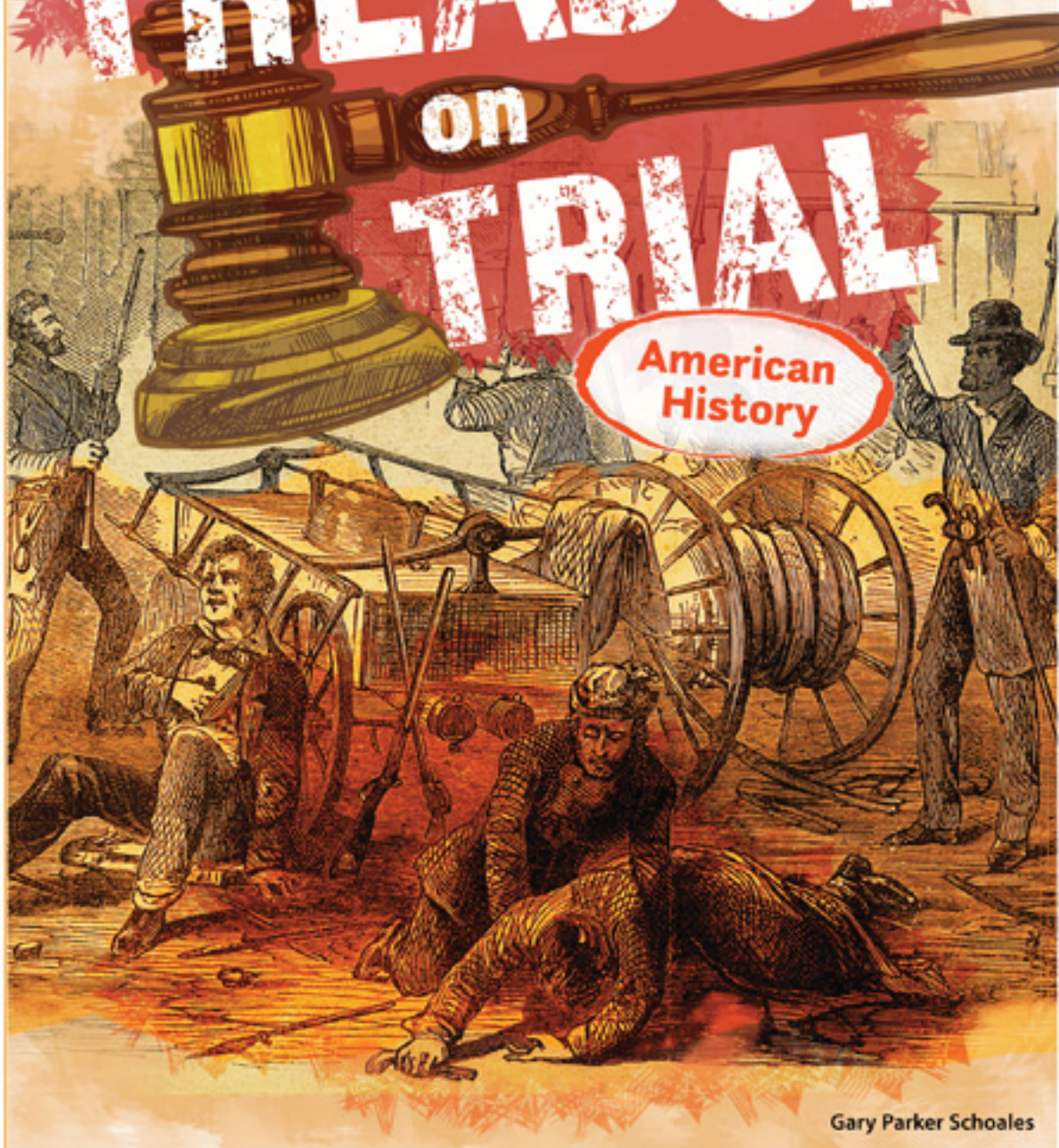


# TREASON on TRIAL

**American  
History**



Gary Parker Schoales



Recreating Six Compelling Cases from American History

# Treason on Trial

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Recreating Six Compelling Cases from American History

By Gary Parker Schoales





**Gary Parker Schoales** (BA The College of William and Mary and MAT Boston College) taught American and European history for 40 years in public and private schools in the United States and Europe. He is the author of *Justice and Dissent: Ready-to-Use Materials for Recreating Five Great Trials in American History*, *Great American Cities: Boston in the Colonial Period*, *Disillusioned America: The 1970s* and *America's Turn to the Right: The 1980s, Rulers Rebels Rogues, and Despots, Diplomats, Dreamers*. He has made numerous presentations for the European Council of International Schools and the National Council for the Social Studies on topics related to active-learning strategies.

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# Standards

	Social Studies Standards 9–12 Benchmark 1-C World	Common Core State Standards	National Standard U.S. History
Chapter 1: The Trial of Aaron Burr		CCSS.ELA-Literacy.RH.6-8.4 CCSS.ELA-Literacy.RH.6-8.7 CCSS.ELA-Literacy.RH.6-8.8 CCSS.ELA-Literacy.RH.6-8.9 CCSS.ELA-Literacy.RH.6-8.10 Era 6 Standard 1	NSS-USH 5-12.3 Era 3: Revolution and the New Nation
Chapter 2: The Trial of John Brown		CCSS.ELA-Literacy.RH.6-8.4 CCSS.ELA-Literacy.RH.6-8.7 CCSS.ELA-Literacy.RH.6-8.8 CCSS.ELA-Literacy.RH.6-8.9 CCSS.ELA-Literacy.RH.6-8.10 Era 7 Standard 4	NSS-USH 12.4 Era 4: Expansion and Reform
Chapter 3: The Trial of Harrison H. Dodd		CCSS.ELA-Literacy.RH.6-8.4 CCSS.ELA-Literacy.RH.6-8.7 CCSS.ELA-Literacy.RH.6-8.8 CCSS.ELA-Literacy.RH.6-8.9 CCSS.ELA-Literacy.RH.6-8.10 Era 7 Standard 4	NSS-USH 12.5 Era 5: Civil War and Reconstruction
Chapter 4: The Trial of Dr. Samuel Mudd		CCSS.ELA-Literacy.RH.6-8.4 CCSS.ELA-Literacy.RH.6-8.7 CCSS.ELA-Literacy.RH.6-8.8 CCSS.ELA-Literacy.RH.6-8.9 CCSS.ELA-Literacy.RH.6-8.10 Era 7 Standard 4	NSS-USH 12.5 Era 5: Civil War and Reconstruction
Chapter 5: The Trial of Bill Blizzard	Analyze the pattern of historical change as evidenced by the Industrial Revolution, to include:  Conditions that promoted industrialization  Evolution of work/business	CCSS.ELA-Literacy.RH.6-8.4 CCSS.ELA-Literacy.RH.6-8.7 CCSS.ELA-Literacy.RH.6-8.8 CCSS.ELA-Literacy.RH.6-8.9 CCSS.ELA-Literacy.RH.6-8.10 Era 7 Standard 1	NSS-USH 12.6 Era 6: The Development of Industrial U.S.
Chapter 6: The Trial of Douglas Chandler	Analyze and evaluate international developments following WWII, the Cold War and Post-Cold War to include:  War crime trials	CCSS.ELA-Literacy.RH.6-8.4 CCSS.ELA-Literacy.RH.6-8.7 CCSS.ELA-Literacy.RH.6-8.8 CCSS.ELA-Literacy.RH.6-8.9 CCSS.ELA-Literacy.RH.6-8.10 Era 8 Standards 3 and 4	NSS-USH 12.7 Era 7: Emergence of Modern Postwar U.S. America NSS-USH Era 9

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## ● Introduction ●

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This is a book about treason, one of the most significant but misunderstood crimes in America history. The founders considered it so important that it is the only crime specifically enumerated in the United States Constitution. Article III, Section 3 says that “treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture during the life of the person attainted.” A close examination of this clause reveals why there have been very few actual treason trials in American history and even fewer convictions. George Washington, James Madison, Alexander Hamilton and the rest of the delegates to the Constitutional Convention served in the Revolutionary War and remembered quite vividly that during that period they were all, theoretically, traitors. They also had a firm grasp of the concept of “constructive treason” that had defined that crime in Europe for centuries. It was not necessary that a person commit an overt act to be considered a traitor. The mere imagining, organizing, or conspiring a treasonous action was sufficient.

The book begins with a dubious plot to break off the Western territories of the newly formed United States and ends with an insanity plea by an American citizen who broadcasted Nazi propaganda during World War II. The first case, the trial of Aaron Burr, defined the problem for prosecutors and set the bar for all future litigation. There was substantial evidence offered by the prosecution during his trial in 1807 that Burr, along with his cohorts, were up to no good in the early years of the republic. Whether they were actually going to rebel against the United States and set up a separate nation, or merely head a plundering expedition into the West, is debatable. What is uncontested is that there was a conspiracy and Aaron Burr was undoubtedly the primary organizer and leader. But what is equally clear was that when the actual western venture was allegedly launched from Blennerhassett’s Island, located just below Marietta, Ohio, Burr was not present on the island—he was hundreds of miles away. Hence, no witnesses could be found to testify to the required “overt act” and thus he could not be convicted.

It will be nearly fifty years before there is another treason trial with such a powerful impact on American history, and it will take place in a Virginia courtroom. John Brown will be placed on trial for treason against the Commonwealth of Virginia. Brown’s actions at Harper’s Ferry, now Harpers Ferry in West Virginia, left little doubt in anyone’s mind regarding the question of levying war against the United States and the commission of an overt act. There were plenty of ready and willing witnesses to his attack on the federal

armory there and his efforts to liberate the enslaved people. His conviction and subsequent execution is universally acknowledged to be one of the pivotal events leading to the American Civil War.

The treason trial of Harrison H. Dodd in 1864, an Illinois “Copperhead” printer, demonstrated the depths of resentment in certain areas of the North to the policies of the Lincoln administration and the continuation of the Civil War. So-called Peace Democrats, such as Dodd, buttressed by thousands of members of secret societies, such as the Knights of the Golden Circle and the Sons of Liberty, were prepared to use even violence to bring an end to the war.

The 1865 assassination of President Lincoln by John Wilkes Booth launched a massive effort to uncover what must have been a much larger treasonous conspiracy. Seven individuals were eventually identified as possible traitors to be tried before a military commission. One of the accused, Dr. Samuel Mudd, remains the most controversial. After shooting Lincoln on April 15, Booth leaped from the president’s box in Ford’s theatre to the stage and broke his ankle. He and an accomplice fled Washington and in the early morning of April 17 they stopped at Dr. Mudd’s farmhouse, about 30 miles from the city. Dr. Mudd set his broken ankle and after a few hours of rest Booth and his companion continued their flight to escape the authorities. However, it will be revealed in the subsequent trial that this was not the first meeting between this country doctor and the assassin.

The trial of Bill Blizzard, the alleged leader of an armed coal miners’ march in 1922 that resulted in a pitched battle between the miners and those who supported the mine owners, will have echoes of the past. He will be tried for treason in the very same courthouse as John Brown, but this time it will be treason against the state of West Virginia. Finally, the treason trial of Douglas Chandler will take place in 1947 in the federal courthouse in Boston. Chandler will stand accused of making dozens of recordings and radio broadcasts between 1940 and 1945 on behalf of the Nazi government that were transmitted by short wave radio into American homes.

What do students learn and gain from these active learning lessons? Since they require personal involvement, students are forced to think on their feet, question their own responses to historical situations, and to consider new ways of thinking. Students who are intellectually, emotionally and physically engaged have greater retention.

Active learning lessons like these trials challenge students by allowing them to:

1. Practice general skills including research and writing
2. Practice cooperative learning
3. Develop problem-solving skills

4. Engage in synthesizing skills
5. Develop empathic skills

It is always important to set aside adequate class time, both for the actual activity and for discussion and debriefing. Note that for teachers with more limited time there is a scripted version provided for each trial. Nothing is more frustrating for students than to get wrapped up in an activity and not have enough time to complete it and talk about what happened during it. Without strong teacher leadership to help students extract learning from the activity it just becomes a token gesture at active learning—perhaps a fun event, but not educationally sound. Thus, the post-activity discussion and debriefing may be the only time they have to truly consolidate what they have experienced. Debriefing allows students to reflect on their participation in the activity and on how well they achieved the activities' objectives. It also allows time to reflect on how the questions and issues raised in the activity apply to contemporary situations. It also gives teachers time to reiterate what they hoped to achieve, and it provides helpful feedback to students, so they can participate successfully in future activities.

Also, there is the matter of what ultimately happened to these individuals. I would venture to guess, despite his ideological sentiment, that John Brown would have preferred missing a date with the hangman. I don't really think that Dr. Mudd and Douglas Chandler enjoyed their time in prison. William Dodd probably did not want to leave his business and flee to Canada, and I bet that Aaron Burr and Bill Blizzard did not really want to spend time in court battling a treason charge.

Arguably more important than the fate of these individuals, however, were the issues raised by their trials.

- When is it appropriate to use a military tribunal instead of a civilian court?
- What role does the media play in influencing the outcome of a controversial trial?
- Is it appropriate to maintain a strict Constitutional interpretation of treason?
- Is it ever appropriate to suspend habeas corpus?
- Should defendants accused of treason be tried individually?
- Is it appropriate to make promises to witnesses, in order to induce testimony?
- Should every alleged plot, however ludicrous, be considered treason?
- What is the meaning of free speech?

Finally, it should be noted that the six trial scripts are not taken verbatim from court transcripts, but rather represent a mix of direct quotes and recreations of



questions and answers based on the original court transcripts. The recreations were included to save time and space, and to make testimony more understandable to students. At the same time, teachers—and observant students—will notice language that is ungrammatical or a bit confusing to follow. Such language was included to capture the spirit of the original court transcripts—the cadence of how people spoke in the past, and to depict the confusion that often appears in court testimony from any era. In the end, the goal was to recreate—within the time and space constraints of a classroom—trial testimony that was true to the spirit of the six cases and the times in which they occurred.

### **General Tips for Effectively Running These Lessons**

1. Try to match roles to student personalities and academic strengths. For example, for student attorneys, it is particularly important that you select students who are well-organized and not afraid to speak in front of the class. Also, if you are doing the role play version of the trial it is a good idea to let the student attorneys read the scripted version, so they have a better idea of how to organize the case.
2. You can limit the length of the trials by omitting roles or by setting speaking time limits.
3. Students are not adept at being the authority figure in a classroom, so I highly recommend that the teacher assume the role of the primary judge or the head of the military commission in each of the trials.
4. Make signs or labels to put on the desks or tables indicating where the participants should sit.
5. Have witnesses write their historical name on the board before speaking.
6. When presenting, allow students to use note cards and/or permit them to consult their research materials.
7. If a student seems flustered, stressed or anxious when giving a speech or testimony, allow them to stop and begin again without any academic penalty.
8. Secretly prime a student to create an “incident” during the activity. For example, during the trial of Dr. Mudd you might have a student witness stand and shout “You helped the killer of our president—I hope you hang!” Students really enjoy this.
9. Make sure the trial fits within the overall goals for your course.
10. Note that many of the roles are those of very obscure characters so students probably will not be able to find any additional information on them, so have them concentrate on the general background of the times.

11. If class time is an issue, it is highly recommended that you use the scripted version of the trial. Remember that post-activity discussion and analysis is every bit as important as the activity itself. Plan class periods with plenty of time to spare for discussion and debriefing.
12. If you are using a jury in the role-play version make every effort to keep them unknowledgeable about the facts of the case.
13. Debrief yourself after the simulation trial and make notes about what went well and what may need to be changed the next time you do the activity.

## Research Suggestions

1. Research can be a formidable task for most students.
2. There are four major methods that researchers use to collect historical data: archival data (primary sources), secondary sources, running records, and oral recollections. Primary sources are the bread and butter for professional historians. However, the internet has clearly opened up a whole new world for historical research, making many primary sources available to students who do not have ready access to a well-stocked library.
3. Encourage your students to try and use both primary and secondary sources in developing their roles for the activities.
4. Some of the roles associated with some of the lessons may be quite challenging to research. In these cases, students should concentrate their research primarily on the overall strategy of either the defense or the prosecution in each case.
5. It is virtually impossible to prevent students from using Wikipedia and other forms of online encyclopedias as a starting point for their research. It is important that you stress the need, whenever possible, to verify information through multiple sources.
6. I have provided a list of books and, in some cases, online sources that should prove useful for students in preparing their research for participation in these trials.
7. I leave it to the individual teacher as to how you want your students to cite sources. I favor the simpler-the-better method: author, title, publisher, place of publication, copyright, and page number. Hyper-texting websites generally works well for verifying online information.

## Evaluation

There are a number of ways to evaluate student achievement. I would avoid putting the majority of the weight on their actual participation during the trials. It rewards gregarious students at the expense of the more reticent. Instead, I would suggest making it one of many factors that define your

assessment. How well did they research and prepare their role? How effective were they working with their group? How well did they participate in the discussions, debriefing and any Extension Activities? Have students write an analysis of the events and the outcome of the trial from the perspective of his or her role.

Overall, these trials are designed to inspire enjoyment in learning history so I would be very careful about over-emphasis on evaluation. The last thing you want is a group of students striving to get an "A" instead of working cooperatively to have an enjoyable and exciting activity.

Here are the aspects that you might decide to assess:

- **Listening Skills:** How attentive was the student during all aspects of the simulation?
- **Questioning Skills:** Did the student ask relevant questions?
- **Research and Preparation:** How well did the student research and prepare?
- **Participation:** How well did the student actually perform? Note that this may be assessed for the quieter students even by counting the coaching or assisting of other students who are actually doing the speaking.
- **Coordination:** How well did the student work with their assigned group?
- **Other:** Effective document analysis and/or completion of one of the extension activities.

Designing an evaluation matrix can be useful. Here is a sample:

Name \_\_\_\_\_ Simulation \_\_\_\_\_

	Exceptional	Very Good	Good	Needs Improvement
Listening				
Questioning				
Research				
Participation				
Other				

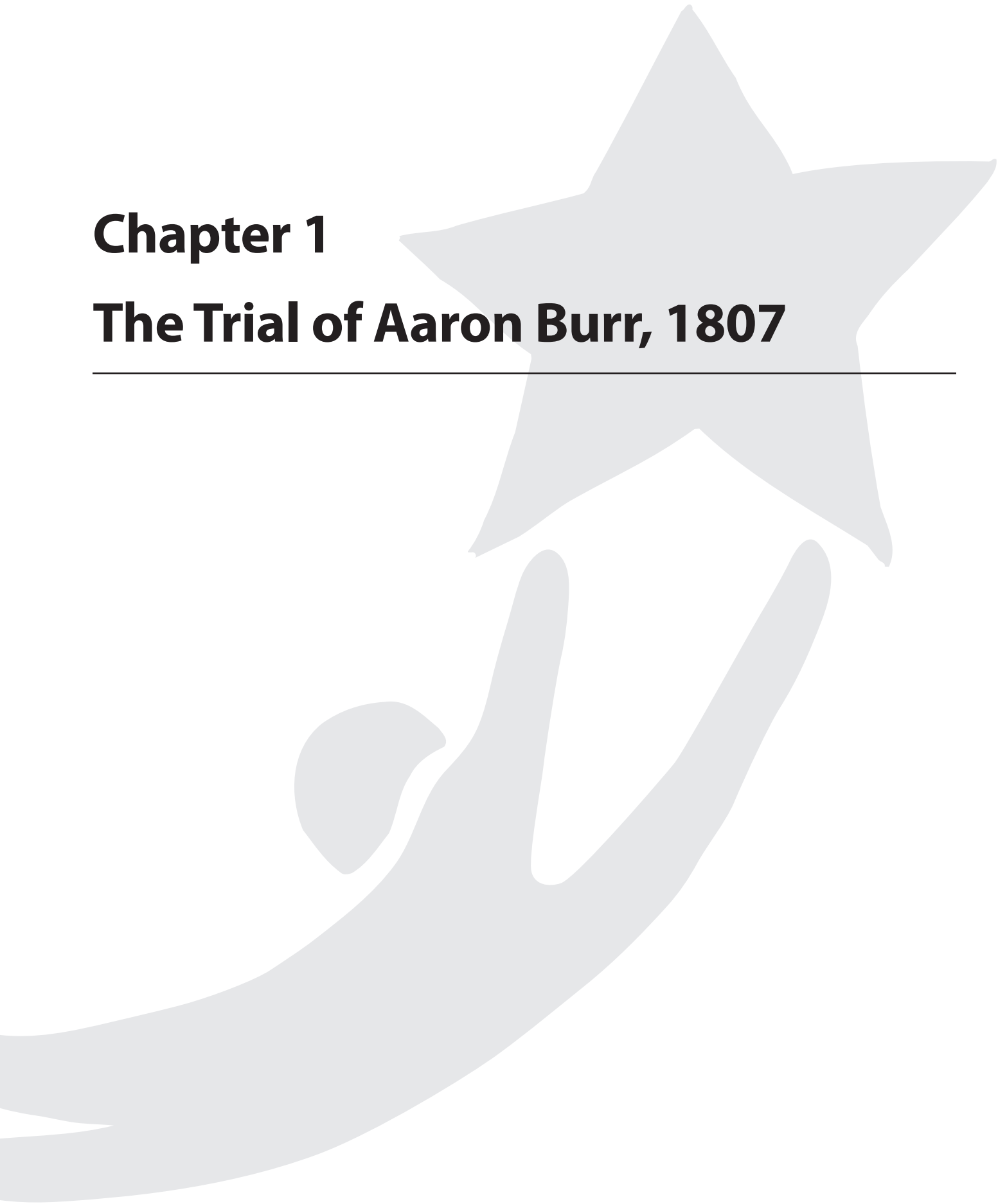
Teacher remarks:

**Grade** \_\_\_\_\_ **(optional)**

# **Chapter 1**

## **The Trial of Aaron Burr, 1807**

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## ● Introduction ●

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The treason trial of Aaron Burr was called by one historian the “greatest criminal trial in American history and one of the notable trials in the annals of law.”<sup>1</sup> It was the only time in American history that a court tried such an important elected official of the United States for treason. Aaron Burr was the former vice president. Nearly every significant personality in American politics at that time was either directly or indirectly involved, including two signers of the U.S. Constitution, future President Andrew Jackson, a former Virginia governor, the most important General in the West, and President Thomas Jefferson. The issues involved included the definition of treason, the constitutional rights of defendants, and the very meaning of the separation of powers.

### Objectives

1. Students will understand the constitutional definition of treason and how it was applied in this case.
2. Students will be familiar with how the trial impacted the politics of this era.
3. Students will understand how lawyers and judges matched old law, new law, and current politics to shape the country in the early national period.

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<sup>1</sup> Corwin, Edward S. *John Marshall and the Constitution*. New Haven, CT: Yale University Press, 1919: 86.

## Lesson Plan

### Trial Procedure

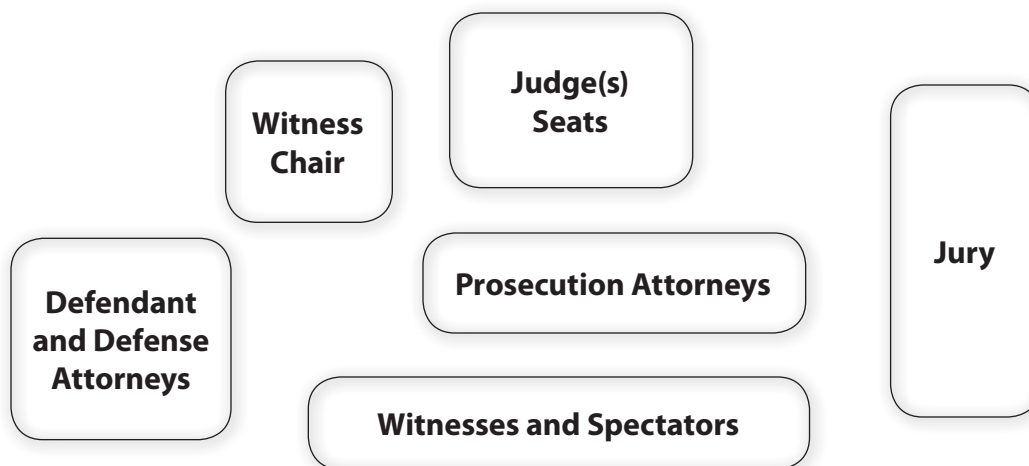
1. Classroom should be set up as a courtroom (see Diagram).
2. Jury, attorneys, witnesses, and any courtroom spectators should be seated.
3. Judge John Marshall enters and the court clerk instructs everyone in the courtroom to "rise."\*
4. The judge then "charges the jury" with their responsibilities.
5. The judge then instructs the clerk to read the charges against the defendant. Aaron Burr pleads "not guilty," and the trial proceeds according to the following schedule:
  - a. Opening remarks by the prosecuting attorney(s)
  - b. Opening remarks by the defense attorney(s)
  - c. Direct testimony and cross-examination of prosecution witnesses
  - d. Direct testimony and cross-examination of defense witnesses
  - e. Summary remarks by the prosecution attorney(s)
  - f. Summary remarks by the defense attorney(s)
  - g. Jury retires to deliberate
  - h. Jury returns to the court and judge asks them for their verdict
  - i. If Burr is declared guilty then Judge John Marshall immediately sentences him to death by hanging. If he is found innocent then he is immediately set free



#### Teaching Tip

For attorney roles, choose students who are well-organized and not afraid to speak in front of class.

### Diagram of Courtroom Seating



\*If you are having two judges then Cyrus Griffin will enter too.

**Teaching Tip**

You can limit the length of the trials by omitting roles or by setting speaking time limits.



## **Suggested Schedule (role play)**

**Day One:** Background, role assignments, and initial preparation

**Day Two:** Preparation

**Day Three:** Begin trial

**Day Four:** Conclude trial and debrief using Discussion Questions

**Day Five:** Conclude debrief and assign Extension Activities

## **Notes for the Teacher (role play)**

1. Read and discuss with students the Background Essay.
2. Divide the class into prosecution and defense. Either assign students specific roles or have them decide as a group who will be the attorneys and which witnesses they will present for the case. Unless you have a very capable student it is advisable for the teacher to perform the role of Justice John Marshall. Students are not accustomed to being the authority figure in a classroom. Historically, the actual trial was heard by two judges, John Marshall and Cyrus Griffin, and a jury. According to the trial transcript, Griffin played a very minor part in the proceedings so you may decide to go with only one judge—or to have a student play the part of Griffin. It is ideal if you can have a jury hear the case but if that is not possible then you can have the judge(s) decide the case.
3. Students should be given the remainder of any class time and the next class to prepare for the trial. Attorneys should present their theories of the case and frame questions for each of the witnesses. Witnesses should write out a deposition (what they plan to say on the witness stand) and practice their direct testimonies and any expected cross-examination questions. You may decide to allow them to refer to their depositions while testifying rather than relying totally on memory.
4. Before the beginning of the trial, the attorneys from both sides should exchange copies of the deposition (or role descriptions) of their witnesses to aid them in framing cross-examination questions. Note that for this trial, this is especially helpful to the prosecution.
5. If you want to complete the trial in one class session, then you will need to allot and enforce strict time limits depending on the length of your class period. Assuming a 60-minute class period the time would look like this:
  - 5 minutes for the judge (teacher) to read the charges and receive Burr's "not guilty" plea
  - 2 minutes for prosecution opening remarks

- 2 minutes for defense opening remarks
  - 15 minutes for direct testimony from prosecution witnesses
  - 5 minutes for cross-examination of selected prosecution witnesses
  - 15 minutes for direct testimony of defense witnesses
  - 5 minutes for cross-examination of selected defense witnesses
  - 2 minutes for prosecution closing remarks
  - 2 minutes for defense closing remarks
6. If you have a large class and the ability to spend more class time on this activity more possibilities exist to expand the time for direct testimony and cross-examination.
  7. Advise student-attorneys to be very careful about cross-examination. Most experienced trial attorneys have difficulty with this skill and often do more harm to their case than good. The best advice you can give student-attorneys is to never ask a question if they don't already know what the answer will be. Although in this particular trial, you should advise the prosecution that, since their best hope of a conviction lies in proving that Burr was constructively present on Blennerhassett's Island, they will need to effectively cross-examine the defense witnesses. Remember that in cross-examination an attorney can use statements, such as "Isn't it true that blah, blah, blah...?"
  8. On the day of the trial arrange the classroom to look like a courtroom (see Diagram) with a judge's seat (the teacher's desk), a chair for those giving testimony, a seat for the defendant, desks for the attorneys and witness seats.
  9. Try to match roles to student personalities and academic strengths. For student-attorneys it is particularly important that you select students who are well-organized and not afraid to speak in front of the class. You should emphasize this point if you decide to let students be a part of the role assignment process.
  10. Note that you can limit the length of the trial by omitting roles.
  11. When the jury is deliberating over the verdict you can engage the rest of the class with the Discussion Questions.
  12. Historically, the government's case revolved around linking Burr's prior actions to the events on Blennerhassett's Island. The government tried to make the case that even though Burr was not actually on the island when armed men were assembling for the purpose of launching some kind of military adventure that constituted "levying war against the US," he was nevertheless guilty of treason. The defense relied on showing that without any "overt act" on the part of Burr—actually leading the armed men on the island—he could not be deemed a traitor, regardless



of any alleged conspiratorial actions. Thus, for the purpose of the role play and scripted versions, I have made the witnesses to Burr's actions prior to the assembly on the island prosecution witnesses and those testifying to actions on the island defense witnesses. This gives students on either side a reasonable chance to "win" the simulated case. Thus, the role play version may illicit a different verdict than what transpired in the actual case. The scripted version is close to what in fact transpired in the real trial and concludes with the jury's actual verdict.

13. In order to make the case easier to follow I have also incorporated elements of the grand jury trial into the actual trial that followed. The decision to indict Burr for treason turned on the testimony of General Wilkinson, who made such a poor impression on the jury that they very nearly indicted him, too. He did not testify in the actual trial. Burr requested a copy of the original cypher, or coded, letter (found in Documentary Evidence) from President Jefferson. Initially, Jefferson refused, citing executive privilege. Marshall ordered the letter delivered to the court, or he would hold the president in contempt of court, just like any other citizen. Jefferson relented and delivered the letter. You may decide to allow the prosecution to enter this document into evidence either in conjunction with a witness or as part of the opening and closing remarks.

### **Suggested Schedule (scripted version)**

**Day One:** Read and discuss with students the Background Essay. Assign speaking parts for scripted trial and begin reading of the trial.

**Day Two:** Conclude reading of scripted trial and conduct debriefing using Discussion Questions.

**Day Three:** Extension Activities.

### **Notes for the Teacher (scripted version)**

1. On the day of the trial arrange the classroom to look like a courtroom (see Diagram) with a judge's seat (the teacher's desk), a chair for persons giving testimony, seat for the defendant, desks for the attorneys, and witness seats.
2. Read and discuss with students the Background Essay.
3. Assign students roles in the play using the Roles Grid with the additional role of narrator. Note that the attorneys have the lengthiest speaking parts.

## Roles Grid

Role	Historical Character	Student Name
<b>Judge(s)</b>	John Marshall	
	Cyrus Griffin*	
<b>Clerk/Bailiff</b>		
<b>Defendant</b>	Aaron Burr	
<b>Prosecution Attorneys</b>	George Hay	
	William Wirt	
	Gordon MacRae	
<b>Prosecution Witnesses</b>	General William Eaton	
	Commodore Truxton	
	General John Morgan	
	Colonel George Morgan	
	Thomas Morgan	
<b>Defense Attorneys</b>	General Wilkinson**	
	Benjamin Botts	
	Luther Martin	
	Edmund Randolph	
	John Wickham	
<b>Defense Witnesses</b>	Jacob Allbright	
	Peter Taylor	
	William Love	
	Dudley Woodbridge	
	Simeon Poole	
	Maurice P. Belknap	
	Edmund P. Dana	
	Israel Miller	
	Pearly Howe	
<b>Narrator</b>		

\*Participated in the trial but played a secondary role to Chief Justice John Marshall

\*\*Was a key personality in the decision to indict Burr but only testified before the grand jury that indicted Burr for the crime of treason against the United States.



### Teaching Tip

Try to match roles with student personalities and academic strengths.



### Teaching Tip

You can add an interfering spectator role. Someone who inappropriately shouts out something about the innocence or guilt of accused.

**Jury Grid**

Note: Ideally the jury should be composed of students who are not directly associated with the class doing the role play. However, as with the real trial, it was nearly impossible to form a jury that did not have some bias—one way or another—about Burr.

	Student		Student
Member 1 (Foreman)		Member 7	
Member 2		Member 8	
Member 3		Member 9	
Member 4		Member 10	
Member 5		Member 11	
Member 6		Member 12	

# Background Essay

Aaron Burr was commissioned as an officer in the Continental Army, rising to the rank of lieutenant colonel. He served heroically during the American Revolution. After the Revolution he settled in New York where he practiced law and eventually became involved in politics. He sided with Thomas Jefferson and the Democratic-Republicans and was selected to run for vice president when Jefferson was nominated for president in 1800. Burr was deeply mistrusted by Alexander Hamilton and the Federalists who viewed him as an ambitious schemer of low character. Thomas Jefferson also came to distrust Burr and opted not to choose him for vice president when he ran for re-election in 1804. He said that he "never indeed thought him an honest, frank-dealing man, but considered him as a crooked gun, or other perverted machine, whose aim you could never be sure of."<sup>1</sup> Burr ran instead for the office of governor of New York but was defeated by the Federalists. Rumors spread that Hamilton himself had been calling Burr a dangerous man who could not be trusted to govern. Burr challenged Hamilton to a duel. The two men met for their duel in Weehawken, New Jersey, just across the river from New York. Hamilton was shot dead by Burr, who was promptly charged with murder in both New York and New Jersey. In March 1805, with his reputation and political career shattered, Burr left Washington for the West, turning his focus to the potential of establishing a new republic in the recently acquired lands in Louisiana. It became clear that Burr was not alone in his scheming. He had a number of supporters that included a senior British diplomat, Anthony Merry, and a United States senator, Jonathan Dayton of New Jersey. Most significantly, he had the financial backing of a

wealthy and eccentric Ohioan named Harman Blennerhassett, as well as the military backing of the General-in-Chief of the Army in the Louisiana Territory, James Wilkinson. Burr even tried to enlist thirty-nine-year-old Andrew Jackson into his arrangements. Jackson, however, did not want any part of the scheme because he detested General Wilkinson and, as he said later, "it rushed into my mind like lightning that Burr might be a traitor."<sup>2</sup>

The first indications of Burr's true intentions appeared in the pages of the Federalist newspaper, *Gazette of the United States*. The paper declared that Burr was not a Democratic-Republican, or a Federalist, but the head of a "revolutionary party on the Western waters" who was determined to put the newly acquired western lands under a separate government. This was the beginning of rumors that spread across the newspapers of the country linking Burr to this alleged plot.<sup>3</sup>

In December 1806, General James Wilkinson decided to betray Burr and reveal the contents of a coded secret letter that Burr had written to him detailing aspects of the plot. He decoded the letter, slightly altering it to disguise his own involvement, and then turned over the contents to President Jefferson. The letter proposed that soldiers commanded by Burr and Wilkinson would assemble in boats and be prepared to use the western waterways as a path to embark on



Aaron Burr

<sup>1</sup> Newmyer, Kent R. *The Treason Trial of Aaron Burr: Law, Politics, and the Character Wars of the New Nation*. New York: Cambridge University Press, 2012: 14.

<sup>2</sup> Sedgwick, John. *War of Two: Alexander Hamilton, Aaron Burr, and the Duel That Stunned the Nation*. New York: Berkley Books, 2015: 378.

<sup>3</sup> Ibid.: 371.

Image source: Aaron Burr. iStock.com/ivan-96.



Blennerhassett's estate on a large island in the Ohio River

the conquest of lands in the West. It suggested that Burr would be the eventual monarch of this new realm. Blennerhassett's private island, located between Ohio and Virginia (now West Virginia), was to be the starting base of operations. It assured the reader that Great Britain was favorable to this venture and that the populations in the West would not object as long as it did not impact their religion or subject them to the domination of a foreign power. President Jefferson believed this letter was proof that Aaron Burr was organizing a treasonous plot against the United States, and he issued an order for his arrest. Meanwhile, with Blennerhassett's help, Burr was moving forward with the planning and outfitting of his proposed expedition. Outraged, Jefferson arranged for Ohio Governor Edward Tiffin to send the local militia to Blennerhassett's Island to crush the conspiracy. When they got there, Burr was nowhere to be found and the boatloads of armed men allegedly assembling on the island had fled downriver.

On February 19, 1807, Burr was arrested in the Mississippi Territory by Major Nicholas Perkins, acting on orders from the federal government. On March 26, he was taken to Richmond, Virginia, to stand trial for treason. He had been accused by President Thomas Jefferson in a congressional

message as being the principal actor in a treasonous cabal against the sovereignty of the United States. He was the alleged chief organizer of a secessionist plot to separate the land west of the Alleghenies from the United States by seizing the pivotal port city of New Orleans by force, commandeering arms and other military supplies there, and then, with the help of a leading U.S. commander—General Wilkinson—launching a military expedition against the Spanish in Mexico. It was assumed that he would then be the leader of this newly formed nation.

Specifically, the indictment stated that Burr had made war on the United States on December 10, 1806, by being the ringleader of a military force that had assembled on Blennerhassett's Island located just below Marietta, Ohio, but technically in Wood County, Virginia. However, the indictment left open a defense for Burr because it was clear that he was not even on the island (the scene of the alleged crime) on the night specified in the charge. He was hundreds of miles away in Kentucky. The prosecution's case then rested on proving that although he was not actually there he was "constructively present" because he was the organizer and de facto leader. The defense's case was simply to show that according to the Constitution there had to be evidence of an "overt act" of levying war and it had to be backed up by the testimony of at least two witnesses. Burr was not present when the Ohio militia stormed Blennerhassett's Island so there was no overt act.

Normally Judge Cyrus Griffin of the Virginia District would have presided at the trial. Supreme Court Justice John Marshall was in Richmond hearing appeal cases at the time and decided to take control of this celebrated trial.

You will now have a chance to either participate in a role play simulation or read a scripted version of this pivotal trial.

Image source: Blennerhassett Mansion. iStock.com/MsNancy.



# Roles

## Defendant: Colonel Aaron Burr

You have been indicted by a grand jury for the crime of treason against the United States of America.

You were born in 1756 to a wealthy New Jersey family. You graduated from Princeton at the age of seventeen and went on to practice law. You clearly are a very ambitious man. Many believe you have a very dubious character. When the American Revolution broke out you joined the Continental Army, where you distinguished yourself in the fighting near Quebec. In 1790, you were elected to the United States Senate and ten years later you were elected vice president in the controversial election of 1800 that brought Thomas Jefferson in as president.

President Jefferson grew distrustful of you and did not support your re-election in 1804. Out of office and disgraced, you have been accused of concocting a plot with General James Wilkinson to seize the newly acquired lands in the West and establish an independent empire. It is alleged that you intended to make yourself the king or emperor of this new region. You are even alleged to be the author of a coded letter sent to General Wilkinson describing your plot and enlisting his participation.

In 1806 you led a group of armed men toward New Orleans, which triggered a government investigation. General Wilkinson turned against you and sent dispatches to Washington accusing you of treason. In February 1807, you were arrested in Kentucky and charged with treason. You were taken to Virginia to stand trial.

You will decline to testify during the trial. However, you are trained as a lawyer and will be permitted by the judge to ask questions of the various witnesses. Privately, you will deny that you ever intended to cause the secession of American lands in the West. You will also deny committing any overt act of treason. You will work with your attorneys, especially through cross-examination of the prosecution witnesses, to make sure the judge and jury understands that you committed no overt action that could be considered treason.

## Chief Justice John Marshall

In the early 1800s, Supreme Court judges also presided over trials. You were in Richmond, Virginia, hearing appeal cases. You decided to drop these cases in favor of hearing this celebrated case. Although you do have another judge (Cyrus Griffin) who sat with you on this case he contributed little to the actual proceedings. During the trial you may be faced with a number of unresolved legal questions, including interpreting the meaning and application of Article III, Section 3 of the U.S. Constitution, which defines treason. You should adhere to a strict interpretation of the constitutional definition of treason. However, you have given indication that an "assembly" of men to "levy war" might be sufficient to constitute treason.

Prior to the trial you should review court procedure with the clerk/bailiff who is there to assist you in running the court and maintaining order. At the beginning of the trial you will be outside of the courtroom (classroom) and when everyone is in their assigned place you will enter. The clerk/bailiff will say "all rise" and "be seated" when you have assumed your position. You

will begin the trial by saying: "Gentleman of the jury it is your duty to carefully listen to the witnesses' testimony and come to a fair and honest decision regarding the guilt or innocence of the accused, Colonel Aaron Burr. You will then ask the clerk/bailiff to read the charges against the defendant and ask for a plea of "guilty" or "not guilty."

You will then ask first the prosecution attorney(s) and then the defense attorney(s) to make any opening remarks to the court. You will then ask the prosecution attorney(s) if they would like to present any witnesses. Each time a witness is called you should ask the clerk/bailiff to swear them in. When the prosecution has concluded presenting all of their witnesses you should then ask the defense attorney(s) to present their witnesses. As with the prosecution witnesses, you should ask the clerk/bailiff to swear in each of the defense witnesses. When the defense has concluded its case you should ask if the prosecution attorney(s) have any final remarks. Then you should give the defense attorney(s) a chance to make any closing remarks.

Before the jury retires to consider its verdict, you have two options:

*Option One:* Tell them to consider all the testimony given by every witness and deliver a fair and honest verdict, or

*Option Two* (historically, what Marshall actually said, which greatly favored the defense): Tell the jury that "It is then the opinion of the court that this indictment against the defendant Colonel Burr can be supported only by testimony which proves the accused to have been actually or constructively present when the assemblage took place on Blennerhassett's Island. According to our Constitution he must have committed an overt act witnessed by at least two people. It is the opinion of the court that there has been no testimony whatever which tends to prove that the accused was actually or constructively present when the assemblage took place—the overt act is not proved by a single witness and thus all other testimony must be irrelevant. The jury have now heard the opinion of the court on the law of the case. They will apply that law to the facts and will find a verdict of guilty or not guilty as their own consciences may direct."

You should then instruct the jury to retire (leave the classroom) and deliberate. When the members of the jury have reached their verdict, they should inform you by written note that they are ready to return to the court and announce their verdict. When they return you should then ask the clerk to say the following to the foreman of the jury: "Gentlemen of the Jury, look upon the prisoner. How say you all? Is Aaron Burr 'guilty' or 'not guilty'?"

### Judge Cyrus Griffin

It will be your job to hear the case along with Chief Justice John Marshall, who may instruct you to perform some of the duties outlined in his role description (see role description for Judge Marshall). If the trial does not include a jury then you and Judge Marshall will be responsible to confer and decide on the guilt or innocence of the defendant.

### Court Clerk/Bailiff

You are the court clerk and bailiff responsible for carrying out the orders of the presiding judge.

At the beginning of the trial you must say to the jury: "Good men and true, stand together and hearken to your evidence." When the trial begins the judge will ask you to read the charges against the defendant. You will read the following statement: "Aaron Burr, you are accused of treason by levying war against the U.S. and plotting to lead armed forces against the Spanish in Mexico. How do you plead? Guilty or not guilty." You will also be asked by the judge to swear

in each witness. You will have each witness place their hand on a Bible (optional) and swear the following: "Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?"

You should be prepared to read aloud to the court any documents that the judge instructs you to enter into the court record, including statements of law and evidence introduced as exhibits. You should keep a record of the names of all witnesses offering testimony. You should be prepared to assist the judge in maintaining courtroom order. You may be asked to remove unruly witnesses or spectators.

At the end of the trial, when the jury has reached their verdict, the judge will ask you to say the following to the foreman of the jury: "Gentlemen of the Jury, look upon the prisoner. How say you all? Is Aaron Burr 'guilty' or 'not guilty'?"

### Prosecution Attorneys: George Hay, William Wirt, and Gordon MacRae

**George Hay** is a prominent Virginia attorney with political connections to future president James Monroe; **William Wirt** is a prominent and highly skilled lawyer with great courtroom presence; and **Gordon MacRae** is not only a prominent and highly skilled lawyer but also Virginia's lieutenant governor.

It will be your job to prove the case laid out in the indictment against Aaron Burr—that he committed treason by levying war against the United States in both his conspiratorial preparations to conquer lands in the West and his specific association with the assembly of armed men on Blennerhassett's Island on December 10–11, 1806.

In your opening remarks you should present your theory of the case and what you will attempt to prove. You will then use your witnesses and any cross-examination of defense witnesses to buttress your case. You should focus on the following in developing your case:

1. Although Burr was not actually present on the island on the date specified in the indictment he was constructively present because of his actions in organizing those who were present. He was the mastermind and thus under law he committed the required overt act of treason.
2. You should cite the legal precedent in the Supreme Court case *Ex Parte Bollman and Ex Parte Swartwout* that stated that "if war be actually levied, that is, if a body of men be actually assembled for the purpose of effecting by force, a treasonable purpose, all those who perform any part, however minute or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered as traitors."
3. It was not necessary that actual fighting took place to constitute levying war. The preparation was enough. The presence of more than two dozen armed men organized by the defendant on Blennerhassett's Island was sufficient proof of Burr's guilt.
4. Burr clearly had treasonable intentions of seizing the port of New Orleans by force and using that city as a springboard for establishing a nation in the West.

### Defense Attorneys: Benjamin Botts, John Wickham, Luther Martin, and Edmund Randolph

All four defense attorneys are prominent and highly skilled; in addition, **Luther Martin** participated in the Constitutional Convention, and **Edmund Randolph** is a former attorney general who had served as secretary of state under President Washington and also as governor of Virginia.



It will be your job to disprove the case laid out in the indictment against Aaron Burr. You will contend that no matter what plots, plans, or conspiracies Burr might have proposed, he did not commit an overt act of treason by levying war against the United States on Blennerhassett's Island on December 10–11, 1806. This fact is the only one that matters.

In your opening remarks you should present your theory of the case and what you will attempt to prove. You will then use your witnesses and any cross-examination of prosecution witnesses to buttress your case. You should focus on the following points in developing your case:

1. Applying the English concept of constructive treason (see Glossary) against Aaron Burr was wrong and would likely set a very dangerous precedent.
2. Burr's actions described in the indictment did not represent a constitutional definition of levying war.
3. Burr was not present on Blennerhassett's Island at the time the alleged treasonable act occurred, so he could not be held responsible for any overt act. Plotting or planning did not constitute treason according to the Constitution.
4. The Supreme Court decision in the case *Ex Parte Bollman and Ex Parte Swartwout* was a distraction because there had never been any attempt to convict a person of treason in the United States who had never actually been at the place where the alleged crime had occurred.
5. The assemblage of men on Blennerhassett's Island, allegedly organized by Burr, may have been armed and seemingly warlike, but use of force and military actions were critical elements of levying war and those things never happened.
6. The rifles and shotguns that constituted the arms of those assembled on Blennerhassett's Island were commonly used in that region for hunting. There is no reason to conclude that they were meant to be used in levying war against the United States.

## Prosecution Witnesses

### General William Eaton

You are the former U.S. Consul General at Tunis, in North Africa, and a hero of the U.S. naval war against the Barbary pirates. You will claim to know nothing about any overt act committed by Aaron Burr. However, you will claim that Burr told you, sometime during the winter of 1805–1806, that he was organizing a military expedition to be launched against the Spanish provinces in the southwestern frontiers of the United States.

At first you believed he was acting under the authority of the U.S. government. You had been overseas serving the U.S. government and were ignorant of any negative views of Aaron Burr. You believed that Aaron Burr was held in high regard by those in the government and you had no reason to doubt his patriotism. As a military man you felt honored to be included in this adventure. Burr attempted to convince you that given adequate resources conquering Mexico was an achievable goal. You grew suspicious of his intentions when he made comments about the leaders of the government, suggesting they lacked character, energy, and gratitude for his efforts.

You eventually began to suspect that what Burr was planning was unlawful but played along to get more details about his plans. Burr revealed to you that he planned to establish an

independent empire west of the Allegheny Mountains. New Orleans would be the capital city. He would be the leader of this empire. He would then move on to conquer Mexico. He told you about the regions he intended to conquer and felt the population would be agreeable to his plans. He told you he had plenty of funds and that he had also secured the support of the U.S. Army, including that of General Wilkinson, who would be his commander-in-chief. You told him that you knew General Wilkinson and you were not sure that he would agree to be his commander. He told you that you were wrong and that General Wilkinson would willingly serve Burr and that, since you were promising double pay and lots of plunder to his soldiers, they would be on board, too. Burr even went on to say that if he could gain control of the U.S. Marine Corps and their commanders then he would be able to drive Congress out of Washington, do away with the president, seize the treasury, and declare himself the protector of a new and more effective government.

Ultimately, you did not trust Burr and were fearful of his intentions. You thought the best course of action was to somehow get him out of the country. You went to President Jefferson and suggested that Burr be sent to Paris, London, or Madrid as a U.S. ambassador. The president rejected this plan because he believed that Burr was a traitor who needed to be prosecuted.

### Commodore Truxton

You are an American naval commander. You had several conversations with Colonel Burr regarding his speculations in the newly acquired lands in the West. He told you that he believed the government was weak, and he proposed that you join him in a venture to conquer lands in the West, currently controlled by Spain. He asked you if Havana, Cuba, could be easily taken in the event of a war between the United States and Spain? You told him that it would require the cooperation of a powerful American naval force. He also asked you if you had any personal knowledge of Cartagena, New Granada (now Colombia), and Veracruz, New Spain (now Mexico), and what would be the best mode of attacking them by sea and land. He then asked you if you would take the command of a conquering naval expedition. You asked him if the president of the United States was privy to or concerned in the project. Burr answered emphatically that he was not. You told Burr that you would have nothing to do with his project. He told you that you should perhaps reconsider since he had already enlisted the support of General Wilkinson of the army and that many other officers of both the army and navy were willing to join. You told Burr that you did not believe they would join such a risky venture.

### General John Morgan

In 1806 you attended a dinner party hosted by your father, Colonel George Morgan. Aaron Burr was a guest at this event, and you recall that he told you that the union of the states could not possibly last and that a separation of the states must ensue as a natural consequence in four or five years. He also asked you a lot of questions about the general state of the army and whether it was prepared for war. He wanted to know the quality of its weapons and whether the army had any effective leaders. You heard Burr say that with two hundred men he could drive the president and Congress into the Potomac River, and with four hundred or five hundred he could take possession of the city of New York. After this conversation you warned your father to beware of Colonel Burr and the dangerous ideas he discussed with you.

**Colonel George Morgan**

You are an elderly veteran of the Revolutionary War. You hosted a dinner party attended by both of your sons (General John Morgan and Thomas Morgan) and Colonel Aaron Burr. You have known Colonel Burr for a long time and considered him a friend. You believe that he has been unjustly persecuted by both the press and the public. You invited him to the dinner party so that you could show that not everyone considered him to be a person of low character. You even told your sons of your great respect and admiration for Colonel Burr. However, during the dinner party you recall Colonel Burr saying that he believed that the West would be separated from the Union and that the Allegheny Mountains would be the dividing line. He then went on to explain how it would happen. He thought people west of the Allegheny would not be happy about paying taxes to support the Eastern states. They would feel that they were paying some kind of tribute. They would demand to set up their own country. You remember saying to the person sitting next to you "God forbid that should happen," at least in our time. Then you heard Burr say that great numbers of soldiers were not necessary to execute great military deeds; all that was wanting was a leader in whom they could place confidence and who they believed could carry them through to victory on the battlefield. You also heard him say that with five hundred dedicated fighting men New York could be taken, and that with two hundred Congress could be driven into the Potomac River. Although, you believe that this comment was said in a joking manner.

**Thomas Morgan**

You attended a dinner party hosted by your father, Colonel Morgan. You recall Aaron Burr saying that the people of the West would be separated in five years from the Atlantic states with the Allegheny Mountains to be the line of division. He also said that a small military force would be sufficient to carry out this plan. In fact you heard him say that he believed that with five hundred soldiers he could conquer the state of New York and with a mere two hundred fighters he could drive Congress into the Potomac River. However, you recall that your brother John replied that he didn't think either force would be able to take even their little town of Cannonsburg.

Later Colonel Burr pulled you aside and asked you what course of study you were pursuing. You told him that you were studying law. He told you it was a worthy occupation. However, he said that he had a better proposition for you. He asked if you would like to take part in an exciting military expedition. You answered that it would depend upon the object or cause of the fight. He didn't go into the details of what he was planning except to say that he wished you were going to join him in the glorious venture he was designing.

**Defense Witnesses****Jacob Allbright**

You were hired by Harman Blennerhassett to build an oven for drying corn on his private island estate. You were then expected to grind the corn into cornmeal. You worked on this project for a month or more. While you were living on the island, Blennerhassett asked you if you were interested in enlisting in a military venture to conquer and settle a new country. You told him that you would think about it but you had a family and probably would not be interested. He told you that he was not really interested in families anyway—what he needed was fighting men—and would you be willing to go to New Lancaster and recruit men who might be interested. You said you would consider his proposal but you never followed up on his offer.

Near the end of your stay you witnessed four boatloads of men land on the island commanded by a man you later learned was Colonel Tyler. They were armed with various weapons, including rifles and shotguns. However, you did not see any bayonets. One of the men in the boats told you that they were Colonel Burr's men and that they intended to go down the river to take what he described as a silver mine from the Spanish. You told him that this might start a war with the United States and Spain but he seemed to make light of that possibility. When you completed your work for Blennerhassett he paid you in Kentucky state currency. You left the island in the fall, but you don't remember the exact date. However, you think it must have been late because there was some snow on the ground. You believe you saw Colonel Aaron Burr on the island—at Blennerhassett's house—however you don't think he was present when the boatloads of armed men arrived on the island.

**Peter Taylor**

You are a gardener who lives on Blennerhassett's Island. You heard talk among the local folk that there was a call out for young men with rifles who were looking for adventure. They wanted men who would make good soldiers. You heard that they might be going into the West, even as far as Mexico. You even heard some say that Colonel Burr would be making himself the king of Mexico and that he had many friends in the Spanish territory. It was said that the Spanish in Mexico were dissatisfied with their government and would welcome Burr and his soldiers with open arms. You heard tell that some folks believed his actions might divide the United States into two countries. You will further admit that you did see three or four boatloads of men—about thirty in all—with weapons and supplies landing on Blennerhassett's Island in December. However you never saw Colonel Burr at any time on the island.

**William Love**

You are Mr. Blennerhassett's groom (servant). You were on Blennerhassett's Island when boatloads of armed men arrived led by a person you later learned was a Colonel Tyler. You saw four boats. You think there were about thirty men. You will admit that most of the men had rifles, shotguns, and knives but do not recall seeing any military-style weapons, such as rifles with bayonets. You also saw Mr. Blennerhassett with several pistols and a large knife. You believe that you saw Mr. Blennerhassett meeting with Colonel Burr sometime in 1806, but you never saw him on the island in December 1806. You will say that Mr. Blennerhassett asked you if you would like to accompany him on an expedition to the West. However, he told you that if you decided not to go then he would recommend you to some other gentlemen to act as a servant or he would even give you a piece of land to farm. You will say that you never took Blennerhassett up on his proposition to join his proposed expedition. You didn't want to get into trouble.

**Dudley Woodbridge**

You will say that around the beginning of September, Mr. Blennerhassett and Colonel Burr contracted with your dry goods company—Dudley Woodbridge and Company—to purchase provisions for a planned expedition. Your company is located in Marietta, Ohio. You recall that Colonel Burr inquired about the prices of different kinds of provisions, such as pork, cornmeal, flour, whiskey, and bacon—and how much it would cost to build boats capable of transporting these provisions on a lengthy river voyage. You provided as much detailed information as you could and finally agreed to build fifteen boats that would be able to effectively navigate the rivers leading west. You completed eleven of these boats by the beginning of December. When

you asked how the boats were going to be used, Mr. Blennerhassett told you that they might be engaged in an enterprise that was going to be very advantageous to all involved. He did not exactly say it but you believe he was suggesting an enterprise against the Spanish in Mexico. You drew this conclusion because you could see that he had an open map on a nearby table that showed these regions. However, you never actually went to Blennerhassett's Island and have no knowledge of whether Burr was ever there.

**Simeon Poole**

You were on Blennerhassett's Island around the first week in December under the authority of the governor of Ohio to serve a warrant on Colonel Burr and Harman Blennerhassett for allegedly organizing a planned attack on the United States and Spanish lands in the West. You saw boats with men land on the island but you do not recall an exact number. You believe there were four or five boats. You believe that some of the men were armed with rifles and pistols. You do not know who the men were but you assumed they might be associated with what Aaron Burr and Harman Blennerhassett were planning. There seemed to be a lot of men going and coming around Blennerhassett's large estate on the island. However, before you were able to serve your warrants everyone had left the island. You will admit that you never saw Colonel Burr on the island.

**Maurice P. Belknap**

On the evening of December 10, you went to Blennerhassett's Island to inquire about possible work. You arrived there between eight and nine o'clock in the evening. You hailed a boat, and they asked your name. You called out your name, and a small boat was immediately sent over with two of Blennerhassett's servants. You remember seeing four or five boats tied up at his pier with a few men looking like they were standing guard. You immediately went to Blennerhassett's house. When you went into the house you saw a number of men—maybe twenty—several of whom were cleaning their rifles. Near the place where you landed there appeared to be two or three boats and people about them. However, you never saw either Mr. Blennerhassett or Colonel Burr on the island, and by the time you left all the boats at his pier were gone.

**Edmund P. Dana**

You heard there was a call out for men who might be interested in an adventure in the West. You and two other young men were determined to find out about this plan, so you crossed over to Blennerhassett's Island on the evening of December 10. You went down to the landing opposite the island about dusk, took a small boat, and landed at the island pier a short while later. You noticed there were several boats tied up that appeared to be making preparations to depart. You then went up to Blennerhassett's house. You went into the house and noticed that there were dozens of armed men who seemed to be making preparations to leave. You were then introduced to Mr. Blennerhassett and Colonel Tyler, but they seemed reluctant to say anything specific about what was going on in the house, so you and your friends decided to leave. You do not recall seeing Colonel Burr.

**Israel Miller**

You arrived by boat on Blennerhassett's Island sometime between the seventh and tenth of December in company with Colonel Tyler. There were four boats. You will admit that you and the other men were armed with a variety of weapons including rifles, knives, and pistols. You will

admit that you believed that you were joining some kind of expedition to the West but you did not know much about the specifics. You believed that you were going to take land and possessions from the Spanish. You will admit that you considered Colonel Burr one of the leaders of this expedition but that you never saw him on the island.

**Pearly Howe**

You were contracted by Mr. Blennerhassett in early in November to make a large quantity of boat poles. He paid you in advanced and told you to deliver the poles as soon as possible. On the evening of December 10 you went over to the island to deliver them. When you arrived on the island you saw a number of armed men guarding four or five boats. They seemed to be making preparations to leave. A few of the men helped you load the poles into the boats. You stayed a little while longer and then departed for the mainland. You never saw either Mr. Blennerhassett or Colonel Burr on the island.



# Script: Trial of Aaron Burr

## Scene One: Opening Arguments and Beginning of Testimony

**NARRATOR:** On August 3, 1807, the treason trial of Aaron Burr began with Supreme Court Justice John Marshall presiding. Richmond's population has nearly doubled with ordinary citizens who have flocked to the city to either witness the trial first-hand or hear about it in the town's many taverns. The prospect of seeing the unpopular Burr and the many other famous men involved is an exciting one. Bets are even being made on the outcome. It is rumored that a star witness for the prosecution—General Eaton—has bet \$5,000 that Burr will be convicted and hanged. The prosecution's plan is to prove to the jury that Burr intended to levy war on the United States and planned to launch this treasonous venture from Blennerhassett's Island. They intend to argue that although he was not actually present on the island, this treasonous conspiracy made him constructively present with his men. However, the defense plans to argue that the wording of the Constitution precisely specifies that a specific overt act—buttressed with the testimony of two witnesses—is needed to prove treason. Colonel Aaron Burr committed no such overt act.

**CLERK:** All rise. (*Chief Justice John Marshall enters the courtroom and is seated at the judge's bench.*) Be seated.

**CHIEF JUSTICE JOHN MARSHALL:** Gentleman of the jury, it is your duty to carefully listen to the witnesses' testimony and come to a fair and honest decision regarding the guilt or innocence of the accused, Colonel Aaron Burr. Clerk, please read the charges against the defendant.

**CLERK:** Aaron Burr, you are accused of treason by levying war against the United States and plotting to lead armed forces against the Spanish in Mexico.

**MARSHALL:** How do you plead?

**AARON BURR:** Not guilty.

**MARSHALL:** Prosecution may make their opening remarks.

**GEORGE HAY:** Your Honor, gentlemen of the jury, distinguished guests. The prosecution intends to prove that the defendant, Colonel Aaron Burr, is guilty of treason as charged in the indictment. We will provide witnesses that will testify about his extensive preparations to levy war on our newly acquired lands in the West along with making war on the sovereign nation of Spain. He clearly intended to set himself up as the ruler of a newly formed republic carved out of his conquests in the West (holding up a copy of the cipher letter, which can be found in the Documentary Evidence section). The court need only to hear his words written in code to General Wilkinson to understand the depths of his plotting. Furthermore, we intend to show that even though he was not literally present on Blennerhassett's Island between Ohio and Virginia, the springboard for his military venture, he was by all intents and purposes constructively present as the organizer of this treasonous venture and therefore as guilty of this overt act as if he had actually been present.

**MARSHALL:** Defense may make their opening remarks.



**LUTHER MARTIN:** Your Honor, gentlemen of the jury, distinguished guests. We intend to prove that Colonel Aaron Burr's actions prior to and including what allegedly transpired on Blennerhassett's Island on December 10–11, 1806, do not represent treason as defined by our Constitution. There is a definite line between talk and action. Colonel Burr may have talked about the possibilities that existed for expansion in the West at the expense of the United States and Spain, but he very clearly was not guilty of backing up that talk with action. He did not levy war against the United States. The Supreme Court case *Ex Parte Bollman* and *Ex Parte Swartwout* set a precedent. We should not convict a person of treason in the United States who has never actually been at the place where the alleged treason occurred—the overt act. Colonel Aaron Burr was not on Blennerhassett's Island where armed men were allegedly gathering to begin an armed conflict against the United States and Spain. Additionally, the rifles and shotguns that constituted the arms of those assembled on Blennerhassett's Island are commonly used in that region for hunting and there is no reason to conclude that they were meant to be used in levying war against the United States or making war against any other nation.

We ask that Colonel Burr be found innocent of this grievous charge of treason against the United States.

**MARSHALL:** Prosecution may call their first witness.

**HAY:** Prosecution calls General William Eaton.

**CLERK:** General Eaton, please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**GENERAL WILLIAM EATON:** I do.

**CLERK:** Be seated.

**HAY:** General Eaton, please tell the court how you first became aware of what Colonel Aaron Burr was plotting?

**EATON:** I met Colonel Burr sometime during the winter of 1805–6 and he told me that he was organizing a military expedition against the Spanish provinces in the southwestern frontiers of the United States. I believed at that time that he was acting under the authority of the U.S. government at least that was how it sounded.

**HAY:** Why were you so initially trustful of Colonel Burr?

**EATON:** I had been serving overseas on behalf of the U.S. military and was ignorant of any negative views of Colonel Burr. I believed at the time that he was held in very high regard by those in the government and had no reason to doubt his good intentions or patriotism. And as a military man I felt honored to be included in his proposed adventure and that conquering Mexico was favored by the U.S. government.

**HAY:** When did you become suspicious of his plans?

**EATON:** He began to make comments about our leaders suggesting that they lacked good character and were not really to be trusted. He did not think they were even grateful for my services to our country. Most importantly, I began to suspect that his plans were illegal and dangerous.

**HAY:** So, what did you do?

**EATON:** I continued to act interested, hoping that he would reveal more specifics of what he was plotting.

**HAY:** And did he?

**EATON:** Yes, he said that he planned to establish an independent empire west of the Allegheny Mountains. New Orleans would be his capital city. He would be the leader of this new empire. He would then conquer Mexico, adding even more territory to his new realm. It was his belief that the population of these regions would welcome him with open arms.

**HAY:** Go on.

**EATON:** He told me that he had plenty of money to finance this plan and that he had also secured the support of the U.S. Army, including its commander, General Wilkinson. He planned to make the general commander-in-chief of his army.

**HAY:** What did you say to that?

**EATON:** I told him that I knew General Wilkinson quite well and I doubted he would agree to this plan. But he assured me that I was wrong about the general—he would willingly serve him—and that he, Wilkinson, had promised the U.S. soldiers under his command double pay and lots of plunder—so they would be on board for the adventure, too.

**HAY:** So, what did you do with this information?

**EATON:** I kept it to myself until I had the opportunity to discuss it with President Jefferson.

**HAY:** What was your suggestion to the president?

**EATON:** I told him that perhaps the best way to deal with Colonel Burr, as odd as it may seem now, was to simply get him out of the country. I suggested that he be sent to Paris, London, or Madrid as an ambassador. That would effectively end the plot.

**HAY:** What did President Jefferson think about your suggestion?

**EATON:** He believed that Colonel Burr was a traitor who should instead be arrested and tried.

**HAY:** No further questions.

**MARSHALL:** Defense may question the witness.

**BENJAMIN BOTTS:** Isn't it true, Commodore Eaton, that Colonel Burr actually confined his plans to attacking only Spanish provinces and not anything that included actual U.S. territories?

**EATON:** I suppose so.

**BOTTS:** Isn't it true that by suggesting to President Jefferson that Colonel Burr be sent to a foreign capital like London you were actually showing a measure of trust?

**EATON:** No, as I said, getting him out of the country seemed like the most effective course of action.

**BOTTS:** Isn't it true that you cannot testify to any overt act of treason committed by Colonel Burr?

**EATON:** I know nothing about any overt act committed by Colonel Burr.

**BOTTS:** No further questions.

**MARSHALL:** Prosecution may call their next witness.

**WILLIAM WIRT:** Prosecution calls Commodore Truxton.

**CLERK:** Commodore Truxton, please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**COMMODORE TRUXTON:** I do.

**WIRT:** Can you state your occupation?

**TRUXTON:** I am an American naval commander.

**WIRT:** Can you tell the court about the nature of conversations you had with the defendant?

**TRUXTON:** I had several conversations with Colonel Burr regarding his speculations in the newly acquired lands in the West, in Louisiana. He told me that he believed our government was weak, and he proposed that I join him in a venture to conquer lands in the West against the Spanish.

**WIRT:** How did he propose to use your naval expertise?

**TRUXTON:** He asked me if the Spanish port of Havana, Cuba, was well defended and if it could be easily captured. I told him it would require a powerful naval force. He also asked me if I had any knowledge of the Spanish ports of Cartagena and Veracruz—and what would be the best method of attacking them—by land or sea?

**WIRT:** Did he make any kind of specific proposal to you?

**TRUXTON:** Yes, he asked me if I was interested in taking command of a future naval expedition that I supposed would be against the Spanish ports.

**WIRT:** What did you say?

**TRUXTON:** I asked him if the president was aware of these plans.

**WIRT:** What did he say?

**TRUXTON:** He said that President Jefferson knew nothing about his plans.

**WIRT:** So, what did you say?

**TRUXTON:** I told him in no uncertain terms that I would have nothing to do with it.

**WIRT:** What did he say to that?

**TRUXTON:** He told me that I should perhaps reconsider since he had already enlisted the support of General Wilkinson of the army and that many other officers of both the army and navy were willing to join him . . . but I told him I could not believe that was true . . . they would never join such a risky venture without full support of our government.

**WIRT:** No further questions.

**MARSHALL:** Defense, do you wish to question this witness?

**EDMUND RANDOLPH:** Yes, Your Honor. Commodore Truxton, isn't it true that you are a true patriot and that you would have gladly joined any military venture that had been ordered by the president?

**TRUXTON:** I would most readily get out of my bed at twelve o'clock at night to go in defense of my country at her call, against England, France, Spain, or any other country.

**RANDOLPH:** Isn't it true that you surmised from your discussions with Colonel Burr that he was merely talking about the possibility of the United States preparing for a conflict with Spain over lands in the West?

**TRUXTON:** No, as I said, at first I did, but then I began to believe he had illegal designs on these lands.

**RANDOLPH:** No further questions.

### Scene Two: Further Testimony

**NARRATOR:** Day two of the trial continues with the testimony of three witnesses about the conversations they had with Colonel Aaron Burr and his plans of conquest in the West.

**CLERK:** All rise. (*Judge John Marshall enters the courtroom and is seated.*) Be seated.

**MARSHALL:** Prosecution may present their next witness.

**GORDON MACRAE:** The prosecution calls General John Morgan.

**CLERK:** General Morgan, please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**GENERAL JOHN MORGAN:** I do.

**MACRAE:** Can you please tell the court about a conversation you had with the defendant at a dinner party in 1806 hosted by your father, Colonel Morgan.

**JOHN MORGAN:** Yes. Colonel Burr was one of my father's guests at this dinner party. I was seated next to him at the table, and I recall him telling me that the union of our states, the United States, could not possibly last and that a separation of the states would probably happen in four or five years. Frankly, I was rather shocked by this statement.

**MACRAE:** Go on.

**JOHN MORGAN:** He also asked me a lot of detailed questions about the general state of the army. He specifically wanted to know about the quality of our weapons and whether the army had any truly effective leaders.

**MACRAE:** And what did you say?

**JOHN MORGAN:** I don't recall exactly but I think I just gave him vague answers. We were looking at some new weapons . . . we had some good leaders . . . statements like that . . . nothing specific.

**MACRAE:** How did he reply?

**JOHN MORGAN:** He told me that with two hundred men he could drive the president and Congress into the Potomac, and with four hundred or five hundred he could take possession of the city of New York. Needless to say, this was really upsetting.

**MACRAE:** And what did you do?

**JOHN MORGAN:** Later in the evening I pulled my father aside and warned him to beware of Colonel Burr and his dangerous ideas.

**MACRAE:** No further questions.

**MARSHALL:** Defense, do you have any questions of this witness?

**JOHN WICKHAM:** Yes, Your Honor. General Morgan, isn't it true that by the time all this talk between you and Colonel Burr had happened, you and everyone else had consumed a considerable amount of wine?

**JOHN MORGAN:** No more than any typical dinner party. But yes . . . we had quite a lot to drink with the dinner. (*Chuckling*) I remember the Madeira wine was excellent.

**WICKHAM:** So, isn't it possible that Colonel Burr was just bragging about his military abilities—remember that he was a Revolutionary War hero—rather than really suggesting any kind of attack on Washington or New York?

**JOHN MORGAN:** I suppose so. But I was still worried.

**WICKHAM:** No further questions.

**MARSHALL:** Prosecution may call their next witness.

**HAY:** Prosecution calls Colonel George Morgan.

**CLERK:** Colonel Morgan, please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**COLONEL GEORGE MORGAN:** I do.

**HAY:** How long have you known the defendant?

**GEORGE MORGAN:** Many years. Up until recently I considered him a friend.

**HAY:** Can you explain?

**GEORGE MORGAN:** I believe that he had been unjustly persecuted by both the press and the public, even the president. The duel with Hamilton . . . a most unfortunate business.

**HAY:** Why did you invite him to a dinner party at your home?

**GEORGE MORGAN:** At the time I wanted to show that not everyone considered him to be a person of low character, or a murderer for shooting Alexander Hamilton in a duel.

**HAY:** Did you convey this respect and admiration to your sons?

**GEORGE MORGAN:** I did.

**HAY:** And did Colonel Burr accept and attend your dinner party?

**GEORGE MORGAN:** He did.

**HAY:** Please tell the court about the conversation you heard from Colonel Burr at your party.

**GEORGE MORGAN:** I remember concluding the party with a toast of our nation, reflecting on what a great country we had in these United States.

**HAY:** Go on.

**GEORGE MORGAN:** But a few moments later I overheard some rather upsetting comments from Colonel Burr, who was talking to the person next to him—I think it was my son.

**HAY:** What did he say?

**GEORGE MORGAN:** He said that in less than five years the country west of the Allegheny Mountains would be totally divided from the Atlantic states. He then went on to explain how it would happen. He thought people west of the Allegheny would not be happy about paying taxes to support the Eastern states. They would feel that they were paying some kind of tribute. They would demand to set up their own country. I remember turning to the person next to me and saying God forbid that should happen . . . at least in our time.

**HAY:** No further questions.

**MARSHALL:** Defense, do you wish to question this witness?

**BOTTS:** Yes, Your Honor. Isn't it true that your son, General Morgan, actually told you about this conversation, that you didn't really hear it yourself?

**MORGAN:** I heard it myself, and what my son said just confirmed what I heard.

**BOTTS:** And isn't it true that you and everyone else at the party spent a considerable amount of time discussing the weakness of the government and imbecility of its elected officials?

**MORGAN:** Well, I suppose so. But it was just idle chatter.

**BOTTS:** No further questions.

**MARSHALL:** Prosecution may call their next witness.

**WIRT:** Prosecution calls Thomas Morgan.

**CLERK:** Thomas Morgan, please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**MORGAN:** I do.

**WIRT:** Can you tell the court what you heard at your father's dinner party in August?

**THOMAS MORGAN:** While we were at dinner I heard Colonel Burr say emphatically that the people of the West would be separated from the Atlantic states—the Allegheny Mountains to be the line of division—within, I think he said, four or five years.

**WIRT:** Go on.

**THOMAS MORGAN:** He also talked about military matters—especially the role of leadership. He said that great numbers were not necessary to perform great military deeds—all that was necessary was to have a confident leader—like Napoleon—whom the men believed could carry them through the venture. He backed this up by suggesting that he was that kind of man and that with five hundred men New York could be taken—with just two hundred Congress itself could be driven into the Potomac River.

**WIRT:** How did you react?

**THOMAS MORGAN:** I was rather shocked. But I remember my brother sarcastically saying that with such a small force Burr couldn't even capture our little town of Cannonsburg.

**WIRT:** What did Burr say to that?

**THOMAS MORGAN:** He turned to my brother and snidely told him he better confine himself to this side of the mountains.

**WIRT:** Did you have occasion to speak to Colonel Burr in private?

**THOMAS MORGAN:** Yes, later in the evening, after dinner, he pulled me aside and asked about my professional pursuits. I told him that I was studying law. He replied that he was sure I could find a use for that occupation—after all, he has practiced law—but he suggested that beginning a military career, like my brother and father did, might be a better idea. Then he asked me if I was interested in joining a military expedition?

**WIRT:** What did you say?

**THOMAS MORGAN:** I said that it would entirely depend upon the cause for which I was to fight.

**WIRT:** What did he say to that?



**THOMAS MORGAN:** He turned away mumbling something about wishing I would join him.

**WIRT:** No further questions.

**MARSHALL:** Does the defense have any questions of this witness?

**BURR:** We do, Your Honor.

**BURR:** Thomas, didn't I begin our private conversation reflecting on how studying law did not really prepare one for a fulfilling life, that being a military man was perhaps more rewarding?

**THOMAS MORGAN:** Yes.

**BURR:** Isn't it true, Thomas, that I never actually asked you to join with me on any kind of military venture?

**THOMAS MORGAN:** I suppose so.

**BURR:** No further questions.

**MARSHALL:** Does the prosecution wish to call another witness?

**HAY:** No, Your Honor. The prosecution rests pending final statements.

### Scene Three: Defense Witnesses' Testimony about Blennerhassett's Island

**NARRATOR:** Witnesses will present evidence to an overt act of levying war that allegedly occurred on Blennerhassett's Island.

**MARSHALL:** Does the defense wish to call any witnesses?

**RANDOLPH:** Yes, Your Honor. The defense calls Peter Taylor.

**CLERK:** Mr. Taylor, please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**PETER TAYLOR:** I do.

**CLERK:** Be seated.

**RANDOLPH:** Where do you live and what is your occupation?

**TAYLOR:** I am a gardener who lives and works on Blennerhassett's Island.

**RANDOLPH:** Mr. Taylor, did you ever see the defendant, Colonel Burr, on the island anytime in December 1806?

**TAYLOR:** No, I never saw him on the island.

**RANDOLPH:** No further questions.

**MARSHALL:** Does the prosecution wish to question this witness?

**HAY:** Yes, Your Honor. Mr. Taylor, you have testified that you never saw Colonel Burr on the island. But isn't it true that you heard that a call was out among local residents that there was a need for young men with rifles who might make good soldiers?

**TAYLOR:** Yes, I did hear talk about that.

**HAY:** And didn't you also hear that Colonel Burr was planning an expedition against the Spanish in the West and that he would be made the king of Mexico, that Burr had many friends in the Spanish territory and that the local people in the West were dissatisfied with their government and they would welcome with open arms Burr and his soldiers?

**TAYLOR:** Yes, I heard folks making those comments. However, I didn't take it seriously because it just seemed too outlandish and poorly planned. Furthermore, I could not believe that Colonel Burr would actually attempt something that would be so dangerous to our Union.

**HAY:** Isn't it true that you saw armed men on the island.

**TAYLOR:** Yes, I did see four boatloads of men—maybe thirty men—with weapons and supplies land on the island. I stayed away from them because I didn't want any trouble.

**HAY:** No further questions.

**MARSHALL:** Defense may call their next witness.

**WICKHAM:** The defense calls William Love.

**CLERK:** Mr. Love, please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**WILLIAM LOVE:** I do.

**CLERK:** Be seated.

**WICKHAM:** Where do you live and what is your occupation?

**LOVE:** I reside on Blennerhassett's Island. I am Mr. Blennerhassett's groom, his servant.

**WICKHAM:** Mr. Love, did you ever see the defendant, Colonel Burr, on the island anytime in December 1806?

**LOVE:** No.

**WICKHAM:** No further questions.

**MARSHALL:** Does the prosecution wish to question this witness?

**WIRT:** Yes, your honor. Mr. Love, isn't it true that you saw boatloads of armed men land on the island?

**LOVE:** Yes, I did see four or five boatloads of armed men land on the island.

**WIRT:** And isn't true that they were heavily armed with rifles, shotguns, and knives?

**LOVE:** Yes, I did see those arms, but I didn't see any bayonets.

**WIRT:** Isn't it true that your employer, Mr. Blennerhassett, met with these men in his home?

**LOVE:** There were a lot of men coming and going at his home. I could not say specifically it was these men.

**WIRT:** Isn't it true that Mr. Blennerhassett asked you if you would be willing to join him in a military venture that he and Mr. Burr were planning in the West?

**LOVE:** Yes, he did discuss that with me and even suggested that he would compensate me with some land.

**WIRT:** What did you say?

**LOVE:** I said I would think about it, but I decided not to take him up on the proposition. I didn't want to get into any trouble. It sounded dangerous.

**WIRT:** No further questions.

**MARSHALL:** Defense may call their next witness.



**BOTTS:** Defense calls Mr. Dudley Woodbridge.

**CLERK:** Mr. Woodbridge, please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**DUDLEY WOODBRIDGE:** I do.

**CLERK:** Be seated.

**BOTTS:** Mr. Woodbridge, have you ever been to Blennerhassett's Island?

**WOODBRIDGE:** No, I have never been there.

**BOTTS:** So, I guess we can conclude that you never saw Colonel Burr on the island?

**WOODBRIDGE:** No.

**BOTTS:** No further questions.

**MARSHALL:** Does the prosecution wish to question the witness?

**HAY:** Yes, Your Honor. Isn't it true, Mr. Woodbridge, that at the beginning of September representatives from your company—Dudley Woodbridge and Company, located in Marietta, Ohio—met with Mr. Blennerhassett to conclude a deal to purchase provisions for an expedition that he was planning?

**WOODBRIDGE:** Yes.

**HAY:** And isn't it true that they intended to purchase a large quantity of salt pork, beans, corn and ammunition?

**WOODBRIDGE:** Yes.

**HAY:** And didn't they also ask if you could provide river boats to transport men and these supplies?

**WOODBRIDGE:** Yes.

**HAY:** And did you complete this contract?

**WOODBRIDGE:** Yes. We eventually completed eleven boats by the beginning of December and prepared to load them with quantities of pork, flour, whiskey, cornmeal, bacon and ammunition.

**HAY:** And isn't it true that Mr. Blennerhassett told you that they were for an enterprise that he said would be very profitable to all involved?

**WOODBRIDGE:** Yes.

**HAY:** And isn't it also true that he told you that he and Burr were planning to lead an expedition to conquer lands in the West?

**WOODBRIDGE:** No, I never heard him mention that specifically. But I did see an open map on a table that showed the Spanish territories in Mexico so it seemed to me that was where they planned to go.

**HAY:** No further questions.

**MARSHALL:** Defense, you may call your next witness.

**BOTTS:** The defense calls Jacob Allbright.

**CLERK:** Mr. Allbright, please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**JACOB ALLBRIGHT:** I do.

**CLERK:** Be seated.

**BOTTS:** Please tell the court why you happened to be on Blennerhassett's Island.

**ALLBRIGHT:** I was hired by Mr. Blennerhassett to build an oven for drying corn. I was then expected to grind the corn into cornmeal. On the island I worked on this project for about a month.

**BOTTS:** Mr. Allbright, did you see Colonel Burr on Blennerhassett's Island anytime in December 1806?

**ALLBRIGHT:** No.

**BOTTS:** No further questions.

**MARSHALL:** Prosecution, do you wish to question this witness?

**WIRT:** Yes, Your Honor. Isn't it true, Mr. Allbright, that Mr. Blennerhassett asked you if you were interested in enlisting in a military expedition to conquer and settle new lands in the West?

**ALLBRIGHT:** Yes.

**WIRT:** What did you say?

**ALLBRIGHT:** I told him I would think about it but probably not since I had a family and I know they would not want me to go.

**WIRT:** Did you see any evidence on the island that Mr. Blennerhassett was part of some kind of military venture?

**ALLBRIGHT:** Yes, I saw four boatloads of men land on the island. They were well armed with rifles, shotguns and knives.

**WIRT:** Did you speak to any of them?

**ALLBRIGHT:** Yes. In fact, one of the men told me that they were Colonel Burr's men and that they intended to go down the river to take a silver mine from the Spanish.

**WIRT:** What did you say?

**ALLBRIGHT:** I told him that might cause a war with the United States, but he smiled and seemed to make light of that possibility.

**WIRT:** No further questions.

**MARSHALL:** Defense, you may call your next witness.

**BOTTS:** The defense calls Simeon Poole.

**CLERK:** Mr. Poole, please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**SIMEON POOLE:** I do.

**CLERK:** Be seated.

**BOTTS:** Mr. Poole, please tell the court why you were on Blennerhassett's Island in December.

**POOLE:** I was sent by the governor of Ohio to serve a warrant on Mr. Blennerhassett.

**BOTTS:** Did you at any time that you were on the island see the defendant, Colonel Burr?

**POOLE:** No, I never saw him.

**BOTTS:** No further questions.

**MARSHALL:** Does the prosecution have any questions of this witness?

**MACRAE:** Yes, Your Honor. Isn't it true that you did see four boatloads of armed men land on the island?

**POOLE:** Yes.

**MACRAE:** And were these men associates of Mr. Blennerhassett?

**POOLE:** Well, I can't say for sure. But I did see a number of armed men near his house. I assumed they were men from the boats.

**MACRAE:** No further questions.

**MARSHALL:** Defense may call their next witness.

**MARTIN:** The defense calls Maurice Belknap.

**CLERK:** Mr. Belknap, please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**MAURICE P. BELKNAP:** I do.

**CLERK:** Be seated.

**MARTIN:** Were you on Blennerhassett's Island in December?

**BELKNAP:** Yes.

**MARTIN:** Did you ever see the defendant on the island at any time during that month?

**BELKNAP:** No.

**MARTIN:** No further questions.

**MARSHALL:** Does the prosecution wish to question this witness?

**HAY:** Yes, your honor. Mr. Belknap, isn't it true that on the evening of December 10 you came over to the island on a boat from the mainland?

**BELKNAP:** Yes.

**HAY:** And isn't it true that you saw several other boats moored at the place where you landed?

**BELKNAP:** Yes.

**HAY:** And isn't it true that when you went to Mr. Blennerhassett's house on the island you saw at least two dozen armed men in and around the house?

**BELKNAP:** Yes.

**HAY:** And isn't it also true that some of these men were actually cleaning their weapons—getting them ready for action?

**BELKNAP:** Well . . . some were cleaning them. But getting them ready for action? I don't know about that.

**HAY:** No further questions.

**MARSHALL:** Defense may call their next witness.

**BOTTS:** The defense calls Edmund P. Dana.

**CLERK:** Mr. Dana, please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**EDMUND P. DANA:** I do.

**CLERK:** Be seated.

**BOTTS:** Mr. Dana, please tell the court how you happened to be on Blennerhassett's Island.

**DANA:** I heard that there were armed men on the island preparing to go down river. I decided to cross over the river from Belpre where I live to the island and investigate. I guess you could say I was curious as to what was going on.

**BOTTS:** Go on.

**DANA:** I went down to the landing opposite the island about dusk, took a skiff and landed at the upper part of the landing. Then I went up to Mr. Blennerhassett's house.

**BOTTS:** What did you see at the house?

**DANA:** There were a number of men in and around the house. I didn't really count them, but Mr. Blennerhassett was not there so I left.

**BOTTS:** Did you at any time see the defendant, Colonel Burr, while you were on the island?

**DANA:** No.

**BOTTS:** No further questions.

**MARSHALL:** Prosecution, do you wish to question this witness?

**WIRT:** Yes, Your Honor. Mr. Dana, isn't it true that every man you saw was carrying a weapon?

**DANA:** Yes, I think they were all armed.

**WIRT:** And isn't it true that some of the men at Blennerhassett's house were actually engaged in making bullets?

**DANA:** Yes, I do recall seeing some men doing that.

**WIRT:** No further questions.

**MARSHALL:** The defense may call their next witness.

**RANDOLPH:** The defense calls Israel Miller.

**CLERK:** Mr. Miller, please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**ISRAEL MILLER:** I do.

**CLERK:** Be seated.

**RANDOLPH:** Were you on Blennerhassett's Island on December 10?

**MILLER:** Yes, I arrived on the island between the 7th and 10th of December last, in company with a Colonel Tyler, who had four boats.

**RANDOLPH:** What was your purpose of being there?

**MILLER:** We heard about the potential for an expedition to the West, but we didn't really know the specifics.

**RANDOLPH:** How many men did Tyler have with him?

**MILLER:** About thirty-two men.

**RANDOLPH:** And were all the men armed?

**MILLER:** Yes, some had rifles, a few had pistols and I think one man had a blunderbuss . . . you know . . . one of those big shotguns.

**RANDOLPH:** Why was it necessary to be so well armed?

**MILLER:** Well, if we were going out West we needed weapons. There are a lot of dangers out there.

**RANDOLPH:** Did you ever see the defendant, Colonel Burr, on the island?

**MILLER:** No.

**RANDOLPH:** No further questions.

**MARSHALL:** Prosecution, do you wish to question the witness?

**HAY:** Isn't it true, Mr. Miller, that you and all the other armed men knew quite well that you were going on an expedition to conquer lands in the West?

**MILLER:** Well, I guess that was assumed.

**HAY:** And isn't it true that every one of the men knew quite well that Colonel Burr was the main organizer of this venture?

**MILLER:** Well, I can't say that for sure.

**HAY:** No further questions.

**MARSHALL:** Defense may call their next witness.

**BOTTS:** The defense calls Pearly Howe.

**CLERK:** Mr. Howe, please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**PEARLY HOWE:** I do.

**CLERK:** Be seated.

**BOTTS:** Were you on Blennerhassett's Island on December 10th?

**HOWE:** Yes.

**BOTTS:** What were you doing there?

**HOWE:** I was there to deliver a supply of boat poles that Mr. Blennerhassett had ordered . . . you know, the long poles used to push boats upriver.

**BOTTS:** What did you see when you landed at the boat pier?

**HOWE:** There were a few young men there with rifles who told me to leave the poles. They said they would take care of them.

**BOTTS:** Did you see any other armed men?

**HOWE:** No.

**BOTTS:** Did you see the defendant, Colonel Burr, at any time on the island?

**HOWE:** No.

**BOTTS:** No further questions.

**MARSHALL:** Prosecution, do you wish to question this witness?

**HAY:** Yes, Your Honor. Mr. Howe, isn't it true that these young men you described as being armed with rifles were in fact guarding a number of boats?

**HOWE:** I couldn't say for sure . . . but, well, they sure looked like guards to me. And they never left the vicinity of the boats.

**HAY:** No further questions.

**MARSHALL:** Defense may call their next witness.

**BOTTS:** The defense rests, Your Honor, pending closing remarks.

**MARSHALL:** We will take a recess until tomorrow, at which time we will entertain closing arguments.

#### Scene Four: Closing Arguments and Verdict

**NARRATOR:** Both the prosecution and the defense will make closing remarks. The jury then will retire and after deliberation they will render their verdict.

**CLERK:** All rise.

**MARSHALL:** Prosecution may make any closing remarks.

**WIRT:** Gentlemen of the jury, the defense would have you believe that we should reduce the shocking charge of treason against Colonel Burr to a speck of evidence—the atom which relates only to that of what happened on Blennerhassett's Island. You must lift your eyes from this small island in the Ohio River to the treasonous designs of the defendant and his confederates to establish an empire in the West—at the expense of these United States. I know that some in this court may fear that this so-called constructive treason has produced much oppression in Britain, but that will never happen in America because we have no tyrannical kings who abuse their authority. Our country is based on the will of the people and the people know their rights and how to support them. Colonel Burr's involvement in the conspiracy made him constructively present on Blennerhassett's Island along with the other armed men.

And who is Blennerhassett? He used his fortune to establish a wonderful life on his own private island that included a large mansion. And into his ideal world, his private Eden, slithered a snake—Colonel Aaron Burr—who wooed him with dreams of conquest and glory in the West. Blennerhassett, along with all the other poor and unfortunate men who assembled on his island, staked their lives and fortunes with a man whose only dream was to set himself up as an emperor of the West. Common sense and principles founded on considerations of national security and safety required that actions had to be taken against those plotting to harm our nation. If the government had waited until all the traitors were in a position to wage war, it might have been too late to stop them. We insist that it was not just an overt act of levying war but an overt act of treason. An assemblage of men—convened for the purpose of effecting by force a treasonable design—is treasonable, and all persons, even those not present, are traitors. Conspiring to commit treason was treason and everyone associated with the conspiracy was guilty—most of all the primary organizer, Colonel Burr.

**MARSHALL:** Defense may make any closing remarks

**MARTIN:** Your Honor, gentlemen of the jury, English law speaks of two kinds of levying war—direct and constructive—but there is only one in our country. When the framers of our beloved

Constitution wrote about levying war that meant actually levying war. If a one hundred, five hundred, one thousand men conspire and only fifty men actually levy war, then they—the fifty—are by definition the only ones guilty of treason. Therefore, all the testimony you have heard regarding the alleged planning, plotting, or preparing for some kind of venture in the West should be disregarded. What did the prosecution witnesses actually say about any overt act? Nothing. General Morgan, Colonel Morgan and Thomas Morgan all just reported about idle talk at a dinner party—mere speculations. Commodore Truxton testified that he did not know anything about any overt acts, treasonable actions or conversation from Colonel Burr. And General Eaton even went so far as suggesting to President Jefferson that he give Colonel Burr an ambassadorship. The only act that can be considered by this court—according to Article III, Section 3 of the Constitution—has to be what occurred on Blennerhassett’s Island—and the defense has conclusively proved beyond a shadow of doubt that Colonel Burr was not on that island. Furthermore, there is no evidence that the actions on the island were even acts of war. There was no bloody battle. There was no bloody war. Fortunately, the swift action on the part of the government prevented the tragic consequences that might have happened if some poor leaderless, misguided men assembled there had decided to carry some adventure in the West. We humbly ask the court to find Aaron Burr not guilty.

**MARSHALL:** Gentlemen of the jury it is then the opinion of the court that this indictment against the defendant Colonel Burr can be supported only by testimony which proves the accused to have been actually or constructively present when the assemblage took place on Blennerhassett’s Island. According to our Constitution, he must have committed an overt act witnessed by at least two people. It is the opinion of the court that there has been no testimony whatsoever which tends to prove that the accused was actually or constructively present when the assemblage took place—the overt act is not proved by a single witness and thus all other testimony must be irrelevant. The jury have now heard the opinion of the court on the law of the case. They will apply that law to the facts and will find a verdict of guilty or not guilty as their own consciences may direct.

**NARRATOR:** The jury retires to deliberate but returns after only a brief period of time.

**MARSHALL:** Mr. Foreman, have you reached a verdict?

**FOREMAN OF THE JURY:** Yes, Your Honor, we the jury say that Aaron Burr is not proved guilty under the indictment by any evidence submitted to us. Therefore, we find him not guilty.

**MARSHALL:** The defendant is now free to go.



# Documentary Evidence

The Cipher letter dated July 22, 1806 (edited)

“Your letter postmarked 13th May is received. I have at length obtained funds and have actually commenced. The Eastern documents, from different points under different pretense will rendezvous on Ohio on 1 November.

Everything internal and external favor our view. Naval protection of England secured. T[ruxton] is going to Jamaica to arrange with the admiral to join, and final orders are given to my friends and followers. It will be a host of choice spirits. Wilkinson shall be second to Burr only and Wilkinson shall dictate the rank and promotion of his officers.

Burr will proceed westward 1 August—never to return. With him go his daughter and grandson. The husband will follow in October with a corps of worthies.

Send forthwith an intelligent and confidential friend with whom Burr may confer. He shall return immediately with further interesting details. This is essential to concert and harmony of the movement. Send a list of all persons known to Wilkinson westward of the mountains, who could be useful, with a note delineating their characters. By your messenger send me four or five of the commissions of your officers which you can borrow under any pretense you please. They shall be returned faithfully. Already are orders to the contractor given to forward six months’ provisions to points you may name. This shall not be used until the last moment, and then under proper injunction.

Our project my dear friend is brought to the point so long desired. I guarantee the result with my life and honor, with the lives, the honor and fortunes of hundreds the best blood of our country.

Burr’s plan of operations is to move rapidly from the falls on fifteenth November, with the first 500 or 1,000 men, in light boats now constructing for that purpose—to be at Natchez between the 5 and 15 of December, there to meet you; then to determine whether it will be expedient in the first instance to seize on or pass by B.R. [Baton



Rouge]. On receipt of this send me an answer. Draw on me for all expenses.

The people of the country to which we are going are prepared to receive us—their agents now with me, say that if we will protect their religion and will not subject them to a foreign power, that in three weeks all will be settled.

The gods invite us to glory and fortune—it remains to be seen whether we deserve the boon.

**Source:** Stewart, David O. *American Emperor: Aaron Burr's Challenge to Jefferson's America*. New York: Simon & Schuster, 2011: 311–312.

# Time Line

<b>1800</b>	Thomas Jefferson is elected president; Aaron Burr is elected vice president.
<b>1804</b>	Jefferson is re-elected president; Aaron Burr kills Alexander Hamilton in a duel.
<b>1805</b>	Burr travels down the Ohio and Mississippi Rivers, meeting with leading politicians along the way, to assess their attachment to the U.S. government and whether they would support military operations against Spanish territory.
<b>1806</b>	Plans are made by Aaron Burr to launch a military venture in the West. A cipher letter written by a Burr conspirator is delivered to U.S. General James Wilkinson outlining Burr's alleged plans to conduct a military expedition against the Spanish in the West.
<b>1807</b>	<p>General Wilkinson alters the cipher letter to further implicate Burr in a treasonous conspiracy and to cover up his own involvement. He then turns the letter over to President Jefferson.</p> <p>Jefferson goes to Congress and declares Burr guilty of treason.</p> <p>A grand jury hears preliminary evidence and indicts Burr for treason.</p> <p>August 3: the principal treason trial of Aaron Burr begins.</p> <p>September 1: the jury returns a not guilty verdict against Burr.</p>

# Glossary

**Article III, Section 3 of U.S. Constitution:** "Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court."

**Constructive treason:** It is not necessary that a person commit an overt act; the mere imagining or organizing a treasonous action is sufficient.

**Ex Parte Bollman and Ex Parte Swartwout:** An 1807 Supreme Court decision that mere conspiracy to war against the United States did not constitute treason.

# Postscript

On September 1, 1807 Aaron Burr was acquitted on the grounds that, although he had conspired against the United States, he was not guilty of treason because he had not committed an “overt act” as specified in the Constitution. However, public opinion was very much against him, and he was viewed by many Americans as a traitor.<sup>1</sup> He ridiculed the suggestion that he was a traitor. But evidence suggests that he surely encouraged secession, repeatedly telling Westerners they should leave the Union, and that he intended to benefit from secession without directly leading it. Ambitious and unrepentant to the end, Aaron Burr died at the ripe old age of 81 on Staten Island, New York, in 1836, shortly before the presidency of Martin Van Buren.

Burr expected General Wilkinson to join his expedition. There is no other explanation for his repeated consultations with him, including the infamous cipher letter. General Wilkinson never testified at Burr’s actual trial. Edmund Randolph later wrote of Wilkinson that he was the “only man that I ever saw who was from the bark to the very core a villain.”<sup>2</sup>

Harman Blennerhassett was indicted along with Aaron Burr, but when Burr was acquitted the government decided not to proceed with the case against his alleged co-conspirator. He was freed but ruined, eventually losing his house, his island, and his fortune.

Thomas Jefferson wrote that the outcome of the trial was the “equivalent to a proclamation of impunity to every traitorous combination which may be formed to destroy the Union” and predicted that an amendment to the Constitution would be made that while “keeping the judges independent of the Executive, will not leave them so, of the nation.”

Prosecution attorney William Wirt failed to convict Burr, but the trial gave a boost to his career. He went on to argue nearly two hundred cases in the United States Supreme Court and served for twelve years as attorney general of the United States. Prosecutor George Hay benefitted, too. He married the only daughter of James Monroe and later became a federal judge.

Only one man associated with Burr’s expedition was convicted of a crime. Davis Floyd was convicted of violating the Neutrality Act by an Indiana Court and was sentenced to just a few hours in jail. Other American leaders, not Burr, finally realized the glory of conquest in the West. By 1819 all of Florida was in American hands at the expense of Spain. Texas gained independence under the leadership of Sam Houston in 1836 and twelve years later General Winfield Scott and General Zachary Taylor defeated Mexico and forced that country to cede most of the Southwest and California.

1 Stewart, David O. *American Emperor: Aaron Burr’s Challenge to Jefferson’s America*. New York: Simon & Schuster, 2011: 301.

2 Cunningham, Noble E. *In Pursuit of Reason: The Life of Thomas Jefferson*. Baton Rouge: Louisiana State University Press, 1987: 293.

## Discussion Questions

1. Former president John Adams said about Burr's plot that it was so far-fetched it would have had to have been hatched by either an idiot or a lunatic. Do you agree or disagree? Why or why not?
2. The U.S. Constitution requires that the accused has the right to an impartial jury composed of persons who are expected to fairly evaluate the evidence presented during a trial and reach an unbiased verdict. During the jury selection process for Burr's trial his attorneys challenged many of the prospective jurors for holding existing negative feelings toward the defendant. Do you think that made a difference in the actual verdict? Do you think it is indeed possible to have an impartial jury in any highly publicized case like that of Aaron Burr? Can you think of any other trials in which jury bias was clearly a factor in their decision? Explain.
3. The framers of the U.S. Constitution wrote that "Treason against the United States shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort." This definition came from law originating in England as early as the fourteenth century. However, English law from that era also included bringing about or even imagining the death of the king. English judges then interpreted the law to embrace even spoken or written words critical of government policy or actions—in other words even to encourage treason made one a traitor. Had Burr faced this more expansive definition, would he have been convicted? Why do you think the framers decided against this definition? Discuss.
4. John Adams wrote during the treason trial: "Something must come out on the trial, which will strengthen or weaken our confidence in the general union."<sup>1</sup> Do you agree or disagree? Discuss.
5. People living in 1807 were familiar with Aaron Burr's life, and some found it very easy to believe he could become a traitor. Do you think that by looking at a person's past life we can sometimes decide whether it is logical that he might act in a certain way?
6. Embittered prosecutor William Wirt wrote about the trial that "John Marshall has stepped between Burr and death."<sup>2</sup> Do you agree that the actions of the Supreme Court justice actually saved Burr from conviction and execution? Discuss.

<sup>1</sup> Stewart, *American Emperor*, 304.

<sup>2</sup> Sedgwick, *War of Two*, 390.

## Extension Activities

1. Research and write an essay about the role and impact that President Thomas Jefferson had on Burr's trial. For example, why did he insist that Burr be prosecuted for treasonably levying war against the United States with little solid evidence when he could have urged prosecutors to indict him for mounting a military campaign against Spanish Mexico in violation of the Neutrality Act—a high misdemeanor for which there was a lot of evidence and more concrete proof?
2. Write an essay discussing how much popular opinion influences the outcome of a trial. Did it play a part in Burr's trial and other celebrated trials like those of Sacco and Vanzetti, Ethel and Julius Rosenberg, and O.J. Simpson?
3. Many high-profile trials with controversial decisions that result in convictions are immediately appealed by defense attorneys. If your role-play trial resulted in Burr's conviction, write a brief for a future court explaining what actions, decisions, and arguments that you believe unfairly had a negative impact on Burr that would be cause for a new trial. If you did the role-play trial, read and compare the scripted version with the class trial. What were the similarities and differences?
4. Newspapers reporting Burr's alleged plot often said that he was leading a "Cataline conspiracy." Most educated Americans at that time would have known that Cataline was a senator who tried to overthrow the Roman republic in 63 BCE. Either write an essay or create a class presentation about similar historical parallels that would have resonated with Americans.

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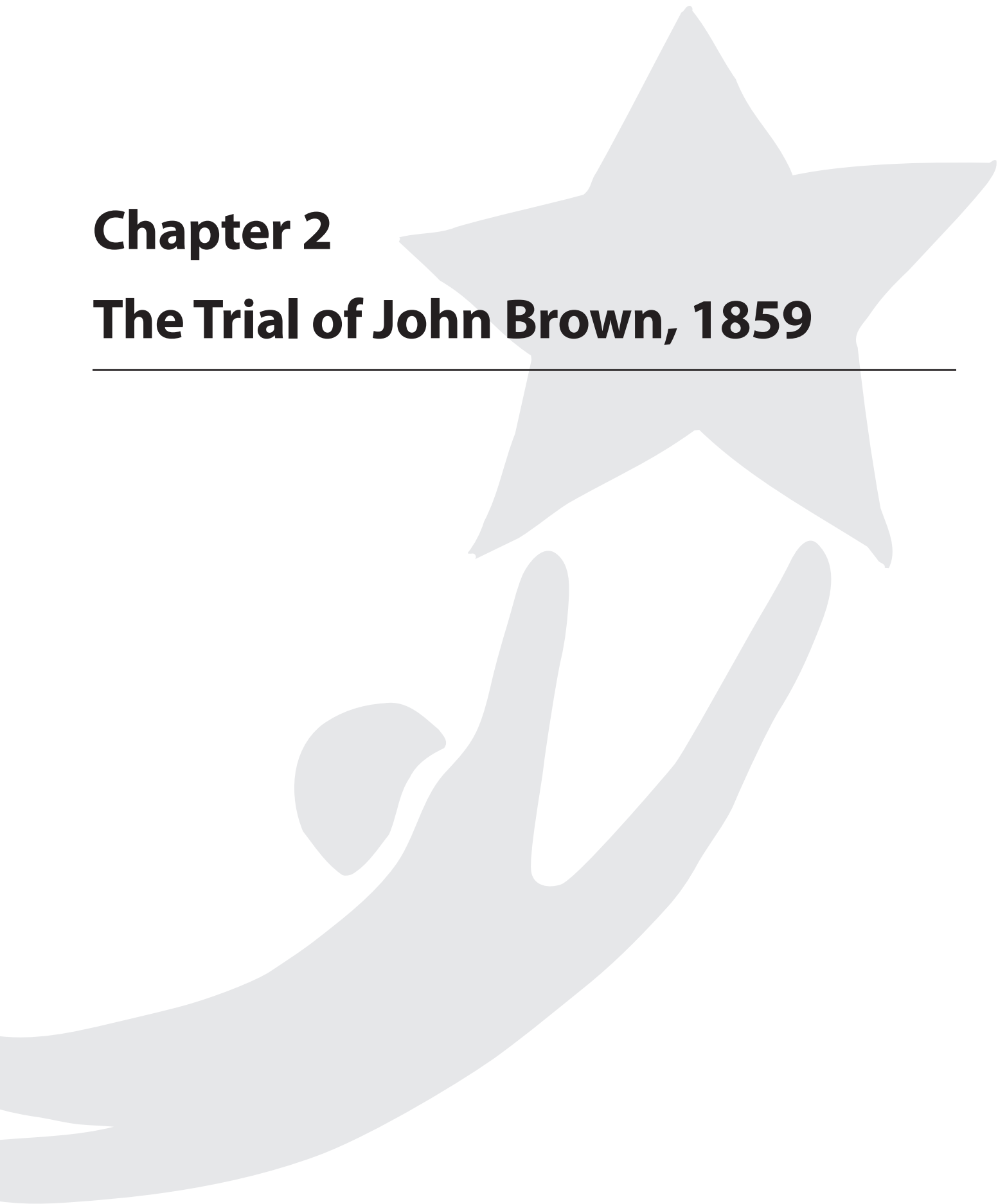
Trial of Col. Aaron Burr, on an Indictment for Treason before the Circuit Court of the United States, held in Richmond (Virginia), May terms, 1807; including the arguments and decisions on all the motions made during the Examination and trial, and on the motion for an attachment against Gen. Wilkinson. Washington City: Wescott and Co., 1807–1808. Available at Library of Congress, <https://archive.org/details/trialcolaaronbu00carpggoog>.



## **Chapter 2**

# **The Trial of John Brown, 1859**

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## ● Introduction ●

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John Brown was placed on trial in the Charles Town Courthouse in Jefferson County, Virginia (now in West Virginia). He was charged with conspiring with free blacks and enslaved people to produce insurrection, treason against the Commonwealth of Virginia, and first-degree murder.

### **Objectives**

1. Students will know the basic facts surrounding John Brown's attack on Harper's Ferry and his subsequent trial.
2. Students will understand the implications of John Brown's trial in bringing on the American Civil War.

## Lesson Plan

### Trial Procedure

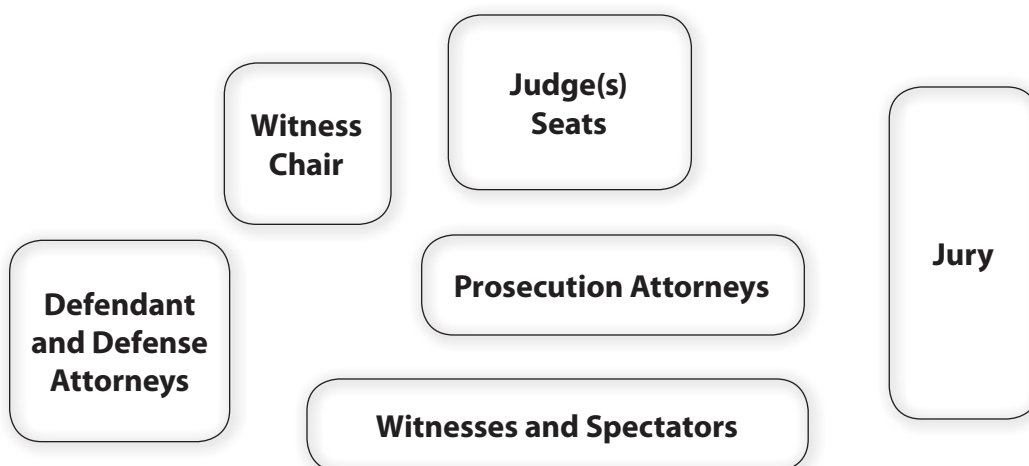
1. Classroom should be set up as a courtroom (see Diagram). For added realism you can even have John Brown reclining (he was badly injured) as was the case in the real trial.
2. Jury, attorneys, witnesses, and any courtroom spectators should be seated.
3. Judge Parker enters and the court clerk instructs everyone in the courtroom to "rise."
4. The judge then "charges the jury" with their responsibilities.
5. The judge then instructs the clerk to read the charges against the defendant John Brown and to ask for a plea.
6. John Brown pleads "not guilty," and the trial proceeds according to the following schedule:
  - a. Opening remarks by the prosecuting attorney(s)
  - b. Opening remarks by the defense attorney(s)
  - c. Direct testimony and cross-examination of prosecution witnesses
  - d. Direct testimony and cross-examination of defense witnesses
  - e. Summary remarks by the prosecution attorney(s)
  - f. Summary remarks by the defense attorney(s)
  - g. Jury retires to deliberate
  - h. Jury returns to the court and judge asks them for their verdict
  - i. If Brown is declared guilty then Judge Parker immediately sentences him to death; if he is found innocent then he is immediately set free



#### Teaching Tip

For attorney roles, choose students who are well-organized and not afraid to speak in front of class.

### Diagram of Courtroom Seating



### Teaching Tip

You can limit the length of the trials by omitting roles or by setting speaking time limits.



## Suggested Schedule (role play)

**Day One:** Background, role assignments and initial preparation

**Day Two:** Preparation

**Day Three:** Begin trial

**Day Four:** Conclude trial and debrief using Discussion Questions

**Day Five:** Conclude debrief and assign Extension Activities

## Notes for the Teacher (role play)

1. Read and discuss with students the Background Essay.
2. Divide the class into prosecution and defense.
3. Either assign students specific roles or have them decide as a group who will be the attorneys and which witnesses they will present for the case. Unless you have a very capable student it is advisable for the teacher to perform the role of Judge Parker. Students are not accustomed to being the authority figure in a classroom.
4. Students should be given the remainder of any class time and the next class to prepare for the trial. Attorneys should present their theories of the case and frame questions for each of the witnesses. Witnesses should write out a deposition (what they plan to say on the witness stand) and practice their direct testimonies and any expected cross-examination questions. You may decide to allow them to refer to their depositions while testifying rather than relying totally on memory.
5. If you want to complete the trial in one class session then you will need to allot and enforce strict time limits, depending on the length of your class period. Assuming a 60-minute class period the time would look like this:
  - 5 minutes for Judge Parker (teacher) to read the charges and receive Brown's not guilty plea
  - 2 minutes for prosecution opening remarks
  - 2 minutes for defense opening remarks
  - 15 minutes for direct testimony from prosecution witnesses
  - 5 minutes for cross-examination of selected prosecution witnesses
  - 15 minutes for direct testimony of defense witnesses
  - 5 minutes for cross-examination of selected defense witnesses
  - 2 minutes for prosecution closing remarks
  - 2 minutes for defense closing remarks



6. If you have a large class and the ability to spend more class time on this activity more possibilities exist to expand the time for direct testimony and cross-examination.
7. Advise student-attorneys to be very careful about cross-examination. Most experienced trial attorneys have difficulty with this skill and often do more harm to their case than good. The best advice you can give student-attorneys is to never ask a question if they don't already know what the answer will be.
8. On the day of the trial arrange the classroom to look like a courtroom (see Diagram) with a judge's seat (the teacher's desk), a chair for those giving testimony, seat for the defendant, desks for the attorneys, and witness seats.
9. Try to match roles to student personalities and academic strengths. For student-attorneys it is particularly important that you select students who are well-organized and not afraid to speak in front of the class.
10. Note that you can limit the length of the trial by omitting roles
11. When the jury is deliberating over the verdict you can engage the rest of the class with the Discussion Questions.

### Suggested Schedule (scripted version)

**Day One:** Read and discuss with students the Background Essay. Assign speaking parts for scripted trial and begin reading of trial.

**Day Two:** Conclude reading of scripted trial and debrief using Discussion Questions.

**Day Three:** Assign Extension Activities.

### Notes for the Teacher (scripted version)

1. On the day of the trial arrange the classroom to look like a courtroom (see Diagram) with a judge's seat (the teacher's desk), a chair for those giving testimony, seat for the defendant, desks for the attorneys, and witness seats.
2. Read and discuss with students the Background Essay.
3. Assign students roles in the play. Use the Roles Grid to assign speaking parts with the additional role of narrator. Note that the following roles have major speaking parts: the Narrator, Judge Parker, John Brown, and both the defense and prosecution attorneys.

**Teaching Tip**

Try to match roles with student personalities and academic strengths.

## The Trial of John Brown, 1859

### Lesson Plan

#### Teaching Tip

Try to match roles with student personalities and academic strengths.



### Roles Grid

Role	Historical Character	Student Name
<b>Defendant</b>	John Brown	
<b>Judge*</b>	Richard Parker	
<b>Clerk/Bailiff</b>		
<b>Prosecution Attorneys</b>	Charles B. Harding	
	Andrew Hunter	
<b>Prosecution Witnesses</b>	Dr. John Starry	
	Conductor A. J. Phelps	
	Colonel Lewis Washington	
	John Thomas Gibson	
	Armistead Ball	
	John Allstadt	
	Albert Grist	
<b>Defense Attorneys</b>	Henry Griswold	
	Lawson Botts	
<b>Defense Witnesses</b>	Joseph Brua	
	Archibald Kitzmiller	
	William Williams	
	Rezin Cross	
	John Dangerfield	
	Captain Simms	
<b>Narrator</b>		

\*Students are not typically accustomed to being the authority figure in the classroom so it is recommended that the teacher play the role of the judge. The case can be decided by the judge. However, it is certainly possible to include a jury. Forming the jury from members of another class or even interested adults works well as long as they know little or nothing about the case (the hallmark of any good jury!).

#### Teaching Tip

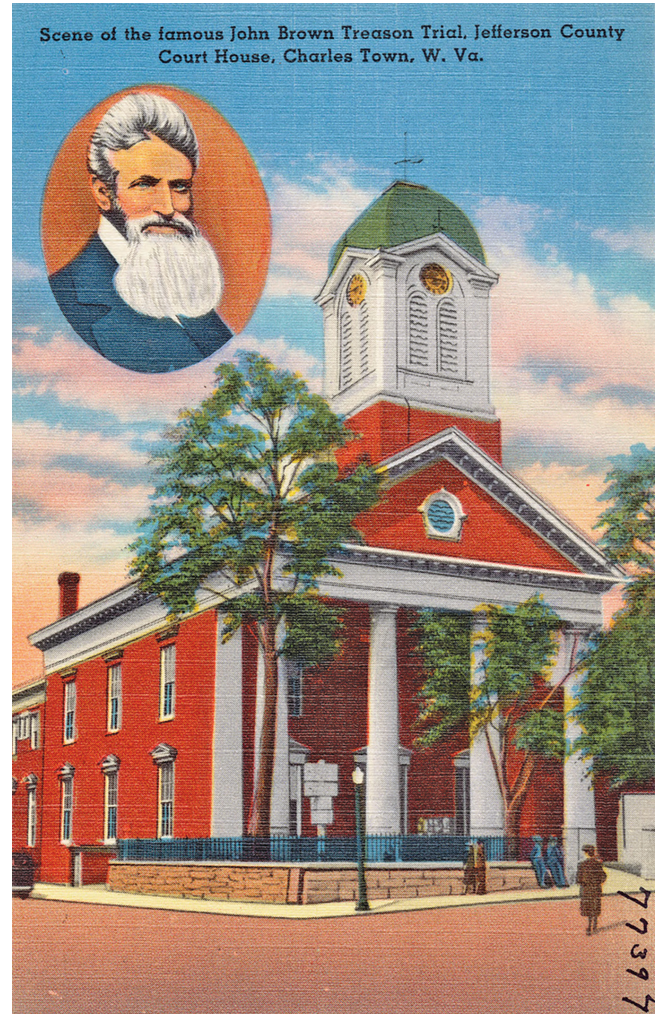
You can add an interfering spectator role. Someone who inappropriately shouts out something about the innocence or guilt of accused.



# Background Essay

By the fall of 1859, the United States was coming apart at the seams primarily over the issue of slavery. The Supreme Court had ruled in the *Dred Scott* decision that enslaved people were property even in free states, and for the owners of enslaved people in the South that settled the matter. Slave catchers from the South patrolled Northern states seeking to recover escaped slaves. Harriet Beecher Stowe galvanized the nation with her novel *Uncle Tom's Cabin* depicting the horrors of enslavement and the determination of the oppressed to seek freedom. Politicians like Abraham Lincoln representing the new Republican Party insisted that slavery must not be allowed to spread beyond the South. Democrats like Stephen Douglas asserted the principle of "popular sovereignty"—let the people of each territory and state decide whether to permit slavery. However, this principle was leading to disastrous consequences in the territory of Kansas, as rival gangs of pro-slavery and anti-slavery men fought each other in open warfare, with hundreds of casualties on both sides. John Brown and his sons rode with the anti-slavery forces and were accused of what became known as the Pottawatomie Massacre—the hacking to death with broadswords of five pro-slavery men.

John Brown was determined to carry his battle against slavery beyond the Western frontier into the heart of the South. He enlisted the support of Northern abolitionists and hatched a plan to attack the federal armory at Harper's Ferry, Virginia (now in West Virginia). He would then use the weapons he captured to arm the enslaved and lead them to freedom. Historian James McPherson notes that when Brown finally launched his invasion in mid-October "he did so without previous notice to the slaves he expected to join him, without rations, without



Jefferson County Courthouse

having scouted any escape route from Harper's Ferry, and with no apparent idea of what to do after capturing the armory building."<sup>1</sup> Clearly, it was a venture doomed to failure, and it is hard to believe that Brown was not aware of its folly.

Brown's attack on Harper's Ferry was a military failure. But it was a resounding success in striking fear in white Virginians that their enslaved population, aided by Northern sympathizers, were going to murder them in their beds. When

<sup>1</sup> McPherson, James. *Battle Cry of Freedom*. New York: Oxford University Press, 1988: 205.

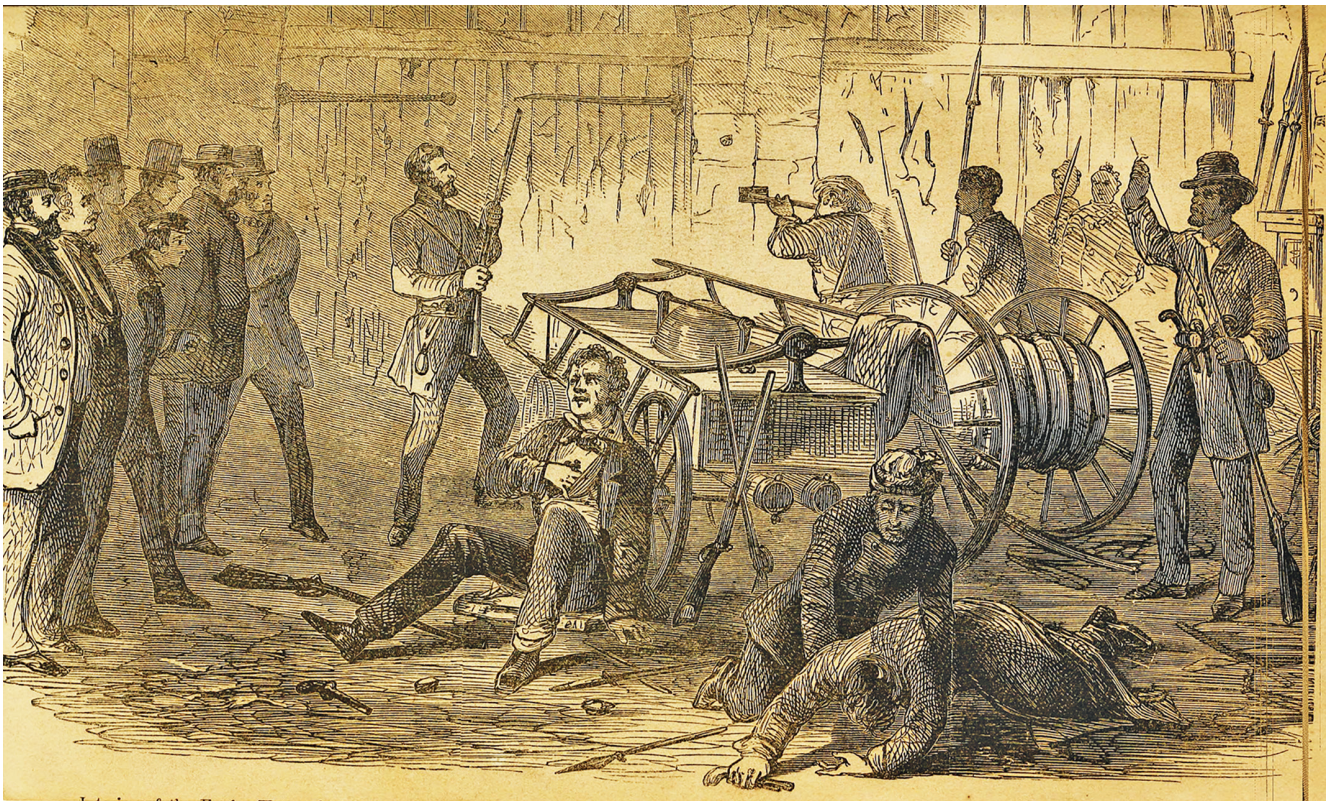
Image source: Scene of the John Brown Treason Trial. Courtesy of the Boston Public Library, Tichnor Brothers collection, 77397.



Brown was placed on trial, a mixture of local statutes, prior court decisions, and the Constitution of the Commonwealth of Virginia determined what constituted a fair trial. The most challenging legal question raised by the trial was one of sovereignty. Could an individual state like Virginia prosecute someone for treason, completely ignoring the jurisdiction of federal courts? Regardless, Virginia authorities were resolved to

give John Brown a fair trial. They knew that the eyes of the nation were focused on this courthouse and that more than Brown was on trial. The institution of slavery was on trial, too.

You will now have a chance to either participate in a role play or read a dramatic portrayal of this pivotal trial and discuss its implications for the course of American history.



Harper's Ferry insurrection, interior of the engine house

Image source: Harper's Ferry Insurrection. From DeWitt, Robert M. *The life, trial, and execution of Captain John Brown, known as "Old Brown of Ossawatimie," with a full account of the attempted insurrection at Harper's Ferry. Compiled from official and authentic sources, including Cooke's confession, and all the incidents of the execution.* New York: Robert M. DeWitt, 1859.



# Roles

## Defendant: John Brown

You are the defendant in one of the most celebrated treason trials in American history.

Some of your contemporaries, particularly in the Northern states, view you as a heroic man, wholly dedicated to the cause of abolishing slavery. Southerners almost universally interpret your actions as nothing short of murder and treason.

You first gained national recognition and notoriety for your involvement in what was called “bleeding Kansas,” the bout of pre-Civil War violence when you and your sons were accused of the so-called Pottawatomie Massacre—the hacking to death with broadswords of five pro-slavery men. Later, allegedly with the backing of prominent Northern abolitionists, you hatched a plan to attack the U.S. Armory and Arsenal at Harper’s Ferry, Virginia. You and your followers then planned to use the stolen weapons to arm the surrounding enslaved population, triggering a widespread revolt that would put an end to the institution of slavery in the South.

Your attack was an utter failure that resulted in several deaths among your supporters and those resisting your violent assault, including the mayor of Harper’s Ferry. You were seriously injured and captured.

You have been indicted for premeditated murder, insurrection and treason against the Commonwealth of Virginia. At the beginning of the trial, when either the judge or the clerk asks you “how do you plead, guilty or not guilty” to the charges, you should plead “not guilty.”

You *will not* testify on your behalf during the trial (Brown never did) but you should assist your attorneys in preparing the witnesses who will testify on your behalf. You should also do the following:

At the beginning of the trial you should ask the judge if you can make an opening comment. He will likely grant your request. You should say the following (either read it or recite it from memory).

Opening Statement:

“Virginians, the governor of your State has assured me that I should have a fair trial but is that even possible? If you seek my blood, you can have it at any moment, without this mockery of a trial. I am ready for my fate. I beg for no mockery of a trial. I do not know what is the benefit of this trial to the Commonwealth. I have little further to ask, other than that I may not be foolishly insulted, only as cowardly barbarians insult those who fall into their power.”



John Brown 1859

Image source: Portrait of John Brown. By Martin M. Lawrence, 1859, courtesy of the Library of Congress Prints and Photographs Division, LC-DIG-ppmsca-23764.

If you are found guilty at the end of the trial and sentenced to death you should ask the judge if you can make a final statement to the court. The judge will most likely grant that request and you should be prepared to say the following (you can either read it or recite it from memory):

#### Closing Remarks

"I have, may it please the Court, a few words to say . . . I deny everything but what I have all along admitted—the design on my part to free the slaves. I never did intend murder, or treason, or the destruction of property, or to excite or incite slaves to rebellion, or to make insurrection. . . . This court acknowledges the validity of the law of God. I see a book kissed here which I suppose to be the Bible, or at least the New Testament. That 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 say, I am yet too young to understand that God is any respecter of persons. 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, was not 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 submit; so let it be done! . . .

I feel entirely satisfied with the treatment I have received on my trial. Considering all the circumstances it has been more generous than I expected. But I feel no consciousness of guilt . . . I never had any design against the life of any person, nor any disposition to commit treason, or excite slaves to rebel, or make any general insurrection. I never encouraged any man to do so, but always discouraged any idea of that kind. I hear it has been stated by some of them that I have induced them to join me. But the contrary is true. I do not say this to injure them, but as regretting their weakness. There is not one of them but joined me of his own accord, and the greater part of them at their own expense. A number of them I never saw, and never had a word of conversation with, till the day they came to me; and that was for the purpose I have stated. Now I have done."

#### Judge: Richard Parker

You are a judge from the Commonwealth of Virginia presiding over the case of Captain John Brown charged with treason against the Commonwealth of Virginia, insurrection, and murder. You should review court procedure with the clerk/bailiff who is there to assist you in running the court and maintaining order. At the beginning of the trial you will be outside of the courtroom (classroom) and when everyone is in their assigned place you will enter. The clerk will say "all rise" and "be seated" when you have assumed your position.

You will begin the trial by saying: "We are in the courthouse in Charles Town, Virginia. It is Tuesday morning, October 25, 1859. The trial of Captain John Brown will commence with myself Richard Parker as presiding judge." If this is a trial with a jury then you will be responsible at the beginning of the trial for "charging the jury" with their responsibilities. You should instruct them that they should obey all your instructions during the trial as to whether any comments or evidence is admissible or whether they should disregard any such statements or evidence. You should also tell them that they should give a fair and just verdict based on the presentation of



the evidence. If this is a trial without a jury then it will be your responsibility to evaluate the comments and evidence and render a fair and just verdict.

At the beginning of the trial you will ask the clerk to read the charges against the defendant and then ask for his plea, "guilty" or "not guilty." After the defendant, John Brown, pleads "not guilty" he may ask to make an opening comment. You should grant this request. You will then ask first the prosecution attorney(s) and then the defense attorney(s) to make any opening remarks to the court. You will then ask the prosecution attorney(s) if they would like to present any witnesses. Each time a witness is called you should ask the clerk/bailiff to swear them in. When the prosecution has concluded with all of its witnesses you should then ask the defense attorney(s) to present their witnesses. As with the prosecution witnesses you should ask the clerk/bailiff to swear in each of the defense witnesses. When the defense has concluded their case you should ask if the prosecution attorney(s) have any final remarks. Then you should give the defense attorney(s) a chance to make any closing remarks. You should then instruct the members of the jury to retire (leave the classroom) and deliberate.

When they have reached their verdict they should either inform you by written note (that you will read) or you can ask them to announce it to the court. If the defendant is found not guilty he will be immediately freed. If he is found guilty of any of the charges then you should immediately sentence him by saying "John Brown, the Commonwealth of Virginia sentences you to be taken to a place of execution where you will be hanged by the neck until dead—may God have mercy on your soul."

If John Brown is found guilty he may request to make a final statement to the court. You should grant this request.

### **Court Clerk/Bailiff**

You are the court clerk and bailiff responsible for carrying out the orders of the presiding judge.

At the beginning of the trial you must say to the jury: "Good men and true, stand together and hearken to your evidence."

When the trial begins, the judge will ask you to read the charges against the defendant. You will read the following statement: "John Brown, you are charged with treason, insurrection and murder. How do you plead, guilty or not guilty?"

You will also be asked by the judge to swear in each witness. You will have each witness place their hand on a Bible (optional) and swear the following: "Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?"

You should be prepared to read aloud to the court any documents that the judge instructs you to enter into the court record, including statements of law and evidence introduced as exhibits.

You should keep a record of the names of all witnesses offering testimony.

You should be prepared to assist the judge in maintaining courtroom order. You may be asked to remove unruly witnesses or spectators.

At the end of the trial, when the jury has reached their verdict, the judge will ask you to say the following to the foreman of the jury: "Gentlemen of the jury, look upon the prisoner. How say you all? Is John Brown 'guilty' or 'not guilty' of all or any of the charges whereof he stands indicted?"

## Jury

You are a member of a jury that has been selected to try Captain John Brown. You are a citizen of the Commonwealth of Virginia and believe firmly in upholding the laws and institutions of your state including the protection of property. You consider the enslaved people of your state as property. You will be asked to consider the comments and testimony presented by both the prosecution and the defense and to render a fair and just verdict based on the evidence.

## Prosecution Attorneys: Charles B. Harding and Andrew Hunter

As attorneys you will be expected to form a theory of the case—essentially, what happened. You will then organize your witnesses to back up this theory with their direct testimony. You should have each witness write out specific questions you can ask them on the witness stand. That will help them remember what they have to say about the case. You may not ask leading questions during direct testimony, such as “Isn’t it true that you saw John Brown point his rifle at the mayor of Harper’s Ferry and threaten to kill him?” You may, however, ask leading questions under cross-examination.

Finally, during the trial, in addition to asking questions of your witnesses and any cross-examination questions of opposing witnesses, you will be expected to give opening and closing remarks. In your opening remarks you should describe for the court your theory of the case and what you intend to prove. In your closing remarks you should briefly summarize for the court what your witnesses proved and any errors you heard from the opposing witnesses. It is hard to be an attorney. That is why real lawyers go to law school after college. Do your best! You are the prosecuting attorneys charged with the conviction of Captain John Brown. You should formulate a theory of the case and frame your opening remarks and questions of your witnesses to support this theory of the case.

Points to consider in framing your arguments should include the following:

1. John Brown was not only a citizen of the U.S. and subject to federal jurisdiction but he was also a citizen of the Commonwealth of Virginia.
2. You will point out that the provisional constitution that he wrote clearly showed that his actions were designed not merely to free enslaved people but to treasonously overthrow the government of Virginia.
3. When you put weapons in the hands of slaves advising them to rebel—and hold their masters captive—those actions are punishable by death. Treason against the state of Virginia is treason against the state’s sovereignty.
4. You believe the U.S. Constitution supports your position, saying that citizens of each state shall be entitled to all the immunities of citizens of the several states. Treason means a breach of trust, and Brown betrayed that trust when he attacked the U.S. Armory at Harper’s Ferry.
5. Finally, you will use your witnesses to point out that as a result of his attack unarmed men in the town of Harper’s Ferry, including the town mayor, were murdered. The law expressly says that killing committed in resisting officers of the law attempting to suppress a riot is first degree murder and should be punishable with death. It is not enough to show how lenient Brown was with his hostages and how he did not want to shed their blood. Brown gloried in coming here to violate the laws of Virginia, and he should be ready to face the consequences.

You should ask for his conviction on all the charges to vindicate the majesty of Virginia’s sacred law.

## Prosecution Witnesses

### Dr. John Starry

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, especially under cross-examination, but if you do not know the answer it is best to just say, "I don't know."

You are a doctor living in the town of Harper's Ferry, Virginia. Your house is very near the train station. You were at your home on Sunday evening, October 16, 1859, when you heard a shot. Then you heard someone cry out as if they had been hit. You went to the window of your bedroom and saw two men get out of a train that had just pulled into the station. You heard one of the men shout, "There he goes now." Then you saw a tall man raise a rifle and fire off a shot. It was dark so you didn't see what or who he was firing at. However, you believed that someone might have been shot so you grabbed your medical kit and left your house. You went to the train station where you found Hayward Sheppard, the African American baggage master, nearly dead from a gunshot wound. You tried to help him, but he had lost too much blood. You stayed in the station until dawn and then decided to leave the station and seek help. You encountered two townsmen, Archibald Kitzmiller and Armistead Ball, and told them that you believed armed men had attacked and taken possession of the armory. In the course of the evening, you saw more than twenty armed men. Finally, you saddled a horse and rode off to Charles Town, Virginia, to raise the alarm. You returned to Harper's Ferry, along with several militiamen around 11:00 in the morning. During the course of Brown's capture of the armory, you were called to treat several townspeople hit by bullets. You tried to give medical attention to the town mayor, who was shot during the fighting, but could not do anything to save his life. You did not witness the final assault on the armory.

### Conductor A. J. Phelps

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, especially under cross-examination, but if you do not know the answer it is best to just say, "I don't know."

You are a conductor for the Baltimore and Ohio train. You were on a train that arrived in Harper's Ferry at about 1:00 a.m. You were with the engineer when the train pulled into the station and found it odd that there was no watchman on the bridge leading into the town from Maryland. Then suddenly, the watchman appeared—he was very agitated—he said that a band of armed men had attacked the bridge.

You decided to investigate. You went with three other men into the covered portion of the bridge where you were met by armed men. They had rifles. One of the men told you to "stand and deliver." You saw four men pointing their guns at you. Fearing for your life, you turned and retreated back across the bridge. Then a man you recognized as Mr. Sheppard came running up to you. He was bleeding. He had been shot in the back. You helped carry him into the railroad office, and the clerk went off to fetch a doctor. When the clerk left, you heard shots fired at him. The shots were very loud, and you wondered why more of the townspeople had not been aroused. Then one of the armed men came across the bridge and told you that you could bring the train across—but you told him you did not dare. You asked him what they wanted from this assault on Harper's Ferry. He said, "we want liberty and we mean to have it." You said, "What do you mean?" and he said, "You will find out in a day or two."

At about 4:00 a.m., you saw a wagon enter the armory yard and several men jump out. A little later you saw a man you recognized as Edwin Coppoc, and you asked him what was happening. He said that he and the other attackers did not mean to harm the train and its passengers—all they wanted to do was free the slaves. Then John Brown came up to you and told you that it was not his intention to harm anybody. You never heard him give orders to shoot anyone and remember him saying there would be no more shots from his men as long as the townspeople were peaceable. Then you actually saw him walk in front of the slow-moving train, escorting it over the bridge and out of town.

### Colonel Lewis Washington

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, especially under cross-examination, but if you do not know the answer it is best to just say, “I don’t know.”

You should consult with prosecution witnesses Conductor Phelps and Mr. Starry because you agree with what they know about the case.

You were taken hostage by Brown, who told you at one point that you could just go home. However, you were afraid that if you left the armory engine house one of Brown’s men would shoot you—so you decided to stay

You were present when the U.S. Marines stormed the engine house, and you can testify that once the marines were in the engine house you heard someone yell, “Surrender”. You were not sure whether it was one of the marines or Brown. The fighting continued, and you saw Brown with a rifle in his hand when he was struck by a marine with a sword—you think it was Lieutenant Green. You saw Brown stabbed and hit on the head by one of the soldiers.

You can’t say for sure whether Brown and his men were only firing in self-defense. You will say that you heard him say several times not to shoot unarmed citizens. However, he also complained on a number of occasions of the bad faith of the townspeople because they fired on his men, who were carrying a white truce flag.

### John Thomas Gibson

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, especially under cross-examination, but if you do not know the answer it is best to just say, “I don’t know.”

You are the colonel of the Jefferson County militia. Your men surrounded the armory engine house and were constantly exchanging shots with Brown and his men. Many of the shots coming from the armory engine house were directed at the townspeople who were also taking part in the action. You saw Mayor Fontaine Beckham shot by one of Brown’s men. He was standing near the water tank when he was hit. You went as near as possible to him as you could, but it was dangerous. Bullets were flying everywhere it seemed. You could see that the mayor was not breathing so you knew he had been killed.

### Armistead Ball

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, especially under cross-examination, but if you do not know the answer it is best to just say, “I don’t know.”

You work at the federal armory at Harper's Ferry as a machinist. You live in a house near the armory. You were awakened early in the morning with the news that armed men were at the armory carrying off government property. You immediately went to the armory to investigate. You were met at the entrance to the armory engine house by two armed men, who immediately took you prisoner. When you were being held hostage you actually spoke to John Brown and asked him what was his reason for attacking the armory and taking you and the others as hostages. He said that he was sorry that you had to be held as a hostage but his intent was to free the slaves, not to make war on the townspeople. You told him that he had no chance of succeeding and that he should just give up. You told him to stop spilling blood—his own men's and that of the townspeople—but he replied that he knew what he was doing and was willing to accept the consequences. You actually witnessed the killing of the town mayor, Fontaine Beckham. You saw one of Brown's men firing in the direction of the water tower in town and you think you heard him say, "Drop him." That man turned out to be the unfortunate Mayor Beckham of Harper's Ferry. You will say that you saw the man who actually shot Beckham killed by the marines when they stormed the armory engine house.

You will have to admit that you and the other hostages were treated quite well by Brown. In fact, he even permitted you to leave the engine house on parole to visit your family. According to the terms of the parole you had to promise to return. And you did return. Even though the armory engine house was very dangerous since it was frequently under fire and all of the hostages had to lie flat on the floor for safety.

### John Allstadt

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, especially under cross-examination, but if you do not know the answer it is best to just say, "I don't know."

You own a farm near Harper's Ferry. One of your neighbors is Lewis Washington, who is also a prosecution witness. On Monday morning about three o'clock you were awakened from sleep by a loud knocking on the door. You asked who was there. The reply was "Get up quickly or we will burn you up." You asked what they intended to do. They said, "Free the country of slavery." They told you they were going to take you to Harper's Ferry. You quickly dressed yourself and when you got to the door you saw that they had captured all seven of your slaves and armed them with pikes (spears). You and your slaves were all put into a wagon. All the men who captured you were armed with rifles. Then they took you and your slaves and headed off in the direction of Harper's Ferry. When you got there, you were ordered into the watch-house near the armory. Colonel Washington was there, and Brown came and spoke to you about getting two of the enslaved people to take your places—then he said you would be released. Nothing came of that proposition. You noticed that Brown's rifle was cocked and ready to fire all the time. The African Americans in the watch-house all had spears in their hands, but they didn't seem very threatening. You were later taken to the armory engine house where Brown's men were busy making firing holes in the walls, so they could shoot without being hit from the outside. By this time, you saw that most of the slaves had dropped their spears and seemed a bit dazed.

You were a hostage in the armory engine house when the marines made their assault. You saw Brown and his men take positions behind the fire engine, aiming their rifles at the door. You saw Brown fire his rifle when the marines burst through the door, and you believe that he shot one



of the marines, who you later learned was Private Luke Quinn. Although in the smoke and confusion of the fight you cannot be entirely sure that Brown actually fired the fatal shot.

### Albert Grist

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, especially under cross-examination, but if you do not know the answer it is best to just say, "I don't know."

You live in the town of Harper's Ferry. On Sunday night, the evening of the attack by Brown and his men, you had gone to visit your son who works on a nearby farm. You were coming home across the Shenandoah Bridge and were seized by two men with rifles. When you got to the end of the bridge you were halted by a man with a spear. You asked him what was going on and was the town under some kind of military law. He told you that you would not be harmed and then asked you if there were many slaveholders in Harper's Ferry. You told him no—just a few. Then a third man came up—you later learned he was Captain John Brown—and he said, "I see you have some prisoners." Then they took you and a few other men off to the armory engine house, which was already filled with several other town citizens. Brown came in and told you and the others that you were hostages but that this would be only temporary—until he got his way and the enslaved people were freed. You told him that there really were not many slaves in Harper's Ferry, and he replied that "the good book says we are all free and equal and, if we were peaceable, we should not be hurt."

You heard a lot of firing coming from the town and being returned from Brown's men in the engine house. At one point, Brown agreed to let you go home, but you declined because you feared that Brown's men might shoot you anyway.

### Defense Attorneys: Lawson Botts and Henry Griswold

As attorneys you will be expected to form a theory of the case—essentially, what happened. You will then organize your witnesses to back up with their direct testimony your theory of the case. You should have each witness write out specific questions you can ask them on the witness stand. That will help them remember what they have to say about the case. You may not ask leading questions during direct testimony, such as "Isn't it true that John Brown never ordered his men to shoot citizens of Harper's Ferry?" You may, however, ask leading questions under cross-examination. Finally, during the trial, in addition to asking questions of your witnesses and any cross-examination questions of opposing witnesses, you will be expected to give opening and closing remarks. In your opening remarks you should describe for the court your theory of the case and what you intend to prove. In your closing remarks you should briefly summarize for the court what your witnesses proved and any errors you heard from the opposing witnesses. It is hard to be an attorney. That is why real lawyers go to law school after college. Do your best!

In preparing your opening and closing remarks you should consider the following:

1. John Brown is entitled to an impartial trial under the laws of Virginia and should be acquitted or convicted according to those laws and the evidence given in this case.
2. Regarding the charge of treason, the defense believes that Brown cannot be guilty of treason because he is not even a citizen of the Commonwealth of Virginia and none but a citizen could commit treason. He never swore allegiance to Virginia so how could he be a rebel against her authority.



3. It must be proven that Brown attempted to establish a separate and distinct government. There must be sufficient evidence to prove this charge of treason and according to the U.S. Constitution it requires two distinct witnesses to prove each and every “overt act” of treason.
4. Brown is also charged with levying war against the Commonwealth of Virginia but evidence will show this to be untrue—there is a great difference between levying war and resisting authority. Men congregating together to perpetrate crime have their rules and regulations. When assailed they defend their lives to the utmost—even sacrificing and intending to sacrifice the lives of others—but that is resistance, not levying war.
5. Brown will not deny that he and his men came to liberate the enslaved people. This is a crime in Virginia and Captain Brown should be subjected to the laws applicable to this offense. In carrying out this crime he temporarily took possession of the U.S. arsenal at Harper’s Ferry and, while he was there, attempts were made to arrest him. It was while resisting those attempts that blood was shed and lives taken—but this was not levying war against the Commonwealth of Virginia.
6. Brown knew he was committing an offense against slave property. He repeatedly confessed it and is willing to take the consequences. Indict and convict him for this offense and not for a crime he never intended to commit.
7. Regarding the charge of murder, if committed within the limits of the federal armory at Harper’s Ferry, this court has no jurisdiction. In the case of Mr. Beckham, the town mayor, if he was killed on the railroad bridge, it was committed within the state of Maryland and thus also outside this court’s jurisdiction.
8. Brown may be guilty of taking a life during the fighting at Harper’s Ferry, but it must be proven that it was deliberate and premeditated murder to make it a capital offense. Otherwise the killing was murder in the second degree—punishable by imprisonment.

## Defense Witnesses

### Joseph Brua

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, especially under cross-examination, but if you do not know the answer it is best to just say, “I don’t know.”

You were one of Brown’s hostages. You heard Brown tell you and the other hostages that it was unfortunate that so many shots were being fired at the armory engine house but that you and the other hostages would have to share the danger with his men unless they stopped. You saw some of Brown’s men leave the engine house on several occasions under a flag of truce only to be fired at by the townspeople. When one of Brown’s men, a Mr. Stevens, was badly wounded, Brown allowed you to go out and help him into town so a doctor could tend to his wounds. You had to swear that you would return as a hostage, which you did. You saw one of Brown’s men—Mr. Coppoc—get shot and then return fire. You heard someone say, “That man’s down.” That downed man, you later learned, was Mayor Beckham. But you will admit that you never heard Brown tell his men to shoot the mayor. In fact, he was constantly urging them to show restraint, to shoot only in self-defense.

**Archibald Kitzmiller**

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, especially under cross-examination, but if you do not know the answer it is best to just say, "I don't know."

You were one of Brown's hostages. You repeatedly tried to get Brown to surrender, but each time he said he was determined to free the slaves from bondage and that if it was necessary to fight pro-slavery men to accomplish that end he was prepared to do it.

You will say that while you were out of the armory engine house on parole you saw one of Brown's men, Mr. Thompson, captured on the bridge into town. He was held in the Wagner rooming house with Stevens—one of Brown's men injured in the fighting near the engine house—but a mob of townspeople seized the injured Stevens and dragged him from the house to the trestle over the Potomac River. One of the townspeople—you did not know the man—shot Stevens in the head. You heard the crowd cheering and then they dumped his body into the river. You saw several more men fire more shots into the lifeless body. You think this was done because of the killing of Mayor Beckham.

**William Williams**

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, especially under cross-examination, but if you do not know the answer it is best to just say, "I don't know."

You were the night watchman on the bridge leading into town. You heard shots fired and then you were taken prisoner by Brown's men. While you were a prisoner in the armory engine house, you saw the African American baggage master Haywood Sheppard shot. He was hit from a bullet fired by someone in the town. You believe that Brown treated you and the other hostages well. He told you and all the other hostages to stay at the rear of the building and to keep as low as possible so as not to be hit by the bullets which were coming pretty thick. You believe that the reason Sheppard was hit was because he ignored this advice. However, you will admit that Brown told you and all the other hostages that if necessary he was prepared to burn down the town.

**Rezin Cross**

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, especially under cross-examination, but if you do not know the answer it is best to just say, "I don't know."

You were one of Brown's hostages. You will testify that Brown was always kind and respectful to all of the hostages. You spoke to Brown and got him to agree to a possible solution to the stand-off. Brown's men would be allowed to keep possession of the armory engine house and the hostages would be released. However, the townspeople had to agree to stop firing at Brown's men in the engine house. Brown allowed you to go out with one of his men, William Thompson, under a flag of truce to propose this solution. However, the townspeople ignored the white flag and took Thompson prisoner. You returned to the armory, as promised. You later heard that Thompson had been shot and killed by a mob of townspeople.

**John Dangerfield**

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, especially under cross-examination, but if you do not know the answer it is best to just say, "I don't know."

You are the paymaster for the U.S. armory. You were taken hostage along with several other men. During your time as a hostage you never felt threatened except from the bullets being fired at the armory engine house by the townspeople. You saw both of Brown's sons hit by fire from the townspeople. They later died of their wounds. One of his sons was shot by the townspeople while he was outside the armory under a flag of truce.

You saw the marines storm the engine house, and you heard Brown tell his men to surrender but you don't think they heard him. Then you saw Brown struck by a sword. He appeared to be protecting himself, not really resisting.

You did hear Brown say that it was in his power to burn down the town, but you never heard him say he would actually carry out this threat.

**Captain Simms**

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, especially under cross-examination, but if you do not know the answer it is best to just say, "I don't know."

You are a captain in the Virginia militia. You will testify that you received a report from a messenger that 750 African Americans and abolitionists had seized the U.S. armory at Harper's Ferry, Virginia, so you set out for Harpers Ferry with a company of militia volunteers under the command of Colonel Shriver. When you arrived on Monday afternoon you were glad to find that the number of attackers had been greatly exaggerated. You believed there were less than twenty and some had already been injured.

When you got close to the armory you noticed that the door to the engine house was partially open, and you hailed Brown, asking if you could have a parley. Brown said he had a proposition to make to you. He told you that he wanted to be allowed to go over the bridge unmolested and then we could capture him if we could. He said that he had fought "Uncle Sam" before and was willing to do it again if necessary. He complained that his men had already been shot down like dogs while bearing a flag of truce. You told him that they could be expected to be treated like that because they had taken up arms against Virginia. You told him that you would never agree to the request, and he needed to surrender immediately. He refused. You felt no sympathy for him at the time but did consider him a brave man. Some may criticize you, a Southerner, for testifying about your respect for John Brown, but you believe that every man deserves a fair trial.

# Script: Trial of John Brown

## Scene One: Opening Remarks

**NARRATOR:** Charles Town, Virginia. It is Tuesday morning, October 25, 1859. The trial of Captain John Brown commences with Richard Parker as presiding judge. At 10:30 the sheriff was directed to bring in the prisoner, who was conducted from the jail under a guard of eighty armed men. A guard with fixed bayonets was also stationed around the courthouse. Charles B. Harding was the lead prosecutor, assisted by Andrew Hunter. Captain Brown seemed weak and haggard, with eyes swollen from the wounds on his head. He is allowed to recline on a cot.

**JUDGE RICHARD PARKER:** Clerk, please read the charges against the defendant.

**CLERK:** John Brown, you are charged with treason, insurrection, and murder. How do you plead?

**JOHN BROWN:** Not guilty. May I address the court?

**PARKER:** You may.

**BROWN:** Virginians, the governor of your state has assured me that I should have a fair trial but is that even possible? If you seek my blood, you can have it at any moment, without this mockery of a trial. I don't even have an attorney. I am ready for my fate. I beg for no mockery of a trial. I do not know what the benefit of this trial would be to the Commonwealth. I have little further to ask, other than that I not be foolishly insulted, only as cowardly barbarians insult those who fall into their power.

**NARRATOR:** At the conclusion of Brown's remarks, the court assigned Charles Faulkner and Thomas Green, two Southern lawyers, to represent the defendant. However, they were soon replaced by two more sympathetic attorneys sent from the North, Henry Griswald and Lawson Botts.

**PARKER:** Prosecution may make their opening remarks.

**CHARLES B. HARDING:** The evidence in this case will show without a shadow of doubt that when this man came to the Commonwealth of Virginia and planted his feet at Harper's Ferry, he came there to reside and hold the place permanently. It is true that he occupied a farm four or five miles off in Maryland but not for the purpose of establishing a home. It was for the nefarious and hellish purpose of rallying his forces to attack Harper's Ferry as a starting point to overthrow our beloved government. His actions—whether you view them as tragic, insane, or farcical—showed that his true intent was not merely to free the slaves. (*Holding up a copy of Brown's provisional constitution*).\* His intent was to establish a provisional government—it was no debating society—and in holding offices under it and exercising its functions he was clearly guilty of treason. Look at some of the provisions: Article 7 provides for a commander in chief with powers to direct all movements of his army, and Article 48 requires that all officers, citizens, and soldiers connected with his organization take an oath to abide by and support this Provisional Constitution and Ordinances. As to conspiring with enslaved people to initiate rebellion, the law is clear—they are guilty whether insurrection is made or not. When you put pikes in the hands of slaves advising

\* See Preamble in Documentary Evidence section. Full text of Brown's Provisional Constitution is available online at the National Archives.

them to rebel, and hold their masters captive, those actions are punishable by death. Treason against the state of Virginia is treason against her sovereignty. We have no other description of treason, because treason can only be committed against sovereignty, whether that of the United States or of a sovereign state.

**PARKER:** Defense may make any opening remarks.

**HENRY GRISWALD:** Gentlemen of the jury, you must keep in mind that you are the judges of the law and if you have any doubt as to the law or the fact of the guilt of this prisoner you must give the prisoner the benefit of the doubt. Captain Brown is entitled to an impartial trial under the laws of Virginia, and let him be acquitted or convicted according to those laws and the evidence given in this case. Regarding the charge of treason, the defense believes that Captain Brown cannot be guilty of treason because he is not even a citizen of the Commonwealth of Virginia and no one but a citizen could commit treason. He never swore allegiance to Virginia so how could he be a rebel against her authority. Also, it must be proven that Captain Brown attempted to establish a separate and distinct government. There must be sufficient evidence to prove this charge of treason and according to the U.S. Constitution it requires two distinct witnesses to prove each and every act of treason.

The defendant is also charged with levying war against the state, but evidence will show this to be untrue. There is a great difference between levying war and resisting authority. Men congregating together to perpetrate crime have their rules and regulations. When assailed they defend their lives to the utmost—even sacrificing and intending to sacrifice the lives of others—but that is resistance, not levying war. Captain Brown will not deny that he and his men came to liberate the slaves. This is a crime in Virginia, and Captain Brown should be subject to the laws applicable to this offense. In carrying out this crime he temporarily took possession of the U.S. arsenal at Harper's Ferry, and, while he was there, attempts were made to arrest him. It was while resisting those attempts that blood was shed and lives taken, but this was not levying war against the Commonwealth. Captain Brown knew he was committing an offense on slave property. He has repeatedly confessed it and is willing to take the consequences. So, indict and convict him for this offense and not for a crime he never intended to commit.

Regarding the charge of murder, if committed within the limits of the federal armory at Harper's Ferry, this Court has no jurisdiction. And in the case of Mr. Beckham, the town mayor, if he was killed on the railroad bridge, it was committed within the state of Maryland and thus also outside the jurisdiction of this court. Captain Brown may be guilty of taking a life during the fighting at Harper's Ferry but it must be proven that it was deliberate and premeditated murder to make it a capital offense. Otherwise the killing was murder in the second degree, punishable by imprisonment. If you have any doubt on the points you must give that doubt to the prisoner. Let simple justice be meted out to the prisoner. He asks no more.

## Scene Two: Case for the Prosecution

**PARKER:** Prosecution, you may call your first witness.

**HARDING:** Prosecution calls Dr. John Starry.

**CLERK:** Place your left hand on the Bible and raise your right hand. Do you swear to tell the truth the whole truth and nothing but the truth?

**DR. JOHN STARRY:** I do.

**HARDING:** What is your occupation, Mr. Starry?

**STARRY:** I am a doctor.

**HARDING:** Please tell the court when you first became aware that Harper's Ferry was being attacked.

**STARRY:** I was home on Sunday night, October 16, when I heard a shot. Then someone cried out. I looked out the window of my bedroom and saw two men get out of the train that had just pulled into town. One shouted, "There he goes now." Then I saw a tall man raise his rifle and fire off a shot. I didn't see exactly what he was aiming at.

**HARDING:** What did you do next?

**STARRY:** I left my house and went to the railroad station where I found Hayward Sheppard, the black baggage master, dying. He had been shot. I tried to help him but it was hopeless. I stayed in the station till dawn and then I left the station and went to see Archibald Kitzmiller, one of the armory clerks, and Armistead Ball, the master machinist, and told them that I thought armed men had attacked and taken possession of the armory. I had seen men patrolling during the night, and I figured there were twenty or thirty of them.

**HARDING:** What did you do next?

**STARRY:** I rode off on my horse to Charles Town to give the alarm and get help. I returned to Harper's Ferry at about 11:00 p.m., along with a number of militiamen.

**HARDING:** No further questions.

**PARKER:** Defense, do you have any questions of this witness?

**BOTTS:** No, Your Honor.

**PARKER:** Witness may step down. Prosecution, you may call your next witness.

**HARDING:** Prosecution calls Conductor A. J. Phelps.

**CLERK:** Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

**A. J. PHELPS:** I do.

**HARDING:** What is your occupation, Mr. Phelps?

**PHELPS:** I am the conductor for the Baltimore and Ohio train.

**HARDING:** Can you tell the court where you were in the early morning hours of October 17?

**PHELPS:** I was on our train that arrived in Harper's Ferry at about 1:00 a.m.

**HARDING:** What happened on your arrival?

**PHELPS:** I was with the engineer, and we found it odd that there was no watchman on the bridge. Then suddenly the watchman appeared. He was very agitated and said that a band of armed men had attacked the bridge.

**HARDING:** Then what did you do?

**PHELPS:** I decided to investigate. I went with three other men into the covered portion of the bridge where we were met by armed men. They had rifles. One of the men told us to "stand and deliver" and I saw four men pointing their guns at us.



**HARDING:** What did you do?

**PHELPS:** We turned and retreated back across the bridge. Then Sheppard came running up to me. He was bleeding. He had been shot in the back. We carried him into the railroad office and the clerk went off to fetch a doctor. When the clerk left, we heard shots fired at him. The shots were very loud, and I wondered why more of the townspeople had not been aroused. Then one of the armed men came across the bridge and told us we could bring the train across. But I told him we did not dare. Then I asked what did they want?

**HARDING:** What did he say?

**PHELPS:** He said, "We want liberty and we mean to have it." I said, "What do you mean?" and he said, "You will find out in a day or two."

**HARDING:** Go on.

**PHELPS:** At about 4:00 a.m., I saw a wagon enter the armory yard and several men jumped out. A little later I saw a man I recognized as Edwin Coppoc, and I asked him what was happening. He said that they did not mean to harm our train. All they wanted to do was free the slaves. Then John Brown came up to me and told me that it was not his intention to harm anybody. He never gave orders to shoot anyone and there would be no more shots from his men as long as the townspeople were peaceable. Then he actually walked in front of our slow-moving train, escorting us over the bridge and out of town.

**HARDING:** No further questions.

**PARKER:** Defense, do you have any questions of this witness?

**BOTTS:** No, Your Honor.

**PARKER:** Prosecution may call their next witness.

**HARDING:** Prosecution calls Colonel Lewis Washington.

**CLERK:** Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

**COLONEL LEWIS WASHINGTON:** I do.

**HARDING:** You have heard the testimony of Conductor Phelps and Mr. Starry. Do you agree with everything they had sworn?

**WASHINGTON:** Yes.

**HARDING:** You were one of Brown's hostages, correct?

**WASHINGTON:** Yes, except that at one point, Brown told me I could go home. But I was afraid that if I left the armory one of Brown's men would shoot me, so I stayed.

**HARDING:** Were you present when the marines stormed the engine house?

**WASHINGTON:** Yes, all the hostages including myself took cover in the rear of the armory.

**HARDING:** What did you see happen?

**WASHINGTON:** Once the marines were in the engine house I heard someone yell, "Surrender". I am not sure whether it was one of the marines or Brown. But the fighting continued, and I saw Brown with a rifle in his hand when he was struck by a marine with a sword. I think it was Lieutenant Green. Brown was stabbed and hit on the head.



**HARDING:** No further questions.

**JUDGE PARKER:** Defense, do you wish to question this witness?

**GRISWALD:** Yes, your honor. Isn't it true, Colonel Washington, that Captain Brown and his men were only firing in self-defense?

**WASHINGTON:** I don't know. There were shots constantly being fired at the armory. I will say that I did hear Captain Brown give frequent orders not to fire on unarmed citizens. I heard Brown complain on a number of occasions of the bad faith of the townspeople because they fired on his men who were carrying a white truce flag

**GRISWALD:** No further questions.

**JUDGE PARKER:** The witness may step down. Prosecution, you may call your next witness.

**HARDING:** Prosecution calls John Thomas Gibson.

**CLERK:** Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

**JOHN THOMAS GIBSON:** I do.

**HARDING:** What is your occupation?

**GIBSON:** I am the colonel of the Jefferson County militia.

**HARDING:** Colonel Gibson, please tell the court what you witnessed at Harper's Ferry.

**GIBSON:** My men surrounded the engine house and were constantly exchanging shots with Brown and his men. Many of the shots coming from the engine house were directed at the townspeople who were also taking part in the action.

**HARDING:** Did you see any of the townspeople hit by shots from the armory?

**GIBSON:** Yes. I saw Mayor Beckham shot by one of Brown's men. He was standing near the water tank when he was hit. I went as near as possible to him as I could, but it was dangerous. Bullets were flying everywhere, it seemed. I could see that he was not breathing.

**HARDING:** No further questions.

**PARKER:** Defense, do you wish to question this witness?

**GRISWALD:** No questions, Your Honor.

**PARKER:** Prosecution may call their next witness.

**HARDING:** Prosecution calls Armistead Ball.

**CLERK:** Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

**ARMISTEAD BALL:** I do.

**HARDING:** What is your occupation at the armory?

**BALL:** I am the master machinist.

**HARDING:** When were you aware that the armory was under attack?

**BALL:** I was roused early in the morning with the news that armed men were at the armory carrying off government property. I immediately went to the armory to investigate. I was met at the entrance to the engine house by two armed men, who made me a prisoner.

**HARDING:** While you were first made a hostage, did you ever talk with Brown?

**BALL:** Yes, I asked him why he was attacking the armory and why he made me a hostage. He said that he was sorry that I had to be held as a hostage but his intention was to free the slaves, not to make war on the townspeople.

**HARDING:** Did you try and convince Brown to give up?

**BALL:** I did. I told him to stop spilling blood—his own men's and that of the townspeople—but he replied that he knew what he was doing and was willing to accept the consequences.

**HARDING:** Do you know anything about the death of Mayor Fontaine Beckham?

**BALL:** Yes. I saw one of Brown's men firing in the direction of the water tower and heard him say, "Drop him." The man who killed Beckham was killed when the marines stormed the engine house.

**HARDING:** No further questions.

**PARKER:** Defense, do you wish to question this witness?

**GRISWALD:** Yes, Your Honor. How were you and the other hostages treated by Brown?

**BALL:** We were treated well. In fact, Brown even allowed me to leave and visit my family, on parole. I had to promise to return, which I did. But the engine house was under constant fire, so I and the other hostages hugged the floor for cover.

**GRISWALD:** No further questions.

**PARKER:** Prosecution may call their next witness.

**HARDING:** Prosecution calls John Allstadt.

**CLERK:** Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

**JOHN ALLSTADT:** I do.

**HARDING:** Mr. Allstadt, where do you live?

**ALLSTADT:** I live on a farm next to Lewis Washington.

**HARDING:** Can you tell the court how you became aware that the town and armory were under attack?

**ALLSTADT:** On Monday morning about 3:00, I was awakened from sleep by a loud knocking on the door. I asked who was there. The reply was "Get up quickly or we will burn you up." I asked what they intended to do. They said, "Free the country of slavery." They told me they were going to take me to Harper's Ferry. I quickly dressed myself and when I got to the door they had rounded up all my slaves, seven in number. We were all put into a wagon and my slaves were given pikes, spears. All the men with us were armed with guns.

**HARDING:** What happened next?

**ALLSTADT:** We headed off in the direction of Harper's Ferry. When we got there, we were ordered into the watch-house. Brown came and spoke to us about getting two slaves to take our places. Then he said we would be released. Nothing came of that proposition. Brown's rifle was cocked all the time. The blacks in the watch-house all had spears in their hands, but they didn't seem

very threatening. We were later taken to the engine house where Brown's men were busy making firing holes. By this time most of the blacks had dropped their spears.

**HARDING:** Did you witness the assault on the armory by the marines?

**ALLSTADT:** Yes, when the marines made the assault Brown and his men took positions behind the engine and aimed at the door. Brown was in front, squatting. He fired at the marines, and in my opinion, he killed one of the marines.

**HARDING:** No further questions.

**PARKER:** Defense, do you wish to question this witness?

**GRISWALD:** Yes, Your Honor. Mr. Allstadt, isn't it true that you were very confused and excited when the marines assaulted the engine house and you could be wrong about Brown firing the shot that killed Private Luke Quinn?

**ALLSTADT:** Yes, I could be wrong.

**GRISWALD:** No further questions.

**PARKER:** Prosecution may call their next witness.

**HARDING:** Prosecution calls Albert Grist.

**CLERK:** Raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth?

**ALBERT GRIST:** I do.

**HARDING:** Please tell the court when you realized armed men were attacking Harper's Ferry.

**GRIST:** Sunday night I had gone to visit my son. I was coming home across the Shenandoah bridge and was seized by two men with rifles. When we got to the end of the bridge we were halted by a man with a spear. I asked what was going on. Was the town under martial law? He told me I would not be hurt and then asked me if there were many slaveholders in Harper's Ferry? I told him no.

**HARDING:** Did you see the defendant with these men?

**GRIST:** Yes. Captain Brown came up and said to his men, "I see you have some prisoners." Then they took us off to the armory where there were several other citizens. Later Brown came in and said to us that his object was to free the slaves.

**HARDING:** What did you say?

**GRIST:** I told him that there were not many here. He replied that the good book says we are all free and equal, and, if we were peaceable, we should not be hurt. There was some firing at this time and later a person was sent to tell the conductor that the train might pass unmolested. Brown then dismissed me, but I did not go home because I feared that some of Brown's men, not knowing of his order, might shoot me. I also saw Hayward brought in, wounded.

**HARDING:** No further questions.

**PARKER:** Defense, do you wish to question this witness?

**GRISWALD:** No, Your Honor.

**PARKER:** Prosecution may call their next witness.

**HARDING:** Prosecution rests, Your Honor, pending closing remarks.

**Scene Three: Defense Witnesses**

**NARRATOR:** The next day begins with the case for the defense.

**PARKER:** Defense may call their first witness

**BOTTS:** Defense calls Joseph Brua.

**CLERK:** Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

**JOSEPH BRUA:** I do.

**BOTTS:** Please tell the court what you know about this case.

**BRUA:** I was one of Brown's hostages. Brown told all of us that it was unfortunate that so many shots were being fired at the engine house but that we would have to share the danger with his men unless they stopped.

**BOTTS:** Isn't it true that Brown made many attempts to negotiate a truce?

**BRUA:** Yes. I saw men leave the engine house on several occasions under a flag of truce only to be fired at by the townspeople. When Mr. Stevens, one of Brown's men, went out with Mr. Kitzmiller, Stevens was shot. He was badly wounded, so Brown allowed me to go out and help bring him to Wagner's Boarding House, in the town, so a doctor could tend to his wounds. I had to promise that I would return as a hostage, which I did.

**BOTTS:** Did you see Mayor Beckham get shot?

**BRUA:** Yes, I saw one of Brown's men, Coppoc, get hit and then several of Brown's men returned fire. Then I heard someone say, "That man's down," which I later learned was Mayor Beckham.

**BOTTS:** Did you ever hear Brown give instructions to his men to shoot the mayor?

**BRUA:** No. In fact, he was constantly urging them to show restraint—only to shoot in self-defense.

**BOTTS:** No further questions.

**PARKER:** Prosecution, do you wish to question this witness?

**HARDING:** No, Your Honor.

**PARKER:** Defense may call their next witness.

**BOTTS:** Defense calls Archibald Kitzmiller

**CLERK:** Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

**ARCHIBALD KITZMILLER:** I do.

**BOTTS:** You were one of Brown's hostages, correct?

**KITZMILLER:** Yes.

**BOTTS:** Please tell the court what you know about this case.

**KITZMILLER:** I repeatedly tried to get Brown to surrender but each time he said he was determined to free the slaves from bondage and that if it was necessary to fight pro-slavery men to accomplish that end that he was prepared to do it.

**BOTTS:** Did you see anything happen to any of Brown's men?

**KITZMILLER:** Yes. I saw one of his men—it was Mr. Thompson—captured on the bridge by several armed townspeople.

**BOTTS:** And what happened to him?

**KITZMILLER:** At first, he was held in the Wagner boarding house with Stevens, one of Brown's men injured in the fighting near the Engine House, but a mob of townspeople seized him and they dragged him from the house to the trestle over the Potomac River. Then he was shot in the head. The crowd cheered and then they dumped his body into the river. Several men fired more shots into the lifeless body.

**BOTTS:** Why do you think the townspeople did this?

**KITZMILLER:** I guess they thought it was justified because of the killing of Mayor Beckham.

**BOTTS:** No further questions.

**PARKER:** Prosecution, do you wish to question this witness?

**HARDING:** No questions, Your Honor.

**PARKER:** Defense may call its next witness.

**BOTTS:** Defense calls William Williams.

**CLERK:** Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

**WILLIAM WILLIAMS:** I do.

**BOTTS:** Please tell the court what you know about this case.

**WILLIAMS:** I was the night watchman on the bridge. I heard shots fired when I was taken prisoner, but I didn't see Hayward Sheppard the black baggage master, shot. I was taken hostage by Brown and his men and taken to the engine house.

**BOTTS:** How were you treated and what did you hear Brown say?

**WILLIAMS:** He treated us well. He told us to stay at the rear of the building and to keep as low as possible so as not to be hit by the bullets being fired at us from the townpeople—they were coming pretty thick.

**BOTTS:** No further questions.

**PARKER:** Prosecution, do you wish to question this witness?

**HARDING:** Yes, Your Honor. Isn't it true, Mr. Williams, that Brown told you and all the other hostages that if necessary he was prepared to burn down the town?

**WILLIAMS:** Yes.

**HARDING:** No further questions.

**PARKER:** Defense may call its next witness.

**BOTTS:** Defense calls Rezin Cross.

**CLERK:** Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

**REZIN CROSS:** I do.

**BOTTS:** Were you one of Brown's hostages?

**CROSS:** Yes.

**BOTTS:** How were you treated?

**CROSS:** Brown was always kind and respectful to us.

**BOTTS:** Did you make a proposition, agreed to by Brown, that he and his men would keep possession of the armory and, if the townspeople stopped firing, the hostages would be released?

**CROSS:** Yes. And Brown allowed us to take this proposition out under a flag of truce. I went out with William Thompson but the townspeople took Thompson prisoner, and later I heard he was killed by a mob.

**BOTTS:** No further questions.

**PARKER:** Prosecution, do you wish to question this witness?

**HARDING:** No questions, Your Honor.

**PARKER:** Defense may call their next witness.

**BOTTS:** Defense calls John Dangerfield.

**CLERK:** Raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth?

**JOHN DANGERFIELD:** I do.

**BOTTS:** What is your occupation, Mr. Dangerfield?

**DANGERFIELD:** I am the paymaster for the armory.

**BOTTS:** What happened to you when Brown began his attack on the armory?

**DANGERFIELD:** I was taken hostage.

**BOTTS:** Did you ever feel threatened?

**DANGERFIELD:** I never felt in danger from Brown's men while I was a hostage.

**BOTTS:** Did you see any of Brown's men killed?

**DANGERFIELD:** Yes, I saw both of Brown's sons hit by fire from the townspeople. They both died. I also saw one of Brown's sons go out under a flag of truce and return with a mortal wound.

**BOTTS:** What did you see when the marines attacked the armory?

**DANGERFIELD:** When the marines stormed the engine house I heard Brown tell his men to surrender, but I don't think they heard him. Then I saw him struck by a sword. He appeared to be protecting himself, not really resisting.

**BOTTS:** No further questions.

**PARKER:** Prosecution, do you have any questions of this witness?

**HARDING:** Yes, Your Honor. Isn't it true that Brown threatened to burn down the town?

**DANGERFIELD:** Yes. I did hear Brown say that it was in his power to burn down the town, but I never heard him say he would actually carry out this threat.

**HARDING:** No further questions.

**PARKER:** Defense may call their next witness.



**BOTTS:** Defense calls Captain Simms.

**CLERK:** Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

**CAPTAIN SIMMS:** I do.

**BOTTS:** Please tell the court how you became aware that Harper's Ferry was under attack and what you did about it.

**SIMMS:** The report came to me in Frederick, Maryland, that 750 blacks and Northern abolitionists had seized Harper's Ferry so I set out for the Ferry with the militia volunteers under command of Colonel Shriver. When we arrived on Monday afternoon, I was glad to find their numbers had been exaggerated.

**BOTTS:** When did you first encounter the defendant, Captain Brown?

**SIMMS:** The door to the engine house was partially open and I hailed Brown asking if we could have a parley. I entered and met Brown and others. Captain Brown said he had a proposition to make to me. I listened.

**BOTTS:** What did he say?

**SIMMS:** He said that he wanted to be allowed to go over the bridge unmolested and then we could capture him if we could. He said that he had fought Uncle Sam before and was willing to do it again if necessary. He complained that his men had already been shot down like dogs while bearing a flag of truce. I told him that they could be expected to be treated like that because they had taken up arms.

**BOTTS:** Then you flatly rejected his offer, correct?

**SIMMS:** Yes, and I might add that I felt no sympathy for Brown, but I do regard him as a brave man.

**BOTTS:** Some may criticize you, a Southerner, testifying about your respect for Captain Brown. How do you explain this?

**SIMMS:** I am testifying about Brown's character so that those of the North will not be able to say that a Southern man would not testify on behalf of a person like Captain Brown, whose principles I detest.

**BOTTS:** No further questions.

**PARKER:** Does the prosecution wish to question this witness?

**HARDING:** No questions, Your Honor.

**PARKER:** Does the defense have any more witnesses?

**BOTTS:** No, Your Honor. The defense rests pending closing remarks.

#### Scene Four: Closing Remarks, Verdict, and Sentence

**NARRATOR:** The court assembled at 9:00 Monday morning to hear the closing remarks. Brown was helped into the courtroom and allowed to assume his usual reclining position on his cot, although he appeared to have regained most of his health. Brown's lawyers believed their only hope was to convince the jury that he could not be convicted of treason against Virginia when the evidence demonstrated that he clearly was not a citizen of the Commonwealth.

**PARKER:** Prosecution may make their closing argument.



**HARDING:** Gentlemen of the jury, I think it is hardly necessary for me to tell you where lies the boundaries of Virginia. I think you all know that these crimes were committed within the jurisdiction of this court, within Jefferson County, Virginia. Virginia law clearly makes the Potomac River the boundary between Maryland and Virginia. It gives both states power to enforce criminal law along the banks of this river. The defense would have you believe that the United States alone holds jurisdiction over the armory grounds but fails to note that the evidence showed that four murders were committed outside the grounds of the armory.

The defense has maintained that Brown cannot be convicted of treason because he is not a Virginia citizen. But we believe the Constitution of the United States supports our argument. It says that citizens of each state shall be entitled to all the immunities of citizens of the several states. Thus, Brown came to Virginia with all the immunities provided by the Constitution. He did not divest the responsibilities belonging to these immunities. Treason means a breach of trust and did he not betray that trust when he attacked our fair state? By the federal Constitution he was manifestly a citizen when he was here.

Further, Virginia law defines Virginia citizenship as all those white persons born in any other state of this Union who become residents here. The evidence shows, without a shadow of a doubt, that when Brown came to Virginia and planted his feet at Harper's Ferry, he came to reside and hold the place permanently. His provisional government was very real. It was no debating society as Mr. Griswold would have you believe. In holding office under it and exercising its function he was clearly guilty of treason. He meant that the new government was to be a union of separate states like our United States, with one major exception. They were all to be free states and the property of slaveholders was to be confiscated all over the South and any man who resisted was to be shot. Brown's actions at Harper's Ferry demonstrate, without a doubt, that he fully meant what he said, however senseless the attempt might appear. And I might add that Brown had already enlisted thousands of allies in the North ready to support him. Regarding his conspiracy with the enslaved people to rebel, the law is clear. It is a crime to incite a slave rebellion whether it is successful or not. When you put pikes in the hands of slaves and hold their masters captive, it is a crime punishable with death. The defense would have you believe that Brown shot no unarmed men, but when our dear mayor, Mr. Beckham, was murdered, he was unarmed. The law expressly says that a killing committed in resisting officers of the law attempting to suppress a riot is first degree murder and should be punishable with death. It is not enough to show how lenient Brown was with his hostages and how he did not want to shed their blood. Brown gloried in coming here to violate our laws and he should be ready to face the consequences. We ask for his conviction on all the charges to vindicate the majesty of our sacred law, and we ask the court that he be sentenced to death.

**PARKER:** Defense may make their closing argument.

**GRISWOLD:** May it please Your Honor and gentlemen of the jury, I know that you desire my client to have a fair trial. But I ask you, what is a fair trial? You must weigh every principle of law and if there is any doubt in your minds regarding guilt or innocence you must acquit. First, there has been no evidence that any of the offenses for which my client has been charged were committed in Virginia. My client cannot be convicted of treason against Virginia because he is not a citizen of Virginia. Second, regarding the offense of levying war against this state, we maintain that he was not making war, he was resisting authority. He was carrying out civil disobedience to the institution of enslavement. I know that the court has seen a copy of my

client's so-called provisional government. However close examination of the details of this document reveal one simple fact—he clearly meant to establish a government in opposition to that of the United States, not to subvert that of the Commonwealth. He has been charged with inciting rebellion among the enslaved. We disagree. Rather, he was providing the means for the enslaved to escape from bondage. Finally, my client has been charged with premeditated murder, a charge punishable with death. We do not deny that deaths occurred during this sad episode and we deeply regret the loss of life. However, evidence has shown that Brown's intent was manifestly to prevent bloodshed and at worse he should only be held accountable for murder in the second degree. We humbly ask the court to spare John Brown's life.

**NARRATOR:** The jury retired to consider their verdict. They returned after deliberating for less than an hour. Brown was found guilty on all the charges.

**PARKER:** John Brown, before this court passes sentence on you, do you have any final words?

**BROWN:** (*Rising from his cot*) I have, may it please the court, a few words to say. I deny everything but what I have all along admitted—the design on my part to free the slaves. I never did intend murder, or treason, or the destruction of property, or to excite or incite slaves to rebellion, or to make insurrection. This court acknowledges the validity of the law of God. I see a book kissed here which I suppose to be the Bible, or at least the New Testament. That 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 say, I am yet too young to understand that God is any respecter of persons. 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, was not 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 submit; so let it be done! I feel entirely satisfied with the treatment I have received on my trial. Considering all the circumstances it has been more generous than I expected. But I feel no consciousness of guilt. I never had any design against the life of any person, nor any disposition to commit treason, or excite slaves to rebel, or make any general insurrection. I never encouraged any man to do so, but always discouraged any idea of that kind. I hear it has been stated by some of them that I have induced them to join me. But the contrary is true. I do not say this to injure them, but as regretting their weakness. There is not one of them but joined me of his own accord, and the greater part of them at their own expense. A number of them I never saw, and never had a word of conversation with, till the day they came to me; and that was for the purpose I have stated. Now I have done.

**PARKER:** John Brown, the Commonwealth of Virginia sentences you to be hanged by the neck until dead. May God have mercy on your soul.

# Documentary Evidence

Provisional Constitution and Ordinances for the People of the United States Written by John Brown

PROVISIONAL  
CONSTITUTION  
And  
ORDINANCES  
For the  
PEOPLE OF THE UNITED STATES  
Preamble

Whereas, Slavery, throughout its entire existence in the United States, is none other than a most barbarous, unprovoked, and unjustifiable War of one portion of its citizens upon another portion; the only conditions of which are perpetual imprisonment; and hopeless servitude or absolute extermination; in utter disregard and violation of those eternal and self-evident truths set forth in our Declaration of Independence:

Therefore

We, citizens of the United States, and the oppressed people, who, by a recent decision of the Supreme Court are declared to have no rights which the White Man is bound to respect; together with all other people degraded by the laws thereof, do, for the time being ordain and establish for ourselves, the following PROVISIONAL CONSTITUTION and ORDINANCES, the better to protect our Persons, Property, Lives, and Liberties; and to Govern our actions.

Source: Courtesy of National Archives and Records Administration, 3819337.

# Time Line

1800	John Brown is born.
1837	John Brown vows to end slavery.
1850	Compromise of 1850 becomes law.
1854	Kansas-Nebraska Act is passed.
1856	Pottawatomie massacre occurs in "Bleeding Kansas."
1857	The Supreme Court issues its <i>Dred Scott</i> decision.
1859	Brown launches his assault on Harper's Ferry; he is tried and executed for this action.
1860	Abraham Lincoln is elected president.
1861	The Civil War begins.

# Glossary

**Allocution:** A formal speech given by a defendant prior to sentencing,

**Constitutional treason:** "Treason against the U.S. shall consist only in levying war against them, or in adhering to their Enemies, giving them Aid and Comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on Confession in open court."

**Parole:** Temporary release generally with a promise to either return to captivity or to swear not to engage in any more fighting.

**States rights:** The rights assumed to belong to the citizens of each state under the U.S. Constitution, which, in 1859, according to Southern states, such as Virginia, included the right to own people.

# Postscript

John Brown never blamed others for his failed attempt to free the slaves. He admitted that using hostages to protect his men during the fight over the armory was not an effective strategy. Although he believed that if he had been more ruthless in prosecuting the attack it might have succeeded. Legal attempts to save John Brown from his date with the hangman failed. His attorneys petitioned the Virginia Supreme Court on his behalf, arguing that there were errors in the indictment and that it was wrong to condemn a man who was clearly insane. The Virginia Supreme Court rejected their pleas and Virginia's Governor Henry Wise refused to issue a pardon.

John Brown was executed at a little after 11:00 a.m. on Friday December 2, 1859. He was taken from the jail by Sheriff Campbell and his assistant Captain Avis, the jailor. There was no attempt at a rescue. Brown said that he desired no religious ceremonies either in the jail or on the scaffold from ministers who consented or approved of the enslavement of their fellow men. He preferred to be accompanied to the scaffold by a dozen enslaved children and their mothers. Everything was conducted under the strictest military discipline. Mounted guards were stationed in the woods to the left of the gallows. The soldiers on the field formed two hollow squares around the scaffold. The day was fine and warm. Brown appeared perfectly calm and collected. He took formal leave of each of his fellow prisoners, and gave each one a quarter of a dollar as a token of remembrance. As he was escorted from the jail to the gallows he bowed to acquaintances. He rode to the scaffold in an open wagon, seated on his coffin. At the gallows Brown was perfectly cool. He made no remarks. As soon as he mounted the scaffold a hood was placed on his head and drawn over his face. He was then placed over the drop. A few minutes passed, then the drop open and he fell. After about three minutes there were no convulsions or indications of life. At the end of twenty minutes, his body was examined by a doctor and he was reported dead.

Prior to his hanging, Brown predicted that "the crimes of this guilty land will never be purged away, but with Blood."<sup>1</sup> By the conclusion of the Civil War in 1865 the deaths of more than 600,000 Union and Confederate soldiers proved the veracity of that prophecy.

1 McGinty, Brian. *John Brown's Trial*. Cambridge, MA: Harvard University Press, 2009: 272.

# Discussion Questions

1. The U.S. Constitution prior to the American Civil War supported a person's right to due process and a "speedy" trial, but nowhere did it define a "fair" trial. Do you think that under the circumstances John Brown received a fair trial? Why or why not?
2. Given the nature of his crimes did Brown stand any realistic chance of escaping conviction and execution? Discuss.
3. Given the political circumstances of 1859, who makes the stronger argument regarding the meaning of treason, the prosecution or the defense? Discuss.
4. Brown made several statements during his trial, but he was never allowed to actually testify in his own defense. In America prior to the Civil War, only potentially impartial witnesses were permitted to give testimony because it was believed that an individual who had a personal interest in a case might give false testimony. Had Brown been able to testify at his trial, do you think it would have made a difference? Why or why not?
5. Brown's jury was composed of affluent white men. Most were middle-aged farmers, and some were slave owners. Virginia law also made it impossible to serve on a jury if you opposed the death penalty. Do you think that if the jury had included women, blacks, or individuals who were reluctant to support the death penalty Brown would have been spared execution?
6. After the verdict, Brown's attorneys appealed the decision. What points do you think they used in their appeal?
7. Brown was tried, condemned, and executed. But many historians argue that it was the institution of slavery that was the real defendant in this trial. Did it too die as a result of the verdict? Discuss.
8. Many historians argue that John Brown was undoubtedly insane and that his ludicrous attempt to seize the U.S. armory in Harper's Ferry and launch a hopeless slave rebellion only served to prove this point. Should his lawyers have insisted that he submit an insanity plea? Would it have been successful? Would Brown have agreed to it? Discuss.
9. John Brown's raid on Harper's Ferry raised the conundrum of whether the end justifies the means and the relevancy of violence as a means of social and political protest. Do you believe that Brown's goal, destroying slavery, justified his violent means to achieve it? Is violence as a form of social and political protest ever justified? Discuss.
10. Arrange the following from most justified to least justified as protests against the enslavement of individuals in the South prior to the Civil War. Discuss your reasoning.
  - a. A Northern boycott of all goods produced in the South until enslavement is officially abolished
  - b. The signing of petitions by U.S. citizens opposed to enslavement to be sent to the legislatures of every state in the South supporting enslavement
  - c. Withdrawing all federal funds or infrastructure improvements from states that refuse to abolish enslavement



- d. Aiding and abetting the escape of enslaved people from slaveholding states to free states in the North or other countries
- e. Publishing books decrying the horrors of Southern enslavement
- f. Arming and assisting enslaved individuals to overthrow the existing slaveholding state governments
- g. Lobbying elected officials in both the North and the South to pass legislation to end enslavement

## Extension Activities

1. John Brown's final allocution at the end of his trial has been widely viewed as one of the greatest speeches in American history. Write an essay in which you either support or disagree with this assessment.
2. Historians are divided about whether John Brown was a madman who launched a hopeless and inept plot to free the slaves, or a clever revolutionary who deliberately sacrificed his life to bring down the South's institutional system of enslavement. Write an essay in which you defend one of these two theses.
3. One of the most relevant legal questions raised by Brown's trial was that of who had legal priority: state or federal courts. If alleged treason is construed as treason against an individual state and against the federal government, can the state take priority over the federal government in prosecuting the offense? Write an essay on how this issue was part of the wider discussion of states' rights versus the primacy of federal authority that defined politics leading up to the Civil War.
4. Read the scripted version of the trial and compare it to your role play. What were the similarities and differences? Were there statements made in the scripted version that you wished had been said in your role play? Would it have made a difference in the verdict?

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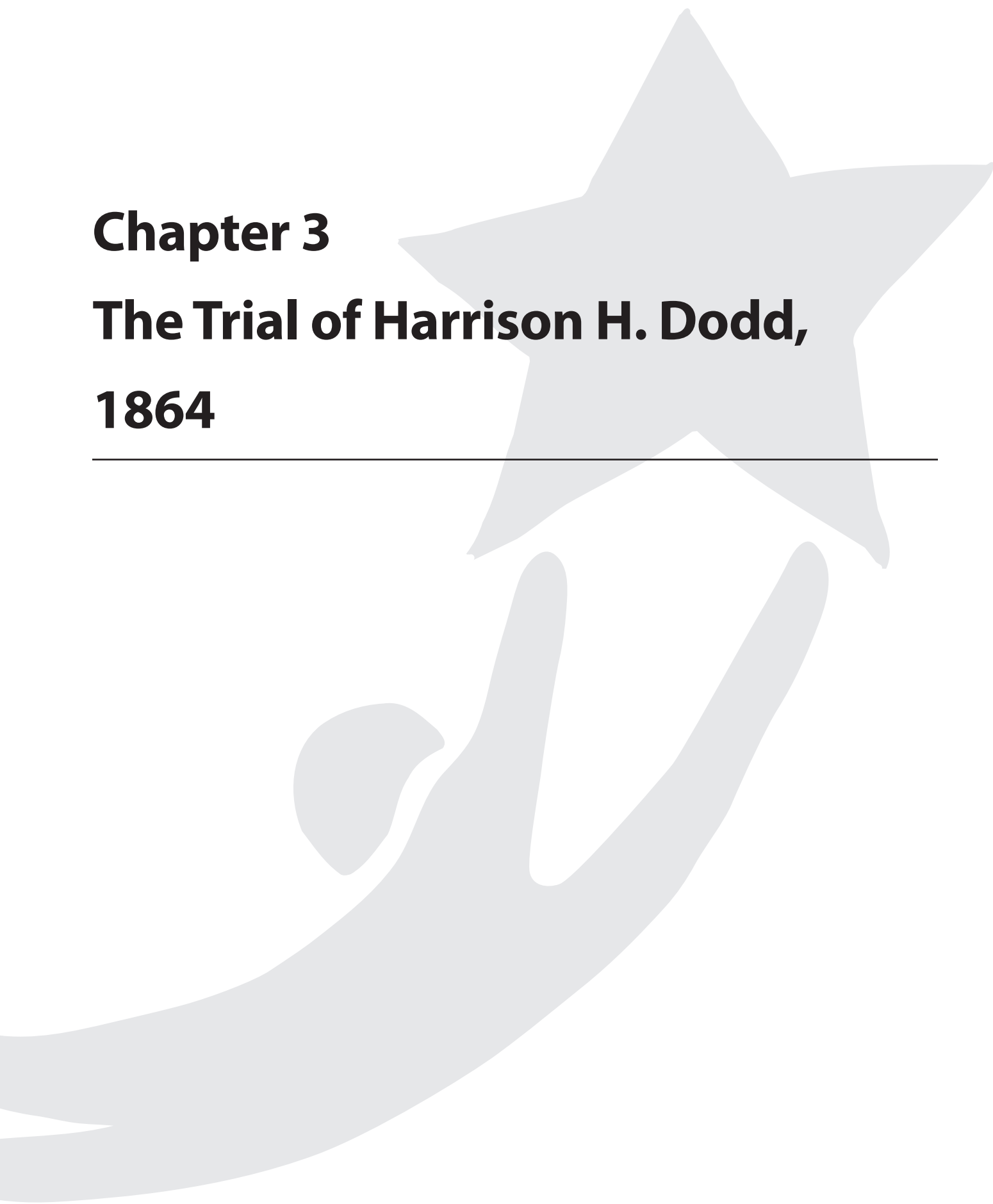
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## **Chapter 3**

# **The Trial of Harrison H. Dodd, 1864**

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## ● Introduction ●

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President Abraham Lincoln reputedly said that he feared “the fire in the rear” more than the rebel armies in the field as a threat to maintaining the Union.<sup>1</sup> In September 1864, Harrison H. Dodd was placed on trial before a military commission in Indianapolis, Indiana, accused of a plot that involved leading a subversive society whose treasonous purpose was to overthrow the U.S. government and initiate a Northwestern Confederacy.

### Objectives

1. Students will be familiar with the contentious political environment that existed during the final years of the Civil War.
2. Students will learn the significance that secret societies played in local and national politics in 1864.
3. Students will learn the facts surrounding the treason trial of Harrison Dodd and the role that his conviction, along with that of others, played in political and legal history.

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<sup>1</sup> Weber, Jennifer. *Copperheads: The Rise and Fall of Lincoln's Opponents in the North*. New York: Oxford University Press, 2006: 1.



## Lesson Plan

### Trial Procedure

1. Classroom should be set up as a courtroom (see Diagram).
2. Attorneys, witnesses, and any courtroom spectators should be seated.
3. Military tribunal (judges) enter and the court clerk/military sergeant-at-arms instructs everyone in the courtroom to "rise."
4. General Colgrove (head of the tribunal) then makes an opening remark about the legitimacy of using a military tribunal in this case.
5. General Colgrove then instructs the clerk/sergeant-at-arms to read the charges against the defendant Harrison H. Dodd. Dodd should declare himself "not guilty," and the trial proceeds according to the following schedule:
  - a. Opening remarks by the judge-advocate(s)
  - b. Opening remarks by the defense attorney(s)
  - c. Direct testimony and cross-examination of prosecution witnesses
  - d. Court is advised that the defendant has escaped to Canada
  - e. Summary remarks by the judge advocate(s)
  - f. Summary remarks by the defense attorney(s)
  - g. Military tribunal retires to deliberate
  - h. Military tribunal returns to the court and General Colgrove delivers the verdict
  - i. If Dodd is declared guilty in absentia then General Colgrove immediately sentences him to be hanged by the neck until dead



#### Teaching Tip

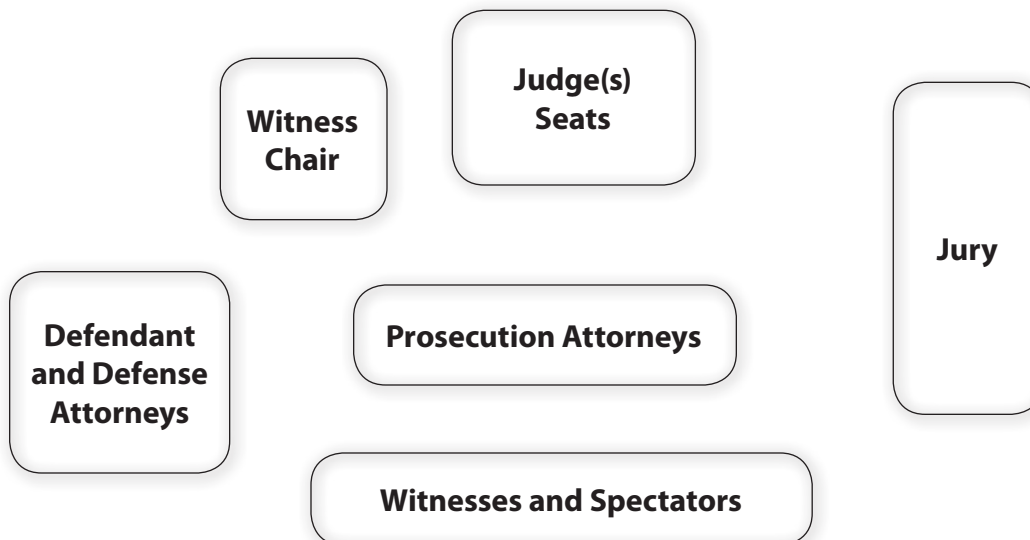
As students are not adept at being authority figure, teacher should play role of head of military commission.



#### Teaching Tip

For attorney roles, choose students who are well-organized and not afraid to speak in front of class.

### Diagram of Courtroom Seating



**Teaching Tip**

You can limit the length of the trials by omitting roles or by setting speaking time limits.



## **Suggested Schedule (role play)**

**Day One:** Background, role assignments and initial preparation

**Day Two:** Further preparation (if necessary)

**Day Three:** Begin trial

**Day Four:** Conclude trial, and debrief using Discussion Questions

**Day Five:** Conclude debrief and assign Extension Activities

## **Notes for the Teacher (role play)**

1. Read and discuss with students the Background Essay.
2. Divide the class into prosecution and defense and either assign students specific roles or have them decide as a group who will be the attorneys and which witnesses they will present for the case. Unless you have a very capable student it is advisable for the teacher to perform the role of General Colgrove, the head of the military tribunal. Students are not accustomed to being the authority figure in a classroom. This is additionally important because (if you pursue the historical trial) the defendant escapes and General Colgrove will have to deal with this unusual circumstance.
3. Students should be given the remainder of any class time and the next class to prepare for the trial. Attorneys should present their theories of the case and frame questions for each of the witnesses. Witnesses should write out a deposition (what they plan to say on the witness stand) and practice their direct testimonies and any expected cross-examination questions. Other students playing the role of members of the military tribunal can be asked to research the role their particular character played during the Civil War.
4. It is highly recommended that you have Dodd escape since there is no testimony on the side of the defense, other than Dodd's own testimony.
5. Very important. Unless you decide to have Dodd testify—not escape—you should secretly inform the defense attorneys and the student playing Dodd that after the conclusion of the prosecution's case, he will "escape" and thus will not be giving any testimony. The attorneys and Dodd must be sworn to secrecy! It has been my experience that students really enjoy this plot. However, tell Dodd's attorneys that when it comes time to make closing remarks they will deny any foreknowledge of Dodd's plan to escape.
6. You should also inform the members of the military commission that if the defendant should escape the trial will continue with him being tried in absentia.

7. You may decide to allow witnesses to refer to their depositions while testifying rather than relying totally on memory.
8. Before the beginning of the trial the attorneys from the prosecution and defense should exchange copies of the depositions (or role descriptions) of their witnesses to aid them in framing cross-examination questions. Note that the defense does not have any witnesses other than the defendant. If you want to complete the trial in one class session then you will need to allot and enforce strict time limits depending on the length of your class period.
9. Assuming a 60-minute class period the time would look like this:
  - 5 minutes for General Colgrove (teacher) to read the charges and receive Dodd's not guilty plea
  - 3 minutes for prosecution opening remarks
  - 3 minutes for defense opening remarks
  - 25 minutes for direct testimony from prosecution witnesses
  - 10 minutes for cross-examination of selected prosecution witnesses
  - Unless Dodd is going to "escape," allow 5 minutes for his testimony. Otherwise allow 5 minutes for comments regarding Dodd's escape.
  - 3 minutes for prosecution closing remarks
  - 3 minutes for defense closing remarks
  - 2 minutes for verdict and sentence
10. On the day of the trial arrange the classroom to look like a courtroom (see Diagram) with the military tribunal seated at the front of the classroom, a chair for those testifying, a seat for the defendant, desks for the attorneys, and witness seats.
11. Try to match roles to student personalities and academic strengths. For student-attorneys it is particularly important that you select students who are well-organized and not afraid to speak in front of the class. You should emphasize this point if you decide to let students be a part of the role assignment process.
12. When the military commission is deliberating over the verdict, students can review the Discussion Questions and Extension Activities.
13. Finally, if you allowed Dodd to testify rather than escape, you will have to discuss this unhistorical change with students during the Discussion Question period.

### **Suggested Schedule (scripted version)**

**Day One:** Read and discuss the Background Essay, assign speaking parts for scripted trial, read the scripted trial, and begin debriefing using the Discussion Questions.

**Day Two:** Continue debriefing and assign Extension Activities

### **Notes for the Teacher (scripted version)**

1. On the day of the trial, arrange the classroom to look like a courtroom (see Diagram) with the military tribunal seated at the front of the classroom, a chair for those testifying, a seat for the defendant, desks for the attorneys, and witness seats.
2. Read and discuss with students the Background Essay.
3. Assign students roles in the play (see Roles Grid). Note that the attorneys and prosecution witness Felix Stidger have the lengthiest speaking parts so you might have two students share those roles.
4. Note that (consistent with history) Dodd escapes to Canada and is tried and convicted *in absentia*.

## Roles Grid

Role	Historical Character	Student Name
<b>Defendant</b>	Harrison H. Dodd	
<b>Head of the Military Tribunal</b>	Brevet Brigadier General Silas Colgrove	
<b>Military Tribunal Members</b>	Colonel William E. McLean	
	Colonel John T. Wilder	
	Colonel Thomas I. Lucas	
	Colonel Charles D. Murray	
	Colonel Benjamin Spooner	
	Colonel Richard P. DeHart	
	Colonel Ambrose A. Stevens	
<b>Sergeant-at-Arms</b>	Sergeant Major Bush	
<b>Judge-Advocate (Prosecution)</b>	Major Henry L. Burnett	
<b>Assistant Judge-Advocate (Prosecution)</b>	Major Ben Pitman	
<b>Prosecution Witnesses</b>	Felix Stidger	
	Joseph Kirkpatrick	
	W. M. Clayton	
	Wesley Trantor	
	Elliot Robertson	
<b>Defense Attorneys</b>	J. W. Gordon	
	M. M. Kay	
<b>Narrator</b>		



### Teaching Tip

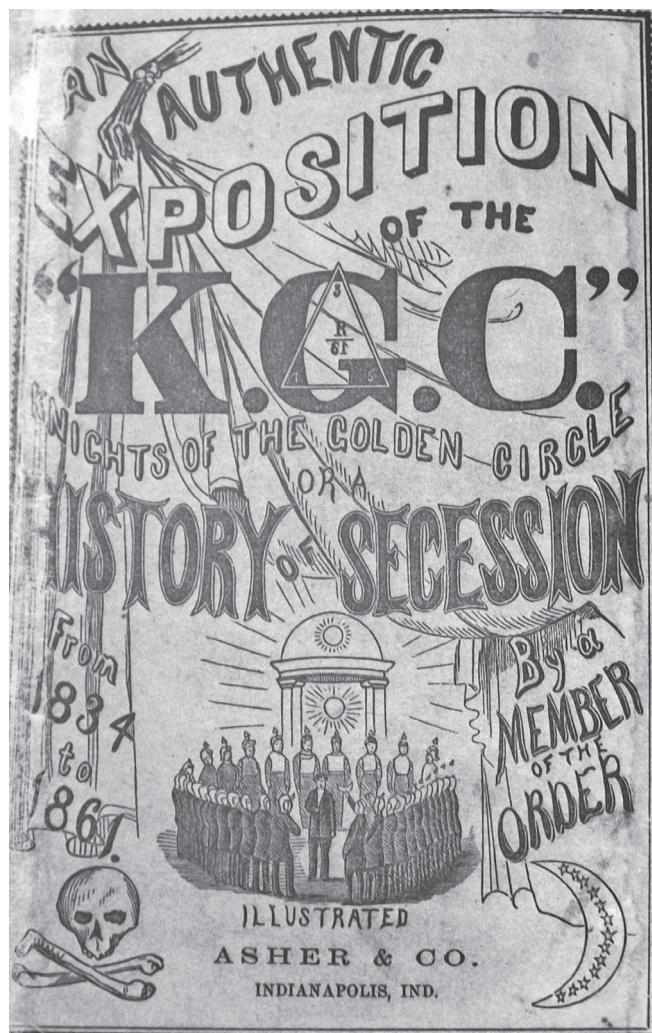
Try to match roles with student personalities and academic strengths.



### Teaching Tip

You can add an interfering spectator role. Someone who inappropriately shouts out something about the innocence or guilt of accused.

# Background Essay



Knights of the Golden Circle, *History of Secession*, 1862

While the Civil War raged on the battlefield, secret societies, sometimes called “dark lanterns,” emerged in the North. The Union League was pro-Republican and the other three—the Knights of the Golden Circle, the Order of American Knights, and the Sons of Liberty—were Democratic, or Copperhead, secret societies. “Copperhead” (a poisonous snake) was the label that Republicans attached to the anti-war Democrats, who believed there should be a negotiated end to the Civil War. Copperhead support was especially strong in Midwestern

states, such as Ohio, Indiana, and Illinois, where there were many people with Southern roots. They energetically opposed Republican-endorsed legislation to reform the banking system, emancipate enslaved people, and curtail civil liberties, such as the suspension of habeas corpus. They especially hated the draft legislation that empowered the conscription of young men into the Union army for a term of three years—unless, of course, they could pay for a substitute. The Democratic supporters of the latter three societies maintained that they were perfectly legitimate organizations, formed to protect their civil rights, to help them win close elections, and to promote a peaceful settlement of the Civil War. They saw secret political societies as a means to protect themselves and their rights under the Constitution. However, Republicans were adamant that these Democratic secret societies represented a direct and dangerous threat to the U.S. Government and its efforts to win the Civil War.

Republican leaders, according to one historian, were convinced that a “potent fifth column of Southern sympathizers in the Midwest stood poised for an uprising to take their states out of the Union and establish a separate peace with the Confederacy.”<sup>1</sup> One prominent Republican, known for his radical views, argued that Democratic dissenters had only two rights, “the right to be hanged and the right to be damned.”<sup>2</sup> Republican inspired mobs wrecked or burned more than two dozen Democratic-owned printing plants as a means of intimidating the editors supporting the peace movement. Union General Ambrose Burnside went a step further to silence Copperhead opposition by issuing General Order

1 McPherson, James. *Battle Cry of Freedom*. New York: Oxford University Press, 1988: 762.

2 Klement, Frank L. *Dark Lanterns: Secret Political Societies, Conspiracies, and Treason Trials in the Civil War*. Baton Rouge: Louisiana State University Press, 1984: 3.

Source: An authentic exposition of the Knights of the Golden Circle, A history of secession from 1834 to 1861. Indianapolis: Asher & Co., 1861.



No. 38 banning all public statements “sympathetic to the enemy.”

In 1864, Indiana Republican governor Oliver P. Morton was seeking reelection. He believed that it was his mission to crush Democratic opposition—by any and all means necessary. Democrats believed that Morton was “demented” upon the subject of treason and conspiracy and that his real goal was to create an atmosphere of fear that would give him an excuse for declaring martial law in the state.<sup>3</sup> Confirming their worst fears, Morton attacked the Democratic nominee, Joseph E. McDonald, and his supporters, labeling them as Copperhead traitors and saying that they even supported Jefferson Davis, the president of the Confederacy. He saw pro-Southern Copperheads arousing opposition to the emancipation of the slaves, and calling for a “restoration of the ‘Union as it was,’” as a direct threat to his administration and the Union cause.<sup>4</sup> The issue of emancipation was especially unpopular in Illinois and Indiana. Very few men in these states had joined the Union Army to oppose enslavement; they joined to save the Union. Morton especially regarded the secret societies, such as the Knights of the Golden Circle and the Sons of Liberty as infected with traitors, and that all true patriots should reject them. He enlisted a Union officer, Brigadier General Henry B. Carrington, Commander of the Indiana Military District, to hire U.S. government detectives to gather incriminating evidence against Democratic leaders that would link them to treason. He even suggested that, as pernicious traitors, they should face a military, not a civilian, court.

By the beginning of 1864, H. H. Dodd had become the chief organizer and promoter of the Sons of Liberty. Outwardly, he had always presented the Sons of Liberty as an organization dedicated to open and free elections and

the protection of civil rights. However, he told Republicans that they would learn the purpose of the Sons of Liberty if they tried to “place arms in the hands of their sons and send them to polls in company with hired ruffians to intimidate and overawe peaceable citizens in the exercise of a constitutional right.”<sup>5</sup> Along with the other members of his order he saw an active peace movement as the only way to successfully conclude the Civil War. He was even selected by his supporters as a delegate to the Democratic National Convention. However, by July 1864 the Republican-inspired campaign to depict him and other Democratic leaders as traitors had arguably clouded his good judgement. Dodd’s printing firm needed cash to fund his movement, and he learned that Confederate agents in Canada had money available to support a Northern peace movement, elect Copperheads to office, arouse discontent, and even support a vague scheme to foment rebellion in the North and bring about a Northwestern Confederacy. Dodd agreed to take money from these questionable sources and even went so far as to reorganize the Sons of Liberty into four imaginary military districts that would potentially be used to oppose Republican takeover of the polls in the contentious October and November elections. Lambdin Milligan, Andrew Humphreys, John C. Walker, and William A. Bowles, prominent Peace Democrats, were to be appointed as commanders of this new military organization. But Dodd was unaware that a government detective, Felix Stidger, had penetrated his organization. Using a bogus letter of introduction, Stidger met with Dodd, joined the society, gained his confidence, learned the secret signs, and acquired a number of documents, including an initiation booklet.

Meanwhile as the October gubernatorial and November presidential elections approached, Dodd’s level of anxiety grew. He was convinced that the Republicans were going to use force to prevent a free election. He decided to form a new “defensive” society called the Order of

3 Stampp, Kenneth M. *Indiana Politics during the Civil War*. Indianapolis: Indiana Historical Bureau, 1949: 166.

4 Doyle, Don H. *The Cause of All Nations: An International History of the American Civil War*. New York: Basic Books, 2015: 211.

5 Stampp, *Indiana Politics*, 166.

American Cincinnatus with the express purpose of stopping Republican election fraud. However, during an early August meeting, Dodd shocked even his most dedicated members by proposing open resistance to the U.S. government. When Felix Stidger informed General Carrington of the proposed use of force Stidger suggested to Governor Morton that Dodd should be arrested and charged with treason “lest the situation get out of hand.”<sup>6</sup>

The final straw came on August 20 when a shipment of weapons, including pistols and ammunition, was seized by detectives and soldiers who had been watching Dodd’s printing company. They also seized a number of incriminating documents that quickly found their way into Republican newspapers, such as the *Indianapolis Daily Journal*. The story in the August 20, 1864, *Daily Journal* headlined “Rampant

Treason in Indianapolis” reported that a treasonous conspiracy had been uncovered and that many prominent Democratic leaders, including H. H. Dodd, were involved. On September 3,



Harrison H. Dodd

Harrison Dodd was arrested at his home and taken into confinement at a military prison in Indianapolis. Governor Morton pressured the military authorities to put Dodd on trial as soon as possible so it would have a negative impact on Democrats in the fall elections. General Hovey agreed. A military commission was formed “to meet at the United States Court Rooms in the city of Indianapolis on the 19th day of September 1864, at 10 a.m. for the trial of Harrison H. Dodd and such other prisoners as may be brought before it.”<sup>7</sup> You

will now have an opportunity to participate in a role play or scripted version of this dramatic trial.

<sup>6</sup> Klement, *Dark Lanterns*, 167.

<sup>7</sup> *Ibid.*, 172.

# Roles

## Defendant: Harrison H. Dodd

You are the acknowledged leader of the Sons of Liberty, a secret society that existed during the Civil War. It evolved from an earlier organization called the Knights of the Golden Circle.

You own a printing company and have used your resources to support the so-called Peace Democrats, or Copperheads, especially in their opposition to Indiana Governor Oliver Morton and President Abraham Lincoln. You and your supporters in the Sons of Liberty especially oppose emancipation of the slaves and the military draft. You want an immediate and peaceful settlement of the war.

On August 20, 1864, your printing plant was raided by Union soldiers and detectives. They confiscated a number of documents associated with the Sons of Liberty along with crates, labeled religious books, that in fact contained hundreds of pistols and rounds of ammunition. You will maintain that these weapons were purchased in New York for members of your secret order so that they could prevent Republican intimidation at the voting polls during the coming election. They were never planned to be used to assault Union prisoner of war camps or federal arsenals.

You believe that you have been arrested and brought to trial primarily as a scapegoat by Republican leaders to try and smear the Peace Democrats. You were careful not to put important plans about your secret society into writing. However, you did reveal some damaging information to an undercover detective, Felix Stidger. Don't be surprised if he testifies against you in the trial! He may say that you suggested that any detective that secretly infiltrated your society should be killed, but you should say that there was never anyone actually murdered. You will admit that during meetings you discussed various military actions, but they were always in the context of making sure that the Republicans did not try and intimidate Democrats who were trying to vote. You will deny that you ever advocated the establishment of a so-called Northern Confederacy nor did you plan to raid Union prisoner of war facilities to free Confederate soldiers. You will admit to taking money from individuals in Canada but only because your printing company was desperately short of funds and you were unaware that this money was directly connected to the Confederate government.

In general, you should insist that you and the members of your secret society, the Sons of Liberty, were not guilty of anything other than your active opposition to the Republican Party and the continuation of the Civil War.

Finally, after the prosecution has presented all their witnesses, you may decide to escape to Canada in order to avoid a likely conviction. It is very important that you say nothing about this to anyone except your teacher.

## Military Tribunal

### Brevet Brigadier General Silas Colgrove, Head of Commission

You are the head of a military tribunal, also called a military commission, formed to try Harrison H. Dodd and others accused of various crimes against the government. The trial is popularly

viewed as a treason trial but the prosecutor, or judge-advocate, cleverly wrote the indictment so that it would not need to conform to the constitutional definition of treason, which is a very tough standard to meet. You are supposed to be completely objective. However, you are a partisan supporter of the Republican Party, and you believe that all advocates of peace and compromise are traitors. You have openly expressed nothing but contempt for the Democratic Party and specifically for Copperheads.

First, you should make an opening statement saying that a military commission has been assembled because the charges against the defendant Harrison H. Dodd involve crimes against the government while it is trying to suppress a rebellion. The defense may challenge your authority to try the case but you should overrule any objections. Second, you should instruct the sergeant-at-arms to read the charges against the defendant. Dodd will plead not guilty and then the trial should commence according to the following schedule:

1. Opening remarks by the prosecution
2. Opening remarks by the defense
3. Prosecution witnesses
4. If necessary, announcement regarding the defendant's escape and the continuation of the trial with Dodd in absentia; otherwise, testimony from the defendant, Harrison Dodd
5. Closing remarks by the prosecution
6. Closing remarks by the defense
7. Military commission retires and considers the verdict
8. Military commission delivers the verdict and sentence
9. Military tribunal returns to the court and you deliver their verdict; If Dodd is declared guilty then you should immediately sentence him to be hanged by the neck until dead

#### **Other Members of the Commission:**

**Colonel William E. McLean**

**Colonel John T. Wilder**

**Colonel Thomas I. Lucas**

**Colonel Charles D. Murray**

**Colonel Benjamin Spooner**

**Colonel Richard P. DeHart**

**Colonel Ambrose A. Stevens**

Each of you are a member of a military commission formed to try Harrison H. Dodd and others accused of various crimes against the government. The trial is popularly viewed as a treason trial but the prosecutor cleverly wrote the indictment so that it would not need to conform to the constitutional definition of treason, a very tough standard to meet. Each of you are supposed to be completely objective. However, each of you is a partisan supporter of the Republican Party and believe that all advocates of peace and compromise are traitors. Each of you have openly expressed nothing but contempt for the Democratic Party and specifically those labeled as "Copperheads." It will be each of your jobs, along with those of the other officers on the military

commission, to hear the statements made by the attorneys and witnesses and make a ruling on the guilt or innocence of the defendant.

**Sergeant-at-Arms: Major Bush**

It will be your job to help General Colgrove in running the trial. He will ask you to read the following charges against the defendant and to ask for a plea.

Charges and Plea:

"Mr. Harrison H. Dodd you are accused of conspiring along with several other members of your secret society known as the Sons of Liberty to overthrow the United States government. You are further charged with providing aid and comfort to the enemies of the U.S. government and conspiring with others to incite insurrection. You and other members of your society actively practiced disloyalty to the government by encouraging desertion and preventing further enlistment of soldiers into the Union army. To these charges how do you plead?"

He will also ask you to swear in each witness by naming each witness and saying the following:

"Place your left hand on the Bible and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?"

**Prosecution Attorneys: Judge-Advocate Major Henry L. Burnett and Assistant Judge-Advocate Major Ben Pitman**

In your opening remarks you should present your theory of the case and what you will attempt to prove. You will then use your witnesses and any cross-examination of defense witnesses to buttress your case. In your closing remarks you should briefly summarize the evidence against the accused presented by your witnesses and why Harrison H. Dodd should be found guilty.

You should focus on the following in developing your case:

1. It is entirely appropriate that Harrison Dodd be tried by a military commission because the United States is currently suppressing a rebellion and he is accused of crimes associated with that insurrection.
2. He was the primary leader of the Sons of Liberty, a secret conspiratorial society, whose traitorous purpose was to undermine the authority of the U.S. government by specifically opposing emancipation, the military draft, and the economic policies of the current administration.
3. He advocated the murder of U.S. government detectives investigating his secret society and promoted the acquisition of weapons and ammunition purchased with funds provided by Confederate agents in Canada. These weapons would then be used to attack federal prisoner of war camps and federal arsenals for the purpose of establishing a Northwestern Confederacy.

**Defense Attorneys: J. W. Gordon and M. M. Kay**

In your opening remarks you should present your theory of the case and what you will attempt to prove. You will only have the defendant, Harrison Dodd, available to offer direct testimony, so if he is going to testify, it is important that he be prepared to deny any specifics that involve him in any treasonous plot. You should be prepared to ask effective cross-examination questions of the prosecution witnesses. However, you may hear some secret information from your teacher that will greatly influence the course of the trial. In your closing remarks you should briefly



summarize the evidence against the accused presented by your witnesses and why Harrison H. Dodd should be found not guilty.

You should focus on the following points in developing your case:

1. You should begin by objecting to the fact that your client, Harrison Dodd, is being tried by a military commission. The civilian courts in Illinois are in operation, and you should argue that that is where the trial should be taking place. However, this motion will most likely be denied.
2. You should point out that although the defendant is being characterized as a traitor, none of his actions support the constitutional definition of treason.
3. You will point out that the Sons of Liberty, Dodd's secret society, was a perfectly legal organization and neither its leaders, such as Harrison Dodd, nor any of its members participated in any overt actions against the U.S. government or any of its authorities.
4. You will maintain that none of the so-called plans or statements of opposition to the U.S. government rises to the level of a so-called conspiracy.
5. Finally, you will maintain that Harrison H. Dodd is being used as a scapegoat by the Republican Party to portray Peace Democrat leaders as traitors in order to win the coming election.

## Prosecution Witnesses

### Felix Stidger

You are the star witness for the prosecution.

You were born on a farm in Taylorsville, Kentucky, and later moved with your family to Illinois in 1853. You drifted back to Kentucky to work as a carpenter for two years before trying your hand as a clerk in a dry goods store in Fairfield and moving to Louisville at the start of the war. You volunteered for service in the Union army and were mustered into the Fifteenth Kentucky Infantry Regiment in 1862. Your ability to write and cipher brought you a clerk's assignment at divisional headquarters, but you grew tired of being a low paid military clerk. You learned that a government detective earned six times as much as a clerk, so you agreed to become a special agent. It was in this capacity that you infiltrated the secret society of the Sons of Liberty and gained the confidence of one its most prominent leaders—the defendant, Harrison H. Dodd.

You were sent to investigate the secret society of the Sons of Liberty by Captain S. E. Jones, the provost marshal of the District of Kentucky. In May 1864, you met with various officials of this secret society and they agreed to initiate you into it. You became a member of the Order of the Sons of Liberty on May 5, 1864. You participated as a bona fide member of the order but acted in the character of detective from the beginning.

You learned that the secret society had various rituals like secret signs and that they hardly ever put anything incriminating in writing. The unwritten work of the order was mainly confined to the third-degree members, those considered as top leaders, such as Mr. Dodd. It consisted of signs by which members make themselves known to each other and gain admittance to lodges where they were not known. First-degree members were not considered worthy to receive these instructions.



You gained the confidence of the defendant, Harrison Dodd, and he spoke to you about a Mr. Coffin, who was living in Cincinnati and was employed as a detective officer by the government. He told you that various members of the society were concerned about the investigations being conducted by Mr. Coffin. There was even a federal judge named Bullitt involved in the case. You believed that Dodd felt they should be murdered because you heard him say that both of them should be—in his words—“put out of the way.” You recall the details of one meeting on June 5, 1864, that took place at Dodd’s printing house. There were a number of other people present, including Mr. Harrison, Dr. Bowles, Mr. Milligan, Mr. Humphreys, and a Dr. Gatling. You had to give a secret password to enter: “America.” By this time you had the members’ full confidence and you had even been given an official title. You were the Secretary of the Grand Council for the state of Kentucky. The meeting began around 10:00 a.m. and they discussed creating committees to consider the military organization of the order, which they wanted to achieve as soon as possible. Someone proposed that to raise money to fund operations they should “tax” members of the order. Also, everyone agreed that every member in the society should arm themselves with guns and ammunition. The subject of education was raised and a resolution was offered, recommending the establishment of Democratic schools. Then someone brought up the matter of Detective Coffin and the various things that he had done as an investigator for the U.S. government. It was finally determined that he should be murdered. You volunteered to go to Hamilton, Indiana, and if Coffin was there, to dispose of him. However, you don’t think they ever acted on this plan. They may have hunted for him, but you don’t think they ever found him.

After several meetings it became clear to you that the general purpose of the society was to oppose the Union government in every way possible, even by force of arms. They also expected to cooperate with the rebel forces of the South. In fact, early in July, you met with Mr. Dodd at the home of Dr. Bowles, another member, and learned about a plot by the secret society to seize U.S. military arsenals and to liberate rebel prisoners of war. The armed members of the Sons of Liberty would be placed in strategic locations. You received this information directly from Mr. Dodd, who told you never to say anything about these plans. This proposed military action was planned for Ohio, Indiana, Illinois, Missouri, and Kentucky. It was also determined that information of this plot should be communicated to a rebel colonel, who would then inform Southern authorities so that they could coordinate their forces. You gathered from the statements of society members that they intended to form a Northwestern Confederacy.

At several meetings you heard Mr. Dodd and other leaders strongly denounce the U.S. government, saying it should be resisted because of its “tyrannical usurpation” of power. They feared that the government would use soldiers to intimidate voters in upcoming elections. With that in mind, society leaders believed it would be proper to use violence against the U.S. government. You did not know for sure whether the order had any storehouses, arsenals, or depots of arm, or that the members had arms beyond what citizens would normally have.

You were at Dodd’s office at his printing company twice and heard him say, in speaking about a pending uprising, that they had not yet acquired enough weapons to go into action. However, he also said that if society leaders and members did not rise up, he would leave the country because he would be damned if he would live under such a government as the present administration. However, you may be forced to admit that you never actually saw Dodd or other members of the Sons of Liberty actually carrying weapons or practicing military formations or drilling. Also, you might have to acknowledge that many members of the Sons of Liberty expressed loyalty to the government and wanted no part of violence.

**Joseph Kirkpatrick**

You are a New York City firearms dealer. You sold 290 pistols and ammunition to a man calling himself Mr. Parsons at your place of business. Parsons told you at the time that the weapons were eventually to be sent to either California or Mexico. You also agreed to a future contract to deliver 2,500 revolvers and 135,000 pistol cartridges at a later date. He paid for the purchase of the pistols and ammunition in cash. You eventually boxed up the pistols and ammunition and marked them to be shipped to Dodd's printing company in crates marked "J. J. Parsons, Indianapolis, Indiana." You never had any direct contact with the defendant Mr. H. H. Dodd and know nothing about secret societies in Illinois or elsewhere.

**W. M. Clayton**

You are a farmer who lives in Warren County, Illinois, where you have lived since the fall of 1841. You are a third-degree member of the Order of American Knights, a secret society that later became the Order of the Sons of Liberty. You are not and never have been a U.S. government detective.

You took a solemn oath when you joined the order, which made you swear, in the presence of God, that you would "never reveal nor make known to any man, woman or child anything which your eyes may behold, or any word which your ears may hear within this sacred temple, or any other temple, nor in any other place where the brotherhood may be assembled. That you will never speak of except to a brother of this order, any purpose or purposes of this order and that you will never exhibit emblems or insignia of the order, except by express authority granted to that end, and that you will never explain their use or signification to anyone not a brother of this order under any pretense whatsoever, neither by persuasion nor by coercion. That you will never reveal nor make known to any man, woman or child any of the signs, hails, passwords, or watchwords belonging to this order." You promised that you "will if need be take up arms in the cause of the oppressed against any monarch or government usurped, which may be found in arms and waging war against a people or peoples who are endeavoring to establish a government for themselves of their own free choice in accordance with and founded upon the eternal principles of truth." You attended a meeting in which the speakers repeatedly told members that the authorities who had control of our government were tyrannical and members of the society were being trampled underfoot—and that they should have the right to defend themselves against this oppression. They even suggested the overthrow of the government by force. You and other members engaged in military style drilling at least a couple of times a month.

You heard in conversation with the officers of the Grand Lodge that there were thousands of men—members of the order in Illinois and Indiana—that were ready for action against the government.

You heard of plans about assisting the Southern rebels in case of an invasion of Missouri or of assisting the rebels by moving society forces into Kentucky. You were informed that sometime between May and June there was to be a rebel invasion of the Union at three different points in Ohio, Indiana, and Illinois. You understood that in case the rebels came over into Illinois they and the brethren of this organization were to shake hands and be friends. However, you do not think that the Sons of Liberty passed any resolution saying that they would assist the rebels. They only discussed it during the meetings.

**Wesley Trantor**

Your home is at Shoal's Station, Martin County, Indiana. You are a miller by trade. In the spring of 1863 you joined a secret society called the Order of American Knights that later became the Sons of Liberty. This was after you had been discharged from the Union army because of a disability. You were a private in the 17th Indiana Volunteers and served with General William Sherman's army. When you were initiated into the order you were taught various secret signs so that you could recognize and communicate with other members. You were told that if you ever revealed any of these secret signs then your heart would be torn out and your body would be cut up into pieces and scattered to the north, south, west and east. You were told that the most important man in the order was Mr. H. H. Dodd.

You were told that Indiana's Governor Morton was to be deposed and that Dodd would be set up in his place. At first you thought it meant that he would be voted out of office but then you came to believe that the order might even be threatening the governor's life. You and other members were also told to arm yourselves and resist any attempt to be drafted into the army. This armed resistance would scare President Lincoln and prevent him from trying to implement the draft. You were further told to fix up your old rifles and shotguns, and that new revolvers and ammunition were going to be provided.

Eventually a few boxes of pistols with ammunition did arrive. These weapons were meant to assist the rebels against the Union "blue coats", which was how they referred to U.S. soldiers. They said that we must show the Union soldiers how men really fight. Society leaders expressed their intention to resist the U.S. government and to support the South. Since you had been in the army they asked if you would train members of the order in military methods, but you refused.

You did not join the order as a detective. You joined it in good faith, supposing it to be a legitimate organization. You received no fee or offer of reward for your testimony and no promise of any kind had been made to you to induce testimony. You made up your mind to expose the order the day after you were sworn into the Knights of the Golden Circle and it became clear that you would be supporting the efforts of the rebels against the federal government.

You will have to admit that every member of the order was a Democrat, and that no Republicans would ever be admitted.

**Elliot Robertson**

You are a farmer and live in Randolph County, Indiana. You joined the order of Knights of the Golden Circle in Green Fork Township, Indiana, around June 1, 1863. You do not remember the obligation you took except the penalty for disclosing the secrets of the order, which was death and your body being cut into four quarters with one part to be cast out in each direction: north, south, west and east. They had handshakes and signs by which members of the order could recognize and verify to each other whether they were actually members. First, you stood in a military stance, with the heel of the right foot in the hollow of the left, arms folded, and the two first fingers of the left hand kept apart. This position was answered, when recognized, by passing the right hand across the face, as though stroking the mustache. Another sign was a grip, in which each party held the forefinger of the other so that it should reach as far as it could up the wrist.

You understood the order to be organized for military purposes because most of the members were well armed. The intention of the order was to oppose the Union in its attempts to suppress the rebellion. The name of the order was changed to the Order of American Knights around September 1863. You were invited to join the new order but you did not want any part of fighting against the government. You understood the purpose of the organization was to oppose the draft and arbitrary arrests, by force of arms if necessary.

At society meetings it was discussed how members were to acquire arms in Indianapolis, but the leaders assured everyone that there were plenty of weapons available here in the city. However, you do not know of any arms being distributed, except by hearsay from other members. You joined the order more out of curiosity than anything else. You never acted as a U.S. government detective. Your testimony before the commission is voluntary, and no offer or promise of reward in any way has been made to you to induce you to testify.

You only know of one attempt to resist what was called arbitrary arrest. One of the members—his name was J. D. Burkebyle—thought he was going to be arrested and you and some of the members of the order met at his house to resist his arrest. Burkebyle told you that the only reason for his arrest was because it had become known that he was a member of the Order of the Knights of the Golden Circle. You camped out at his house for two nights armed with a pistol, but no one came to arrest him.

# Script: Trial of Harrison H. Dodd

## Scene One: Charges and Opening Remarks

**NARRATOR:** The trial of Harrison H. Dodd begins at the U.S. Courthouse in Indianapolis, Indiana, on September 19, 1864, at 10:00 in the morning. The military commission is composed of seven senior officers: Brevet Brigadier General Silas Colgrove, Colonel William E. McLean, Colonel John T. Wilder, Colonel Thomas I. Lucas, Colonel Charles D. Murray, Colonel Benjamin Spooner, Colonel Richard P. DeHart, and Colonel Ambrose A. Stevens. The accused applied to the commission to have J. W. Gordon and M. M. Kay be his lawyers.

**SERGEANT-AT-ARMS MAJOR BUSH:** All rise. *(The military commission enters the courtroom and are seated at a long table.)* Be seated.

**BREVET BRIGADIER GENERAL SILAS COLGROVE:** Will the defendant please rise. *(H. H. Dodd rises.)* Sergeant Major, please read the charges against the defendant.

**SERGEANT MAJOR BUSH:** Mr. Harrison H. Dodd, you are accused of conspiring along with several other members of a secret society known as the Sons of Liberty to overthrow the U.S. government. You are further charged with providing aid and comfort to the enemies of the U.S. government and conspiring with others to incite insurrection. Finally, you and other members of your society actively practiced disloyalty to the government by encouraging desertion and preventing further enlistment of soldiers into the Union army. To these charges, how do you plead?

**HARRISON H. DODD:** Not guilty.

**COLGROVE:** Judge-Advocate, you may make any opening remarks.

**JUDGE-ADVOCATE MAJOR HENRY L. BURNETT:** First, let me be clear that the prosecution finds it entirely appropriate that the defendant, Harrison H. Dodd, be tried before this military commission. He did, with William A. Bowles of Indiana, Joshua F. Bullitt of Kentucky, Richard Barrett of the state of Missouri, and others, conspire against the government of the United States, and used a secret society known as the Sons of Liberty for military purposes to overthrow the legitimate government of the United States. He provided aid and comfort to the rebels in Illinois. He conspired with the aforementioned men to seize, by force, the U.S. and state arsenals at Indianapolis and Columbus, Ohio; to release by force the rebel prisoners held by authorities of the United States at Camp Douglas, Illinois, Camp Morton, Indiana, and Camp Chase, Ohio and the depot of prisoners of war on Johnson's Island; and to arm these prisoners with the seized arms. He then conspired with the help of members of this secret society and these armed prisoners to march into Kentucky to make war on the United States. He incited insurrection by declaring the government of the United States to be a usurpation that had to be expelled by force. He engaged in disloyal practices when acting as the supreme commander of the Sons of Liberty by attempting to prevent the further enlistment of citizens in the armies of the United States. Finally, he pretended to be a peaceful, loyal citizen of the United States but was instead a leader and organizer of a secret society whose purpose was to aid and ensure the success of the rebel forces arrayed against the United States. He is a traitor to the United States, and



our witnesses will shortly make clear to the court the extent of the defendant's conspiratorial, unpatriotic, and treasonous actions.

**COLGROVE:** Defense counsels, you may make any opening remarks.

**J. W. GORDON:** Before we make any opening remarks we would first like to formally say that our client, Harrison H. Dodd, strongly objects to the jurisdiction of the commission appointed to try him upon the aforesaid charges and claims the right, as a citizen of the United States and of the state of Indiana, to have the said charges and specifications presented to a grand jury of the civilian court in this district and to be tried by a jury of the said district, duly elected and sworn, according to the Constitution and laws of the United States of America.

**BURNETT:** *(Rising, holding a copy of Document A, which can be found in the Documentary Evidence.)* The prosecution would like to point out that the president of the United States published in General Orders No. 141, dated September 24, 1862, that "whereas, it has become necessary to call into service not only volunteers, but also portions of the militia of the States by draft, in order to suppress the insurrection existing in the United States, and disloyal persons are not adequately restrained by the ordinary processes of law from hindering this measure, and from giving aid and comfort in various ways to the Insurrection it is ordered that during the existing insurrection, and as a necessary measure for suppressing the same, all rebels and insurgents, their aiders and abettors, within the United States, and all persons discouraging volunteer enlistments, resisting militia drafts, or guilty of any disloyal practice, affording aid and comfort to rebels against the authority of the United States, shall be subject to martial law and liable to trial and punishment by courts martial or military commission. Also, the writ of habeas corpus is suspended in respect to all persons arrested or who are now or hereafter during the rebellion shall be imprisoned in any fort, camp, arsenal, military prison or other place of confinement, by any military authority, or by sentence of any courts martial or military commission." We would like to enter this document as exhibit A.

**COLGROVE:** Noted. Sergeant Major, please mark this document as exhibit A.

**NARRATOR:** The officers of the military commission whisper quietly among themselves and then General Colgrove speaks to the court.

**COLGROVE:** All members of the military commission concur that Mr. Dodd is obligated to present his defense before this legitimate court. Defense counsel, do you have any further remarks?

**GORDON:** Yes, sir. First, the defense would like to point out that absolutely none of the charges against our client, Mr. Dodd, meets the constitutional definition of treason, which declares "treason against the United States consists only in levying war against them, or adhering to their enemies, giving them aid or comfort and that no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court." The secret society of which he was a leader was a perfectly legal organization, and there is no evidence whatsoever of Mr. Dodd or any other member of this society committing any crimes or misdemeanors against anyone in authority, civil or military, of the United States government. The U.S. Constitution guarantees freedom of speech, so any statement made by the defendant that can be interpreted by the court as conspiratorial or treasonous are merely statements. Without any overt actions, they are perfectly legal. We believe that the only reason Mr. Dodd is being placed on trial is because the Republican Party would like to portray Democratic leaders like him



as traitors, in order to help them win the coming election. We ask that all charges against our client be immediately dropped.

**COLGROVE:** Your request is denied. We will adjourn until tomorrow morning at which time the prosecution will present their first witness.

## Scene Two: Witnesses for the Prosecution

**NARRATOR:** All members of the court are in place. The sergeant-at-arms calls everyone to attention.

**COLGROVE:** Prosecution may call their first witness.

**BURNETT:** The prosecution calls Felix Stidger.

**NARRATOR:** As Felix Stidger approaches the witness stand Dodd stares at him with a bewildered look—as though he found it difficult to believe his own eyes! Up until his appearance in the court, he had no idea that Stidger was actually an undercover detective for the U.S. government who had covertly infiltrated the Sons of Liberty.

**SERGEANT MAJOR BUSH:** Mr. Felix Stidger, place your left hand on the Bible and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**FELIX STIDGER:** I do.

**BURNETT:** What is your occupation and where do you live?

**STIDGER:** I am currently employed as a United States detective. I used to reside in Louisville, Kentucky, but I am now living in Illinois.

**BURNETT:** Please tell the commission what you know about the existence of a secret society known as the Order of American Knights or the Order of the Sons of Liberty.

**STIDGER:** I was sent to investigate this secret society by Captain S. E. Jones, the Provost Marshall of the District of Kentucky. In May 1864, I met with various officials of this society and they agreed to initiate me into this secret society.

**BURNETT:** And did you join the Sons of Liberty?

**STIDGER:** I became a member of the Order of the Sons of Liberty on May 5, 1864. I participated as a bona fide member of the order but acted in the character of detective from the beginning.

**BURNETT:** Did you have any conversations with the defendant, Mr. Dodd and, if so, what was said?

**STIDGER:** We spoke about a Mr. Coffin, who was living in Cincinnati and was employed as a detective officer by the government. He told me that various people in the society were worried about the investigations of Mr. Coffin, which included a federal judge—I think it was Judge Bullitt—and that they believed Coffin should be put out of the way.

**BURNETT:** What do you mean by “put out of the way?”

**STIDGER:** He was to be murdered.

**BURNETT:** What injury had Coffin done to Dodd or Judge Bullitt or any of the members of this secret society?

**STIDGER:** There was nothing in particular that I knew of, but Dodd expressed himself in favor of him being killed. I guess they were worried about what Coffin had learned about their society. Little did they know how much they were revealing to me.

**BURNETT:** Did anything happen to Detective Coffin or Judge Bullitt?

**STIDGER:** Not that I know of.

**BURNETT:** When did you next meet with Dodd and what transpired?

**STIDGER:** The first Sunday in June—I think it was the 5th or 6th—it was in his printing house—in his office. There were a number of other people present—Mr. Harrison, Dr. Bowles, Mr. Milligan, Mr. Humphreys, and Dr. Gatling—you know, the man who invented that machine gun—among others whose names I do not recall. I had to give a secret password to enter: “America.” By this time, I had their confidence and I had even been given a title. I was the Secretary of the Grand Council for the state of Kentucky. Anyway, the meeting began around 10:00 a.m. and they discussed creating committees to consider the military organization of the order, which they wanted to happen as soon as possible. Someone proposed that to raise money to fund operations, they should tax members of the order. Additionally, they all agreed that individuals in the society should arm themselves. The subject of education was raised and a resolution was offered recommending the establishment of Democratic schools.

**BURNETT:** You attended many other meetings of this secret society. Can you tell the commission, what was their avowed purpose?

**STIDGER:** Their organization was for the general purpose of opposing the U.S. government in every way possible—and by force of arms, if necessary—and they expected to cooperate with the rebel forces.

**BURNETT:** Who told you about this purpose?

**STIDGER:** Mr. Dodd and Dr. Bowles both told me so.

**BURNETT:** Can you tell the commission about the organization of this order?

**STIDGER:** In addition to various rituals like secret signs, there was the unwritten work of the order that was never put in writing. The unwritten work of the order was mainly confined to the third-degree members—those considered as top leaders. Mr. Dodd was one. It consisted of signs by which members make themselves known to each other and gain admittance to lodges where they were not known. First-degree members were not considered worthy to receive these instructions. I gained the trust of the members of the order and rose to become a second-degree member and thus had access to some of their secrets.

**BURNETT:** When did you next meet with the defendant, and what transpired?

**STIDGER:** I next met with Mr. Dodd in July. At that time I became privy to the whole program of the uprising being plotted by their secret society, including their plans to seize United States arsenals, liberate rebel prisoners of war, and concentrate armed members of the Sons of Liberty in strategic locations.

**BURNETT:** From whom did you get this information?

**STIDGER:** From Mr. Dodd. But he pressed upon me the importance of secrecy and he never put anything in writing.

**BURNETT:** When did their conspiracy begin to unravel?

**STIDGER:** An arrest warrant was first issued for one of their leaders—Judge Bullitt—and he was sent to Fort Lafayette in Kentucky. I met Mr. Dodd in his printing office and informed him of this arrest. He did not seem to be too upset and believed that their military plans could still go forward.

**BURNETT:** Where was this uprising to be?

**STIDGER:** It was to be in Ohio, Indiana, Illinois, Missouri, and as much of Kentucky as could be possible.

**BURNETT:** Did you know of Dodd or any member of the Sons of Liberty taking steps to communicate to the rebels anything about their society and its plans?

**STIDGER:** Yes. I heard that a rebel colonel was given the secrets of the society and was told to disseminate them to the South. I never learned the name of this rebel colonel.

**BURNETT:** State to the commission whether at the meetings of the society you attended, at which the defendant Mr. Dodd was present, there was used any language that denied the authority of the U.S. government?

**STIDGER:** I heard Mr. Dodd and other leaders strongly deny the power of the government. They even said that the government should be resisted because of its tyrannical usurpation of power.

**BURNETT:** Did they, and specifically the defendant, say that force should be used to overthrow the U.S. government and establish an independent republic in the West?

**STIDGER:** I gathered from their statements that they intended to establish a Northwestern Confederacy.

**BURNETT:** Tell the Commission what other meetings you had with the defendant, Mr. Dodd, at his house or elsewhere.

**STIDGER:** I was at his house twice and heard him say, in speaking about a pending uprising, that they had not yet acquired enough weapons. He also said that if they did not rise up he would leave the country because he would be damned if he would live under such a government as the present administration. This was on the Friday night before Judge Bullitt was arrested. I think it was the last Friday in July.

**NARRATOR:** Judge-Advocate Burnett goes over to his desk and then returns to the front of the witness stand holding a conically shaped artillery shell. He proceeds to unscrew the top of the shell and shows the interior to the witness and the commission. It contained an iron case for explosive powder.

**BURNETT:** Have you ever seen this kind of shell and, if so, state where and how it was going to be used?

**STIDGER:** I first saw it at a meeting of the order. The inner shell was to be filled with gunpowder and nine explosive blasting caps were on the outside. Inside the shell was a glass container of so-called Greek fire so that when the shell exploded on impact, it would spread fire on whatever it touched.

**BURNETT:** Was this weapon designed to be used by Mr. Dodd and the other conspirators?

**STIDGER:** Yes, sir. They were delighted with this weapon and some members said they looked forward to using it to destroy government property.

**BURNETT:** We have no further questions for this witness at this time.

**COLGROVE:** Does the defense have any questions for this witness?

**GORDON:** Yes, sir. Isn't it true, Mr. Stidger, that you cannot be positively sure that the secret society that Mr. Dodd and others belonged to was any kind of military organization because you never actually saw them with pistols and muskets in hand or participating in military drilling?

**STIDGER:** Yes, I guess that is true.

**GORDON:** And isn't it true that most members of the Sons of Liberty expressed the feeling that they wanted to avoid any kind of military confrontation with the government?

**STIDGER:** Yes, most of the common members did not seem inclined to violence.

**GORDON:** And isn't it true that you never heard the defendant say anything at any of the meetings you attended about opposing the draft or enlistments by force?

**STIDGER:** I do not remember hearing much said about the draft except that they felt it was unfair to the poor, those who could not pay for a substitute.

**GORDON:** No further questions at this time.

**BUSH:** Witness may step down.

**COLGROVE:** Prosecution may call their next witness.

**BURNETT:** The prosecution calls Joseph Kirkpatrick.

**BUSH:** Mr. Kirkpatrick, place your left hand on the Bible and raise your right hand—do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**JOSEPH KIRKPATRICK:** I do.

**BURNETT:** Please state your residence, place of business, and occupation.

**KIRKPATRICK:** I reside in the city of New York, where I have lived since 1858. I am a merchant and have dealt in firearms for the last three years.

**BURNETT:** State if any arms were sold by you in New York City to a party purporting to be a Mr. Parsons of Indianapolis. If so, state what they were, and describe them.

**KIRKPATRICK:** I sold 290 pistols to a man in New York—I think he called himself Harris, not Parsons—but I could be wrong. I also made a contract with him to deliver 2,500 revolvers and 135,000 pistol cartridges. He paid for them at the time of purchase, in cash.

**BURNETT:** Were these arms delivered?

**KIRKPATRICK:** Yes, they were boxed up and marked to be shipped to Indianapolis, to Dodd's printing company, in crates marked "J. J. Parsons, Indianapolis, Indiana." However, he told me at the time that they were eventually to be sent to the California market or perhaps to Mexico.

**BURNETT:** No further questions.

**COLGROVE:** Does the defense wish to question this witness?

**GORDON:** Yes, sir. Mr. Kirkpatrick, do you know if the defendant was ever present at any of the negotiations for the sale of these guns and ammunition?

**KIRKPATRICK:** No, I never had any personal dealings with him.

**GORDON:** No further questions.

**COLGROVE:** Prosecution may call their next witness.

**BURNETT:** The prosecution calls W. M. Clayton.

**BUSH:** Mr. Clayton, place your left hand on the Bible and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**W. M. CLAYTON:** I do.

**BURNETT:** State for the commission your residence and occupation.

**CLAYTON:** I reside in Roseville Township, Warren County, Illinois, where I have lived since the fall of 1841. I am a farmer.

**BURNETT:** Have you ever been admitted to the lodges of a certain order known as the Order of American Knights or Order of the Sons of Liberty, and if so are you a member of such an organization?

**CLAYTON:** I suppose I am.

**BURNETT:** Into how many degrees?

**CLAYTON:** Three.

**BURNETT:** Have you ever been employed in any way as a detective for the government?

**CLAYTON:** No, sir.

**BURNETT:** Did you join this order, and continue a member of it, in good faith?

**CLAYTON:** I did, sir.

**BURNETT:** Did you have to take a solemn oath when you joined?

**CLAYTON:** Yes.

**BURNETT:** (*Turning to the military commission*) I would now like to read to the court the oath that the witness has testified he had to take when joining this order.

**COLGROVE:** Permission granted.

**BURNETT:** "I promise in the presence of God that I will never reveal nor make known to any man, woman or child anything which my eyes may behold, or any word which my ears may hear within this sacred temple, or any other temple, nor in any other place where the brotherhood may be assembled. That I will never speak of except to a brother of this Order, any purpose or purposes of this Order and that I will never exhibit emblems or insignia of the order, except by express authority granted to that end, and that I will never explain their use or signification to anyone not a brother of this order under any pretense whatsoever, neither by persuasion nor by coercion. That I will never reveal nor make known to any man, woman or child any of the signs, hails, passwords, or watchwords belonging to this Order. I promise that I will if need be take up arms in the cause of the oppressed against any monarch or government usurped, which may be found in arms and waging war against a people or peoples who are endeavoring to establish a government for themselves of their own free choice in accordance with and founded upon the eternal principles of truth." (*Turning to Clayton*) Mr. Clayton, did you swear to this oath?

**CLAYTON:** Yes.

**BURNETT:** Did you attend regular meetings of the order and at those meetings were there statements made against the government?

**CLAYTON:** Yes, in fact, at the last meeting I attended the speakers repeatedly told us that the authorities who had control of our government were tyrannical and we were being trampled underfoot, and that we should have the right to defend ourselves against this oppression.

**BURNETT:** Did they then suggest the overthrow of the government by force?

**CLAYTON:** I would consider it so.

**BURNETT:** Did you ever participate in military drilling, as part of your participation in this order?

**CLAYTON:** Yes, we had drilling at least a couple of times a month.

**BURNETT:** Do you know how extensive the numbers of individuals associated with this order were in Illinois?

**CLAYTON:** I heard in conversation with the officers of the Grand Lodge that there were nearly 100,000 in Illinois and 80,000 in Indiana.

**BURNETT:** Did you ever hear of any plans about assisting the rebels in case of the invasion of Missouri or of assisting them by moving forces into Kentucky?

**CLAYTON:** I heard some talk of that kind. We were informed that sometime between May and June there was to be an invasion at three different points. One was to be in Ohio, one into Indiana, and another into Illinois.

**BURNETT:** How were the members of the order to receive these rebels?

**CLAYTON:** I think the understanding was that in case the rebels came over into Illinois they and the brethren of this organization were to shake hands and be friends.

**BURNETT:** And were they to receive aid and assistance from the order?

**CLAYTON:** I should consider it that way, sir.

**BURNETT:** What was your understanding about what would happen to any member of the order who revealed secrets of the order?

**CLAYTON:** They would be killed.

**BURNETT:** No further questions.

**COLGROVE:** Does the defense wish to question this witness?

**M. M. KAY:** Yes, sir. Mr. Clayton, was it the purpose of those who crossed over from the South, as you have stated, that you should help the rebels in case of an outbreak?

**CLAYTON:** I considered it that way.

**KAY:** From whom did you learn this?

**CLAYTON:** From a member of the Order of the American Knights or Sons of Liberty.

**KAY:** Did you ever talk with any man from the South in regard to helping the rebellion?

**CLAYTON:** I do not wish to answer that question unless the judge-advocate tells me I should.

**BURNETT:** You need to answer the question unless your answer might incriminate you and you wish to plead the Fifth Amendment.

**CLAYTON:** Yes, I have been asked by men who said their homes were in the South or Missouri if we had any intention to assist them in case they came over to Illinois.

**KAY:** Well, what did you tell them?

**CLAYTON:** That I presumed a great many would. But that some would not assist them.

**KAY:** What did you say that you would do?



**CLAYTON:** I did not tell them whether I would help them or not.

**KAY:** What did your society resolve to do in case of an invasion from Missouri by the rebels?

**CLAYTON:** I do not think that our society passed any resolution that they would assist the rebels. We only discussed it during the meetings.

**KAY:** Did the government promise you that you would be protected against prosecution if you testified against the order?

**CLAYTON:** I have never been before a military court before. I am no lawyer—only a farmer, and a poor one at that—and I don't know the custom of military courts. I have received no assurances of that kind except that I had here today in court from the judge-advocate. I consider this a lawful tribunal and I have spoken the whole truth. I regard my obligations to the laws of this land as most important.

**KAY:** Thank you, no further questions.

**COLGROVE:** Prosecution may call their next witness.

**BURNETT:** The prosecution calls Wesley Tranter.

**BUSH:** Mr. Tranter, place your left hand on the Bible and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**WESLEY TRANTER:** I do.

**BURNETT:** Mr. Tranter, please state your place of residence and occupation.

**TRANTER:** My home is at Shoal's Station, Martin County, Indiana. I am a miller by trade.

**BURNETT:** Mr. Tranter, please tell the military tribunal what you know about this case.

**TRANTER:** In the spring of 1863, I joined a secret society called Knights of the Golden Circle. This was after I had been discharged from the army because of a disability. I was a private in the 17th Indiana Volunteers and was with Sherman's army. When I was initiated into the order I was taught various secret signs so that I could recognize and communicate with other members of the Order. We were told that if we ever revealed any of these secret signs then our hearts would be torn out and our bodies would be cut into pieces and scattered to the north, south, west and east. I was told that the most important man in the order was Mr. H. H. Dodd.

**BURNETT:** Go on.

**TRANTER:** I was also told that Governor Morton was to be deposed and that Dodd would be set up in his place.

**BURNETT:** What do you mean by deposed?

**TRANTER:** At first, I thought it meant that he would be voted out of office, but then I came to believe that they might even be threatening his life.

**BURNETT:** What else did the leaders of this order tell you to do?

**TRANTER:** We were to arm ourselves and resist any attempt to be drafted into the army. Our armed resistance would scare President Lincoln and prevent him from trying to implement the draft. We were told to fix up our old rifles and shotguns, and that new revolvers and ammunition were going to be provided.

**BURNETT:** And were you provided with new weapons?

**TRANTER:** Yes, eventually a few boxes of pistols with ammunition did arrive. They said that we must show the blue coats how to fight. They expressed their intention to resist the United States government and to support the South. At the same meeting there was said some things about drilling, but I never drilled with them. Since I had been in the army they probably thought I would know some proper moves, but I did not participate.

**BURNETT:** At this time, were you working as a detective for the government?

**TRANTER:** No, I did not join the order as a detective nor have I acted as such. I joined it in good faith supposing it to be a legitimate organization. I have received no fee or offer of reward for my testimony and no promise of any kind has been made to me to induce testimony. I made up my mind to expose the order the day after I was sworn into the Knights of the Golden Circle and it became clear that I would have to be supporting the efforts of the rebels against our government.

**BURNETT:** No further questions.

**COLGROVE:** Does the defense wish to question this witness?

**M. M. KAY:** Yes, sir. Of what political faith were the majority of the men comprising the secret society you joined?

**TRANTER:** They were all Democrats.

**KAY:** State whether any other class of men were admitted, or if it was just assumed that a man must be a Democrat.

**TRANTER:** I do not think that anyone would have got in unless he professed to be a Democrat.

**KAY:** No further questions.

**COLGROVE:** Prosecution may call their next witness.

**BURNETT:** The prosecution calls Elliot Robertson.

**BUSH:** Mr. Robertson, place your left hand on the Bible and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**ELLIOT ROBERTSON:** I do.

**BURNETT:** State your place of residence and occupation.

**ROBERTSON:** I am a farmer and live in Randolph County, Indiana.

**BURNETT:** Please tell the court what you know about the membership obligations associated with a secret society known as the Knights of the Golden Circle.

**ROBERTSON:** I joined the Knights of the Golden Circle in Green Fork Township, Indiana, around June 1, 1863. I do not remember the obligation I took except the penalty for disclosing the secrets of the order, which was death, the body being cut into four quarters with one part to be cast out in each direction—north, south, west and east. They had handshakes and signs by which members of the order could recognize and verify whether they were actually members to each other. First, we stood in a military stance, with the heel of the right foot in the hollow of the left, arms folded, with the two first fingers of the left hand apart. This position was answered, when recognized, by passing the right hand across the face, as though stroking the mustache. Another sign was a grip, in which each party held the forefinger of each other so that it should reach as far as it could up the wrist.

**BURNETT:** What did you learn was the true purpose of this secret society?

**ROBERTSON:** I understood the order to be organized for military purposes because most of the members were well armed. The intention of the order was to oppose the Union in its attempts to suppress the rebellion. The name of the order was changed to American Knights around September 1863. I was invited to join the new order, but I did not.

**BURNETT:** Were there any other purposes to this society?

**ROBERTSON:** Yes, to oppose the draft and arbitrary arrests, by force of arms, if necessary.

**BURNETT:** At meetings you attended, was there ever any discussion of acquiring weapons?

**ROBERTSON:** Yes. The question was discussed about how members were to acquire arms here in Indianapolis, but the leaders assured everyone that there were plenty of weapons available here in the city. However, I do not know of any arms being distributed, except by hearsay.

**BURNETT:** Were you ever acting as a detective for the government?

**ROBERTSON:** No, I joined the order more out of curiosity than anything else. I never acted as a U.S. detective. My testimony before this commission is voluntary and no offer or promise of reward in any way has been made to me to induce me to testify.

**COLGROVE:** Does the defense wish to question this witness?

**GORDON:** Yes, sir. Do you know of any attempts to resist what were called arbitrary arrests?

**ROBERTSON:** I only know of one attempt to resist what was called arbitrary arrest. One of the members—his name was, I think, Mr. Burkebyle—thought he was going to be arrested. I'm not sure why. I think he believed it was only for his participation in the secret order. Anyway, I and some of the members of the order met at his house to resist this illegal arrest. We stayed at his house for two nights. I was armed with a pistol, but no one came to arrest him and nothing happened as far as I know.

**GORDON:** No further questions.

**COLGROVE:** The commission will stand in recess until tomorrow morning.

### Scene Three: The Trial Continues with the Defendant in Absentia

**NARRATOR:** At 8:30 a.m., October 7, the court assembled with all members present including the judge-advocate, and the counsels for the accused. But there was no sign of the accused, Harrison Dodd.

**BURNETT:** Sirs, I have been informed that the defendant, Harrison H. Dodd, has broken his parole and escaped to Canada. Under the circumstances, the prosecution does not feel the need to present any further witnesses and asks the court to move to summary judgment with the defendant in absentia.

**GORDON:** (*Rising*) We, the counsels for the accused, were informed early this morning by Judge-Advocate Burnett of our client's escape. It was the first time we heard anything about his escape. We wish to make it formally known to the commission that never by word, act, or intimation, did

we prompt, suggest, or intimate to Mr. Dodd or anyone else his escape from prison. We consider our obligation to our client to be over and do not wish to present any witnesses in his defense or to make any summary statements in his behalf.

**COLGROVE:** The commission accepts your statement and it will be formally noted. Judge-Advocate Burnett, can you provide the court with any specifics regarding the defendant's escape.

**BURNETT:** Yes, sir. It appears that early on the morning of October 7, 1864. Mr. Harrison Dodd, made his escape from the room occupied by him, in the third story of the Post Office Building. He escaped through the window, opening on Pennsylvania Street, by means of a rope attached to an iron rod, which was held fast between his bed and the iron window shutter. A ball of twine had been conveyed to him by some of his friends who had been permitted to visit him, by means of which he had drawn up to his window a large rope, furnished by some persons outside, who assisted in his escape. There was no guard on the outside of the building and the attempt was not detected. The street lamps nearby had been previously darkened to conceal the movement. It should be noted that Mr. Dodd had petitioned Brevet Major General Hovey, commander of the district, to be allowed to occupy a room in the Post Office Building, instead of being closely confined in a military prison. He gave his honor that he would make no attempt to escape. His brother also pledged his word and stated he would risk all he was worth that H. H. Dodd would not try to escape, if this privilege was granted. Measures, therefore, that would have been taken to prevent escape, by placing guards on the outside as well as within the building, were not, under the circumstances, resorted to in this case.

**COLGROVE:** Judge-Advocate Burnett, do you wish to make any further remarks?

**BURNETT:** Yes, sir.

**COLGROVE:** Proceed.

**BURNETT:** Simply put, it should be clear to every member of the military commission that Harrison Dodd was the head of a conspiratorial treasonous society that under his leadership made every effort it could to oppose our government. He used his printing firm and his speeches to disseminate anti-government information that opposed emancipation, the draft, and the Union army's efforts to suppress the rebellion. He purchased arms and ammunition—the purpose of which was to arm his supporters, ally with rebels, and effect a Northwestern Confederacy. Why did he flee? It is a simple answer. He knew that he was guilty. We consider his escape as an admission of guilt and ask the court to issue a summary judgment and sentence.

**COLGROVE:** Thank you, Judge-Advocate Burnett. The commission will now retire and consider your request for summary judgment and sentencing.

**NARRATOR:** The commission retires to an adjoining room and returns after a brief deliberation.

**COLGROVE:** The commission has considered the evidence presented by the witnesses for the prosecution and have drawn the conclusion that the defendant's escape was an admission of guilt. We therefore find him guilty of all charges and specifications and sentence him in absentia to be hanged by the neck until dead.

# Documentary Evidence

## General Orders No 141 by the President of the United States—A Proclamation

“Whereas, It has become necessary to call into service not only volunteers, but also portions of the militia of the States by draft, in order to suppress the insurrection existing in the United States, and disloyal persons are not adequately restrained by the ordinary processes of law from hindering this measure, and from giving aid and comfort in various ways to the insurrection: now, therefore, be it ordered:

First. That during the existing insurrection, and as a necessary measure for suppressing the same, all rebels and insurgents, their aiders and abettors, within the United States, and all persons discouraging volunteer enlistments, resisting militia drafts, or guilty of any disloyal practice, affording aid and comfort to the rebels against the authority of the United States, shall be subject to martial law, and liable to trial and punishment by courts-marshal [sic] or military commission.

Second. That the writ of habeas corpus is suspended in respect to all persons arrested, or who are now or hereafter during the rebellion shall be imprisoned in any fort, camp, arsenal, military prison or other place of confinement, by any military authority, or by sentence of any courts-martial, or military commission.

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the City of Washington, this twenty-fourth day of September, in the year of the Lord, one thousand eight hundred and sixty-two, and of the independence of the United States.

ABRAHAM LINCOLN

**Source:** Pitman, Ben, ed. *The Trials for Treason at Indianapolis: Disclosing the Plans for Establishing a North-Western Confederacy*. Cincinnati: Moore, Wiltach & Baldwin, 1865: 249.

# Time Line

1864	
August 20	Dodd's printing office is raided and arms are seized.
September 3	Dodd is arrested in his home.
September 19	Trial of Harrison H. Dodd begins.
October 10	Dodd is convict in absentia and sentenced to hang.
November 8	Abraham Lincoln defeats George McClellan and is re-elected President, for a second term.



# Glossary

**Conspiracy:** A secret plan by two or more persons or groups to commit a crime sometime in the future.

**Constitutional treason:** The Constitution of the United States, Article III, Section 3 defines treason against the United States to consist only in “levying war against them, or in adhering to their enemies, giving them aid or comfort.” This offense is punished with death. By the same article of the Constitution, no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act or on confession in open court.

**Copperheads:** The label attached to Democrats who favored a peaceful settlement of the Civil War. They were compared to a venomous snake of the same name.

**Ex Parte Milligan:** 1866 U.S. Supreme Court case that ruled unconstitutional the use of military tribunals to try private U.S. citizens, when civilian courts are in operation.

**Knights of the Golden Circle:** A Civil War-era secret society of Democrats.

**Military commission:** A court consisting of military officers to try offenses within their jurisdictions. They are subject to applicable principles of law and rules of procedure and evidence prescribed by judicial courts-martial.

**Order of American Knights:** A Civil War-era Democrat secret society that spawned the Sons of Liberty.

**Revoking the writ of habeas corpus:** Under the U.S. Constitution the federal government can suspend the writ of habeas corpus if the public safety requires it in times of rebellion or invasion (see **writ of habeas corpus**).

**Sons of Liberty:** A Democratic secret society associated with H. H. Dodd.

**Union League:** A Republican secret society.

**Writ of habeas corpus:** A legal principle that requires a person under arrest be brought before a judge or court, typically to secure the person’s release, unless there are legal grounds for their detention.

## Postscript

The military commission agreed with the judge-advocate that Harrison Dodd's escape to Canada was tantamount to an admission of treason, and they found him guilty of every charge and specification in the indictment. He was sentenced by the commission to be hanged by the neck until he was dead. Democrats made feeble attempts to discredit the importance of the treason trial, but the press coverage of the trial had a direct and negative effect for them in the outcome of the October and November elections in 1864. Republican Indiana Governor Morton was re-elected for another four-year term on October 11 and Abraham Lincoln won the presidential election in November. It was estimated that the exposé of the "Dodd conspiracy" had given the Republicans in Indiana at least ten thousand extra votes.

# Discussion Questions

1. Military jurisdiction is usually exercised by a belligerent occupying enemy territory (military government) or by a government temporarily governing the civilian population of a locality through its military forces. Do you think Dodd should have been given a trial in a civilian court, or, since the United States was fighting the Civil War, a military commission was legal and appropriate? Explain.
2. Do you think that Dodd would have been convicted if he had not escaped but instead presented a significant defense, including testifying on his own behalf? Explain.
3. In the days before Dodd's escape to Canada, Democratic newspapers labeled his trial as a "so-called conspiracy trial," a "political farce," and a "mockery of justice." Can you think of any other trials in American history that would have been given those kinds of labels by a political party or other influential groups? Explain.
4. Much of the public viewed the trial of Dodd and others as a "treason trial." However, the prosecution cleverly did not include an accusation of actual treason in the indictment. Although the prosecution believed Dodd and the other conspirators were traitors, why did they not say so in the indictment? Hint: Look at the definition of treason in the U.S. Constitution and discuss.
5. The facts of this case seem to suggest that Dodd had indeed proposed some kind of forceful opposition to the government and had accepted money from Confederate agents in Canada. However, Democratic leaders refused to acknowledge these facts because to admit them would be to paint themselves with the same brush. Thus, they were likely guilty of covering up Dodd's rash behavior because they feared the political repercussions. Can you think of any more recent political events—for example, the Watergate scandal—in which the cover-up was arguably more significant than the crime? Discuss.
6. It has been said that amid war the laws are silent. President Abraham Lincoln, for example, said that "under cover of 'Liberty of speech,' 'Liberty of the press' and 'Habeas corpus,' traitors hoped to keep foot amongst us a most efficient corps of spies, informers, suppliers, and aiders and abettors of their cause in a thousand ways."  
Judge-Advocate Burnett said in his closing remarks to the commission that "while war rages, the rights which in peace are sacred, must and do give way to the higher right—the right of public safety—the right which the country, the whole country, claims to be protected from its enemies, domestic and foreign—from spies, conspirators, and from traitors."  
Do you agree with Lincoln and Burnett? Discuss
7. Historian William A. Blair wrote that "it was ludicrous to consider a violent uprising staging itself with a bunch of revolvers and no muskets, likening these weapons to 'paving stones' in the face of organized soldiers." Do you think that Republicans greatly exaggerated the significance of Dodd's specific actions and the Copperhead menace in general?

8. There is considerable evidence showing that in Illinois, Indiana, and Ohio, Democrats were overwhelmingly loyal and supportive of the Union. They were, however, more inclined to moderation and compromise than Republicans. Do you think that the trial of Dodd and others unfairly pinned the label of treason on the Democratic Party? Discuss.
9. During the Dodd trial, the defense attorneys brought in evidence to show that in several cases questionable methods had been used to persuade men to testify. One witness confessed that a government detective had promised him relief from the draft if he would appear on the stand. The government's star witness, Felix Stidger, even suggested that he would be "provided with a sufficiency to live hereafter in protection." Do you think that these kinds of promises to potential witnesses compromised their testimony? Discuss.

## Extension Activities

1. Dodd escaped to Canada but the treason trials before the military commission continued with others who were accused of being part of his conspiracy, including William A. Bowles, Andrew Humphreys, Horace Heffren, L. P. Milligan, and Stephen Horsey. Research the case against one or more of these men and either write an essay or develop a class presentation supporting their guilt or innocence.
2. Research one or more other secret societies such as the Elks, the Masons or the Odd Fellows. Write an essay or make a presentation to the class about them and whether they have had any influence on local or national politics in the United States.
3. Some historians have portrayed the Copperheads as deliberate obstructionists and conspirators, while others portray them as merely dissenters whose views and actions fell well short of treason. Nevertheless, the questions they raised about the protection of civil liberties during times of civil strife, the relationship between citizens' rights and responsibilities, and the meaning of the United States Constitution are still of great interest and historical relevancy. Write an essay that supports one of these views.
4. An Iowa soldier wrote that "if the Copperheads and Peace men succeed in carrying out their principals, we will have war as long as there is a single square foot of land in the North that dare call itself a free soil." The Peace Democrats and Copperheads were mostly despised by the military. Ex-Union soldiers actively harassed, threatened and even assaulted them. Research the role of Copperhead peace protests and compare with the anti-war protests that existed during other American conflicts, such as the Vietnam War.
5. There were sharp political divisions among the newspapers in both the North and the South that revealed the political and ideological conflicts within the Union and the Confederacy. In the North, newspapers favorable to the Copperheads, for example, alarmed the Lincoln administration to such a degree that measures were even taken to suppress such dissenting newspapers and editors. Write an essay or make a class presentation about the divided press during the Civil War and the role it played in splitting the nation, covering the war, and reporting on such controversial events as the Dodd trial.

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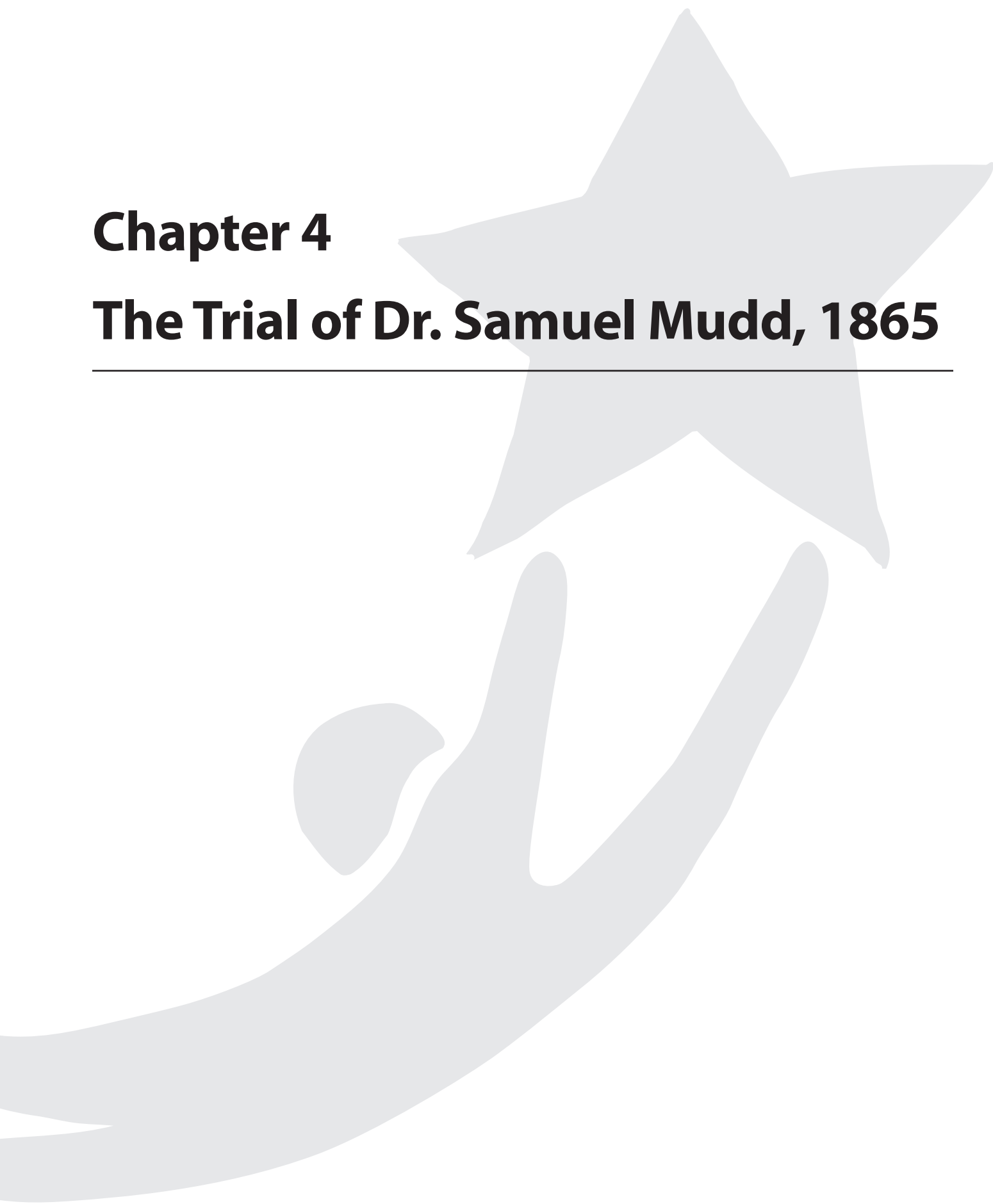
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## **Chapter 4**

# **The Trial of Dr. Samuel Mudd, 1865**

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## Introduction

The trial of Dr. Samuel A. Mudd and seven other alleged conspirators—David Herold, George Atzerodt, Lewis Powell, Michael O’Laughlen, Edmund Spangler, Samuel Arnold, and Mary Surratt—began at 10:00 a.m. on May 9, 1865. The defense of Mudd was the longest and most complicated of the entire trial.

### Objectives

1. Students will understand the details of the conspiracy that resulted in the assassination of President Abraham Lincoln.
2. Students will understand the controversial conviction of Dr. Samuel Mudd.
3. Students will understand the complicated political atmosphere that surrounded the trial of the Lincoln conspirators, including Dr. Samuel Mudd.

## Lesson Plan

### Trial Procedure

1. Classroom should be set up as a courtroom (see Diagram).
2. Attorneys, witnesses, and any courtroom spectators should be seated.
3. Military tribunal (judges) enter and the court clerk/military sergeant-at-arms instructs everyone in the courtroom to "rise."
4. General Hunter makes an opening remark about the legitimacy of using a military tribunal in this case.
5. General Hunter then instructs the clerk /sergeant-at-arms to read the charges against the defendant, Dr. Samuel Mudd. Mudd pleads "not guilty," and the trial proceeds according to the following schedule:
  - a. Opening remarks by the judge-advocate(s)
  - b. Opening remarks by the defense attorney(s)
  - c. Direct testimony and cross-examination of prosecution witnesses
  - d. Direct testimony and cross-examination of defense witnesses
  - e. Summary remarks by the judge-advocate(s)
  - f. Summary remarks by the defense attorney(s)
  - g. Military tribunal retires to deliberate
  - h. Military tribunal returns to the court, and General Hunter delivers their verdict
  - i. If Mudd is declared guilty then General Hunter immediately sentences him to life in prison; If he is found innocent then he is immediately set free



#### Teaching Tip

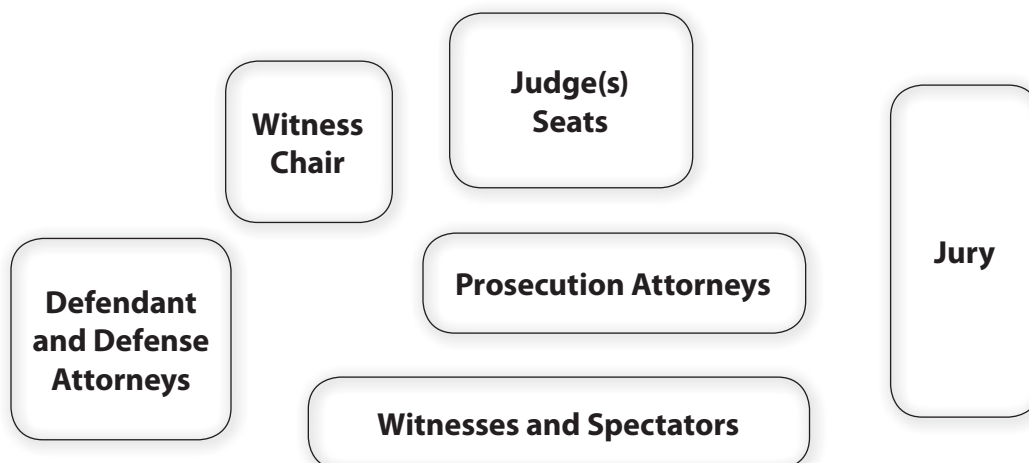
As students are not adept at being the authority figure, teacher should play role of head of military commission.



#### Teaching Tip

For attorney roles, choose students who are well-organized and not afraid to speak in front of class.

### Diagram of Courtroom Seating



### Teaching Tip

You can limit the length of the trials by omitting roles or by setting speaking time limits.



## Suggested Schedule (role play)

**Day One:** Background, role assignments, and initial preparation

**Day Two:** Conclude preparation for trial

**Day Three:** Begin trial

**Day Four:** Conclude trial and debrief using Discussion Questions

**Day Five:** Conclude debrief and assign Extension Activities

## Notes for the Teacher (role play)

1. Read and discuss with students the Background Essay.
2. Divide the class into prosecution and defense and either assign students specific roles or have them decide as a group who will be the attorneys and which witnesses they will present for the case. Unless you have a very capable student it is advisable for the teacher to perform the role of General Hunter, the head of the military tribunal. Students are not accustomed to being the authority figure in a classroom.
3. Students should be given the remainder of any class time and the next class to prepare for the trial. Attorneys should present their theories of the case and frame questions for each of the witnesses. Witnesses should write out a deposition (what they plan to say on the witness stand) and practice their direct testimonies and any expected cross-examination questions. Other students playing the role of members of the military tribunal can be asked to research the role their particular characters played during the Civil War.
4. You may decide to allow witnesses to refer to their depositions while testifying rather than relying totally on memory.
5. Before the beginning of the trial the attorneys from the prosecution and defense should exchange copies of the depositions (or role descriptions) of their witnesses to aid them in framing cross-examination questions.
6. If you want to complete the trial in one class session, then you will need to allot and enforce strict time limits depending on the length of your class period.
7. Assuming a 60-minute class period the time would look like this:
  - 5 minutes for General Hunter (teacher) to read the charges and receive Mudd's not guilty plea
  - 2 minutes for prosecution opening remarks
  - 2 minutes for defense opening remarks
  - 15 minutes for direct testimony from prosecution witnesses

- 5 minutes for cross-examination of selected prosecution witnesses
  - 15 minutes for direct testimony of defense witnesses
  - 5 minutes for cross-examination of selected defense witnesses
  - 2 minutes for prosecution closing remarks
  - 2 minutes for defense closing remarks
8. If you have a large class and the ability to spend more class time on this activity more possibilities exist to expand the time for direct testimony and cross-examination.
  9. Advise student-attorneys to be very careful about cross-examination. Most experienced trial attorneys have difficulty with this skill and often do more harm to their case than good. The best advice you can give student-attorneys is to never ask a question if they don't already know what the answer will be. Remember that in cross-examination an attorney can use statements, such as "Isn't it true that blah, blah, blah . . . ?"
  10. On the day of the trial arrange the classroom to look like a courtroom (see Diagram) with the military tribunal seated at the front of the classroom, a chair for those giving testimony, a seat for the defendant, desks for the attorneys, and witness seats.
  11. Try to match roles to student personalities and academic strengths. For student-attorneys it is particularly important that you select students who are well-organized and not afraid to speak in front of the class. You should emphasize this point if you decide to let students be a part of the role assignment process.
  12. Note that you can limit the length of the trial by omitting roles
  13. When the jury is deliberating over the verdict you can engage the rest of the class with the Discussion Questions.
  14. Historically, the most damaging witness against Dr. Mudd was Louis Weichmann. Overall the trial was complicated by three factors: First, eight people were being tried together; second, a conspiracy charge could involve an unlimited number of yet to be named individuals, and third, the accused were not allowed to testify on their own behalf. However, for the role play there is a role description for Dr. Mudd and you may decide to have him testify in the simulated trial. (He does not testify in the scripted version.) If he does testify there is a better chance of an acquittal since he can rebuff the worst aspects of the testimony of Weichmann, the prosecution's most effective witness.

### **Suggested Schedule (scripted version)**

**Day One:** Read and discuss the Background Essay, assign speaking parts for scripted trial, and begin reading of the trial

**Day Two:** Conclude reading of scripted trial, and debrief using Discussion Questions

**Day Three:** Assign Extension Activities

### **Notes for the Teacher (scripted version)**

1. On the day of the trial arrange the classroom to look like a courtroom (see Diagram) with the military tribunal seated at the front of the classroom, a chair for those giving testimony, a seat for the defendant, desks for the attorneys, and witness seats.
2. Read and discuss with students the Background Essay.
3. Assign students roles in the play (see Roles Grid). Note that the attorneys have the lengthiest speaking parts.
4. Note that, true to history, none of the defendants were allowed to testify on their own behalf. Therefore, Dr. Mudd does not speak in this scripted version of the trial.
5. Judge-Advocate Holt had two assistant judge-advocates. For this activity, the role of General Lawrence Henry Burnett has been eliminated.



## Roles Grid

Role	Historical Character	Student Name
<b>Defendant</b>	Dr. Samuel Mudd	
<b>Head of the Military Tribunal</b>	Major General David Hunter	
<b>Military Tribunal Members</b>	Lt. Colonel David Clendenim	
	Brigadier General James Ekin	
	Brigadier General Robert Foster	
	Brigadier General T. M. Harris	
	Major General Lew Wallace	
	Brigadier General Alvin Howe	
	Major General August Kautz	
	Colonel C. H. Tompkins	
<b>Sergeant-at-Arms</b>		
<b>Judge-Advocates (Prosecution)</b>	General Joseph Holt	
	Honorable John Bingham	
<b>Prosecution Witnesses</b>	Louis J. Weichmann	
	Mary Simms	
	Elzee Eglen	
	Lt. Alexander Lovett	
	Daniel J. Thomas	
	Melvina Washington	
<b>Defense Attorneys</b>	General Thomas Ewing	
	Frederick Stone	
<b>Defense Witnesses</b>	George D. Mudd	
	Jeremiah T. Mudd	
	Mary Mudd	
	Julia Ann Bloyce	
	John C. Thompson	
	Jeremiah Dyer	
	Thomas Davis	
	Joshua S. Naylor	
<b>Narrator</b>		

**Teaching Tip**

Try to match roles with student personalities and academic strengths.

**Teaching Tip**

You can add an interfering spectator role. Someone who inappropriately shouts out something about the innocence or guilt of accused.

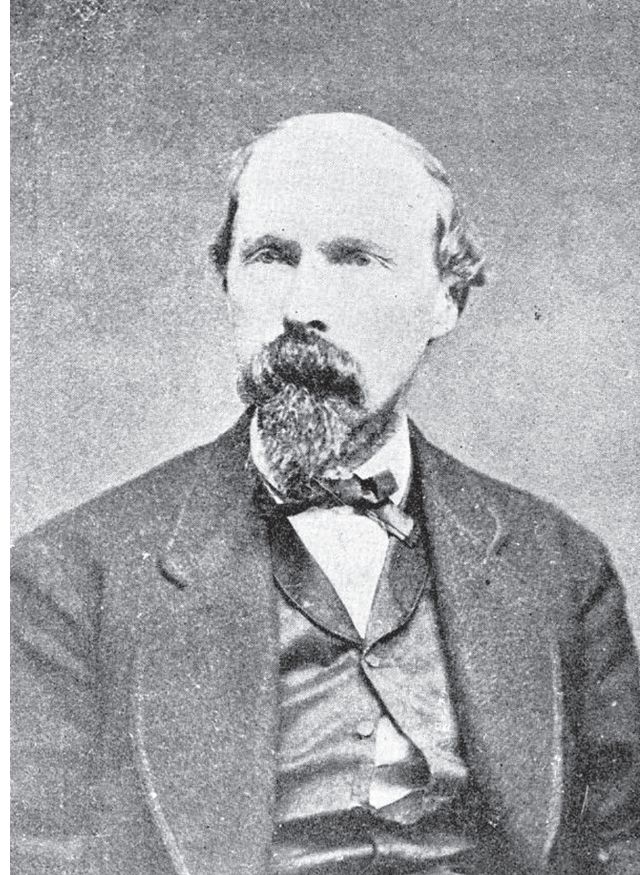


# Background Essay

Dr. Samuel Mudd, like most large farm owners in Maryland, was a slaveholder. The predominant attitude of the people of this region in the southern part of the state was pro-Confederate, even though the state never seceded from the Union. By the spring of 1865, the American Civil War was nearly over. Confederate General Robert E. Lee had surrendered the Army of Northern Virginia at Appomattox, General Sherman had cut a swath of destruction across Georgia, and everywhere else the rebel forces were in full retreat. However, many Southerners had not come to terms with defeat, including an embittered actor and Southern sympathizer named John Wilkes Booth. He believed that murdering Lincoln and other Union leaders might paralyze the federal government and pave the way for a Southern victory.

On the evening of April 14, 1865, Booth had his opportunity. President Abraham Lincoln and his wife Mary set out for an evening at Ford's Theatre in Washington, DC. During the third act of the play, *Our American Cousin*, Booth, a well-known actor, slipped undetected into the Presidential Box and shot Lincoln in the back of the head. Then Booth jumped down to the stage crying "sic semper tyrannus!" (thus always to tyrants!) In the process he broke a bone in his ankle. The president was dead in a matter of hours. Meanwhile, two of Booth's co-conspirators, David Herold and Lewis Powell, tried unsuccessfully to murder Secretary of State William H. Seward, leaving him gravely injured. Powell was quickly arrested at his boardinghouse, along with Mary Surratt, the boardinghouse owner.

Herold met up with the injured Booth across the Anacostia River and together they fled on horseback south towards Maryland. Booth's injured ankle became increasingly painful so, around dawn, on the morning of April 15, they



Dr. Samuel Mudd

decided to stop and seek help at Dr. Samuel Mudd's house in Bryantown, about 30 miles from Washington. The doctor was awakened by a loud rapping on his door and at first "was very much alarmed at this, fearing it might be somebody who had come there not for any [good or proper] purpose."<sup>1</sup> The man at the door said that his companion had fallen off his horse and badly injured his leg. Doctor Mudd unlocked his door and agreed to assist them. He did not know Herold, nor did he immediately recognize the man with the injury, perhaps because he had his cloak drawn up covering most of his head

<sup>1</sup> Swanson, James L. *Manhunt: The Twelve-Day Chase for Lincoln's Killer*. New York: HarperCollins, 2006: 124.

Image source: Dr. Samuel Mudd. 1860, courtesy of Florida Memory, State Library and Archives of Florida, C031395.

and face. The injured man with the distinctive mustache was John Wilkes Booth.

Doctor Mudd woke a hired hand, Frank Washington, and told him to put the men's horses in the stable. Then he helped Booth into his farmhouse where he proceeded to care for his injured ankle. He put splints on both sides of Booth's lower leg, including his ankle and then put him in a bed to rest with his injured leg elevated to reduce the swelling. While Booth was resting, Dr. Mudd and his wife had breakfast with Booth's companion, the man calling himself Mr. Tyson. After breakfast Dr. Mudd left the farmhouse to supervise his workers in the farm's tobacco fields. He returned around midday and found Booth and Tyson preparing to leave. He gave Booth some crude crutches, and collected \$25 for his services. He noticed that Booth had shaved off his mustache. Shortly before noon, Booth and Herold left Dr. Mudd's house and continued riding south, eventually crossing into Virginia, where they were tracked down, after an eleven-day manhunt, by Union soldiers on April 26, just outside the town of Port Royal. Thanks to a description provided by Dr. Mudd, the pursuers knew that Booth was not traveling alone and that he had shaved off his signature mustache. Herold was captured but Booth barricaded himself in a barn, determined to fight to the end. He got his wish. The barn was set on fire and a soldier, spotting the injured assassin through a hole in the side of the barn, shot and killed him.

Secretary of War Edwin Stanton ordered the arrest of anyone even remotely associated with Booth's alleged treasonous plot. In addition to Herold, Powell, and Surratt, authorities also detained Samuel Arnold, George Atzerodt, Michael O'Loughlen, Edmund Spangler, and Dr. Samuel Mudd. Another conspirator, John Surratt, escaped. Doctor Mudd and the other detainees were charged with being part of a treasonous conspiracy to murder President Lincoln and other Union leaders. Shocked and horrified by the president's death, the Northern public demanded swift punishment for all the alleged treasonous murderers. On May 1, 1865, President Andrew Johnson issued an executive order directing authorities to convene a military tribunal to try all persons suspected of being involved in Lincoln's assassination. In this highly charged atmosphere, Dr. Mudd and the other defendants were brought before a military commission less than a month after Lincoln's assassination. However, the decision to try the suspects in a military court remains controversial to this day. Some believe they should have been tried in a civilian court and been given more time to prepare their defense. Many historians (as well as Mudd's descendants) maintain that the doctor—the most controversial of the defendants—was merely an honest physician unwittingly caught up in a tragic crime.

You will now have the chance to participate in either a role play or scripted version of this dramatic trial.

# Roles

## Defendant: Dr. Samuel Mudd

You were born on December 20, 1833, the son of Henry Lowe Mudd and Sarah Ann Reeves. You earned your medical degree at the University of Maryland, and throughout the war you were a practicing physician and a farmer. Your 500-acre farm is located just five miles north of Bryantown, in Charles County, Maryland. It is roughly thirty miles from Washington, DC. Your farm was worked by enslaved people until they received their freedom with the Emancipation Proclamation. Most stayed on to serve as farm hands and servants. Your family has always owned slaves, so you never favored the anti-slavery measures adopted by the government and were clearly not happy with enslaved workers being given their freedom by President Lincoln. You did take the oath of allegiance pledge required of all citizens. However, it was rumored that you were a Confederate sympathizer and perhaps even a member of the Confederate underground in the North.

On Sunday evening, November 13, 1864, you first met President Lincoln's assassin, John Wilkes Booth, at St. Mary's Church, near Bryantown. There is some evidence that suggests you may have had a second meeting with him a few days later at the Bryantown Tavern near your home. On December 23, you met Booth again at the National Hotel in Washington. You will maintain that the reason you went to Washington was to buy a new stove and to do some Christmas shopping. However, while on this trip, it will be alleged, you met with three other men—John Surratt, John Wilkes Booth, and Louis Weichmann—in Booth's hotel room. You will maintain that Booth had invited you and the other two men to his room for drinks and cigars. You will say that the conversation you had with these men was totally innocent and that any discussion with Booth revolved around the sale of land and horses. However—be prepared!—there may be testimony from Louis Weichmann, a prosecution witness, that suggests otherwise.

Your final encounter with Booth was when he once again came to your farmhouse. After he shot President Lincoln, he broke his ankle when he leaped from the Presidential Box to the theatre stage. Fleeing Washington, he and David Herold arrived at your house around 4:00 a.m. on April 15. You set, splinted, and bandaged his broken ankle. You will claim that although you had met Booth on other occasions you did not recognize him. You will say that both men used aliases calling themselves Mr. Tyson and Mr. Henston. While Booth was resting after your medical attention you left your home to do some errands in town. When you were in town you heard that President Lincoln had been shot but did not immediately link it with Booth and his friend. When you returned you asked one of your men, John Best, to make some crutches for Booth—which he did—and Booth left your house shortly after, in the early afternoon. Booth paid you \$25 for your services, and he and Herold left in the direction of a swampy area near your farmhouse.

You suspected that Booth might have been involved in the assassination, but you were afraid and did not immediately contact the authorities. The next day, April 16, Easter Sunday, you decided to send Dr. George Mudd, your second cousin, to alert the authorities about caring for Booth at your farm. You were initially questioned about Booth's whereabouts, and you told them that he headed out in the direction of the swamp. A few days later U.S. soldiers came to your



farmhouse and arrested you. They declared at the time that you had helped Booth and Herold escape. They called you a traitor.

Initially you told investigators about Booth's visit to your farm in November but denied seeing him again until he arrived injured at your farm in April. Later, you confessed that you had briefly met with him in Washington in December, while in the city shopping for Christmas presents. However, you will maintain that your only discussion with Booth was about the sale of land and horses.

You, along with seven other alleged conspirators including Lewis Powell, George Atzerodt, Mary Surratt, David Herold, Edmund Spangler, Samuel Arnold, and Michael O'Laughlen, will be placed on trial accused of treason and the assassination of President Lincoln.

You will plead "not guilty."

## Military Commission

### Major General David Hunter, Head of Commission

You are the head of a military tribunal, also called a military commission, assembled to try the alleged conspirators accused of murder and treason in the assassination of President Abraham Lincoln. For the purposes of this activity you will be concentrating on the accusations against Dr. Samuel Mudd. It will be your job to run the trial, along with the other members of the tribunal, in the capacity of both judge and jury. You will hear the evidence and then decide whether Mudd is guilty or innocent.

First, you should make an opening statement saying that a military commission has been assembled to try all those indicted for murder and treason in conjunction with the assassination of President Lincoln, beginning with Dr. Samuel Mudd.

Second, you should instruct the clerk/sergeant-at-arms to read the charges against the defendant. He will declare himself not guilty and then the trial should commence according to the following schedule:

1. Opening remarks by the prosecution
2. Opening remarks by the defense
3. Prosecution witnesses
4. Defense witnesses
5. Closing remarks by the prosecution
6. Closing remarks by the defense
7. Military commission retires and considers the verdict
8. You deliver the verdict and sentence. If you and the other officers unanimously agree he is guilty then you should sentence him to be hanged. If some of the members of the commission believe he is innocent then you should sentence him to life in prison. If you all agree he is innocent then he should be immediately set free.

### Other Members of the Commission:

**Major General Lew Wallace**

**Lt. Colonel David Clendenin**

**Brigadier General James Ekin**

**Brigadier General Robert Foster**

**Brigadier General T. M. Harris**

**Brigadier General Alvin Howe**

**Major General August Kautz**

**Colonel C. H. Tompkins**

Each of you are members of a military tribunal assembled to try the alleged conspirators accused of murder and treason in the assassination of President Abraham Lincoln. For the purposes of this activity, each of you will be concentrating on the accusations against Dr. Samuel Mudd. Each of you will hear the evidence and then decide on whether Mudd is guilty or innocent.

### **Clerk/Sergeant-at-Arms**

It will be your job to help General Hunter in running the trial. He will instruct you to read the following charges against the defendant and to ask the defendant for a plea:

"Dr. Mudd, you stand accused of treasonously conspiring with eight others to murder President Abraham Lincoln, Vice-President Andrew Johnson, Secretary of State William E. Seward, and Lieutenant General Ulysses S. Grant within the fortified and entrenched lines of the Military Department of Washington. You are further charged with advising, encouraging, receiving, entertaining, harboring, concealing, aiding, and assisting John Wilkes Booth and others to carry out this treasonous plot between March 6 and April 20, 1865, which resulted in the assassination of President Abraham Lincoln. You did this with full knowledge of the conspiracy and with the intent to aid, abet, and assist them not only in the assassinations but also in escaping from justice after the murders in pursuance of aforementioned conspiracy. To these charges how do you plead?"

General Hunter will also ask you to swear in each witness by naming the witness and saying the following:

"Place your left hand on the Bible and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?"

### **Prosecution Attorneys: Judge-Advocate General Joseph Holt and Judge-Advocate Mr. John Bingham**

In your opening remarks you should present your theory of the case and what you will attempt to prove. You will then use your witnesses and any cross-examination of defense witnesses to buttress your case. In your closing remarks you should briefly summarize the evidence against the accused presented by your witnesses and explain why Dr. Mudd should be found guilty.

You should focus on the following in developing your case:

1. Dr. Mudd was a cruel master to his enslaved workers. He shot one of his slaves in the leg and threatened others with being sent to Richmond to aid the Confederate army in their defense of the city.
2. He was a member of a Confederate communication and resistance society and had sheltered rebel soldiers on his farm in Bryanstown.
3. He met with John Wilkes Booth on at least two occasions prior to the assassination.



4. He helped John Wilkes Booth escape from the authorities after he assassinated the president, even giving him medical attention for a leg injury.
5. Overall, he was part of the treasonous conspiracy to murder the president.

You will allege that the following is the correct time line of contacts between Dr. Mudd and John Wilkes Booth:

Nov. 1864: Dr. Mudd and Booth are introduced to each other at St. Mary's Church in Bryanstown, Maryland. Booth expresses interest in buying horses and land. The following day Booth visits Dr. Mudd's farm to look at land and horses. He stays overnight and leaves the next day.

Dec. 23: Mudd meets with Booth, Louis Weichmann, and John Surratt in Washington, DC.

April 15: Mudd cares for Booth's leg.

April 16: Mudd attends church but does not immediately alert authorities about caring for Booth even though he knows that President Lincoln has been murdered.

### Defense Attorneys: General Thomas Ewing and Frederick Stone

In your opening remarks you should present your theory of the case and what you will attempt to prove. You will then use your witnesses and any cross-examination of prosecution witnesses to buttress your case. In your closing remark you should highlight how your witnesses have supported your theory of the case and explain why Dr. Mudd was not guilty. You should focus on the following in developing your case:

#### Defense Strategy:

1. Doctor Mudd was a loyal citizen of the United States who never once demonstrated any overt act of treachery.
2. Dr. Mudd was a deeply religious man and a devoted father to his children.
3. Dr. Mudd was a Southerner who owned a large farm in Maryland and prior to emancipation he did own people. However, he always treated his enslaved workers kindly.
4. Mudd may have had Southern sympathies during the beginning of the war but he took the oath of allegiance to the United States and voted for a Union candidate in the November 1864 election.
5. Mudd treated Booth's injury, which is the obligation of any good doctor. He was merely acting as a "good Samaritan."
6. Overall, Mudd was not part of any treasonous plot to murder President Lincoln or any other government official.

You will allege that the following is the correct time line of contacts between Dr. Mudd and John Wilkes Booth:

Nov. 1864: Dr. Mudd and Booth are introduced to each other at St. Mary's Church in Bryonstown, Maryland. Booth expresses interest in buying horses and land. The following day Booth visits Dr. Mudd's farm to look at land and horses.

Dec. 23: Mudd meets briefly with Booth, Louis Weichmann, and John Surratt in Washington.

April 15: Mudd cares for Booth's leg.

April 16: Mudd attends church, hears of the assassination, but does not immediately connect his care for Booth with the tragic events in Washington.

## Prosecution Witnesses

### Louis J. Weichmann

You are the star witness for the prosecution. You are a government clerk and former schoolmate of John H. Surratt whose mother, Mary Surratt, has also been indicted for treason. Up until the time of the assassination of President Lincoln you lived at Mary Surratt's boardinghouse at 541 H Street in Washington, DC. Some even think that you might have been part of the treasonous plot to kill the President. Testifying for the prosecution will be a good way of clearing your name.

You will testify that in December 1864 you and Mr. Surratt were walking down 7th Street in Washington, DC, in the early evening and saw John Wilkes Booth and Dr. Mudd walking together. Dr. Mudd called, "Surratt, Surratt." You walked over to them and Surratt introduced Dr. Mudd to you. Then Dr. Mudd introduced Booth to both you and Surratt, although it seemed to you at the time that Booth already knew Surratt. After these mutual introductions Booth invited everyone to his room at the National Hotel for some wine and cigars. After the wine and cigars came, Booth left you at the table and called Surratt and Mudd into a passageway where they talked quietly for about ten to twenty minutes. You could not hear what they were saying. Although you did see that Booth had an envelope in his hand with some lines on it, which you thought looked like some kind of map. On returning to the room, Dr. Mudd seated himself next to you and apologized for the private conversation, saying that he and Booth had some private business and that Booth wished to purchase his farm and some horses. The four of you chatted for about another twenty minutes—general conversation—then you, Surratt, and Mudd excused yourselves and you walked with Dr. Mudd to Pennsylvania House where he was staying. You sat in the lounge and chatted about the war, expressing the opinion that it would be over soon. Mudd sounded to you like a Union man. After a short while you said "goodnight" to Dr. Mudd and left.

### Mary Simms

You claimed to have been Dr. Mudd's slave for four years. You left his household sometime in November 1864. You heard Dr. Mudd talk about President Lincoln. You heard him say that if Lincoln had ever come into his house he would have killed him. You believe that John Surratt visited the house often. He would go to Virginia and stop along the way to provide news. You also believe that strange people hid in the woods near the farmhouse. In fact, you will claim that you were sent with food for them from Dr. Mudd's house. You believe that bed clothes were taken out to them. However, you cannot say you ever saw or heard the name of John Wilkes Booth.

### Elzee Eglen

You were one of Dr. Mudd's slaves. You will claim that he was a rather harsh master who demanded strict obedience from his slaves. You will claim that Dr. Mudd even shot you in the thigh with some buckshot because he thought you were being unruly. You will also claim that he threatened to send you to Richmond to help the Confederate forces build defenses for the city. You will also testify to the fact that there were a lot of strange men who camped in the woods near Dr. Mudd's farmhouse and that your sister Mary Simms, also one of Dr. Mudd's slaves, occasionally brought them food from the house. You think some of these men were wearing gray coats like those worn by Confederate soldiers.

**Melvina Washington**

You were one of Dr. Mudd's slaves. You left his house shortly after the Emancipation Proclamation set you free. When you were in his service you remember hearing him say that "President Lincoln would not occupy his seat long." There were a lot of gentlemen in the house when he said it. You will claim that some had on gray clothes like those worn by Confederate soldiers. You know that sometimes these men stayed in the house and sometimes they slept in the woods. You know that they were given food by Dr. Mudd or by his servant Mary Simms. You think you saw these men about the house on seven or eight occasions.

**Daniel J. Thomas**

You are a neighbor of Dr. Mudd. You will claim that you heard Dr. Mudd make disparaging remarks about Lincoln and his cabinet. You even heard him predict that the president would be assassinated. However, you have a reputation in your community of being mentally unstable. In fact, even your brother, Dr. John Thomas, will likely be called as a defense witness to testify that you suffer from mental instability and that anything you say should be taken with a grain of salt.

**Lieutenant Alexander Lovett**

On Friday April 21, 1865, you went to Dr. Mudd's farmhouse in Bryantown to arrest him on behalf of the U.S. government because he was suspected to have been involved in the assassination of President Lincoln. You first asked whether there had been any strangers at his house and he said that on Saturday morning, at daybreak, two strangers had come to his place. One of them rapped at the door and the other sat on a horse. He went down, opened the door, went out with the young man and helped the other man off the horse and into the house. He said that one of them had a broken leg, and he went to work to set the leg. You asked him who the man was. He said he did not know. He said he was a stranger to him. You asked him what he looked like. He said he was a young man about seventeen or eighteen. When Mudd heard that your soldiers intended to search his house he produced a boot that he said he had cut off Booth's leg. You turned down the top of the boot and saw the name J. Wilkes Booth written in it. You continued to question Dr. Mudd about the strangers he had cared for, and he admitted that he might have met Booth earlier when he came seeking to buy land and horses. He said he met him briefly while on a shopping trip to Washington. He said that prior to leaving the farmhouse, Booth had shaved off his mustache. He said that he provided some crutches for the injured man and showed Booth and his companion the way across the swamp near his house. He said the men rode away on horses. He claimed that the first time he heard about the assassination of the president was when he went to church on Sunday, April 16, and that he did not immediately link his care of the two strangers with that event.

**Defense Witnesses****Mary Mudd**

Doctor Mudd is your brother. You live at your father's farm, which is next to your brother's farm. You remember seeing Booth in church one Sunday and heard of his being at your brother's house to discuss the sale of land and horses. You typically visit your brother three or four times a week. You do not think that he stayed overnight on that visit. You never saw or heard anything about Booth except for that one occasion before the assassination.

**George D. Mudd**

You are a practitioner of medicine in the village of Bryantown. Mudd's father and your father are first cousins and Samuel Mudd was one of your medical students. You considered him a very kind master. He always fed and clothed his slaves and servants well and treated them kindly.

You saw Dr. Mudd on April 16 at church. You and Dr. Mudd heard about the assassination while in church, but did not discuss it in detail because you really did not know any details. After the service you rode with him as far as his house. He told you that two suspicious persons had been at his house on the previous day. On Monday morning, April 17, you communicated this information to Lieutenant Lovett who was investigating the assassination. You told him that Dr. Mudd had informed you that two suspicious men had been at his house on Saturday April 15 and that he had treated one of them for an injury to his leg. Dr. Mudd also told you that one of the men had altered his appearance before leaving by shaving off part of his beard. He also said that he gave the injured man some crutches and that they left in the direction of the swamp near his farmhouse.

On Tuesday afternoon, April 18, four detectives, arrived at your house and further questioned you about Dr. Mudd. Then they asked you to take them to his house. When you got to Dr. Mudd's house, the detectives went into the farmhouse, leaving you outside. As far as you know, Dr. Mudd was completely honest with the detectives regarding the assistance he had given the two strangers on Saturday, April 15.

**Jeremiah T. Mudd**

You are a cousin of Dr. Mudd and have known him since he was a young boy. You have always considered him an honest, upstanding citizen. You never heard anything about him being cruel to either his enslaved workers or servants. He never subjected them to excessive work. After the Emancipation Proclamation many of his former slaves decided to stay on his farm to work as house servants and farm hands. You did hear that he had shot one of his slaves, but from what you know about the actual event Dr. Mudd was simply firing to scare him because he was being unruly and that he only hit him by accident. Later he expressed sorrow about the incident. You know that he went on a shopping trip to Washington in December 1864, but you don't know anything about him meeting anyone there.

**John C. Thompson**

You introduced John Wilkes Booth to Dr. Mudd at St. Mary's Catholic Church on a Sunday morning in early November 1864. Booth had come to you as a stranger but was carrying a letter of introduction from a man named Martin in Montreal, Canada. Booth said that he was interested in buying land and horses. You believe that Booth and Mudd agreed to meet the next day at his farmhouse to discuss the sale of land and horses. This is the only knowledge you have of contact between Booth and Mudd prior to Lincoln's assassination.

**Jeremiah Dyer**

You own a farm near Dr. Mudd's property. You have known him since he was a boy and consider him a fine doctor and an honest man. You believed him to be a man of peace. You do not think he has ever committed a disloyal act and certainly had nothing to do with the assassination of the president. You will deny knowing anything about Dr. Mudd's threat to send some of his slaves to Richmond to help the Confederate forces. You always considered him a very kind

and humane master and have never known anything to the contrary, with the exception of a difficulty with one man who was unruly. You heard that Dr. Mudd accidentally shot him in the leg. You may be asked about whether you are a member of an illegal military company formed to oppose the United States. You will say that you do train with a militia company, but it is not aimed at opposing the government.

**Thomas Davis**

You are a laborer on Dr. Mudd's farm doing all kinds of jobs, like ploughing and planting. You will testify that you never left the farm up until the time of Dr. Mudd's arrest. You never saw Surratt, Booth or any men with gray suits. You considered Dr. Mudd a kind master and never heard him express any disloyal sentiments.

**Julia Ann Bloyce**

You were a servant in Dr. Mudd's house. You cooked, washed, and cleaned the house. You will testify that you did not see any men in gray suits in the house or in the woods near the house. You don't know anything about men named Surratt or Booth. You never saw or heard anything about them. You also don't know anything about threats made to any of Dr. Mudd's slaves about being sent to Richmond to help the rebels. You always considered Dr. Mudd to be a kind master to his slaves and you do not believe that he ever whipped any of them. You know the prosecution witness Mary Simms and believe that the general opinion of all the servants was that she was a liar.

**Joshua S. Naylor**

You live on a farm in Prince George's County, Maryland, near Dr. Mudd's land. You have known Dr. Mudd for many years and consider him an honest man and an excellent doctor. You also know the prosecution witness Daniel J. Thomas and consider that he has a very bad reputation and cannot be trusted to tell the truth. You even believe that he would be willing to lie under oath.

# Script: Trial of Dr. Mudd

## Scene One: Trial Begins

**NARRATOR:** Ten o'clock a.m., May 9, 1865. The trial of Dr. Samuel A. Mudd and seven other alleged conspirators—David Herold, George Atzerodt, Lewis Powell, Michael O'Laughlen, Edmund Spangler, Samuel Arnold, and Mary Surratt—begins in a room on the third floor of Arsenal Prison in Washington, DC. The nine officers of the military tribunal including Lieutenant Colonel David Clendenin, Brigadier General James Ekin, Brigadier General Robert Foster, Brigadier General T. M. Harris, Major General August Kautz, Major General David Hunter, Brigadier General Alvin Howe, Colonel C. H. Tompkins, and Major General Lew Wallace are seated at a table at the front of the court. The defendant, Dr. Samuel Mudd, is seated at a table along with the other seven conspirators and his defense attorneys, including General Thomas Ewing and Mr. Frederick Stone. The chief prosecutor, Judge-Advocate General Joseph Holt and the Assistant Prosecutor Honorable John Bingham are seated to the left. The witness stand is in the center of the room between two posts, with a table on either side. The witnesses and spectators are seated in the rear of the courtroom.

**CLERK/SERGEANT-AT-ARMS:** All rise. All persons having business before the honorable United States Military Court are admonished to draw nigh and give their attention for the tribunal is now sitting.

Dr. Mudd, please rise. You stand accused of treasonously conspiring with others to murder President Abraham Lincoln, Vice President Andrew Johnson, Secretary of State William E. Seward, and Lieutenant General Ulysses S. Grant within the fortified and entrenched lines of the Military Department of Washington. You are further charged with advising, encouraging, receiving, entertaining, harboring, concealing, aiding, and assisting John Wilkes Booth and others to carry out this treasonous plot between March 6 and April 20, 1865, that resulted in the assassination of President Abraham Lincoln. You did this with full knowledge of the conspiracy and with the intent to aid, abet, and assist them not only in the assassinations but also in escaping from justice after the murders in pursuance of aforementioned conspiracy. To these charges how do you plead?

**DR. MUDD:** Not guilty.

**GENERAL EWING:** *(Rising)* Sirs, Dr. Mudd respectfully requests that he may be tried separate from the other defendants because he believes his interests will be prejudiced by association with the other defendants.

**JUDGE-ADVOCATE HOLT:** *(Rising)* Sirs, the crimes charged were committed in execution of a common conspiracy of which Dr. Mudd was a willing participant. So, it is entirely proper that they all be tried together.

**NARRATOR:** The generals on the military commission whisper to each other and then General Hunter announces their decision.

**GENERAL HUNTER:** General Ewing, your request is denied. Judge-Advocate, you may make opening remarks.



**HOLT:** (*Rising*) We will show there is ample evidence to suggest that Dr. Mudd was not just a simple country doctor and farmer who embraced the Union but was in fact a cruel master to his slaves and a man who was deeply opposed to our government, aiding and abetting the Confederate cause. He longed to return to his slaveholding roots and willingly entered into a treasonous conspiracy with John Wilkes Booth and the other defendants in this court to murder President Lincoln and other government officials. Tragically, they succeeded in assassinating our beloved President. After John Wilkes Booth shot the president, Dr. Mudd clearly became an accessory to this overt act of murder and treason by rendering medical aid and comfort to this assassin and should be found guilty on all charges specified in the indictment.

**HUNTER:** Does the defense wish to make any opening remarks?

**EWING:** Yes, sir. Dr. Mudd, contrary to the allegations of the prosecution, was a kind master to his slaves. He willingly accepted the Emancipation Proclamation and hired many of his former slaves to work on his farm. He was not engaged in assisting the Confederate cause and willingly took an oath of allegiance to the Union. Dr. Mudd is not, and cannot possibly be, guilty of any offense known to the law. Specifically, he is not guilty of treason. The overt act attempted to be alleged is the murder of the president. The proof is conclusive, that at the time the tragedy was enacted Dr. Mudd was at his residence in the country, thirty miles from the place of the crime. Those who committed it are shown to have acted for themselves, not as the instruments of Dr. Mudd. He, therefore, cannot be charged, according to the law, and upon the evidence, with the commission of this overt act. There are not two witnesses to prove that he did commit it, but abundant evidence to show negatively that he did not. Dr. Mudd should be acquitted of all the charges against him.

## Scene Two: Prosecution Witnesses

**HUNTER:** Judge-Advocate Holt, you may call your first witness.

**HOLT:** The prosecution calls Louis Weichmann.

**CLERK:** Mr. Weichmann, place your left hand on the Bible. Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

**LOUIS WEICHMANN:** I do.

**HOLT:** Please tell the court when you first met Dr. Mudd and under what circumstances.

**WEICHMANN:** I was walking down 7th Street in Washington City with Mr. Surratt. We were across from the Odd Fellow Hall when I heard a man call, "Surratt, Surratt." We turned and saw two men. Surratt immediately recognized Dr. Mudd. He said he was an old friend. We walked over and Mr. Surratt introduced Dr. Mudd to me and then Dr. Mudd introduced the other man, Mr. John Wilkes Booth, to both of us.

**HOLT:** What happened next?

**WEICHMANN:** Mr. Booth invited us to have some refreshments in his room in the National Hotel, so we walked together to the hotel.

**HOLT:** What happened when you were in Mr. Booth's room?

**WEICHMANN:** Booth told us to be seated at a table and then he ordered room service to bring wine and cigars.

**HOLT:** What was the nature of your conversation?

**WEICHMANN:** We talked about the war and how it was not going well for the Confederacy.

**HOLT:** Do you recall Booth having any private conversations with Dr. Mudd?

**WEICHMANN:** Yes, at one point Dr. Mudd and Booth went out to a passageway in the room and quietly chatted. They also called Surratt over into the conversation, leaving me puffing on my cigar alone.

**HOLT:** How long were they talking alone?

**WEICHMANN:** I guess it was about fifteen or twenty minutes.

**HOLT:** Did you hear any of the private conversation?

**WEICHMANN:** No, they were out of earshot. However, when Dr. Mudd came back, he sat next to me and apologized for his private conversation. He said that he and Booth had some private business and that Booth wanted to purchase his farm and some horses. However, he said that Booth was not willing to pay his price so he didn't think there would be any sale.

**HOLT:** Did you see any maps or papers in Booth's room?

**WEICHMANN:** I didn't see any maps . . . but now that I think about it, Booth did take out the back of an envelope and made marks on it, not writing—more like lines that looked like roads. Surratt, Booth, and Dr. Mudd appeared to be studying this paper.

**HOLT:** Did you have any conversations with Booth about this proposal to buy Dr. Mudd's farm?

**WEICHMANN:** Yes, Booth did tell me that he was interested in buying Dr. Mudd's farm.

**HOLT:** No further questions.

**GENERAL WALLACE:** Do you wish to cross-examine this witness?

**EWING:** Yes, General. Mr. Weichmann, didn't it seem strange to you that Booth would invite you all into his hotel room?

**WEICHMANN:** At the time I just thought he was being friendly—a real gentleman and a rather famous actor. I was honored.

**EWING:** How long were you in Booth's room?

**WEICHMANN:** Maybe a little less than an hour.

**EWING:** Isn't it true that you never saw Dr. Mudd write anything on the back of the envelope?

**WEICHMANN:** No, I never saw him write anything. It was Booth who drew the lines on the envelope.

**EWING:** Again, isn't it true that you did not hear any of the so-called private conversation that transpired between Booth, Dr. Mudd, and Surratt?

**WEICHMANN:** Yes, they were speaking too softly and I was way across the room.

**EWING:** And isn't it true that they only chatted very briefly, a mere five or six minutes?

**WEICHMANN:** No, as I said, I think it was more like ten or fifteen minutes.

**EWING:** How far is Dr. Mudd's house from Washington?

**WEICHMANN:** I do not really know. I have never been to his house. All I know about his house is that it is near Bryantown in Charles County, Maryland.

**EWING:** After you left Booth's room, where did you go?

**WEICHMANN:** When we left the National Hotel, we went to Pennsylvania House where Dr. Mudd had rooms. We all went into the sitting room, and Dr. Mudd came over to me and we continued our chat about the war. He told me that he thought the war would end soon. He sounded like a Union man. Booth was talking to Surratt. Booth then bade us a goodnight and left. A few minutes later we said goodnight, too, and left.

**EWING:** Do you know if Dr. Mudd left Washington the next day?

**WEICHMANN:** He said he was leaving the next morning, but I don't know if he did.

**EWING:** Isn't it true that there was really nothing that led you to believe that there was anything unusual going on between Booth, Surratt, and Dr. Mudd?

**WEICHMANN:** Yes, I guess so.

**EWING:** No further questions.

**HUNTER:** Prosecution may call their next witness.

**JUDGE-ADVOCATE BINGHAM:** The prosecution calls Mary Simms.

**CLERK:** Miss Simms, place your left hand on the Bible. Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

**MARY SIMMS:** I do.

**BINGHAM:** State if you know any of these persons in the dock here, the prisoners.

**SIMMS:** (*pointing to the prisoner Dr. Mudd*) I know that one yonder.

**BINGHAM:** How do you know him?

**SIMMS:** I lived on his farm for nearly four years. I was one of his slaves.

**BINGHAM:** When you were with him, did you hear Dr. Mudd, the prisoner, say anything about shooting President Lincoln?

**SIMMS:** Yes, sir. I heard him say that if Lincoln ever came near his farm dressed in women's clothes, like when he slipped into Washington for his first inauguration, he'd shoot him.

**BINGHAM:** Did you ever see the defendant John Surratt at Dr. Mudd's house?

**SIMMS:** There was a man visited there last summer by the name of Surratt, John Surratt, and another one by the name of Walter Bowie.

**BINGHAM:** Who called him Surratt?

**SIMMS:** I heard Dr. Mudd and his wife call him Mr. Surratt. He was a young looking man with light hair, slim but not too tall.

**BINGHAM:** Did he sleep in Dr. Mudd's house?

**SIMMS:** No, he slept out in the woods. All of them slept in the woods.

**BINGHAM:** How many were with them at times in the woods?

**SIMMS:** There was a bunch of men. I think they were military men because they kept calling each other captain and lieutenant and the like . . . you know . . . military titles—like you, general.

**BINGHAM:** How did they get fed?

**SIMMS:** Sometimes they came into the house to eat and sometimes we had to bring them food out into the woods. When they came into his house to eat they put us all out to watch, to let them know if anybody was coming toward the house.

**BINGHAM:** Did you ever see Surratt in the house of Dr. Mudd at any other time than when he was eating?

**SIMMS:** Yes, sir. I have seen him in the house, upstairs with him, and in the parlor.

**BINGHAM:** State whether they went apart and talked, or whether they were present with the family.

**SIMMS:** They never talked very often in the presence of the family. They always went off by themselves to talk.

**JUDGE-ADVOCATE BINGHAM:** Did you hear Samuel A. Mudd say anything at any time about sending some of his slaves to Richmond to help with the rebel defenses?

**SIMMS:** Yes, after he shot my brother, Elzee Eglen, he talked about sending him to Richmond. He said that would teach him to behave.

**BINGHAM:** What did he say he would have to do in Richmond?

**SIMMS:** Build rebel fortifications.

**BINGHAM:** How long was that before you left Dr. Mudd's?

**SIMMS:** I left him just about a month before Christmas. I was free then. He whipped me and I ran away.

**BINGHAM:** You left Dr. Mudd's house because he whipped you?

**SIMMS:** Yes, sir.

**BINGHAM:** No further questions.

**WALLACE:** General Ewing, do you wish to question this witness?

**EWING:** Yes, sir. Miss Simms, isn't it true that four years ago Dr. Mudd told you that President Lincoln came into Washington disguised, dressed in women's clothes, because it was feared then that he might be shot?

**SIMMS:** Yes, sir.

**EWING:** And isn't it true that Dr. Mudd was just joking when he commented about shooting him if he came to his farm dressed in women's clothes?

**SIMMS:** I guess that might be true.

**EWING:** Did any of the men, including Surratt, ever sleep in Dr. Mudd's house?

**SIMMS:** No, they slept in the woods.

**EWING:** No further questions.

**HUNTER:** Prosecution may call their next witness.

**HOLT:** The prosecution calls Elzee Eglen.

**CLERK:** Mr. Eglen, place your left hand on the Bible. Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

**ELZEE EGMEN:** I do.

**HOLT:** How do you know the defendant, Dr. Mudd?

**EGMEN:** He was my boss (*pointing at Mudd*). I was his slave and lived with him until August 20, 1864.

**HOLT:** How did he treat you and the other slaves?

**EGMEN:** He was not a kind person. He even shot me in the leg because he thought I was being unruly.

**HOLT:** Did he ever threaten you with being sent to Richmond?

**EWING:** (rising) I object to that question and answer.

**HOLT:** The object of this question is to show disloyalty on the part of Dr. Mudd to the Union cause.

**HUNTER:** Objection overruled.

**EGMEN:** Yes. He said that if I continued to be disobedient and unruly he would ship me off to Richmond—I think to work on the rebel defenses around the city.

**HOLT:** Do you know anything about strange men living in the woods near Dr. Mudd's farmhouse?

**EGMEN:** Yes. On several occasions I saw men going into the woods near the farmhouse. My sister Mary Simms even brought them food. Some of the men had on gray jackets.

**HOLT:** No further questions.

**HUNTER:** General Ewing, do you wish to question this witness?

**EWING:** Yes, sir. Isn't it true, Mr. Egle, that the real reason you were shot by Dr. Mudd was because you were threatening him with a curry comb?

**EGMEN:** Well, I might have been a bit sassy, but I didn't threaten him.

**EWING:** No further questions.

**CLERK:** Witness may step down.

**HUNTER:** Prosecution may call their next witness.

**BINGHAM:** The prosecution calls Melvina Washington.

**CLERK:** Miss Washington, place your left hand on the Bible. Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

**MELVINA WASHINGTON:** I do.

**BINGHAM:** How well do you know the defendant?

**WASHINGTON:** I was one of his servants. I lived with him, at his house, for a couple of years.

**BINGHAM:** State whether, while you lived at Dr. Samuel Mudd's, you heard him say anything about President Lincoln.

**WASHINGTON:** I heard him say that he would not keep his seat long.

**BINGHAM:** When was it that you heard him say that?

**WASHINGTON:** I heard him say it the summer before I came away, the summer before last.

**BINGHAM:** Was there anybody talking with him at the time he said that?

**WASHINGTON:** There was a heap of gentlemen in the house, but I don't know who they were.

**BINGHAM:** How were the gentlemen that were in the house dressed, and where did they sleep?

**WASHINGTON:** Some had on gray clothes, and some had on little short jackets with black buttons.

**BINGHAM:** Where did they sleep?

**WASHINGTON:** Sometimes they stayed in the house, and sometimes they slept in the pines.

**BINGHAM:** How far from Dr. Mudd's home?

**WASHINGTON:** The pines were not far from the spring near his house.

**BINGHAM:** State how they got their food.

**WASHINGTON:** Sometimes Dr. Mudd would carry the food out to them, or his wife did. Other times he sent his slave, Mary Simms.

**BINGHAM:** Did you hear him say anything about sending some of his slaves to Richmond to help the rebel forces?

**WASHINGTON:** Yes, sir. I remember he got real mad at one of his slaves—I can't remember his name—and he said he was going to send him and his friends to Richmond.

**BINGHAM:** No further questions, sir.

**HUNTER:** General Ewing, do you wish to question this witness?

**EWING:** No questions, sir.

**HUNTER:** Prosecution may call their next witness.

**HOLT:** The prosecution calls Daniel J. Thomas.

**CLERK:** Mr. Thomas, place your left hand on the Bible. Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

**DANIEL J. THOMAS:** I do.

**HOLT:** How do you know the defendant?

**THOMAS:** I live on a farm near him. I guess you could say I am his neighbor.

**HOLT:** Did you ever hear him say anything bad about the Union or President Lincoln and other government officials?

**THOMAS:** Yes. After church services, a couple of months before the President was murdered. I remember overhearing him say to a group of men that he believed President Lincoln was a bad leader, and he predicted that he would be assassinated.

**HOLT:** What would be your assessment of his loyalty to the Union?

**THOMAS:** I would say that although he signed the loyalty oath—we all did—he sympathized with the Confederate cause.

**HOLT:** No further questions, sir

**HUNTER:** General Ewing, do you have any questions of this witness?

**EWING:** Yes, sir. Mr. Thomas, isn't it true that you have been under the medical care of your brother, Dr. John Thomas?

**THOMAS:** Yes, I guess so.



**EWING:** And isn't it true that your brother has diagnosed you as suffering from mental instability and has even submitted a report to the court, a deposition, that says, in effect, you should be considered an unreliable witness?

**THOMAS:** Well, I don't know anything about that.

**EWING:** No further questions but I refer the court to Mr. John Thomas' deposition that has been submitted to the tribunal.

**HUNTER:** Duly noted. Prosecution may call their next witness.

**BINGHAM:** The prosecution calls Lieutenant Alexander Lovett.

**CLERK:** Lt. Lovett, place your left hand on the Bible. Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

**ALEXANDER LOVETT:** I do.

**BINGHAM:** The day after the assassination of the president were you, along with soldiers and detectives, engaged in the pursuit of the murderers?

**LOVETT:** Yes, sir.

**BINGHAM:** What route did you take?

**LOVETT:** The route by Surrattsville.

**BINGHAM:** Did you eventually find yourself at the house of the prisoner Dr. Samuel Mudd?

**LOVETT:** Yes, sir. We stopped at his house and first asked whether there had been any strangers at his house, and he said there had been. At first, he did not seem to hesitate about saying anything. He told me that on Saturday morning, at daybreak, two strangers had come to his farmhouse. One of them rapped at the door and the other sat on a horse. He went down and opened the door, and went out with the young man, and helped the other off the horse and into the house. He said that one of them had a broken leg, and he went to work to set the leg. I asked him who the man was. He said he did not know. He said he was a stranger to him. I asked him about the appearance of the other man, and he said he was a young man, about seventeen or eighteen.

**BINGHAM:** How long did he say they remained there?

**LOVETT:** He said they remained there a short time. This was the first conversation that I had with him.

**BINGHAM:** You say a short time. Do you mean that they went away in the course of the morning?

**LOVETT:** Yes.

**BINGHAM:** How long were you at his house?

**LOVETT:** Probably an hour.

**BINGHAM:** Did he continue to maintain that he did not know these men?

**LOVETT:** Yes, sir. He said he knew nothing of them. He said that one of them called for a razor—the injured man—and he furnished him with a razor and some soap and water. He said the man shaved his mustache off but kept his whiskers.

**BINGHAM:** And that they both left there on that morning?

**LOVETT:** Yes, they left on horseback. He said that one of them went on crutches. He said he made some crutches for the injured man.

**BINGHAM:** What did Dr. Mudd say about caring for the injured man's leg?

**LOVETT:** He said he had to cut off the man's boot in order to set the leg. He showed me the boot that he took off the injured man's foot. I turned down the top of the boot and saw some writing on the inside—the name "J. Wilkes" was written in it. I called Mudd's attention to it and he said he had not taken notice of that before.

**BINGHAM:** (*Exhibiting a boot*) Is that the boot?

**LOVETT:** It is.

**BINGHAM:** Did he later admit that he knew the injured man and that he was John Wilkes Booth?

**LOVETT:** Yes, sir. Later he did admit knowing the man, that he had met him earlier when he came to his town seeking to buy land and horses.

**BINGHAM:** No further questions, sir.

**HUNTER:** General Ewing, do you wish to question this witness?

**EWING:** Yes, sir. Lieutenant Lovett, isn't it true that when you first questioned Dr. Mudd, he was very cooperative?

**LOVETT:** Yes.

**EWING:** And didn't he tell you that he did not immediately say that he knew Booth because he was afraid that his actions to help the man might be misinterpreted? That he had only seen him a few times before and that perhaps he could be mistaken?

**LOVETT:** Yes, he did say he was afraid.

**EWING:** No further questions.

**HUNTER:** Prosecution may call their next witness.

**HOLT:** We have no further witness to present, sir. The prosecution rests pending closing remarks.

**HUNTER:** The court will stand in recess until tomorrow at which time the defense may present their witnesses.

**CLERK:** All rise.

**NARRATOR:** The generals on the military tribunal depart the room.

### Scene Three: Defense Witnesses

**CLERK:** (*The military tribunal enters the court.*) All rise for the military tribunal.

**HUNTER:** Defense, you may call your first witness.

**EWING:** The defense calls Mary Mudd.

**CLERK:** Mary Mudd, place your left hand on the Bible. Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

**MARY MUDD:** I do.

**EWING:** What is your relation to the defendant?

**MARY MUDD:** He is my brother.

**EWING:** Where do you live?

**MARY MUDD:** I live on my father's farm, which is near my brother's farm in Bryantown.

**EWING:** Do you ever remember seeing your brother with this person (*showing her a picture of John Wilkes Booth*)?

**MARY MUDD:** I never saw my brother with him. I do remember seeing him one Sunday at our church. I later learned that he was interested in buying land and horses from local farmers so I assume he met with my brother, along with other local farmers.

**EWING:** Did your brother ever mention the name John Wilkes Booth?

**MARY:** I typically see my brother three or four times a week, and I never heard him mention that name.

**EWING:** Do you know if Booth ever stayed at your brother's house?

**MARY MUDD:** I have no recollection of that man staying at my brother's house.

**EWING:** I have no further questions.

**HUNTER:** Does the prosecution have any questions of this witness?

**HOLT:** No questions, sir.

**HUNTER:** Defense may call their next witness.

**EWING:** Defense calls George D. Mudd.

**CLERK:** George Mudd, place your left hand on the Bible. Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

**GEORGE D. MUDD:** I do.

**EWING:** State whether you know the prisoner Samuel A. Mudd.

**GEORGE D. MUDD:** I know him. I am a practitioner of medicine in the village of Bryantown. His father and my father are cousins, and he was one of my medical students.

**EWING:** State to the court whether you know about his reputation and what kind of a master he was to his slaves.

**GEORGE D. MUDD:** I know of no one whose reputation is better in that regard. I have always considered him a humane man to everyone, whether they were his servants or otherwise. He always fed and clothed his servants well, to my knowledge, and treated them kindly, as far as I know.

**EWING:** Did you see Dr. Mudd on the Sunday, April 16, after the assassination of the president?

**GEORGE D. MUDD:** Yes, sir. I saw him at church and after the service I rode with him as far as his house.

**EWING:** Did Dr. Mudd speak to you about having two suspicious persons at his house on Saturday, one of whom was injured?

**GEORGE D. MUDD:** He did.

**EWING:** State to whom you communicated this, and what did you say?

**GEORGE D. MUDD:** I communicated it to Lieutenant Lovett. I think it was on Monday morning. I stated to him that Dr. Samuel Mudd had informed me that two suspicious men were at his house.

He said they came there a little before daybreak on Saturday morning and that one of them had a broken leg. He said they both seemed very agitated. He said he set the leg and ankle and that the injured man asked for a razor and shaved off some of his facial hair—I suppose to alter his appearance. He then made some crutches for the injured man and around noon the man and his companion left the farm headed in the direction of the swamp near his house.

**EWING:** Did you make any other communication to any other military authorities of the facts stated to you by Dr. Samuel A. Mudd?

**GEORGE D. MUDD:** Yes, sir.

**EWING:** To whom?

**GEORGE D. MUDD:** On Tuesday afternoon four detectives came to my house. They questioned me further and even asked me to take them to Dr. Mudd's farmhouse. The detectives went in while I waited outside. Dr. Mudd was not in the house. I was outside the door, and saw him coming, and told him, as he entered the house, that the detectives had come there for the purpose of ascertaining the particulars relative to that matter which he had spoken to me about.

**EWING:** State whether anything was said by either of those gentlemen about Dr. Mudd's having denied that the two men had been at his house.

**GEORGE D. MUDD:** Not to my knowledge.

**EWING:** State whether you were at church on Sunday, and what was known there about the assassination of the president.

**GEORGE D. MUDD:** I was at church on Sunday. It was believed, and I may say known, then, that the president of the United States had been assassinated. It was talked about.

**EWING:** Did you have any conversation with Dr. Samuel Mudd at the church, or hear his conversation, as to what he knew of the assassination?

**GEORGE D. MUDD:** No.

**EWING:** No further questions.

**HUNTER:** Does the prosecution have any questions for this witness?

**HOLT:** Yes, sir. Did Dr. Mudd ever tell you how he thought the man's leg or ankle had been broken?

**GEORGE D. MUDD:** He said the man claimed to have fallen from a horse.

**HOLT:** No further questions.

**CLERK:** Witness may step down.

**HUNTER:** Defense may call their next witness.

**EWING:** The defense calls Jeremiah T. Mudd.

**CLERK:** Jeremiah T. Mudd, place your left hand on the Bible. Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

**JEREMIAH T. MUDD:** I do.

**EWING:** State where you reside.

**JEREMIAH T. MUDD:** I reside in Byrantown, about a mile and half from Dr. Mudd's house.

**EWING:** Are you well acquainted with Dr. Samuel A. Mudd?

**JEREMIAH T. MUDD:** I am. I have known him from early youth.

**EWING:** Do you know his general character?

**JEREMIAH T. MUDD:** Exemplary. I never heard in all my life anything to the contrary. He has always been amiable and estimable, a good citizen, a good neighbor, honest and correct. I never heard anything from anybody to the contrary.

**EWING:** Do you know how he treated his servants, either as slaves or as hired hands?

**JEREMIAH T. MUDD:** I have lived very close by him all my lifetime. I think him humane and kind to his servants. He did not work them very hard either, like some do around these parts.

**EWING:** State whether you came with him to Washington, DC last winter.

**JEREMIAH T. MUDD:** I did.

**EWING:** At what time?

**JEREMIAH T. MUDD:** We rode in on the twenty-second of December.

**EWING:** Did you sleep in the same room at the Pennsylvania House?

**JEREMIAH T. MUDD:** Yes, sir. In the Pennsylvania House, there are two rooms, the rooms are about equal in size.

**EWING:** Did you ever see Dr. Mudd conferring with anyone in your rooms?

**JEREMIAH T. MUDD:** I have no knowledge of there being anybody with him. I saw no one.

**EWING:** Why did you and Dr. Mudd come to Washington?

**JEREMIAH T. MUDD:** I was there to purchase a stove, and he was shopping for Christmas presents.

**EWING:** Did Dr. Mudd ever mention to you that he was planning to meet with either a Mr. Surratt or a Mr. Booth or any other gentlemen?

**JEREMIAH T. MUDD:** No, sir.

**EWING:** No further questions.

**HUNTER:** Does the prosecution have any questions for this witness?

**HOLT:** Yes, sir. Mr. Mudd, you speak of the general reputation of the prisoner, Dr. Mudd. Do you know his reputation for loyalty to the government of the United States during this war?

**JEREMIAH T. MUDD:** I have never heard of him committing any disloyal acts.

**HOLT:** Never heard any disloyal statements expressed by him?

**JEREMIAH T. MUDD:** No, sir, not that I am aware of.

**HOLT:** Isn't it true that he was openly opposed to the action of the government of the United States in its endeavors to suppress this rebellion?

**JEREMIAH T. MUDD:** I do not know anything about that.

**HOLT:** Do you know, or not, that he has constantly held that the state of Maryland had been false to her duty in not going with other states into the rebellion against the government?

**JEREMIAH T. MUDD:** I never heard him say so.

**HOLT:** Have you not from time to time seen Confederate officers or soldiers about his house?

**JEREMIAH T. MUDD:** Never.

**HOLT:** You spoke of his amiability and kind treatment to his servants. Do you know anything about him shooting one of his slaves?

**JEREMIAH T. MUDD:** I heard that one of his servants was very unruly, that he had ordered him to do something about the stable, and he refused to do it and started off to go away. The doctor had his bird gun with him, and he thought he would shoot at him, in his direction, and frighten him to make him stop and come back. I think that he accidentally shot him somewhere in the calf of the leg. But it was not a very dangerous wound—just painful, I guess.

**HOLT:** Did the defendant ever express his opposition to the Emancipation Proclamation issued by President Lincoln?

**JEREMIAH T. MUDD:** Well sir, I guess Dr. Mudd was just like all the slave owners in Maryland. They didn't like it, but they accepted it and moved on.

**HOLT:** No further questions.

**CLERK:** Witness may step down.

**HUNTER:** Defense may call their next witness.

**EWING:** The defense calls John C. Thompson.

**CLERK:** John C. Thompson, place your left hand on the Bible. Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

**JOHN C. THOMPSON:** I do.

**EWING:** Where are you residing at present?

**THOMPSON:** In Charles County, Maryland.

**EWING:** Did you know J. Wilkes Booth?

**THOMPSON:** Yes, I was introduced to a Mr. John Wilkes Booth by Dr. Queen, my father-in-law. I think it was some time in November.

**EWING:** Had you or any of your family known him previously?

**THOMPSON:** Not that I know of.

**EWING:** State to the court how John Wilkes Booth got admission there?

**THOMPSON:** Dr. Queen's son Joseph brought him there, I think, from Bryantown.

**EWING:** Did this man Booth bring any letters of introduction to Dr. Queen?

**THOMPSON:** I think he brought a letter from somebody in Montreal. If I am not mistaken, it was from a man named Martin.

**EWING:** Did you see the letter?

**THOMPSON:** I hurriedly glanced over the letter. But not being a letter to me, I paid very little attention to it. Frankly, I was not very interested.

**EWING:** State the purport of the letter, as near as you can remember.

**THOMPSON:** As well as I remember, it was simply a letter of introduction to Dr. Queen, saying that this man Booth wanted to see the county. That is about it, as well as I remember.



**EWING:** Were you present at the first meeting between Dr. Samuel A. Mudd, the accused, and this man Booth?

**THOMPSON:** Yes. It was at the church.

**EWING:** State the circumstances.

**THOMPSON:** On Sunday morning, this man Booth, Dr. Queen, and myself went to the church at Bryantown, and I introduced Booth to Dr. Mudd.

**EWING:** State to the court what was Booth's reason for being in Byrantown.

**THOMPSON:** It was for the purpose of purchasing land. I paid very little attention to the man, as apparently he had not business with me after this letter to Dr. Queen. I am confident that it was for the purpose of purchasing land. He asked me the price of land in that section of the country and, as well as I remember, I told him that land varied there in price from \$5 to \$50 per acre, according to the quality of the land, the situation of the land, and the improvements thereon. Poor land, I thought, was worth only about \$5 an acre, good land, with improvements, on a river, I considered worth \$50 an acre. As far as I could ascertain from him, that was his motive, his object and his ostensible purpose down there in Charles County.

**EWING:** Did he make any inquiries of you as to who had land for sale?

**THOMPSON:** Yes. And I think I told him that I was not very well satisfied who in the county had land for sale, but that Mr. Henry Mudd was a large landowner, and that it was possible he might select land from him, and he might have land for sale.

**EWING:** Who is Henry Mudd? What relation is he to the accused?

**THOMPSON:** He is the father of Samuel A. Mudd.

**EWING:** Did Booth make any inquiries as to the purchase of horses in the neighborhood?

**THOMPSON:** I think he did, as well as I remember. I think he asked me if there were any horses in that neighborhood for sale. I told him I did not know, that the government had been purchasing horses, and a good many of the neighbors around had been going up to Washington to sell their horses. Whether there were any here for sale at the time he made the inquiry to me, I was not able to state to him.

**EWING:** When you, Dr. Queen, and Booth went to church next day, was, or was not, your meeting with Dr. Mudd, the accused, casual?

**THOMPSON:** Yes.

**EWING:** Where did you meet him?

**THOMPSON:** On Sunday morning, in the churchyard, just in front of the church door, I happened to see Dr. Mudd there with a group of gentlemen. I went over and introduced Booth to Dr. Mudd.

**EWING:** Did Booth stay at Dr. Queen's house during that visit?

**THOMPSON:** I think he stayed there that night and the next day, as well as I remember.

**EWING:** Did you ever see Booth again?

**THOMPSON:** If my memory serves me correctly, in December he came down to Dr. Queen's house again.

**EWING:** Did he stay all night on his second visit to Dr. Queen's?

**THOMPSON:** I think he did and left very early the next morning.

**EWING:** Did you ever see him in the country but on those two visits?

**THOMPSON:** Never after that.

**EWING:** You do not know of his having been there but on those two occasions?

**THOMPSON:** When he left Dr. Queen's, I did not know where he went.

**HUNTER:** Does the prosecution wish to question this witness?

**HOLT:** Yes, sir. Did Booth ever say anything to you about purchasing lands from Dr. Samuel Mudd?

**THOMPSON:** No.

**HOLT:** Do you know, as a matter of fact, whether Dr. Samuel Mudd does own any lands there at all, or not?

**THOMPSON:** I am not positive as to that. Dr. Samuel Mudd lives about a mile, or a mile and a half, from his father. But whether he lives upon land that belongs to his father, or not, I am not able to state to this court.

**HOLT:** No further questions.

**CLERK:** Witness may step down.

**HUNTER:** Defense may call their next witness.

**EWING:** The defense calls Jeremiah Dyer.

**CLERK:** Jeremiah Dyer, place your left hand on the Bible. Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

**JEREMIAH DYER:** I do.

**GENERAL EWING:** Do you know the prisoner at the bar, Samuel A. Mudd?

**DYER:** I do.

**EWING:** State how far you lived from his house.

**DYER:** The riding way, about half a mile. But, around the main road, I suppose it was about four miles.

**EWING:** State whether in August 1863, at the house of the accused, Dr. Samuel Mudd, you heard the accused say that he would send any of his servants to Richmond.

**DYER:** I never heard him say anything about sending servants to Richmond.

**EWING:** Did you ever hear of a large band of servants being sent to Richmond?

**DYER:** Yes, sir, some thirty or forty left.

**EWING:** Were any of these servants from Dr. Mudd's house?

**DYER:** Not that I know of.

**EWING:** How well do you know the defendant?

**DYER:** Very well. I have known him since a boy.

**EWING:** What is his general reputation for peace, order, and good citizenship?

**DYER:** I have never heard the slightest thing against him. He has always been regarded as a good citizen, I believe.

**EWING:** What is his reputation as a master over his servants?

**DYER:** I have always considered him as a very kind and humane master. I have never known anything to the contrary, with the exception of a difficulty with one man. That is the only act I ever knew him to be guilty of that questioned his reputation at all as a kind master.

**EWING:** What was that?

**DYER:** Shooting that young man, one of his slaves, which he told me about the day after it happened.

**EWING:** Under what circumstances was that done?

**DYER:** I know nothing of it, except what he told me—that the man was unruly and that he had accidentally shot him.

**EWING:** No further questions.

**HUNTER:** Does the prosecution wish to question this witness?

**HOLT:** Yes, sir. Have you yourself been loyal to the government of the United States during the rebellion?

**DYER:** I do not know that I have been guilty of any disloyal act.

**HOLT:** I do not speak of acts, I speak of your sentiments. Have you, during this rebellion, desired that the government should succeed in suppressing it?

**DYER:** I never wanted to see two governments here.

**HOLT:** You say you have committed no overt acts of disloyalty?

**DYER:** Not that I am aware of.

**HOLT:** Have you ever spoken kindly of the government or encouragingly in reference to it among your neighbors and friends?

**DYER:** I certainly have, and I have persuaded young men from going on the other side.

**HOLT:** Were you a member of the local military organization, the object of which was to stand by the state of Maryland in the event that it should take ground against the government of the United States?

**DYER:** I belonged to a military company, but not to go against the government.

**HOLT:** No further questions.

**CLERK:** Witness may step down.

**HUNTER:** Defense may call their next witness.

**EWING:** The defense calls Thomas Davis.

**CLERK:** Thomas Davis, place your left hand on the Bible. Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

**THOMAS DAVID:** I do.

**EWING:** Where do you reside and what do you do?

**DAVIS:** I lived with Dr. Sam Mudd, working on his farm, cutting, ploughing, and any things that came to hand.

**EWING:** Have you ever been absent from the farm?

**DAVIS:** No, sir.

**EWING:** Will you state to the court how often Dr. Mudd had been absent from home from the time you went there, say on the 9th of January, up to the time of his arrest?

**DAVIS:** He had only been away from home three nights that I know of.

**EWING:** Do you know John H. Surratt?

**DAVIS:** No, sir, I do not.

**EWING:** Do you know John Wilkes Booth?

**DAVIS:** No, sir, I do not.

**EWING:** (*Exhibiting to the witness a likeness of J. Wilkes Booth*) During the time that you were living with Dr. Mudd, did you ever see that man there?

**DAVIS:** No, sir. I have never seen the man in that picture.

**EWING:** Will you state to the court whether, during the time you were there, you ever heard the name of John H. Surratt mentioned in the family?

**DAVIS:** Never, sir.

**EWING:** Did you ever hear Dr. Mudd, during the time you were there, express any disloyal sentiments?

**DAVIS:** No sir, never.

**EWING:** No further questions.

**HUNTER:** Does the prosecution wish to question this witness?

**HOLT:** No questions, sir.

**CLERK:** Witness may step down.

**HUNTER:** Defense may call their next witness.

**EWING:** The defense calls Julia Ann Bloyce.

**CLERK:** Julia Ann Bloyce, place your left hand on the Bible. Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

**JULIA ANN BLOYCE:** I do.

**EWING:** State to the court whether you formerly lived at the house of Dr. Samuel A. Mudd, the prisoner at the bar.

**BLOYCE:** Yes, sir.

**EWING:** What was your business in the house? What did you do?

**BLOYCE:** I cooked at times, washed, ironed, and starched, sometimes cleared up the house, and put the table away, and at other times I waited on the table.

**EWING:** Did you ever know while there of any party of men sleeping in the pines?

**BLOYCE:** No, sir.

**EWING:** Did you ever know of any Confederate officers or soldiers being about Dr. Mudd's house?

**BLOYCE:** No, sir.

**EWING:** Did you ever see a man they called Surratt there?

**BLOYCE:** No, sir, I did not.

**EWING:** (*Exhibiting to the witness the photograph of John H. Surratt*) Look at that likeness.

**BLOYCE:** I have never seen it before.

**EWING:** You never saw that man there?

**BLOYCE:** No, sir.

**EWING:** Did you ever hear Dr. Mudd say anything about sending any of the servants to Richmond?

**BLOYCE:** No, sir, never.

**EWING:** State what sort of a master was Dr. Mudd.

**BLOYCE:** He treated me very kindly, and all that were around him. He was very kind to us all—I mean what few he had around him. I lived with him during the year and he never gave me a cross word during the year, or any of the rest, that I know of.

**EWING:** Did you ever know of his whipping the prosecution witness Mary Simms?

**BLOYCE:** No, sir. He never struck her a lick through the whole year.

**EWING:** Why did Mary Simms leave the house?

**BLOYCE:** Mrs. Mudd told her not to go away on a Sunday evening walking, but she would go. And the next morning, Mrs. Mudd struck her about three licks with a little switch. The switch was small and, from the licks she gave her, I do not believe she could have hurt her.

**EWING:** Do you know what the general opinion of Mary Simms was among the servants in Dr. Mudd's house?

**BLOYCE:** She is not a very great truth-teller. I lived with her last year and she is not a great truth-teller, because she has told lies on me. Most everyone thinks she is a liar.

**EWING:** Did you hear Dr. Mudd talk anything about the Government of Mr. Lincoln, against him?

**BLOYCE:** No, sir, never.

**EWING:** No further questions.

**HUNTER:** Does the prosecution wish to question this witness?

**HOLT:** No questions, sir.

**CLERK:** Witness may step down.

**HUNTER:** Defense may call their next witness.

**EWING:** The defense calls Joshua S. Naylor.

**CLERK:** Joshua Naylor, place your left hand on the Bible. Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

**JOSHUA S. NAYLOR:** I do.

**EWING:** Where do you live and how do you know the defendant?

**NAYLOR:** I live on a farm near Dr. Mudd. I have known him since he was a young lad.

**EWING:** What kind of reputation does he have?

**NAYLOR:** Everyone in the county considers him to be an honest man and an excellent doctor. He has taken care of me and my family on many occasions.

**EWING:** What do you know about the character and honesty of the prosecution witness Daniel J. Thomas?

**NAYLOR:** He is considered by most people in our county as a man of low character who could not be trusted to tell the truth. I believe he would even lie under oath, especially if he stood to gain something from it.

**EWING:** No further questions.

**HUNTER:** Does the prosecution wish to question this witness?

**HOLT:** Yes, sir. You say Mr. Thomas cannot be trusted to tell the truth, but isn't it true that your opinion on this matter is strictly based on rumors?

**NAYLOR:** I suppose so, but I believe he is a liar.

**HOLT:** No further questions.

**HUNTER:** Does the defense wish to call another witness?

**EWING:** The defense rests pending closing remarks.

**HUNTER:** We will stand in recess.

**CLERK:** All rise. (*The military commission leaves the room.*)

#### Scene Four: Closing Remarks and Verdict

**CLERK:** All rise. (*The military commission enters the room and are seated.*) Be seated.

**HUNTER:** Prosecution may make any closing remarks.

**HOLT:** Thank you, sir. Contrary to what the defense would have you believe, Dr. Mudd was a cruel master. He shot one of his slaves in the leg simply for not showing him what he deemed the proper respect and he threatened to send others to Richmond to help the rebel cause. Despite signing a loyalty oath to the government, he undoubtedly still had pro-Southern sympathies. There is certainly reason to believe that he was an active member of a Confederate resistance organization that sheltered and fed rebel soldiers on his farm. He is on record as having made derogatory statements about President Lincoln and even suggested that he should be killed. Dr. Mudd gave medical attention to the man who murdered the president when he was fleeing Washington after committing the dastardly deed. He even allowed him to rest at his farmhouse after treating him for his injury. Later he denied even knowing Booth when it was clear that he had met him on at least two other occasions. When he met Booth in Washington, it was likely to finalize his participation in the assassination plot that resulted in the death of President Lincoln. He should be found guilty of treasonably conspiring with the other defendants in this courtroom and sentenced to death.

**HUNTER:** Defense may make any closing remarks.

**EWING:** Thank you, sir. Dr. Samuel Mudd cannot possibly be guilty of any of the crimes for which he has been indicted. He has been shown by our witnesses to be an honest, dedicated country



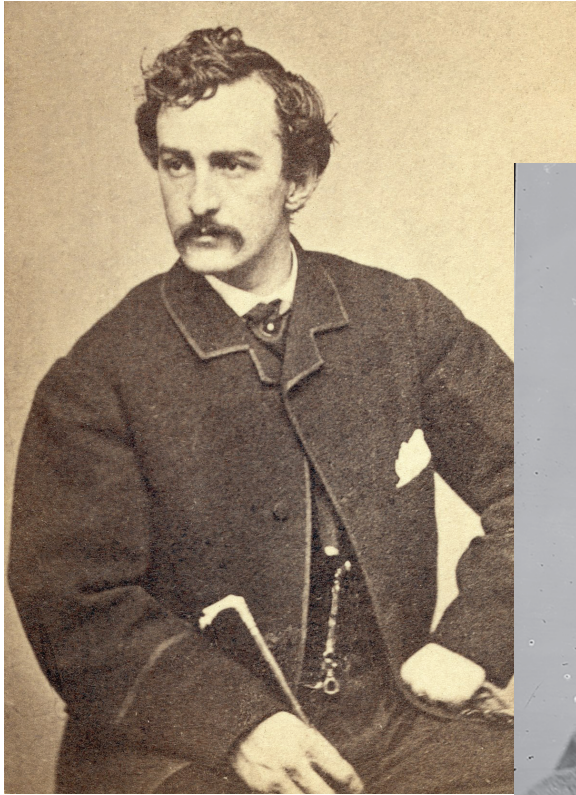
doctor, who was kind to all those around him, including his servants. He is not guilty of the murder of President Lincoln because at the time this horrible act was committed Dr. Mudd was at his farmhouse nearly 30 miles from the scene of the crime. He is not guilty of treason because the law is clear under the Constitution that to be convicted of treason, the guilty party must participate in an overt act that is witnessed by at least two persons. Dr. Mudd was not present in Washington when the overt acts of treason took place nor was he sufficiently near to give assistance to those who did this terrible deed. His only meetings with John Wilkes Booth were about the sale of land and horses. It should be perfectly clear to the commission that Dr. Mudd is not guilty of participating in the murder of the president. He was not actually or constructively present when the horrid deed was done, either as a traitor, chargeable with it as an overt act, or as a conspirator. If Dr. Mudd is to be held responsible at all it would be only as an accessory after the fact. But the facts do not even support this charge. An accessory after the fact occurs when a person knowing a felony to have been committed, receives, comforts, or assists a known felon. He must actually know that the felon is guilty to make him an accessory. Dr. Mudd did not know or even suspect that the two strangers—one with an injured leg needing medical attention—that arrived at his door in the early morning hours were in any way associated with the assassination of the president. He merely did what any physician is required to do—he tended to the sick man—and gave food and rest to these weary men. If this tribunal is to be governed in its finding by the just and time-honored rules of law, Dr. Mudd cannot be found guilty of even this lesser offense. The prosecution has shown that there is not a shred of evidence showing that Dr. Mudd was ever in league with traitors in their treason or that he levied war against the United States. You should find Dr. Mudd not guilty of all charges.

**NARRATOR:** On June 29, according to military procedure, the military court, including the three judge-advocates, met behind closed doors. Everyone else, including the court recorder and the defense counsels, was excluded.

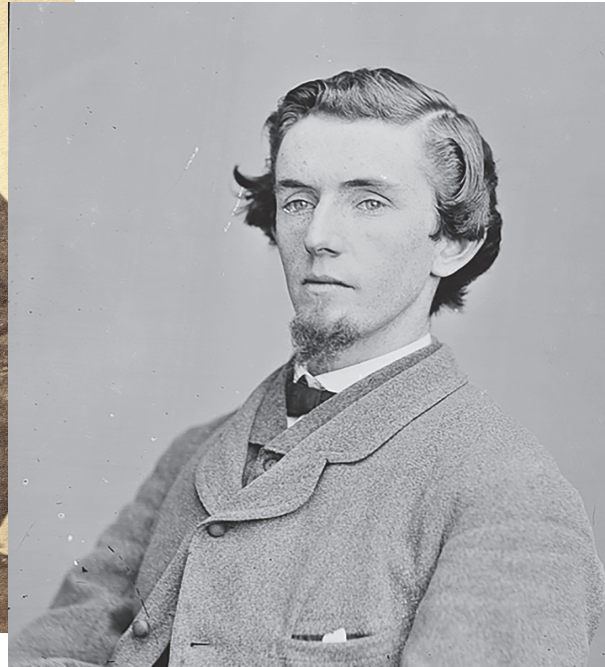
**CLERK:** All rise. (*The military commission returns to the court.*) Will the defendant, Dr. Samuel Mudd, please rise?

**HUNTER:** Dr. Mudd, by a five-to-four vote we find you guilty and therefore sentence you to life in prison.

# Documentary Evidence



John Wilkes Booth



John Surratt

Telegram (edited), April 24, 1865.

Major Eckert:

Have just met Major O-Beirne, whose force had arrested Doctor Mudd and Thompson. Mudd set Booth's left leg (fracture), furnished crutches, and helped him and Herold off. They have been tracked as far as the swamp near Bryantown, and under one theory it is possible they may be still concealed in swamp which leads from Bryantown to Allen's Fresh, or in neck of land between Wicomico and Potomac Rivers.

S. H. Beckwith

**Source:** Swanson, James L. *Manhunt: The Twelve-Day Chase for Lincoln's Killer*. New York: Harper Collins, 2006: 282.

Image sources: John Wilkes Booth. By Alexander Gardner, circa 1865, courtesy of the Library of Congress, LC-DIG-ppmsca-19233.

John A. Surratt. Circa 1870, courtesy of the Library of Congress, LC-BH826-476.

# Time Line

## 1864

November 13: Dr. Samuel Mudd supposedly meets John Wilkes Booth for the first time at St. Mary's Church near Bryantown.

November 14: Booth allegedly meets Dr. Samuel Mudd again at his farmhouse to discuss the sale of land and horses. Booth purportedly stays overnight.

December 23: Dr. Samuel Mudd, ostensibly on a shopping trip, meets John Wilkes Booth, John Surratt, and Louis Weichmann at the National Hotel in Washington, DC.

## 1865

April 14: President Abraham Lincoln is assassinated by John Wilkes Booth, who injures his leg while escaping from Ford's Theatre in Washington, DC.

April 15: Booth and Herold arrive at Dr. Samuel Mudd's farmhouse in Bryantown early in the morning. Mudd tends to Booth's injury. Booth shaves off his mustache and then he and Herold leave around noon.

April 16 (Easter Sunday) Dr. Mudd attends church and learns about the assassination. He tells George Mudd about his assistance to two strangers on the Saturday before.

April 17: George Mudd tells investigators about Dr. Mudd's contact with two suspicious strangers.

April 18: Detectives question Dr. Mudd about his contact with two men on April 15.

April 21: Dr. Mudd is arrested for conspiracy to murder the president.

April 26: John Wilkes Booth is killed at Garrett's farm in Virginia.

May 1: President Johnson orders that Dr. Mudd and the other alleged conspirators be tried by a military commission.

May 9 The trial of the eight Lincoln assassination conspirators, including Dr. Mudd, begins at the Old Arsenal building in Washington, DC.

June 30: The military commission hands down its verdict; Dr. Mudd is sentenced to life in prison.

# Glossary

**Accessory after the fact:** If a person receives, harbors, or otherwise assists to elude justice, one who they know to have committed a felony, they become an accessory after the fact in that felony.

**Constitutional treason:** The Constitution of the United States, Article III, Section 3 defines treason against the United States to consist only in levying war against them, or in adhering to their enemies, giving them aid or comfort. This offense is punished with death. By the same article of the Constitution, no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

**Emancipation Proclamation:** A decree issued in September 1862 setting free enslaved persons in the rebellious Southern states, as of January 1, 1863.

**Military tribunal:** A military court designed to try enemy combatants during wartime; the judges are military officers. Also called a military commission.

**Overt act:** An action that can be clearly verified by evidence.



# Postscript



Preparing to hang the Lincoln Assassination conspirators

On June 30, 1865, the military commission declared Dr. Mudd guilty and sentenced him to life imprisonment. Four officers voted for conviction so he escaped being sentenced to hang by just one vote. Samuel Arnold and Michael O'Loughlen were also given life sentences. Edward Spangler was sentenced to six years. But George Aterodt, David Herold, Lewis Powell, and Mary Surratt were sentenced to death by hanging.

Dr. Mudd was first sent to a prison in Albany, New York. A few months later he was transported to a prison at Fort Jefferson, in the Dry Tortugas, islands off Florida. Meager food, low standards of hygiene, and the tropical climate led to an epidemic of disease on the island. Dr. Mudd used his medical expertise to save the lives of many of his fellow inmates and even some of the guards. In 1868, in recognition of his humanitarian work at the prison, President Andrew Johnson pardoned Mudd and he returned to his home in Maryland. He continued his medical practice and died of pneumonia in 1883. However, the stigma of the treason conviction remained.

In the late 1970s, President Jimmy Carter wrote Mudd's descendants to express his belief in Mudd's innocence and effectively extended Johnson's pardon to cover any implication that Mudd had been involved in Booth's conspiracy. However, in 1977, a previously unknown "confession" made by George Atzerodt, one of the executed conspirators, was discovered. In it he says that he was "certain Dr. Mudd knew all about it [the plot] because Booth had sent liquor and other provisions to Dr. Mudd's house two weeks before the assassination."

The mystery continues.

*Image sources: Adjusting the ropes for hanging the conspirators. By Alexander Gardner, 1865, courtesy of the Library of Congress, LC-DIG-cwpb-04229.*

## Discussion Questions

1. Although Mudd was a free man after 1868, he was tainted by the military commission's guilty verdict until he died in 1883. Mudd's involvement in the events surrounding Lincoln's assassination seemed so innocent that many historians, as well as Mudd's descendants, have challenged the commission's guilty verdict as being politically motivated. Some of the descendants of Dr. Samuel Mudd argue that he was truly wronged by this trial. He was not part of any conspiracy and was only doing what a doctor should do—treat a patient. Furthermore, as a civilian, he should never have been tried by a military tribunal. Do you agree? Why or why not?
2. Was the assassination of Abraham Lincoln a war crime? Why or why not?
3. The greatest obstacle in evaluating historical events rests in the ability to accurately grasp the full range of facts surrounding the event in question. Would it have made a difference if Dr. Mudd had been allowed to testify in his own defense? Why or why not?
4. Trial by military commission cost Dr. Mudd his rights under the Constitution to action by a grand jury and trial in an appropriate civil court with a jury of his peers. Would it have made a difference if Dr. Mudd had been tried in a civilian court instead of a military tribunal, where a unanimous decision is not necessary for a conviction? In fact, he was convicted by a five-to-four vote. Explain why or why not.
5. Would it have made a difference if Dr. Mudd had been tried separately from the other defendants? Why or why not?
6. On June 29, 1865, according to military procedure, the military commission, including the judge-advocates, met behind closed doors. The inclusion of the judge-advocates during deliberation of the commission has been likened to including the prosecuting attorney with a civilian jury during deliberation. What transpired behind those closed doors has been the subject of much speculation and debate. Conviction did not need to be unanimous. In fact, the sentence of death only required a 6/3 vote. Dr. Mudd got a close five-to-four decision, and was sentenced to life in prison. Do you think this was fair? Why or why not?



## Extension Activities

1. Research the case against one of the other defendants who were tried along with Dr. Mudd. Write an essay or give a class presentation about whether they received a fair trial and a just sentence.
2. *The Prisoner of Shark Island* is a 1936 film loosely based on the life of Dr. Samuel Mudd. The film recreates the events surrounding Dr. Mudd's treatment of John Wilkes Booth, his arrest for being part of the assassination conspiracy, and his sentencing to the prison in the Dry Tortugas. It goes on to show his heroic actions in combating the yellow fever epidemic on the island and his eventual pardon. Watch the film and write a movie review regarding the historical accuracy of this depiction of Mudd's life.

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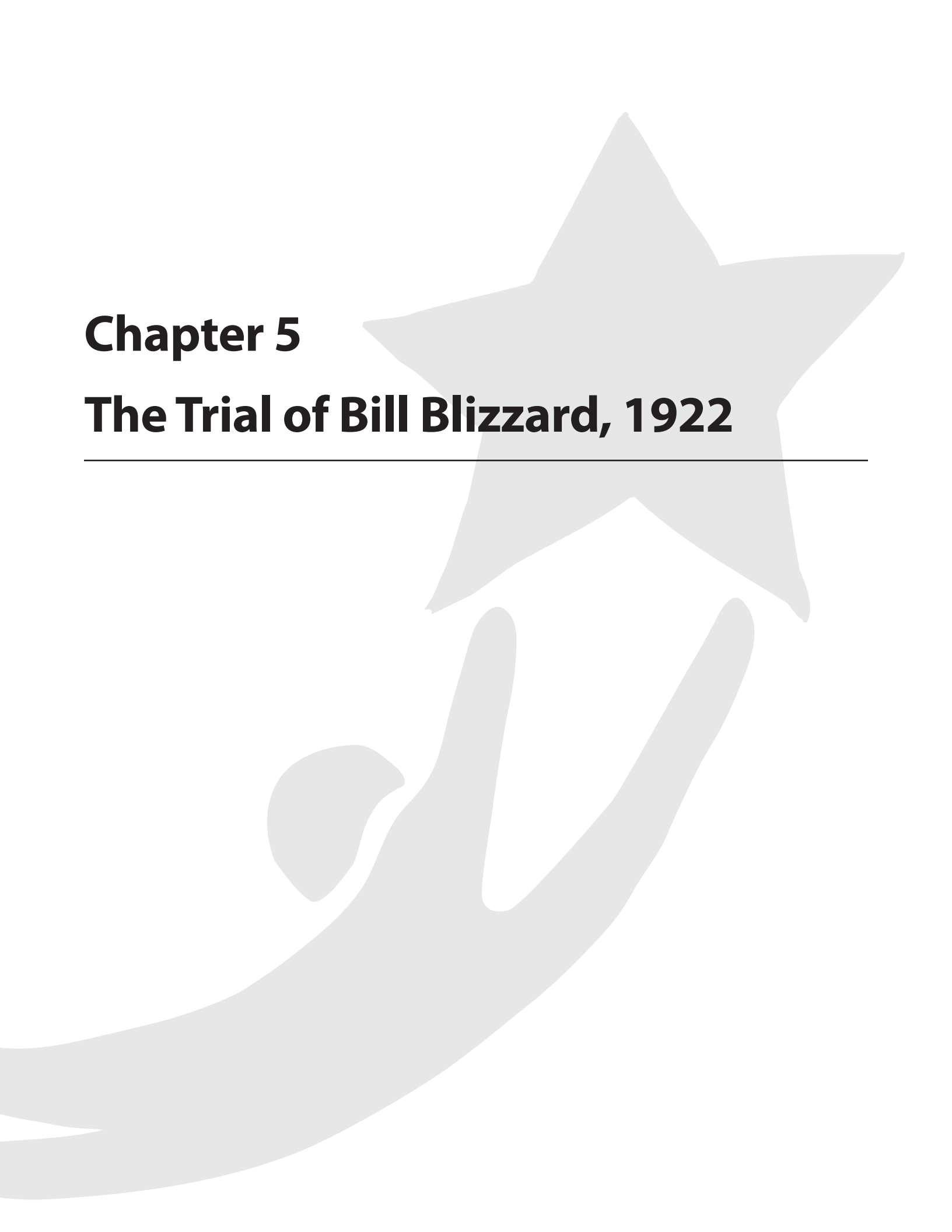
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## **Chapter 5**

# **The Trial of Bill Blizzard, 1922**

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## Introduction

The deadly conflicts between the coal miners of West Virginia and mine owners and their armed agents in the early twentieth century resulted in nearly a hundred deaths and many injuries on both sides. The miner's armed march in 1921, culminating in the Battle of Blair Mountain the following year, was viewed by many at the time as a virtual civil war. In fact, it required the use of the U.S. Army to finally put a stop to the fighting.

### Objectives

1. Students will understand the importance of the coal mining industry to America during the 1920s and the harsh life experienced by miners.
2. Students will understand the efforts made by miners and mine leaders, such as Bill Blizzard, to improve their pay and working conditions.
3. Students will appreciate the struggles faced by miners to unionize their industry and why those efforts sometimes resulted in violence.

## Lesson Plan

### Trial Procedure

1. Classroom should be set up as a courtroom (see Diagram).
2. Jury, attorneys, witnesses, and any courtroom spectators should be seated.
3. Judge Woods enters and the court clerk instructs everyone in the courtroom to "rise."
4. The judge then "charges the jury" with their responsibilities.
5. The judge then instructs the clerk to read the charges against the defendant Bill Blizzard and to ask for a plea.
6. Bill Blizzard should declare himself "not guilty" and the trial commences according to the following schedule:
  - a. Opening remarks by the prosecuting attorney(s)
  - b. Opening remarks by the defense attorney(s)
  - c. Direct testimony and cross-examination of prosecution witnesses
  - d. Direct testimony and cross-examination of defense witnesses
  - e. Summary remarks by the prosecution attorney(s)
  - f. Summary remarks by the defense attorney(s)
  - g. Jury retires to deliberate
  - h. Jury returns to the court and judge asks them for their verdict
  - i. If Blizzard is declared guilty then the judge immediately sentences him to ten years in prison; If he is found innocent, then he is immediately set free



#### Teaching Tip

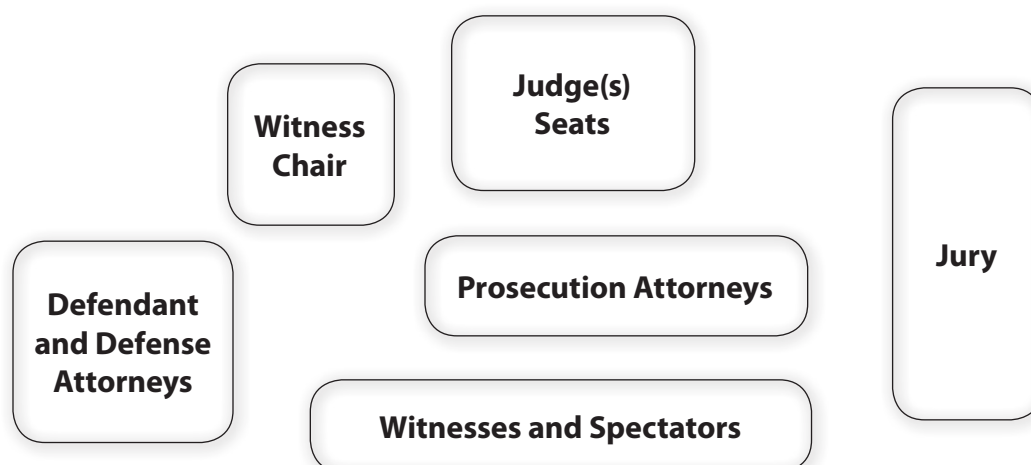
As students are not adept at being the authority figure, it is recommended teacher play role of Judge Woods.



#### Teaching Tip

For attorney roles, choose students who are well-organized and not afraid to speak in front of class.

### Diagram of Courtroom Seating



### Teaching Tip

You can limit the length of the trials by omitting roles or by setting speaking time limits.



## Suggested Schedule (role play)

**Day One:** Background, role assignments and initial preparation

**Day Two:** Conclude preparation for trial

**Day Three:** Begin trial

**Day Four:** Conclude trial, and debrief using Discussion Questions

**Day Five:** Conclude debrief and assign Extension Activities

## Notes for the Teacher (role play)

1. Read and discuss with students the Background Essay.
2. Divide the class into prosecution and defense.
3. Either assign students specific roles or have them decide as a group who will be the attorneys and which witnesses they will present for the case. Unless you have a very capable student, it is advisable for the teacher to perform the role of Judge Woods. Students are not accustomed to being the authority figure in a classroom.
4. Students should be given the remainder of any class time and the next class to prepare for the trial. Attorneys should present their theories of the case and frame questions for each of the witnesses. Witnesses should write out a deposition (what they plan to say on the witness stand) and practice their direct testimonies and any expected cross-examination questions. You may decide to allow them to refer to their depositions while testifying rather than relying totally on memory.
5. If you want to complete the trial in one class session, then you will need to allot and enforce strict time limits depending on the length of your class period. Assuming a 60-minute class period the time would look like this:
  - 5 minutes for the judge (teacher) to read the charges and receive Blizzard's not guilty plea
  - 2 minutes for prosecution opening remarks
  - 2 minutes for defense opening remarks
  - 15 minutes for direct testimony from prosecution witnesses
  - 5 minutes for cross-examination of selected prosecution witnesses
  - 15 minutes for direct testimony of defense witnesses
  - 5 minutes for cross-examination of selected defense witnesses
  - 2 minutes for prosecution closing remarks
  - 2 minutes for defense closing remarks



6. If you have a large class and the ability to spend more class time on this activity more possibilities exist to expand the time for direct testimony and cross-examination.
7. Advise student-attorneys to be very careful about cross-examination. Most experienced trial attorneys have difficulty with this skill and often do more harm to their case than good. The best advice you can give student-attorneys is to never ask a question if they don't already know what the answer will be.
8. On the day of the trial arrange the classroom to look like a courtroom (see Diagram) with a judge's seat (the teacher's desk), a chair for those giving testimony, a seat for the defendant, desks for the attorneys, and witness seats.
9. Try to match roles to student personalities and academic strengths. For student-attorneys it is particularly important that you select students who are well-organized and not afraid to speak in front of the class.
10. Note that you can limit the length of the trial by omitting roles.
11. When the jury is deliberating over the verdict you can engage the rest of the class with the Discussion Questions.\*

### **Suggested Schedule (scripted version)**

**Day One:** Read and discuss with students the Background Essay, assign speaking parts for scripted trial, and begin reading of the trial.

**Day Two:** Conclude reading of scripted trial and conduct debriefing using Discussion Questions and assigning Extension Activities.

### **Notes for the Teacher (scripted version)**

1. Read and discuss with students the Background Essay.
2. Assign students speaking roles in the play. Use the Roles Grid. Note that the roles of the narrator, Judge Woods, and the prosecution and defense attorney have the lengthiest speaking parts.
3. Prior to students coming to class you may decide to set up the classroom to look like a courtroom (see Diagram). It adds more realism to the drama.
4. Read the play.
5. Debrief using the Discussion Questions.
6. Assign Extension Activities.

\*The case can be decided by the judge; however, it is certainly possible to include a jury. Forming the jury from members of another class or even interested adults works well as long as they know little or nothing about the case (the hallmark of any good jury!).

## The Trial of Bill Blizzard, 1922

### Lesson Plan

#### Teaching Tip

Try to match roles with student personalities and academic strengths.



### Roles Grid

Role	Historical Character	Student Name
<b>Defendant (also Defense Witness)</b>	Bill Blizzard	
<b>Judge</b>	J. M. Woods	
<b>Clerk/Bailiff</b>		
<b>Prosecution Attorneys</b>	A. M. Belcher	
	Charlie Osenton	
	John Chafin	
<b>Prosecution Witnesses</b>	Governor Ephraim Morgan	
	E. C. Lee	
	Ivan J. Ely	
	Walter Blout	
	James King	
	J. N. Stone	
	Nathan Haddod	
<b>Defense Attorneys</b>	Harold Houston	
	Thomas Townsend	
	Sam Montgomery	
<b>Defense Witnesses</b>	E. C. Green	
	Horace Haines	
	Amos Stanley	
	First Sergeant Flynn	
	General Bandholz	
	Charles Frampton	
<b>Narrator</b>		

#### Teaching Tip

You can add an interfering spectator role. Someone who inappropriately shouts out something about the innocence or guilt of accused.



# Background Essay



Coal miners in Hazleton, Pennsylvania, in 1900

Following the conclusion of the Civil War in 1865, the American labor movement expanded with the growth of industry. The country began to witness militant labor unions demanding better working conditions and more equitable pay. The coal industry was no exception. Mining anthracite coal (then and now) is a very hard and dangerous way to make a living. Coal miners had to tunnel deep into the ground and then drill and blast the coal deposits away from the tunnel face. Then they loaded the coal into cars to be taken to the surface. Coal dust covered their clothing and skin, and ultimately it entered their lungs with fatal results—known as “black lung.” Coal mine workers at the turn of the century faced low, insecure wages, and owners were determined to maintain rigid working conditions riddled with safety issues—factors that encouraged union solidarity.

Most miners could only afford to live in a company house and were forced to sign a housing contract that West Virginia courts later ruled created a condition not of landlord and

tenant, writes historian David A. Corbin, but of “master and servant.”<sup>1</sup> If a miner chose to join the union they were more often than not forcefully evicted at the “point of a Winchester rifle,” along with their furniture, which was rudely dumped into the street.<sup>2</sup> Coal miners could not understand why they were not paid for the weight of coal they dug out of the mines instead of the number of coal cars they filled. This would add more money to their paychecks. Forming a union seemed the only way to initiate changes. However, unionization could not be achieved without able leaders, a willingness to put aside regional and ethnic differences, and a determination to strike—even if that strike led to violence. In 1912, a coal strike began in Cabin Creek, West Virginia, and spread to Paint Creek near the capital city of Charleston. The United Mine Workers of America (UMWA) union sent help. Coal owners brought in hundreds of armed guards, most from the Baldwin-Felts Detective Agency, to forcefully break the strike. Cabin Creek was overrun with armed guards patrolling the town, all roads, and the train station. Most of these men were little more than armed thugs, and any actions by striking miners or their sympathizers resulted in threats, beatings and, in some cases, death. Miners referred to these actions as the “Baldwin-Felts system.” It was a system that controlled most of the southern West Virginia coal industry. The most hated and feared representative of this system was Logan County Sheriff Don Chafin, who often mistreated miners with his posse of deputies. Working together with the Baldwin-Felts men, Sheriff Chafin and his deputies evicted from their homes thousands of striking miners and their families. Miners fought back in what became known as the “West Virginia mine wars.” After more than

1 Corbin, David Alan. *Life, Work, and Rebellion in the Coal Fields: The Southern West Virginia Miners, 1880-1922*. Urbana: University of Illinois Press, 1981: 9

2 Ibid., 201.

Image source: Coal miners. Public domain via Wikimedia Commons.

a year of violence the miners achieved some of their demands, inspired by a slogan that became the de facto anthem of the labor movement—"Solidarity Forever."

West Virginia Governor Henry Hatfield was no ally of organized labor unions. To suppress striking miners, he had sided with the mine owners, even declaring martial law and sending in the state militia. Military courts were established, and hundreds of miners were convicted of various crimes and sent to prison. Hatfield forced the union to settle strikes in the mining companies' favor. But the miners had another major problem. Their leaders had become corrupt, using resources and funds to feather their own nests, instead of helping the miners. Eventually these leaders were ousted and, by 1919, more trustworthy leaders emerged, including Fred Mooney, Frank Keeney, and William Blizzard.

In 1920, hundreds of Baldwin-Felts agents came by train to the town of Matewan in Mingo County. When they evicted striking miners, and their families, the local police chief, Sid Hatfield, siding with the miners, attempted to arrest the Baldwin-Felts men. In the ensuing gunfight, seven Baldwin-Felts men, two miners, and Matewan's mayor were shot and killed. It became known as the "Matewan massacre." A year later, in retaliation, Baldwin-Felts men murdered Hatfield. On August 20, 1921, inspired by Hatfield's death, miners—many of them armed—began assembling near Charleston. They were urged to fight by their leaders, including Mooney, Keeney, and Blizzard. They aimed to end martial law in Mingo, abolish the mine guard system, and unionize the entire mining industry. This was a call to open insurrection.

But the miners had a leadership problem. Their two most prominent leaders, Mooney and Keeney, were under threat of indictment for the murders stemming from the violence in Matewan in 1920. They decided it was in their best interest to flee from West Virginia to Columbus, Ohio, the site of the UMW national

headquarters. They left Bill Blizzard as the acknowledged leader, a man Mooney described as "all fire and dynamite, hot headed and irresponsible." Some said that "he would fight at the drop of a hat and sometimes you didn't need to drop the hat."<sup>1</sup> Once he paused while speaking at a union rally and waded into a crowd of supporters to punch a heckler. Most miners loved him.

In August 1921, more than 10,000 armed miners, led by Blizzard started south through the mountains by auto and train. It became known as the "armed march." Their "uniforms" consisted of blue overalls and red bandanas, lending them the name "rednecks," although coal owners preferred to call them "reds," as in Communists. They were supported along the way by sympathetic working men, who contributed provisions, weapons, and ammunition. The marchers seemed "well-organized, like an army of invasion" organized into military formations.<sup>2</sup> As they marched, the miners chanted "going to march to Blair Mountain, going to whip the company."<sup>3</sup> In Logan County, Sheriff Chafin stated publicly that no armed mob will be allowed to enter his county. The miners responded by singing a song to the old Civil War tune, "John Brown's Body"—modifying it to say "we'll hang Don Chafin to a sour apple tree"—and then took bets as to who would be the first to shoot the hated sheriff. When the miners reached Blair Mountain, they found it occupied by more than 2,000 men led by the hated Sheriff Chafin, including mine guards, police officers, state militia, and other volunteers. They were entrenched along a ridgeline outside the town. Some were even armed with machine guns. But the miners had assembled a formidable army that was equally well-armed and supplied. They even had attending nurses and doctors. Many

1 Shogan, Robert. *The Battle of Blair Mountain*. New York: Basic Books, 2006, 194.

2 Green, James. *The Devil Is Here in These Hills: West Virginia's Coal Miners and Their Battle for Freedom*. New York: Atlantic Monthly Press, 2015: 261.

3 Shogan. *Battle of Blair Mountain*, 226.



of the miners were veterans of World War I and were accustomed to combat.

After nearly a week of scattered shooting, President Harding put West Virginia under martial law. On September 1, 1921, he ordered the U.S. Army to the region to restore order. On September 2, more than 2,000 U.S. infantrymen, most of them combat veterans, were ordered to West Virginia to put an end to the violence. He also sent 14 bombers into action, led by famed aviator Billy Mitchell, but, despite reports to the contrary, they never actually bombed the miners. In fact, only a few crude bombs had been dropped by a National Guard plane. When the U.S. Army soldiers arrived, the miners decided to end their siege. Their conflict was with the mining companies, not the U.S. government.

Dozens of people had been killed during the conflict, but the miners kept a strict code of silence about what happened in order to protect their leaders from prosecution. Many contemporary sources alleged that Frank Keeney and Fred Mooney were the true instigators, however the miners never formally revealed who commanded their force. The press and authorities firmly believed that Bill Blizzard was the union leader behind the event. It was Blizzard who held negotiations with the U.S. Army and convinced the miners to retreat. When the army officers met with Blizzard, he was asked if he led the miners' army, and he reputedly said, "What army? I guess the boys will listen to me all right."<sup>4</sup> Neither side was winning the battle when the U.S. Army intervened and, after their retreat, the miners achieved none of their aims—recognition of their union, higher wages or better working conditions. However, the coal mine owners were determined to expand their power over the miners by putting their leaders on trial—accusing them of murder, conspiracy to commit murder, accessory to murder, and treason against the state of West Virginia. Bill Blizzard and other Union leaders were arrested and spent nearly three months in the Logan County jail awaiting trial. The coal operators were not taking any

chances in their attempt to prosecute the union leaders, so they even got their own attorneys to serve as prosecutors. But the miners' lawyers achieved a major victory by getting the trial moved out of Logan County to a less prejudicial court in Charles Town, Jefferson County—nearly three hundred miles from the capital of Charleston.

Bill Blizzard was the first union leader to be put on trial. His trial became a national sensation. Special telegraph lines were even installed to handle the volume of press coverage. The UMWA conducted an intense campaign to convince the jury and, indirectly, all West Virginians that Blizzard and the other defendants were good, God-fearing men, and not wild "Reds" intent on murder, insurrection, and treason. The defendants even formed their own ad hoc baseball team and played several games against the home team of local merchants, policemen, and firemen, wisely not winning very often. Their wives sang gospel songs in front of the courthouse and supporters packed local churches. They even sent dozens of men door-to-door posing as Bible salesmen and telling horror stories about the treatment of miners at the hands of Sheriff Chafin and his posse.

The coal miners' march in 1921 was both a massive strike and a significant political protest directed at exposing the abuses committed against the miners by the mine owners and sympathetic government officials. With the exception of the Civil War, it was the largest civil insurrection the country had ever experienced, and it was to have a deep impact on further labor relations. The Miners' March culminated in what can best be described as a "battle" between the miners and the agents of the mine owners. There were injuries and deaths on both sides. The mine owners jumped at the chance to use this violent event as a way of breaking the union.

You will now have a chance to participate in a simulation—or read a dramatic presentation—of the treason trial of William Blizzard.

4 Green. *Devil Is Here*, 281.

# Roles

## Defendant: Bill Blizzard

You are charged with murder, inciting insurrection by leading an army of armed miners to overthrow the governor's proclamation of martial law in Mingo County, and treason by leading that army to wage war against the state of West Virginia. You will plead "not guilty" to each of these charges. As the defendant and a witness, you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, but if you do not know the answer, it is best to just say, "I don't know."

You think that the mine owners believe that you are the most important person behind the "miners' march." You helped organize a march protesting the way miners have been treated by the coal operators and their hired thugs, especially the Baldwin-Felts men, hired by the coal operators. You think most of the men in the march felt they had better bring their guns because those thugs have a way of getting pretty rough. You never personally raided any stores for supplies, including weapons and ammunition. You personally had a gun permit for the weapon you carried during the march. You were up along the so-called firing line held by the miners around Blair Mountain, but you personally never did any shooting. In fact, you encouraged the miners not to fire unless they were fired on. You consider yourself a peacemaker. You will agree that there were a lot of shots being fired by both sides, and you were almost hit several times. You will disagree with the characterization of the Miners' March as an "army." You and the other men were just a group of miners marching against the injustice being handed down to you by the coal operators. You agree that the men listened to your advice. When the federal troops arrived, you suggested that the miners abandon their position and head home, as you and they had no beef with the U.S. government. You didn't want to be fighting the U.S. Army. Many of the men had served in the army during the Great War—it didn't seem right. But you believe that you had every right to make a peaceful march.



Bill Blizzard

## Judge: J. M. Woods

You should review court procedure with the clerk/bailiff who is there to assist you in running the court and maintaining order.

At the beginning of the trial you will be outside of the courtroom (classroom) and when everyone is in their assigned place you will enter. The clerk will say, "All rise" when you come in and "Be seated" when you have assumed your position.

You will begin the trial by saying: "We are in the courthouse in Charles Town, West Virginia, April 26, 1922. The trial of Bill Blizzard will commence with myself, Judge Woods, as presiding judge." There are some facts you should make everyone in the court aware of.

Image source: Bill Blizzard. Courtesy of the USGenWeb Project.



1. Ironically, this trial is taking place in the same building in which John Brown was tried and convicted for treason in 1859.
2. More than three dozen men were killed during the fighting between the miners and those supporting the coal companies, but only individual miners, such as Bill Blizzard, face prosecution.
3. Bill Blizzard will be the first miner selected to be tried for murder, insurrection, and treason because he was one of the few men who actually admitted he had been in the “war” zone during the miners’ uprising.
4. As the presiding judge, I agree with the indictment that the armed conflict can be considered an act of war and that if the defendant, Bill Blizzard, furnished arms and ammunition to the miners during this conflict it could be considered an overt act that, according to the Constitution, would be treason. However, when the trial commences, the prosecution will have to provide at least two witnesses to this overt act.
5. Finally, I reject the pre-trial argument by the miners’ attorneys that treason against the state of West Virginia was impossible because of the division of authority between state and federal governments.

If this is a trial with a jury, then you will be responsible at the beginning of the trial for “charging the jury” with their responsibilities. You should say, “Members of the jury, prior to your deliberation I must remind you of the meaning of treason. Every violent opposition to the execution of the laws of the state, every resistance by force and violence to the officers of the state in the performance of their duties, is not treason. Rioters may assemble together in an unlawful assembly, they may conspire to do an unlawful act, or a series of unlawful acts. Their purpose may be to commit a felony, or to commit a misdemeanor, and they may proceed with arms and with the intent to use violence to accomplish their designs, and yet it wouldn’t be treason. It would not be a treasonous reason for an unlawful assemblage of individuals to come together unless their purpose is by force and violence to commit some act or some acts, which, if successful, will subvert the government in whole or in part.”

You should instruct the jury that they should obey all your instructions during the trial as to whether any comments or evidence is admissible, or whether they should disregard any such statements or evidence. You should also tell them that they should give a fair and just verdict based on the presentation of the evidence.

At the beginning of the trial you will instruct the clerk to read the charges against the defendant and to ask for his plea, “guilty” or “not guilty.”

You will then ask first the prosecution attorney and then the defense attorney(s) to make any opening remarks to the court.

You will then ask the prosecution attorney(s) if they would like to present any witnesses. Each time a witness is called you should ask the clerk/bailiff to swear them in.

When the prosecution has concluded with all of their witnesses you should then ask the defense attorney(s) to present their witnesses. As with the prosecution witnesses you should ask the clerk/bailiff to swear in each of the defense witnesses.

When the defense has concluded its case, you should ask if the prosecution attorney(s) have any final remarks.

Then you should give the defense attorney(s) a chance to make any closing remarks.

You should then instruct the jury to retire (leave the classroom) and deliberate.

When they have reached their verdict and returned to the court, they may inform you by written note (that you will read) or you can ask them to announce it to the court.

If the defendant is found not guilty he will be immediately freed. If he is found guilty of any of the charges, then you should immediately sentence him by saying, "Bill Blizzard, the state of West Virginia sentences you to serve ten years in the state penitentiary."

### **Court Clerk/Bailiff**

You are the court clerk and bailiff responsible for carrying out the orders of the presiding judge.

At the beginning of the trial you must say to the jury: "Good men and true, stand together and hearken to your evidence."

When the trial begins, the judge will ask you to read the charges against the defendant. You will read the following statement: "Bill Blizzard, you are charged with murder, inciting insurrection by leading an army of armed miners to overthrow the governor's proclamation of martial law in Mingo County, and treason by leading that army to wage war against the state of West Virginia—how do you plead?"

You will also be asked by the judge to swear in each witness. You will have each witness place their hand on a Bible (optional) and swear the following: "Do you swear to tell the truth, the whole truth, and nothing but the truth?"

You should be prepared to read aloud to the court any documents that the judge instructs you to enter into the court record, including statements of law and evidence introduced as exhibits.

You should keep a record of the names of all witnesses offering testimony.

You should be prepared to assist the judge in maintaining courtroom order. You may be asked to remove unruly witnesses or spectators.

At the end of the trial, when the jury has reached its verdict, the judge will ask you to say the following to the foreman of the jury: "Gentlemen of the jury, look upon the prisoner. How say you all? Is Bill Blizzard 'guilty' or 'not guilty' of all or any of the charges whereof he stands indicted?"

### **Prosecution Attorneys, A. M. Belcher; Assistant Prosecution Attorneys, Charlie Osenton and John Chafin**

As attorneys you will be expected to form a theory of the case—essentially, what happened. You will then organize your witnesses to back up this theory with their direct testimony. You should have each witness write out specific questions you can ask them on the witness stand. That will help them remember what they have to say about the case. You may not ask leading questions during direct testimony, such as "Isn't it true that you saw Bill Blizzard providing ammunition to a group of miners?" You may, however, ask leading questions under cross-examination. Finally, during the trial, in addition to asking questions of your witnesses and any cross-examination questions of opposing witnesses, you will be expected to give opening and closing remarks. In your opening remarks you should describe for the court your theory of the case and what you intend to prove. In your closing remarks you should briefly summarize for the court what your witnesses proved and any errors you heard from the opposing witnesses. It is hard to be an attorney. That is why real lawyers go to law school after college. Do your best!

You should specifically focus on the following points:

The miners' "army" led by Bill Blizzard carried on a campaign of violence and terrorism, marked by the murder of police officers, civilians, helpless bystanders, and fellow miners who refused to join this armed insurrection.

There were as many as 5,000 or 6,000 men, many armed with high-power rifles and machine guns in Logan County, fighting the forces of law and order. Many individuals were shot and killed as a direct result of this so-called Miners' March through our beloved state of West Virginia.

During the fighting, the defendant, Bill Blizzard, went along the battle line furnishing ammunition to the fighting miners.

Blizzard's army robbed stores, took food supplies, stole guns and ammunition, commandeered trains and automobiles, and held up storekeepers, forcefully making them open their doors, and threatening that if they did not comply they would be murdered.

Even after President Harding had issued a proclamation calling for a cessation of fighting, Blizzard continued to furnish ammunition to the miners.

Deputy Sheriff John Gore of Logan County was brutally murdered by the miners who were acting under the leadership of the defendant, Bill Blizzard.

It was only in the face of U.S. Army soldiers—overwhelming force—that the defendant and other leaders reluctantly abandoned their treasonous activities and urged their men to retreat.

### **Defense Attorney, Harold Houston; Assistant Defense Attorneys, Thomas Townsend and Sam Montgomery**

As an attorney you will be expected to form a theory of the case—essentially what happened. You will then organize your witnesses to back up this theory with their direct testimony. You should have each witness write out specific questions you can ask them on the witness stand. That will help them remember what they have to say about the case. You may not ask leading questions during direct testimony, such as, "Isn't it true that you never heard the defendant tell miners to bring their guns to the so-called Miners' March?" You may, however, ask leading questions under cross-examination. Finally, during the trial, in addition to asking questions of your witnesses and any cross-examination questions of opposing witnesses, you will be expected to give opening and closing remarks. In your opening remarks you should describe for the court your theory of the case and what you intend to prove. In your closing remarks you should briefly summarize for the court what your witnesses proved and any errors you heard from the opposing witnesses. It is hard to be an attorney. That is why real lawyers go to law school after college. Do your best!

You should concentrate on the following points:

You believe that the major characteristic of treason is an overt act to in some way subvert the government, in levying war against the state, and giving aid and comfort to its enemies—and there is simply no evidence that Bill Blizzard committed any overt act.

You believe that to rise to the level of making war against the state, the intent of the violence must have a certifiable treasonable design or else every riot or insurrection would constitute treason.

Mr. Blizzard admits that he was present during the Miners' March. But his actions, like those of all the other miners, were to protest the violent actions that had been taken against the miners by the hired thugs of the coal operators.

We will also show that Bill Blizzard was instrumental in ending the confrontation by working with the federal authorities and convincing the miners to abandon their guns in and around Blair Mountain and return to their homes.

Mr. Blizzard had nothing whatsoever to do with the death of Deputy Sheriff John Gore.

This was a protest that unfortunately turned violent, but the violence came from both sides and Mr. Blizzard did everything he could to bring this affair to a peaceful conclusion.

What this trial has revealed is the extent to which the coal operators have taken over our state. It is well known by everyone that even the prosecution lawyers are on the payroll of the coal owners.

Convicting the defendant or any other of these miners for merely expressing their discontent with their working conditions would just be an acknowledgement that the state belongs to the coal companies.

## Prosecution Witnesses

### Governor Ephraim Morgan

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, but if you do not know the answer, it is best to just say, "I don't know."

You were the governor of the state of West Virginia when the Miners' March occurred. You initially activated members of the National Guard to deal with the crisis but there were just too many armed miners and the violence was out of control. Thousands of shots were being fired—it was like something out of a Great War (World War I) battlefield. You felt you had no other choice but to ask the federal government to send regular army troops. Thankfully, President Harding agreed and the sight of these soldiers had the effect of making the miners put down their arms and retreat back to their homes. You can't say for sure who the major leader of the miners was, but you did hear that Bill Blizzard worked with U.S. Army General Bandholtz to convince the miners to leave, so you assumed he must have been their leader. You may be forced to admit that at the time of the Miners' March there existed in your state what may best be described as a private government, whose army consisted of notoriously violent mine guards you seemed powerless to control.

### E. C. Lee

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, but if you do not know the answer, it is best to just say, "I don't know."

You were stopped on the road to Lens Creek by a group of armed miners, who forced you to load your car with guns and ammunition and take these supplies to Blair Mountain, where the miners were fighting. You can't say for sure that Bill Blizzard was one of the men who stopped you because they had on hats pulled way down on their heads, but you think he looks familiar.

You heard that the miners were fighting the coal operator thugs, but you did not participate in any of this violence.

**Ivan J. Ely**

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, but if you do not know the answer, it is best to just say, "I don't know."

You are the superintendent of construction for a mine company operating near Cabin Creek, West Virginia. On the night of August 16, 1921, armed men appeared at your house at around 11:00 p.m. and declared they were going to kill members of the state constabulary. They were accompanied by a group of African American miners, who proceeded to ransack your house. They even stole your pistol.

The next day you were warned by a miner, who drove up in a car, that you better not press charges against the men, even the blacks, or he said you would never live to see those indictments prosecuted. You assumed this miner was a leader, but you didn't know who he was at the time. He had his hat pulled down low and you didn't get a good look at his face—he was speaking from the back of a car—but he sure looked like Bill Blizzard. You knew what Bill Blizzard looked like, because you had seen him speak at a miners' picnic a few years ago. Although you may have to admit you were pretty far away from the speaker's platform and it was raining very hard that day.

**Walter Blout**

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, but if you do not know the answer, it is best to just say, "I don't know."

You are a coal miner and a member of the miners' union. You participated in the so-called Miners' March and witnessed many of the events associated with this event. You got your orders from the local headquarters of the United Mine Workers of Charleston, instructing you that every able-bodied man was to gather and organize in Logan County. You believed at the time they came directly from your union leaders—Mooney, Keeney, and Bill Blizzard. You and the other members of your local union then got your guns and ammunition and put them in your cars and headed out. It was your intention to clean up the thugs—those Baldwin-Felts men—in Logan County, and if you got your hands on him, to hang Sheriff Chafin from a sour apple tree. You believed there must have been more than a thousand men in the march, maybe more, it was hard to say, as many miners joined along as you marched. You went to Blair Mountain and almost immediately got into a gunfight with Sheriff Chafin's posse and his hired thugs—those Baldwin-Felts men. Some of your men were shot, but you and your fellow miners also got a few of theirs, including Deputy Sheriff Gore. You saw a group of miners confronting Deputy Sheriff Gore and you heard them tell him that he had no business siding with those Baldwin-Felts thugs. Then, they told him to get on his knees. He begged them not shoot him, but a couple of men just pointed their rifles at him and blew out his brains. You did not know the miners who killed the sheriff, but Bill Blizzard was not one of them. You may be forced to admit that you did not actually see Bill Blizzard giving orders to the miners or providing ammunition and weapons.



**James King**

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, but if you do not know the answer, it is best to just say, "I don't know."

You are a coal miner and a member of the United Mine Workers union. You got orders from Bill Blizzard to send riflemen to the Blair Mountain fight. He gave you a signed pass so that you could freely move around the miners' lines, in case someone suspected you might be one of the Baldwin-Felts men. You no longer have the pass. You ripped it up. You will explain to the court what you know about the funding of the Miners' March. You heard the union leaders, including Bill Blizzard, give speeches to you and the other miners about needing money to buy guns and ammunition. They said they were going to raise a miners' army to march on Logan and Mingo Counties. You remember one union official saying to hell with martial law—we'll wipe it out.

You saw Bill Blizzard during the Miners' March. You passed him on the road between Clothier and Blair. He was headed in the direction of the fighting line. You think he was in a Ford.

You may be forced to admit that you have received money from the mine operators as a way of influencing your testimony.

**J. N. Stone**

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, but if you do not know the answer, it is best to just say, "I don't know."

You are a railroad contractor out of Charleston. While you were at work near the town of Winifred you heard a group of miners saying they should go to Charleston to burn the newspapers and hang the governor. You also heard another group of armed men at the railroad station say that they were keeping watch for state police officers on every train that came from Charleston and that they intended to shoot every one that tried to get off the train. You were afraid they might shoot you, too. You may be forced to admit that you don't know for sure that these men were actually miners. You may also be forced to admit that you didn't really take any of these threats seriously.

**Nathan Haddod**

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, but if you do not know the answer, it is best to just say, "I don't know."

You own and operate a general store. A group of armed miners came into your store during the Miners' March and demanded guns, ammunition, and clothing. There were more than a dozen of them, and they had on masks so you couldn't tell for sure who they were. They helped themselves to more than a \$2,000 worth of goods and then told you that you could bill the United Mine Workers union. However, one of them poked you with his rifle and said that you'd be lucky if you saw a dime. After they left the store, you looked out the window and saw that they had also taken your truck and were loading it with the stolen goods. One climbed up the telephone pole and cut the wires and then you watched them drive out of town. You have never received any reimbursement for the stolen goods. You cannot say for sure that Bill Blizzard was one of the miners.



## Defense Witnesses

### Bill Blizzard

(See description under Defendant.)

### E. C. Green

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, but if you do not know the answer, it is best to just say, "I don't know."

You are retired now but at the time of the Miners' March you were the president of the Dry Branch local miners' union. You were forced by a group of armed miners to transport weapons and ammunition in your auto to the miners in Lens Creek. You understood at the time why they wanted your help because they had received news that Baldwin-Felt men had gone up there to beat up some miners' families. You believe these Baldwin-Felts men were just a gang of thugs who beat up people every chance they got, and you know they were hired by the mine owners. Bill Blizzard was not among the miners who forced you to transport guns and ammunition, and you never heard his name referred to as a leader. However, it was unwritten mine union policy never to mention the name of specific leaders. Everyone was just called "buddy." You may be forced to admit that you were threatened with violence if you didn't comply with every request made by the miners.

### Horace Haines

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, but if you do not know the answer, it is best to just say, "I don't know."

You are a civilian aviator, mostly flying mail routes. You were hired by the coal operators to drop bombs on the miners' positions at Blair Mountain. You did it because they paid you well and you needed the money. Your attorney will probably show you a picture of a bomb dropped on the miners and you will testify to its authenticity. You will say that you only dropped a few bombs on the miners, but you didn't think they had much effect because you had to constantly swerve the plane to avoid getting hit by the bullets being fired at you by the miners. In fact, you did not even think the bombs exploded because they were just crude non-military grade bombs, not like the bombs you dropped when you flew planes against the Germans during the Great War. However, you felt somewhat uncomfortable dropping bombs on civilians.

### Amos Stanley

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, but if you do not know the answer, it is best to just say, "I don't know."

You are a coal miner and a union member. You attended a miners' picnic in Fairmont and heard speeches by union leaders, including Bill Blizzard. You heard union leader Keeney call the governor a red-handed murderer but you never heard Bill Blizzard say anything other than that we miners had to stand up for our rights. And if that meant striking . . . well . . . I guess we had to go out on strike. Bill Blizzard never said anything about shooting anybody or anything like that. He just said that we needed to stand up for our rights. You agree that you are in fact a close friend of

Bill Blizzard and that he was a very social man who got along well with all the miners. Everyone liked him. You will say that Bill Blizzard never provided weapons and ammunition to anyone. He never urged miners to shoot anyone, even though you agree that some of them deserved to be shot for the way they have been treating you and the other union miners.

### First Sergeant Flynn

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, but if you do not know the answer, it is best to just say, "I don't know."

You are a first sergeant in the Tenth Infantry Regiment of the U.S. Army. You were sent from your base in Sharples to Blair Mountain by train with a squad of men to get the armed men out of the town. Bill Blizzard agreed to go along and help you persuade the men to leave without further violence. You were successful. The armed men said that they had no quarrel with the U.S. Army—only with the mine owners and their hired thugs. You will acknowledge that Bill Blizzard was one of the most important leaders of the miners, but he was not solely in charge. In fact, you saw him more as a peacemaker.

### General Bandholtz

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, but if you do not know the answer, it is best to just say, "I don't know."

You are a general in the regular U.S. Army. You were in charge of the U.S. troops sent to put a stop to the fighting at Blair Mountain. On the morning of August 21, Bill Blizzard agreed to escort you safely through the miners' lines so you and they could negotiate a peaceful settlement. You had to laugh at the time, because you remember him saying he was escorting me to "keep the boogers [bogeymen] off." At the time, he just said that the miners would probably listen to him, and he said the miners were interested in what you had to say. At Racine, you met with about two hundred or three hundred armed miners. You told them you knew that many of them had served in the army during the war and that they knew quite well what the army was capable of doing, that we don't bluff. It was my impression at the time that these were just warm-hearted American boys, not crazed anarchists. They had just been led astray by their leaders. They did not appear to you at the time to have any formal leaders or much organization, so you decided to leave. Some other union officials arrived. They didn't introduce themselves. You guessed they wanted to remain anonymous, but they were clearly in charge of things. You said that you and they should go to some neutral location, and you ordered two staff cars—one for you and one for the union leaders. You didn't see Bill Blizzard in any of the cars. You never saw him again. You don't know whether Bill Blizzard was the primary leader of the miners, but it seemed to you at the time they certainly listened to what he had to say. After he spoke to them, they decided to leave Blair Mountain and just go home.

### Charles Frampton

As a witness you will be expected to testify to the details below. Additionally, you may be asked cross-examination questions. Further research into your character may help you, but if you do not know the answer, it is best to just say, "I don't know."

You are a newspaper man, a reporter. You were in Blair covering the Miners' March and saw Bill Blizzard there when the federal troops arrived. You overheard Blizzard advising the miners to go home and to do so without any further violence. They appeared to give him a lot of attention. You had never heard of him before, but he seemed to you at the time to be some kind of leader. However, there was a lot of confusion, and you were not able to say with accuracy exactly what Bill Blizzard was saying to the miners. You asked him for an interview, but he refused. He said he was too busy. You believed they must have agreed with everything he said because they did leave Blair Mountain and went home.

# Script: Trial of Bill Blizzard

## Scene One: Opening Remarks

**NARRATOR:** Bill Blizzard's treason trial begins on April 26, 1922, in the Jefferson County Courthouse in Charles Town, West Virginia—ironically the same building in which John Brown had been convicted of treason against the Commonwealth of Virginia in 1859. More than three dozen men had been killed during the uprising, but only the miners face indictment and trial. No one from the coal companies faces any prosecution. The coal companies have demanded the death penalty for the miners, and the state of West Virginia will try to oblige. Even the indictment against the miners has been written in the law offices of the coal companies, and their attorneys head the prosecution. Of the twenty-three defendants under indictment, Bill Blizzard was selected as the first to be tried. He is one of the few defendants who has admitted to being in the so-called war zone during the miners' uprising that culminated in what is being referred to as the Battle of Blair Mountain. Judge Woods has agreed with the indictment that the armed conflict could be defined as an act of war. He has also agreed that if Bill Blizzard furnished arms and ammunition to the miners during this armed conflict, this could be considered an overt act that, according to the U.S. Constitution, would be treason. However, the prosecution will have to provide at least two witnesses to this overt act. Finally, the judge has discounted the pre-trial argument by the miners' attorneys that treason against the state of West Virginia was impossible because of the division of authority between state and federal governments. He has ordered that the trial proceed.

**CLERK:** All rise. (*Everyone in the court stands*). Be seated.

**JUDGE J. M. WOODS:** (*Turning to the court clerk*) Please read the charges against the defendant.

**CLERK:** Will the defendant please rise (*Bill Blizzard stands*). You are charged with murder, inciting insurrection by leading an army of armed miners to overthrow the governor's proclamation of martial law in Mingo County, and treason by leading that army to wage war against the state of West Virginia. How do you plead?

**BILL BLIZZARD:** Not guilty. (*Laughing*) I guess they think I am a big fry.

**CLERK:** You may be seated.

**WOODS:** Mr. Belcher, do you have any opening remarks?

**A. M. BELCHER:** Yes, Your Honor. The prosecution will offer proof that the miners' army carried on a campaign of violence and terrorism, marked by the murder of police officers, civilians, helpless bystanders, and fellow miners who refused to join this armed insurrection. Our evidence will show that there were as many as 5,000 or 6,000 men, many armed with high-power rifles and machine guns, in Logan County, fighting the forces of law and order. We will show that during the fighting the defendant, Bill Blizzard, went along the battle line furnishing ammunition to the fighting miners. The prosecution will show that this miners' army, led by Blizzard, robbed stores, took food supplies, stole guns and ammunition, commandeered trains and automobiles, and held up storekeepers, forcefully making them open their doors and threatening that if they did not comply they would be murdered. The prosecution will show that even after President Harding had issued a proclamation calling for a cessation of fighting, Bill Blizzard continued

to furnish ammunition to the miners. Finally, the prosecution will show that Deputy Sheriff John Gore of Logan County was brutally murdered by the miners who were acting under the leadership of the defendant, Bill Blizzard.

**WOODS:** Mr. Houston, do you have any opening remarks?

**HAROLD HOUSTON:** I do, your honor. The prosecution in its opening statement avoided any reference to the notorious Baldwin-Felts guard system that has terrorized the mining community for years. We contend that the violence on both sides was a direct result of this system. We still are mystified by the charge of treason against the defendant, Mr. Blizzard. We believe that the major characteristic of treason is an overt act to in some way subvert the government, in levying war against the state, and giving aid and comfort to its enemies. Gentlemen of the jury, I maintain that none of the actions of my client, Bill Blizzard, meet that criteria. To rise to the level of making war against the state, the intent of the violence must have a certifiable treasonable design, or else every riot or insurrection would constitute treason. Mr. Blizzard admits that he was present during the “miners’ march.” But his actions, like all the other miners, were to protest the violent actions that had been taken against the miners by the hired thugs of the coal operators. We will also show that Bill Blizzard was instrumental in ending the confrontation by working with the federal authorities and convincing the miners to abandon their guns in and around Blair Mountain and return to their homes. Finally, there is not a shred of evidence to suggest that Bill Blizzard conspired with other union officials to finance a miners’ army intent on levying war against the state. Finally, my client, Mr. Blizzard, had nothing whatsoever to do with the death of Deputy Sheriff John Gore.

**NARRATOR:** With the close of Mr. Belcher’s address, the court was adjourned until the next morning when the prosecution would be asked to begin presenting evidence. The jury was locked up in the jury room for the night guarded by two deputy sheriffs. The judge ordered that the jury remain isolated throughout the trial.

## Scene Two: Prosecution Presents Its Case

**CLERK:** All rise. (*The judge enters.*) Be seated.

**WOODS:** Mr. Belcher, you may call your first witness.

**BELCHER:** The prosecution calls Governor Ephraim Morgan.

**CLERK:** Place your hand on this Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

**EPHRAIM MORGAN:** I do.

**CLERK:** Be seated.

**BELCHER:** Governor Morgan, please explain to the court your efforts to put an end to the violence at Blair Mountain.

**MORGAN:** I initially activated members of the National Guard to deal with the crisis, but there were just too many armed miners and the violence was just out of control. Thousands of shots were being fired—it was like something out of a Great War battlefield. I felt I had no other choice but to ask the federal government to send regular army troops.

Thankfully President Harding agreed, and the sight of these soldiers had the effect of making the miners put down their arms and retreat back to their homes.

**BELCHER:** Was it your understanding that the defendant, Bill Blizzard, was the miners' leader?

**MORGAN:** I can't say for sure who their leader was, but I did hear that Mr. Blizzard worked with General Bandholtz to convince the miners to leave—so I guess he must have been their leader.

**BELCHER:** Thank you, Governor. No further questions.

**WOOD:** Mr. Houston, do you wish to question the witness?

**HOUSTON:** Yes, Your Honor. Isn't it true, Governor, that there exists in your state, West Virginia, what can best be described as a private government, whose army consists of notoriously violent mine guards?

**MORGAN:** Yes, I guess so. And frankly, I have to admit that I seem powerless to end it.

**HOUSTON:** No further questions.

**CLERK:** Witness may step down.

**WOODS:** Mr. Belcher, you may call your next witness.

**BELCHER:** The prosecution calls Mr. E. C. Lee.

**CLERK:** Place your hand on this Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

**E. C. LEE:** I do.

**CLERK:** Be seated.

**BELCHER:** Mr. Lee, can you tell the court what you had to do during this conflict?

**LEE:** I was stopped on the road to Lens Creek by a group of armed miners, and they forced me to load my car with guns and ammunition and take it to Blair Mountain.

**BELCHER:** Was the defendant one of those men?

**LEE:** I can't say for sure because they had on hats pulled way down on their heads, but I think he looks familiar.

**BELCHER:** No further questions.

**WOOD:** Mr. Houston, do you wish to question the witness?

**HOUSTON:** Yes, Your Honor. Mr. Lee, to be quite clear then, you can't say for sure the defendant was one of the men who forced you to load your car with guns and ammunition, correct?

**LEE:** Yes, I guess so.

**HOUSTON:** No further questions.

**CLERK:** Witness may step down.

**WOOD:** Mr. Belcher, you may call your next witness.

**BELCHER:** The prosecution calls Mr. Ivan J. Ely.

**CLERK:** Place your hand on this Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

**IVAN J. ELY:** I do.

**CLERK:** Be seated.



**BELCHER:** Can you please tell the court your occupation?

**ELY:** I am the superintendent of construction for a mine company operating near Cabin Creek.

**BELCHER:** Explain to the court what happened to you on the night of August 16 last year.

**ELY:** Armed men appeared at my house at around 11:00 p.m. and declared they were going to kill members of the state police. They were accompanied by a group of black miners who proceeded to ransack my house. They even stole my pistol. The next day I was warned by a miner who drove up in a car—I assumed he was one of their leaders, but I'm not sure who he was—that I better not press charges against the men, even the blacks, or, in his words, I would never live to see those men indicted and prosecuted.

**BELCHER:** Did you get a good look at the man who gave you the warning?

**ELY:** Yeah, I think it was Blizzard. But I can't be sure because he had a hat pulled down low and he was speaking from the back of the car. But it sure looked like him.

**BELCHER:** No further questions.

**WOOD:** Mr. Houston, do you wish to question the witnesses?

**HOUSTON:** Yes, Your Honor. Mr. Ely, had you ever seen the defendant, Bill Blizzard, before you allegedly think that you saw him in the back of a car?

**ELY:** I saw him at a miners' picnic a few years ago, but I was way back in the crowd and it was raining pretty hard.

**HOUSTON:** No further questions.

**CLERK:** Witness may step down

**WOOD:** Mr. Belcher, you may call your next witness.

**BELCHER:** The prosecution calls Walter Blout.

**CLERK:** Place your hand on this Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

**WALTER BLOUT:** I do.

**CLERK:** Be seated.

**BELCHER:** What is your occupation, Mr. Blout?

**BLOUT:** I am a coal miner.

**BELCHER:** Are you a member of the miners' union?

**BLOUT:** Yes.

**BELCHER:** Were you part of the so-called Miners' March?

**BLOUT:** Yes.

**BELCHER:** Please tell the court how you learned there was going to be a march.

**BLOUT:** We got orders from the local headquarters of the United Mine Workers of Charleston, instructing that every able-bodied man was to gather and organize in Logan County. I believed at the time they came directly from our union leaders—Mooney, Keeney, and Blizzard.

**BELCHER:** Did your order from these leaders include bringing weapons and ammunition?

**BLOUT:** They did.

**BELCHER:** And what did you do with those orders?

**BLOUT:** Members of my local got our guns and ammunition and put them in our cars and headed out. It was our intention to clean up the thugs, those Baldwin-Felts men, in Logan County, and if we got our hand on him, to hang Sheriff Chafin from a sour apple tree.

**BELCHER:** How many miners were marching in the direction of Blair?

**BLOUT:** Oh, I'd say there must have been more than 1,000, maybe more. It was hard to say. Many miners joined along as we marched.

**BELCHER:** What happened when you arrived in the vicinity of Blair Mountain?

**BLOUT:** We got into a gunfight with Sheriff Chafin's posse and those thugs, those Baldwin-Felts men.

**BELCHER:** Were any of the miners shot?

**BLOUT:** Yeah, they hit some of our men, but we got a few of theirs, too.

**BELCHER:** Was one of their men killed Deputy Sheriff Gore?

**BLOUT:** Yes. I saw a group of miners confront him, and I heard them tell him that he had no business siding with those Baldwin-Felts thugs. Then they told him to get on his knees. He begged them not to shoot him, but a couple of men just pointed their rifles at him and blew out his brains.

**BELCHER:** Did you know these miners?

**BLOUT:** No. Never saw them before.

**BELCHER:** No further questions.

**WOOD:** Do you wish to question this witness, Mr. Houston?

**HOUSTON:** Yes, Your Honor. Mr. Blout, did you ever actually see the defendant giving orders to the miners or passing out guns and ammunition?

**BLOUT:** I didn't.

**HOUSTON:** No further questions.

**CLERK:** Witness may step down.

**WOOD:** Mr. Belcher, you may call your next witness.

**BELCHER:** The prosecution calls James King.

**CLERK:** Place your hand on this Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**JAMES KING:** I do.

**CLERK:** Be seated.

**BELCHER:** What is your occupation, Mr. King?

**KING:** I am a coal miner.

**BELCHER:** Are you a member of the United Mine Workers union?

**KING:** Yes.

**BELCHER:** Please tell the court, Mr. King, what contact you had with the defendant.

**KING:** I got orders from Bill Blizzard to send riflemen to the Blair Mountain fight. He gave me a signed pass so that I could freely move around the miners' lines—in case someone suspected I might be one of the Baldwin-Felts men.

**BELCHER:** Do you have that pass?

**KING:** No, I destroyed it.

**BELCHER:** Please, explain to the court what you know about the funding of the Miners' March.

**KING:** Well, union leaders gave a speech to us about needing money to buy guns and ammunition, so my local gave them \$3,000.

**BELCHER:** What did they say they were going to do with these guns and ammunition?

**KING:** They said they were going to raise a miner's army to march on Logan and Mingo. I remember one union official saying to hell with martial law—we'll wipe it out.

**BELCHER:** Did you ever see the defendant during the Miners' March?

**KING:** Yes. I passed Bill Blizzard on the road between Clothier and Blair. He was headed in the direction of the fighting line. He was in a Ford, I think.

**BELCHER:** No further questions.

**WOOD:** Do you have any questions for this witness, Mr. Houston?

**HOUSTON:** Yes, Your Honor. Mr. King, isn't it true that you are on the payroll of the mine operators and you'd say anything they want you to say?

**BELCHER:** *(rising)* Objection your honor. Badgering the witness!

**WOOD:** Sustained.

**HOUSTON:** *(Looking with disdain at the witness)* No further questions of this witness.

**CLERK:** Witness may step down.

**WOOD:** Mr. Belcher, you may call your next witness.

**BELCHER:** The prosecution calls J. N. Stone.

**CLERK:** Place your hand on this Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**J.N. STONE:** I do.

**CLERK:** Be seated.

**BELCHER:** Mr. Stone, what is your occupation?

**STONE:** I am a railroad contractor out of Charleston.

**BELCHER:** Can you tell the court what you heard a group of miners saying?

**STONE:** While I was at work near Winifred, I heard a group of miners saying they should go to Charleston to burn the newspapers and hang the governor. I also heard another group of armed men at the railroad station say that they were keeping watch on every train that came from Charleston for state police officers and that they intended to shoot every one that tried to get off the train.

**BELCHER:** And did this scare you?

**STONE:** You bet! I was afraid they might shoot me, too.

**BELCHER:** No further questions.

**WOOD:** Do you have any questions of this witness, Mr. Houston?

**HOUSTON:** Yes, Your Honor. Isn't it true, Mr. Stone, that you don't know for sure that these men were actually miners?

**STONE:** Well, I guess not. But they sure sounded like them.

**HOUSTON:** And isn't it true that at the time you told friends that you didn't actually take these threats seriously?

**STONE:** I guess so.

**HOUSTON:** No further questions.

**CLERK:** Witness may step down.

**WOOD:** You may call your next witness, Mr. Belcher.

**BELCHER:** The prosecution calls Nathan Haddod.

**CLERK:** Place your hand on this Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**NATHAN HADDOD:** I do.

**CLERK:** Be seated.

**BELCHER:** What is your occupation, Mr. Haddod?

**HADDOD:** I own and operate a general store.

**BELCHER:** Can you tell the court what happened to your business during the Miners' March?

**HADDOD:** A group of armed miners came into my store and demanded guns, ammunition, and clothing. There were more than a dozen of them and they had on masks, so I couldn't tell for sure who they were.

**BELCHER:** How were you sure they were union miners?

**HADDOD:** They helped themselves to more than a \$2,000 worth of goods and then told me that I could bill the United Mine Workers union. One of them poked me with his rifle and said that I'd be lucky if I saw a dime.

**BELCHER:** What happened after they left the store?

**HADDOD:** I looked out the window and saw that they had also commandeered my truck and were loading it with the stolen goods. One climbed up the telephone pole and cut the wires and then I watched them drive out of town.

**BELCHER:** Have you ever received any reimbursement for your stolen goods?

**HADDOD:** Not a dime.

**JUDGE WOOD:** Do you have any questions for this witness, Mr. Houston?

**HOUSTON:** Yes, Your Honor. Before today have you ever seen the defendant?

**HADDOD:** No.

**HOUSTON:** So, isn't it true that you can't say he was one of the men you claim robbed your store?

**HADDOD:** No, I can't say he was one of them.

**HOUSTON:** No further questions.

**CLERK:** Witness may step down.

**WOOD:** You may call your next witness, Mr. Belcher.

**BELCHER:** The prosecution rests pending summary remarks.

**WOOD:** The court will recess until tomorrow morning.

### Scene Three: Defense Presents Its Case

**WOOD:** You may call your first witness, Mr. Houston.

**HOUSTON:** The defense calls E. C. Green.

**CLERK:** Place your hand on this Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**E.C. GREEN:** I do.

**CLERK:** Be seated.

**HOUSTON:** What is your occupation, Mr. Green?

**GREEN:** I am retired now but I was the former president of the Dry Branch local union.

**HOUSTON:** Did you transport weapons and ammunition in your auto to the miners in Lens Creek?

**GREEN:** Yes, but I admit that I didn't really want to. I was forced to do it by a group of armed miners, but I understand why they wanted my help. They had received news that Baldwin-Felt's men had gone up there to beat up some miners' families. These Baldwin-Felts men were just a gang of thugs that beat up people every chance they got, and I know they were hired by the mine owners.

**HOUSTON:** Was the defendant, Mr. Blizzard, among the miners who forced you to transport guns and ammunition in your auto?

**GREEN:** No, I never saw him.

**HOUSTON:** And did you hear any of the miners refer to Mr. Blizzard as some kind of leader?

**GREEN:** No, they never mentioned his name. But that didn't surprise me because it was against the miners' rules to ask for names. Everyone was just called "buddy."

**HOUSTON:** No further questions.

**CLERK:** Witness may step down.

**WOOD:** Mr. Belcher, do you wish to question this witness?

**BELCHER:** Isn't it true, Mr. Green, that their threat to you was that if you did not comply with their request they would shoot you?

**GREEN:** Yes.

**BELCHER:** And isn't it true that they had made good on that threat with other storekeepers?

**HOUSTON:** Objection your honor—speculation.

**WOOD:** Sustained.

**BELCHER:** No further questions.

**CLERK:** Witness may step down.

**JUDGE WOOD:** You may call your next witness, Mr. Houston.

**HOUSTON:** The defense calls Horace Haines.

**CLERK:** Place your hand on this Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**HORACE HAINES:** I do.

**CLERK:** Be seated.

**HOUSTON:** What is your occupation, Mr. Haines?

**HAINES:** I am an aviator.

**HOUSTON:** A military aviator?

**HAINES:** No, I am a civilian aviator, mostly mail routes.

**HOUSTON:** Were you hired by the coal operators to drop bombs on the miners' positions at Blair Mountain?

**HAINES:** Yeah. I really needed the money and they were paying very well.

**HOUSTON:** *(Holding up a picture of a bomb dropped on the miners—see Documentary Evidence.)* Is this one of the bombs you dropped?

**HAINES:** Yes.

**HOUSTON:** How many bombs did you drop on the miners?

**HAINES:** I dropped a few bombs, but I don't think they had much effect because I had to constantly swerve the plane. The miners were shooting at me with their rifles.

**HOUSTON:** Did these bombs have any effect?

**HAINES:** I can't be sure, but I don't think any of the bombs even exploded. They were pretty crude, not like the stuff we used during the Great War.

**HOUSTON:** No further questions.

**CLERK:** Witness may step down.

**WOOD:** Mr. Belcher, do you wish to question this witness?

**BELCHER:** No questions for this witness.

**CLERK:** Witness may step down.

**WOOD:** You may call your next witness, Mr. Houston.

**HOUSTON:** The defense calls Amos Stanley.

**CLERK:** Place your hand on this Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**AMOS STANLEY:** I do.

**CLERK:** Be seated.

**HOUSTON:** What is your occupation, Mr. Stanley?



**STANLEY:** I am a coal miner.

**HOUSTON:** Are you a union member?

**STANLEY:** Yes.

**HOUSTON:** Tell the court what you know about the defendant.

**STANLEY:** I attended a miners' picnic in Fairmont and heard speeches by our union leaders, including Mr. Blizzard.

**HOUSTON:** Did you hear any of these leaders call for violence?

**STANLEY:** I heard Keeney call the governor a red-handed murderer, but I never heard Mr. Blizzard say anything other than we miners had to stand up for our rights, and if that meant striking . . . well, I guess we had to go out on strike.

**HOUSTON:** So to be sure, you never heard the defendant preach any kind of violence?

**STANLEY:** No. Bill never said anything about shooting anybody or anything like that. He just said that we needed to stand up for our rights.

**HOUSTON:** No further questions.

**WOOD:** Mr. Belcher, do have any questions for this witness?

**BELCHER:** I do. Mr. Stanley, isn't it true that you have been a close friend of Bill Blizzard for many years?

**STANLEY:** A close friend of Bill, sure, I guess you could call him a friend, but that's Bill. He is a very social guy, got along well with all of us miners. We all liked him.

**BELCHER:** And isn't it true, Mr. Stanley, that if the defendant asked you miners to get guns and march to Blair you'd do it? In fact, isn't it true that is exactly what he did?

**STANLEY:** No, it ain't. We marched all right, but Bill never told us to shoot anybody.

**BELCHER:** No further questions.

**CLERK:** Witness may step down.

**WOOD:** You may call your next witness, Mr. Houston.

**HOUSTON:** The defense calls General Bandholtz.

**CLERK:** Place your hand on this Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**GENERAL BANDHOLTZ:** I do.

**HOUSTON:** You are a general in the U.S. Army, correct?

**BANDHOLTZ:** Yes.

**HOUSTON:** Can you tell the court what contact you had with Mr. Blizzard?

**BANDHOLTZ:** I was in charge of the U.S. troops sent to put a stop to the fighting at Blair Mountain. On the morning of August 21, Mr. Blizzard agreed to escort me safely into the miners' lines so we could negotiate a peaceful settlement. I had to laugh at the time because I remember him saying he was escorting me to "keep the boogers off."

**HOUSTON:** Did he ever refer to himself as a leader of a "miners' army?"

**BANDHOLTZ:** No. He just said that the miners would probably listen to him, and he said the miners were interested in what I had to say.

**HOUSTON:** So, what happened?

**BANDHOLTZ:** At Racine I met with about two hundred or three hundred armed miners. I told them I knew that many of them had served in the army during the war and that they knew quite well what the army was capable of doing—we don't bluff. It was my impression at the time that these were just warm-hearted American boys, not crazed anarchists. They had just been led astray by their leaders.

**HOUSTON:** Did they mention any leaders specifically?

**BANDHOLTZ:** No. They did not appear to me at the time to have any formal leaders or much organization, so I decided to leave.

**HOUSTON:** What happened next?

**BANDHOLTZ:** Some other union officials arrived. They didn't introduce themselves. I guess they wanted to remain anonymous, but they were clearly in charge of things. I said that we should go to some neutral location and ordered two staff cars—one for me and one for the union leaders.

**HOUSTON:** And was Mr. Blizzard in either car?

**BANDHOLTZ:** Well, he certainly was not in my car. And when we arrived, he wasn't in the second car either. I never saw him again.

**HOUSTON:** No further questions.

**WOOD:** Mr. Belcher, do you wish to question this witness?

**BELCHER:** Yes, Your Honor. General Belcher, is it your opinion that the defendant was the primary leader of the miners at Blair Mountain?

**BANDHOLTZ:** All I can say is that it seemed to me that the miners listened to what he had to say, whatever that was. But they did give up and go home after he spoke to them.

**BELCHER:** No further questions.

**CLERK:** Witness may step down.

**WOOD:** You may call your next witness, Mr. Houston.

**HOUSTON:** The defense calls First Sergeant Flynn.

**CLERK:** Place your hand on this Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**SERGEANT FLYNN:** I do.

**HOUSTON:** You are a first sergeant in the Tenth United States Infantry, correct?

**FLYNN:** Yes sir.

**HOUSTON:** Can you tell the court what orders you were given and what contact you had with the defendant?

**FLYNN:** I was sent from Sharples to Blair by train with a squad of men to get the armed men out of the town. Mr. Blizzard agreed to go along and help me persuade the men to leave without further violence.

**HOUSTON:** And were you successful in your mission?

**FLYNN:** Yes. The armed men said that they had no quarrel with the U.S. Army, only with the mine owners and their hired thugs.

**JUDGE WOOD:** Do you have any questions of this witness, Mr. Belcher?

**BELCHER:** Yes, Your Honor. Sgt. Flynn, it would be your view that the defendant was the most important leader of the miners?

**FLYNN:** He was certainly one of their leaders. Whether he was in charge . . . well, I can't say that for sure.

**BELCHER:** No further questions.

**CLERK:** Witness may step down.

**WOOD:** You may call your next witness, Mr. Houston.

**HOUSTON:** The defense calls Charles Frampton.

**CLERK:** Place your hand on this Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**CHARLES FRAMPTON:** I do.

**HOUSTON:** What is your occupation, Mr. Frampton?

**FRAMPTON:** I am a newspaper man, a reporter.

**HOUSTON:** How do you know the defendant?

**FRAMPTON:** I was in Blair covering the Miners' March, and I saw Blizzard there when the federal troops arrived.

**HOUSTON:** Did you hear Bill Blizzard speaking to the miners?

**FRAMPTON:** Yes. I heard him advise the men to go home and to do so without any further violence. The men obeyed him. He seemed to me to be some kind of leader. I tried to get a story from him, but he wouldn't talk, said he was too busy.

**WOOD:** Do you have any questions of this witness?

**BELCHER:** Yes, Your Honor. Mr. Frampton, so to be clear, the defendant was giving orders to the miners and they were obeying his instructions, correct?

**FRAMPTON:** Well it certainly seemed so, but there was a lot of confusion. He was talking to a lot of the miners, and I couldn't tell for sure exactly what he was saying. And as I said, he refused to talk to me.

**BELCHER:** No further questions.

**CLERK:** Witness may step down.

**WOOD:** You may call your next witness, Mr. Houston.

**HOUSTON:** The defense calls the defendant, Mr. Bill Blizzard.

**CLERK:** Place your hand on this Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**BILL BLIZZARD:** I do.

**CLERK:** Be seated.

**HOUSTON:** Mr. Blizzard, please tell the jury what part if any you played in either the planning or the execution of the Miners' March.

**BLIZZARD:** I helped organize what we proposed would be a peaceful march protesting the way we miners have been treated by the coal operators and their hired thugs, especially them Baldwin-Felts men. I think most of the boys felt they better bring their guns because those thugs have a way of getting pretty rough.

**HOUSTON:** Were you personally carrying a gun?

**BLIZZARD:** Yes, and I have a permit to carry a gun.

**HOUSTON:** Were you ever up along the so-called firing line held by the miners around Blair Mountain?

**BLIZZARD:** Yeah, I was there, but I encouraged the boys not to take shots unless they fired on us.

**HOUSTON:** So, you would call yourself kind of a peacemaker?

**BLIZZARD:** I guess there was no need for any unnecessary violence. But there was a lot of shooting. I was almost hit a few times myself.

**HOUSTON:** Did you consider yourself a leader of a miner's army?

**BLIZZARD:** What army? We were just a group of miners marching against the injustice being done to us by them coal operators.

**HOUSTON:** Were you a leader during this march?

**BLIZZARD:** Well . . . I guess the boys will listen to me all right.

**HOUSTON:** What did you do when the federal troops arrived?

**BLIZZARD:** I suggested that we abandon our position and head home. We had no beef with the U.S. government. We didn't want to be fighting the U.S. Army. Many of the boys had served in the army during the Great War—it didn't seem right.

**HOUSTON:** No further questions.

**WOOD:** Mr. Belcher, do you wish to question the defendant?

**BELCHER:** Yes, Your Honor. Mr. Blizzard, isn't it true that when Mother Jones, the well-known union leader, was trying to discourage the miners from making this violent march, you instead yelled at them saying, "What in hell is the matter with you? Do you want some old woman to tell you what to do? Straighten up and be men!"

**BLIZZARD:** I don't remember my exact words. That may be right, but I believed we had every right to make our march.

**BELCHER:** Mr. Blizzard, you have acknowledged that the men listened to you. Doesn't that make you one of their leaders?

**BLIZZARD:** (*Laughing*) Well, I guess that's up to the jury to decide. As I said already, the boys listened to me, but they listened to a lot of people.

**BELCHER:** No further questions, Your Honor.

**WOOD:** Mr. Houston, you may call your next witness.

**HOUSTON:** No further witnesses, Your Honor. The defense rests pending final remarks.

**NARRATOR:** On May 25, the evidence portion of the treason trial of Bill Blizzard concluded, after nearly four weeks of testimony. Judge Woods set six and a half hours for each side to complete closing remarks.

#### Scene Four: Closing Remarks and the Verdict (May 25–27, 1922)

**WOOD:** Members of the jury, prior to your deliberation, I must remind you of the meaning of treason. Every violent opposition to the execution of the laws of the state, every resistance by force and violence to the officers of the state in the performance of their duties is not treason. Rioters may assemble together in an unlawful assembly, they may conspire to do an unlawful act, or a series of unlawful acts, their purpose may be to commit a felony, or to commit a misdemeanor, and they may proceed with arms and with the intent to use violence to accomplish their designs, and yet it wouldn't be treason. It would not be a treasonous reason for an unlawful assemblage of individuals to come together unless their purpose is by force and violence to commit some act or some acts, which, if successful, will subvert the government in whole or in part. Mr. Belcher, you may make any summary remarks on behalf of the prosecution

**BELCHER:** *(Rising and facing the jury.)* Thank you, Your Honor. Gentlemen of the jury, you have heard evidence of what can only be described as a treasonous armed insurrection by thousands of miners organized and led by union leaders that included the defendant, Bill Blizzard. Many individuals were shot and killed as a direct result of this so-called Miners' March through our beloved state of West Virginia. The miners' leaders, including the defendant, openly called for miners to gather weapons and ammunition and then issued orders that supplies—food, ammunition, and even weapons—be taken from local shopkeepers to maintain what was clearly an army. Innocent civilians were terrorized by this armed mob and many miners who were reluctant to participate were forced to do so by threat and intimidation. Despite words to the contrary by the defense it was clear that the defendant was very much a part of this armed treasonous rampage—providing ammunition, much of it stolen, and encouraging miners to maintain their positions—even in the face of legitimate attempts by recognized law enforcement officers to maintain order. Deputy Sheriff John Gore would be alive today if it were not for the encouragement to murderous violence by the defendant and other union leaders. Finally, it was only in the face of U.S. Army soldiers—overwhelming force—that the defendant and other leaders reluctantly abandoned their treasonous activities and urged their men to retreat. Gentlemen of the jury, we ask you to find the defendant, Bill Blizzard, guilty as charged.

**WOOD:** Mr. Houston, you may make any summary remarks on behalf of the defense.

**HOUSTON:** *(Rising and facing the jury.)* Thank you, Your Honor. Gentlemen of the jury, the prosecution has clearly failed to definitively identify how my client, Bill Blizzard, and any of his alleged co-conspirators financed and aided any of the miners' "army" in levying war against the state. This was a protest that unfortunately turned violent, but the violence came from both sides, and Mr. Blizzard did everything he could to bring this affair to a peaceful conclusion. How could any of the miners or their leaders be branded as traitors, deserving of execution, when they were clearly fighting the coal company thugs and not the state? What this trial has revealed is the extent to which the coal operators have taken over our state. It is well known by everyone that even the prosecution lawyers are on the payroll of the coal owners. Convicting the defendant or any other of these miners for merely expressing their discontent with their working

conditions would just be an acknowledgement that the state belongs to the coal companies. And I know that you don't want that outcome. Finally, the defense does not deny that Bill Blizzard was involved in the Miners' March, but his actions to convince the miners to abandon their positions around Blair Mountain and return to their homes demonstrated his non-violent inclinations. The prosecution has failed to provide any conclusive evidence that the defendant acted overtly or covertly in a treasonous fashion, and we call for you to find him innocent of all charges.

**Wood:** Gentlemen of the jury, you may now retire to deliberate your verdict.

**NARRATOR:** The jury retires and after less than an hour they return. They hand a paper to the clerk, who gives it to the judge.

**JUDGE WOOD:** Mr. Blizzard, please rise to hear the verdict of the jury. (*Blizzard stands.*) The jury has considered the evidence against you and finds you not guilty of all charges.

**NARRATOR:** Cheers resounded throughout the courtroom and Blizzard's mother, wife, and two young children hugged him. Bill then shook hands with his fellow miners until his hand was sore. His supporters were elated with the victory and openly mocked the prosecution attorneys and witnesses as they filed out of the courtroom.



# Documentary Evidence



Miners display a bomb dropped on them during the Battle of Blair Mountain.

*Image source: UMW officials. Charleston Gazette, 1921, courtesy of the West Virginia State Archives.*

# Time Line

1902	A general coal strike breaks out in the anthracite mines of Pennsylvania.
1914	The Great War (World War I) begins.
1918	The Great War ends.
1921	West Virginia coal miners conduct the Miners' March and engage with coal company security forces in a shootout, known as the Battle of Blair Mountain.
1922	The alleged leader of the striking coal miners, Bill Blizzard, is put on trial for treason and ultimately acquitted.

# Glossary

**Baldwin-Felts system:** The use of armed agents of the Baldwin-Felts Detective Agency to enforce the will of the coal mine operators, often resulting in threats, beatings, home evictions, and murder of miners.

**Constitutional treason:** The Constitution of the United States, Article III, Section 3 defines treason against the United States to consist only in levying war against them, or in adhering to their enemies, giving them aid or comfort. This offense is punished with death. By the same article of the Constitution, no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

**Strike:** To refuse to work until acceptable changes are made.

**UMWA:** United Mine Workers of America, the nation's largest mine worker union.

# Postscript

During the treason trial, the defendants, including Bill Blizzard, played baseball with the local townspeople. Since many of the townspeople's relatives were serving on the jury, the defendants were careful not to win too many games. Bill Blizzard, on trial for murder and treason, played right field and reportedly was a pretty good hitter. In the end, none of the miners were convicted and executed. But not all were acquitted. Walter Allen, one of the mine leaders, was convicted of treason. Two witnesses testified that they saw him with armed men in Logan County. The jury concluded that he was part of a treasonous conspiracy and sentenced him to ten years in prison. The defense appealed the verdict and Allen was granted bail. Allen fled the state and was never seen again. West Virginia eventually dropped charges against the other twenty-two men charged with treason but put union leader Frank Kenney on trial for murder. He was acquitted. However, some miners were sentenced to lengthy prison terms associated with the violence. By 1925, all those jailed had been paroled.

United Mine Workers membership dropped throughout the latter part of the 1920s. It was not until the presidential election of Franklin Roosevelt in the 1930s and his New Deal program of reformist laws and agencies that union membership once again swelled. While many historians believe that the coal owners won the Battle of Blair Mountain, others disagree. Wess Harris, editor of *When Miners March*, wrote: "That's just a lot of hogwash . . . if anything, Blair Mountain was a victory. The twin events of Blair Mountain and the trials were the furnaces that forged the miners' steel that got them ready for the 1930s." William Blizzard put it more succinctly: "Unions struggle and lose, then struggle and win." What people need to understand was that there had always been something wrong with an industry, according to Harris, that "produced a mint of wealth and forced its employees to live in poverty."

Bill Blizzard remained an influential labor leader for many years after his treason trial. He served as the president of the United Mine Workers District 17 from 1945 until 1955 and died peacefully on July 13, 1958, at age 65. His great rival during the Miners' March, Sheriff Chafin, ended up in jail for two years after being convicted of violating the Prohibition laws. He later entered West Virginia politics, serving in the state legislature, and died a wealthy man in 1954.

## Discussion Questions

1. Within a few days of the beginning of the trial, people throughout the country began to sense that the state of West Virginia, rather than the miners, was on trial. It seemed to many that the entire machinery of government had been turned over to the coal operators and their hired thugs. Do you agree that convicting William Blizzard was secondary to de facto recognition that the coal operators were really in control of state politics? Why or why not?
2. The mining company owners and their attorneys assumed that it would be relatively easy to convince a Jefferson County jury that Bill Blizzard and the rest of the union men were murderers and traitors. The nation was embroiled in the so-called, Red Scare, and the trial and conviction of violent union organizers and their followers, seemed like a sure thing. They could legally execute the leaders, jail their followers, and crush organize labor for good. While the trial progressed, the mining operators stayed in fancy hotels and feasted on sumptuous meals, while the accused union members were housed and socialized with the local people, the friends and neighbors of those sitting on the jury. They even organized baseball teams. Do you think the mine operators' arrogance undermined their efforts to convict Blizzard? Can you think of any other trials in American history that seemed to be a slam dunk for the prosecution but led to a not guilty verdict instead?
3. The West Virginia constitution—similar to the U.S. Constitution—necessitated that two witnesses needed to testify to an overt treasonous act. However, Judge Woods went back to the ruling in the *Bollman* case (accessories in the Aaron Burr treason trial), which determined “if war be actually levied, that is, if a body of men be actually assembled for the purpose of effecting by force a treasonable purpose, all those persons who perform any part, however minute, or however remote from the scene of action and who are actually leagued in the general conspiracy, are to be considered as traitors.” Do you agree with the judge regarding this precedent? Discuss.
4. Even today many of our workplaces are breeding dissatisfaction and insecurity. There is probably little chance of an armed march similar to that of what happened in the West Virginia coal industry in 1921, but grievances like the income inequality between workers and management are real and profound. Do we run a great risk as a nation and society if we overlook these problems and fail to come up with solutions? Discuss.
5. The miners believed that when the authorities prevented them from peacefully marching they were violating their Constitutional rights. A U.S. senator asked United Mine Workers leader Fred Mooney “what Constitutional rights do you feel you have been denied?” Mooney answered that we have been “denied a Republican form of government; we are denied the right of public assemblage; we are denied the right to belong to a union.” However, there is not one word in the Constitution about labor unions. What enumerated rights in the Constitution might support Mooney's position? Discuss.
6. The miners who marched, including Bill Blizzard, believed that their rights as American citizens could not be obtained without a fight. A miner wrote that “the oppressed of all time when goaded too far have risen up in their might and thrown off the yoke of the oppressor. Unfortunately, these uprisings have been accompanied with bloodshed and riot.” Covering

a strike in southern West Virginia, a newspaper reporter noted that “the talk of the miners and their wives . . . is of guns and shooting . . . because freedom has never been won without bloodshed.” Do you believe this is true? How would Mahatma Gandhi and Martin Luther King Jr., advocates of non-violent resistance and activism, have responded to striking miners? Discuss.

7. A circuit judge told a committee of U.S. senators touring southern West Virginia: “We think and live coal. If you take our coal from us, we shall go back to the days of bobcats and wilderness. Coal is our existence.” As other energy sources allow the country to move away from dependence on fossil fuels, such as coal, what can be done for the regions and their people that depend on this industry for their livelihood? Discuss.

## Extension Activities

1. The operators' attempt to take vengeance on the miners by means of a treason trial essentially failed, and this failure was consistent with the history of treason trials in the United States. There have been few convictions for treason. Frequent reference was made by the defense attorneys to the decision rendered by Chief Justice John Marshall in the case of Aaron Burr. Research this case and either write an essay or prepare a presentation as to why this event directly related to the case made by the defense.\*
2. Throughout American history, labor unrest has been blamed on new immigrants, extremists, and radicals ranging from anarchists to Communists. With that in mind, research and write an essay about another example of labor unrest and compare it with the Miners' March and the treason trials that followed.
3. Most historians believe that although Bill Blizzard and most of the miners escaped any kind of punishment associated with the Miners' March, the effort to effectively unionize the coal industry and bring about substantial changes failed. Write an essay or create a media presentation outlining the reasons why the coal operators and their allies were successful in maintaining control of the industry.
4. The federal government considered indicting some of the miners for treason, but never did. In fact, U.S. Assistant Attorney General John Crum demanded that the miners be tried, and noted in a memo to the attorney general that "our machinery is ready, if this meets your approval." Why the federal government did not prosecute is unclear even today. Officials of the Department of Justice never explained their reasoning. Write an essay discussing what would be the basis for a federal indictment of Bill Blizzard and whether it would have been successful.
5. The violent behavior of the southern West Virginia miners was discussed intensely in the early part of the twentieth century. Radicals throughout the country publicized the miners' actions as evidence of class warfare and the beginnings of a socialist revolution in the United States. Write an essay either supporting or refuting this premise.
6. The coal miners and their families in West Virginia were subjected to many of the same injustices and indignities as African American sharecroppers in the South, which included almost complete control of their lives by the coal operators. For example, they were often paid in company scrip, which could only be redeemed at company stores for supplies at inflated prices. Write an essay or create a media presentation comparing the two systems.



7. An excerpt from the iconic miner's tune, *Cold Tattoo*:

Somebody said that's a strange tattoo  
You have on the side of your head  
I said that's the blueprint left by the coal  
A little more and I'd be dead.  
I stood for the union and I walked the line  
I fought against the company  
I stood for the U M W of A  
Now whose gonna stand for me?

The coal miners' lives and struggles spawned some of the most iconic of American folk music. Research and present some of these songs and what their lyrics reveal about the coal industry, its hardships, and the efforts of unions to improve the lot of miners.

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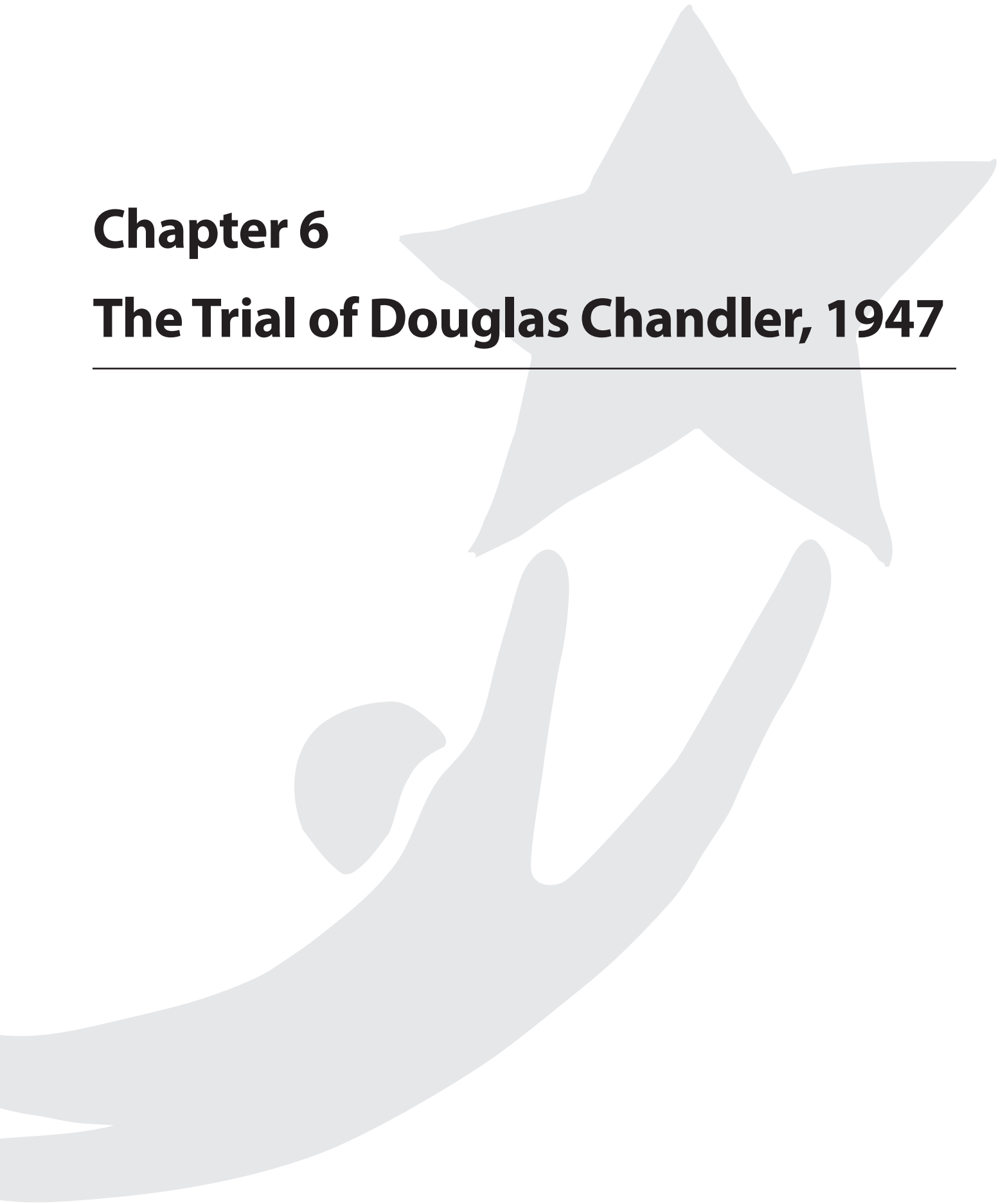
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## **Chapter 6**

# **The Trial of Douglas Chandler, 1947**

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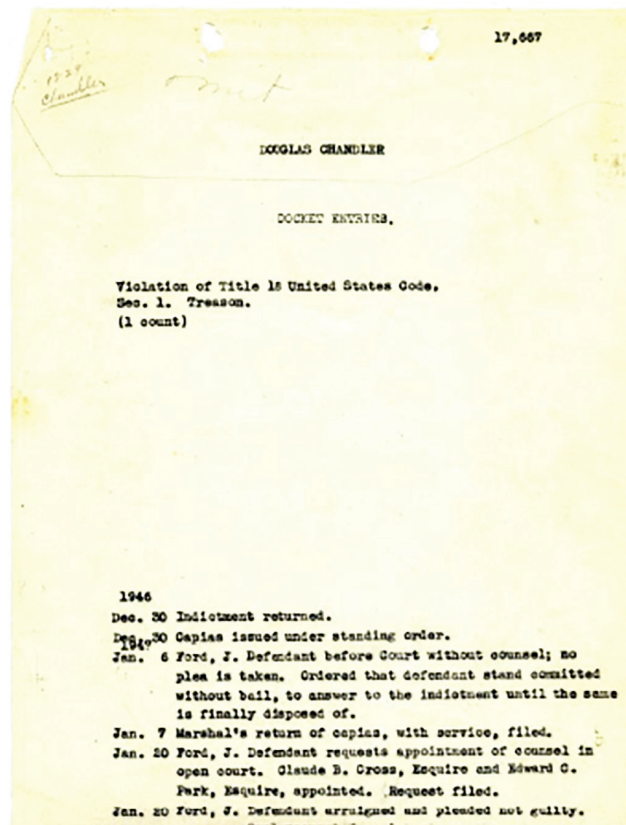


## Introduction

In 1943, Douglas Chandler, along with seven other Americans, was indicted by a federal grand jury for radio recordings and broadcasts made from Germany, and other countries, transmitting Nazi propaganda. Shortly after the war, in 1947, Chandler was arrested in Germany and flown to the United States to stand trial for treason.

### Objectives

1. Students will know the basic facts of the Chandler case and its ramifications for the First Amendment's guarantee of freedom of speech.
2. Students will understand how German propaganda was used during World War II.
3. Students will understand the implications and difficulties of an insanity defense in a criminal trial.



Case # 17,667, U.S. v. Douglas Chandler

Image source: Case # 17,667, U.S. v. Douglas Chandler. Courtesy of the National Archives and Records Administration, 84565030.

## Lesson Plan

### Trial Procedure

1. Classroom should be set up as a courtroom (see Diagram).
2. Jury, attorneys, witnesses, and any courtroom spectators should be seated.
3. Judge Ford enters and the court clerk instructs everyone in the courtroom to "rise."
4. The judge then "charges the jury" with their responsibilities.
5. The judge then instructs the clerk to read the charges against the defendant Douglas Chandler and to ask for a plea.
6. Douglas Chandler should declare himself not guilty and the trial commences according to the following schedule:
  - a. Opening remarks by the prosecuting attorney(s)
  - b. Opening remarks by the defense attorney(s)
  - c. Direct testimony and cross-examination of prosecution witnesses
  - d. Direct testimony and cross-examination of defense witnesses
  - e. Summary remarks by the prosecution attorney(s)
  - f. Summary remarks by the defense attorney(s)
  - g. Jury retires to deliberate
  - h. Jury returns to the court and the judge asks them for their verdict
  - i. If Chandler is declared guilty then the judge immediately sentences him to life in prison and a fine of \$10,000; If he is found innocent, then he is immediately set free



#### Teaching Tip

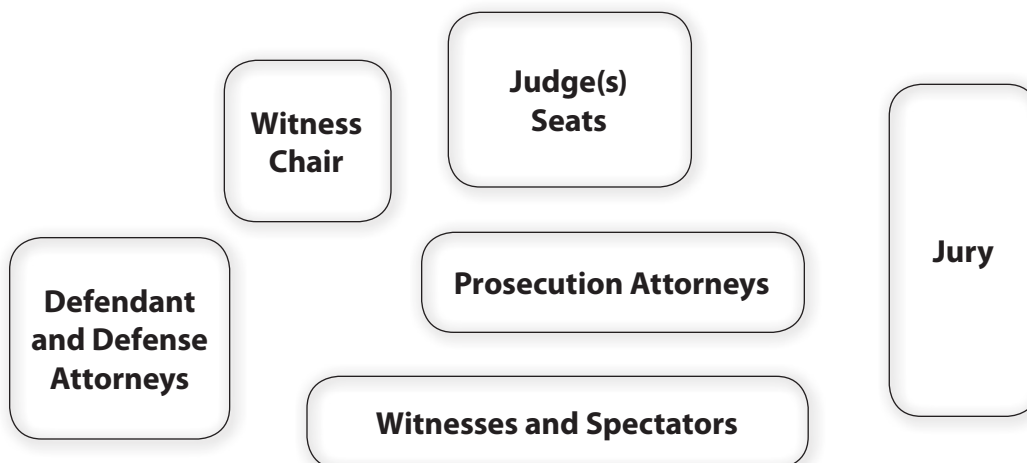
As students are not adept at being the authority figure, it is recommended teacher play role of Judge Ford.



#### Teaching Tip

For attorney roles, choose students who are well-organized and not afraid to speak in front of class.

### Diagram of Courtroom Seating



### Teaching Tip

You can limit the length of the trials by omitting roles or by setting speaking time limits.



## Suggested Schedule (role play)

**Day One:** Background, role assignments and initial preparation

**Day Two:** Conclude preparation for trial

**Day Three:** Begin trial

**Day Four:** Conclude trial and debrief using Discussion Questions

**Day Five:** Conclude debrief and assign Extension Activities

## Notes for the Teacher (role play)

1. Read and discuss with students the Background Essay.
2. Divide the class into prosecution and defense.
3. Either assign students specific roles or have them decide as a group who will be the attorneys, and which witnesses they will present for the case. Unless you have a very capable student it is advisable for the teacher to perform the role of Judge Ford. Students are not accustomed to being the authority figure in a classroom.
4. Students should be given the remainder of any class time and the next class to prepare for the trial. Attorneys should present their theories of the case and frame questions for each of the witnesses. Witnesses should write out a deposition (what they plan to say on the witness stand) and practice their direct testimonies and any expected cross-examination questions. You may decide to allow them to refer to their depositions while testifying rather than relying totally on memory.
5. If you want to complete the trial in one class session, then you will need to allot and enforce strict time limits depending on the length of your class period. You will also have to ask the prosecution to reduce the number of witnesses they are presenting to conform to the time constraints. You can also eliminate cross-examination and only allow direct testimony. Assuming a 60-minute class period the time would look like this:
  - 5 minutes for the judge (teacher) to read the charges and receive Chandler's not guilty plea
  - 2 minutes for prosecution opening remarks
  - 2 minutes for defense opening remarks
  - 15 minutes for direct testimony from prosecution witnesses
  - 5 minutes for cross-examination of selected prosecution witnesses
  - 15 minutes for direct testimony of defense witnesses



- 5 minutes for cross-examination of selected defense witnesses
  - 2 minutes for prosecution closing remarks
  - 2 minutes for defense closing remarks
6. If you have a large class and the ability to spend more class time on this activity, more possibilities exist to expand the time for direct testimony and cross-examination.
  7. Advise student-attorneys to be very careful about cross-examination. Most experienced trial attorneys have difficulty with this skill and often do more harm to their case than good. The best advice you can give student-attorneys is to never ask a question if they don't already know what the answer will be.
  8. On the day of the trial arrange the classroom to look like a courtroom (see Diagram) with a judge's seat (the teacher's desk), a chair for those giving testimony, a seat for the defendant, desks for the attorneys and witness seats.
  9. Try to match roles to student personalities and academic strengths. For student-attorneys it is particularly important that you select students who are well-organized and not afraid to speak in front of the class.
  10. Note that you can limit the length of the trial by omitting roles.
  11. The case can be decided by the judge. However it is certainly possible to include a jury. Forming the jury from members of another class or even interested adults works well as long as they know little or nothing about the case (the hallmark of any good jury!).
  12. When the jury is deliberating the verdict, you can engage the rest of the class with the Discussion Questions.

### **Suggested Schedule (scripted version)**

**Day One:** Read and discuss with students the Background Essay, assign speaking parts for scripted trial, and begin reading of the trial.

**Day Two:** Conclude reading of scripted trial, debrief using Discussion Questions and assign Extension Activities.

### **Notes for the Teacher (scripted version)**

1. Read and discuss with students the Background Essay.
2. Assign students speaking roles in the play. Note that the roles of the narrator, Judge Ford, and the prosecution and defense attorneys have the lengthiest speaking parts.
3. Prior to students coming to class you may decide to set up the classroom to look like a courtroom (see Diagram). It adds more realism to the drama.
4. Read the play.
5. Debrief using the Discussion Questions.
6. Assign Extension Activities.

## Roles Grid

Role	Historical Character	Student Name
<b>Defendant (also possible prosecution witness)</b>	Douglas Chandler	
<b>Judge</b>	Francis J. W. Ford	
<b>Clerk/Bailiff</b>		
<b>Prosecution Attorneys</b>	Special Government Prosecutor Oscar R. Ewing	
	Assistant District Attorney Alexander M. Campbell	
<b>Prosecution Witnesses</b>	Karl Linnard Schotte	
	Leo A. Ribitski	
	Anton Winkelkemper	
	Aldo E. Cesarini	
	Edward Veith Sittler	
	Dr. Clarence Bonner	
	Dr. Abraham Myerson	
	Gerhardt Wagner	
	George Otto Edward von Lilienfeld	
<b>Defense Attorneys</b>	Claude B. Cross	
	E. C. Park	
<b>Defense Witnesses</b>	Dr. Robert Fleming	
	Dr. Kenneth Tillotson	
	Dr. Alfred Strecker	
	Dr. Frederick Wyatt	
	Richard McCabe	
<b>Narrator</b>		



### Teaching Tip

Try to match roles with student personalities and academic strengths.



### Teaching Tip

You can add an interfering spectator role. Someone who inappropriately shouts out something about the innocence or guilt of accused.

# Background Essay

On an April night in 1941, several months before the entry of the United States into World War II, American listeners heard a radio broadcast coming from a German shortwave station that began with the sounds of “Yankee Doodle Dandy” and the clapping of horse hooves. Then a man began speaking, calling himself “Paul Revere,” and spewing out a torrent of pro-Nazi, anti-Roosevelt, anti-Soviet Union, and anti-Jewish propaganda. His recordings accused President Roosevelt of slowly but surely dragging Americans into war against Germany, and that the real enemies of the American people were the Bolsheviks and the Jews. Chandler was particularly adamant in his criticism of the Jews, saying in one of his early recordings: “And what about the Jews, in America? What are these termites doing? It is their function, as ever in the world’s history, to speculate and garner their inhuman profits by means of the moral and mental breakdown of the inhabitants of the United States. The Jews are using this war to make hay while the sun shines.”<sup>1</sup>

American listeners wondered, who was this strange American broadcasting Nazi propaganda from Germany? A month later, on May 26, they found out when the man on the radio identified himself. He was one Douglas Chandler. In a later broadcast Chandler said that he “was born in Chicago in 1889 but spent much of his early years in Baltimore and New England.” During World War I, he served in the U.S. Navy. However, he declared to his listeners that the major part of my work and education was in “H.K. University. What, you don’t know H.K.? It is the old University of Hard Knocks.”<sup>2</sup> The truth was

otherwise. In fact, he led a rather privileged life. Chandler was a successful stockbroker until the market crashed in 1929. The crisis ruined his finances and that of his wealthy wife, Laura, the daughter of a wealthy Carnegie Tech professor, Alexander Jay Wurtz. Chandler then turned to journalism. He was known among his associates during this time period as alternately charming and arrogant. Along with reflections on literature and poetry, his writings painted a dark picture of the state of America and he blamed his personal financial failures on the Jews. Later, in a broadcast from Germany, he would say “my fellow Americans, let us re-declare our independence and get our country back.”<sup>3</sup> In 1931, Chandler, along with his wife and two daughters, decided to leave America for Europe. With the Great Depression on, he believed they would be able to live more comfortably overseas. Chandler purchased a high-end Leica 35mm camera and began a career as a photo-journalist eventually working for *National Geographic* magazine. This career path even led him to a tour of one of Nazi Germany’s concentration camps, Dachau, where he would write that he was impressed with the clean barracks. Chandler, like other observers, was completely deceived since the Nazis never allowed visitors to these camps to see what conditions there were really like.

Regardless, he became convinced that the negative reports about Germany under the Nazi regime were distortions. By 1938, Chandler was thoroughly enamored of the Nazi state. By then he had come to believe that a thrilling and admirable new social order was alive in Germany. Furthermore, he saw Hitler and Nazi Germany<sup>4</sup> as the safeguard of Western Civilization against what he believed was a Jewish-Communist assault.

1 From Documents and Records related to the trial of Douglas Chandler, including the official trial transcript. Waltham, MA: National Archives and Records Administration.

2 Transcript of shortwave broadcast, Berlin, in English to North America at 9:15 p.m., March 26, 1942. National Archives and Records Administration, Waltham, MA.

3 Ibid.

4 Strohlic, Nina. “The Nazi Who Infiltrated *National Geographic*,” *National Geographic*, April 27, 2017. <http://news.nationalgeographic.com/2017/04/lost-found-douglas-chandler-nazi/>.

In 1940, Chandler and his family moved to Florence, Italy, and it was here that he decided that he wanted to broadcast his views to the United States. The U.S. government was not allowing citizens to travel to Germany, but Chandler was able to get there, along with his family, with the aid of the German consul who issued him a *Femdenpass*, an alien identity card. Within a month he was making broadcasts from Berlin to the United States. The German Ministry of Propaganda, headed by Josef Goebbels made it quite clear that Chandler was to frame his radio comments within key points, which included identifying Russian Bolsheviks (Communists), along with their allies, the Jews, as the major enemy of both Germany and America; Germans are the happiest and most prosperous people in Europe buttressed with an invincible army; and, finally, England is economically and politically corrupt. Overall, the objective of German propaganda was to sow disunity and defeatism among Germany's adversaries, and to stir up worldwide racial and political unrest. Chandler's broadcasts aired off and on throughout the war, with only a brief interruption when his wife, Laura, unexpectedly died in 1943. For his work, he received 2,500 marks per month, which made him one of the highest paid German radio commentators. Late in 1943, he married his second wife, Maria, and the couple moved to Vienna, where his radio programs were recorded and forwarded to Berlin for transmission. In addition to his propaganda broadcasts, from February 1944 until the war's end, he hosted a radio series on American poetry and literature, saying in one recording: "poets and musicians were the ultimate peace-makers, for in troubled times they provided mankind with that central ingredient to international understanding—love of beauty."<sup>5</sup> When the war concluded on May 8, 1945, Chandler opted to remain in Germany, where he was arrested by U.S. military authorities on February 28, 1946, and held in confinement in Germany until December 10, 1946. On December 10, he

was flown by military plane from Germany to Paris. Three days later he was taken from Paris to the Azores, and then on to Newfoundland, Canada. He was then flown to Washington, DC, after stopping at Westover Field military base in Chicopee, Massachusetts. On December 14, he was taken into custody by authorities of the federal district court of the District of Columbia and arraigned on the indictment brought against him during the war, on July 28, 1943. He was held in jail in the District of Columbia until January 4, 1947, when he was brought to Boston and placed in the East Cambridge jail, pending his trial for treason. Chandler argued that his poor physical health and his general mental stability had been so impaired by nearly a year of incarceration in Germany after the war that he felt poorly equipped to properly organize his defense. His plea was rejected.

The trial began in Boston, Massachusetts, on June 2, 1947. More than a dozen Germans who were part of the Nazi propaganda bureau, including Edward Sittler, a former top official of the German radio office, were transported to federal district court to testify for the prosecution. Briefly, Chandler's indictment alleged that he worked for German radio during the war, beaming broadcasts to American citizens to intentionally hinder the American war effort. The prosecution further charged that the defendant committed more than a dozen overt acts in furtherance of his treasonable adherence to the German Reich, giving aid and comfort to this enemy of the United States. These acts included meetings and conferences with Karl Schotte, the head of the United States zone of the German Radio Corporation, at which he discussed his work as a radio commentator. He also attended meetings and conferences with Edward Sittler, a senior station employee, about possible improvements to the operation of the radio station and the content of the programs broadcast to America. He also confided to Sittler that he believed he might be indicted for treason by the United States, although he did not seem to

5 Rybicki, Frank. *Two American Voices of Nazi Propaganda*. Self-published, Amazon Digital Services, 2012. Kindle.

think the charge would stick. Finally, Chandler spoke into a microphone in radio recording studios located in Berlin, Vienna, and other Axis cities, for the purpose of recording propaganda talks broadcast to the United States.

Douglas Chandler was alternately portrayed in federal court as a man who refused to renounce his American citizenship and as the “Paul Revere” of Nazi radio, attacking the U.S. war effort. He did this by saying in a German radio broadcast to Americans that, among other things, “all the frantic production of weapons by sweating, toiling American laborers, all the transporting of expeditionary units of American troops

to far-flung battlefields is a waste of effort.”<sup>6</sup> Meantime, both the defense and the prosecution enlisted psychiatrists to examine Chandler, to determine whether he had been mentally capable of forming an intent to betray his country or had been suffering from paranoid delusions when he made his Paul Revere recordings for the German Radio Corporation. If the latter, he could have been insane, and therefore not responsible for his actions.

You will now have a chance to either role play or read a scripted version of this historic treason trial.

<sup>6</sup> “Record Plays ‘Voice’ at Chandler Trial,” *New York Times*, June 15, 1947.



# Roles

## Defendant: Douglas Chandler

You are a tall, fifty-seven-year-old man with a rather dignified appearance. You view yourself as the artistic type and not very technically oriented. Beginning in 1931, you were an advertising writer for *National Geographic* magazine, based in Europe. You believe the greatest accomplishment of your advertising career was having promoted the Schick razor to the American public. You were never very financially secure even though you had married Laura Jay Wurtz, who had considerable financial means. Your financial insecurity bothered you, and you tried to compensate by constantly seeking to make more money.

The Great Depression in America motivated you to move with your family to the South of France, where you could live more comfortably than in New York. You became involved in broadcasting primarily to prevent the United States from entering the European war. You convinced yourself that America was being goaded into a catastrophic war by international Jewry and their ally in Washington, President Roosevelt. You were determined to go on the radio microphone, even if it meant going to Germany, and tell your countrymen all that you could to warn them. You wrote to some influential friends in Berlin, volunteering your services. You offered your services free of charge, but German officials refused and insisted that you be paid for your services. Your first contact in Berlin was Dr. Hans Schirmer, who was in the foreign office in charge of radio affairs. You asked again if you could offer your services free of charge and he refused, as it was against government policy. You believe that you were unaware at the time that, by accepting money, you would be considered a paid tool of the Nazi regime.

You made your first broadcast on April 26, 1941, several months before American entry into the war. You admit that after the Japanese attacked Pearl Harbor in December, and America entered the war, you had second thoughts about your activities in Berlin. But you continued to broadcast anyway because you believed in German military might and that the real threat to the world was Bolshevik Russia and the Jews. You do not seem to understand that Nazi Germany was a repressive regime, which was trying to exercise world domination. You will say that you even toured the Dachau concentration camp in 1933, and it seemed to you at the time that it was a model prison. It was well organized and well run. You even tasted some of the soup. You will say that if you had known what the Nazis were doing in these camps during the war you would have asked them to intern you, too. Your first wife died in 1943 and you remarried a woman named Maria Moorgat. After your marriage you moved to Vienna, Austria, where your radio programs were recorded and forwarded to Berlin for transmission. From February 1944 until the war's end, you hosted a radio series on American poetry and literature in addition to your political broadcasts.

Your defense team has convinced you to accept a plea of insanity, so you will not have to testify during the trial. However, you should be prepared to work with your attorneys to frame questions for your witnesses and cross-examination questions for the prosecution's witnesses.

## Federal Judge Francis J. W. Ford

You should review court procedure with the clerk/bailiff who is there to assist you in running the court and maintaining order. At the beginning of the trial you will be outside of the courtroom

(classroom) and when everyone is in their assigned place you will enter. The clerk will say, "All rise" when you enter and "Be seated" when you have assumed your position.

You will begin the trial by saying: "We are in the Federal Courthouse in Boston and the trial of Douglas Chandler will commence with myself Judge Ford as the presiding judge." If this is a trial with a jury, then you will be responsible at the beginning of the trial for "charging the jury" with their responsibilities. You should say "Members of the jury. Prior to your deliberation I must remind you of the meaning of treason." You should tell them the following:

"According to the Constitution, treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or in confession in open court. Gentlemen of the jury, it is important that you listen carefully to the testimony of the witnesses and determine the facts of this case. You are not to be influenced by passion, prejudice, public opinion and sympathy. Remember that the defendant is presumed innocent until he has been found guilty beyond a reasonable doubt. The defendant is not obligated to testify and failure to do so should not play a part in your decision. Also, it is important that when listening to testimony relating to alleged overt acts, you must exercise care in deciding whether such acts actually aided and comforted the enemy and assisted Germany in its conduct of the war against the United States. The prosecution must prove that the defendant knew he was assisting the enemy."

You should instruct the jury that they should obey all your instructions during the trial as to whether any comments or evidence is admissible or whether they should disregard any such statements or evidence. You should also tell them that they should give a fair and just verdict based on the presentation of the evidence.

At the beginning of the trial you will ask the clerk to read the charges against the defendant and then ask for his plea, "guilty" or "not guilty." You will then ask first the prosecution attorney(s) and then the defense attorney(s) to make any opening remarks to the court. You will then ask the prosecution attorney(s) if they would like to present any witnesses. Each time a witness is called you should ask the clerk/bailiff to swear them in. When the prosecution has concluded with all of its witnesses you should then ask the defense attorney(s) to present their witnesses. As with the prosecution witnesses you should ask the clerk/bailiff to swear in each of the defense witnesses. When the defense has concluded its case you should ask if the prosecution attorney(s) have any final remarks. Then you should give the defense attorney(s) a chance to make any closing remarks. You should then instruct the jury to retire (leave the classroom) and deliberate. If you are deciding the case without a jury then you should take some time to reflect on your decision. When they, the jury (or you), have reached a verdict they should either inform you by written note (that you will read) or you can ask them to announce it to the court. If the defendant is found not guilty he will be immediately freed. If he is found guilty then you should immediately sentence him by saying the following:

"It is adjudged that according to sentencing guidelines the defendant is hereby committed to the custody of the attorney general or his authorized representative for imprisonment for the term of his natural life, and sentenced to pay a fine of \$10,000."

**Clerk/Bailiff**

You are the court clerk and bailiff responsible for carrying out the orders of the presiding judge.

At the beginning of the trial you must say to the jury:

"Good men and true, stand together and hearken to your evidence."

When the trial begins the Judge will ask you to read the charge against the defendant, Douglas Chandler. You will read the following statement:

"Douglas Chandler, to the charge of treason against the United States, how do you plead?"

You will also be asked by the judge to swear in each witness. You will have each witness place their hand on a Bible (optional) and swear the following:

"Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?"

You should be prepared to read aloud to the court any documents that the judge instructs you to enter into the court record, including statements of law and evidence introduced as exhibits.

You should keep a record of the names of all witnesses offering testimony.

You should be prepared to assist the judge in maintaining courtroom order. You may be asked to remove unruly witnesses or spectators.

At the end of the trial, when the jury has reached their verdict, the judge will ask you to say the following to the foreman of the jury:

"Gentlemen of the Jury, look upon the prisoner. How say you all? Is Douglas Chandler 'guilty' or 'not guilty' of the charge of treason?"

**Jury**

You are a member of a jury that has been selected to try Douglas Chandler for treason. You are a citizen of the United States and believe firmly in upholding the laws and institutions of our nation. You will be asked to consider the comments and testimony presented by both the prosecution and the defense, and to render a fair and just verdict based on the evidence.

**Special Government Prosecutor, Oscar R. Ewing; Assistant District Attorney, Alexander M. Campbell**

As attorneys you will be expected to form a theory of the case. Essentially, Douglas Chandler was a traitor when he made recordings and broadcasts over German radio to America on behalf of the Nazi government. You will then organize your witnesses to back up this theory with their direct testimony. You should have each witness write out specific questions you can ask them on the witness stand that will help them remember what they have to say about the case. You may not ask leading questions during direct testimony, such as "Isn't it true that you saw Douglas Chandler in the German radio station on February 1, 1943, making a broadcast to the United States?" You may, however, ask leading questions like that under cross-examination. Finally, during the trial, in addition to asking questions of your witnesses and any cross-examination questions of opposing witnesses, you will be expected to give opening and closing remarks. In your opening remarks, you should describe for the court your theory of the case and what you intend to prove. In your closing remarks, you should briefly summarize for the court what your witnesses proved and any errors you heard from the opposing witnesses. It is hard to be an attorney. That is why real lawyers go to law school after college. Do your best!

Key points that you should make include the following:

1. Douglas Chandler deliberately went to Germany to make propaganda broadcasts to the United States on behalf of the Nazi government.
2. He worked directly with German officials to frame his anti-Jewish and anti-Communist, pro-German broadcasts aired by shortwave radio into American homes.
3. Douglas Chandler's broadcasts were designed to traitorously undermine the American war effort.
4. Douglas Chandler committed overt acts of treason by meeting with German officials on many occasions to frame the content of his broadcasts.
5. Douglas Chandler is completely sane and was so during the time he spent in Germany making his recordings and broadcasts.

### Defense Attorneys: Claude B. Cross and E. C. Park

As attorneys you will be expected to form a theory of the case. Essentially, Douglas Chandler was not a traitor when he made recordings and broadcasts over German radio to America on behalf of the Nazi government. You will then organize your witnesses to back up this theory with their direct testimony. You should have each witness write out specific questions you can ask them on the witness stand that will help them remember what they have to say about the case. You may not ask leading questions during direct testimony, such as, "Isn't it true that you never saw Douglas Chandler making a broadcast to the United States?" You may, however, ask leading questions like that under cross-examination. Finally, during the trial, in addition to asking questions of your witnesses and any cross-examination questions of opposing witnesses, you will be expected to give opening and closing remarks. In your opening remarks you should describe for the court your theory of the case and what you intend to prove. In your closing remarks you should briefly summarize for the court what your witnesses proved and any errors you heard from the opposing witnesses. It is hard to be an attorney. That is why real lawyers go to law school after college. Do your best!

Key points that you should make include the following:

1. Douglas Chandler went to Germany to make broadcasts to the United States because he wanted to warn Americans about the dangers of entering World War II and, later, participating in that war.
2. Many of Douglas Chandler's comments in his broadcasts were offensive. You admit this fact. But, according to the First Amendment to the Constitution he had every right to express his opinion.
3. Douglas Chandler is clinically insane and was so during the war, as you will demonstrate with the testimony of your witnesses.

### Prosecution Witnesses

#### Aldo E. Cesarini

You were a U.S. Army intelligence officer during World War II. After the war you were stationed in Germany. You went to Chandler's house in Germany in May 1945. You told him that you were with the military and that you wanted to know the reason he was living in Germany.

He seemed hesitant to answer questions at first. When he learned that his broadcasts beamed from Germany to America had been monitored by military authorities he spoke openly. He told you that he believed Russia was more of a menace to the world than Germany. He said that he offered his services to the German Radio Corporation in 1941, to speak against American entry into the war. You asked him what he had broadcasted, and he said that he spoke about how he felt that Nazism was good for Europe and that he did not agree with Secretary of State Cordell Hull's surrender ultimatum to Japan. He said that he was planning to return to the United States and was willing to face trial in the Supreme Court for treason.

You asked him why he came to Germany and he said that back in 1931 he had come to Europe to write for *National Geographic* magazine. However, his editor had warned him to leave his political views out of his articles. You asked him about his first wife and he told you that she died during the war and he had remarried.

He then brought up the question of whether or not you knew that his foreign broadcast to America had been monitored by the government. You told him that you were quite sure that they had been carefully reviewed. Hearing that, he said there was no point for him to hold back anything, and that he was ready and willing to speak openly.

You asked him what his activities had been in Germany besides writing and making recordings. He said he had offered his services to the German government to speak against the American entry into World War II. He was on air six times a week and viewed his broadcasts as the actions of an American patriot. He continued to broadcast from Germany and other Axis cities, such as Vienna, throughout the war, particularly focusing on the dangers of Communism and the threat posed by the Jews. He believed that Bolshevik Russia was more of a threat to America than Nazi Germany. During the war he believed that Nazism was actually a good thing for Europe and hoped that Germany would win the war. However, he now believed that he had been deceived.

### Edward Veith Sittler

You are an American citizen born in Baltimore, Maryland. From 1937 to 1940, you were a student at various German universities and during the war you continued to study at the University of Berlin. In 1940, you became a German citizen and after a brief time in the German Army you became a translator for the German Overseas Radio, where you worked until the end of the war. You met Douglas Chandler in the spring of 1941 at the radio station where he was making broadcasts into what the German Overseas Radio referred to as the "USA zone." You will testify that you saw Douglas Chandler actually speaking into the microphone of the German Broadcasting Corporation. You heard his recordings that condemned the Jews and warned of the menace of communism. You saw him reading these works into a microphone, using the name "Paul Revere." You will also say that Chandler was with you when these broadcasts were discussed with German officials.

You decided that Chandler was a person who you would like to know socially, so you invited him and his wife to your home. You eventually formed a friendship and Chandler often came to visit. He even worked on writing and editing broadcasts at your home. You will tell how you directly observed Chandler at work in your home on manuscripts that he intended to broadcast. He always drove a big, maroon Mercedes with an American flag painted on the side. Chandler used the typewriter in your room in July 1944, and discussed with you the script he was writing. You will say that you actually saw Chandler broadcasting this manuscript a few days later when you



and your wife accompanied him to the German radio studio. You and your wife Margaret actually saw him reading the manuscript into a microphone and heard his voice while the broadcast was being recorded.

You know that he had great difficulty in sleeping, and he told you that he took a number of sleeping pills each night. At work he seemed extraordinarily nervous. He was also very volatile by nature and would often explode over minor inconveniences. You remember him saying on one occasion that his experience had led him to discount the extent to which any man was or could be governed by his own reason. You believe he took a very anti-rational view of life. You believe that Chandler had an excellent memory, but it could be erratic. Sometimes he seemed to have almost a photographic knowledge of details and then, at other times, you noticed his mind was in a fog and that he could not recall simple details

You often talked over the substance of his commentaries or the things which he had read—both from American and British sources, as well as political trends, issues, and ideas. He often said to you that he felt that it was his mission to proclaim truths that were not being properly aired in America. On many occasions he told you that he was an American and could not conceive of himself being anything else. Also, he believed that his whole work and mission in Germany was caused by, and bound up with, his being an American.

### Gerhardt Wagner

You lived in the United States from January 1924 to July 1940. You came to the United States to represent your father's business interests. You were the president of Ravenna Mosaics, a company that specialized in stained glass. You became a naturalized citizen of the United States in 1936. However, when you returned to Germany, you applied again for German citizenship in the winter of 1940–1941, and became a citizen again on May 8, 1941. You never joined the Nazi Party.

You obtained a job in Berlin as the news editor for the USA zone of the German radio station where Douglas Chandler worked. You maintained this job throughout the war. Your immediate boss was Carl Schotte, who is also expected to testify for the prosecution.

You will say that after a trip to the Baltic region you told Chandler that you had conclusive evidence of the massacre of 160,000 Jews by the Germans. Mr. Chandler refused to believe it and you argued. You told him that Hitler knew all about it. Later, you suspect that Chandler turned you in to the Gestapo. You don't know for sure what he told them, but you were detained for several months. When you were released, you returned to the radio station as a war reporter. At the station, you were in charge of briefing Mr. Chandler and other radio broadcasters on the daily propaganda line. You made sure that his commentaries would not run counter to the official German propaganda line. You pointed out to Mr. Chandler and other broadcasters that it was important that they not deviate from the official line, because their commentaries were being used as a weapon of psychological warfare. Your typical advice was to give them "jazz and Schmaltz [sentimental chat]." You told them to deliver it like a nightclub master of ceremonies even if it is slightly indecent; give them old favorite songs they can gather and sing to and then give them news disguised as confidential gossip; and feed the propaganda tidbits into a round table discussion.

You recall a conversation with Mr. Chandler at which he discussed converting his U.S. dollars into German marks, because he felt that Germany was going to win the war and the dollar might become worthless. You also remember conversations with Mr. Chandler in which the subject



of treason charges was discussed. You remember one particular occasion during a meeting in Mr. Schotte's office, in which Chandler mentioned a possible treason indictment against him. But he felt that he didn't have to worry because he wasn't really working against the United States, but only for Germany. You remember him saying that a German victory in Europe was very important because, without it, Central Europe would be destroyed. It would be opened up to the Soviet Union, whereas a German victory would not hurt America. Chandler believed an American victory would very definitely destroy Central Europe. However, you must admit that Chandler constantly told you that he considered that his broadcasts and recordings were not the actions of an American traitor but rather his patriotic duty to warn Americans about engaging in a futile war.

### **Karl Linnard Schotte**

You are a German citizen who lived and worked in the United States off and on until 1934. You worked for the Fahnstook Electric Company in New York as a purchasing agent. You returned to Germany in 1934, and you were employed by the German Radio Broadcasting Corporation. You were the head of the USA broadcasting division in Berlin until August 19, 1943, when you were arrested and put in a concentration camp. You were released at the end of 1943 and returned to your job, where you stayed until the end of the war.

The time you spent in a concentration camp came as punishment for letting remarks pass your censorship in a commentary broadcasted to the United States that ran counter to the directives of the Ministry of Propaganda. Churchill and President Roosevelt were in a conference in Ottawa, Canada, and American newspapers came out with headlines about an alleged German appeal for peace. You allowed a remark made by one of the commentators about this proposal to remain in the broadcast. That violated the propaganda ministry's directive not to give the enemy a chance to say that the German government was making any kind of a peace move.

You organized and attended several meetings at the German Broadcasting Corporation at which the defendant was present. These meetings primarily involved discussions and instructions about the uses that were to be made of propaganda to the United States. There were also instructions about the uses of anti-Semitic and anti-Bolshevism themes. There were directives calling for arguments that would spread defeatism among the enemies of Germany: showing the strength of the German Army; showing that the American GI did not know what he was fighting for; pointing out the tremendous losses that a second front would bring to Allied soldiers; pointing out the great danger of Bolshevism to the world's economic system; and pointing out the great influence that Jews held over world opinion through control of the press, radio, and film. You personally witnessed Mr. Chandler make many recordings and broadcasts that reflected these themes. You will admit that Chandler always believed that he was performing his duty as a patriotic American by making these broadcasts.

### **Leo A. Ribitski**

You are a German citizen who was employed by the German Radio Corporation from June 1938 until the end of the war. You were the program coordinator of the American zone of operations. You oversaw all the broadcasts that were directed at the United States. You knew Chandler quite well. You say he typically wore a small swastika and a pin that had a combination of flags representing all of the Axis countries when he came to work at the recording studio.

You always tried to observe and listen to all the commentators, such as Mr. Chandler, when they made their recordings for transmission. On many occasions, you saw him sitting before a microphone, speaking into the microphone, and reading a talk from a manuscript, which was intended for later transmission. He usually made recordings or broadcasts twice a week.

He always introduced his talks using the pseudonym Paul Revere. He would start by saying that “your riding messenger Paul Revere is now on the air,” followed by the piped tune of Yankee Doodle Dandy and the sound of horses tromping. The prosecution attorney may play a recording in court of one of Chandler’s broadcasts and you should be prepared to identify his voice. You will testify that to your knowledge all the recordings made by Chandler that were intended for broadcast were indeed transmitted by radio to the United States.

You will admit that Mr. Chandler told you on several occasions that he was making his recordings and delivering his broadcasts because he wanted to enlighten Americans about how much their government was deceiving them.

### Anton Winkelnkemper

You were educated in Germany and other countries in Europe and have a Doctor of Law degree from the University of Bonn. You were a Nazi member of the Reichstag, Germany’s parliament, before and throughout the war. You should be prepared to discuss how the German government functioned after Hitler came to power. Briefly, the German government after Hitler was appointed Chancellor on March 25, 1933, consisted of members of the Nazi Party as well as members of the German National Party. Then a law was passed by the German Reichstag that gave Hitler the power to enact laws of his own. The government consisted of twelve ministers who were the heads of the different ministries. For example, there was the foreign ministry, which was headed by Joachim von Ribbentrop, and the Ministry of Public Enlightenment and Propaganda, which was headed by Dr. Josef Goebbels. The German radio station where Chandler worked reported directly to Goebbels.

In addition to your duties in the Reichstag, you were appointed a managing director of German radio in 1941, in charge of overseeing all foreign broadcasts. The German radio was divided in zones assigned to Asia, the Soviet Union, and the United States. Chandler’s broadcasts were directed to the USA zone.

You can describe the various types of broadcasts the Germans directed at the United States. These broadcasts used psychological warfare in support of the German war effort. They tried to undermine morale by exploiting the divisions within American society—by ideology, politics, race, and class—in order to create discord and disunity. Your division directed particular attention to international Jewry, highlighting their support of Bolshevism and their control of radio and film in various countries, which allowed them to influence public opinion. You liked to point out that the so-called “brain trust” of advisors surrounding President Roosevelt was composed of Jews who were misleading the American public.

You consider Chandler to have been one of your most effective broadcasters into the American zone. You made sure that he was very well paid for his services. But you will admit that you never personally witnessed Chandler making a broadcast.

**George Otto Edward von Lilienfeld**

You are a German citizen. In 1941, you were hired by the German foreign office in Berlin. You were the head of the United States Department of the Radio Political Division of the foreign office. You first met Chandler around the end of January 1941, in Florence, Italy. The German embassy in Rome had contacted you and mentioned his name as someone who was interested in moving to Germany to make radio broadcasts to America.

You met Mr. Chandler and he expressed a deep desire to come to Germany, but he told you that he needed an entry visa. He explained his desire to take advantage of the technical facilities of the German radio to speak his opinions to America. His reasons, as far as you remember, were that he was convinced that the United States was being driven into the war by the Jewish advisors of President Roosevelt. He expressed his fear of Jewish and Bolshevik influence gaining more and more control of Europe, and he stated his belief that he thought Germany was one of the main bulwarks against Communism and Jewish influence in the world. Chandler also said that he was an American who had lived many years in Europe, and that he considered it his duty to his fellow countrymen to enlighten them on these subjects.

You managed to arrange documentation for Chandler from the German consul in Florence to come to Berlin. When he arrived, arrangements were made for him to immediately use the facilities of the German radio so that he could broadcast to the United States. The content of his broadcasts was subject, naturally, to military censorship. He didn't seem too concerned about payment, but it was the policy of German radio to insist that broadcasters received a salary. He was paid very well.

Later, you remember meeting Chandler at the radio station in Berlin shortly after the Japanese attack on Pearl Harbor. He told you that despite American entry into the war, he planned to stay in Berlin and to continue his broadcasts, because he believed his country was entering the war on the wrong side. He considered it his duty to enlighten Americans as to the wrong course the U.S. government was taking. He said that he was aware that he might possibly be in a dangerous situation, but he believed most Americans would appreciate his efforts.

You also remember meeting him at a luncheon given at the Adlon Hotel in Berlin in the fall of 1944. You sat next to him and remember that he seemed obsessed with a belief that the Roosevelt administration was under the influence of the Jews, who were prolonging American participation in the war. He believed his radio broadcasts were the only way to help Americans understand the gravity of the situation.

You will admit that you never actually witnessed him making his broadcasts or recordings.

**Dr. Clarence A. Bonner**

You have been the superintendent of the Danvers State Hospital in Massachusetts for 20 years. You are one of the court appointed psychiatrists assigned by the prosecution to conduct an extensive ten-day mental assessment of Chandler at the Marine Hospital, a United States public health hospital located in Boston. You examined Chandler and concluded that he was sane. You acknowledge that Chandler spoke incessantly about his belief that the Jews sought to dominate the world, but do not believe that the defendant's anti-Semitic ideas constitute paranoid delusions. You spoke to Chandler on a number of occasions and found him to be very clear, logical, and aware, despite having many irrational views, especially about his belief that there was a vast Jewish conspiracy to undermine world society. He believed that this Jewish conspiracy had

harmed him personally. At one point you asked Chandler if he was disturbed by voices, and he replied that he possessed a “psychic adjustment” to the world. However, it was your conclusion that this remark about “psychic adjustment” did not represent a significant sign of either hallucinations or that he perceived himself as living in some kind of alternative world.

### Dr. Abraham Myerson

You are a psychiatrist with an independent practice in Boston. You have a PhD from Harvard and many years of experience in the field. You were contracted by the government to make an independent analysis of the defendant’s mental state.

You believe that Douglas Chandler is sane and responsible. You acknowledge that he is a fanatic but maintain that fanaticism and mental illness are not the same. You believe his anti-Semitism had evolved to the point of total obsessiveness. However, his ideas regarding a Jewish conspiracy and its activities were entirely borrowed and similar to the stereotypes that you feel have appeared in the anti-Semitic literature of the nineteenth and twentieth centuries, especially in Germany, where he lived. That he came to believe in all of the hateful labels attached to Jews merely meant that he viewed Judaism as a religion of hate, an idea that he accepted unquestioningly, without regard for the evidence. You believe his personal feelings of persecution were exactly those that would be felt by a man in a desperate situation. You can see no evidence of any hallucinatory delusions in Chandler. You believe that though his views were irrational, his belief they were true does not make him insane. Chandler believed that God somehow influenced him to become an anti-Semite and take up a personal crusade against the Jews. This is not delusional. It is a common belief held by many people that God intervenes directly in personal affairs. Chandler believed that God had a mission for him and every other anti-Semite. This does not, in your opinion, constitute delusion or a manifestation of paranoia. Finally, you believe that Chandler knows the difference between right and wrong. He knows that his actions are regarded as treasonable. However, he also believed that the majority of the American people were deceived about world politics, and that his actions were a justified attempt to keep America out of war. He believed that he was doing an unpopular but necessary duty.

## Defense Witnesses

### Douglas Chandler

(See description under Defendant.)

### Dr. Robert Fleming

You are a psychiatrist hired by the defense to determine whether Douglas Chandler was sane when he made his German wartime recordings and broadcasts transmitted by radio to the United States. In your professional opinion, Mr. Chandler’s mind was so impaired by mental disease in the years from 1941 to 1945 that he was incapable of forming an intent to betray the United States. You heard many of his recordings and they serve to confirm your personal examination of the defendant. Mr. Chandler was not able to distinguish between the concept of right and wrong because his reasoning was distorted and pathological. You concluded that he believed what he was saying was rational and justified, because he had convinced himself that he was saving his country from an international Jewish conspiracy. You concluded that Mr. Chandler’s mind was so pathologically confused that he was incapable of distinguishing right

and wrong in relation to either motive or intent. You further concluded that Mr. Chandler's mind had gone beyond mere irrationality to delusion. He did not know right from wrong, and was clinically insane.

**Dr. Kenneth Tillotson**

You are the psychiatrist-in-chief to McLean Hospital, which is a facility for the treatment and care of nervous and mental diseases, located in Belmont, Massachusetts. Most of your work involves the diagnosis and treatment of patients. You conducted a thorough examination of Douglas Chandler on behalf of the defense to determine his mental condition. In determining mental status, you try to determine whether a patient is confused or disoriented, and whether he knows who he is, where he is, what time it is. This is called "orientation." You try to determine whether patients like Chandler are suffering from any abnormal or false perceptions manifested through their sensory organs—eyes, ear, and nose. When a person has a false perception or hallucination it may be of any one of the special sensory types. This may lead to morbid or false beliefs and delusions. From your tests you determined that Chandler seemed to be suffering from many abnormal and false perceptions and delusions.

You define insanity as a severe form of mental illness, in which a person is incapable of distinguishing reality from fantasy, often displaying irrational and impulsive behavior. You believe that Chandler is insane. You also believe that this was his condition when he worked in Germany making broadcasts to America during the war.

**Dr. Alfred Strecker**

You are a psychiatric physician. During and shortly after the war, you served as a consultant to the U.S. Secretary of War and the Surgeon General of the Army, appointments made by President Roosevelt himself. You were also the president of the American Psychiatric Association for many years prior to the war. As a consultant, you worked with the Inspector General of the War Department, advising and counseling medical authorities on anything pertaining to psychiatry in the armed forces.

You made a mental examination of Mr. Chandler on behalf of the defense and, after some time, formed an opinion of the defendant's mental condition between 1941 and 1945. Your method of examination was to let the patient, in this case Douglas Chandler, do the talking, from time to time asking questions, but not conducting formal tests. It appeared from your examination that Mr. Chandler had systematized delusions of persecution, delusions of a definite psychotic nature involving not only the United States but also a plot by international Jewry to seize control of, and eventually overthrow, all Gentile (that is, non-Jewish) civilization and culture. This plot, as he described it, would eventually result in every Jew having two hundred Gentile slaves. You found that Mr. Chandler believed this not in a figurative sense but in a very literal sense, and that this was evidence of delusional thoughts. You believe that Mr. Chandler was clinically insane and was so during the war when he was making his broadcasts to the United States.

**Dr. Frederick Wyatt**

You are a clinical psychologist. You received your PhD from the University of Vienna in Austria in 1936. In 1938, you came to the United States, where you attended Columbia University in 1939 for post-doctoral work. From 1941 to 1943 you were a research associate at the Harvard Psychological Clinic at Harvard University. From 1943 to the present, you have been on the staff of the Department of Psychiatry of Massachusetts General Hospital in Boston and also McLean



Hospital, which is a mental institution directly associated with Massachusetts General Hospital. Your work in the hospital primarily concerns diagnostic psychology. You diagnose patients who might have psychiatric disorders. You typically administer a battery of psychological tests to determine the mental condition of patients and then recommend treatment. Generally speaking, these tests reveal whether a person has a vague or unstable relationship with reality. The tests can also indicate whether a patient harbors intensely aggressive feelings, which he cannot fully express or abandon. The presence of such feelings also may reveal whether a person lacks a sense of reality—in other words, would they be deemed insane? Sometimes, such thinking allows the person to see the world in a very rosy light but more commonly it leads to a feeling of being surrounded by enemies. You found Mr. Chandler to be a borderline schizoid psychopath, with varying degrees of delusions and a lack of a connection to reality. You determined that he was clinically insane.

**Mr. Richard McCabe**

You are an attorney practicing law in Massachusetts. You knew Douglas Chandler when he was a young man growing up in Maryland. He was your friend, although you will testify that he never engaged in the kinds of activities that boys generally enjoy—sports, for example. When you heard he had been arrested and detained in Massachusetts, you went to visit him on two occasions. You had a lengthy conversation during both meetings. You asked him about his reasons for going to Europe and why he had eventually ended up in Germany during the war. He seemed to only want to discuss what he believed was an international movement of Jewry to undermine world civilization. He told you that the Jews had learned about his study of this phenomena and that they had forced him to go to Germany. He said that he saw a danger in Russia and that his broadcasts in Germany were to save America. He also believed a German victory in Europe would serve as a buffer against the Soviet Union. You eventually became convinced that he was not well, that he was clearly not like the bright young man you had known while growing up, that he was now insane. You will likely have to acknowledge that your conclusions are merely the opinion of a non-professional, not a trained psychiatrist.



# Script: Trial of Douglas Chandler

## Scene One: Introduction and Opening Remarks

**NARRATOR:** The trial of Douglas Chandler for treason against the United States begins on the morning of June 2, 1947, in the federal courthouse in Boston, with Judge Francis Ford presiding.

**CLERK/BAILIFF:** All rise. (*The judge enters and is seated at the bench.*) Be seated.

**JUDGE FRANCIS J. W. FORD:** Gentlemen of the jury, the defendant is charged with treason. According to the Constitution, "treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or in confession in open court." Gentlemen of the jury, it is important that you listen carefully to the testimony of the witnesses and determine the facts of this case. You are not to be influenced by passion, prejudice, public opinion, and sympathy. Remember that the defendant is presumed innocent until he has been found guilty beyond a reasonable doubt. The defendant is not obligated to testify and failure to do so should not play a part in your decision. Also, it is important that when listening to testimony relating to alleged overt acts you must exercise care in deciding whether such acts actually aided and comforted the enemy and assisted Nazi Germany in its conduct of the war against the United States. The prosecution must prove that the defendant knew he was assisting the enemy. (*Looking at the defendant*) The clerk will now please read the charges against the defendant, Douglas Chandler.

**CLERK:** Douglas Chandler, to the charge of treason against the United States, how do you plead?

**DOUGLAS CHANDLER:** Not guilty.

**FORD:** Does the prosecution wish to make any opening remarks?

**EWING:** Yes, Your Honor. The defendant, Douglas Chandler, is charged with treason against the United States, the blackest of crimes. He betrayed our country at a most dangerous time, a time when it was fighting to defeat a monstrous Nazi regime in Germany. This was a regime that had brought nothing but terror and destruction to Europe and much of the rest of the world. The defendant, being a citizen of the United States, and a person owing allegiance to the United States, in violation of said duty of allegiance, did knowingly, intentionally, willfully, unlawfully, feloniously, traitorously, and treasonably adhere to the enemies of the United States, to wit, the German Reich, with which the United States at all times since December 11, 1941, had been at war. He gave aid and comfort to the aforesaid enemies of the United States during this period by working as a radio speaker and commentator in the USA zone of the shortwave station of the German Radio Broadcasting Corporation, a company controlled by the German government. This work included the preparation and composition of commentaries, speeches, talks and announcements, and the recording thereof for subsequent broadcast by radio from Germany to the United States. These broadcasts were made from Berlin, Munich, Vienna, and other German and Austrian cities within the German Reich, between 1941 and 1945.

He intended the aforesaid activities to persuade citizens and residents of the United States to decline to support their government's conduct of said war, and to weaken and destroy

confidence in the administration of the government of the United States. He conspired with the government of the German Reich to unlawfully, feloniously, willfully, knowingly, traitorously, and treasonably to commit overt acts that gave aid and comfort to the enemies of the United States. The defendant's overt acts of treason between 1941 and 1945 consisted of the many recordings that he made for the German shortwave radio station broadcast to the United States. The defendant, Douglas Chandler, committed each and every one of these overt broadcasts with treasonable intent and for the purpose of, and with the intent to, adhere to and give aid and comfort to the government of the German Reich, enemy of the United States, and he committed each and every overt broadcast contrary to his duty of allegiance to the United States. Ah, how he loved Hitler! No matter what the defense may say about the alleged insanity of his opinions and actions, Douglas Chandler is a traitor, and he should be punished to the maximum extent of the law for his willful and deliberate actions.

**NARRATOR:** Chandler sat quietly through Special Assistant U.S. Attorney Oscar R. Ewing's opening remarks. He even grinned when Mr. Ewing shouted, "Ah, how he loved Hitler."

**FORD:** Does the defense wish to make any opening remarks?

**MR. CROSS:** Yes, Your Honor. My client, Douglas Chandler, has been indicted, and is now being tried, before you gentlemen sitting as a jury, for the crime of treason. This is an intricate case and I ask you to keep your minds open until you have heard all the evidence. The defendant has been charged with numerous overt acts of treason that stemmed from broadcast recordings that he made prior to and during the war on German radio. The crime of treason is defined in the Constitution as giving "aid and comfort" to the enemy. With respect to Chandler's alleged overt actions, it will be your job to decide whether he actually gave "aid and comfort" to Germany. Also, there must be specific intent to betray the United States, to be disloyal to the United States. Furthermore, at the time that the acts were done, the person must be responsible. That is, he must be legally responsible and sane in order to be held liable for his actions. The burden of proof on every issue rests with the government and my client's guilt must be proven beyond a reasonable doubt.

We shall also offer evidence that at the time the overt treasonable acts were allegedly committed, Mr. Chandler was not legally responsible because he was not sane. We shall present doctors who have examined Mr. Chandler and have formed an expert opinion as to his mental condition at the time. They will confirm that Mr. Chandler is now, and has been for several years, what is known as a paranoiac and suffering from delusions. A delusion is a morbidly false and fixed belief, which cannot be corrected by reason or judgment. The evidence will show that a paranoiac may have an excellent memory, may be entirely rational on every other subject, may go about his daily business, talk rationally about other things, but when he gets to certain topics—and for Mr. Chandler, it is the Jews—he has a morbidly false and delusional view that cannot be corrected by reason or judgment.

But the more critical question is whether he knew his actions were right or wrong. The evidence will show that when he was making texts and recordings, which he started seven months before the war, on the so-called Jewish question, that he was obsessed with his morbidly false, fixed idea, which has remained with him ever since. Our evidence will be that his mental condition was such that he could not have had an intent to betray the United States. It will show, instead, that he had an irresistible impulse that drove him to say the things against the Jews that he did say.

What the government is really trying to convict this defendant of is actually giving some aid and comfort to the enemy—specifically, that he made broadcasts and recordings, which were broadcast and which reached the United States, and had some effect as psychological warfare. I submit those acts—merely presenting yourself at the microphone and making a recording broadcasted to the United States—never gave aid and comfort to the enemy. They had no effect whatsoever in hampering the war effort of the United States, or in aiding the war effort of the Germans. In this case, we submit there is no evidence of an intent to betray. Nothing he did was secret or hidden. Mr. Chandler spoke openly over the radio. He said his name, said who he was, and expressed his opinions. There is not the slightest evidence that he did not believe everything he said and that he didn't believe that he was doing his patriotic duty in expressing these opinions. He did not deliver arms and ammunition to the Germans. He did not reveal the secret plans of our military. He merely expressed his opinions and convictions. There can be no intent to betray if the motive is honest and sincere.

### Scene Two: Prosecution Witnesses

**FORD:** Prosecution may call their first witness.

**EWING:** Prosecution calls Aldo E. Cesarini.

**CLERK:** Mr. Cesarini, raise your right hand and place your other hand on the Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**ALDO E. CESARINI:** I do.

**EWING:** Please tell the court where you were in May 1945.

**CESARINI:** I was a captain in the U.S. Army, stationed in Phronten-Reid, Bavaria, Germany. I was an intelligence officer.

**EWING:** When did you first meet the defendant, Douglas Chandler?

**CESARINI:** I met him three days after the war ended, on May 11, 1945.

**EWING:** Will you describe the circumstances under which you met Chandler?

**CESARINI:** I was told there was an American living in the German city of Durach that I needed to question. So, I went to the city and found his home. I met him there along with his wife and two young children. I told him that I was with U.S. Army intelligence and that I needed to question him about his wartime activities.

**EWING:** Can you tell the court what questions you asked him and how he responded?

**CESARINI:** I asked him how he found himself in Germany at this time, and he said that back in 1931 he had come to Europe to write for *National Geographic* magazine. However, they had warned him to leave his political views out of his articles. I asked him about his first wife—I think he said her name was Laura—and he told me she was an American, but she had died in a Berlin hospital in 1943 and that he had since remarried.

**EWING:** Go on.

**CESARINI:** He then brought up the question of whether or not I knew that his foreign broadcasts to America had been monitored by the government, and I told him that I was quite sure that they had been carefully reviewed. And then he said there was no point for him to hold back anything and that he was ready and willing to tell me anything I asked.

**EWING:** What did you ask him next?

**CESARINI:** I asked him what his activities had been in Germany besides writing, and he said that he had offered his services free of charge to the German government to speak against the war and for American patriotism for a period from April 1941 to September 1941—making radio broadcasts six times a week. Then he was inactive for five months. He resumed broadcasting from February to July 1942, four times a week. He was then off the air four months as a protest against what he had seen in Germany. I am not sure what he meant by this. He resumed broadcasting from November 1942 to February 1943, and then he was off the air for five months. His last broadcast was in January 1945, in Munich.

**EWING:** Did you ask him about the content of these broadcasts?

**CESARINI:** Yes. He said his initial broadcasts focused on Russia being more of a threat to America than Germany. He believed Nazism was good for Europe. However, he said he now believed he had been deceived.

**EWING:** No further questions.

**FORD:** Does the defense wish to question this witness?

**E. C. PARK:** Yes, Your Honor. Mr. Cesarini, did Mr. Chandler answer every question you asked during your interview?

**CESARINI:** Yes, I believe he answered every question honestly.

**PARK:** Did Mr. Chandler appear sincere with his answers, including his belief that ultimately he had had been wrong about Nazism?

**CESARINI:** Yes, I believe at the time of the interview that he was sincere.

**PARK:** No further questions.

**JUDGE FORD:** Witness may step down. Prosecution may call their next witness.

**EWING:** The prosecution calls Edward Sittler

**CLERK:** Mr. Sittler, please raise your right hand and place your other hand on the Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**EDWARD SITTLER:** I do.

**EWING:** Mr. Sittler, what is your permanent home and how long have you lived there?

**SITTLER:** Wolfrateshausen, Bavaria, Germany. I have lived there since September 1937.

**EWING:** Where were you born?

**SITTLER:** In the town of Delaware, which is actually located in Ohio, in the United States.

**EWING:** What citizenship do you hold?

**SITTLER:** I applied for German citizenship in September 1939 and it was granted six months later, in the spring of 1940.

**EWING:** In general, what were you doing in Germany?

**SITTLER:** From 1937 to 1940, I was a student at various German universities. Even during the war, I continued to study at the University of Berlin. However, after I acquired German citizenship, I was subject to the German military service and was drafted into the German army in 1940. But after

a short while I was given duty as a translator for German radio, where I worked until the end of the war.

**EWING:** When did you first meet the defendant, Douglas Chandler?

**SITTLER:** I met him in the spring of 1941 at German Overseas Radio, where he was making broadcasts into what the German radio referred to as the USA zone.

**EWING:** Please tell the court about your first social meeting with the defendant.

**SITTLER:** I had asked Mr. Chandler and his wife to come to our apartment, in order that both my wife and I might make a closer personal acquaintance with him. Mr. Chandler drove out to my home, which was in eastern Berlin, in a maroon Mercedes car that was flying the American flag. This was rather remarkable in Berlin at that time, although the United States had not entered the war. We had a purely social get-together that eventually led to a friendship.

**EWING:** So, you got to know him quite well.

**SITTLER:** Yes, we worked together and often socialized.

**EWING:** Can you tell the court anything you might know about Mr. Chandler's mental state?

**SITTLER:** I know that he had great difficulty in sleeping and took a number of sleeping pills each night. At work he seemed extraordinarily nervous. He was also very volatile by nature and would often explode over minor inconveniences at work. Oddly, I remember him saying on one occasion that his experience had led him to discount the extent to which any man was or could be governed by his own reason. He took a very anti-rational view of life.

**EWING:** Did you have discussions with Mr. Chandler about his political and racial ideas?

**SITTLER:** Mr. Chandler and I often talked over the substance of his commentaries or the things which he had read, both from American and British sources, as well as political trends, issues, and ideas. I felt I was very well acquainted with this line of thought, his convictions. He often said to me that he felt that it was his mission to proclaim truths were not that being properly aired in America.

**EWING:** Did he ever discuss his loyalty to the United States?

**SITTLER:** On many occasions he told me that he was an American and could not conceive of himself being anything else. Also, he believed that his whole work and mission in Germany was caused by, and bound up with, his being an American.

**EWING:** That is all. No further questions.

**FORD:** Does the defense wish to question the witness?

**CLAUDE B. CROSS:** Yes, Your Honor. Mr. Sittler, in your observations of Mr. Chandler, did you find him to have a good memory?

**SITTLER:** He had an excellent memory, but it could be erratic. Sometimes he seemed to have almost a photographic knowledge of details and then, at other times, I noticed his mind was, shall I say, in a fog. He could not recall simple details.

**CROSS:** Mr. Sittler, did you ever have any conversations with Mr. Chandler in which he mentioned the fact that he had been indicted in the United States for treason?



**SITTLER:** I only believe that he mentioned to me a few times in passing that there had been such an indictment in which he had been included. He did not seem too concerned about it.

**CROSS:** No further questions.

**FORD:** Witness may step down. Prosecution may call their next witness.

**EWING:** The prosecution calls Gerhardt Wagner.

**CLERK:** Mr. Wagner, please raise your right hand and place your other hand on the Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**GERHARDT WAGNER:** I do.

**EWING:** Mr. Wagner, are you a German citizen and were you ever a member of the Nazi Party?

**WAGNER:** I am a German citizen, but I was never a member of the National Socialist Party.

**EWING:** Did you ever reside in the United States, and how is it that you are now a German citizen?

**WAGNER:** I lived in the United States from January 1924 to July 1940. I came to the States to represent my father's business interests. I was the president of the firm Ravenna Mosaics, Inc. We did stained glass work, for example, the *Christian Science Monitor* building in Boston. I became a naturalized citizen of the United States in 1936. However, when I returned to Germany I was considered stateless and I applied again for German citizenship in the winter of 1940–1941, and became a citizen again on May 8, 1941.

**EWING:** Were you ever employed by the German Radio Broadcasting Company and, if so, what was your job?

**WAGNER:** I started work for the German Radio Corporation on August 15, 1940. I was a news editor for the USA zone in Berlin till the end of the war.

**EWING:** Who was the head of the USA zone?

**WAGNER:** Mr. Carl Schotte.

**EWING:** Do you know the defendant, Mr. Douglas Chandler?

**WAGNER:** Yes, I met him when I started work at the radio station.

**EWING:** Do you ever recall a conversation with Mr. Chandler at which he discussed converting his U.S. dollars into German marks?

**WAGNER:** Yes, he told me that he was planning to convert his American money into German marks because he felt that Germany was going to win the war and the dollar might end up being worthless.

**EWING:** Did you at any time have any conversations with Mr. Chandler in which the subject of treason charges was discussed?

**WAGNER:** Yes, I remember one particular occasion during a meeting in Mr. Schotte's office that Chandler mentioned a possible treason indictment, but he felt that he didn't have to worry because he wasn't really working against the United States, but only for Germany. I remember him saying that a German victory in Europe was very important because, without it, Central Europe would be destroyed. It would be opened up to the Bolsheviks, the Soviets. Whereas a German victory would not hurt America, but an American victory would very definitely destroy Central Europe.



**EWING:** Did you ever edit or censor any of Mr. Chandler's broadcasts?

**WAGNER:** Yes, I made sure that his commentaries would not run counter to the official German propaganda line. We pointed out to Mr. Chandler and other broadcasters that it was important that they do not deviate from the official line because their commentaries were being used as a weapon of psychological warfare.

**EWING:** So, you are saying that German propaganda, like Mr. Chandler's broadcasts, were specifically designed to create disunity among the Allies—England, America, and Russia—and also to create discord within individual countries, like the United States.

**WAGNER:** Yes, that was the purpose.

**EWING:** Was Mr. Chandler given any direction by Mr. Schotte and other German authorities regarding what he should specifically say?

**WAGNER:** He was generally instructed to applaud Nazi doctrine, attack Bolshevism and the Jews, and point out that Germany was going to win the war. Oh, and yes, in the beginning, it was important for America to stay out of the war.

**EWING:** No further questions.

**FORD:** Does the defense wish to question this witness?

**CROSS:** Yes, Your Honor. Mr. Wagner, isn't it true that Mr. Chandler repeatedly told you that he considered what he was doing to be the patriotic actions of someone who opposed American entry and eventual participation in the war?

**WAGNER:** Yes.

**CROSS:** No further questions.

**FORD:** Witness may step down. Prosecution may call their next witness.

**EWING:** The prosecution calls Karl Linnard Schotte.

**CLERK:** Mr. Schotte, please raise your right hand and place your other hand on the Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**KARL LINNARD SCHOTTE:** I do.

**EWING:** Mr. Schotte, are you a German citizen?

**SCHOTTE:** Yes.

**EWING:** Can you describe your employment prior to and during the war?

**SCHOTTE:** I lived and worked in the United States off and on until 1934. I worked for the Fahnstook Electric Company in New York as a purchasing agent. I returned to Germany in 1934 and was employed by the German Radio Broadcasting Company. I stayed at that job until the end of the war.

**EWING:** What was your position?

**SCHOTTE:** I was the head of the USA broadcasting division in Berlin until August 19, 1943, when I was arrested and put in a concentration camp, where I remained until the end of 1943.

**EWING:** What were you accused of doing?

**SCHOTTE:** I was accused of letting remarks pass my censorship, in a commentary for the United States, which were counter to the directives of the Ministry of Propaganda. Churchill and President Roosevelt were in a conference in Ottawa, Canada, and American newspapers came out with headlines about an alleged German appeal for peace. I allowed a remark made by one of the commentators on this subject to remain in a broadcast, which violated the propaganda ministry's directive not to give the enemy a possible argument that the German government was making any kind of a peace move.

**EWING:** When you were released from the concentration camp did you return to your job at the German Broadcasting Corporation?

**SCHOTTE:** Yes.

**EWING:** Did you attend meetings at the German Broadcasting Company at which the defendant was present?

**SCHOTTE:** Yes.

**EWING:** What was the nature of these meetings?

**SCHOTTE:** They primarily involved discussions and instructions about the uses that were to be made of propaganda to the United States.

**EWING:** Can you describe what was said regarding the uses of propaganda to the United States?

**SCHOTTE:** There were instructions about the uses of anti-Semitic and anti-Bolshevism themes. There were directives calling for arguments that would cause defeatism among the enemies of Germany: showing the strength of the German Army; showing that the American GI did not know what he was fighting for; pointing out the tremendous losses that setting up a second front would cause among Allied soldiers; pointing out the great danger of Bolshevism to the world's economic system; pointing out the great influence that Jews hold over world propaganda through their strong hold over the press, radio, and film.

**EWING:** Did you ever see the defendant, Mr. Chandler, make recordings that discussed these themes?

**SCHOTTE:** Yes, on many occasions.

**EWING:** No further questions.

**FORD:** Does the defense wish to question this witness?

**CROSS:** Yes, Your Honor. Mr. Schotte, was it your belief at the time that you worked with Mr. Chandler that he thought of himself as an American doing his patriotic duty?

**SCHOTTE:** Yes.

**CROSS:** No further questions.

**JUDGE FORD:** Prosecution may call their next witness.

**EWING:** Prosecution calls Leo A. Ribitski.

**CLERK:** Mr. Ribitski, raise your right hand and place your other hand on the Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**LEO A. RIBITSKI:** I do.

**EWING:** Are you a German citizen?

**RIBITSKI:** Yes.

**EWING:** Please state for the court your employment in Germany during the war and what your duties were.

**RIBITSKI:** I was employed by the German Radio Corporation from June 1938 until the end of the war. I was the program coordinator and, beginning in January of 1943, I was commissioned with the management of the American zone of operations. I oversaw all the broadcasts that were directed to the United States.

**EWING:** Did you know the defendant, Douglas Chandler?

**RIBITSKI:** Yes, I knew him. I met him quite often, either in the office dedicated to the North American zone or in other offices in the station.

**EWING:** Mr. Ribitski, can you tell the court if the defendant was ever wearing any kind of badges or pins in the lapel of his jacket when he was at work?

**RIBITSKI:** Yes, he typically wore a small swastika and a pin that had a combination of flags representing all of the Axis countries.

**EWING:** Did you ever see the defendant Chandler make any recordings, actually speaking into the microphone?

**RIBITSKI:** Yes, I always tried to observe and listen to all the commentators like Mr. Chandler when they made their recordings for transmission. On many occasions, I saw him sitting before a microphone, speaking into the microphone, reading a talk from a manuscript that was intended for later transmission.

**EWING:** How many recordings for transmission did the defendant make per week?

**RIBITSKI:** Typically, twice a week.

**EWING:** Would it be correct to say that you actually heard the defendant's voice on these recordings, and could you identify it?

**RIBITSKI:** Yes, I heard his voice and can identify it. He always introduced his talks using the pseudonym "Paul Revere." He would start by saying that "your riding messenger Paul Revere is now on the air," followed by the piped tune of Yankee Doodle Dandy and the sound of a horse tromping.

**EWING:** (*Turning to the judge*) Your Honor, I would like to play a recording so the witness can identify the voice on the recording.

**FORD:** Proceed, Mr. Ewing.

**NARRATOR:** Ewing plays a recording made by Douglas Chandler (*see Documentary Evidence*).

**EWING:** Mr. Ribitski, can you identify the voice on this recording?

**RIBITSKI:** Yes, it is Douglas Chandler.

**EWING:** Mr. Ribitski, were all the recordings, like the one that I just played, transmitted to the United States?

**RIBITSKI:** All the recordings were intended for broadcast, however there may have been some occasions when some were not—perhaps technical difficulties—but I would say that most, if not all, of Douglas Chandler’s recordings were broadcasted.

**EWING:** No further questions.

**FORD:** Does the defense wish to question this witness?

**CROSS:** Yes, Your Honor. Isn’t it true, Mr. Ribitski, that Mr. Chandler told you on several occasions that he was making his recordings and delivering his broadcasts because he wanted to enlighten Americans about how much their government was deceiving them?

**RIBITSKI:** Yes.

**CROSS:** No further questions.

**FORD:** Prosecution may call their next witness.

**EWING:** The prosecution calls Dr. Anton Winkelnkemper.

**CLERK:** Dr. Winkelnkemper, raise your right hand and place your other hand on the Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**DR. ANTON WINKELNKEMPER:** I do.

**EWING:** Dr. Winkelnkemper, can you describe your background for the court?

**WINKELNKEMPER:** I was educated in Germany and other countries in Europe. I have a Doctor of Law degree from the University of Bonn.

**EWING:** What position did you hold in Germany during the war?

**WINKELNKEMPER:** I was elected a member of the German parliament, the Reichstag, from the district of Cologne in 1933, and was a member until the end of the war.

**EWING:** Were you also a member of the Nazi Party?

**WINKELNKEMPER:** Yes.

**EWING:** Can you describe for the court the nature of the German government prior to and during the war?

**WINKELNKEMPER:** The German government after Hitler was appointed chancellor on March 25, 1933, consisted of members of the Nazi Party, as well as members of the German National Party. Then a law was passed by the German Reichstag that gave Hitler the right or the power to enact laws of his own. The government consisted of twelve ministers, who were the heads of the different ministries. For example, there was the foreign ministry that was headed by Joachim von Ribbentrop and the Ministry of Public Enlightenment and Propaganda, which was headed by Dr. Josef Goebbels.

**EWING:** What if any connection did you have with the German Radio Corporation?

**WINKELNKEMPER:** After 1941, in addition to my duties in the Reichstag, I was appointed as managing director. This corporation was under the direct jurisdiction of the Ministry of Public Enlightenment and Propaganda. I was in charge of overseeing all foreign broadcasts.

**EWING:** Were there separate zones of operation for German radio broadcasts?

**WINKELNKEMPER:** Yes, there were zones assigned to Asia, the Soviet Union and the United States.

**EWING:** Can you comment on the types of broadcasts that were made to the United States?

**WINKELNKEMPER:** The German foreign broadcasts made extensive use of psychological warfare to support the German war effort by creating disunity in other peoples. They did this by undermining the morale of the American people, by playing up their divisions into different social and racial groups and different political parties. We directed particular focus on the theme of international Jewry supporting Bolshevism, as well as the power that Jews had in all countries over radio and film, which the Jews used to influence public opinion. We liked to point out that the so-called brain trust of advisors surrounding President Roosevelt was composed of Jews who were misleading the American public

**EWING:** Dr. Winkelnkemper, did you know the defendant, Douglas Chandler?

**WINKELNKEMPER:** Yes, he was one of our most effective broadcasters into the American zone. We paid him very well for his services, I might add.

**EWING:** No further questions.

**FORD:** Does the defense wish to question this witness?

**CROSS:** Yes, Your Honor. Dr. Winkelnkemper, did you ever personally witness Mr. Chandler making a radio broadcast?

**WINKELNKEMPER:** No.

**CROSS:** No further questions.

**JUDGE FORD:** Prosecution may call their first witness.

**EWING:** Prosecution calls George Otto Edward von Lilienfeld.

**CLERK:** Mr. Lilienfeld, raise your right hand and place your other hand on the Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**GEORGE OTTO EDWARD VON LILIENFELD:** I do.

**EWING:** Mr. Lilienfeld, are you a German citizen?

**LILIENFELD:** Yes.

**EWING:** In 1941, where were you employed and what position did you hold?

**LILIENFELD:** I was employed by the German foreign office in Berlin. I was the head of the United States department of the radio political division of the foreign office.

**EWING:** Do you know the defendant, Douglas Chandler, and if so, when did you first meet him?

**LILIENFELD:** I do know him. I first met him around the end of January 1941, in Florence, Italy. The German Embassy in Rome had contacted me and mentioned his name as someone who was interested in moving to Germany to make radio broadcasts to America.

**EWING:** Can you tell the court what transpired in your first meeting with Mr. Chandler?

**LILIENFELD:** Mr. Chandler expressed a deep desire to come to Germany, but he told me that he needed an entry visa. He explained his desire to take advantage of the technical facilities of German radio to broadcast his opinions to America. His reasons, as far as I remember, were that he was convinced that the United States was being driven into the war by President Roosevelt's Jewish advisors. He expressed his fear of Jewish and Bolshevik influence gaining more and

more control of Europe, and he stated his belief that he thought Germany was one of the main bulwarks against communism and Jewish influence in the world. He also said that he was an American who had lived many years in Europe and that he considered it his duty to his fellow countrymen to enlighten them on these subjects.

**EWING:** Did you manage to get the proper documents for Mr. Chandler to come to Berlin?

**LILIENFELD:** Yes, he received a passport from the German consul in Florence to come to Berlin. When he arrived, arrangements were made for him to immediately use the facilities of German radio, so that he could broadcast to the United States. The content of his broadcasts was subject, naturally, to military censorship. Oh, and I should mention that Mr. Chandler did not seem too concerned about payment for his work, although I believe he received a very generous salary.

**EWING:** Do you recall the next time you saw Mr. Chandler, and what transpired?

**LILIENFELD:** Yes, I met him at the radio station in Berlin shortly after the Japanese attack on Pearl Harbor. Mr. Chandler told me that despite America's entry into the war he planned to stay in Berlin and to continue his broadcasts, because he believed his country was entering the war on the wrong side and that he considered it his duty to enlighten Americans as to the wrong course the United States government was taking. He said that he was aware that he might possibly be putting himself in a dangerous situation, but he believed most Americans would appreciate his efforts.

**EWING:** When did you next see Mr. Chandler and what transpired?

**LILIENFELD:** I met him at a luncheon given at the Adlon Hotel in Berlin in the fall of 1944. I sat next to him and I remember that he seemed obsessed with a belief that the Roosevelt administration was under the influence of the Jews, who were prolonging American participation in the war. He believed his radio broadcasts were the only way to help Americans understand the gravity of the situation.

**EWING:** Was this your last encounter with the defendant?

**LILIENFELD:** Yes, I never saw him again.

**EWING:** No further questions.

**JUDGE FORD:** Does the defense wish to question this witness?

**CROSS:** Yes, Your Honor.

**LILIENFELD:** Mr. Lilienfeld, isn't it true that you never actually witnessed Mr. Chandler making recordings or broadcasting from Berlin or any other German city?

**LILIENFELD:** Yes.

**JUDGE FORD:** Prosecution may call their next witness.

**EWING:** Prosecution calls Dr. Abraham Myerson.

**CLERK:** Dr. Myerson, raise your right hand and place your other hand on the Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**DR. ABRAHAM MYERSON:** I do.

**EWING:** Can you please tell the court your background and how you came to examine the defendant?



**MYERSON:** I am a psychiatrist with an independent practice in Boston. I have a PhD from Harvard and many years of experience in the field. I was contracted by the government to make an independent analysis of the defendant's mental state.

**EWING:** How often did you examine the defendant, and what conclusions did you draw from your observations?

**MYERSON:** I spoke to him on several occasions. I found him to have outlandish ideas—to be a fanatic—but fanaticism and mental illness are not the same. For example, his anti-Semitism has evolved to the point of total obsessiveness. But his ideas regarding a Jewish conspiracy and Jewish activities are entirely borrowed and are similar to the stereotypes that have appeared in the anti-Semitic literature from the nineteenth and twentieth centuries, especially in Germany, where he lived. That he came to believe all the hateful labels attached to Jews merely means, in my opinion, that he viewed Judaism as a religion of hate, an idea that he accepted unquestioningly and without regard to evidence.

**EWING:** Go on.

**MYERSON:** I believe his personal feelings of persecution are those that might be felt by a man who perceives himself in a desperate situation. I could see no evidence of any hallucinatory thoughts, or anything that can be called fundamentally delusional. I believe his beliefs are false, but they are unquestionably within the social culture and can easily be removed from it so that they do not make him insane. Specifically, Chandler believed that God somehow influenced him to become an anti-Semite and to take up a personal crusade against the Jews. This is not delusional. It is a common belief held by many people that God intervenes directly in personal affairs. He believed that God had a mission for him and every other anti-Semite. This does not, in my opinion, constitute delusion or a manifestation of paranoia.

**EWING:** Do you believe that the defendant knew right from wrong?

**MYERSON:** Yes, I believe he knows the difference between right and wrong. He knows that his actions during the war would be regarded as treasonable. However, he believed that the majority of American people were deceived about world politics, and that his actions were a justified attempt to keep America out of war. He believed that he was doing an unpopular, but necessary, duty.

**EWING:** So, it is your conclusion that the defendant was sane?

**MYERSON:** Yes, he is sane and responsible.

**EWING:** No further questions.

**FORD:** Does the defense have any questions for this witness?

**CROSS:** Yes, Your Honor. Dr. Myerson, isn't it true that your evaluation of the defendant's mental state has been made entirely while he has been in detention, pending his trial here in the United States?

**MYERSON:** Yes.

**CROSS:** And isn't it possible your observations could be impacted by the stress of that detention?

**MYERSON:** I don't believe so.

**CROSS:** No further questions.

**EWING:** The prosecution calls Dr. Clarence Bonner.

**CLERK:** Mr. Bonner, please raise your right hand and place your other hand on the Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**DR. CLARENCE BONNER:** I do.

**EWING:** Please tell the court your occupation?

**BONNER:** I am a psychiatrist. In 1927, I was appointed superintendent of the Danvers State Hospital where I am currently employed.

**EWING:** Did you conduct an examination of the defendant, Mr. Chandler?

**BONNER:** Yes. I spoke to him on a number of occasions and found him to be very clear, logical, and aware but irrational in a lot of his views.

**EWING:** Did he ever bring up what he referred to as the Jewish question?

**BONNER:** Yes. He said that there was a conspiracy by world Jews to undermine Western society, including the United States.

**EWING:** Did you ask him to explain the mode and action of this so-called conspiracy?

**BONNER:** No, I just noted it as being consistent with his anti-rational view of the world.

**EWING:** Did you think that he blamed the Jews for a lot of things that you believed they were not responsible for or could not have caused?

**BONNER:** He indicated a rabid attitude toward the Jews and believed they were specifically out to get him.

**EWING:** So, Dr. Bonner, what would be your conclusion regarding Mr. Chandler's mental state now and during the war?

**BONNER:** He was sane then and is so now.

**EWING:** No further questions.

**FORD:** Does the defense wish to question this witness?

**CROSS:** Yes, Your Honor. Did you ever discuss the matter of hallucinations with Mr. Chandler?

**BONNER:** Yes, at one point I asked him if he was disturbed by voices and he replied that he possessed a psychic adjustment to his world, which I interpreted as meaning a mind adjustment to his world—whatever that world was—I was not sure.

**CROSS:** So, isn't it true that based on your observations you concluded that Chandler was living in some kind of alternative world?

**BONNER:** Well . . . not quite. He just had reached some conclusions that were undoubtedly extremely unreasonable.

**CROSS:** No further questions.

**FORD:** Witness may step down. Prosecution may call their next witness.

**EWING:** The prosecution rests pending closing remarks.

**Scene Three: Defense Witnesses**

**FORD:** Defense may call their first witness.

**PARK:** Defense calls Dr. Kenneth Tillotson.

**CLERK:** Dr. Tillotson, please raise your right hand and place your other hand on the Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**DR. KENNETH TILLOTSON:** I do.

**PARK:** Dr. Tillotson, what is your occupation and where do you work?

**TILLOTSON:** I am psychiatrist-in-chief at McLean Hospital, which is a hospital for the treatment and care of nervous and mental diseases, located in Belmont, Massachusetts. I am also instructor in psychiatry at Harvard College and a consultant at Massachusetts General Hospital.

**PARK:** How would you describe your work?

**TILLOTSON:** Most of my work is diagnosis and treatment of patients. Also, I do participate in research and teaching medical students.

**PARK:** Did you conduct an examination of the defendant?

**TILLOTSON:** Yes.

**PARK:** Can you tell the court about the criteria you use in making a diagnosis?

**TILLOTSON:** In determining mental status, we try to determine whether the patient is confused or disoriented, that is, whether he knows who he is, where he is, what time it is.

We call that "orientation." You would be surprised how many patients don't know who or where they are. We try to determine whether they are suffering from any abnormal or false perceptions. As you know, our perceptions come to us through our sensory organs, that is, through the eyes, ears, smelling, tasting and so forth. When a person has a false perception or hallucination it may be of any one of the special sensory types. This may lead to morbid or false beliefs and delusions.

**PARK:** Dr. Tillotson, after your examination of the defendant, did you find that he was suffering from any or all of what you just described?

**TILLOTSON:** Yes, he seemed to be suffering from many abnormal and false perceptions and delusions.

**PARK:** Dr. Tillotson, how would you define insanity?

**TILLOTSON:** Insanity is a severe form of mental illness, in which a person is incapable of distinguishing reality from fantasy. They also typically display irrational and impulsive behavior.

**PARK:** Would it be your determination that the defendant was clinically insane?

**TILLOTSON:** Yes.

**PARK:** No further questions.

**FORD:** Does the prosecution wish to question this witness?

**EWING:** Yes, Your Honor. Isn't it true that these tests may only reveal a person's state of mind now, and that they may do little or nothing to verify what that person's mind might have been two or three—or five—years ago?

**TILLOTSON:** It is my opinion that my tests and observations suggest Mr. Chandler was deeply delusional during the war. I stand by my analysis.

**EWING:** No further questions.

**FORD:** Defense may call their next witness.

**CROSS:** Defense calls Dr. Robert Fleming

**CLERK:** Dr. Fleming, please raise your right hand and place your other hand on the Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**DR. ROBERT FLEMING:** I do.

**CROSS:** Dr. Fleming, what is your profession?

**FLEMING:** I am a psychiatrist.

**CROSS:** In your professional opinion, was the defendant Mr. Chandler's mind so impaired by mental disease in the years 1941 to 1945 that he was incapable of forming an intent to betray the United States?

**FLEMING:** Yes.

**CROSS:** In your professional opinion, was he capable of realizing whether his participation in broadcasts by German radio to the United States was right or wrong?

**FLEMING:** He was not capable, in my opinion, of forming a judgment between right and wrong in this category.

**CROSS:** Have you heard any of the defendant's wartime recordings?

**FLEMING:** Yes, I have heard and read transcripts of eleven of his broadcasts.

**CROSS:** What effect did hearing these recordings and reading the transcripts have on your opinion as to Mr. Chandler's mental condition in the years 1941 to 1945?

**FLEMING:** They served to confirm my personal examination of the defendant. Mr. Chandler was not able to distinguish between the concept of right and wrong because his reasoning was so distorted and so pathological that his will, as expressed in his behavior and his capacity of forming a judgment, was annihilated by the pathological state of his mind.

**CROSS:** Did he have the mental capacity to know when an act of his would assist the countries at war against the United States?

**FLEMING:** He might know it, but he would not be able to know whether it was right or wrong. In fact, he would believe it was right because he would believe he was saving this country from what he often said during my personal evaluations of him—that there was an international Jewish conspiracy.

**CROSS:** What part of this thinking can be considered a motive?

**FLEMING:** Motive flows from thinking and his thinking was pathological. It was deeply delusional.

**CROSS:** So, is motive the same thing as intent?

**FLEMING:** You are asking a complicated question. Motive is the thing that determines a person's behavior in a given direction. Intent, I should say, is their desire to behave in a certain way. Again, it would be my professional opinion that Mr. Chandler's mind was so pathologically confused that he was incapable of distinguishing right and wrong in relation to either motive or intent.

**CROSS:** No further questions.

**FORD:** Does the prosecution wish to question this witness?

**EWING:** Yes, Your Honor. Isn't it true, Dr. Fleming, that the defendant's extreme views could just be the reflections of an irrational mind, not a delusional and insane mind?

**FLEMING:** In my professional opinion, Mr. Chandler's mind had gone beyond mere irrationality, to delusion. He did not fundamentally know right from wrong.

**FORD:** Defense may call their next witness.

**CROSS:** Defense calls Dr. Alfred Strecker.

**CLERK:** Dr. Strecker, please raise your right hand and place your other hand on the Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**DR. ALFRED STRECKER:** I do.

**CROSS:** Dr. Strecker, what is your occupation and where do you work?

**STRECKER:** I am a psychiatric physician. During and shortly after the war, I served as a consultant to the U.S. Secretary of War and the Surgeon General of the Army, an appointment made by President Roosevelt himself. I was also the president of the American Psychiatric Association for many years prior to the war.

**CROSS:** What were your duties as such a consultant?

**STRECKER:** There were many duties, both in the United States and overseas, working with the Inspector General, advising and counseling medical authorities, anything pertaining to psychiatry in the armed forces. When I was overseas, I was accompanied by the Surgeon General of the Army.

**CROSS:** Did you have an occasion to examine the defendant?

**STRECKER:** Yes, Dr. Tillotson suggested that I examine Mr. Chandler.

**CROSS:** Please describe your examination of the defendant.

**STRECKER:** I made a mental examination of Mr. Chandler, and, after some time, I formed an opinion of his mental condition between 1941 and 1945.

**CROSS:** Can you describe the way you conducted your examination?

**STRECKER:** I met with him on June 7 and I proceeded with what I believe is the best way of determining a patient's mental condition. I let the patient, in this case Mr. Chandler, do the talking, from time to time asking questions but not making a formalized examination, which, in my opinion, is a very unsatisfactory way of assessing a patient's mental state.

**CROSS:** What conclusions did you draw from your examination of Mr. Chandler?

**STRECKER:** It appeared from my examination that Mr. Chandler had systematized delusions of persecution, delusions of a definite psychotic nature. These involved not just the United States but claims that international Jewry was plotting to seize control and eventually overthrow all Gentile civilization and culture. This plot, as he described it, would eventually result in every Jew having two hundred Gentile slaves as their personal laborers. I found that Mr. Chandler believed this, not in a figurative sense but in a very literal sense, and that it was delusional in his thoughts.

**CROSS:** So, Dr. Strecker, do you believe that the defendant, Mr. Chandler, was clinically insane?

**STRECKER:** I do.

**CROSS:** No further questions.

**FORD:** Does the prosecution wish to question this witness?

**EWING:** Yes, Your Honor. Isn't it possible for a person to hold extreme views and still realize that holding these views and broadcasting them to an enemy of his country would be a betrayal, that it would be treasonous?

**STRECKER:** It is my opinion that Mr. Chandler was deeply delusional during the war and was fundamentally unaware that his views were harmful to our country.

**EWING:** No further questions.

**FORD:** Defense may call their next witness.

**PARK:** Defense calls Dr. Frederick Wyatt.

**CLERK:** Dr. Wyatt, please raise your right hand and place your other hand on the Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**DR. FREDERICK WYATT:** I do.

**CROSS:** Dr. Wyatt, please tell the court your occupation, where you work and your background.

**WYATT:** I am a clinical psychologist. I received my PhD from the University of Vienna, in Austria, in 1936. In 1938, I came to the United States where I attended Columbia University in 1939 for post-doctoral work. From 1941 to 1943, I was a research associate at the psychological clinic at Harvard University. From 1943 until now I have been on the staff of the Department of Psychiatry of the Massachusetts General Hospital in Boston, and also at McLean Hospital, which is a mental institution directly associated with Massachusetts General Hospital.

**CROSS:** What is the nature of the work you do at McLean?

**WYATT:** It is mainly diagnostic psychological work. We diagnosis patients who might have psychiatric disorders. We administer a battery of psychological tests to determine the mental condition of patients and then recommend treatment.

**CROSS:** Can you describe what these tests might reveal?

**WYATT:** Generally speaking, they reveal whether a person has a vague or unstable relationship with reality. The tests can also indicate whether a patient harbors intensely aggressive feelings that he cannot fully express or abandon.

**CROSS:** How might persons who are suffering from what you describe as a lack of a connection to reality express themselves?



**WYATT:** One way is to see the world in a very rosy light. But more commonly, there is a feeling that they are surrounded by enemies.

**CROSS:** When you examined Mr. Chandler and gave him these tests that you have described, what did you conclude?

**WYATT:** I found Mr. Chandler to be a borderline schizoid psychopath with varying degrees of delusions.

**CROSS:** Would it be your conclusion that Mr. Chandler was clinically insane?

**WYATT:** Yes.

**CROSS:** No further questions.

**FORD:** Does the prosecution wish to question this witness?

**EWING:** Yes, Your Honor. Dr. Wyatt, isn't it true that you are a psychologist, not a psychiatrist?

**WYATT:** Yes.

**EWING:** And isn't it true that terms like "schizoid" and "psychopath" are not generally associated with psychology, but rather psychiatry?

**WYATT:** Yes, however as a result of my tests, as I said, I found his personality reflective of those traits.

**EWING:** As a result of your tests, did you observe any impairment of Mr. Chandler's intellectual capacities—his memory, reasoning?

**WYATT:** No.

**EWING:** No further questions.

**FORD:** Defense may call their next witness.

**CROSS:** Defense calls Richard McCabe.

**CLERK:** Mr. McCabe, please raise your right hand and place your other hand on the Bible. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

**RICHARD McCABE:** I do.

**CROSS:** What is your profession?

**McCABE:** I am a lawyer, a member of the bar in Massachusetts.

**CROSS:** Do you know the defendant, Douglas Chandler?

**McCABE:** Yes, I grew up with him in Baltimore. We were very good friends. We went to different schools but remained close throughout our younger years.

**CROSS:** Was Mr. Chandler an outgoing boy? Did he play games or sports, for example?

**McCABE:** I never knew him to engage in sports, even so much as playing catch. He never played any games with us.

**CROSS:** Did you see Mr. Chandler in your capacity as an attorney when he was taken to Massachusetts after his arrest in Germany?

**McCABE:** Yes, I saw him on January 15 of this year and again a few days later. I saw him twice.

**CROSS:** Will you please tell the court what you observed and concluded from these two meetings?

**McCABE:** We had a lengthy conversation during both meetings. I asked him about his reasons for going to Europe and why he had eventually ended up in Germany during the war. He seemed to only want to discuss what he believed was an international movement of Jewry to undermine world civilization. He told me that the Jews had learned about his study of this phenomenon and that they had forced him to go to Germany. He said that he saw a danger in Russia and that his broadcasts in Germany were to save America, and that he believed a German victory in Europe would serve as a buffer against the Soviet Union. I eventually became convinced that he was not well, that he was insane.

**CROSS:** No further questions.

**FORD:** Does the prosecution wish to question this witness?

**EWING:** Yes, Your Honor. Mr. McCabe, you are not either a psychiatrist or psychologist, but rather an attorney. Isn't that correct?

**McCABE:** Yes.

**EWING:** Therefore, Mr. McCabe, you are only testifying to your conclusions about a former friend's sanity as a lay person, who only recently spoke to him on two occasions, correct?

**McCABE:** Yes, I guess that is true.

**CROSS:** *(Rising.)* Your Honor, the defense would like to point out that in federal cases, in contrast to Massachusetts court cases, the opinion of a nonprofessional person regarding sanity can be offered for consideration by the jury.

**FORD:** You are correct, Mr. Cross. The jury may consider the testimony of the witness. Does the defense wish to call another witness?

**CROSS:** The defense rests pending closing remarks.

#### Scene Four: Closing Arguments, Jury Deliberation, and Verdict

**NARRATOR:** The courtroom is packed with spectators and newspaper reporters as Judge Ford enters.

**CLERK:** All rise *(The judge enters and is seated at the bench.)* Be seated.

**FORD:** Does the prosecution wish to make any closing remarks?

**EWING:** *(Rising and standing before the jury.)* Yes, Your Honor. May it please the court, Your Honor, Mr. Foreman, and gentlemen of the jury—we have come to the end of a long trial, and I thank you very much for your careful consideration of the evidence. We have before us a defendant, Douglas Chandler, who has been called to account for the worse crime in the whole catalogue of crimes that an American can commit—treason. The prosecution does not deny that Mr. Chandler had a perfect right under our Constitution to say the many things that he did. He had a perfect right to say he was opposed to American participation in the war. He had a perfect right to say what he was displeased with the Jews. But he did not have the right to say those things over our enemy's radio broadcast system, and to make himself part of their psychological warfare against the United States. And that is the crime with which Mr. Chandler is being tried—not because he said these things but because he said them for the very purpose of trying to defeat his own country when it was engaged in a death struggle with an utterly ruthless enemy.

The defense will admit, I am sure, that the recordings that Mr. Chandler made during the war were horrifying. However, they will defend his right to say them. The defense may tell you that Mr. Chandler may have expatriated himself because of his long stay in Europe that led to his living in Germany during the war. But this is false. Mr. Chandler was an American citizen, not a German citizen, and what he did for Germany was flagrant treason. He hired himself out to the enemy. He made recordings for broadcast to the United States. He took up employment with them. He took their money. He did what they told him to do. He followed their propaganda lines, and he wanted very much for them to win the war. His actions were treason, damnable treason, from beginning to end!

The defense has not produced a shred of evidence to contradict Mr. Chandler's treasonous activities. The only defense that they have been able to mount is a trumped up claim of insanity. Now, I am sure that there isn't anyone in this courtroom that wants to punish an insane man. But I am sure that we are also all interested in not letting a traitor get off by means of a faked claim of insanity! The defense presented four so-called mental health experts, who testified to Mr. Chandler's alleged insanity. But I say Chandler fooled them all. He faked whatever symptoms they believe they detected to escape his conviction for treason. They all said that his delusions and paranoia dominated his personality, especially regarding the Jews. It was only after he got here in Boston that the question of insanity appeared. Remember, no matter what the doctors say, you are the judges of the facts, and the defendant's actions speak louder than words. I want to make this perfectly clear: that in determining the question of sanity, it does not make any difference if Chandler might have been insane, or whether he did or did not have paranoia. The legal test is whether he had a mental disease that so affected his mind that he did not know right from wrong. Was his mind so diseased that he did not know the nature of the act that he was committing? Chandler knew the nature and the quality of the acts he was committing, and that he had the mental capacity to betray his country. The things that came out of his mouth prove it beyond a shadow of doubt. And traitors cannot escape the consequences of what they do by any slippery claims of insanity.

All this stuff about Chandler doing this for the good of the country as his motive—that is no excuse. If a man deliberately does an unlawful act, it is no excuse that he did it for some pure motive, or any motive that you can think of. It is no defense. There cannot be a shadow of doubt that Chandler knew when he went to Berlin that he was signing up with the German Broadcasting Company. There cannot be a shadow of a doubt that when he signed those radio contracts in January 1942, after war with America was declared, that he knew he was signing up with the enemy of America. There is not a shadow of doubt that every time he went into the German Broadcasting Company he was doing what he could to help defeat this country!

Finally, it is clear that when Douglas Chandler made his recordings that were broadcasted to the United States and listened to by hundreds, if not thousands, of American citizens, he committed overt acts that are necessary under the treason clause of the U.S. Constitution. Douglas Chandler committed each and every one of these overt acts—these recordings—with intent, and for the purpose, of adhering to and giving aid and comfort to the government of the German Reich, and contrary to his duty of allegiance to the United States. Judas Iscariot betrayed his savior for thirty pieces of silver. Chandler betrayed his country for 30,000 Reichmarks. I ask you to return a verdict of guilty against this unrepentant traitor.

**FORD:** Does the defense wish to make any closing remarks?

**PARK:** Yes, Your Honor. I don't for a minute claim that Mr. Chandler is not a fanatic, and that he does not have extreme views. Gentlemen of the jury, I shall quote "treason against the United States," according to the Constitution, "shall consist only in levying war against them or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or in confession in open court." It was frankly intended by the framers of our Constitution to make it hard for the government to prosecute, and for juries to convict, a person of treason. The men who wrote the Constitution had all been revolutionaries; they all been guilty of treason against England.

I think it is enough then to say at this point that there are two main elements of treason, as there are in any other crime, the intent and the act. The alleged acts, then, must be proved by the direct testimony of two witnesses, not by the admission of circumstantial evidence. Mr. Chandler had as much right as anyone else in this courtroom to criticize the administration of the government of the United States, however offensive we might find his remarks, if he did so without specific intent to betray. He had a right to oppose the prosecution of the war, if he did so honestly and sincerely without intent to betray. Now what is criminal intent? It is a specific intent to betray. An intent to give aid and comfort is not equivalent to an intent to betray. For example, if a strike is called during a war and it is an essential industry, the people who strike know, must know, that their acts may in some way give aid and comfort to the enemy, particularly if it is in the coal industry. But is this treason? In the first place you must, of course, find that Mr. Chandler had the mental capacity to form such an intent. You have heard the testimony of our psychiatrists that he lacked that mental capacity.

The prosecution has given evidence of intent to betray by means of Mr. Chandler's recordings and the testimony of various German witnesses. His recordings were, I suppose, the most dramatic piece of evidence offered in the courtroom. And when we hear and read his words, I think all of us were deeply and profoundly shocked that he could say such things. However, gentlemen, you must not convict this man because you don't like what he said, because what he said revolted you. We are dealing with the crime of treason and the man is charged with certain acts. And if he said something that you didn't like, you have got no right to convict him merely because of that, and without finding specific intent to betray. We have had few prosecutions for treason in this country. If a jury may convict a man for his words, spoken openly, expressing his opinion, however odious, we would have many more prosecutions for treason. In this country, we do not convict people of treason because they say things about the Jews or any other group or President Roosevelt, or oppose the prosecution of a war, if they do so without intent to betray. No, gentlemen, if a man is not free to express his opinion, whether spoken in the United States, Germany, Italy, or anywhere else, then we are going to be very near to creating a body of thought police, the kind of thought police we have seen in other countries. And will not our right to free speech be whittled down to a shadow, because words which a man could say without a specific intent to betray will justify a jury in finding he had an intent to betray? We submit, then, that Mr. Chandler's recordings, his words, should not be given any weight by you. I am here to defend Mr. Chandler's life and liberty, not his opinions. However distorted the man's mind may be—and we believe that he is not entirely sane—he had those opinions and in his deeply troubled mind he believed them. And he believed it was his patriotic duty to express them to his own country.

Gentlemen of the jury, the prosecution has paraded before you in this court a collection of German witnesses—former Nazis—who would undoubtedly like nothing better than to stick it to an American. I ask you to look deeply into your heart and find the compassion not to convict this deeply delusional, disturbed, and clinically insane man.

**FORD:** The jury may retire to consider their verdict.

**NARRATOR:** It is June 29, 1947. The jury returns its verdict to federal judge Francis J. Ford at 5:30 p.m. after deliberating five-and-a-half hours.

**FORD:** Will the foreman of the jury please rise and state your verdict to the court?

**FOREMAN OF THE JURY:** We, the jury, find the defendant guilty as charged of all the overt acts and specifications issued in the indictment.

**NARRATOR:** Standing stiffly and solemnly, the tall defendant showed no emotion when he heard the verdict, except for a blinking of the eyes.

**FORD:** *(Looking at the jury.)* Thank you, gentlemen. You have returned a verdict in accordance with your findings and in accordance with your oaths. *(Turning to the defendant.)* Does the defendant have anything to say as to why judgment should not be pronounced?

**CHANDLER:** Yes, Your Honor. I am, of course, not insane, but I have permitted my attorneys to defend me on the grounds they chose. It is the tragedy of my life that the warnings I gave my country were not, and are not, yet accepted. Time, however, will vindicate me.

**FORD:** It is adjudged that the defendant is guilty as charged and convicted. It is adjudged that, according to sentencing guidelines, the defendant is hereby committed to the custody of the attorney general or his authorized representative for imprisonment for the term of his natural life and sentenced to pay a fine of \$10,000.

# Documentary Evidence

## Audio Recording:

Propaganda Broadcast by "Paul Revere" [Douglas Chandler], September 9, 1941. Department of Justice, Criminal Division. Courtesy of the National Archives and Records Administration, 2188111 (available at <https://archive.org/details/PropagandaBroadcastByPaulRevere>).

For use in the trial with any witnesses willing to identify the voice on the recording as that of Douglas Chandler.

## Time Line

<b>1931</b>	Douglas Chandler moves to Europe and eventually begins his career as a photo journalist for <i>National Geographic</i> magazine.
<b>1939</b>	World War II begins in Europe.
<b>1941</b>	Chandler moves to Germany and makes his first broadcasts to the United States; America enters World War II.
<b>1945</b>	World War II concludes; Chandler remains in Germany.
<b>1946</b>	Chandler is detained in Germany by American authorities.
<b>1947</b>	Chandler is transported to the United States to be tried for treason; Chandler's treason trial ends in a conviction.
<b>1963</b>	Chandler's sentence is commuted by President John F. Kennedy and he is deported to West Germany.



# Glossary

**Anti-Semitism:** Prejudice against Jews.

**Bolshevism:** A form of Communism usually associated with the former Soviet Union.

**Constitutional treason:** The Constitution of the United States, Article III, Section 3 defines treason against the United States to consist only in levying war against them, or in adhering to their enemies, giving them aid or comfort. This offense is punished with death. By the same article of the Constitution, no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

**Criminal insanity:** A legal term denoting a condition of mental incompetence, in which a person lacks responsibility for a crime.

**Delusion:** An unconventional, unrealistic, and often irrational belief that is held by an individual, which is often interpreted as a sign of mental instability.

**Gestapo:** The Nazi secret police.

**Paranoia:** A rare form of insanity characterized by fixed delusions.

**Propaganda:** Ideas, facts, or allegations spread deliberately to further one's cause or undermine the cause of an adversary.

**Sedition:** Actions or words that are interpreted as an effort to provoke citizens of a country to rebellion.

**Swastika:** The emblem of Nazi Germany.

# Postscript

Douglas Chandler's attorneys appealed his conviction. The Circuit Court of Appeals rejected Chandler's appeal on June 2, 1948, and he was sent into confinement to serve his life sentence at the U.S. penitentiary at Lewisburg, Pennsylvania. He was unable to pay the \$10,000 fine. On August 5, 1963, President John F. Kennedy commuted his sentence, but ordered that he be deported to West Germany. In the 1970s, a young American claims to have met Chandler on a German train. Chandler spoke to him about his extreme right-wing political views, his experiences in Europe prior to World War II, his work for *National Geographic* magazine, his work as a radio broadcaster in Nazi Germany during the war, and his trial and imprisonment for treason against the United States. It was the young American's impression that Chandler was still completely unrepentant for his actions.

## Discussion Questions

1. At the beginning of the trial, Chandler received a letter from a fan, who wrote that he “often heard you and the Paul Revere act you had on the German Broadcast [and] your act was like this Walter Winchell [a popular radio broadcaster of the time] act on Sunday nights. You didn’t like the [Jews] and he doesn’t like the Republicans. Can’t see you being tried for treason on such a set-up, as I know you never made any treasonable remarks while I was listening.” Do you think it was fair to prosecute Chandler for what this person viewed as merely exercising his fundamental right of free speech? Discuss.
2. Park said in his closing remarks that “there are of course other statutes which punish people for crimes [involving speech allegedly harmful to the United States], the sedition law, for instance.” Why didn’t they indict and try Chandler for sedition rather than the riskier proposition of treason? Discuss.
3. Defense attorneys in criminal trials often argue that their client cannot get a fair trial in a particular town or state, and ask for a change of venue. Chandler’s trial was held in Boston federal court because his first point of entry into the United States, after his extradition from Germany, was Massachusetts. Do you think that the outcome of the trial would have been different had it been held in Washington, DC? Discuss.
4. Historically, it has not been the policy of the United States to prosecute for treason those whom it recognized as having enemy status. In both the Revolutionary War and in the Civil War, there were many thousands-in-arms, whose allegiance was claimed by two governments. None of those recognized as enemies were ever prosecuted for treason. Do you think that if Chandler had renounced his American citizenship he would have been prosecuted for treason? Discuss.
5. During World War II, the radio broadcasts from men like Douglas Chandler were viewed by the U.S. government more as potential dangers rather than actual threats. It was estimated that less than one percent of the American public listened to foreign shortwave radio broadcasts. However, during the war, news in the United States was heavily censored. Do you think that wartime restrictions on information can actually have an unintended and negative effect, by turning citizens to outside sources of information? Discuss, particularly in the context of the dialogue today surrounding the whole “fake news” phenomena?
6. The warden in the classic movie *Cool Hand Luke* says to a prison inmate (played by Paul Newman) after his re-capture that “what we have here is a failure to communicate.” Despite their best efforts, Douglas Chandler and other expatriate broadcasters failed to form personal bonds with American listeners. By contrast, President Roosevelt understood how to use radio by talking to the American public, not at them. The president’s calm, reassuring, and authoritative delivery created a sense of trustworthiness for the millions who regularly tuned in. Can you think of any people in the media today who represent either a failure to communicate or an ability to create a bond of trust? Discuss.
7. On August 22, 1972, an American actor, Jane Fonda, delivered a propaganda radio broadcast from Hanoi, North Vietnam, denouncing U.S. participation in the war, and personally

attacking President Nixon for perpetuating the conflict. She said that “despite the bombs, despite the crimes . . . being committed against them by Richard Nixon, these people own their own land [and] build their own schools . . . and after 4,000 years of struggling against nature and foreign invaders—and the last 25 years . . . of struggling against French colonialism—I don’t think that the people of Vietnam are about to compromise in any way, shape or form about the freedom and independence of their country, and I think Richard Nixon would do well to read Vietnamese history . . . particularly the poetry written by [the late North Vietnamese leader] Ho Chi Minh.”<sup>1</sup> She returned to the United States after two weeks in North Vietnam, but was never prosecuted for this broadcast from enemy territory. Do you think that she should have been indicted for treason and brought to trial like Douglas Chandler? Do you think that the fact that the Vietnam War, unlike World War II, was deeply unpopular with the American public had anything to do with the decision? Discuss.

8. There have been many instances during war when American soldiers have been subjected to privation and torture, to force them to make statements and broadcasts on behalf of our enemies. Some soldiers, like future Senator John McCain, absolutely refused, while others caved under the pain and pressure. Do you think that those who agreed to go along with their captors were traitors? Discuss.
9. Chandler frequently mentioned to his listeners that he had formerly work for *National Geographic* magazine. Some subscribers to the magazine who heard his broadcasts wrote angry protest letters to the editor-in-chief, who wrote back saying that it was a sickening commentary on human nature that an especially intelligent man would sell his birthright for Nazi gold. Do you agree with the magazine’s editor? Did Chandler make his recordings for money? Would it have made any difference to the outcome of his trial had he not been paid for his broadcasts? Discuss.
10. One of the prosecution psychiatrists said in his testimony that there was a difference between knowing what is right and wrong and accepting right and wrong. For example, there are people who think that their government is badly, and even wickedly, organized. They may not even regard sabotage against its functioning as wrong, but they know it is regarded as wrong. The psychiatrist said that Chandler knew the difference between right and wrong. He simply rejected the criteria by which treason is judged and deliberately established his own criteria. This also addresses the matter of “intent to commit treason.” Do you agree with this assessment? Discuss.
11. According to the law, a person (like Chandler) “is not mentally responsible in a criminal sense for an offense unless he was, at the time, so far free from mental defect, disease, or derangement as to be able, concerning the particular act for which he was charged, both to distinguish right from wrong and to adhere to the right.” Thus, a mere defect of character, will power, or behavior, as manifested by one or more offenses, does not necessarily indicate insanity. In short, mental disease does not always amount to mental irresponsibility. Do you agree or disagree? Discuss.

1 “Jane Fonda Radio Broadcast from Hanoi, August 22, 1972,” Pacifica Radio/UC Berkeley Social Activism Sound Recording Project. lib.berkeley.edu/MRC/pacificaviet/fonda.html.

## Extension Activities

1. There were other British and American expatriates who made radio propaganda broadcasts during World War II, including Robert Best, Mildred Gillars ("Axis Sally"), William Joyce ("Lord Haw Haw"), Iva Toguri ("Tokyo Rose"), Sefton Demer, Philippe Henriot, and Fred Kaltenbach. Research their participation during the war, and eventual prosecution, and either write an essay about them or make a presentation to the class.
2. Write an essay or make a class presentation about the history of free speech and the press (media) in America. What have been the most challenging historical threats, and how have they been resolved?
3. Before and during World War II, propaganda was one of the most important methods used by the Nazis in gaining and maintaining the loyalty of the people to Hitler and to sustain the war effort. Write an essay or make a class presentation that shows how the Nazis used radio broadcasts and other means of propaganda to influence the German people and the citizens of other countries.
4. Every one of the nations involved in the war used the power of radio to influence both their enemies and their own populations. President Roosevelt's "fireside chats" over the radio, which began during the Depression and continued during World War II, brought a feeling of comfort and security to millions of Americans. Write an essay or make a presentation to the class about specific radio programs, such as, *Speaking of Liberty* (1941) and "Lest We Forget" (1943), which Roosevelt used to discuss the importance of freedom, democracy, and American ethics.

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