

BENDING THE ARC OF HISTORY TOWARD JUSTICE— WHAT A TRUSTS AND ESTATES LAWYER CAN DO



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An active member of the trusts and estates legal community, Mr. Franklin serves as Chair of the Diversity Equity and Inclusivity Committee of the American College of Trust and Estate Counsel (ACTEC), where he is committed to improving the level of membership and engagement of diverse lawyers in pursuit of a truly diverse and equitable future. He is working with ACTEC to develop strategies to make the trusts and estates practice area more attractive to minority law students and young attorneys, and was instrumental in developing a diversity and inclusivity mission statement for ACTEC, a fellowship to support potential future fellows in the college, and a statement condemning racism on behalf of the organization following the killing of George Floyd, and the attendant civil unrest. In addition, Mr. Franklin serves on the California Membership Committee, and the Fiduciary Litigation Committee, and previously served on the Board of Regents of ACTEC.

Mr. Franklin is a member of the Diversity Committee of the American Bar Association (ABA) Real Property, Trust and Estate Section; Estate Planning Advisory Panel member for American Law Institute Continuing Legal Education; former Council Member and Supervisory Council Member for the Litigation, Ethics and Malpractice Group; Former Vice Chair of the Practice Group Management; and Former Chair of the Ethics and Malpractice Committee, and served as a member of the American Bar Association Commission on Sexual Orientation and Gender Identity.

Mr. Franklin is frequently called upon as a speaker to national, state and local estate planning, trust, and probate groups, such as ACTEC, ABA Real Property Trust and Estate Law Section, and USC Gould School of Law Probate and Trust Conference, where he is the Program Chair.

Mr. Franklin has been recognized by numerous industry awards, including: ranked by Chambers and Partners High Net Worth guide in Private Wealth Disputes; “Highly Commended” by Chambers and Partners Diversity & Inclusion Awards; named to the list of “Most Influential Minority Lawyers” and “Leaders of Influence: Litigators & Trial Lawyers” by Los Angeles Business Journal; ranked a Top 100 attorney by The National Black Lawyers; named to the list of Southern California Super Lawyers every year since 2005; included on the list of the Best Lawyers in America every year since 2011. Mr. Franklin was also named Best Lawyers “Lawyer of the Year” in 2016 for Trusts & Estates Litigation—Los Angeles which is awarded to individual attorneys with the highest overall peer feedback for a specific practice area and geographic region. Only one attorney is recognized as the “Lawyer of the Year” for each specialty and location.

Admitted to practice in California, Mr. Franklin is a graduate of Harvard Law School and obtained his Bachelors of Science from Northwestern University. Prior to Sacks Glazier Franklin & Lodise, he practiced with the Los Angeles office of Morrison & Foerster and as a partner at Ross, Sacks & Glazier, LLP.

Editor’s note: The following is condensed from the Keynote Address that the author presented at the USC Trust and Estate Conference, November 13, 2020.

Thank you for being here today and for helping me to fulfill my life’s mission.

which they now call a “keynote” at the USC Trust and Estates Conference.

A lot’s changed since November 2015 when I last had the honor of giving the luncheon presentation,

For one, I’m now the Chair of the Conference.

This time, it really doesn’t matter whether any of us are wearing pants.

Back in 2015, I was just beginning to figure out that my mission in life is to tell stories that bend the arc of history toward justice.

The last luncheon was just months after I had traveled to Jacksonville, Florida with my then-boyfriend Jeffrey (who has now been my husband for two years) to see a document. It was the last will and testament from 1846 that was done by John Sutton, my white fourth great-grandfather, who was a farmer near Jacksonville. He owned my fourth great-grandmother, whom he identified in the will as his “mulatto slave Lucy, aged about 45.” The will also identified Lucy’s eight children, starting with Easter, aged about 27, going all the way down to the youngest child David, and it also listed Easter’s six children all the way down to the little toddler Mahala, who was just 14 months old in January 1846, when John made his mark on his will.

John’s will provided that after his death, all of his other property was to be sold to finance the removal of Lucy and the children, who were to be taken to a free state, like Ohio, Indiana, or Illinois, which is exactly where they ended up. And John named William Adams—who, it turns out, was Lucy’s white half-brother—as Executor, because he knew William would make sure the family got safely to freedom.

After John died, the family did in fact sell everything and travel with William Adams from Jacksonville, got onto boats around the Florida peninsula through New Orleans, and sailed up the Mississippi to Illinois, where they claimed their freedom in December of 1846.

Along with the will that set my ancestors free, John Sutton’s original probate file also contained a will contest.

Bear in mind that I had been a trust and estates litigator handling will contests for 25 years, without ever knowing that there had been a will contest in my family over a century-and-a-half before, in which our freedom hung in the balance.

But, mystically, while chanting a Buddhist chant, “Nam-Myoho-Renge-Kyo,” my ancestors had come

to me and let me know there was more to the story, which is why I started writing a novel with a will contest in it, and I had invented an uncle I didn’t know existed, for whom I chose the old-timey name “Eustis,” which turned out in reality to be “Shadrack”—who fought to keep my family enslaved and who threatened to beat them if he ever came to own them.

When I was here talking to you five years ago, I also explained that lawyer friends at the Gunster firm in Florida had gone to court and reopened John Sutton’s probate file and convinced the judge to give me possession of the original four-dozen original handwritten documents that tell my family’s story.

Since I was here last, I’ve shared versions of this story dozens of times across the country, and I’ve come to understand and appreciate that this is my mission—to tell this story, and help bend the arc of history towards justice.

Since then, in my spare time outside the practice of law, I have felt inspired to work on a bunch of creative projects: the novel (in progress); a limited series for television (in development); a documentary project (in development, looking for foundation support); a podcast that exists today (and if people really listen to it, maybe I’ll make more than just three episodes; a Facebook page and a website (www.lucysutton.com) and we’re working on a curriculum for law school that’s currently in beta testing at the University of Washington in a trust and estates class. That curriculum will then be scaled to teach issues of humanities, property, history, civics, from college down to middle school.

In the process of doing this creative research, my collaborators: my husband Jeffrey and co-writer John Meeks, and I have unearthed other stories of women, like my ancestor Lucy who fought to get her family to freedom—women who were part of the ongoing fight to expand the benefits of America’s promise of freedom.

Today, I want to tell you about three other women of color who were contemporaries of Lucy’s who also had to fight against racist laws. We are weaving their

stories with Lucy's because their paths just might have crossed. So, let me tell you about these three women: Celia, whom the law gave no last name, Anna Madgigene Jai Kingsley and Eulalie de Mandeville de Marigny.

Celia has no last name but she's not to be confused with another Celia, both of whom were the first women executed in their respective states for killing the white men who owned them. The other Celia lived in Missouri, but the one I'm talking about lived near Jacksonville, the same area where my family came from. Celia might well have known Lucy. They were both enslaved women. Both had been owned by their white fathers.

Celia and my ancestor Lucy were both owned by men who lived in Georgia but who moved with them to Florida with the intention of setting them free.

Celia's owner, Jacob Bryant, was also like likely Celia's father, and her rapist, and the father of her four children.

Celia was moved by Jacob Bryant to Florida in 1830; Lucy moved to Jacksonville with John in 1844 and they all settled around the same vicinity.

I know all this in part because John Sutton's will contest file included the original transcript of the testimony of Gregory Yale, the lawyer who drafted the will. Yale testified that John was too sick to travel to town, so Yale went out to the farm to see John. Yale said John's family, not his slaves, explained to him that they had moved to Florida in the belief that they could be set free there, but found out once they arrived that there was a statute that prohibited the emancipation of slaves in the state of Florida.

Jacob Bryant had also moved to Florida, like John, with designs on setting free his slaves, including Susan, Celia's enslaved mother, and the six children who were the product of his raping her, of whom Celia who the eldest. Bryant also likely raped Celia, giving her four children.

Florida law at the time said that in order to set a slave free, one had to pay a \$200 fine for their emancipation; one had to post a bond for the value of the slave, and the enslaved person had to leave this state within 30 days. Furthermore, any ostensibly freed person who was not in compliance with that law was subject to being arrested and sold at auction by the Sheriff.

When Jacob Bryant, Celia's father/owner/rapist/father of her children, he did a deed of manumission when they arrived in Florida. But they were anything but truly free. He abused them terribly. Perhaps worse than some owners would.

Although the facts of Bryant's killing are murky, what we're able to figure out based on Jacob Bryant's probate file is something like this:

On December 7, 1847, about a year after my family was safely in Illinois, Celia used the foot-long blade of a drawing knife—used to make shingles—to slash Bryant's head, after beating him with the long handle of the knife.

According to court records, Celia was reacting to "discipline" that Bryant was trying to administer.

More than likely, he was looking to rape her and her children again and she finally just said, "Hell no. Not again."

Celia was swiftly tried and convicted by a jury of six white men.

Interestingly though, Celia's conviction was for manslaughter, not murder. And although the jury recommended clemency or mercy, the judge sentenced her to death. Celia's attorneys appealed the judge's sentence and the trial jurors actually petitioned the governor asking for clemency for Celia.

Half the citizens of Jacksonville took up Celia's cause, and half wanted to see her hang.

Imagine a highly polarized time and place. Half of the population wants to expand rights for all people, and the other half of the population are intent

on restricting, not expanding, the pool of people entitled to the rights afforded by living in this country. And the people who want to restrict rights hold all the power, and are mortally afraid that if they give any more rights to the oppressed, that the newly empowered people will come after them with a vengeance, and treat them as cruelly as the powerful had treated them.

Well, it was like that throughout the south at this time, including in Jacksonville.

In the Jacksonville area, as in many other places, there was a delicate racial balance. The population was about 50/50 free whites to enslaved blacks and there was a small percentage of free people of color, as free mixed people were called. Most white folk were terrified that the free Black people of color were likely to join with Black enslaved people and together take over and kill the white people.

Here's what happened: When Celia killed her father, the community all knew what a terrible person Jacob Bryan had been. Half of the community felt that he got what he deserved, or at least Celia didn't deserve to die for having defended herself and her children.

The half of Jacksonville that supported clemency included Isaiah Hart. He was known as the "Father of Jacksonville."

But the other half of the community couldn't let a white man die at the hands of a Black woman without her dying too, because it was too threatening to the stability of the community.

Celia was executed on September 22nd, 1848 and she hung for an hour, but that wasn't the final indignity. After Celia's execution the fate of her children was at stake. They had been manumitted by Bryant, but not legally, because he hadn't paid the fine and he hadn't posted the bond. So, they remained in the state of Florida, which itself was a breach of the law. As a result, when Celia was locked up awaiting execution, her four children, Mary Jane, age 12, William, 9, Damius, 7, and Frances, 4, were all to be locked up, too.

Old Jacob Bryant's white relatives came down to Florida from Georgia to fight to keep Celia's kids enslaved. They argued that the laws for emancipation hadn't been met; so they wanted to take ownership of the people Jacob had owned, including Celia's children. Jacob's family hired Gregory Yale, the same lawyer who drafted the will that set my ancestors free, to fight to keep Celia's kids enslaved and transferred to Bryant's white relatives.

Isaiah Hart, the Father of Jacksonville, was named as the administrator of Jacob Bryant's estate. And Judge Crabtree, the judge who upheld the will of my ancestor John that freed Lucy and her children—and who ordered my fourth great uncle Shadrack to pay \$28.08 in court costs—was the same judge who presided over the case that decided the fates of Celia's children.

Judge Crabtree felt that Jacob Bryant's failure to comply with the manumission laws left Celia's children free, subject to being sold by the state of Florida, but they were not the property of Ol' Jacob Bryant's white heirs.

Bryant's family appealed Judge Crabtree's ruling, going to the same judge who had sentenced Celia to death. He overruled Crabtree. And Ol' Jacob Bryant's family also petitioned the Florida legislature to pass an act that proclaimed that the State of Florida was not asserting any entitlement to Bryant's slave "family," so Bryant's white family succeeded to ownership of Celia's children.

In the end, we don't know exactly what happened to Celia's family. We know that all the legal cases and legal wrangling all went against them in the end. It may be that they slipped in with some Seminoles who mingled with escaped African Americans in the area. But we do know that Bryant's family were relentless in their efforts to try to claim ownership of Celia's family.

A sidenote is that Isaiah Hart, the Father of Jacksonville who tried to protect Celia's children, was sympathetic to the cause of the mixed-race people. And we know that in addition to having a wife and children, he also had "Amy" a mixed-race enslaved

woman who bore his children, whom he eventually emancipated and to whom he left the bulk of his estate. Another connection is that Judge Peter Dearing (also an ordained Episcopalian Minister) was the judge who granted the petition giving me John Sutton's file, and is a descendant of Isaiah Hart. It was he who told the story of the clerk who saved some probate files from the Great fire of Jacksonville by putting on a boat and going into the St. Johns River, which is why I can tell this story today.

And this brings us to the next black woman who may have known Lucy. You should know about her. Her name is Anna Madgigine Jai Kingsley. She is the subject of legend and myth in Northeast Florida, and you can learn more about her if you go visit the Kingsley plantation today.

The legend of Anna is that she was an African princess descended from two royal tribal lines—Majigine and N'diaye who was stolen from Senegambia at the age of 12. The legend goes that she was "married" to slave trader and planter Zephaniah Kingsley in a ceremony in Cuba.

Zephaniah brought Anna to Florida, set her free, and put her in charge of his plantation. He also had two other wives, which was not unusual for Anna's cultural norm of plural marriages in Africa. Anna bore Kingsley four children: two sons and two daughters.

Zephaniah was more open-minded than many of his neighbors. He had been a member of the territorial council when Florida was becoming a state and argued that Florida should acknowledge a category of "free people of color." He lost that argument, so he had to protect his family to the extent he could within the law.

Zephaniah sent Anna and their two sons to Haiti, which had no slavery following the Haitian revolution when enslaved people threw off their chains and booted the French colonists out.

However, Anna and Zephaniah married their mixed-race daughters off to powerful white men so they could remain in Florida, helping to run and maintain their properties there.

Zephaniah died in 1843, about three years before John Sutton did. He was 78 at the time. In his will, he divided most of his estate among Anna and his other wives, with the bulk going to Anna and their children together. But Zephaniah's youngest sister, Martha Kingsley O'Neal, challenged Zephaniah's will, arguing that Black people weren't allowed to inherit property in Florida. (As a side note, Zephaniah's sister, Martha, was the grandmother of James McNeill Whistler. So, Martha is actually the mother of the lady pictured in the famous painting of Whistler's mother. Martha was Whistler's mother's mother.)

Anna's eldest son, George set sail from Haiti first to New York and then to Florida to fight in court to protect their right to inherit Zephaniah's property. But he never made it. He was killed at sea. And Anna lost her husband and her son within twenty-nine months.

This put the burden on Anna to decide what to do. Anna knew that under Zephaniah's will, she would forfeit her inheritance if she left Haiti, but she had to come back to fight for her inheritance in Florida. Anna argued to the Court that when she and Zephaniah had arrived in Florida, they were citizens of Spain because Florida was a Spanish territory. Therefore, under the treaty between the United States and Spain that brought Florida into the union (which was signed by John Adams as the Secretary of State of the United States and Ambassador Oniz of Spain), Anna and Zephaniah were citizens of Spain entitled to all the rights and privileges of citizens of Spain. The fact that Anna was Black could not stand in the way of her right to inherit from Zephaniah.

Anna's case that was also heard in front of Judge Crabtree. He ruled in her favor and she was allowed to inherit.

As we've conceived the narrative of Lucy, she believes that Anna is her long-lost aunt. And Lucy is determined to meet Anna and try to learn her own mother's story and her mother's fate.

The third and final woman who may have known Lucy that I'd like to tell you about is Eulalie de

Mandeville. Now, Eulalie was not in Florida. Eulalie was instead in New Orleans. My family story is that after they were set free in May of 1846, that they made their way to boats through Savannah down the coast, around the tip of Florida across The Gulf of Mexico, and over to New Orleans before they made their way up the Mississippi to Illinois to claim their freedom.

And as I tell the story, Lucy has an opportunity while she is New Orleans to meet several people, including the famous Voodoo Queen Marie Laveau. But she also meets someone you probably have never heard of: Eulalie de Mandeville de Marigny.

Let me tell you about Eulalie Mandeville de Marigny. Eulalie was the product of a particular kind of legal family arrangement which was somewhat unique to Louisiana that I need to describe before I tell you about Eulalie. The arrangement is called *plaçage*, from the French verb “to place.” *Plaçage* existed because Louisiana laws, like all the Southern states, prohibited interracial marriage. Thus, white men were not allowed to marry African or mixed-race women. Yet, as a matter of practice and custom, there were many relationships like this that existed throughout Louisiana, and especially in New Orleans. By agreement, a white man would provide financial support, a home, and property that the woman could inherit to a certain degree, and convey to her own heirs. Some of the relationships were abusive, but many reflected love and familial ties.

Eulalie was a *placée*. She was also part of the class of people known as “gens de couleur libre” or “free people of color.” In New Orleans and other places, they were thought of as a class, distinct from white or enslaved Africans. They were akin to what Zephaniah Kingsley had unsuccessfully argued should exist as a distinct class in Florida.

Eulalie was the daughter of a French Count, Pierre Philippe Mandeville de Marigny, a very prominent family in New Orleans. The Faubourg Marigny in New Orleans is a whole section of town that their family owned.

Eulalie’s French Créole white grandparents raised her free like a daughter. She was given money, slaves of her own, and cattle as a young woman. She established a dairy and other business enterprises and she was an innovator, and came up with the idea of hiring out young women, including enslaved women, to act as clerks into the general stores that she ran, and invented a form of door-to-door sales of goods. She was one of the most prominent women in New Orleans.

Eulalie formed a romantic partnership with a white man named Eugene Macarty. They could not be married, but they lived together, had seven baptized children together between 1794 and 1815, and they had business ties together (he leased her properties and ran businesses from them both). Their children were raised well. They were educated, some of them in France, they were set up in suitable matched relationships, and they were established in their own businesses.

But when Eugene died in 1845, just a few months before John Sutton took antiracist steps to protect Lucy and my ancestors by attending to his will before he died in Florida, Eugene also took antiracist steps to try to protect Eulalie. For example, he married Eulalie to try to buttress her rights, even though it was illegal for the two of them to be married in Louisiana. He died a few days later.

Eugene’s family sued Eulalie, claiming that Eulalie’s property actually had actually belonged to Eugene, so that his white siblings were entitled to inherit it; they argued that the property was in Eulalie’s name only in order to defraud the white family.

Well, the court traced the couple’s relationship, found that the Macarty family claims were ridiculous because Eulalie could trace the ownership of her property back to the Mandeville family.

Eugene Macarty’s greedy family appealed that decision and they kept trying to claim that money that belonged to Eulalie until the family finally lost its appeal in 1848, just months before poor, rich Eulalie died. But at least she died knowing she had finally beaten her husband’s racist relatives.

The process of coming to understand my mission began with a new understanding of what history is.

I used to think of history as what happens to famous people—to kings and queens and princes and pontiffs. Or to ordinary people who did something extraordinary, like Harriet Tubman, or Rosa Parks, Martin Luther King, or Bryan Stevenson at the Equal Justice Initiative. But unpacking these stories, these true stories of the lives of real Americans like my ancestors, has helped me see that we are living in the midst of history every day. It shapes us and changes us, every day. But we have the ability to shape and change history too.

Just as I stand on the arc of history with my ancestors at one end—Lucy who got John to make his mark on the will and taking antiracist action to make life better for themselves and those who came after them, including me—at the other end of that arc of history are my descendants’ descendants yet unborn, who are looking back at me, holding me to account for whether I am taking antiracist action in this moment, and for the future.

And so, I have come to understand that it is my mission to take action, to do what I can to help bend the arc of history toward justice. And every time I share this story, I am working to fulfill my mission—to bend the arc of history toward justice.

Thank you for helping me fulfill my mission.

I left a lot of time at the end of this talk for questions, but also to share a few additional practical thoughts with you, because this Conference seeks to be practical. So, before I take questions, let me say a few more things.

So, what can you do? What can any one person do to try to change things, to try to make the world better?

Well, we have learned a lot from this global pandemic, and there are still lessons to be learned. But a huge one is the power of every single person on this planet to personally have a global impact.

It only takes one person, just by the action of breathing—the essence of life—to infect everyone that person contacts, and tiny droplets of moisture can spread the illness exponentially around the globe. Talk about the power of one individual. Imagine harnessing that kind of power for a good cause.

And one person, George Floyd, lynched on camera by police in Minnesota, seems, in his death, to have motivated the world to demand recognition at last for the importance of Black lives, and this despite so many people whose names are hashtags that came before and after George Floyd—Eric Garner, Philando Castille, Michael Brown, Sandra Bland, Breonna Taylor, so many others, including countless unnamed trans women.

So, knowing that you, one person, has within you the potential to change the world, how do you do that?

I think, start by educating yourself. You are smart, competent professionals—here today to learn. You are open and receptive to new ideas and you know how to do research.

Read a book, or if you don’t have that much patience, listen to an audiobook. My reading list from this summer included:

- Ibram X. Kendi’s books, “How to be Antiracist” and National Book Award Winner, “Stamped from the Beginning: The Definitive History of Racial Ideas in America”;
- Isabel Wilkerson, “Caste: The Origins of Our Discontents” in which she compares Indian caste system, with Nazi Germany and racism in the U.S.;
- Rochelle Riley’s “The Burden: African Americans and the Enduring Impact of Slavery” a collection of essays that explore the continuing legacy of racism across various spheres of American

culture. ACTEC will soon be posting on its public website a discussion with Rochelle about racism and the wealth gap in the U.S.; <https://youtu.be/wDQaw0ojaeQ>; and

- Anything by Ta-Nehisi Coates.

Watch a webinar. Never before have we had so many opportunities to gain knowledge in our own homes from experts speaking from their own homes—the essence of community engagement, to demonstrate the bonds of human connection, beyond the physical. Many of these webinars from zoom rooms are posted and free or very cheap (around five dollars or so) to watch and learn from:

- Last night I watched Dr. Angela Davis give a talk on the State of the Black Union to Northwestern black students. It’s recorded and accessible on Facebook;
- Earlier this week I watched Harvard Business School Professor Rebecca Henderson talk about “Reimagining Capitalism In a World on Fire” where she discussed climate change and how businesses can get involved in saving the planet;
- UC Irvine, which has a “Black Thriving Initiative” did a month-long series of discussions on music, art, history, and the humanities, centered around Nikole Hannah-Jones’ New York Times Pulitzer Prize-winning series on the 1619 Project, that culminated with a discussion from Nikole Hannah-Jones herself; and
- Our own USC has hosted forums on “Speaking Out” and “Black Lives Matter” talk-back.

I’m convinced that the more you become aware of the ways that racism is built into the beams, and walls, and ceilings of our society’s institutions, and of the way that racism is like the nails holding together the mudsill beam that our entire society sits upon, that you cannot look at things the same way, and that you will be compelled to act.

So what can a Trusts and Estates lawyer do?

- A program at the University of Oregon to provides wills for the underserved. In this program,

law students under the supervision of practicing lawyers help families prepare wills that enable them to hang onto their homes—the bedrock of American wealth. Professor Susan Gary there has created a manual and templates and tools to assist a law school that wants to start a Wills for the Underserved Program. Search for ACTEC Foundation “wills for the underserved”. <https://actecfoundation.org/wills-for-the-underserved-a-how-to-mentorship-program/>

- A pipeline program funded by ACTEC Foundation pays a black new law grad to be trained in trusts and estates while working with families to retain their property in connection with “The Commons Law Center” in Portland, Oregon.
- Look around you—Does everyone you know look like you? In a virtual world, where travel is not an impediment to joining groups, associations, seminars, what is stopping you from reaching out from where you are—to connect with other human beings—to find new ways to bend the arc of history toward justice?
- Kindness and compassion count. Kindness is a choice, and showing compassion for others is how we express our humanity. And practicing kindness and compassion for others helps us learn to have compassion and be kind to ourselves. In tough times like these, who couldn’t use a little compassion? 🍂