

The Trial of John Brown
Douglas O. Linder
2005

The greatest effects of John Brown's life come from how he acted and what he said after his arrest. A person who might have been a footnote in history became, for many northerners, a saintly martyr who helped persuade millions that eradication of slavery throughout the land was the only answer to the divisions in America.

Brown and his fellow prisoners were transported eight miles to Charles Town, where they were arraigned on three state charges: treason against Virginia, inciting slaves to rebellion, and murder. After hearing the charges, Brown rose to say, "If you want my blood, you can have it any moment, without this mockery of a trial." The presiding judge, unmoved, set October 26 as the day for the trial to open--with Brown to be tried before his compatriots.

In the North, only--at first--did the Transcendentalists rally to Brown's defense. Henry David Thoreau delivered to a Concord audience his "[A Plea for Captain John Brown](#)" in which he praised Brown as "a man of ideas and principles." Thoreau boldly described Brown and Christ as "two ends of a chain which I rejoice to know is without links."

On the morning of October 26, as armed guards and cannons surrounded the courthouse in Charles Town, Brown's trial began with the return of the Grand Jury's indictment. The injured Brown, except when forced to rise, lay on a cot. He asked for a delay in his trial. His motion was denied. To the charges against him, he pled "not guilty."

Northern reporters covering Brown's trial noted its farcical aspects. The nearly 600 spectators who crowded the courtroom continuously opened peanuts and chestnuts, then tossed the shells on the floor so that they crunched noisily when anyone walked on them. Other onlookers spat tobacco juice, smoked cigars, or hurled occasional insults in the direction of the defendant. A long-haired militiaman assigned to security marched around shouting at unruly spectators. Charles Harding, the prosecutor, relaxed with his feet on a table. He would doze off from time to time, awakening in one instance to call out for tobacco. When he showed up on the second day of trial with a bruised face, he told curious reporters that the injuries resulted from a fight the night before with a "blind nigger." Eventually, Harding's obvious alcohol impairment convinced Judge Andrew Parker to replace him with a new prosecutor, the more dignified Andrew Hunter. Brown, meanwhile, spent most of the trial lying on his back.

There was considerable speculation that Brown would plead insanity. His defense attorneys had begun marshaling evidence to support such a theory. Ohio abolitionists pushed the idea, hoping that evidence of insanity would lighten his sentence, even if it failed to gain an outright acquittal. Brown, however, would have no part of it. He called the insanity plea a "pretext" and said, "If I am insane, of course, I should know more than all the rest of the world. But I do not think so." He rejected "any attempt to interfere in my behalf on that score." (In fact, the best evidence is that Brown did not suffer from insanity, as he showed none of its classic symptoms--swings of mood, delusions, disengagement, inability to sleep or concentrate.)

Testimony began with the prosecution presenting witnesses that laid out for the jurors the events of October 16 to 18. Conductor Phelps, for example, described how Brown's men stopped his train and, with rifles pointing at him, ordered to back the train away from the bridge. He also told the jurors how his black baggage handler came running to him yelling, "Captain, I am shot" as blood flowed from under his left nipple. He recalled being approached by Brown (described by his men as "Captain Smith") who assured him his life was not in danger: "My head for it, you will not be hurt." Phelps, who later returned to Harper's Ferry for the interview with Brown that included Governor Wise and others, also described Brown's planned slave revolution, as Brown had outlined them immediately after his capture in the engine-house.

Prosecution witness--and hostage--Colonel Lewis W. Washington, who also recounted Brown's post-arrest interview, told jurors in his cross-examination by defense attorney Lawson Botts that Brown had treated hostages respectfully. Washington testified that prisoners "were allowed to go out and assure their families of their safety" and that Brown told him that he would be treated well. He also stated that Brown "gave frequent orders not to fire on unarmed citizens." Washington said that Brown complained of the "bad faith" shown to his men who had walked with a flag of truce, but that he had not "uttered any vindictiveness against the people." Botts' cross revealed the basic defense strategy: faced with obvious criminality, prove that Brown's intentions through it all were never malicious--and hope that the sentence would not be the ultimate punishment that everyone in Virginia seemed to predicting that it would be.

Perhaps the most damaging prosecution witness was slave owner and hostage John Allstadt, who described being awakened in his Virginia farmhouse by armed men telling him, "Get up quick, or we will burn you up." The men told Allstadt that they intended to "free the country of slavery" and, to help get that process going, would take him and his seven slaves (who had been armed with pikes) to Harper's Ferry. Allstadt told jurors that the antislavery men drove him in a wagon to the federal Armory, where he met John Brown. He described Brown's activities in the engine-house after he was surrounded by Lee's marines. Brown, Allstadt said, carried a cocked rifle and squatted near the front door, firing at the marines. "My opinion is," he said of the fatal wounding of one soldier, "that he killed that marine." On cross-examination, however, Allstadt conceded that he could not say for certain whose shot it was that killed the marine and that there was much confusion and excitement at the time. He also admitted that Brown expressed deep regret upon hearing the news that one of his men had shot the unarmed and popular mayor of Harper's Ferry.

The defense chose to open its case with another of Brown's hostages, Joseph A. Brewer. Brewer painted Brown as a principled and considerate captor. He testified that Brown allowed hostages to "shelter themselves as they could." Remarkably, Brewer, after being allowed by Brown to leave so that he might carry a wounded citizen into the town hotel for treatment, *returned*--as he promised--to his hostage status in the engine-house. Brewer confirmed earlier testimony concerning Brown's displeasure at the wounding of one of his men carrying the flag of truce. The shooting prompted Brown to warn that he had the power to destroy the place "in half an hour"--but then he quickly reassured his hostages that he had no intention of doing so.

Lead prosecutor Andrew Hunter, a dominating presence in the Charles Town courtroom, interrupted defense attorney Thomas Green's examination of yet another witness describing Brown's pleas not to shoot citizens unless in self-defense. Hunter objected that testimony had

"no more to do with this case than the dead languages." Judge Parker, probably sensing that the defense would prove unavailing anyway, allowed the defense to continue to present evidence of Brown's forbearance.

The most dramatic moment in the trial came during the testimony of militiaman Henry Hunter, who led the capture, shooting, and desecration of William Thompson, one of Brown's closest friends. Hunter told jurors that as they cornered Thompson in a hotel, the hotelkeeper's daughter pleaded with him to spare his life and let justice take its course. Hunter replied, "Mr. Beckham's life is worth ten thousand of these vile abolitionists." Thompson answered, "You may take my life, but 80,000 will arise up to avenge me, and carry out my purpose of giving liberty to the slaves." Unmoved, Hunter dragged Thompson to a railroad bridge to serve as a rifle target. Hunter insisted "I have no regrets" about the brutal killing, having just witnessed his uncle and "the best friend I ever had" shot by one of Brown's men.

Angered by the callousness of Hunter, Brown rose to his feet. "May it please the Court," he said, "I discover that, notwithstanding all the assurances I have received of a fair trial, nothing like a fair trial is given me." Brown complained that subpoenas had not been delivered to persons he had hoped would testify in his behalf. He demanded that the trial be deferred until the arrival of counsel "in whom I feel I can rely." The sixty gold dollars in his pocket at the time of his arrest had been stolen, he said, and "I have not a dime" to fund the defense. After registering his objections, Brown laid down "drew a blanket over him and closed his eyes."

Following Brown's interruption and the immediate withdrawal from the case of defense attorneys Botts and Green, twenty-one year old George Hoyt, a young Boston lawyer actually sent to scout out escape possibilities (he concluded that escape was hopeless) rather than materially aid in the defense, stood to announce it would be "ridiculous" for him to carry on the defense of Brown without a continuation of the case, as he had not read the indictment, had not discussed defense strategy with his client or other lawyers, and had "no knowledge of the criminal code of Virginia." Parker granted a one day adjournment, allowing time for two more defense attorneys, Samuel Chilton and Hiram Griswold, to arrive in Charles Town.

The defense continued to draw its witnesses from unlikely sources, such as a Maryland volunteer company commanded by Captain Simms. Simms joined the parade of defense witnesses who described Brown's generous treatment of prisoners even in the face of provocation. Like many witnesses, Simms was quick to insist he had no sympathy Brown's goals, even while he admired his bravery and integrity. Simms claimed he appeared as a defense witness "with pleasure" because he did not want it said by "northern men" that "southern men were unwilling to appear as witnesses in behalf of one whose principles they abhorred."

Closing arguments began on Monday, October 30 in a packed courtroom. Hiram Griswold spoke for the defense. Griswold argued that "no man is guilty of treason unless he be a citizen of the state against which the treason so alleged has been committed"--and that Brown, a citizen of New York, could not therefore commit treason against Virginia. As for the charge of inciting a slave revolt, Griswold insisted "there is a manifest distinction" between trying to free slaves, which Brown admittedly did, and inciting them "to rebellion and insurrection," which includes "riot, robbery, murder, and arson." Brown's goal, Griswold told the jury, was to liberate slaves,

not kill slaveowners or inflict mayhem. Finally, Griswold conceded, as he must, that citizens were shot during the Harper's Ferry incident. To call these shootings "murders," however, as the state sought to do, was to confuse common criminal conduct with the unfortunate but sometime necessary consequences of a military battle. The deaths, Griswold contended, were not "murders" within the meaning of Virginia law.

Andrew Hunter, in his closing argument for the prosecution, said the Brown had "come into the bosom of the Commonwealth with the deadly purpose of applying the torch to our buildings and shedding the blood of our citizens." Hunter argued that no matter whether Brown's conduct was seen as "tragical or farcical," it was "not alone for the purpose of carrying off slaves." Brown's "Provisional Constitution" showed that he had grander plans--and that his plans made him "clearly guilty of treason." There was, Hunter argued, "too much method in Brown's madness" for him to avoid the full legal consequences of his actions. "When you put pikes in the hands of slaves and have their masters captive," you cannot then claim to be merely liberating negroes and not inciting a slave rebellion. Finally, Hunter told the jury, it is irrelevant under the law whether Brown himself intended to take life. When one perpetrates a felony and deaths result, that is murder under the law whether the defendant wished those deaths to occur or not. If Brown had his way, Hunter contended, Virginia would have become another Haiti (the site of a bloody slave insurrection). "You have nothing to do" with the question of mercy, Hunter told the jury in closing. "If justice requires you by your verdict to take his life,...send him before the Maker who will settle the question for ever and ever." Brown listened to Hunter's crescendoing voice lying on his back with his eyes closed.

Just forty-five minutes after being sent out to deliberate, the jury returned with their verdict. Spectators, filling nearly every square foot of the courtroom, silently and anxiously craned their necks to observe the closing scene. According to a reporter, "the only calm and unruffled countenance" was "Old John Brown." The Clerk of Court asked, "Gentlemen of the jury, what say you, is the prisoner at the bar, John Brown, guilty or not guilty?" The foreman replied with a single word: "Guilty."

Sentencing took place on November 2, 1859. After overruling defense objections to the verdict, Judge Parker asked Brown if he had anything he wished to say before being sentenced. Brown immediately rose and in a clear, distinct voice delivered [one of the most memorable courtroom speeches](#) ever by a defendant in a criminal case. Ralph Waldo Emerson would later call it, along with the Gettysburg Address, one of the two greatest American speeches. Brown said:

[T]he New Testament teaches me that all things whatsoever I would that men should do to me, I should do even so to them....I have endeavored to act on that instruction. I am yet too young to understand that God is any respecter of persons. I believe that to have interfered, as I have done,...in behalf of His despised poor, is no wrong, but right. Now, if it is deemed necessary that I should forfeit my life for the furtherance of the ends of justice, and mingle my blood farther with the blood of my children and the blood of millions in this slave country whose rights are disregarded by wicked, cruel, and unjust enactments, I say let it be done."

Judge Parker listened silently to Brown's speech. Then he sentenced him to be publicly hanged on December 2. When Parker pronounced his sentence, one man in the crowd clapped.