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EXECUTION IN VIRGINIA, 1859: THE TRIALS OF GREEN AND COPELAND*

STEVEN LUBET**

This essay tells the story of Shields Green and John Copeland, two black men who joined John Brown's raid on Harpers Ferry in 1859. Along with Brown and several others, Green and Copeland were taken prisoner in the aftermath of the failed insurrection, and they were brought to trial in nearby Charles Town on charges of murder and treason. Unlike Brown, who was treated respectfully by his captors, Green and Copeland were handled roughly. Copeland in particular was subjected to a harsh interrogation that was criticized even by pro-slavery Democrats in the North. The black prisoners did, however, have the benefit of a remarkable attorney—George Sennott of Boston. Unlike virtually all of the other lawyers at the Harpers Ferry trials, Sennott boldly condemned slavery and announced that he was honored to defend the black insurrectionists. Sennott also employed a creative legal strategy in which he raised the Dred Scott decision as a defense to the treason charge. If black men could not be citizens, he argued, they likewise could not be guilty of treason. The tactic was only partially successful. Green and Copeland were acquitted of treason but convicted nonetheless of murder. Even after pronouncing the death penalty, the Virginia authorities continued their racist treatment of the prisoners. Green and Copeland were executed separately from their white comrades—segregation on the gallows—and their corpses were turned over to medical students for dissection, despite the frantic efforts of Copeland's family to retrieve his body for decent burial. Throughout his ordeal, and right up until the time he faced the noose, John Copeland held to his ideals. On the morning of his execution he wrote a moving letter to his parents in which he expressed devotion to the "holy cause"¹ for which he

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Note from the Editors: This Article is historical in nature, and the *North Carolina Law Review* has relaxed its normal citation requirements at the author's request.

1. Letter from John Copeland to his father, mother, and brothers Henry, William, and Freddy, and sisters Sarah and Mary (Dec. 16, 1859) (on file with the Oberlin College Archive), available at http://www.oberlin.edu/external/EOG/Copeland/copeland_letters.htm.

*would die, while condemning “the demands of the cruel and unjust monster Slavery.”*²

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I. THE RAID

On Sunday night, October 16, 1859, John Brown and a company of eighteen men entered the sleeping town of Harpers Ferry, where they began an assault on slavery that would lead first to civil war and eventually to emancipation.³ They quickly took control of the United States arsenal, located in the heart of town, but shots were fired in the encounter, killing a black railroad worker and alerting the citizenry that a raid was under way. By mid-morning the following day, Brown and his men were surrounded by local militia whose constant fire killed many of the raiders. For a short while, however, there was a standoff. Brown’s men were protected by the thick armory walls, and the militia members were too disorganized—and in some cases too drunk—to mount an effective assault on the insurrectionists’ stronghold.⁴

Late Monday, October 17, a detachment of federal Marines arrived under the command of Robert E. Lee, and Brown’s fate was sealed. At dawn on Tuesday morning, only five of Brown’s men remained standing—ten were either dead or gravely wounded, and the others had fled. When Brown refused a demand to surrender, a

2. RICHARD J. HINTON, JOHN BROWN AND HIS MEN: WITH SOME ACCOUNT OF THE ROADS THEY TRAVELED TO REACH HARPER’S FERRY 510 (New York and London, Funk & Wagnalls Co. rev. ed. 1894).

3. The town is now located in West Virginia. In 1859, it was known as Harper’s Ferry, but the apostrophe was removed in an early twentieth century postal reform. TONY HORWITZ, MIDNIGHT RISING: JOHN BROWN AND THE RAID THAT SPARKED THE CIVIL WAR 293 (2011); BRIAN MCGINTY, JOHN BROWN’S TRIAL 289 (2009). Other than in direct quotations, I have used the modern orthography throughout this essay.

4. See OSWALD GARRISON VILLARD, JOHN BROWN: 1800–1859: A BIOGRAPHY FIFTY YEARS AFTER 465 (1965).

squadron of Lee's troops stormed the armory. Brown was taken alive and six more of the survivors were eventually captured as well.⁵

One of the imprisoned raiders was John Copeland, a free black man from Oberlin, Ohio. Described by observers as a "bright mulatto," Copeland had been a highly visible leader of the Oberlin slave rescue the previous fall.⁶ Along with thirty-six others, he had been indicted by a federal grand jury for violating the Fugitive Slave Act, but he successfully evaded arrest, and he was thus already a fugitive himself when he arrived in Virginia to join Brown's army. Another captive was Shields Green, a fugitive slave from North Carolina who reporters called "a regular out and out tar colored darkey."⁷ Green had been introduced to Brown by Frederick Douglass, the famous black abolitionist. Douglass himself had refused to join Brown's expedition to Virginia—believing that Brown would fall into a "trap of steel"⁸—but Green had readily agreed. According to Douglass, Green was determined to "go down wid de ole man."⁹

Although it had taken federal troops to quell Brown's rebellion, all of the captives, including Green and Copeland, were turned over to the Commonwealth of Virginia for prosecution. The Virginia authorities were naturally outraged at Brown, but Governor Henry Wise nonetheless insisted that he be treated with the sort of grudging respect that is typically afforded a defeated commander. At the beginning of Brown's lengthy interrogation, for example, Wise admonished his prisoner that "he did not desire to hear anything from

5. See *id.* at 449–54.

6. ROBERT M. DE WITT, *THE LIFE, TRIAL AND EXECUTION OF CAPTAIN JOHN BROWN: BEING A FULL ACCOUNT OF THE ATTEMPTED INSURRECTION AT HARPER'S FERRY, VA.* 55 (1969). For details of the Oberlin Slave Rescue, including John Copeland's involvement, see STEVEN LUBET, *FUGITIVE JUSTICE: RUNAWAYS, RESCUERS, AND SLAVERY ON TRIAL* 229–47 (2010).

7. MCGINTY, *supra* note 3, at 237.

8. Frederick Douglass, John Brown Speech Delivered at Storer College, Harper's Ferry, West Virginia (May 30, 1881), in *FREDERICK DOUGLASS: SELECTED SPEECHES AND WRITINGS* 633, 647 (Philip S. Foner & Yuval Taylor eds. 1999).

9. *Id.* Regarding Copeland's background, see WILLIAM E. BIGGLESTONE, *THEY STOPPED IN OBERLIN: BLACK RESIDENTS AND VISITORS OF THE NINETEENTH CENTURY* 50–52 (1981). Regarding Shields Green, see JOHN STAUFFER, *THE BLACK HEARTS OF MEN: RADICAL ABOLITIONISTS AND THE TRANSFORMATION OF RACE* 259 (2002). The patronizing descriptions of Copeland and Green were made in multiple newspaper articles, including *A Carrion Bird*, *FREEMONT J.*, Nov. 4, 1859, at 2; *Further Disclosures*, *ASHTABULA WKLY. TELEGRAPH*, Nov. 5, 1859, at 2; *John Brown's Invasion*, *N.Y. DAILY TRIB.*, Nov. 12, 1859, at 6 (citing *The Spirit of Jefferson*, a local Charles Town newspaper); *John Copeland and the Virginia Authorities*, *CLEVELAND MORNING LEADER*, Dec. 22, 1859, at 2.

him that he did not willingly . . . feel disposed to communicate.”¹⁰ Wise later praised Brown as “a man of clear head, of courage, fortitude and simple ingenuousness [who] inspired me with great trust in his integrity, as a man of truth.”¹¹ As we will see, no such respect, grudging or otherwise, was shown to the black prisoners, who were treated far more roughly from beginning to end.

II. THE INDICTMENT

Following Brown’s interrogation, all of the prisoners were taken to nearby Charles Town,¹² where they were soon indicted on four capital counts by a unanimous grand jury. Presented in the ornate language of antebellum law, counts two and three charged murder (both directly and for “abetting”), and count four alleged a conspiracy to induce slaves “to make insurrection against their masters and owners, and against the Government, and the Constitution and laws of the Commonwealth of Virginia.”¹³

The first count of the indictment, however, was the most politically important. It charged the prisoners with conspiracy to commit treason against the Commonwealth of Virginia, in concert

with divers other evil minded and traitorous persons to the Jurors unknown, not having the fear of God before their eyes, but being moved and seduced by the false and malignant counsels of other evil and traitorous persons, and the instigations of the Devil.¹⁴

Specifically, the indictment alleged that Brown and the other defendants had plotted to “make rebellion and levy war” against Virginia, and that they had thereby attempted to institute “a Government separate from, and hostile to, the existing Government”

10. The excerpt from Brown’s interrogation is found in Andrew Hunter’s congressional testimony. See SELECT COMM. OF THE SENATE ON THE INVASION AT HARPER’S FERRY, 36TH CONG. REPORT ON THE INVASION AT HARPERS FERRY 60 (1860) (containing the testimony of Andrew Hunter) [hereinafter *Hunter’s Testimony*].

11. *The Harper’s Ferry Prisoners*, W. RES. CHRONICLE, Nov. 2, 1859, at 2. Regarding the inadmissibility of involuntary confessions in the pre-*Miranda* era, see Henry E. Smith, *The Modern Privilege: Its Nineteenth Century Origins*, in THE PRIVILEGE AGAINST SELF-INCRIMINATION 145–80 (R. H. Helmholtz ed., 1997). Regarding the interrogation, see MCGINTY, *supra* note 3, at 67–68.

12. Charles Town was then Charlestown, but, as with Harpers Ferry, I have used the contemporary name other than in direct quotes. HORWITZ, *supra* note 3, at 293; MCGINTY, *supra* note 3, at 291.

13. Indictment of John Brown et al., Circuit Court of Virginia, Oct. 26, 1859, available at <http://www.wvculture.org/history/johnbrown/01-05-01.html>.

14. *Id.*

of the Commonwealth.¹⁵ Tracking the language of the state treason statute, the indictment accused the defendants of professing “allegiance and fidelity to said usurped Government.”¹⁶

Less than two years later, virtually all of the officials in the Charles Town trial, including the prosecutors, the judge, and Governor Wise, would themselves swear allegiance to the Confederate States of America—an actual “usurped government” if there ever was one—but they were never known afterward to have appreciated that particular irony. In any case, those events were still unforeseen in 1859, and, for the time being, only Brown and his comrades faced hanging for treason.

The treason count raised profound questions of jurisdiction. The crime of treason necessarily involves betrayal or disloyalty to one’s sovereign, and yet none of the defendants—black or white—had been a citizen of Virginia. Copeland had not even set foot in Virginia prior to the raid, which itself had occurred almost entirely on federal property.¹⁷ There would be evidentiary complications as well. While murder and incitement were straightforward crimes that would be relatively easy to prove, treason required the testimony of at least two witnesses to every overt act by each defendant. In addition to those obvious legal obstacles, the treason count was also superfluous from the perspective of punishment, given that the murder and servile incitement counts all carried the death penalty.¹⁸

Nonetheless, Virginia’s Governor Henry Wise had decided to use the prosecution to assail the entire abolitionist movement. He saw the treason count—which was drafted by his personal lawyer, Andrew Hunter, who would also lead the Harpers Ferry prosecutions—as the ideal vehicle for charging that sanctimonious northerners, including prominent ministers and political figures, had engaged in a broad-ranging conspiracy to make war against the Commonwealth of

15. *Id.*

16. *Id.* The initial indictment was against John Brown, John Copeland, Shields Green, Aaron Stevens, and Edwin Coppoc, all of whom were taken prisoner in the immediate aftermath of the raid. Two other raiders—John Cook and Albert Hazlett—initially escaped, only to be captured in the following weeks and taken to Charles Town. Cook and Hazlett were also indicted on similar charges. See DAVID S. REYNOLDS, *JOHN BROWN, ABOLITIONIST: THE MAN WHO KILLED SLAVERY, SPARKED THE CIVIL WAR, AND SEEDED CIVIL RIGHTS* 347–55, 375 (2005) (discussing the arraignment, indictment, trial, and sentencing).

17. John Cook had lived in Virginia for over a year, serving as Brown’s spy. Cook, however, had not yet been captured when the first indictment was issued. For details regarding John Cook, see generally STEVEN LUBET, *JOHN BROWN’S SPY: THE ADVENTUROUS LIFE AND TRAGIC CONFESSION OF JOHN E. COOK* (2012).

18. CODE OF VIRGINIA, chs. 190, 191 cls. 1–2 (1860) (repealed).

Virginia. Not only would Governor Wise make his case against the votaries of abolitionism, but he would also assert Virginia's primacy over a federal government that had, in his eyes, failed for many years to take sufficient measures for the protection and expansion of slavery. There was one further problem: Virginia law did not provide the governor sole power to grant clemency for treason. Unlike all other crimes, a treason conviction could only be pardoned or reprieved following a vote by the full legislature.¹⁹ The limitation on gubernatorial authority, however, did not appear to trouble Governor Wise, who, in the immediate aftermath of the raid, had scant interest in pardoning any of the prisoners. The treason charge would thus become a major issue in the trials of John Brown, Shields Green, and John Copeland.

III. BROWN'S TRIAL

John Brown was the first of the insurgents to face trial. Almost from the moment he got to Charles Town, Brown had attempted to have his case postponed until sympathetic lawyers could arrive from the North, but Judge Richard Parker denied every request for delay. Instead, the court appointed two local lawyers—Lawson Botts and Thomas Green—to represent the defendant, and he insisted that Brown's trial begin post-haste. Brown protested, but to no avail. The first witness against him was called on Thursday, October 27, only nine days after the raid had collapsed.²⁰

Lawson Botts and Thomas Green were prominent members of the Charles Town bar. Both slaveholders themselves, they had no sympathy for John Brown and little reason to want to see him acquitted. Green was the mayor of Charles Town, charged with protecting public safety, and Botts had actually been "in the thick of events at Harper's Ferry" as a member of one of the militia companies that had first surrounded the armory.²¹

Despite their personal interests and allegiances, Botts and Green were deeply committed professionals who did their best to represent John Brown. Of course, there was never any possibility that they would defend either his ideals or his actions, both of which they found abhorrent. Nor would they even hint that there was any justification for Brown's campaign to free Virginia's slaves. But within the

19. MCGINTY, *supra* note 3, at 110–11.

20. 6 AMERICAN STATE TRIALS 733 (John D. Lawson ed.) (1916); MCGINTY, *supra* note 3, at 31.

21. MCGINTY, *supra* note 3, at 101.

confines of their own principles, Botts and Green spared no effort on Brown's behalf. They vigorously cross examined prosecution witnesses and, at Brown's request, subpoenaed witnesses to testify for the defense. More controversially, they obtained affidavits and other evidence showing that "insanity is hereditary in [Brown's] family."²² That was an incisive move in strictly legal terms, as an insanity plea was Brown's only hope—slight as it was—of avoiding execution, but the defendant naturally saw things differently. Brown refused to "put in the plea of insanity," and he objected to his lawyers' efforts to raise such "a miserable artifice and pretext."²³ He viewed the entire strategy with "contempt," and he rejected "any attempt to interfere in my behalf on that score."²⁴ That closed the door on the issue, and Botts and Green soon moved to withdraw over continuing tactical disagreements with their client.

Fortunately for Brown, the long-sought legal reinforcements reached Charles Town just as the local lawyers were quitting the case. Brown's northern friends had retained two experienced attorneys—Hiram Griswold and Samuel Chilton—who arrived for the closing days of the trial. The two attorneys could not have been more different in their backgrounds and politics. Hiram Griswold was an abolitionist from Cleveland who had been extensively involved in Ohio's anti-slavery movement. He had been active in the defense of fugitive slaves, and he was eager to represent Brown as a matter of pro bono principle. Samuel Chilton, on the other hand, had no use for either Brown or abolitionism. A native Virginian, Chilton had more in common with Jefferson County slaveholders than he did with his client. Although he had relocated his practice to Washington, D.C., Chilton remained a pro-slavery southerner in his outlook, and he accepted Brown's case only after northern abolitionists promised him an enormous fee of \$1,000.²⁵

Griswold and Chilton ably defended their client, calling witnesses on his behalf and presenting spirited closing arguments. Their defense, however, rested entirely on what we would now call "technicalities." Griswold argued forcefully for dismissal of the treason count on the ground that Brown had never been a citizen, or even a resident, of Virginia. Speaking in a pronounced—and perhaps exaggerated—southern accent, Chilton added that Brown had not personally committed any of the killings at Harpers Ferry. Chilton

22. 6 AMERICAN STATE TRIALS, *supra* note 20, at 733.

23. *Id.* at 734.

24. *Id.*

25. *See id.* at 766; MCGINTY, *supra* note 3, at 182–83.

sought to blame the murders on the other defendants—including Shields Green and John Copeland, whom he did not represent—while arguing that Brown's own acts had been undertaken without legal malice.²⁶ While admitting that Brown's goal had been to free the slaves, neither Griswold nor Chilton questioned the legality, much less the morality, of slavery, which they thought would diminish the vanishingly small chance of saving their client's life.

Judge Parker sent the case to the jury shortly after noon on Monday, October 31, with the expectation that the verdict would be simply a matter of form. Indeed it was. The jury deliberated for only about forty-five minutes—most of which was spent reading through the baroque wording of the lengthy indictment—before pronouncing Brown “Guilty of treason, and conspiring and advising with slaves and others to rebel, and murder in the first degree.”²⁷

Brown had interjected objections and comments throughout his trial, but he had not been allowed to testify. As did every other state in 1859, Virginia adhered to the “interested party” rule, which prohibited defendants (and also plaintiffs in civil cases) from testifying under oath. Odd as it seems today, the rule was then considered necessary to remove a perceived incentive to commit perjury,²⁸ but it also denied a defendant such as Brown the opportunity to explain his motives or defend his own actions. It was evident that Brown was frustrated by his compelled silence during the trial, but that would all change when he appeared for sentencing.

Judge Parker had other matters to resolve on the day following Brown's conviction, so sentencing was set for Wednesday morning, November 2. As Brown stood stiffly before the bench, Parker directed his clerk to read the obligatory question: Was there anything the defendant wanted “to say why sentence should not be pronounced upon him?”²⁹ That was the moment Brown had been waiting for. With dignity and defiance, he seized the moment:

In the first place, I deny everything but what I have all along admitted, of a design on my part to free slaves . . . This Court

26. See 6 AMERICAN STATE TRIALS, *supra* note 20, at 778–99.

27. *Id.* at 799–800; JOSEPH BARRY, THE ANNALS OF HARPER'S FERRY 44 (Martinsburg, W.Va., Office of the Berkeley Union 1872).

28. See *Ferguson v. Georgia*, 365 U.S. 570, 573–76 (1961); Smith, *supra* note 11, at 149–56.

29. 6 AMERICAN STATE TRIALS, *supra* note 20, at 800. The death certificate is available to be viewed online. See *John Brown Papers held by Jefferson County Circuit Clerk's Office*, W. VA. DIVISION OF CULTURE & HIST., <http://www.wvculture.org/history/johnbrown/02-06-01.html> (last visited May 9, 2013).

acknowledges, too, as I suppose, the validity of the law of God . . . which teaches me that all things whatsoever I would that men should do to me, I should do even so to them. It teaches me further to remember them that are in bonds, as bound with them. I endeavored to act up to that instruction . . . I believe that to have interfered as I have done, as I have always freely admitted 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 further with the blood of my children and with the blood of millions in this slave country whose rights are disregarded by wicked, cruel, and unjust enactments, I say let it be done.³⁰

The court, needless to say, took little note of Brown's oratory. Judge Parker simply observed that "no reasonable doubt could exist of the guilt of the prisoner," and he sentenced Brown to be executed by public hanging on Friday, December 2, 1859.³¹

The reaction was far different outside the courtroom. Reporters quickly transcribed Brown's extraordinary speech, and it was published the next day in many major newspapers, to be followed by republication around the country. Spreading with the speed of telegraphy, Brown's heartfelt denunciation of slavery had an enormous impact on the northern public, "unleashing powerful imagery that would vastly deepen the meanings of his puny act of physical rebellion."³² Although many abolitionists had initially condemned the Harpers Ferry raid—calling it the act of a madman—they now found themselves in awe of Brown's steadfast dedication and refusal to request mercy in the face of execution. As to the dispensers of Virginia's slaveholding justice, Wendell Phillips was not alone when he proclaimed that "John Brown has twice as much right to hang Governor Wise[] as Governor Wise has to hang him."³³

The southern prosecutors believed momentarily that they had defeated John Brown, but it soon became obvious that Brown had taken control of his fate, if not his life, by placing slavery itself on trial. Although condemned as a murderer, Brown had managed through sheer force of eloquence to transform himself into a martyr who would, as Ralph Waldo Emerson soon put it, "make the gallows

30. 6 AMERICAN STATE TRIALS, *supra* note 20, at 800–01.

31. *Id.* at 802.

32. MICHAEL FELLMAN, IN THE NAME OF GOD AND COUNTRY: RECONSIDERING TERRORISM IN AMERICAN HISTORY 40 (2010).

33. *Id.* at 40; WENDELL PHILLIPS, SPEECHES, LECTURES, AND LETTERS 272 (New York, C.T. Dillingham 1884).

glorious like the cross.”³⁴ It was a remarkable victory for the old abolitionist, in which he had gotten no help from his lawyers, who did their best to keep the explosive issue of slavery out of the trial.

IV. INTERROGATION

John Brown’s conviction and sentencing did not end the proceedings in Charles Town. There were six other defendants who had to face the bench, including Shields Green and John Copeland.

Both Green and Copeland had been questioned following their capture. In Copeland’s case, the interrogation was especially severe. Apart from Brown, Copeland was the only prisoner who had been at all well known before the Harpers Ferry raid. As a visible leader of the Oberlin fugitive slave rescue, he was notorious in Ohio, and his status as an indicted fugitive therefore attracted the immediate attention of United States Marshal Mathew Johnson in Cleveland. Within days of his arrival in Charles Town, Copeland was confronted in his cell by Marshal Johnson, who was accompanied by Marshal Jefferson Martin of Virginia.

Marshal Johnson was a staunchly partisan, pro-slavery Democrat who had been responsible for rigging the jury in the trials of the Oberlin rescuers. Having been frustrated by Copeland’s escape from Ohio, Johnson jumped at the opportunity to get his hands on the fugitive, intending to “to ferret out testimony implicating the other parties” to Brown’s raid.³⁵ Johnson was especially interested in gathering evidence against Republican Congressman Joshua Giddings, who was the *bête noir* of Ohio Democrats. In sharp contrast to Brown’s courtly treatment by Governor Wise, Marshall Johnson’s techniques were relentless, and Copeland eventually buckled under the pressure.³⁶ The tactics had been so harsh, however, that they were condemned even by other pro-slavery Democrats. The *Cleveland Daily Herald*, for example, called Johnson’s conduct “disreputable” and charged that Copeland’s eventual statement had

34. REYNOLDS, *supra* note 16, at 366.

35. *U.S. Marshal Johnson and His Negro Confession*, CLEVELAND DAILY HERALD, Nov. 5, 1859, at 1. Johnson was so despised by Republicans, and a good many Democrats, that Abraham Lincoln would summarily fire him only weeks after his inauguration—despite the President’s other rather pressing concerns. Johnson’s removal was effective on April 12, 1861, the same day that Confederate cannons opened fire on Fort Sumter. See *History of Northern District of Ohio*, U.S. MARSHALS SERVICE, <http://www.usmarshals.gov/district/oh-n/general/history.htm> (last visited May 9, 2013).

36. See *U.S. Marshal Johnson and His Negro Confession*, *supra* note 35.

been shamefully "wormed out of a negro scared almost to death at the prospect of the gallows."³⁷

Pleased with his work, and disdainful of any criticism, Johnson proudly informed the press that he had successfully extracted a full confession from the prisoner. In reality, Copeland provided only limited information, none of which could be especially helpful in the prosecution of Giddings or others. He admitted that he had been recruited by Brown (which was no surprise to anyone) and he mentioned the involvement of several other raiders who were already dead, while insisting that his only intention had been "running off slaves."³⁸ He told Johnson that two prominent Oberlin Republicans, the brothers Ralph and Samuel Plumb, had given him fifteen dollars for expenses, and added cryptically that other unnamed persons in Cleveland had also given him "money to join John Brown."³⁹ Notably missing from the confession, however, was any mention of Boston abolitionists, and even the Plumbs' involvement appeared to be slight and indirect.⁴⁰ Ohio's Marshal Johnson might have gotten something he wanted out of Copeland, but Governor Wise had to be disappointed with the result.

Shields Green was also interrogated—by Johnson and others—although no record was made of his responses.⁴¹ Robert E. Lee

37. *Id.*

38. *Brown's Trial*, THE JEFFERSONIAN, Nov. 3, 1859, at 2.

39. VILLARD, *supra* note 4, at 536.

40. See, e.g., *Inciting to Insurrection*, N.Y. DAILY TRIB., Oct. 29, 1859, at 6; *John Brown's Invasion*, N.Y. DAILY TRIB., Nov. 8, 1859, at 6; *John Brown's Invasion*, N.Y. DAILY TRIB., Nov. 12, 1859, at 6. "According to the journalist and illustrator David Hunter Strother, Copeland was overwhelmed with fear and cowered before his interrogators." LUBET, *supra* note 17, at 290 n.28. Likewise, the *Cleveland Daily Herald* called Copeland a "great coward." *U.S. Marshal Johnson and His Negro Confession*, *supra* note 35. Historian Benjamin Quarles discounts such reports as the predictable distortions of antebellum racists. BENJAMIN QUARLES, *ALLIES FOR FREEDOM: BLACKS AND JOHN BROWN* 134 (1974). At least one ardent abolitionist, however, thought that Copeland had been intimidated into hedging the truth at Brown's expense. *Mrs. Sturtevant*, THE ANTI-SLAVERY BUGLE, Nov. 19, 1859, at 1. Copeland's fellow Oberliners, however, believed that reports of his fearful confession were slanders spread "by those who never dreamed of nobleness in a negro." AM. ANTI-SLAVERY SOC'Y, THE ANTI-SLAVERY HISTORY OF THE JOHN BROWN YEAR 137 (Boston, Prentiss & Deland 1861) (internal quotation marks omitted). Prosecutor Andrew Hunter later claimed that he had also obtained a confession from Copeland, including a very accurate "statement of the numbers" of Brown's men, but no evidence of it was offered at trial. *Hunter's Testimony*, *supra* note 10, at 64; *Copeland's Confession*, 3 HARPER'S WEEKLY 727, 727 (1859); *U.S. Marshal Johnson and His Negro Confession*, *supra* note 35, at 2. According to another version of the confession, Copeland also implicated Charles Langston, one of the Oberlin rescuers and a leading black abolitionist in Ohio. *Copeland's Confession*, *supra*, at 727.

41. Colonel R.E. Lee's Report to the Adjutant General from October 19, 1859, in *The John Brown Letters*, 10 VA. MAG. HIST. & BIOGRAPHY 17, 22 (1902).

informed his superiors in Washington, D.C., that he had obtained "statements of those now in custody," but his official report provided no further details.⁴² There is no doubt, however, that Green resisted providing the details of his recruitment to the abolitionist army, and that he never mentioned having been introduced to Brown by Frederick Douglass. Any implication of Douglass would have been a bombshell, certain to have been trumpeted by the Virginia authorities and reported widely in the press. Instead, it is evident that Green shielded his friend and, in fact, Douglass's meeting with Brown remained unknown until years later when Douglass revealed it himself.⁴³

Whatever the substance of Green's actual statement, it would play no role in the trials that followed. Copeland's confession was a different matter.

V. THE TRIALS OF COPELAND AND GREEN

The two Virginia attorneys appointed for Brown had also accepted the representation of John Copeland and Shields Green, although it appears that they never troubled to meet with their black clients. In any event, they evidently ceased even nominal representation of Copeland and Green when they withdrew from Brown's case. By that time, however, additional attorneys had arrived from the North, including the ardently abolitionist George Sennott, of Boston, who quickly filed his appearance for John Copeland and Shields Green.

Sennott was an outsized character—in terms of height, girth, and personality—whose appearance at first occasioned outright ridicule in Charles Town. The local newspapers took turns deriding him. One reporter sneered that "George Sennott has come to us upon a mission of great bigness, and his size, so far as latitude is concerned, shows him fully up to the immortal standard of envoys extraordinary."⁴⁴ "When he is out of Boston," another journalist scoffed, "we presume

42. *Id.* at 22; List of Insurgents as Furnished Me by Brown & Stephens at Harper's Ferry, in *The John Brown Letters*, *supra* note 41, at 274, 274–75; see also Letter from Matthew Johnson to Andrew Hunter (Nov. 15, 1859) in *The John Brown Letters*, *supra* note 41, at 280, 280–82 (discussing, after capturing and imprisoning the insurgents, his fear that "some movement is on foot to rescue if possible Brown and his Confederates").

43. John Brown, Speech at Storer College, Harper's Ferry, West Virginia (May 30, 1881), in FREDERICK DOUGLASS: SELECTED SPEECHES AND WRITINGS, *supra* note 9, at 647; STAUFFER, *supra* note 9, at 259.

44. *More Humor of the Local Press*, N.Y. DAILY TRIB., Nov. 9, 1859, at 6 (quoting the *Spirit of Jefferson*, a local Charles Town newspaper), available at <http://chroniclingamerica.loc.gov/lccn/sn83030213/1859-11-09/ed-1/seq-6/>.

lager-beer has an opportunity to accumulate.”⁴⁵ Sennott was indeed a man of large appetites, but he was also an outstanding lawyer. He was an anti-slavery Democrat—an affiliation that was vanishing in the North and nonexistent in the South—which may have contributed to the scorn he attracted in Charles Town. One courthouse wag branded Sennott “the celebrated Damphool,” but never was an epithet more mistaken.⁴⁶

Although John Brown’s lawyers—the courtly Samuel Chilton and the cautious Hiram Griswold—had been unwilling to challenge the legitimacy of slavery, George Sennott showed no such reluctance on behalf of Green and Copeland. With rare audacity, he announced that it was an honor to represent the two black men, and he boldly declared to the court that “the system of Slavery is illogical and absurd.”⁴⁷ That claim caused outrage in Virginia, where no such “[a]bolition harangue” had ever before been heard in a court of law.⁴⁸

Sennott later complained about his treatment in Charles Town, saying that he had encountered “an excitement and a suspicion that looked like insanity.”⁴⁹ He was trailed whenever he ventured onto the street and repeatedly questioned by both authorities and self-appointed locals, whom he considered the “most absurd and offensive advocates” of slavery.⁵⁰ The constant abuse, however, did not deter Sennott from doing his job. His skill and determination would eventually earn grudging respect, and even admiration, among the locals. “The spectators marveled at [Sennott’s] keenly-drawn arguments,” reported one newspaper.⁵¹

Green’s case was called first, and the prosecution’s evidence was overwhelming. The chief witness against the defendant was the plantation master Lewis Washington, a great-nephew of George Washington, who had been kidnapped and held prisoner by Brown’s men. Washington testified that Green—who was carrying a rifle, a pistol, and a butcher knife—had been placed in charge of guarding the white hostages. Washington also testified that Green had fired shots at the surrounding militia. Far worse in Washington’s eyes,

45. *Id.*

46. *Id.*

47. *Id.*

48. *A Revival of Wrath*, N.Y. DAILY TRIB., Nov. 7, 1859, at 6, available at <http://chroniclingamerica.loc.gov/lccn/sn83030213/1859-11-07/ed-1/seq-6/>.

49. *The Harper’s Ferry Affair: Speech of George Sennott, Esq., Before the Virginia Legislature*, 30 LIBERATOR 54, 54 (1860) (quoting “the substance of the argument” in Sennott’s speech).

50. *Id.*

51. *A Revival of Wrath*, *supra* note 48, at 6.

however, had been Green's "very impudent manner" in addressing his betters, a crime that the aristocratic plantation owner considered more threatening than violence.⁵² Unusual for a man born in slavery, Green did have a self-confident bearing that led his friends to affectionately call him "Emperor."⁵³ Although he may have appeared impudent in the eyes of a slave master, the reality was, as Frederick Douglass put it, that Green's "courage and self-respect made him quite a dignified character."⁵⁴ Lewis Washington, however, was unable to recognize dignity in a black man, and he was especially offended that Green had presumed to give orders to the white hostages.

Washington also called Green a coward. When a detachment of Colonel Lee's men, under the command of Lieutenant J.E.B. Stuart, made their final assault on Brown's position at the armory, Green evidently threw away his arms and tried to lose himself among the local slaves.⁵⁵ Despite Washington's condescending characterization, there was nothing really cowardly about attempting to escape capture or death. In fact, Green showed considerable bravery both during and after the raid. Despite intensive interrogation, Green never implicated Douglass in Brown's conspiracy. The Emperor, as it turned out, was noble enough to protect his comrades.

George Sennott first displayed his considerable legal talents in Green's defense. One observer noted that "[h]is struggle with the prosecution was a sort of guerrilla warfare [in which] He attacked the indictment on all points."⁵⁶ To the complete surprise of the prosecution, Sennott moved to dismiss the treason count on the basis of *Dred Scott v. Sandford*,⁵⁷ arguing that a non-citizen could not be guilty of treason.⁵⁸ In *Dred Scott*, decided only two years earlier, the United States Supreme Court had infamously concluded that a black man had "no rights which the white man was bound to respect."⁵⁹ It was nearly impossible for an abolitionist to find any redeeming virtue in the *Dred Scott* case, but Sennott had sensed a way to turn it to his clients' advantage.

52. 6 AMERICAN STATE TRIALS, *supra* note 20, at 810–11; *see also* QUARLES, *supra* note 40, at 101 (providing a similar account of Green's role).

53. *See* 6 AMERICAN STATE TRIALS, *supra* note 20, at 809 n.2.

54. FREDERICK DOUGLASS, LIFE AND TIMES OF FREDERICK DOUGLASS 387 (Dover Publ'ns, Inc. 2003) (1892).

55. 6 AMERICAN STATE TRIALS, *supra* note 20, at 810–11.

56. *A Revival of Wrath*, *supra* note 48, at 6.

57. 60 U.S. 393 (1857), *superseded by* U.S. CONST. amends. XIII, XIV.

58. MCGINTY, *supra* note 3, at 236.

59. *Id.* at 403–04.

Sennott's argument was elegant in its simplicity and ironic in its effect. A treason conviction had to be premised on a breach of allegiance, but the Court, in an opinion written by Chief Justice Roger Taney, had ruled that no black man, whether free or slave, could be a citizen of the United States. Consequently, Shields Green could never have owed any possible duty of loyalty to Virginia. Having thus exposed the hypocrisy of both slavery and the Virginia indictment, Sennott argued that the treason count therefore had to be dismissed. The spectators gasped in amazement at Sennott's audacity, but Judge Parker appeared to realize that he had been backed into a corner.⁶⁰

The prosecutor objected vociferously to Sennott's bold motion, but the logic of the defense argument was irrefutable. The court dismissed the treason count.⁶¹ Sennott's other equally audacious efforts were not equally successful. He sought dismissal of the remaining counts on several technical grounds—including a visionary challenge to the exclusion of free black men from the jury venire—but Judge Parker denied every motion. It took the jury only a few minutes to return guilty verdicts on the counts of murder and conspiracy.⁶²

John Copeland's trial followed immediately after Green's. Once again, Sennott moved to dismiss the treason count. This time, the prosecution made no objection and voluntarily abandoned the charge.⁶³ Unlike Green, Copeland had given a confession, and the prosecution insisted that was sufficient to support convictions for both murder and inciting servile rebellion. Sennott, however, had not exhausted his store of creative motions. He argued that the confession could not be admitted as evidence because "it had been made under influence as well as threats."⁶⁴ Although Sennott's assertion was unquestionably true—outside Virginia's borders, even bigots recognized that Copeland had been coerced—Judge Parker ruled in favor of the prosecution.⁶⁵ Antebellum Virginia law simply could not accept the concept that any black man was entitled to refuse the demands of white authorities. Undaunted, Sennott had yet another creative argument up his sleeve. If the confession were to be admitted, he contended, it would have to be taken as a whole.

60. See *A Revival of Wrath*, *supra* note 48, at 6.

61. See *id.*

62. See 6 AMERICAN STATE TRIALS, *supra* note 20, at 813.

63. *Id.* at 812.

64. *Id.*

65. *Id.*

Copeland, however, had admitted only to an attempt to “run off slaves,”⁶⁶ which constituted the crime of slave stealing rather than rebellion, murder or conspiracy. And yet, no count for slave stealing had been included in the indictment. Having drafted the indictment, the prosecution “could not be allowed now to contradict their own story.”⁶⁷

To the consternation of most observers and the horror of the prosecution, Judge Parker, for the first time in any of the Charles Town trials, seemed to consider granting a highly technical defense motion. Parker complimented Sennott for the cogency of his argument and visibly hesitated before ruling. The court was clearly troubled by the inconsistency between the indictment and the proffered proof. Recognizing that his whole case was on the line, the prosecutor fumed that Sennott’s “ingenious pleading” should be disregarded.⁶⁸ The other evidence had established a common purpose among the raiders, he claimed, which was quite enough to support a conviction. Nonetheless, Parker continued to waver, which caused “a very perceptible sensation” among the Virginians who packed the courtroom.⁶⁹

Finally, the judge ruled that mere “evidence of a conspiracy to run off slaves did not and would not support” the indictment.⁷⁰ It took exceptional courage for a judge to rule in favor of a black defendant and against the Commonwealth, and it quickly became apparent that Parker was not that fearless (or foolhardy). He immediately backtracked by allowing that the jury could nonetheless consider whether there had been adequate proof of a “common design [of rebellion] chargeable upon all the conspirators.”⁷¹

Parker thus handed the decision to the jury. But even with that fateful instruction, the outcome of the case was not yet determined. Could it be that Sennott’s argument had succeeded in raising doubts? Alas, not for long. The jurors evidently resolved any misgivings and returned a verdict of guilty on every count save treason. Judge Parker set sentencing for the following week.

66. *The Trials of the Accused*, N.Y. WKLY. TRIB., Nov. 12, 1859, at 1, available at <http://www.wvculture.org/history/jbexhibit/tribunetrialsanborn.html>.

67. See 6 AMERICAN STATE TRIALS, *supra* note 20, at 812.

68. See *id.*

69. *Id.*

70. *Id.* at 813.

71. See *The Trials of the Accused*, *supra* note 66.

VI. SENTENCING

Court convened at noon on Thursday, November 10, for the sentencing of four prisoners, two black and two white. In addition to Copeland and Green, John Cook and Edwin Coppoc had also been convicted of murder and conspiracy in the preceding week. Cook was accompanied by a phalanx of friends and family—including his brother-in-law, who was the sitting governor of Indiana—as well as several prominent attorneys. Coppoc, a naïve Quaker from Iowa, also had relatives present, although none as influential as Cook's. The two black men were alone, their attorney having returned to Boston some days earlier.⁷²

The court clerk directed the prisoners to stand. In language required by Virginia law, he asked, as he had in Brown's case, whether any of them "had anything to say why sentence according to the terms of the verdict, should not now be passed."⁷³

Each of the white prisoners spoke emotionally in a last ditch effort to save his own life. Both men said they regretted joining the insurrection, claiming they had been deceived by Brown into thinking that Virginia's slaves were longing for freedom. John Cook was especially voluble, speaking at considerable length and with great passion.⁷⁴

According to several newspapers, "the negroes declined saying anything" at the sentencing hearing.⁷⁵ The implication was that the court offered Green and Copeland an opportunity to speak on their own behalf, and they remained silent out of either fear or hopelessness. But those reports may not have been quite accurate.

John Copeland, having been raised in the uniquely integrated community of Oberlin, was an exceptionally outspoken and adamant opponent of slavery. Unlike southern slaves and free blacks, he had not grown up in an atmosphere of intimidation and illiteracy. Having attended Oberlin College, he was well educated and expressive, and

72. See MCGINTY, *supra* note 3, at 237–41. Coppoc had also been convicted of treason against Virginia, while Cook had been acquitted of that charge. *Id.* at 240. Two other prisoners—Aaron Stevens and Albert Hazlett—had not yet faced trial; they would be convicted and executed the following spring. *Id.* at 271.

73. *Sentence of Prisoners*, VA. FREE PRESS, Nov. 17, 1859, at 1; see also *Close of the Trials*, BALT. AM. & COM. ADVERTISER, Nov. 12, 1859, at 1 (reporting a similar quote).

74. See *Close of the Trials*, *supra* note 73. Regarding Cook's sentencing, see LUBET, *supra* note 18, at 202–03.

75. *Close of the Trials*, *supra* note 73; *The Sentence of the Harper's Ferry Insurgents*, DAWSON'S DAILY TIMES, Nov. 19, 1859, at 2; accord 6 AMERICAN STATE TRIALS, *supra* note 20, at 858–59 ("The two negroes said nothing.").

he was not reluctant to speak his mind.⁷⁶ It would have been uncharacteristic for Copeland to have remained mute if he had been offered an opportunity to address the court. It is therefore entirely possible, or even likely, that Judge Parker, himself a slaveowner, did not allow the black prisoners any meaningful occasion to speak at sentencing, although he may have momentarily glanced in their direction following the allocutions of Coppoc and Cook.

It is easy to understand how a perfunctory nod to Green and Copeland could have been reported as though the court had given them an actual opportunity to speak. Most journalists, especially those from the South, showed markedly little interest in Green and Copeland throughout the course of the Harpers Ferry trials. Most of the coverage focused on Brown, of course, but there were also many stories about the other white men. In contrast, almost none of the local or national newspapers devoted significant space to Green and Copeland—the only exception having been stories about Copeland's confession, which implicated white men—typically limiting their reports to one or two perfunctory paragraphs. And no reporter appears to have been particularly interested in Shields Green, other than to disparage him as appearing “so woe-begone that there was small room for his looking worse.”⁷⁷

Judge Parker was “evidently laboring under much feeling” as he proceeded to pronounce sentence in regretful language that was obviously directed only to Cook and Coppoc.⁷⁸ “In spite of your offences against our laws,” Parker said, “I cannot but feel deeply for you, and sincerely, most sincerely, do I sympathize with those friends and relations, whose lives are bound up in yours”⁷⁹ But all sympathies aside, Parker had an obligation to fulfill. “To conclude this sad duty,” he continued, “I now announce that the sentence of law is, that you, and each one of you . . . be hanged by the neck until you be dead”⁸⁰ The court set the execution date for Friday, December 16. The sheriff was ordered to hang the two black men “between the hours of eight in the forenoon and twelve, noon,” with the two white men to follow “in the afternoon of [the] same day.”⁸¹

76. See QUARLES, *supra* note 40, at 88, 134–35.

77. *The Harpers Ferry Outbreak*, N.Y. HERALD, Nov. 10, 1859, at 1.

78. *Sentence of Prisoners*, *supra* note 73.

79. *Id.*

80. *Id.*

81. *Close of the Trials—Sentence of Cook, Coppic [sic], Copeland and Green*, BALT. AM. & COM. ADVERTISER, Nov. 12, 1859, at 1; Death Sentence for John Copeland, Nov. 10, 1859, available at <http://www.wvculture.org/history/johnbrown/03-03-01.html>; Death Sentence for John E. Cook, Nov. 10, 1859, available at <http://www.wvculture.org/history/>

Even in death, Virginia demanded strict segregation of the races. In what may have been the most unintentionally trenchant report of the day, the *Virginia Free Press* observed that “the negroes, Green and Copeland, made no response” when the court ruled that they were not fit to die alongside their white comrades.⁸²

VII. CAMPAIGN FOR PARDONS

Barely three weeks had passed since the collapse of Brown’s raid, and the Virginia courts had sped through five trials and delivered five death sentences. But that was not the end of the legal maneuvering. Intensive efforts were immediately undertaken to secure pardons for the three white defendants. Brown’s friends and sympathizers besieged Governor Henry Wise with letters urging him to commute the death sentence, arguing either that Brown was insane, or alternatively that his martyrdom would only encourage further abolitionist violence. The efforts of Brown’s supporters were all for naught. The Governor did not have the power to pardon Brown without a favorable vote from the legislature,⁸³ and Wise—who hoped to obtain the Democratic presidential nomination in 1860—had no desire to expose himself to the criticism that might attend a legislative debate. Wise confided in the prosecutor that he did not intend to pardon Brown, and he leaked word to the *Richmond Enquirer*—edited by his son—that Brown’s fate “may be considered as sealed.”⁸⁴

There was never any real chance that Brown would be spared the gallows, but the pardon efforts on behalf of Cook and Coppoc were more promising. Cook was from an influential family—with both wealth and political connections—and his attorneys secured a private audience with Governor Wise where they presented their case for executive clemency. Because Cook had been acquitted of treason, his fate was entirely in Wise’s hands. The lawyers argued that Cook was a naïve youth (although in fact, he was already thirty years old) who had been misled by the villainous John Brown. Wise, however, was unmoved, and he let it be known that no “unbiased mind” could possibly “desire the pardon of this man.”⁸⁵

johnbrown/06-11-01.html; Death Sentence for Shields Green, Nov. 10, 1859, available at <http://www.wvculture.org/history/johnbrown/05-04-01.html>. There was also a death warrant for Edwin Coppoc, but it has not survived in the records of the court.

82. *Sentence of Prisoners*, *supra* note 73.

83. See CODE OF VIRGINIA, ch. 17, § 18 (1860).

84. MCGINTY, *supra* note 3, at 241–48.

85. *The Pardon of Cook*, RICHMOND ENQUIRER, Nov. 25, 1859, at 1.

Coppoc's case was more complicated. Having been convicted of treason against Virginia, he could not be pardoned without the prior consent of the state legislature. Coppoc did, however, have the support of the Quaker communities in Ohio, Iowa, and elsewhere, which generated considerable sympathy in Virginia. At one point, a committee of the Virginia Senate actually recommended a pardon for Coppoc, but the full legislature rejected the proposal when it was discovered that he had written an inflammatory letter to John Brown's wife in which he referred to Virginians as "the enemy."⁸⁶

Shields Green and John Copeland had neither formidable friends nor influential communities to petition for their lives. Nonetheless, many free blacks of the North, powerless and disenfranchised as they were, did their best to aid the black prisoners. Among the entreaties to Governor Wise was a deferential letter from a "committee of colored persons" in Philadelphia, who respectfully sought reprieves for Copeland and Green. "We plead," they wrote, for "the intervention of your executive influence in behalf of these poor, miserably misguided men."⁸⁷ Recognizing the delicacy of their position, the Philadelphians admitted the guilt of Green and Copeland, while suggesting that Wise take account of their mitigating circumstances:

Whatever may have been the impulses that moved them to this desperate act of self destruction, it must be remembered that they are one in identity of interest, complexion, and of *national proscription* with the men whose liberty they sought to secure.

...

[A]ll these things may have operated upon their minds as an incentive, driving them into the ranks of Capt. Brown, [so] do they not present strong arguments in the extenuation of their guilt, and may they not justly claim the interposition of Executive clemency in their behalf?⁸⁸

There was no chance, of course, that Governor Wise might accept such an argument. An "identity of interest" with Virginia's slaves could never be considered a valid reason for joining Brown's

86. See VILLARD, *supra* note 4, at 570; C. B. Galbreath, *Edwin Coppoc*, 30 OHIO ARCHEOLOGICAL & HIST. Q. 397, 428 (1921), available at <http://publications.ohiohistory.org/ohstemplate.cfm?action=toc&vol=30>.

87. *Request to Gov. Wise for the Bodies of the Colored Men*, N.Y. DAILY TRIB., Dec. 17, 1859, at 5.

88. *Id.*

abolitionist insurrection. The Philadelphians therefore added a far more modest request to their petition:

We, therefore, humbly ask that you will grant to us, in the event of their being hung, the bodies of Shields Green and John Copeland, to be transmitted to us for a respectable interment.⁸⁹

In Virginia, black men could not even be assured the decency of proper burial without the intercession of the governor. Many decades later, two of the trial's principals would tell revisionist stories about the respect afforded to the black defendants. Both Judge Richard Parker and lead prosecutor Andrew Hunter wrote in memoirs that they had been in favor of commuting Copeland's death sentence because they considered him brave and respectable. Unfortunately, both men claimed, a reprieve or pardon had been precluded by Copeland's treason conviction.⁹⁰ In truth, of course, the treason charge against Copeland had been dismissed following George Sennott's inspired invocation of the *Dred Scott* decision. Thus, a clemency recommendation from either Hunter or Parker might have been favorably received by Governor Wise. Long after the Civil War, the trial judge and prosecutor evidently came to wish that they had spoken up on Copeland's behalf, but their belated protestations of sympathy were contrived. At the time when it mattered, no Virginian advocated mercy for Green or Copeland. Governor Wise, of course, was unmoved by the petition from Philadelphia—to which he never bothered to reply—and the death sentences were allowed to stand.⁹¹

VIII. EXECUTION

John Brown was executed on Thursday, December 2, 1859. On the way to the gallows, he was allowed to visit briefly with his fellow prisoners. His first stop was in the cell of Green and Copeland, where he found the two black men manacled together. Ever the military commander, Brown embraced his comrades warmly, if sternly. He

89. *Id.*

90. See *The Trial of John Brown: Its Secret History, Revealed for the First Time by the Judge*, ST. LOUIS GLOBE-DEMOCRAT, April 8, 1886; Andrew Hunter, *John Brown's Raid*, 1 PUBL'NS S. HIST. ASS'N 165, 188 (1897).

91. See *Hunter's Testimony*, *supra* note 10, at 188. Wise was reported to have disdained Copeland as "a great coward" who was "craven and trembling." See *U.S. Marshal Johnson and his Negro Confession*, *supra* note 35; AM. ANTI-SLAVERY SOC'Y, *supra* note 40, at 137. There is no record of any contrary observation from Judge Parker. A month after Copeland's execution, Andrew Hunter allowed that he had been "a mulatto, a smart, intelligent fellow," but Hunter said nothing about having favored clemency. *Hunter's Testimony*, *supra* note 10, at 66.

instructed “the two faithful colored men [to] [s]tand up like men, and not betray their friends.”⁹² He then gave each man a quarter, explaining that “he had no more use for money.”⁹³ It was an odd gesture, given that an execution date two weeks hence had already been set for Green and Copeland, but what else could Brown do to show his affection for the condemned men? Perhaps the gift of money expressed his hope that their own death sentences might somehow be reprieved.

Brown’s futile hopes aside, Green and Copeland’s hanging day arrived with no hint of mercy from Governor Wise. Shortly after dawn on Friday, December 16, the streets of Charles Town began to fill with soldiers who were assigned to escort the prisoners to the gallows. The first executions would not occur until mid-morning; preparations would take hours to complete. The scaffold had to be built; the condemned men had to be readied; and the town had to be scoured for possible spies and infiltrators.⁹⁴ Gawkers from surrounding counties, and curious visitors from as far away as Baltimore, began to arrive at first light, only to be intercepted by the edgy soldiers who patrolled the outskirts of town. Strangers who could not “get some citizen to vouch for them were confined until after the execution.”⁹⁵ Most of the morbid entertainment seekers were allowed into town, but bad weather put a damper on the expected carnival atmosphere. “The heavens were overcast, the air raw and bitter,” and an “Equinoctial Storm” seemed about to descend upon the valley.⁹⁶

We do not know how Shields Green spent his last hours, but John Copeland composed a moving letter to his family in Oberlin. “Dear parents, brothers and sisters,” he wrote, “it is true that I am now in a few hours to start on a journey from which no traveler returns.”⁹⁷ He offered a prayer “that you, one and all, may prepare your souls to meet your God, that so, in the end, though we meet no

92. JOHN H. ZITTLE, *A CORRECT HISTORY OF THE JOHN BROWN INVASION AT HARPER’S FERRY, WEST VA., OCT. 17, 1859*, at 136 (1905).

93. *Id.*

94. *The Charlestown Executions*, N.Y. DAILY TRIB., Dec. 17, 1859, at 5.

95. *The Morning of the Execution—Arrest of Strangers*, CLEVELAND MORNING LEADER, Dec. 19, 1859, at 1.

96. *The Charlestown Executions*, *supra* note 93; Letter from George Mauzy to Eugenia Burton (Dec. 18, 1859) (on file with the West Virginia Archive, Boyd Stutler Collection), available at <http://www.wvculture.org/history/wvmemory/jbresults.aspx?Geography=&Topic=&Date=&People=&Words=george%20mauzy&Op=AND&NumRec=50>.

97. Letter from John Copeland, *supra* note 1.

more on earth, we shall meet in Heaven, where we shall not be parted by the demands of the cruel and unjust monster Slavery.”⁹⁸

A deputation of Charles Town clergy came to the jail, hoping to inspire expressions of remorse. They went first to the cell of John Copeland and Shields Green, who were due to be hanged that morning (with their white comrades, John Cook and Edwin Coppoc, to follow in the afternoon). Most of the northern press had little interest in the black prisoners, preferring to concentrate on the more notorious and newsworthy John Cook. Perhaps due to familiarity with the clergy, the local press was more expansive. The *Shepherdstown Register* reported that Green expressed a strong desire to “pray and prepare for another world.”⁹⁹

As befit an Oberlin abolitionist, John Copeland was far more outspoken; “If I am dying for freedom,” he told the *Register*, “I could not die for a better cause—I *had rather die than be a slave!*”¹⁰⁰

General William Taliaferro, the commander of the Virginia militia, arrived at the jail shortly after 10:30 that morning, leading a contingent of about twenty-five troops. The armed men formed a hollow square as the jailor and county sheriff led Green and Copeland out of their cells and down the jailhouse steps. An open wagon pulled into the square, carrying two rough poplar caskets. With their arms tied behind their backs, Green and Copeland were helped onto the wagon and seated on their coffins. The two prisoners appeared frightened and downcast, and “wore none of that calm and cheerful spirit evinced by Brown under similar circumstances.”¹⁰¹ Soon the grim parade was underway, with riflemen flanking the wagon as it passed through the streets of Charles Town. It took only ten minutes to arrive at the hanging ground, where the condemned men were escorted up the scaffold steps. Copeland was calm and silent, but Green appeared to shiver while praying out loud.

After yet another minister delivered an obligatory prayer, Copeland attempted to step forward to speak to the crowd. It was common in the nineteenth century for condemned men to be allowed a final address, so Copeland reasonably expected to make one last denunciation of slavery. But that routine privilege could not be extended to a black man in Virginia. The hangman literally choked off Copeland’s speech, abruptly pulling a hood down over his head

98. *Id.*

99. *Cook’s Last Letter to His Wife*, SHEPHERDSTOWN REG., Dec. 24, 1859, at 1.

100. *Id.* (emphasis added).

101. *The Charlestown Executions*, *supra* note 93.

and tightening the rope around his neck. Copeland did not struggle, but instead appeared to endure the ultimate indignity with "firm and unwavering fortitude."¹⁰²

The trap was drawn at a few minutes after eleven o'clock, and the two men were "launched into eternity."¹⁰³ Green appeared to die instantly, his neck having been broken by the fall, but Copeland was slowly strangled and he "writhed in violent contortions for several minutes."¹⁰⁴

Green and Copeland were left hanging for half an hour. The corpses were then cut down so that they could be pronounced dead by a physician. Ignoring the petition of the Philadelphians, Governor Wise had refused to make any plans for the respectable interment of the bodies, which were instead hastily buried near the gallows. Even those graves were shallow, because Green and Copeland were not expected to remain there long. A delegation of students from the Winchester Medical College had attended the execution, and it was understood that they already had plans for the black cadavers.¹⁰⁵

IX. RECOVERING THE BODIES

After John Cook and Edwin Coppoc were executed later that day, their families had no difficulty securing their remains. Coppoc was put into a walnut casket, supplied by the local undertaker, to be sent to his mother in Iowa. Cook's family had provided an even more elegant coffin, replete with brass fittings, with instructions that it be shipped to his wealthy sister and brother-in-law in Brooklyn. Brown's corpse, too, had been shipped north at the request of his wife. Governor Wise assured Mary Brown that the body would be "protected from all mutilation," and he instructed that it be delivered to her promptly in "a plain, decent coffin."¹⁰⁶

Shields Green had no known relatives to claim his body, but John Copeland's father made great efforts to obtain a decent burial for his son. In the weeks before the execution, the elder Copeland repeatedly wrote to Governor Wise seeking permission to retrieve his son's body. Wise finally replied, only four days before the execution date. The Copelands could send a messenger to claim the corpse, but

102. AM. ANTI-SLAVERY SOC'Y, *supra* note 40, at 135.

103. *Id.*

104. *The Charlestown Executions*, *supra* note 93.

105. See James Monroe, *A Journey to Virginia in December, 1859*, in OBERLIN THURSDAY LECTURES, ADDRESSES, AND ESSAYS 158, 170-71 (Oberlin, Ohio, Pearce, Randolph & Co. 1897); *The Charlestown Executions*, *supra* note 93.

106. HORWITZ, *supra* note 3, at 243.

it had to be a white person. "You can't come to this State yourself," wrote the Governor.¹⁰⁷ With little time to spare, the Copelands, acting through a white friend, attempted to arrange for the body to be shipped to the custody of A.N. Beecher, the mayor of Oberlin. The appeal eventually found its way to General Taliaferro, who oversaw the execution. Taliaferro simply ignored the request. With no one present to take custody of the corpses, he ordered them to be buried immediately on the hanging ground.¹⁰⁸

With the tacit permission of the Virginia authorities, Green and Copeland were allowed to "remain in the ground but a few moments, before they were taken up and conveyed to Winchester for dissection."¹⁰⁹ The dean of the medical school would later ask Wise for permission to place the skeletons on display in the college's anatomy museum, which was apparently necessary because legally available skeletons were scarce and none of the hospital's indigent patients were reliably close to death. Wise gave his assent, inasmuch as the bodies had not been "demanded by their proper relatives."¹¹⁰

But John Copeland's "proper relatives" had never given up. On the day after the execution, Mr. and Mrs. Copeland sought the assistance of James Monroe, an Oberlin professor and a member of the Ohio state senate. News had by then reached Ohio that the bodies of the black prisoners had been turned over to the medical school for dissection, and the Copelands implored Monroe to "go promptly to Winchester [to] endeavor to recover the body of their son."¹¹¹ Although he was firmly opposed to slavery, the professor was at first reluctant to undertake such an expensive and potentially dangerous mission. He explained to the Copelands that it was probably too late and that hostility in Virginia was likely to make the task impossible. Mrs. Copeland, however, "exhibited such intense suffering" that Monroe relented.¹¹²

Preparation for the journey was not simple. Monroe first procured a letter from attorney Hiram Griswold, who had represented Brown in the Charles Town trial, introducing him to Judge Richard Parker who, conveniently, happened to live in Winchester. He then obtained the telegram that Governor Wise had

107. *Id.* at 265.

108. QUARLES, *supra* note 40, at 140.

109. *Consummation of the Harper's Ferry Tragedy*, CLEVELAND MORNING LEADER, Dec. 19, 1859, at 1.

110. QUARLES, *supra* note 40, at 141.

111. Monroe, *supra* note 104, at 160.

112. *Id.* at 158, 161.

sent the Copelands, allowing them to send a white messenger to retrieve their son's body. Mr. Copeland then executed an affidavit, appointing Monroe as his agent for the purpose of "receiving the body."¹¹³ All that was missing was money. The Copelands had none, and Monroe was a self-described "impecunious" academic. Fortunately, members of Oberlin's abolitionist community were able to raise \$100—largely through door-to-door solicitations—which was sufficient to cover Monroe's expenses.¹¹⁴

Monroe departed Oberlin by rail on Wednesday, December 19, finally reaching Winchester on late Friday evening. Although more than two months had passed since Brown's raid, northerners were still treated with suspicion in Virginia, and Monroe was interrogated by both railroad officials and fellow passengers. Still, he arrived in Winchester without incident (other than a lengthy delay due to snowfall in the Alleghenies), and he headed directly to the Taylor House for lodging.¹¹⁵

At the hotel, Monroe was informed that he had to provide his name and address in the registration book, which was evidently open for inspection by a group of "rough and rather *spirituous*"¹¹⁶ looking young men who eyed the stranger in the lobby with barely concealed hostility. It came as no surprise that conspicuous northerners risked violence in Virginia. Monroe knew, for example, that Boston attorney George Hoyt, on a mission to retrieve John Brown's belongings, had recently been forced out of Charles Town by threatened mob action.¹¹⁷

Another ominous story from Virginia struck even closer to home. Only a few weeks earlier, Ohio Congressman Harrison Blake—who represented the Oberlin district—had been intimidated into abandoning his own attempt to visit the prisoners awaiting execution in the Charles Town jail. As Blake explained in a letter to Monroe, he had encountered constant harassment as soon as his train

113. *Id.* at 162.

114. *Id.*

115. *Id.* at 165–66

116. *Id.* at 166.

117. The "spirituousness" of the youths referred to their insobriety as well as their rowdiness. See BENJAMIN RUSH, AN ENQUIRY INTO THE EFFECTS OF SPIRITUOUS LIQUORS UPON THE HUMAN BODY, AND THEIR INFLUENCE UPON THE HAPPINESS OF SOCIETY 2, 4 (Boston, Thomas & Andrews 3d ed. 1791); Geo. H. Hoyt, *The Expulsion of Mr. Hoyt from Charlestown*, THE LIBERATOR, Nov. 25, 1859, available at www.wvculture.org/history/jbexhibit/tribunetrial.html (recounting Hoyt's ill treatment).

crossed the state line into "old Virginia."¹¹⁸ The railroad tracks were lined with militia troops, and at every stop, "passengers had to undergo the scrutiny of an officer who passed through the cars to see if he could find, as they said, 'a damned abolitionist.'"¹¹⁹ In Cumberland, Blake saw two "peaceable" Ohio tobacco farmers arrested when they were overheard saying "something the Slave power did not like."¹²⁰ Blake himself was circumspect (and tight-lipped) enough to successfully pass through the gantlet until the train reached Martinsburg where he fortunately ran into Virginia Congressman Alexander Boteler, who represented the Harpers Ferry district. Boteler graciously offered to protect his fellow congressman for the rest of the journey, and they reached Harpers Ferry without further incident.¹²¹

At that point, however, it was necessary to change to the Winchester Railroad line for the onward trip to Charles Town. Boteler and Blake took their seats on the new train, but it was soon "whispered around" that a congressman "from the Oberlin district" was on board.¹²² Angry passengers confronted Boetler and warned him that he would have to "answer for the consequences" if he and Blake insisted on proceeding to Charles Town.¹²³ Recognizing the seriousness of the threats, Boteler advised Blake that he could no longer guarantee his safe passage and urged him to abandon his trip. The Ohioan was resolute but he was not foolhardy, and he quickly saw the wisdom in his colleague's advice. The two congressmen prudently withdrew from the train, and Boteler remained with Blake until he could catch an outbound train to Washington, D.C. Blake wrote to Monroe from the safety of the capital, inveighing against the "sin and shame of slavery" while warning his friend that the outraged Virginians had been unwilling to tolerate even "the presence of one unarmed Republican."¹²⁴

118. Letter from H.G. Blake to James Monroe (Dec. 1, 1859), in *LETTERS AND PAPERS OF JAMES MONROE (1841-1898)* (on file with the Oberlin College Library).

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. See Letter from H.G. Blake, *supra* note 115. Concerning Congressman Blake's aborted journey, see *id.*; Mary Land, *John Brown's Ohio Environment*, in 57 *OHIO HIST.* 24, 43 (1948); Mark Stegmaier, *An Ohio Republican Stirs up the House: The Blake Resolution of 1860 and the Politics of the Sectional Crisis in Congress*, 116 *OHIO HIST.* 62, 65 (2009). Among his other accomplishments, Alexander Boteler initiated the interrogation of John Brown in the aftermath of the Harpers Ferry raid, later enlisted in the Confederate Army, and then served in the Confederate Congress until the end of the

Having been alerted to Blake's unsettling experience, Monroe wisely hesitated to see "Oberlin written upon the page of the register."¹²⁵ As he later explained to his students, with characteristic understatement, Monroe feared that mere mention of his famously abolitionist hometown "might produce a degree of excitement unfavorable to my object in visiting the place."¹²⁶ The cautious professor therefore signed in as "James Monroe, Russia," substituting the name of Oberlin's surrounding township for the village itself. Sure enough, the inebriated toughs immediately scrutinized the registration book for any sign of abolitionism, but they decided to leave the "Russian" visitor in peace.¹²⁷

Monroe's first stop the following day was at the home of Judge Richard Parker, where he presented his letter of introduction. Parker received Monroe with great courtesy and expressed sincere sympathy for Copeland's "afflicted father and mother."¹²⁸ The judge offered to arrange a meeting between Monroe and the medical school faculty, to be held that day following afternoon tea.¹²⁹

Professor Monroe was no stranger to faculty meetings, and he was evidently quite persuasive in such familiar environs. The Winchester medical faculty "unanimously agreed that the body of Copeland should be . . . returned to the home of his parents," and the "college undertaker" volunteered to work through the night in order to prepare the corpse, now six days post mortem, so that the "sorrowful freight should be decently prepared for delivery at the express office" the next morning.¹³⁰ The only discouraging note was sounded by one of the medical school professors, who cautioned Monroe not to mention their meeting when he returned to his hotel. Already wary of disclosing his mission, Monroe assured the physician that he would keep mum, and he returned to the Taylor House quite satisfied that his mission would soon be successfully completed.¹³¹

Monroe was therefore stunned when a committee of medical students arrived at the hotel early the next morning. Monroe was accustomed to deference from his own students, many of whom were

Civil War. See Boteler, *Alexander Robinson (1815-1892)*, BIOGRAPHICAL DIRECTORY OF THE U.S. CONG., <http://bioguide.congress.gov/scripts/biodisplay.pl?index=B000653> (last visited May 9, 2013);

Monroe, *supra* note 104, at 166-67.

126. Monroe, *supra* note 104, at 166-67.

127. See *id.* at 167.

128. *Id.*

129. *Id.* at 167-68.

130. *Id.* at 168.

131. See *id.* at 169.

seminarians, but this group was highly agitated and not very respectful. Their leader was a tall, red-haired young man from Georgia who refused Monroe's invitation to sit down. Instead, he insisted on standing while delivering an ultimatum in a pronounced southern drawl:

Sah, this nigger that you are trying to get don't belong to the Faculty. He isn't theirs to give away. They had no right to promise him to you. He belongs to us students, sah. . . . [F]or the Faculty to attempt to take him from us, is mo' 'an we can b'ar.¹³²

If the cadaver belonged to anyone—other than Copeland's parents—it could only have been the Commonwealth of Virginia, and Monroe was carrying unquestionable legal authorization from the governor to take the corpse to Ohio. The medical students, however, had no interest in legal niceties. Although aware that Monroe carried Governor Wise's authorization "to come into this State and get this nigger," they denied the governor's "authority over the affairs of our college [and repudiated] any interference on his part."¹³³ In case the implicit threat was not sufficiently clear, the students' leader warned Monroe,

You must see, sah, and the Faculty must see, that if you persist in trying to carry out the arrangement you have made, it will open the do' for all sorts of trouble. . . . Now, sah, that the facts are befo' you, we trust that we can go away with your assurance that you will abandon the enterprise on which you came to our town. Such an assurance is necessary to give quiet to our people.¹³⁴

To his great credit, Monroe did not give up. He sought out the assistance of a medical school professor, in the hope that he might still be able to claim Copeland's body. Although ostensibly willing to help, the professor informed Monroe that his quest had become "impracticable."¹³⁵ The students had already broken into the college dissecting room and removed the cadaver, hiding it "at some place in the country."¹³⁶ Any further effort to recover the body would only lead to violence.

132. *Id.* at 170–71.

133. *Id.* at 171.

134. *Id.* at 171.

135. *Id.*

136. *Id.* at 172.

Shields Green's body, however, had been left behind, the students having realized that its custody and fate would not be contested. A member of the medical school faculty made a point of exhibiting the cadaver to Monroe, perhaps as proof that the faculty retained some slight control over their own institution. Monroe, however, saw only tragedy in Green's condition. He was especially moved by the dead raider's "unclosed, wistful eyes staring wildly upward, as if seeking, in a better world, for some solution of the dark problems of horror and oppression so hard to be explained in this."¹³⁷

Monroe prepared to depart Virginia that day, settling his hotel bill and also paying a considerable sum to the college mortician whose work had been interrupted by the unruly students.¹³⁸ Due to the infrequent rail service in Winchester, Monroe had to travel by carriage to Martinsburg, where he could catch a train to Ohio. Just before he left, however, he was warned to stay out of sight in Martinsburg. There was going to be a militia review that day, including many of the troops who had attended Brown's execution. The town would therefore be filled with "many violent and half-drunken men . . . whom it would be well for [him] to avoid."¹³⁹

X. AFTERMATH

Shields Green and John Copeland were dead and unburied, but they were not forgotten. Upon Monroe's return to Oberlin, a mass meeting was held—on Christmas Day, as it turned out—to commemorate the lives of Green and Copeland. Monroe addressed the rally, explaining to the crowd of over 3,000 that his mission had been both a failure and a success. He had, of course, failed in his attempt to repatriate Copeland's body, but the community of Oberlin had succeeded in demonstrating a sense of duty to all of its citizens, regardless of color. Mr. and Mrs. Copeland also expressed gratitude to their neighbors, taking comfort in the knowledge that "every reasonable effort had been made in their own behalf, and in behalf of the memory of their son."¹⁴⁰ In a moving eulogy, Oberlin Professor Henry Peck—one of the indicted Oberlin rescuers—praised John Copeland as a "firm, heroic and Christ-like champion" of his race, comparable to "the immortal John Brown."¹⁴¹

137. *Id.* at 175.

138. *Id.*

139. *Id.* at 174.

140. *Id.* at 184.

141. AM. ANTI-SLAVERY SOC'Y, *supra* note 40, at 137.

The Winchester medical college was burned to the ground by the Union Army in May 1862. With it were destroyed whatever remained of the corpses of Shields Green and John Copeland. The school was never rebuilt.¹⁴²

In 1865, the town of Oberlin erected a memorial to Shields Green, John Copeland, and Lewis Sheridan Leary (another black Oberliner who joined John Brown and died in the fighting at Harpers Ferry). The inscription on the cenotaph reads, "These colored citizens of Oberlin, the heroic associates of the immortal John Brown, gave their lives for the slave. *Et nunc servitudo etiam mortua est, laus deo.*"¹⁴³

In fact, Green had never lived in Oberlin, but the sentiment was sincere and the honor well deserved.¹⁴⁴ The Latin phrase means, "And now slavery is indeed dead, thanks be to God."

142. Monroe, *supra* note 104, at 177–78.

143. To view the cenotaph online, visit *Harper's Ferry Memorial*, ELEC. OBERLIN GRP., <http://www.oberlin.edu/external/EOG/CivilWarTour/Stop4.html> (last visited May 9, 2013).

144. Monroe erroneously believed that he had known Green in Oberlin. The mistake was discovered, but it was decided to leave Green's name on the cenotaph as a gesture of respect for his sacrifice, and as a representative of "every colored person in the land" who had resisted slavery. "[W]e have not thought it right to withhold from such, *nor indeed from any*, the privilege of sharing the honor with us." *Copeland's Confession*, *supra* note 40 (emphasis added). There were two other black men among Brown's raiders: Osborne Anderson, who escaped to safety, and Dangerfield Newby, who was the first to die in the fighting. Anderson later published a memoir that provides one of the fullest accounts of the Harpers Ferry raid. See OSBORNE P. ANDERSON, A VOICE FROM HARPER'S FERRY: A NARRATIVE OF EVENTS AT HARPER'S FERRY WITH INCIDENTS PRIOR AND SUBSEQUENT TO ITS CAPTURE BY CAPTAIN BROWN AND HIS MEN (Boston 1861).

