in January 1847, with Justice Beardsley writing for the court.[3] He began with the extant rule: "No insane person can be tried, sentenced to any punishment, or punished for any crime or offense, while he continues in that state" (Ref. 3, p 19). The decision relied on English cases and legal scholarship, observing that New York's statute did not prescribe a method for determining insanity. Ordinarily, the Justice said, there are no grounds to reverse a judgment in a preliminary trial (competency hearing, for example), but he made an exception here. Because Judge Whiting, in the competency phase, used the single criterion of knowing right from wrong, the court erred and the judgment was defective. By contrast, quoting the M'Naghten Rule, the Justice said distinguishing right from wrong at the time of the act was the correct test and jury instruction. "Partial insanity is not necessarily an excuse for crime," he continued, for if it were, "it would afford absolute impunity to every person in an insane state . . .," an impracticable condition (Ref. 3, pp 29–30). Continuing, "The act . . . must be an *insane act*, and not merely the act of an *insane person*" (Ref. 3, p 30, italics in original). It was erroneous, the Justice concluded, for the trial court to have restricted defense experts' testimony in the guilt phase. The resultant decision was to overturn Mr. Freeman's conviction, granting him a new trial under New York's new insanity standard.

### *The Aftermath*

Mr. Freeman's retrial was expected in March 1847, but Judge Whiting visited him and found he was not physically fit to withstand it.[1] Meanwhile, still chained to his cell wall (Fig. 3), he was the object of scorn and possible lynching, as he had been since his arrest. Dr. Fosgate noted the prisoner's deterioration in 1847.[11] Mr. Freeman's hearing loss was nearly total, he had purulent discharge from his ear, and his vision had deteriorated. The doctor diagnosed "tubercular phthisis." A phrenologist, L.N. Fowler, examined Mr. Freeman in 1847, concluding that he had imperfect brain development and an unbalanced mind.[17]

In August, Mr. Freeman's chains were removed. He died six days later. A Connecticut newspaper reported his death: "William Freeman, the colored man, whose murder of the Van Nest family . . . excited an unusual feeling of horror, died in the jail at Auburn. . . . He had become a perfect idiot."[18] Postmortem examinations, including two phrenological assessments, were supportive of Mr. Freeman's brain pathology being consistent with insanity.

## The "Black Rage" Defense

The *Freeman* decision became relegated to a footnote in the history of insanity jurisprudence. Then, in connection with the defense of Colin Ferguson,[19] a shooting-spree killer on the Long Island Railroad in

New York in 1993, his erstwhile attorney, William Kunstler, invoked "black rage" as a potential defense. After the court permitted Mr. Ferguson to defend himself, he abandoned Kunstler's approach in favor of failure of proof. Kunstler attempted to have the client declared incompetent to stand trial, believing he was delusional. The Associated Press reported: "Outside the courthouse, Kunstler maintained that Ferguson was mentally ill and should be found incompetent to stand trial. 'He is so insane that he thinks he's sane,' he said."[20]

There had been a report by court-appointed mental health experts who concluded, shortly after the offense, that Mr. Ferguson was "able to understand the charges against him and to cooperate with his attorney, and is malingering in an attempt to create an impression that he is unable to do so."[21,22] The psychiatrist concluded that Mr. Ferguson's ideas were not systematized enough to be delusional.[21] Kunstler and co-counsel Ron Kuby claimed Mr. Ferguson's instability precluded assisting counsel, but Judge Belfi would not reconsider the competency question, already decided by Judge Warshawsky earlier in 1994. Instead, when the defendant refused to speak with a court-appointed psychiatrist before trial, Judge Belfi entered into a colloquy with him, finding him fit to proceed.[21]

During the trial, Mr. Ferguson advanced a theory that someone else did the shooting. His argument was so contrary to the evidence by surviving victims that he could have been delusional. Referring to himself in the third person, he claimed he was the victim of a race-inspired conspiracy.[23] Psychiatric issues, however, were not raised again. A jury, deliberating for over 10 hours in 1995, convicted him of six murders and 19 attempted murders, and the judge sentenced him to over 300 years in prison. It was not until 2008 that the Supreme Court ruled that States could impose standby counsel on otherwise competent defendants whose mental illness marred their capacity to mount *pro se* defenses.[24,25]

There is a parallel with the *Freeman* case, in that the theme of racial victimization giving rise to violent rage was argued by Seward and proposed by Kunstler. A core difference, however, was Mr. Ferguson's taking control of the defense narrative. According to Sherman,[26] Kunstler said that "American society's pervasive and destructive racism pushed a mentally unstable Mr. Ferguson over the edge" (Ref. 26, p A6). Allegedly, the attorney had read *Black Rage*[27] and was aware of *Freeman*, planning "to use [the case] right and left" (Ref. 26, p A6). The 1994 reportage was faulty, suggesting that the *Freeman* court explicitly endorsed a black-rage defense: "Surprisingly, it also held that Mr. Freeman's murder spree had in fact been brought on by his reaction to having been a brutalized Negro" (Ref. 26, p A6). The *Freeman* decision was not explicit, but the theme was repeated by Sneirson[28] in a law review article: "In 1846 [sic], a New York appellate court embraced a similar argument, finding a man insane as a result of the brutality he suffered as a black man in upstate New York (Ref. 28, p 2252). . . . [*Freeman*] was perhaps the first to hold a black rage defendant insane" (Ref. 28, p 2265). This is a misreading of the decision. Sneirson observed that Kunstler's black-rage defense was not entirely on point, as the formulation of the defendant's behavior was that his rage was an expression of a previous mental illness (Ref. 28, p 2255). While it appears that the proposed defense would be an insanity plea, Sneirson's legal analysis better aligns with diminished responsibility (i.e., lack of specific intent) (Ref. 28, p 2288).

Legal scholar Alan Dershowitz, in *The Abuse Excuse*,[29] lumps black rage with 39 other conditions that have been used to excuse criminal behavior (Ref. 29, p 323). He conceded that a jury could be swayed by the argument. Attributing the defense tactic to attorney Kunstler, Dershowitz considered it to be neither a self-defense nor an insanity defense; rather, the defendant's attempt to evade responsibility. The black-rage defense, he said:

> . . . asserts that black people who are constantly subjected to actions that are perceived by them to be unfair and oppressive become angry, despite an appearance of external calm. According to William Kunstler, this anger over racial injustice can cause an individual to commit acts of violence by becoming the "catalyst" for an individual who already suffers from severe mental problems (Ref. 29, p 323).

The arguments in *Black Rage*[27] were conducive to ideas about some forms of psychopathology among African-Americans, though not explicitly about how to apply the concepts to criminal defense. Grier and Cobbs say the following:

> For his own survival, . . . the black man must develop a *cultural paranoia* in which every white man is a potential enemy unless proved otherwise and every social system is set against him unless he personally finds out differently. . . . He can never quite respect laws which have no respect for him. . . . This result may be described as a *cultural antisocialism*, but it is simply an accurate reading of one's environment. . . . (Ref. 27, p 178, italics in original)

The authors, however, are quick to add that the traits described are normative among black Americans; more, that they are adaptive and not subject to removal by psychotherapists. They represent the "Black Norm" (Ref. 27, p 179). By implication, absent identification of serious mental illness, pathologizing a person such as Mr. Ferguson may be construed as hijacking the principles in *Black Rage*, which attorney Kunstler had every right to do and his client to reject. In our view, the *Freeman* narrative, as used by Seward, retained its potency by the attorney's not overplaying his hand. Nevertheless, regarded through a cultural lens, Mr. Freeman was angry and obsessed with restitution—perhaps not insane. But how can a normative response to oppression harmonize with the insanity standard?

In a post-*Ferguson* book, *Black Rage Confronts the Law*,[30] the author Paul Harris first discusses Mr. Freeman's case. He devotes several pages to "Bill" Freeman's life narrative. Recalling Mr. Freeman's unjust incarceration at 16, he wrote: "How long can a man—or a sixteen-year-old boy—be in a prison cell wondering why he has been locked away for a crime he did not commit, without terrible changes taking place in his psyche?" (Ref. 30, p 11).

In Harris's view, Seward's defense approach could not resemble the one Kunstler envisioned for Mr. Ferguson:

> He would not have called his strategy a black-rage defense. The very words "black rage" would have conjured up a strong, black man acting in rebellion against his oppression. Seward, limited by his own racial prejudices, felt more comfortable describing Bill as a "child" and a "wretch." . . . So Seward did not talk about black rage; he probably did not even consider it. He did understand, however, that blacks lived under an unfair, oppressive system. He recognized that such a system had driven Freeman mad and was willing to put the system of racism on trial (Ref. 30, p 19).

## Conclusion

William Freeman's case represents a teaching moment about justice, mercy, hatred, culture, and the psychopathology of everyday life. The decision itself, though a landmark in American history, is rarely discussed in forensic psychiatry. Its importance continued into the twentieth century, as legislatures outlined standards for trial competency that distinguish it from criminal responsibility.[31] The decision describes the two major components of modern competency standards: "an ability to understand the nature of the proceedings against the defendant and an ability to assist in the defense" (Ref. 31, p 204). Reportage of the trial and the magnitude of expert testimony were also landmarks.

The *Freeman* decision is also important for attorney Seward's underlying compassion for his client, even though he may have believed Mr. Freeman to be of an inferior race.[32] The decision, had Mr. Freeman lived to be retried, may have allowed him to be found incompetent, thus postponing the question of criminal responsibility. Nevertheless, both the defense arguments in *Freeman* and twentieth-century reverberations of a syndromal defense (black rage) amounted to mitigation, or perhaps attempted jury nullification. Individual narratives must be viewed alongside factual determinations. The narrative, brought forward through expert-witness evidence, contextualizes behavior within culture but does not ignore deviance. DeLombard observes: "With this shift from first-person narrative to professional examination, the increasingly irresponsible free black deviant, protected from the gaze of Execution Day crowds, took up residence in the era's new asylums—and the American psyche" (Ref. 32, p 210). She cautions that adopting a broad-brush narrative that assumes African-Americans incompetent and irresponsible would have a toxic and nullifying effect on reform (Ref. 32, p 225). The effect, beginning in antebellum America, was to shift the focus of racism to asylum psychiatry (Ref. 32, p 226), where undesirables were out of sight until the twentieth century, when forced into urban streets and prisons. Society is now working to undo that pendulum swing, with help from the Supreme Court. Case law such as *Miller v. Alabama*[33] pushes us to examine the life stories and explain the brains of juveniles, now adults, who were sentenced to life imprisonment without parole.

Revisiting the *Miller* cases is but one facet of a uniquely American justice problem. Debates over the nature and meaning of "race" continue, but there is little question that cultural differences inform values and behavior, if not culpability. Forensic psychiatrists may lose sight of the downside of "colorblindness," thereby frustrating, via political correctness, the full exposition of a defendant's position.[34] How this is accomplished, and by whom, questions the legitimacy of psychiatrists in the courtroom and the utility of culturally sterile testimony.[35] Griffith[35] advanced the discussion over 20 years ago. Portraying the "real reality" of a criminal defendant, he argued, must be accomplished by using a cultural formula-

tion, not glib pronouncements aimed at explaining away behavior. While cultural explanations do not imply excuses, attorneys, judges, and psychiatrists would do well to understand some criminal acts as manifestations of the "psychopathology" of oppression. The *Freeman* case and its contemporary offspring help us appreciate the work ahead of us.

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