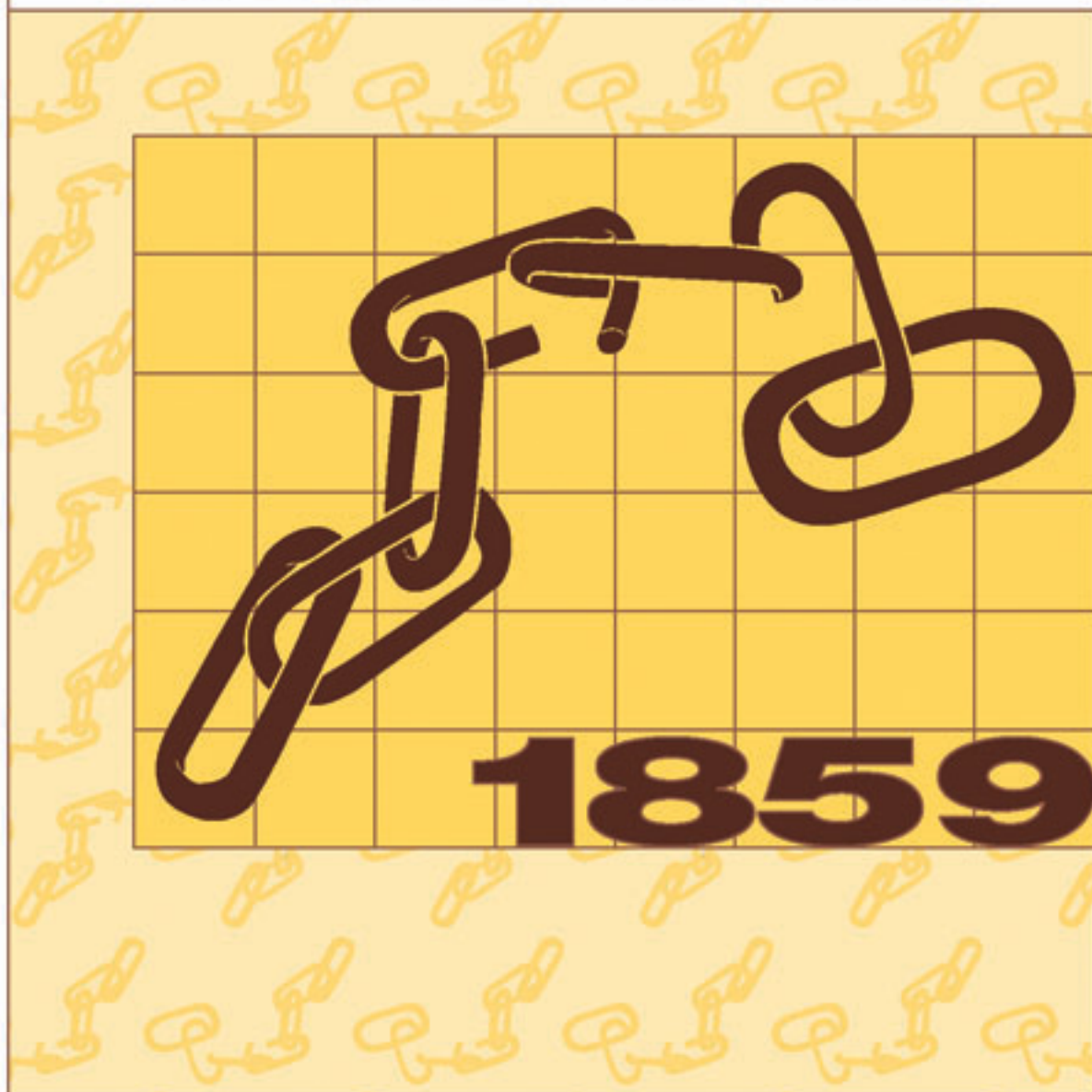


THE TRIAL OF JOHN BROWN



A Re-creation of an Abolitionist's Trial for Treason,
After He Led an Abortive Raid on Harper's Ferry





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A re-creation of an abolitionist's 1859 trial for treason,
after he led an abortive raid on Harper's Ferry

BILL LACEY, author of THE TRIAL OF JOHN BROWN, has written for Interact since 1974. He has authored/edited more than 25 simulations, re-creations, and similar role-playing works. Among the items he has written, he is most proud of GREEKS, CHRISTENDOM, and SKINS. Bill uses many of his creations in his history classes at Fountain Valley High School in Fountain Valley, California.

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“...God’s angry man...”

Mention the name John Brown to almost any American and for certain the response will be similar: “martyr,” “terrorist,” “fanatic,” “abolitionist,” “God’s angry man.” Yet how many Americans really know how John Brown carved his name into our history?

This re-creation affords your students the opportunity to role-play the people involved in a trial called by one writer “the most momentous trial in American history.” John Brown, 59, was captured while he attempted to seize a federal armory at Harper’s Ferry, Virginia, in 1859. Already famous for his bloody attack on a pro-slavery community in Kansas Territory three years earlier, Brown was indicted for murder, treason, and conspiracy to start a slave revolt throughout the South. Because he was John Brown of Kansas and because his trial took place just one and one-half years before the opening guns of the Civil War, the legend of John Brown has resulted in countless literary works: articles, novels, biographies, screenplay. Even America’s ultimate epic poem *John Brown’s Body* by Stephen Vincent Benet is named after this troubled idealist.

The purpose of this exercise is to re-create in much of its dramatic detail the trial of John Brown. Specifically, your students will experience the following:

Knowledge

1. The major issues which caused the Civil War
2. How terms such as “fanatic,” “martyr,” “traitor,” “murderer,” and “conspirator” apply to John Brown
3. The rudiments of a jury trial
4. The details of an event which polarized opinions on slavery and sectionalism just months before the Civil War

Skills

1. Developing a General Statement/Specific Details outline from notes taken during the trial
2. Using oral skills to sway people toward one side on a controversial issue or the other
3. Writing questions and summation statements for speeches to be used in the trial
4. Sharpening listening skills by keeping up with the testimony of the important witnesses

Understanding the "true believer"

Feelings

1. Empathizing with a person who plays a vital role in a court trial
2. Developing a feeling of guilt or innocence for a defendant
3. Understanding the emotions and the motivations which might explain John Brown's actions or the other fanatics on either side of the slavery issue
4. Sensing what it must have been like to have lived and been a part of a trial which increased national tension in an already explosive era

The trial of John Brown unquestionably is one of the most momentous in our history. It came at a time when the sections of our nation were tearing themselves apart because of the burning issues of that era—slavery, economic differences, and sectional political power. It may have been accident or luck which led John Brown to his destiny, but the reaction in the country following his trial and death was unparalleled in our history. Never was a man so guilty. His raid on a federal arsenal at Harper’s Ferry was a dismal failure. He and his “rag-tag army” were caught red-handed holding 11 hostages while attempting a task so great—that of freeing the slaves—that it took four years of bloody war, utilizing most of the men and resources of half the nation, to accomplish it.

Even so, Brown’s trial was haunted by controversy, as controversial as the “Old Man” himself. Captured by a marine detachment led by Colonel Robert E. Lee on Monday, October 17, 1859, Brown was left for dead on the floor of a cold building until Tuesday, when people were astonished that he was well enough to hold a “press conference” and present a forum for his actions and behavior. Healthy or not, Brown and his men were indicted one week later on charges of treason, murder, and conspiracy to start a slave rebellion. On Wednesday, October 26, the trial began, to the shock and amazement of the defense lawyers, who felt they had an inexcusably short time to prepare their case. By Wednesday, November 2, the judge had sentenced Brown to hang on December 2, one month later.

Needless to say, questions and doubts linger about this trial. Despite Brown’s obvious guilt, his ridiculous outbursts during the trial, and the public view that he might be insane, John Brown’s trial was not a textbook version of a fair trial. (Your students will likely perceive this during and after their re-creation of the trial.) To help develop this perception, you will stage the trial with a prejudiced jury, with a judge who wants a very speedy and public trial, with the damning testimony of the witnesses, and with the foolish example of Brown trying to defend himself with lofty ideals. Detailed student role handouts and the Student Guide will help you set up your class for this experience. However, the more you strive to make the trial seem realistic, the more your students will respond and play their roles dramatically.



Expect capable students to be troubled by what they perceive as “an unfair trial.” You can build an interesting discussion on this concern during your debriefing.

HISTORICAL ACCURACY

How accurate is this re-creation?

The author has worked to make this re-creation as accurate as possible. The vast amount of historical literature allowed the author to easily research and write this trial with a minimum of “literary license.” No characters are fictitious; no composite witnesses were created to balance or even out the two sides. The questions and answers, of course, are not always the exact ones spoken at the trial. However, the witnesses in the trial, the attorneys, and each issue and sub-issue are historically accurate. Yet no mock trial or re-creation can be staged in a secondary school classroom without some license or liberties being taken. Be aware of the following:

1. John Brown’s speeches have been shortened to an outline of main ideas to facilitate the trial and to smooth out the proceedings.
2. Only six witnesses are listed in this re-creation—three for each side. In reality, there were several more, mostly for the prosecution. (Most of these were hostages who gave similar testimony.)
3. The sequence or procedure is as close to what transpired as research reveals. Of course, what words the judge, bailiff, or other participants speak will not be the exact words spoken. Hopefully, however, what is given to your students will help them capture the essence of the actual proceedings.
4. John Brown spent most of his time at the trial lying on a cot in the middle of the courtroom. On occasion, he would startle everyone by rising and speaking eloquently for several minutes. Then he would lie back down on his side to moan frequently or to sleep.
5. John Brown was found guilty and sentenced to hang. Your students may—if the prosecution presents a shaky or ineffective case—find him innocent. It could happen in spite of the fact that never was a man so guilty of a crime, a crime so botched or blundered that it adds to the theory of Brown’s insanity. If the verdict is “not guilty,” be sure you as the teacher review the reasons for the jury’s decision.

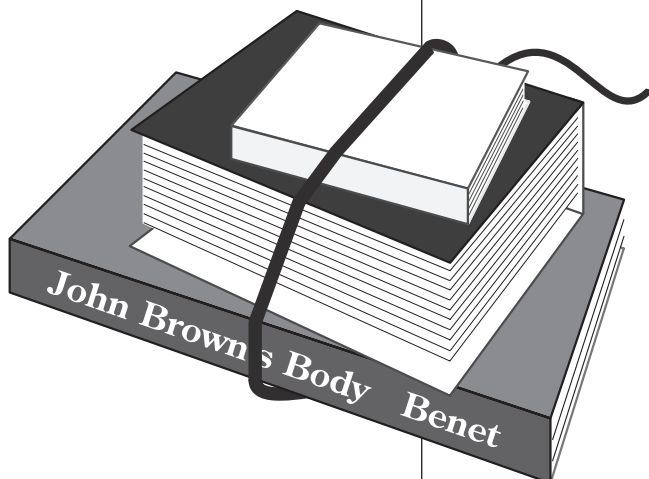
BIBLIOGRAPHY

We can't emphasize enough that if you have a capable student playing John Brown, you should encourage him/her to get Benet's magnificent epic poem in order to study Benet's characterization.



Books and articles

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- Oates, Stephen B., *To Purge This Land With Blood: a Biography of John Brown*, New York, Harper and Row, 1970.
- Stavis, Barrie, *John Brown: The Sword and the Word*, New York, A.S. Barnes and Company, 1970.



SETUP DIRECTIONS - 1

Before the trial

1. Duplicate the number in parentheses, using the masters in this Teacher Guide.

Prosecution

- LEGAL PLAN FOR THE PROSECUTION (two: one for Andrew Hunter; one for Charles Harding—four pages, back to back)
- PROSECUTION WITNESS: George Phelps (three: one for witness, two for prosecutors—one page)
- PROSECUTION WITNESS: Lewis Washington (three: one for witness, two for prosecutors—two pages, back to back)
- PROSECUTION WITNESS: Armsted Ball (three: one for witness, two for prosecutors—two pages, back to back)

Defense

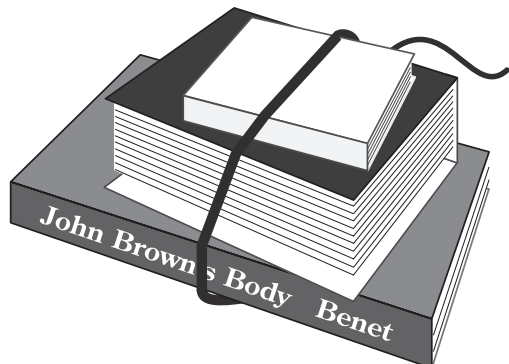
- LEGAL PLAN FOR THE DEFENSE (five—one each for Botts, Green, Hoyt, and, later, Griswold and Chilton—four pages, back to back)
- DEFENDANT: John Brown (six—one for Brown, five for defense attorneys—three pages, back to back)
- DEFENSE WITNESS: Joseph Brewer (six: one for witness, five for defense attorneys—one page)
- DEFENSE WITNESS: Archibald (A.M.) Kitzmiller (six: one for witness, five for defense attorneys—one page)
- DEFENSE WITNESS: Harry Hunter (six: one for witness, five for defense attorneys—one page)

Optional

- * HISTORICAL AFTERMATH (class set—two pages, back to back)
2. Build enthusiasm days before the trial by teasing your students with chalkboard quotes (colored chalk if you have it). Examples: *“John Brown speaks ... and acts for all of us!” ... “Death to Old Man Brown!” ... “Hang John Brown!” ... “Execute the Mad Man!”* You might even want to hang a small noose in class and staple a tape on it saying, *“John Brown’s necktie.”*
 3. No later than four days before the trial is scheduled, select students for the various roles. (See the Brief Summary of Major Roles in the Student Guide.) Your dictation of roles is recommended for Judge Richard Parker, John Brown, and the attorneys. Give these students their role-playing instructions immediately.

SETUP DIRECTIONS - 2

Encourage students who will be role-playing key persons sitting down in the courtroom to make themselves name tags.



Judge Richard Parker

4. A word about your student who will play John Brown. He/she should be encouraged to read widely on Brown in advance. (For example, see Brown's speeches in Stephen Vincent Benet's epic poem, *John Brown's Body*.) Talk with this student about "really getting into the part": wearing a long, white beard; alternately playing a wild-eyed fanatic and a sharp, rational spokesman for the abolitionist cause;

working on body language that conveys age, physical injury, and sense of historical importance.

5. The student who plays Dr. Jared Mason should dress the part, carrying a bag and a stethoscope. Whenever Brown moans loudly, as if on cue, the judge should ask Dr. Mason to come in and examine the prisoner to see if the trial can continue. Of course, the doctor always allows the trial to proceed. The judge should obtain a choir robe and a gavel.
6. Obtain a choir robe and a gavel for your judge.
7. Use risers in your trial if your school has them. The author has found 16- to 24-inch risers to be just about the right height. Use the risers for the judge's bench, the bailiff's chair, and the witness stand.
8. Prepare a lesson(s) prior to the trial which deals with events leading up to the Civil War, the emergence of Lincoln, etc. (a film, filmstrip, or lecture).

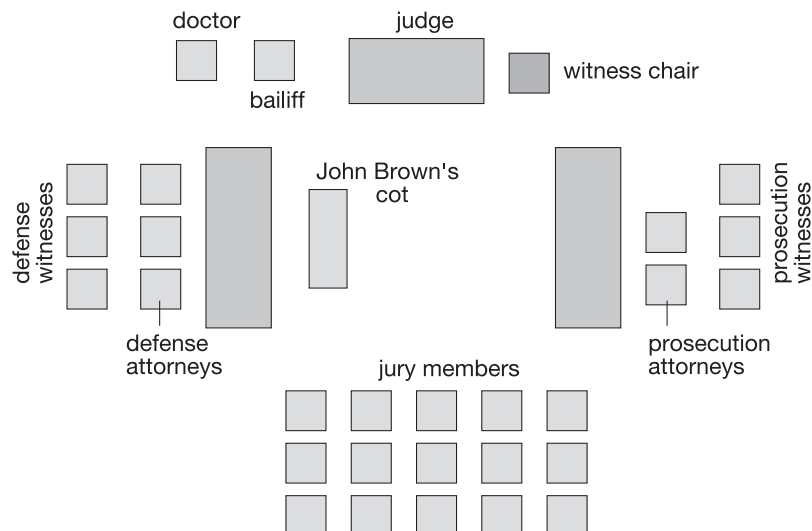
DAILY TEACHING DIRECTIONS - 1

Day 1

1. Hand out the Student Guides and have students read the Purpose and Overview.
2. Now have students examine the bold ink headings in the Background Essay. Comment on them briefly and assign this essay as homework study.
3. After your brief review of pre-Civil War events, introduce the trial's major participants whom you have assigned earlier.
4. Assign minor roles to the remaining students. Make sure the jury members understand they are Virginians and, as such, are prejudiced against Brown and his cause. Of course, the jury may base their decision on what they hear, but that doesn't mean they can't enter the trial being positive that Brown is guilty.
5. Allow 15–25 minutes for the legal teams to meet with their own witnesses to plan strategy for tomorrow. **Note well:** *Attorneys may not meet with the other side's witnesses.* Tell all attorneys and the witnesses that they must carefully study their handouts to maintain verisimilitude during the trial. (*Verisimilitude* is the quality of seeming real.)
6. Remind John Brown and other role-players to “dress up” as per Setup Directions. (Your drama and music departments can likely help you and your students.)

Day 2

1. Before the students arrive, set up your room as shown in this diagram:



Having large tables for your attorneys will help set them apart. Your judge also needs an imposing piece of furniture to sit behind.

DAILY TEACHING DIRECTIONS - 2

Interact authors and purchasers have been pioneering cooperative learning for more than two decades. We all feel that students learn more and feel better about themselves and their classmates as a result of working together. Of course, a participatory class using group experiences often becomes a community.



You may wish to examine carefully the six Debriefing questions before beginning this final activity. Doing so will likely cause you to focus students' attention more intensely on several of the questions.

2. Have role-players refer to the Procedure and Sequence on pages 5-7 in the Student Guide. (Have the judge and John Brown remain outside or in your office.)
3. Start with #1 in the Procedure and Sequence and continue the trial. (To set the proper tone, you may want to read #1 aloud.)
4. Have John Brown enter dramatically—then the judge. Be sure the class shows the judge proper respect from the moment he enters.
5. Five minutes before the class is to end, have the judge declare a recess until the next hour. Remind students of their written responsibilities as given in their Student Guides.

Day 3

1. Continue the trial, following the Procedure and Sequence in the Student Guide.
2. When the jury is instructed to leave for deliberation, you may wish to intercede and have each juror write individually his/her verdict plus whatever justification for that verdict each juror wishes to give. This procedure precludes your having to send them off somewhere for oral deliberation, which might be difficult for you to control (discipline and time).
3. Regardless of the option you use, require only a majority vote to convict or to acquit. (Of course, you must point out the legal inaccuracy of this procedure.) Otherwise one juror could “hang the jury” for too much class time.
4. If time is available, you may want John Brown to explain the contents of the HISTORICAL AFTERMATH handout. Or you may want to give it to everyone as homework.
5. **Optional:** Ask students to write brief answers to the Debriefing questions on page 8 in the Student Guide as overnight homework. We strongly recommend that you divide your students into activity groups of about six students each for tomorrow’s debriefing. Therefore, you might—if time is available—number off your students so that an equal number is in each group. The groups could then briefly circle up and divide the questions among themselves so that they would come to class tomorrow with written preparation.

DAILY TEACHING DIRECTIONS - 3

Day 4

1. If you haven't already done so, divide your class into activity groups of about six students each by numbering them off and having all ones sit together, all twos sit together, and so on.
2. Have each group appoint a chairperson and a recorder within each discussion circle. The chairperson should have students share their written work if writing was done as homework. Otherwise he/she should use a circle response pattern in going through the questions in order to insure that each student participates. The recorder should briefly record the group's feelings on any issue the group feels strongly about.
3. Have all groups' recorders report their groups' deliberations to the class.

LEGAL PLAN FOR THE PROSECUTION - 1

(For Andrew Hunter and Charles Harding)

You are the attorneys prosecuting John Brown, accused of murder, treason (a warlike act against the United States), and conspiracy to start a slave revolt. Over the course of the trial, there will be just two of you. If you and your teacher wish to do so, you may add a legal assistant or a co-equal to help you on the case.

Your strategy is simple: to prove that all evidence presented shows Brown to be guilty of the three charges listed in the indictment.

To build your case, carefully study all the materials given to you. To tighten your case, make an outline of a suggested “plan of attack” such as the following:

Opening statement

Speak forcefully, using language that you hope will anger the jury. Emphasize that Brown—or the men he led—did the following actions:

1. He attempted to rob the citizens of Virginia of their slaves and carry the slaves off by violence.
2. He tried to get the slaves to revolt, though the few he freed rushed back to their masters.
3. He took or kidnapped hostages, thus endangering their lives.
4. He killed, wounded, or maimed several innocent people at Harper’s Ferry.

Examination of your witnesses

Ask your witnesses the following questions plus any others that you think might help your case.)

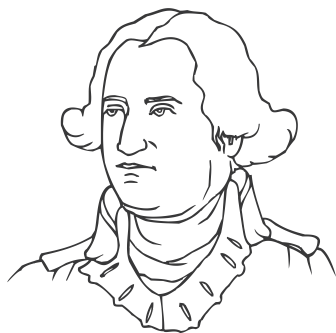
George Phelps

1. Mr. Phelps, what is your profession?
2. What were you doing on the night of October 16, last?
3. What was your reaction to the shooting of Shephard Hayward?
4. Did you ever see or talk to John Brown on that night?
5. What did Brown say to you?
6. What did you do after leaving Harper’s Ferry in the early hours of Monday, October 17, 1859?
7. Did you return to Harper’s Ferry?
8. What did you hear Brown say at this so-called press conference?
9. When the defendant talked about a provisional government, army, secretary of state, and even a Negro congressman, what was your reaction to Brown and the charges against him?



Consider putting such opening statement arguments and questions for witnesses on 3"x5" or 4"x6" cards. You don't have to write down your information verbatim. Instead, practice giving such statements or asking such questions from sentence fragment notes on such cards.

LEGAL PLAN FOR THE PROSECUTION - 2



Speak slowly and dramatically while you ask your first question of Lewis Washington. You want the jury to remember his famous ancestor!

Lewis Washington

1. Colonel Washington, you are related to General George Washington, are you not?
2. How did you become a hostage of John Brown?
3. Were you mistreated in any way?
4. What did Brown's men do or say to you when they took you hostage? For example, did they reveal their purpose?
5. When and where did you first meet Captain Brown?
6. How were you and the other men treated while prisoners in the engine house?
7. Were you allowed to eat?
8. What weapons did Brown carry?
9. Did Brown tell you why he took hostages?
10. How many hostages and members of his army were in the engine house?
11. Tell us, Colonel Washington, about what happened, or what was said, just prior to and during the Marines' siege and capture of the engine house?
12. Did you ever see Brown again? That is, before today?

Armsted Ball

1. Mr. Ball, what was your position at Harper's Ferry when the raid took place?
2. Tell us how you were taken hostage.
3. Did Captain Brown ever talk to you about his reasons for seizing the armory?
4. How were you treated as a hostage?
5. Did Brown ever allow you any special privileges, such as leaving the engine house? What was his purpose?
6. I understand you performed a heroic deed while you were hostage. Can you tell us about it?
7. You witnessed the capture of Captain Brown. Could you go over the events of the capture as you remember them?
8. Tell us about how Lieutenant Green took Brown captive.

LEGAL PLAN FOR THE PROSECUTION - 3

Establish eye contact as you question witnesses ...

Caution:
Never ask a cross-examination question unless you are quite certain you know how that question will be answered!

Cross-examination of defense witnesses

After the defense attorneys finish their examination of their witnesses, you should ask the questions indicated—or ask other questions—or remain silent as directed.

Joseph Brewer

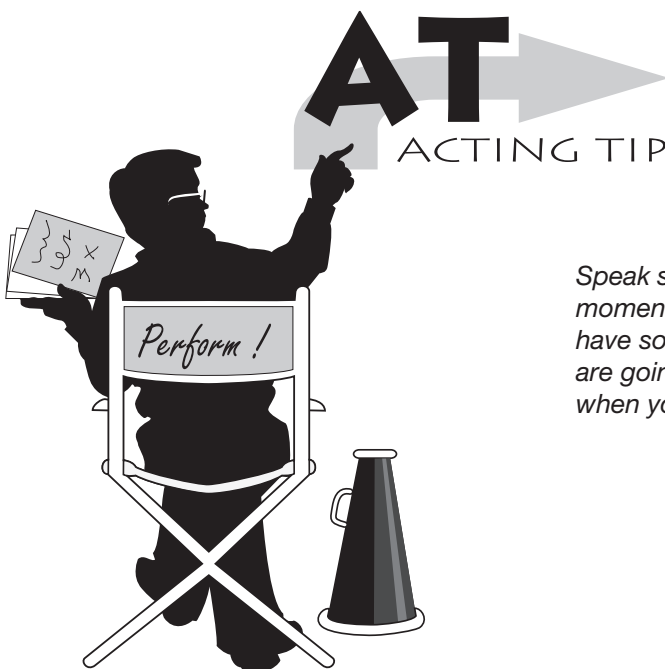
1. You say you never heard Brown give to anyone his reasons for seizing the arsenal. Could it be possible that you were never close enough to Brown to overhear any personal conversation?
2. Our personal congratulations to you, Mr. Brewer, for your heroics in saving the life of the prisoner Aaron Stevens. What made you risk your life to save a man who for nearly two days held you captive?
3. How did John Brown conduct himself in the engine house?

Archibald (A.M.) Kitzmiller

1. Mr. Kitzmiller, you're obviously an intelligent man. Although Captain Brown did not harm you, he and his men did hold guns on you, did they not? They did seize a federal arsenal, did they not? They did try to lead a slave revolt, did they not?
2. Did you ever hear the defendant talk of his reasons for the seizure of the arsenal?
3. Did Brown ever mention why he took the hostages?
4. Did Brown ever make comments about Negroes or slaveholders?

Harry Hunter

1. "The prosecution, your honor, chooses not to cross-examine this witness."



Speak slowly and dramatically at moments such as these—as if you have some secret knowledge you are going to drop on the jury—when you are ready to do so!

LEGAL PLAN FOR THE PROSECUTION - 4

Prosecution summation

You give this speech to the jury after the defense “rests.” Organize it any way you wish, but base your points on the following strategy:

1. Don’t allow the defense to elicit sympathy for Brown because he harmed no hostages during the raid. He still is guilty of the crimes as charged. Also, his white hair and old age could get sympathy. Counter these.
2. Dismiss the defense’s plea to postpone, delay, or otherwise slow the trial as attempts to frustrate justice, especially if the defense asked for a delay because of Brown’s insanity or their desire to better prepare their case. Emphasize the importance of swift justice to traitors and potential leaders of slave revolts who may be influenced by this case. Also the court must be aware of the possibility of escape plots.
3. Make sure you review the witnesses’ damning testimony.
4. Use any words spoken by Brown during the trial against him if you can. Being the cocksure, self-righteous fanatic that he is, he’ll probably have said plenty to prove his guilt.
5. Point out that Brown’s so-called Provisional Government was a *real thing*. It was no debating society. Therefore, he is guilty of treason.
6. Emphasize that Brown’s “army” did kill, they did seize federal property, and they did attempt to start an insurrection all over the South—ready to set free property held so dear to practitioners of slavery.
7. You have a Southern jury, a judge who wants a quick trial, and a partisan courtroom. Work on all these with gestures, phrases, and interpretations of the facts.
8. End your summation on this note: “*Since he is guilty, send him to his Maker!*”



PROSECUTION WITNESS: George Phelps

Note: You will meet with the prosecution attorneys prior to the trial to go over your testimony, but you should be aware that the defense will also question you. In order to avoid embarrassment on the stand, make certain you study carefully the details about your role's life.

Your performance will be ever so much more effective if you sit in the witness chair without this background information in your hands.

To prepare yourself to have the confidence to leave this handout in your notebook, highlight key information with a colored pen. Prior to the trial's beginning, have a friend or family member question you about your background. During such practice questioning, answer the questions aloud. Finally, ask your questioner to comment on how well you answer the questions.

You are called as a witness against John Brown. Having been a conductor on the Baltimore and Ohio train the night of the raid, you testify to the events you saw involving John Brown and the crimes with which he is charged.

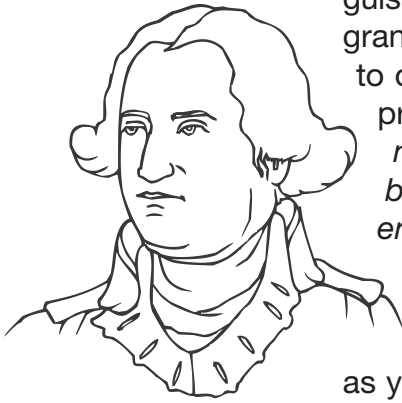
Your train arrived at Harper's Ferry shortly after midnight on Sunday, October 16. Immediately, you were warned by a wounded bridge patrolman that some riflemen had seized the arsenal. Your reaction was to stop the train just before the bridge leading into the town of Harper's Ferry. When the baggage master, a free Negro named Shephard Hayward, walked out on the railroad bridge to find out why the train had stopped, a gun barked out, and Hayward was hit. He staggered back to the station crying: "I am shot"! You later found out that Hayward died 12 hours later.

Waiting in the early hours of the morning, you had watched a stranger board your train. You realized afterward that it was John Brown! At the time, however, you didn't know who he was. Brown, white bearded and old, had come to guarantee personally the safety of the train and its passengers. Nodding your head in amazement, you quickly got the train moving across the bridge and didn't stop until you arrived at Monocacy, Maryland, where you telegraphed the first alarm of the armory's seizure by Brown and his men.

On October 18 you returned to Harper's Ferry, where you were allowed to watch Governor Henry Alexander Wise and others meet with the wounded John Brown, as he lay on the floor of the superintendent's office. You listened carefully to Brown's answers to questions, especially the one asking about his real purpose for seizing the arsenal. Brown answered that all they (the people present) had to do was to read the books in his trunk at his Maryland farm headquarters. Colonel Lee, who led the troops that captured Brown, handed one of these books to the inquisitive governor. Brown then explained that it was the constitution of the "provisional government" of which he was president and commander-in-chief. He also mentioned that he had a secretary of war, a secretary of state, a supreme court, and other governing offices. Brown admitted, too, that he had a place for an intelligent colored man to serve in his House of Representatives. These admissions by Brown, you feel, are really essential to prove that the whole raid was an act of conspiracy to make an insurrection. Hence, Brown was committing treason against the government.

Regardless of all this damning testimony against John Brown, you must testify that you were aware of Brown's civilized treatment of the hostages. You realize that it was not his intention to harm anything or anybody. Brown also stated in front of you that he "was sorry men had been killed. It was not by my orders."

PROSECUTION WITNESS: Lewis Washington - 1



You are called to testify against John Brown. You are the most distinguished of all the participants, as you are George Washington's great grandnephew. Some persons even believe you bear a resemblance to our first president! You live near Harper's Ferry on a small but prosperous farm. (**Note:** You will meet with the prosecution attorneys prior to the trial to go over your testimony, but you should be aware that the defense will also question you. In order to avoid embarrassment on the stand, make certain you study carefully the following details about your role's life.)

Between one and two in the morning, Sunday, October 16, as you lay asleep in your farmhouse five to six miles from Harper's Ferry, you were awakened by hearing your name called. You got up and found five or six men in your hall. Three of them had cocked rifles pointing at you and at two other men who apparently were hostages they had already taken. You later found out the three armed men were named Cook, Coppoc, and one whose name you've forgotten. A fourth man soon came down the hall and barked out some questions. His name, you later found out, was Aaron Stevens. With revolver in hand, he asked: "Is your name Washington?" You said, "That is my name." Then you were told you were a prisoner. Another man said: "Don't be frightened. I want you to surrender and come with us freely. You are safe."

Curious about the whole affair, you put on your clothes and returned to the hallway where you saw one of the men taking some weapons from your gun closet. One man then spoke and told you that their mission was to emancipate all the slaves in the country. The leader, Stevens, asked you if you had money. You said, "I wish I did." When asked if you had a watch, you told him: "I have, but you cannot have it. You have set yourselves up as great moralists and liberators of slaves. Now it appears that you are robbers as well."

You were put on horseback, and then everyone rode to the Harper's Ferry armory. Once inside, a tall, white-bearded old man came over to you and offered you a place by a comfortable fire. Breakfast was ordered for 45 persons from the Wager House in town. Neither you nor this man called Captain Brown could eat once the food arrived. You feared that the restaurant's cook might have poisoned the food.

With time on your hands and freedom to move about in the armory engine house, you approached Captain Brown and asked him to return an old sword Stevens had taken from your gun closet. You told him the weapon was a gift to President Washington from Frederick the Great. Realizing it was merely a museum piece and had only family

PROSECUTION WITNESS: Lewis Washington - 2

value, Brown replied, “I will take especial care of it, and I shall endeavor to return it to you after you are released.” You noticed afterward—all day Monday—that Brown carefully carried the sword around with him. When the Marines finally broke through on Tuesday and took the engine house and captured Brown, you retrieved the historic sword.

Just before the Marines stormed the engine house, Captain Brown picked 10 hostages (including you), assured you of good treatment, and told you he intended to use several hostages to exercise influence on the townspeople to get him good terms. As you waited for the Marines to come through the door, you observed the actions and scenes around you. There were 11 hostages, Brown, and seven members of his army, three of whom lay wounded on the floor. Brown was the coolest and firmest man you ever saw, considering he had lost two sons and was badly outnumbered in the fight.

Note:

Your performance will be ever so much more effective if you sit in the witness chair without these two pages of background information in your hands.

To prepare yourself to have the confidence to leave these pages in your notebook, first highlight key information with a colored pen. Then have a friend or family member question you about your background prior to the trial's beginning. During such practice questioning, answer the questions aloud. Finally, ask your questioner to comment on how well you are answering the questions.

Moments before Colonel Lee signaled his 90 to 100 Marines to attack, Brown told you to keep well under shelter during the firing. At no time did Brown threaten to massacre you or place you and the others in front of the assault. You heard Brown say to his men: “Don’t fire on any unarmed men.” Finally, as the Marines spilled through the door, you saw Brown take a position near the wall, fire one or two errant shots, and cry “Surrender!”

On Tuesday, October 18, you, like other dignitaries in the region, gathered around the prisoner as he lay on the floor. Everyone wanted to hear him tell his story. Brown, for a dying man, was very articulate and talkative. A rapid fire of questions/answers revealed that he furnished the money for the raid; that he was sympathetic to the families of the hostages he had taken; that the bloodshed which occurred was not ordered by him, and that he could do little to prevent it; that he and his 18 men came to Virginia, as you heard Brown say, “to free the slaves and only that”; that he and his men could have killed many Marines during the siege, but killing was not their purpose.

You remember Brown accepting full responsibility for his acts. He refused to implicate any abolitionists who might have furnished the money for such an adventure. Brown justified his acts by quoting the Bible. He said: “To fight slavery is the greatest service a man can render to God.” Brown ended his comments to all of you by saying you should all prepare for a bloody settlement of the slavery issue.

PROSECUTION WITNESS: Armsted Ball - 1



You are called to testify against John Brown. You were one of the several persons whom Brown took as hostage during his capture of the Harper's Ferry armory. Your testimony should center on what Brown said while holding you hostage for one to two days, your experience while a hostage, and your attitude toward the defendant. **(Note: You will meet with the prosecution attorneys prior to the trial to go over your testimony, but you should be aware that the defense will also question you. In order to avoid embarrassment on the stand, make certain you study carefully the following details about your role's life.)**

When John Brown seized the armory at Harper's Ferry on the night of October 16, 1859, you were taken hostage. As master machinist at the federal arsenal, you live on the premises. Early in the morning—one or two o'clock—you were awakened by a disturbance and went to investigate. As you entered the engine house, some armed men took you prisoner, where you remained until you were released upon the U.S. Marines' capture of the armory on Tuesday, October 18.

Being with Brown, his men, and the other hostages for many hours, you observed and heard much talk from Captain Brown. He made a point to tell you it was his determination to seize the arms and munitions of the government to arm the slaves to defend themselves against their masters. He told you his real objective was to free the slaves, not to make war on the people. He also told you that you and your private property would be safe. Amazingly, Brown permitted you to leave the engine house and return to your family to reassure them of your safety and to get some breakfast. Under escort you went to your quarters, ate breakfast, and returned one hour later to where you were held hostage.

During the long hours as hostage, you were able to perform an act of heroism. You prevented one death when you stopped one of Brown's men from firing at an old man named Guess, who was just passing by. Later, however, you were unable to prevent the shooting of Fontaine Beckham, the popular mayor of Harper's Ferry, who had ventured onto the railroad trestle to get a better look at the arsenal below.

The capture of John Brown is an event you recall very well. As the sun came up on Tuesday morning, you peeked out and saw a patrol of U.S. Marines and some 2,000 spectators. Soon after, one of Colonel Lee's officers, Lieutenant J.E.B. Stuart, approached the engine house under a flag of truce. You saw Brown open the door and point his rifle at Stuart's head. A brave Stuart handed Captain Brown a note, which summoned Brown to surrender unconditionally. Brown handed the note back to Stuart, declaring he would surrender only if he and his

PROSECUTION WITNESS: Armsted Ball - 2

men were allowed to escape. You and some of the other hostages begged Stuart to ask Colonel Lee himself to come and reason with Brown. The lieutenant said he could only honor the terms of the note.

Suddenly Stuart jumped aside and waved his cap. With spectators cheering, the Marines rushed at the engine house and started battering at the thick oak doors. The Marines were unbeatable, losing only two men before they burst through the door. Two of Brown's men—Jeremiah Anderson and Dauphin Thompson—were killed almost immediately. One of the hostages, Colonel Washington, pointed to Captain Brown and yelled, "This is Osawatomie!" Lieutenant Green, who led the 90-100 storming Marines, rushed toward Brown and struck the old man with his dress sword before Brown could fire. Green's thrust to run Brown through with his sword failed, as it hit either a bone or Brown's belt buckle. As you watched Brown fall, Green beat him on the head with the hilt of the sword until Brown was unconscious.

You and the others breathed sighs of relief as you looked around the now quiet engine house. You watched the dead and wounded as they were taken outside and laid on the grass. A doctor was called to look at Brown, still unconscious and bleeding. For you and the others, it was a time to be reunited with friends and relatives after this terrifying experience.



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LEGAL PLAN FOR THE DEFENSE - 1

(For Lawson Botts, Thomas Green, George Hoyt—later Hiram Griswold and Samuel Chilton)

However many of you play these roles, use some or all five defense attorneys.

You are the team of attorneys with the impossible task of getting the jury to render a verdict of not guilty for your client, the famous abolitionist, John Brown. Perhaps never in American history has such a difficult case faced a team of defense attorneys.

In the beginning, two of you, Lawson Botts and Thomas Green, are appointed by the court to defend Brown. Midway through the trial, Brown rejects the two, and George Hoyt, a young lawyer from Boston, gives legal aid. Then, in time for the closing statements, two more lawyers—Hiram Griswold and Samuel Chilton—take over Brown's defense (to Brown's satisfaction),

To build your case, carefully study all the materials given you. To help plan your strategy, outline a plan of defense such as the following:

Opening statement

Speak forcefully, using language that you hope will gain sympathy from the jury. Emphasize the following:

1. The burden of proof rests on the prosecution's ability to erase all doubt of the defendant's guilt.
2. Brown went to great lengths to provide for the safety of his hostages.
3. The prosecution cannot possibly prove that Brown is guilty of the charge of treason against Virginia, when in fact he is not even a resident of this state. The jurisdiction to handle such a crime falls to the federal government because Harper's Ferry is a *federal* armory. Thus, the charge of treason should be removed.
4. Point out that if lives were taken, it was the result of the townspeople trying to be soldiers. This certainly cannot be taken to mean Brown was "levying war against the state of Virginia." Much of the bloodshed and death came as a result of self-defense on the part of Brown and his men. Emphasize Brown lost two of his own sons in the fighting. *(At this point interrupt your speech and ask the judge to bring in Dr. Mason to check the condition of the wounded defendant. Contend that your client needs hospital attention and that the trial should be delayed. When the judge refused to delay the trial, continue with your opening remarks.)*
5. Point out that the reason for your client's declining health is the way he has been treated after his capture. After capture Brown lay blood-soaked, unwashed, practically on exhibit, for more than 30 hours on a cold floor. Then he was forced into a meeting with the press. He received little, if any, medical attention.



Consider putting such opening statement arguments and questions for witnesses on 3"x5" or 4"x6" cards ... You don't have to write down your information verbatim. Instead, practice giving such statements or asking such questions from sentence fragment notes on such cards.

LEGAL PLAN FOR THE DEFENSE - 2

6. End your summation by pointing out:
 - a. Brown was not in his right mind when he led the attack. Even so, he treated his hostages with dignity. He and his men did not kill anyone until fired upon.
 - b. Brown cannot possibly receive a fair trial in Virginia because of Southern views on slavery.
 - c. Brown is too sick to stand trial.
7. Close by pleading, "Once again, in the name of humanity, let us delay the trial."

Cross-examination of prosecution witnesses

After the prosecution has finished its examination of prosecution witnesses, you should ask the questions indicated for each witness below. You may add other questions, if you wish.

Establish eye contact as you question witnesses ...

Caution:
Never ask a cross-examination question unless you are quite certain you know how that question will be answered!

George Phelps

1. Mr. Phelps, concerning the shooting of the baggage master, Shephard Hayward—how do you know one of Brown's men shot him? Did not the townspeople fire many wild shots?
2. You say, sir, that Brown boarded your train early in the morning. Did he admit to any crime at that time?
3. Mr. Phelps, did Brown ever say that he was going to overthrow our government?
4. Did John Brown have any malice toward the hostages? Was he concerned about their safety?

Lewis Washington

1. Colonel, would you call John Brown a madman or a murderer?
2. Did he ever kill or shoot anyone during the entire affair?
3. Did he ever threaten your life?
4. How were you treated as a hostage?
5. Do you believe in the teaching in the Bible? Can Brown be justified in his anti-slavery beliefs when the Good Book itself is set against this peculiar institution?
6. You, sir, are a descendant of the great first president, who was himself a slaveholder. Do you think he and the other so-called Founding Fathers could possibly justify slavery today in the late 1850s when they said they believed that "all men are created equal"?
7. What are your views on slavery, colonel? Is it an un-Christian and outmoded institution?

Armsted Ball

1. Mr. Ball, are you sure the words of Brown you testified that he said are accurate in every detail?
2. Could being under stress while a hostage cause you to imagine you were held by a madman who wanted to free the slaves, when in reality, you never really heard Brown say such things?

LEGAL PLAN FOR THE DEFENSE - 3

3. Did Lieutenant Green beat Captain Brown unconscious? Was Brown so uncontrollable that this action was necessary? Did Brown and his army ever harm you or condone any needless bloodshed?
4. When Brown rejected Lee's surrender proposal, Lt. Stuart signaled the Marines to charge. Did Brown and his men have any opportunity to find cover at this abruptly ended truce?

Examination of your witnesses

When the prosecution "rests" (i.e., finishes questioning its witnesses), you call your witnesses and ask the following questions. Of course, you may add others.

Joseph Brewer

1. Tell us how you became John Brown's hostage.
2. Did you ever hear Captain Brown tell anyone why he seized Harper's Ferry?
3. Was there ever any malice in Brown's treatment of you or any other prisoner?
4. Tell us about a mission on which Brown sent Aaron Stevens and A.M. Kitzmiller.
5. Were Brown's men ever wounded by the gunfire which came from the citizens of Harper's Ferry?
6. Do you have any sympathy for Captain Brown after spending nearly two days with him?
7. What does a flag of truce mean to you?
8. Was the trust violated by the townspeople?

Archibald (A.M.) Kitzmiller

1. What was your position at the arsenal?
2. When did you become a hostage?
3. Were you or any of the hostages ever harmed or threatened?
4. Did you think Brown acted like a madman during the time you spent with him in the engine house?
5. Did you ever leave the engine house before the Marines captured it on Tuesday morning?
6. Tell us about the peace plan.
7. How did the townspeople react to a flag of truce?
8. What role did the hostage named Joseph Brewer have in this attempted peace parley?
9. What did you do when Brewer rescued the body of Aaron Stevens?
10. Was the trust expected from a flag of truce violated by the townspeople?
11. Mr. Kitzmiller, tell us again. Was there any malice shown by Captain Brown and his men toward you or any other hostage?

Harry Hunter

1. Mr. Hunter, you're testifying for Captain Brown, are you not?
2. Do you know why you are a defense witness?

Speak slowly and clearly whenever you ask questions of witnesses.

LEGAL PLAN FOR THE DEFENSE - 4

3. What is your relationship to the late mayor of Harper's Ferry, Fontaine Beckham, who was killed in this unfortunate incident?
4. Did you feel anger at Dauphin Thompson?
5. Did you have any proof that Dauphin Thompson killed your granduncle?
6. What part did you play dragging Thompson onto the trestle work of the bridge?
7. Who fired the shots that killed Thompson?
8. What happened to Thompson's body after you fired the fatal shots?
9. Are you aware, Mr. Hunter, that the acts you perpetrated against Mr. Thompson—mob violence, lawless vigilante justice—that these acts are no better than the acts your people blame John Brown for committing?
10. Do you feel any regrets for your part in murdering a man not yet found to be guilty of anything?

Defense summation

Following the prosecution's summation, you must give a speech to the jury. Organize it any way you wish, but base your points on the following strategy:

1. Be aware that your chances of receiving a "not guilty" verdict are slim. Besides, Brown probably is guilty enough to be punished, imprisoned, and perhaps executed for his crimes. Nevertheless, try to work into your summation as much sympathy as you can for this old, senile, insane man, whose word and honor that he would not harm his hostages was good.
2. Insist that Brown had no intention of trying to overthrow the government of Virginia.
3. Emphasize Brown's abhorrence of violence as testified to by the hostages, who also spoke of his gentle nature and concern. *If you can, use verbatim (word-for-word) quotes from witnesses' testimony.*
4. Point out what a total blunder the Harper's Ferry raid was. Know the facts here, and use them to de-emphasize the scale of Brown's act.
5. Play down the importance of John Brown's raid. Ask how important it could be when, in fact, only 21 men made up his pitiful army?
6. Make a pitch for Brown as an idealistic individualist of indomitable will obsessed by a goal, a visionary seeking justice and equality.
7. End your speech by asking the jury to excuse a misdirected, but well-meaning old man, who, because of age and senility, started a hopeless fight and in the process lost his two sons and was seriously wounded himself. Ask the jury: "Hasn't he suffered enough? Wouldn't it be best to allow this poor, old soul to spend his last few years in an old folks' home?"



Speak slowly and dramatically at moments such as these—as if you have some secret knowledge you are going to drop on the jury—when you are ready to do so!

DEFENDANT: John Brown - 1

Try to find a copy of the most famous American epic poem—Stephen Vincent Benet's John Brown's Body.

In it you will find marvelous quotations presented in poetic grandeur.

Reading portions of this poem aloud will get you all primed to be a dramatic John Brown for your classmates.

You are 59-year-old John Brown, accused of treason, conspiracy, and murder. You will plead not guilty, but your case will be difficult, your chances of acquittal slim. You believe that your whole life has led up to this dramatic moment when the entire nation can see that your acts against the vile institution of slavery are justified. You do not fear your death; it will only intensify the efforts of your abolitionist supporters.

Born in Connecticut in May 1800, you have spent most of your life in poverty and misery. From these early years, you came to hate servitude. As an adult you concluded that slavery could be destroyed only by bloodshed and violence. Moving west and failing in several business ventures, you followed your sons into the Kansas Territory. At a time when most men retire to an inactive life, you, John Brown, decided to stir an entire nation.

In 1854 Congress passed the Kansas-Nebraska Act, declaring the Missouri Compromise, which prohibited slavery north of 36 degrees, 30 minutes, unconstitutional. According to the Kansas-Nebraska Act, people who lived in a territory would determine by *popular sovereignty* (that is, a vote of the people) whether the state-to-be would be free or slave. You and your sons joined the free-staters in Kansas, settling at Osawatimie. In the spring of 1856, you led a retaliatory raid on a pro-slavery settlement at Pottawatomie, killing five men in cold blood. Some say you personally used a sword to hack these victims to death. Some of your party were jailed, but you escaped. The Pottawatomie incident made you nationally famous. To some you were a murderous devil; to others, a hero.

For the next few years you wandered about the East collecting funds to fight slavery. One contributing organization, the Massachusetts/Kansas Committee, had as its members such renowned figures as Theodore Parker, Samuel Gridley Howe, and Thomas W. Higginson. They donated guns, money, and gathered recruits.

By late 1858 your plan for leading a slave revolt materialized. You had a feeling that after a few slaves revolted against their masters, an insurrection would spread throughout the South and slavery would be abolished. By early October 1859, you had rented a farm five miles north of the federal arsenal at Harper's Ferry, Virginia. This, you calculated, would be the perfect spot to seize weapons, start liberating slaves, and spark a revolt all over the South.

On October 16, 1859, late at night you and your 18 men and a wagonload of supplies set out for Harper's Ferry. Left behind on the farm in Maryland were documents explaining a framework for a new

DEFENDANT: John Brown - 2

provisional government to replace the one which would be destroyed after the slave revolt started. Your army crossed the covered railroad bridge linking Maryland and Virginia, cut the telegraph wires, and took several persons from the surrounding area as hostages. You then captured the federal arsenal where many army weapons were stored. Within hours the townspeople had driven all of you into the engine house where the fire engine and firefighting equipment were kept. For approximately 56 hours (from 1 a.m. Sunday to 9 a.m. Tuesday) you were surrounded in this building.

Your behavior during these 56 hours is going to be questioned. How did you treat your hostages? Did you tell anyone the reasons for your raid on Harper's Ferry? Did you encourage bloodshed? Your answers must be consistent with your not guilty plea when the court asks you your stand on the charges of treason, conspiracy and murder. (See the Procedure and Sequence in the Student Guide.)

Anything else you must know as you are tried in this courtroom of Judge Richard Parker, you can learn from the other witnesses' role sheets.

You will play your role as John Brown more effectively if you wear a long white beard, lay on a cot in the middle of the courtroom, moan and groan often, and stand up and make frequent eloquent speeches.

Instead of memorizing long speeches actually spoken by the amazingly eloquent Brown in 1859, you might familiarize yourself with the following ideas, which were consistent with Brown himself. Shout out these ideas from time to time during other witnesses' testimony. (You will not be put on the stand.)

You will enjoy shouting out such statements at appropriate moments.

1. Slavery is a mortal sin, and slaveholders will be punished by God.
2. Slavery can only end in bloodshed for slaveholders.
3. I financed my own venture.
4. I didn't escape when I had the chance.
5. I treated my hostages very well and none of them was threatened or harmed. People were killed only because of trigger-happy townspeople.
6. I accept full responsibility for the failure of the raid and will admit so if questions are asked about blame.
7. The Bible supports my cause against slavery. To fight slavery is the greatest service a man can render to God.
8. I acted alone in my attempted slave insurrection. No one nor no abolitionist organization gave me assistance, support, or aid.
9. I am right, slavery is wrong, and bloodshed alone will atone for the sins of slaveholding.
10. I had no knowledge of my men killing others; I condoned none of this.

DEFENDANT: John Brown - 3

11. I admit that I and my army came to Harper's Ferry to free the slaves, but that's all I will admit.
12. This trial is unfair, too swift, and I have poor attorneys. (Modify the latter, in case the jury defies history and sets you free.)

At the end of the trial just before you are sentenced (or set free), make an eloquent speech encompassing the ideas above, especially numbers 12, 5, 7, 11, and 9—in that order. Be very defiant, condemn your attorneys for their efforts (even if you win), and state that your fight has just begun and will continue whether you live or die. Then sink exhausted back onto your cot and assume a glassy stare as though in a trance while the judge renders his verdict.



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DEFENSE WITNESS: Joseph Brewer

You are called as a defense witness for the defendant, John Brown, despite the fact that you were one of the several hostages he took to secure his bargaining position as he captured the federal arsenal at Harper's Ferry, Virginia. (**Note:** You will meet with the defense attorneys prior to the trial to go over your testimony, but you should be aware that the prosecution will also question you. In order to avoid embarrassment on the stand, make certain you study carefully the following details about your role's life.)

Before your capture by Brown's men, life was fairly routine for you as a quiet citizen of Harper's Ferry. Once you were a hostage, however, life was suddenly exciting. As a hostage you watched Brown send Aaron Stevens, one of the old man's chief officers, and a hostage, A.M. Kitzmiller, under a truce flag to parley with the citizens of Harper's Ferry. But one angry and armed citizen fired on Stevens, riddling his body with well-aimed bullets. Viewing the shooting carefully from the engine house, you realized that Stevens was still alive. Suddenly, with great risk, you darted outside and raced to Stevens' nearly lifeless body. Gunfire was popping and cracking all around you. But you reached down, picked up Stevens' body, and carried Stevens to a nearby building. Then because of your promise to Captain Brown, you returned to the engine house.

As a hostage, you saw many grim scenes over the two days. But the grimmest was witnessing two of Brown's sons, Watson and Oliver Brown, being fatally wounded during the early hostilities of the first day—Monday.

Emphasize in your testimony that no malicious treatment was inflicted on you or any other hostage. From early Monday morning till middle Tuesday, you were not physically harmed. You believe this fact is extraordinary: In some 30 hours there were no injuries, deaths, or attempted escapes!



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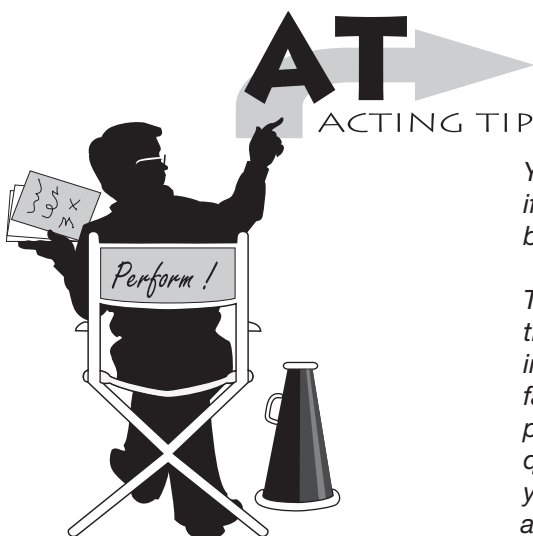
DEFENSE WITNESS: Archibald (A. M.) Kitzmiller

You are called as a defense witness for the defendant, John Brown, who is on trial for his seizure of the Harper's Ferry arsenal. Although not a major witness, you will give testimony which might tone down Brown's actions and bring out his humanity toward the hostages. **(Note:** *You will meet with the defense attorneys prior to the trial to go over your testimony, but you should be aware that the prosecution will also question you. In order to avoid embarrassment on the stand, make certain you study carefully the following details about your role's life.)*

While working as watchman at the arsenal, you were captured by Brown's men on Monday morning, October 17. You spent nearly two days as a prisoner in the engine house. While a hostage, you heard Brown say that, if necessary, he would fight slaveholders to set the Negroes free. Brown urged all hostages to use their influence with the citizens to prevent unnecessary bloodshed.

At first all of you were scared, but after a while you realized that the old man was not going to harm you. In fact, he treated all of you with dignity. You finally realized that he was likely going to use you all as leverage for his own escape.

You were a participant in Brown's attempt to talk with the citizens of Harper's Ferry on Monday afternoon. The citizens were guarding the engine house before federal troops arrived. Under a flag of truce, you and Aaron Stevens, who was just below Brown in authority, left the engine house to walk to where the citizens stood. When one citizen fired on Stevens, you ran for cover. Looking back, you saw one of the hostages, Joseph Brewer, run from the engine house to where Stevens' lifeless body lay, riddled with bullets. Unbelievably, Brewer hoisted the body up into his arms and carried it to a nearby building and then returned to the engine house. You made a dash for safety under the protective eyes of the angered citizens of Harper's Ferry.



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DEFENSE WITNESS: Harry Hunter

You are called by the defense to testify about the death of Dauphin Thompson, one of Brown's men who had been seized by the citizens of Harper's Ferry when Thompson left the engine house to parley under a flag of truce. You are a defense witness, but you are not a defender of Brown. Incidentally, you are the son of Andrew Hunter, one of the prosecuting attorneys. Although the prosecution attorneys may object to your testimony as irrelevant, the judge should rule your testimony relevant. **(Note:** *You will meet with the defense attorneys prior to the trial to go over your testimony, but in order to avoid embarrassment on the stand, make certain you study carefully the following details about your role's life.*)

As a member of the Harper's Ferry armed citizenry, you were in a position to see quite a bit during the key 36 hours. After your grand-uncle, Mayor Fontaine Beckham, was shot, you went to a room where one of John Brown's soldiers was taken after capture. You were part of a small mob that dragged Thompson, the prisoner, by the throat out into the open. Thompson, barely able to talk, said: "Though you may take my life, 80,000 will rise up to avenge me and carry out my purpose of giving liberty to the slaves."

You and the others then carried Thompson out to the bridge where you and another man leveled your guns and fired a dozen balls or more into Thompson's body. You then threw his body off the trestle work. Your actions were caused by your furor from seeing your granduncle killed. Now that the event has passed, you have mixed feelings about what you did at the bridge. You know that you put yourself above the law.



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HISTORICAL AFTERMATH - 1

What happened after the trial?

When the jury rendered a guilty verdict after only 45 minutes deliberation, no one, including John Brown, was very shocked. After all, very little had been said to counter the evidence which showed him guilty of the charges—treason, conspiracy to lead a slave revolt, and murder. The old man, perhaps resigned to his martyrdom, after standing as the foreman read the verdict, then lay back down on his cot and straightened his blanket.

The next day, November 2, 1859, Judge Richard Parker sentenced Brown to hang in one month on December 2. Before sentencing, Brown's lawyers, Hiram Griswold and Samuel Chilton, stated, "Unless the majesty of the law is upheld, dissolution of the Union must soon ensue with all the evils that must necessarily follow in its train." Brown gave a long speech, but everyone by now knew he was obviously guilty in spite of his swift trial. As the sentence was pronounced, the courtroom was silent except for one man who clapped but stopped when he heard no one joining him.

All that was left was to wait the month for the hanging. Some persons wondered why Judge Parker had not dictated a sooner hanging date, for a tremendous groundswell of support for Brown blossomed throughout the North. Officials protecting the old man were alerted to escape plots, rumors of which began as soon as Brown was first put in jail on October 18. Brown faced his destiny with a calm dignity.

Reactions to the trial and conviction of John Brown came from everywhere; none took a middle ground. William Lloyd Garrison, editor of the abolitionist newspaper, *The Liberator*, wrote: "In firing his (Brown's) gun, he has merely told us what time of day it is. It is high noon, thank God." Henry Wadsworth Longfellow recorded in his diary: "They are sowing the wind to reap the whirlwind, which will come soon." Fellow New England poet and essayist Henry David Thoreau, a staunch abolitionist, cried: "John Brown has made the gallows glorious like the cross." A reporter in the *Springfield Republican* wrote, "John Brown still lives!" Sentiment abroad was sympathetic to Brown also. Victor Hugo in France wrote: "Let the judges of Charles Town and the slaveholding jurors and the whole population of Virginia ponder it well; they are watched!" In the South, reactions to Brown's conviction were obviously different. Newspapers praised the justice of the trial and conviction. The region around Harper's Ferry was officially put on a war footing. A pending civil war seemed closer now. The trial of Brown, to most Southerners, proved conclusively that the entire North was guilty of conspiring to end slavery in the South.

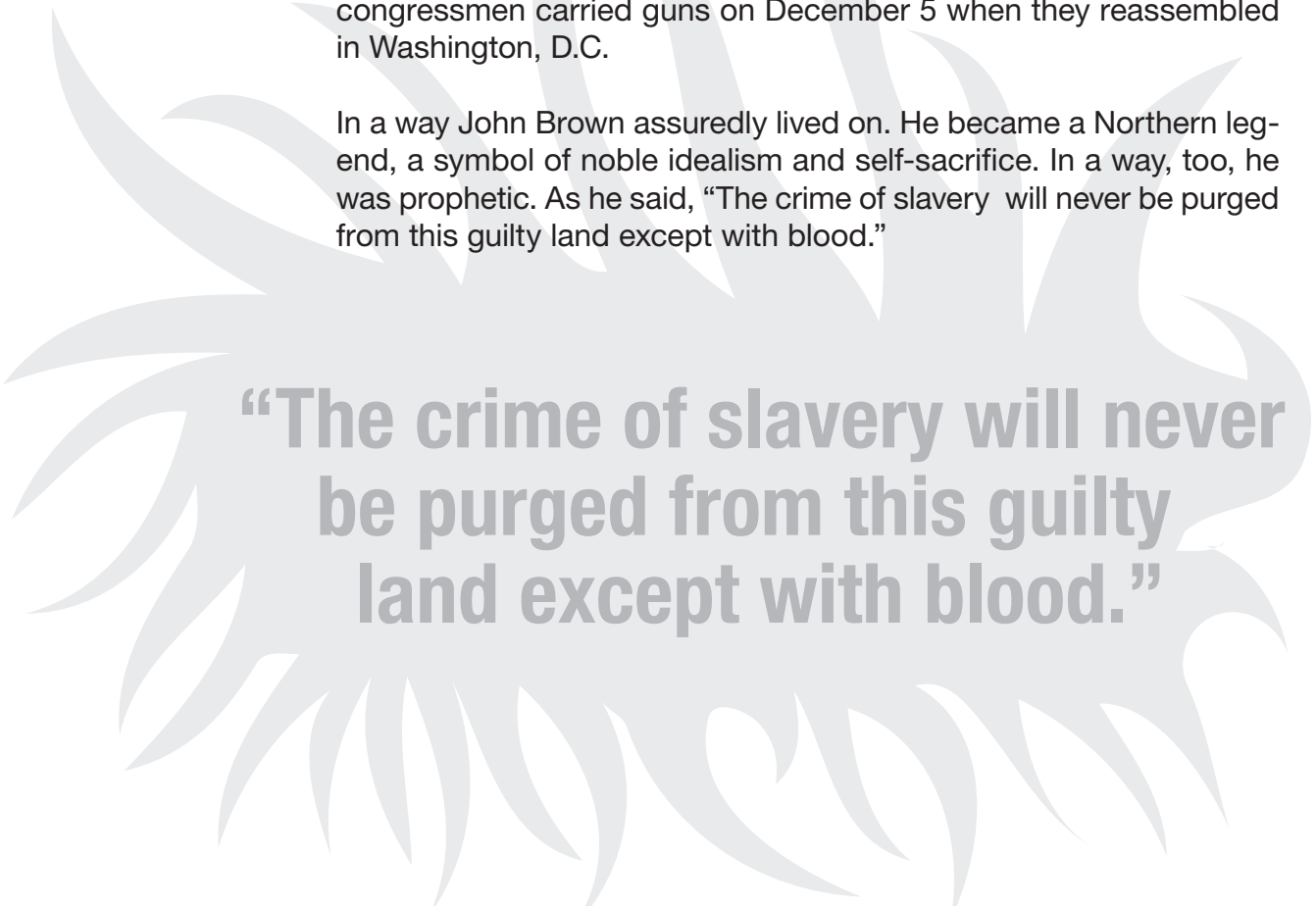
HISTORICAL AFTERMATH - 2

From November 2, the date of his sentencing, until December 2, Brown had hundreds of visitors; 800 alone came during a two-day period in early November. Even the jailor and some local officials were impressed with Brown's composure and courage. They treated the condemned man with reverence.

On December 2, John Brown left his cell and handed a note to an attendant. It read, "I, John Brown, am now quite certain that the crimes of this guilty land will never be purged away but with blood. I had as I now think vainly flattered myself that without very much bloodshed, it might be done." Forced to sit on his own coffin as he rode out to an open field where the gallows had been built, Brown remained quiet and restrained. Before 1,500 cavalry soldiers and scores of spectators (including John Wilkes Booth), Brown walked up the steps. After the old man's neck was placed in the noose, the sheriff cut the rope. The body of 59-year-old John Brown struggled convulsively. Only a low voice pronouncing these words was heard: "So perish all such enemies of Virginia! All such foes of the human race!"

Americans pondered the inevitable conflict. Even in Congress the tension from Brown's execution was evident. Most senators and congressmen carried guns on December 5 when they reassembled in Washington, D.C.

In a way John Brown assuredly lived on. He became a Northern legend, a symbol of noble idealism and self-sacrifice. In a way, too, he was prophetic. As he said, "The crime of slavery will never be purged from this guilty land except with blood."



"The crime of slavery will never be purged from this guilty land except with blood."

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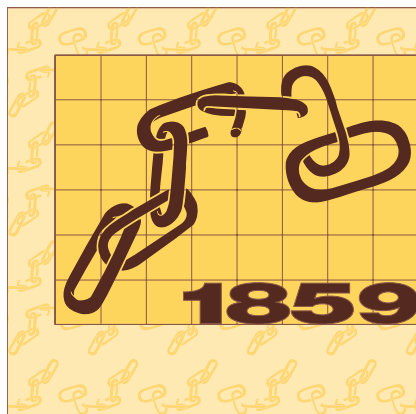
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THE TRIAL OF JOHN BROWN

A re-creation of an abolitionist's 1859 trial for treason, after he led an abortive raid on Harper's Ferry

OVERVIEW

Americans were shocked in October 1859 when they heard that Virginia officials had taken into custody John Brown, the angry abolitionist from Kansas. He had tried to start a massive slave revolt in the South. To Southerners, Brown was a fanatic because he wanted to abolish slavery in a bloodbath. To Northerners, he was either a madman or a saint driven by a fiery moral conscience that was forcing an inevitable conflict between the two regions.

One week after his capture while leading a siege of Harper's Ferry, a federal armory in Virginia, Brown was charged with murder, conspiracy, and treason in what one writer called "the most momentous trial in American history." This trial, based as it was on the moral rightness or wrongness of slavery, was to enter deeply into the consciousness of Northerners and Southerners alike. This trial was also to signal dire consequences because it happened just 18 months before Southern guns were fired on Fort Sumter, beginning the Civil War.

Brown's trial had all the elements of a Hollywood melodrama: intrigue, conspiracy, terror, escape plots, murder, dramatic confrontations, and dire foreshadowings. Brown's personality captured American attention in 1859, and, in the many years since, no single historical personality has caused so much controversy or has had so many accounts written about him. In fact, a review of these accounts points out the dilemma of viewing John Brown dispassionately. Articles, plays, novels, histories, and the American epic poem allow Brown to remain controversial even to this day. As one historian has written, "John Brown refuses to be embalmed in history."

PURPOSE

While participating in the trial of John Brown, you will achieve several objectives.

- First, you will gain knowledge of people and issues of the pre-Civil War era.
- Second, you will learn about trial procedure and understand the controversy which surrounds the subject of "fairness" at John Brown's trial.
- Third, you will sharpen your skills in notetaking, speech-making, and decision-making as they apply to the trial.
- Fourth, playing a role such as attorney, judge, juror, witness, or courtroom observer will give you the sense of what it must have been like in the tension-filled months just before our American Civil War of 1861-1865.

BACKGROUND ESSAY

Introduction

On October 25, 1859, John Brown raised his wounded body from a cot in the middle of a Charles Town, Virginia, courtroom. He listened to the charges against him: treason, conspiring with Negroes to start a massive slave revolt, and murder. This indictment resulted from his woefully unsuccessful raid on Harper's Ferry a week earlier.

To many reading about the trial, Brown was a fearful symbol of the fanatic anti-slavery forces desiring a holy war to free the slaves. To others, mostly Northerners, Brown was a hero of almost mythical proportions. Few Americans doubted that he had tried to spark a slave revolt by taking arms and ammunition from a federal armory at Harper's Ferry, Virginia. Yet, the trial of John Brown, coming shortly before the Civil War, helped to crystallize and, perhaps, freeze the minds and positions of pro-slavery and anti-slavery forces in a country already sharply divided by sectional differences.

Sectional differences

Looking back on the decade before guns were fired at Fort Sumter in April 1861, any keen observer could have predicted Civil War between North and South. In fact, during the 1850s, visitors to the North and South commented on the symbolic differences between the two regions. The North seemed to be a society of hard-working free men toiling as farmers, merchants, ship-builders, and fishermen. The South placed its emphasis on large-scale tobacco and cotton plantations, using black slave labor. This Southern acceptance of slavery had become the most important difference between the two regions. By the time of John Brown's raid, slavery was dividing the nation politically and morally, as well as economically.

The 1850s: a decade of crises

Prior to the 1830s the North and South had averted major flareups. Glaring differences, however, seethed below the surface, ready to explode. During the next 20 years, abortive slave revolts such as Nat Turner's in 1831, the growing moral indignation against slavery by an increasing number of Northern "extremists" (called abolitionists), and the expanding Northern/Eastern political power in Congress—all these put the South on the defensive. In retaliation, Southerners embraced this rigid frame of reference: the Biblical justification of slavery, the righteousness of states' rights, and the gentility of "the Southern way of life" as lived on plantations. Eventually, sectional differences broke out in one of the most violent and tense decades in our history, the 1850s. Since these years influenced John Brown's thoughts and actions, a brief summary follows:

The Compromise of 1850 was a congressional act whereby both the North and South were appeased by temporary gains and losses. California was admitted to the Union as a free state, but the territory newly acquired from Mexico was to be carved up into states that would be free or slave on the basis of *popular sovereignty* (i.e., the citizens in the state would decide themselves).

The Fugitive Slave Law (1850) granted Southerners the legal right to retrieve runaway slaves from the North. Despite this law, the famous underground railroad continued to lead slaves to freedom in Canada because many Northerners refused to obey the law.

The Kansas-Nebraska Act (1854) gave the people settling in the unorganized territory just west of the Mississippi an opportunity to test the popular sovereignty idea of Senator Stephen Douglas (a Democrat from Illinois), who grabbed the national spotlight with his ideas. Settlement of the slavery issue by popular sovereignty made Kansas a bloody battleground. Both pro-slavery and anti-slavery elements tried to get control of Kansas. "Bleeding Kansas" became a national headline. News stories featured settlers killing one another because of their differing views on slavery. One battle was actually a military raid on a pro-slavery settlement near the Pottawatomie River. John Brown led this raid and allowed five people to be hacked to death.

The Dred Scott Decision (1857) invalidated the Missouri Compromise's constitutionality. In this decision the Supreme Court declared that Dred Scott, a slave who was seeking his freedom because his

master had taken him into a free state, could not sue in the courts because Negro slaves were property, not citizens. Since slaves were property, Congress had no right to legislate against slavery in the territories and thus deprive citizens of their property. This decision enraged the North because it allowed slavery to extend into the territories regardless of how the majority of citizens there felt.

Lincoln-Douglas Debates (1858) While campaigning for the Senate in Illinois, Stephen Douglas, the Democratic incumbent, and Abraham

“

... slavery was dividing the nation politically and morally, as well as economically ...

”

... the 1850s: a decade of crisis ...

Lincoln, the little-known Republican challenger, debated the slavery issue. Their words attracted national attention. Though Douglas was a gifted orator, the shrewd, homespun Lincoln forced his opponent into answers about slavery which antagonized Southern Democrats. Douglas won the election, but Lincoln became a national figure and a prime candidate for president in 1860.

John Brown's Raid (1859) More than any other event in this decade, this raid magnified the slavery issue because it polarized opinion in the North and South. When Brown unsuccessfully tried to incite a massive slave insurrection in the South by seizing a federal armory at Harper's Ferry, Virginia, distrust and terror filled many Americans' minds. The North saw the South as a region of hateful and cruel slave owners; the South saw the North as vengeful abolitionists ready to spill blood to end slavery.

John Brown

People who had met John Brown were convinced Brown himself believed God was guiding him. (Some persons called him "God's angry man.") If Brown was not insane, as many believed, then he certainly had all the characteristics of a genuine fanatic willing to shed blood to wipe out slavery.

Born into poverty in Connecticut on May 9, 1800, Brown from an early age knew suffering and failure. As an adult, he was plagued by the death of his first wife, repeated failures in small businesses, inept land speculation, and several lawsuits against him. When at age 50 Brown moved westward to escape creditors, he had already developed a tremendous sympathy for American slaves. In fact, years earlier, Brown had allowed his Pennsylvania farm to be a station on the underground railroad.

By the early 1850s, Brown began to have visions of leading a huge, concerted, slave insurrection. But before he could organize such an operation, he had moved to Kansas where violence had erupted over slavery and popular sovereignty. In May 1856, Brown and his sons rode to Pottawatomie, Kansas Territory, a pro-slavery community. There they hacked to death five hapless victims. Because Brown hailed from the anti-slavery town of Osawatomie, he was known for years as "Old Osawatomie Brown." His blood-spilling raid in Kansas gave Brown a national reputation. Pro-slavery settlers vilified him as a butcher; abolitionists glorified him as an instrument of moral justice. Close acquaintances saw changes in Brown after 1856. His inability to talk about anything but slavery left many with the impression that he was obsessed with a new plan to orchestrate a slave revolt in the South.

Harper's Ferry

By summer 1869, Brown had the men and the financial support (from New England abolitionists) to put into operation what he felt was a divinely inspired plan. He chose Harper's Ferry, a federal armory in Virginia, as a base of operations from which he would lead the revolt. On October 16, 1859, John Brown and 18 other men attacked and seized the United States armory and the bridges leading to the ferry. They took several hostages and occupied the arsenal. By mid-day, October 18, the ill-fated attack ended when the Marines, under the command of Colonel Robert E. Lee, broke into the engine house of the armory. They forced Brown, who had been wounded, and his surviving followers to surrender.

The trial begins

News of John Brown's raid shocked the nation, to say nothing of rumors of an actual slave revolt in the South. (No revolt took place.) Upon capture, Brown and his men were taken into custody and removed to Charles Town jail. Virginia's Governor Henry Alexander Wise reasoned that in spite of Brown's reputation and the crusade he represented, he should have a speedy and public trial. Attorneys were assigned to the case, witnesses were lined up, and a court with a jury was set up to try John Brown for treason, conspiracy, and murder. Now your class is about to re-create his trial.

“ ... By the early 1850s, Brown began to have visions of leading a huge, concerted, slave insurrection ... ”

“ ... a jury was set up to try John Brown for treason, conspiracy, and murder ... ”

BRIEF SUMMARY OF MAJOR ROLES

(The persons playing these roles will receive special identity handouts.)

Prosecution attorneys Andrew Hunter and Charles Harding

The two of you will be in charge of prosecuting John Brown, who is, in your eyes, definitely guilty of the charges. If you handle your witnesses skillfully, you should be able to get the jury of Virginians to bring forth a verdict of guilty.

Defense attorneys Lawson Botts, Thomas Green, and George Hoyt

Your roles will not be easy ones, for few people doubt the guilt of John Brown, since, in fact, the U.S. Marines under Colonel Robert E. Lee, caught Brown and his men in the engine room of Harper's Ferry arsenal as they were attempting to take it over. Your job will be to play down the actual siege and try to get the sympathy of the jury by concentrating your defense on Brown's kind treatment of the hostages and his courage in standing up for what he believed to be right.

Prosecution witness Colonel Lewis Washington

You are the most distinguished witness at the trial, for you are the great grandnephew of George Washington. As a hostage who was held by Brown, you are in a position to give damning evidence against the defendant. You were held prisoner the entire night in the engine house and know the crime very intimately.

Prosecution witness George Phelps

You were a conductor on the Baltimore and Ohio Railroad on the night John Brown seized the arsenal at Harper's Ferry. As you cautiously went through the area under siege, you saw Brown's men kill one man. John Brown himself came to see you that night, and later, when Brown was having a press conference in his jail cell, you heard him talk of his goals.

Prosecution witness Armsted Ball

You were one of the several hostages captured by John Brown, who told you why he was there. Since you work at the arsenal as a master machinist, you were an easy hostage to take. When you testify about events you saw while a hostage, you will hurt the defendant's chance for acquittal.

Defense witness Joseph Brewer

Also a hostage captured by Brown's "army," you will describe the events of that Sunday night and Monday morning. In fact, you performed a heroic deed when a flag of truce initiated a peace parley which unfortunately ended in bloodshed rather than a cease-fire. Your testimony will lessen the impact of the charges leveled at the defendant, John Brown.

Defense witness Archibald M. Kitzmiller

Also a hostage held by Brown and his men, you will testify on the defendant's behalf regarding his sanity, his concern for the hostages' lives, and his attempt to gain a truce.

Defense witness Harry Hunter

You are a surprise witness, in a sense, for you are the son of one of the attorneys for the prosecution, Andrew Hunter. Your testimony will focus on the brutal murder of one of John Brown's men, a deed you are now somewhat ashamed.

Defendant John Brown

You are on trial for your life, charged with murder, conspiracy, and treason. Often, during the trial, you will painfully stand and attempt to assume responsibility for carrying the burden of your own defense. You are articulate and lucid yet wounded and weak.

(The following roles receive no special identity handouts.)

Judge Richard Parker

You are in charge of the proceedings with the power to insure a fair trial for John Brown, yet your insistence on a "public and speedy" trial will meet with criticism. You should be stern and dignified while allowing both sides to fairly present their cases.

Note:

*Later Hiram
Griswold
and Samuel
Chilton
handle
Brown's
defense.*

Doctor Jared Mason

You will be called upon several times to examine John Brown during the proceedings as he lies half-dead on an army cot in the middle of the courtroom. Your professional opinion is respected, and hopefully you will find Brown well enough to stand trial and not hold up the proceedings.

Bailiff Joshua Gibbons

As bailiff you have the responsibilities of keeping order and swearing in the several witnesses who will appear in this momentous case.

Jurors

You are all farmers or small businessmen from the surrounding Virginia area. Although none of you owns slaves, you are nevertheless appalled by this act of terror perpetrated by John Brown and his provisional army. Despite your feelings as Southern defenders of slavery, you will try to keep an open mind. This case has stirred up millions of people in both the North and the South. In fact, the nation's attention for these few days will be on this courtroom and the verdict you will render.



JURORS ...

Be sure you take good notes during the trial ...

TRIAL SEQUENCE

Follow the sequence below as you re-create the trial.

1. You are in a crowded courtroom in Charles Town, Virginia, in late October 1859. The courtroom is packed with 500 to 600 spectators. Another thousand persons are outside milling around in the street.
2. The jury members enter and take their seats facing the judge's "bench."
3. The prosecuting attorneys enter and take their places to the right or left of the judge and between the judge and jury.
4. The defense attorneys enter and sit opposite the prosecution attorneys.
5. The room's noise quiets to a hush as John Brown is half carried into the room by the bailiff and Dr. Mason and is helped onto a cot in front of the defense attorneys.
6. **Bailiff** goes to the judge's bench and calls out, "*Hear ye! Hear ye! Hear ye! The District Court of the Commonwealth of Virginia is now in session, Judge Richard Parker presiding. All rise!*"
7. With the above command, everyone stands as Judge Parker enters, takes his seat, and with a bang of his gavel motions for all to sit.
8. **Judge Parker:** "*The trial of the Commonwealth of Virginia versus John Brown is now in session.*" He then asks the bailiff, "*Bailiff, will you please read the charge against the defendant.*"
9. **Bailiff:** "*The jurors of the Commonwealth of Virginia, Jefferson County, duly impaneled upon their oaths, do present that John Brown, Aaron Stevens, and Edwin Coppec, white men, and Shields Green and John Copeland, free Negroes, together with other evil-minded and traitorous persons, did feloniously and traitorously make rebellion and levy war against the said Commonwealth of Virginia.*"
10. **Judge Parker:** "*John Brown, rise and come forward.*" (Brown rises and staggers to the bench.) "*How do you plead to these charges against you?*"
11. **John Brown:** "*Not guilty.*" (Brown then starts to tell why he is not guilty, by stating, "*I am not guilty of rebellion against Virginia; I am guilty only of rebellion against the evil of slavery; I am not guilty*")
12. **Judge Parker:** "*Bailiff, will you please sit Mr. Brown down.*" (The bailiff forces Brown back to the cot.) "*Now, bailiff, please swear in the jury.*"
13. **Bailiff:** "*Will the jury please stand and raise your right hands. Will you as a juror in this case carefully carry out your duties as an open-minded judge of the testimony and evidence presented for and*

against the defendant and swear to fairly judge him on the basis of the charge brought against him? If you do so swear, say, 'I do swear.'"

14. **Jurors:** "I do swear."

15. **Bailiff:** "Be seated."

16. **Judge Parker:** "Gentlemen of the jury, the defendant is to be given a fair trial. I am bound to execute our laws faithfully, that I must hold that anyone accused of a crime is innocent until proven guilty by an honest and independent and impartial jury of his countrymen. If guilty, he will pay the extreme penalty for his guilt. Be fair and judge him on the evidence. If the prosecution is ready, they may now make their opening remarks."

17. Prosecution makes opening statements.

18. **Judge Parker:** "If the defense is ready, they may now make their opening statements to this court."

19. Defense presents opening statements, which include a request that John Brown not be tried but held over for observation as an insane man.

20. **John Brown** rises: "Your honor, I look upon the plea of insanity as a miserable artifice and pretext. I am perfectly unconscious of insanity, and I reject, as far as I am capable, any attempt to interfere in my behalf, on that score."

21. **Judge Parker:** "Very well, Mr. Brown. Will the prosecution call its first witness?"

22. **Bailiff** swears in all the witnesses with the familiar, "Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?"

23. Prosecution examines George Phelps.

24. Defense cross-examines George Phelps.

25. Prosecution examines Colonel Lewis Washington.

26. Defense cross-examines Colonel Lewis Washington.

27. Prosecution examines Armsted Ball.

28. Defense cross-examines Armsted Ball.

29. **Judge Parker:** "Does the prosecution have any more witnesses to call?"

30. **Prosecutor:** "No, your honor, We rest our case."

31. **Judge Parker:** "Will the defense please call its first witness?"

32. Defense examines Joseph Brewer.

33. Prosecution cross-examines Joseph Brewer.

34. Defense examines Archibald Kitzmiller.

35. Prosecution cross-examines Archibald Kitzmiller.

36. Defense examines Harry Hunter.

37. Prosecutor chooses not to cross-examine Harry Hunter, who is the son of one of the prosecuting attorneys.

38. John Brown rises slowly and gives a speech rejecting his defense as woefully inadequate.

39. **Defense counsel** stands and says: "Your honor, the defense requests that it be given a delay since the defendant has repudiated his legal counsel."

40. **Judge Parker:** "Witnesses have already testified for and against the defendant. Let us continue this trial. Is the prosecution ready with its summation? And the defense should be ready with its summation." (The last is an order.)

41. Prosecution makes its summation.

42. Defense makes its summation.

43. **Judge Parker:** "Jurors, you have now heard the evidence from the mouths of the witnesses presented here and the summary arguments of the attorneys. It is now time for you to make a judgment. Please be aware that you are to make a decision based only on the testimony and evidence in connection with these alleged charges that you have heard in this court. The defendant should not be judged for past or possible future behavior, only on these charges. Bailiff, take the jury to a place where they may be sequestered so that they may deliberate and render a verdict."

44. Bailiff escorts the jurors to a quiet place for deliberation. (Your teacher may ask each juror for a written verdict here without oral deliberation or leaving the room. The foreman will then collect the verdicts and count them. Normally, *all* jurors must be for or against guilt, but because of time limitations, a majority vote will rule here.)

45. Jury returns and the foreman prepares to speak.

46. **Judge Parker:** "The jury having returned, we will carry this case forward. Mr. Foreman, have you and your fellow jurors reached a verdict?"

47. **Foreman:** "We have, your honor."



48. **Judge Parker:** *"What is your verdict?"*
49. **Foreman:** *"We find the defendant, John Brown*
- If guilty, the judge asks John Brown if he has anything to say before sentencing is pronounced. Brown then gives a speech. The judge then sentences Brown to death by hanging *"one month from today, December 2, 1859."* He adjourns the court.
 - If not guilty, the judge adjourns the court after thanking the jurors, attorneys, and other participants. However, Brown should make a speech in spite of the not guilty verdict, thanking the jurors for treating this case with true justice.

ROLE RESPONSIBILITIES

Role players

Those of you who choose, or are picked to be, witnesses, prosecution and defense attorneys, judge, bailiff, or doctor have the following responsibilities:

- Prepare for your role by carefully reading the Background Essay and the Brief Summary of Major Roles.
- Read carefully and follow attentively the sequence of the trial as given in the TRIAL SEQUENCE in this Student Guide.
- If provided by your teacher, carefully read your role sheet.
- After the trial ends, turn in a one-page summary of why your character acted as he did and a brief evaluation of how effectively you played your role.

Jury members

Those of you not chosen above will be members of the jury with the following responsibilities:

- Read carefully and follow attentively the sequence of the trial as given in the TRIAL SEQUENCE in this Student Guide..
- React in a dramatic manner to testimony against John Brown as you are Virginians and Southerners who both hate and fear him.
- Turn in a two- to three-page outline of the issues raised and the points used by each side to prove its case. Use **GSs** (**G**eneral **S**tatements) and **SDs** (**S**pecific **D**etails) as you outline each side's arguments. Here is an example:

Notes on DEFENSE ARGUMENTS

	<p>GS John Brown held no malice toward the hostages he took at Harper's Ferry.</p>
	<p>SDs</p> <ol style="list-style-type: none"> He told the hostages he would not harm them, and he did not. Brown treated the hostages with dignity, calling them "Sir." During most of the ordeal and the final minutes, Brown made sure the hostages in the engine house were out of the line of fire.
	<p>Note: <i>GSs are usually assertions of opinion; SDs are facts. Be aware that attorneys often make "opinions" sound like "facts"; hence, you may have to edit your notes later.</i></p>

DEBRIEFING

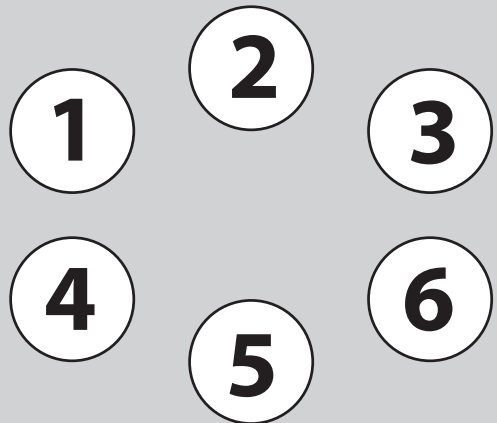
Once you have finished the trial, you will discuss the pivotal questions below. If time permits, you will be placed in an activity group of about six members. After discussion, a representative from your group will report your conclusions to the whole class.

1. What testimony was the most effective in convincing you as to John Brown's guilt or innocence?
2. What differences, if any, might occur if Brown's trial were held today?
3. Who in our society (or in the world) is a John Brown "type"? Would he/she, today, get any sympathy or achieve martyrdom on a scale similar to Brown? Explain.
4. From what you've observed from the trial and Brown's behavior, was he insane or sane? What facts can you see to defend either conclusion?
5. Would a modern court of law allow the following:
 - a. Such a speedy trial?
 - b. Brown to select his own counsel (he didn't in 1859)?
 - c. Brown to be tried for a crime against a state of which he was not a resident (in a state court, and not a federal one, when the crime was against a federal property)?
 - d. The question of Brown's alleged insanity to be decided by Brown himself in a long speech dismissing such rumors?
 - e. Such an inadequate time for Brown's lawyers to familiarize themselves with the case?
 - f. Brown to be indicted by a grand jury and go on trial for the alleged crime on the same day?
 - g. Brown to go on trial for such a "sectional" crime only miles away from Harper's Ferry, in the pro-slavery South, where fear, hysteria, and vigilantism were common?
6. Do you think the fanatic's place in history is significant? Who else besides Brown altered history with fanatical acts?



Your teacher may number off your group and give each numbered member one question to study and answer in detail.

You may even share your work both with similarly numbered members from other lettered groups and with the whole class.



Group A