

# The Trial of Nathaniel Bacon



*A presentation of the King Kamehameha V Judiciary History Center*

## **Pre Trial Conferencing with our Role-players**

**To the Justices:** Your Honors, it is a pleasure having you preside in our court. We urge you to take your duties and responsibilities seriously a man's future and justice hang in the balance of this court action. If the defendant selects a trial by Justices you will be called upon to make the decision of guilt or innocence. However if the defendant selects a trial Upon the Country and that jury comes back with a guilty verdict you will be asked to determine the punishment for the defendant. if the jury comes back with a decision of innocent, you will be asked to send the defendant on his way.

**To the Attorneys for both the King and Defendant:** We give you thanks for coming into our court and plying your trade within our walls. Your duties may seem polar opposite to that of the attorneys on the other side, but your true calling is the same: Represent your client to the best of your abilities. We thank you for remembering to rise each time you address the court.

During your direct examination (when you ask questions of your own witnesses) and your (cross examination (when you question witnesses from the other side) you may remain standing at the podium until you have 'finished your questioning.'

**To the Jury:** We thank you for coming to court and serving on our jury. Even though this is a 'mock' or 'make believe' trial, it is still a serious matter that we are asking you to decide. For that reason we ask that you pay close attention to the testimony offered in trial and vote your conscience when asked by the foreperson of your jury which way you will vote.

**Big Ideas / Major Understandings:** *Students will understand that...*

- Conflicts arose in the British North American colonies between Europeans and Native Americans, among the colonists themselves, and between the French and British.
- The causes of these conflicts are found in the chronology of events preceding them.
- A series of events caused the deterioration of relations between Britain and her thirteen North American colonies, leading to war.

**HCPS III Benchmarks:**

- **SS.5.3.8:** Describe conflicts between Europeans and Native Americans (i.e., King Phillip’s War), among colonists (i.e., Bacon’s Rebellion), and between European Powers (i.e., the French and Indian War)
- **SS.5.3.10:** Explain how conflict between the English government and the English colonies led to the outbreak of the American Revolution.
- *SS.5.8.2: Recognize that governments raise money to pay for goods and services (i.e., taxes) and describe why the American colonists were dissatisfied with the colonial system of taxation.*
- *SS.5.1.1: Use chronological order to explain causal relationships between and among people and events.*
- *SS.5.2.1: Analyze how beliefs and education and/or the society in which a person resides shapes his/her “point of view.”*
- *SS.5.2.2: Judge the past in the context of the time instead of imposing present norms and values on historical events.*

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# Colonial Courts – The Trial of Nathaniel Bacon

*Performance Note: Oyez, Oyez, Oyez... let it be known that for the purposes of this trial if there are citizens participating that are female, we shall pretend that they are men. In the eighteenth century only men would have held these positions.*

*Secondly, the words written in as testimony are NOT historical, remember, Nathaniel Bacon died before he came to trial. We have put together what we believe might have been said. We encourage all students to research the events and make up their own minds if they think our 'guesses' are valid.*

## Cast of Characters

Chief Justice/Magistrate (C.J.)

Justice #2

Justice #3

Sheriff

Clerk

Deputy King's Attorney 1 (DKA1)

Deputy King's Attorney 2 (DKA2)

Deputy King's Attorney 3 (DKA3)

Ben Harper – Attorney for Nathaniel Bacon

Thomas Daily – Attorney for Nathaniel Bacon

Jury Foreperson

### Witnesses for the Prosecution:

Governor Berkeley

Alfred Plumly – Plantation owner

### Witnesses for the Defense:

Nathaniel Bacon – Defendant

John Carter – Plantation worker

**Chief Justice [C.J.]:** Sheriff, please call the court to order.

**Sheriff** (*hits staff loudly on the floor three times*): All rise! Oyez, Oyez, Oyez, silence is commanded in the court while His Majesty's justices are sitting, upon pain of punishment. All manner of persons that have anything to do at this court draw near and give your attendance, and if anyone have any plaint to enter or suit to prosecute, let them come forth, and they shall be heard. God save the King!

**All:** (loudly) God Save the King!

**C.J.:** Be seated.

**Clerk:** (*Stand*) To Your Honors, let it be known that Nathaniel Bacon stands accused of sedition. Along with many other acts, he did on the 19<sup>th</sup> of September, in the year of our Lord 1676, burn the entire town of Jamestown to the ground. He is to stand trial for his crimes before this court.

**C.J.:** Bring the Prisoner before the bar of His Majesty's justice.

**The Sheriff brings in the defendant. Bacon goes to podium.**

**C.J.:** (*to the defendant*): Do you understand the charge brought against you?

**Nathaniel Bacon:** Yes.

**C.J.:** Make your plea.

**Nathaniel Bacon:** I am innocent, Your Honors.

**C.J.:** Do you want to be tried by commission of justices or upon the country?

**Nathaniel Bacon:** Your Honors, I wish to be tried upon the country.

**C.J.:** Are the King's Attorneys ready to make an opening statement?

**DKA1:** (*Stand*) Your Honors, I shall prove the charge against the prisoner out of the mouths of two credible witnesses.

**C.J.:** Mr. Bacon, are you ready to make an opening statement?

**Ben Harper:** *(Stand)* Your Honors, my name is Ben Harper, serving as one of the representatives for Mr. Bacon. We do not wish to make a statement.

**DKA2:** *(Stand)* The Crown calls Governor Berkeley.

**Sheriff:** *(Stand)* Governor Berkeley, come forth and be heard.

*The clerk hands the Bible to the Governor who holds it in his RIGHT hand.*

**Clerk:** Do you, Governor Berkeley swear the evidence you shall give is the truth, the whole truth and nothing but the truth, so help you God?

**Governor Berkeley:** I so swear. *(Returns the Bible to the clerk.)*

**DKA2:** *(Stand)* Do you know Thomas Matthews?

**Governor Berkeley:** Yes, Mr. Matthews owns a plantation along the Potomac. The Doeg tribe attacked his plantation because he refused to pay for traded goods. In response to the raid, Thomas Matthews and neighbors organized an attack on the Susquehanna.

**DKA2:** *(Stand)* What was your response to the attacks?

**Governor Berkeley:** I ordered an investigation into the cause of the attacks and I set up a meeting between the colonial and tribal parties involved. Unfortunately, during the course of the meeting, several tribal chiefs were killed. I had to issue an order to stop attacks against friendly Indian tribes.

**DKA2:** *(Stand)* Did anyone disobey your order, my lord?

**Governor Berkeley:** Nathaniel Bacon did. He continued to raid native settlements.

**DKA2:** *(Stand)* How did you respond to Mr. Bacon's refusal to follow orders?

**Governor Berkeley:** I reprimanded Nathaniel, as I had a right to do. I also took away powder and ammunition from local tribes and called for a gathering of the Long Assembly to foster trade with the various tribes in the area.

**DKA2:** *(Stand)* What was Mr. Bacon's response?

**Governor Berkeley:** He complained that I was playing favorites with traders and drove a tribe off of their land.

**DKA2:** *(Stand)* When Mr. Bacon arrived for the June assembly what happened?

**Governor Berkeley:** I took his council seat and set forth to try him for disobedience. He was captured, brought before me and made to apologize. I pardoned him, but Bacon left the assembly and returned with an armed mob that surrounded the building. To prevent bloodshed, I gave him the council seat and allowed him to campaign against Indians deemed unfriendly.

**DKA2:** *(Stand)* Was Bacon satisfied with your attempts to make peace?

**Governor Berkeley:** No, he issued a Declaration of the People which required followers to swear allegiance to him and not the crown.

**DKA2:** *(Stand)* No further questions.

**Justice #2:** Cross examination, Mr. Harper?

**Ben Harper:** *(Stand)* No questions, your Honor.

**Justice #2:** Governor Berkeley, you are dismissed. Call your next witness, Deputy King's Attorney.

**DKA1:** *(Stand)* The Crown calls Alfred Plumly.

**Sheriff:** *(Stand)* Mr. Plumly, come forth and be heard.

*The clerk hands the Bible to Lord Plumly who holds it in his RIGHT hand.*

**Clerk:** Do you, Lord Plumly swear the evidence you shall give is the truth, the whole truth and nothing but the truth, so help you God?

**Alfred Plumly:** I so swear. *(Returns the Bible to the clerk.)*



**DKA1:** (*Stand*) What is your business here in the colony?

**Alfred Plumly:** I am a plantation owner. I have three hundred acres of land along the Potomac River. We grow tobacco.

**DKA1:** (*Stand*) Do you have any dealings with any local Indian tribes?

**Alfred Plumly:** Yes, I trade tobacco for various crafts and pelts with the Susquehanna and the Doeg.

**DKA1:** (*Stand*) In your dealings with these two tribes have you ever known them to be unfriendly or hostile?

**Alfred Plumly:** No, quite the opposite actually. I find them to be men of their word and straight forward in their dealings with me.

**DKA1:** (*Stand*) No further questions.

**Justice #2:** Cross Examination?

**Thomas Daily:** (*Stand*) Your Honors, I am Thomas Daily, an attorney representing Mr. Bacon. Mr. Plumly, have you ever seen the after effects of an attack on a plantation, such as yours?

**Alfred Plumly:** Yes, I have.

**Thomas Daily:** (*Stand*) What did you observe?

**Alfred Plumly:** Workers attacked, property destroyed. It was a horrible sight to see.

**Thomas Daily:** (*Stand*) Don't you worry about your own plantation if there is a disagreement between you and one of the tribes?

**Alfred Plumly:** Of course not, the Governor and the laws of the Commonwealth protect me.

**Thomas Daily:** (*Stand*) Like they protected Mr. Matthews and his property? No more questions, your Honors.

**Justice #2:** Alfred Plumly, you are dismissed. Call your next witness, Deputy King's Attorney.

**DKA1:** *(Stand)* Your Honors, having proven the Crown's case, the Crown rests.

**C.J.:** Defense Attorneys, do you have any witnesses?

**Ben Harper:** *(Stand)* We call John Carter to speak in my client's favor.

**Sheriff:** *(Stand)* John Carter, come forth and be heard.

*The clerk hands the Bible to John Carter who holds it in his RIGHT hand.*

**Clerk:** Do you, John Carter swear the evidence you shall give is the truth, the whole truth and nothing but the truth, so help you God?

**John Carter:** I so swear. *(Returns the Bible to the clerk.)*

**Ben Harper:** *(Stand)* Mr. Carter, what do you have to say in this matter?

**John Carter:** I saw what those Native men did to Bacon's foreman. I was glad when he went out to get revenge. I went with him because I believed that what he was doing was right. I feel safer now, I don't worry about Natives killing me and stealing from my Master.

**Ben Harper:** *(Stand)* Do you think that the Government was trying to keep you safe?

**John Carter:** I don't believe the Government cares one way or the other if we are killed. They just see us as servants, nothing more.

**Ben Harper:** *(Stand)* Thank you, Mr. Carter. No more questions, your Honors.

**Justice #3:** Cross-examination?

**DKA3:** *(Stand)* What about your Masters, Mr. Carter?

**John Carter:** What about them?

**DKA3:** *(Stand)* You were hired to do a job and yet you joined Nathaniel Bacon while he raided the Native villages?

**John Carter:** I needed to help them. The Governor wasn't doing anything. He was willing to let those Indians kill us as long as he made money. We needed to make them fear us, to keep us safe.

**DKA3:** *(Stand)* Are you aware that you attacked innocent Indians?

**John Carter:** Sure, that's what they'll say, but how do you know? You just can't trust any of them.

**DKA3:** *(Stand)* No more questions, Your Honors.

**Justice #3:** Mr. Carter, you are dismissed. Call your next witness, Mr. Daily.

**Thomas Daily:** *(Stand)* I call my client, Nathaniel Bacon, to speak on his own behalf.

**Sheriff:** *(Stand)* Nathaniel Bacon, come forth and be heard.

*The clerk hands the Bible to Nathaniel Bacon who holds it in his RIGHT hand.*

**Clerk:** Do you, Nathaniel Bacon, swear the evidence you shall give is the truth, the whole truth and nothing but the truth, so help you God?

**Nathaniel Bacon:** I so swear. *(Returns the Bible to the clerk.)*

**Thomas Daily:** *(Stand)* Mr. Bacon, did you commit an act of sedition? Did you rebel against your government?

**Nathaniel Bacon:** Rebel!? No! You'd have to have a government to rebel against. The Governor is no leader; he makes rules meant to benefit him and his business interests. There can be no government when its leaders only do things to benefit a few.

**Thomas Daily:** *(Stand)* Surely there is something else you could have done.

**Nathaniel Bacon:** Should I wait while more of my laborers die at the hands of the Natives? The Governor's investigation found no answers. I had to make sure that it was safe, for my laborers and for my neighbors.

**Thomas Daily:** *(Stand)* Thank you, Mr. Bacon, no more questions, your Honors.

**Justice #3:** Cross-examination?

**DKA3:** (*Stand*) Are you asking us to believe that you and your 'militia', as they have been called, were able to protect the people of Virginia better than our Governor and his forces?

**Nathaniel Bacon:** It is not my word that you have to believe, ask the many Virginians that I have protected from the Indians! They will tell you that my actions have only made their lives better.

**DKA3:** (*Stand*) What about the people that resided in Jamestown? It has been reduced to ashes through your actions! What do you have to say to them?

**Nathaniel Bacon:** I did what I was forced to do. The Governor thought he could shame me by taking my commission and making me 'apologize' in front of the council. He tried to take away my hard-won authority through his petty actions. We had to show the Governor what we were willing to do, so he would treat us with the respect we were owed.

**DKA3:** (*Stand*) With all due respect Mr. Bacon, you ask for the respect that you did not give the Governor and his duly appointed government. I wonder why you expected to get what you did not give. I have no more questions, Your Honors.

**Justice #3:** You are dismissed. Mr. Harper, do you have any more witnesses?

**Ben Harper:** (*Stand*) No, Your Honor, we rest our case.

**C.J.:** Please summarize your case, and I remind you that we will entertain no new testimony.

**DKA3:** (*Stand*) Your Honors, Gentlemen of the Jury, this is a very simple case. Nathaniel Bacon is guilty of sedition. He admits that he did, on more than one occasion incite many to rebel against the government. His belief that a government did not exist at that time is ridiculous. Today, we are seated here in our courthouse before Justice arguing point of law set down by our King. How can it be said that there was no government for the people to turn to? If you are law-abiding citizens yourself, you will find him guilty.

**Ben Harper:** (*Stand*) Your Honors, Gentlemen of the Jury, to find my client guilty of sedition is to say that he acted against the government. We have put before you many reasons why Nathaniel Bacon, loyal citizen of the colonies of America, was loyal to 'his' government. He saw no validity to the puppet government set up by the English King. The Governor served no

one but himself, putting his interests above the people.

Can that truly be a fair and just government? We say not. Nathaniel Bacon was a true citizen to the Colonies and cannot be considered guilty of sedition to a government he does not acknowledge.

**C.J.:** *(to the jury)* Gentlemen of the jury, you and only you will make the decision whether or not the defendant is innocent or guilty, and that is the only decision you will make. You will get no food, no drink, no water, no light, and no heat until you return with a unanimous vote.

*[Have the jury gather and confer. Designate one student as the foreman. After the jury reaches a decision, it returns.]*

**C.J.:** *(to the jury)* Gentlemen of the jury, what is your verdict?

### **If Guilty**

**Jury Foreperson:**

Your Honors, we find the defendant to be guilty as charged.

**C.J.:** *(to the jury)* Thank you for your verdict. *(To the other justices)* Well gentlemen, let us confer to make a decision about the punishment.

Decide on a punishment for Nathaniel Bacon with Justice #2 and Justice #3.

**C.J.:** *(Announce punishment)*

### **If Not Guilty**

**Jury Foreperson:**

Your Honors, we find the defendant not guilty.

**C.J.:** *(to the jury)* Thank you for your verdict. *(To the defendant)* You, Nathaniel Bacon, are free to go and do not have to pay charges of any sort.

**C.J.:** *(To the sheriff)* This session is over.

**Sheriff:** *(Stand and hits staff loudly on the floor three times)* All Rise! This court stands adjourned! God save the King!

**All:** God save the King!

**NOTES:**

1. If the defendant chooses 'commission of justices' there will be no jury and a majority vote of the justices will decide the trial. 'Upon the country' means a jury trial and it will require a unanimous vote.
2. Two witnesses are required by English common law.
3. The name of the chief is pure fiction. We could find no documents showing 'actual' names from the Susquehanna tribe.

**Questions:**

Why do you think the defendant selected a jury trial instead of having the decision made by the justices?

In Colonial courts, African Americans were not allowed to testify in court, do you think that Native Americans would have been allowed?

If someone breaks a law, but they do it for what they believe is a good reason, do you think they should be punished for breaking the law?

What is civil disobedience? Does it apply here?

# Bacon's Declaration

The Declaracon of the People.

1. For haveing upon specious pretences of publique works raised greate unjust taxes upon the Comonality for the advancement of private favorites and other sinister ends, but noe visible effects in any measure adequate, For not haveing dureing this long time of his Gouvernement in any measure advanced this hopefull Colony either by fortificacons Townes or Trade.

2. For haveing abused and rendred contemptable the Magistrates of Justice, by advanceing to places of Judicature, scandalous and Ignorant favorites.

3. For haveing wronged his Majesties prerogative and interest, by assumeing Monopoly of the Beaver trade, and for haveing in that unjust gaine betrayed and sold his Majesties Country and the lives of his loyall subjects, to the barbarous heathen.

4. For haveing, protected, favoured, and Imboldned the Indians against his Majesties loyall subjects, never contriveing, requireing, or appointing any due or proper meanes of sattisfaction for their many Invasions, robbories, and murthers comitted upon us.

5. For haveing when the Army of English, was just upon the track of those Indians, who now in all places burne, spoyle, murther and when we might with ease have distroyed them: who then were in open hostillity, for then haveing expressly countermanded, and sent back our Army, by passing his word for the peaceable demeanour of the said Indians, who imediately prosecuted their evill intentions, comitting horred murthers and robberies in all places, being protected by the said ingagement and word past of him the said Sir William Berkeley, haveing ruined and laid desolate a greate part of his Majesties Country, and have now drawne themselves into such obscure and remote places, and are by their success soe imboldned and confirmed, by their confederacy soe strengthned that the cryes of blood are in all places, and the terror, and constimation of the people soe greate, are now become, not onely a difficult, but a very formidable enemy, who might att first with ease have beene distroyed.

6. And lately when upon the loud outcryes of blood the Assembly had with all care raised and framed an Army for the preventing of further mischeife and safeguard of this his Majesties Colony.

7. For haveing with onely the privacy of some few favorites, without acquainting the people, onely by the alteracon of a figure, forged a Comission, by we know not what hand, not onely without, but even against the consent of the people, for the raiseing and effecting civill warr and distruction, which being happily and without blood shed prevented, for haveing the second time attempted the same, thereby calling downe our forces from the defence of the fronteeres and most weekely exposed places.

8. For the prevencon of civill mischeife and ruin amongst ourselves, whilst the barbarous enemy in all places did invade, murther and spoyle us, his majesties most faithfull subjects.

Of this and the aforesaid Articles we accuse Sir William Berkeley as guilty of each and every one of the same, and as one who hath traiterously attempted, violated and Injured his Majesties interest here, by a loss of a greate part of this his Colony and many of his faithfull loyall subjects, by him betrayed and in a barbarous and shamefull manner exposed to the Incursions and murther of the heathen, And we doe further declare these the ensuing persons in this list, to have beene his wicked and pernicious councillours Confederates, aiders, and assisters against the Comonality in these our Civill comotions.

Revised: 1/2017



Sir Henry Chichley  
William Claiburne Junior  
Lieut. Coll. Christopher Wormeley  
Thomas Hawkins  
William Sherwood  
Phillip Ludwell  
John Page Clerke  
Robert Beverley  
John Cluffe Clerke  
Richard Lee  
John West  
Thomas Ballard  
Hubert Farrell  
William Cole  
Thomas Reade  
Richard Whitacre  
Matthew Kempe  
Nicholas Spencer  
Joseph Bridger

And we doe further demand that the said Sir William Berkeley with all the persons in this list be forthwith delivered up or surrender themselves within fower days after the notice hereof, Or otherwise we declare as followeth.

That in whatsoever place, howse, or ship, any of the said persons shall reside, be hidd, or protected, we declaire the owners, Masters or Inhabitants of the said places, to be confederates and trayters to the people and the estates of them is alsoe of all the aforesaid persons to be confiscated, and this we the Comons of Virginia doe declare, desiering a firme union amongst our selves that we may joyntly and with one accord defend our selves against the common Enemy, and lett not the faults of the guilty be the reproach of the inocent, or the faults or crimes of the oppressours devide and separate us who have suffered by their oppressions.

These are therefore in his majesties name to command you forthwith to seize the persons above mentioned as Trayters to the King and Country and them to bring to Midle plantacon, and there to secure them untill further order, and in case of opposition, if you want any further assistance you are forthwith to demand itt in the name of the people in all the Counties of Virginia.

Nathaniel Bacon  
Generall by Consent of the people.

## Words to Know

1. **Monarchy** - a state or nation in which the supreme power is actually or nominally lodged in a single person (monarch).
2. **Aristocracy** - a class of people considered to be superior through education, ability, wealth, heredity, or social prestige (nobility/gentry). Because of this perception, this group is usually afforded exceptional privileges.
3. **Yeoman** - one of a class of lesser freeholders, below the gentry, who cultivated their own land, early admitted in England to political rights.
4. **Indentured Servant** - a person who came to America and was placed under contract to work for another over a period of time, usually seven years, esp. during the 17th to 19th centuries.
5. **Taxation** - a government's practice of collecting money from citizens and businesses within its domain to support its operations.
6. **Chronology** - the sequential order in which past events occur.
7. **Freeman** - a person who is free; a person who enjoys personal, civil, or political liberty.
8. **Slave** - a person bound in servitude as the property of another person or household.
9. **Sedition** - incitement of discontent or rebellion against a government.
10. **Equality** - the state or quality of being equal in quantity, degree, value, rank, or ability.
11. **Independence** - freedom from the control, influence, support, aid, or the like, of others.
12. **Scapegoat** - a person or group made to bear the blame for others or to suffer in their place.

Name: \_\_\_\_\_

Date: \_\_\_\_\_

### Bacon's Rebellion

V S Y G O L O N O R H C B K J  
U L A R I S T O C R A C Y N L  
F J Q K T A O G E P A C S U H  
Y X T K K U T L Z K U L E S H  
H F I N D E P E N D A N C E P  
C A I J T N W N A M E E R F N  
R D K Q Y E O M A N D X N D E  
A B D I N D E N T U R E D N Q  
N E V A L S N O I T A X A T U  
O U U K S E R V A N T H C O A  
M O J J X H J J I I K P H B L  
T Y O D P K B P U W F A X O I  
Q W M R B M D R F K R S E X T  
X S D L C Z S E D I T I O N Y  
N J Y L U J T P W R N R K B Z

Please find and circle the words listed below in the word puzzle above:

ARISOTCRACY  
CHRONOLOGY  
EQUALITY  
FREEMAN  
INDENTURED  
INDEPENDENCE

MONARCHY  
SCAPEGOAT  
SEDITION  
SERVANT  
SLAVE

## Quotations

“We must defend ourselves against all Indians in general, for that they were all enemies.”

*Nathaniel Bacon*

“The old families of Virginia will form connections to low people, and sink into the mass of overseers’ sons and daughters...”

*John Randolph*

“The spirit of independency was converted into equality, and everyone who bore arms, esteemed himself upon an equal footing with his neighbors.”

*Thomas Mann Randolph*