PRINCE WILLIAM
Historic Preservation

Office and Authority: The Responsibility of Justice in 19th-century Virginia
Teacher's Guide

Figure 1 - Patrick Henry Arguing the Parsons' Cause at Hanover Courthouse by George Cooke, 1834, VMHC

Reporting Category:

Topic: The Virginia justice system before the 14th Amendment.

Primary SOLs: VS.1, VS.7, VS.8, USI.1, USI.9, USII.3, CE.1, CE.3, CE.4, CE.8, CE.9, GOVT.1, GOVT.2, GOVT.3, GOVT.8, GOVT.10, GOVT.11, GOVT.16

Materials: Introduction video, court trial scripts, individual role cards, teacher's guide

Directions:

Students will watch an educational video that provides a brief background of Brentsville and the 19th century court system in Virginia. There are downloads for three complete trials with scripts for instructors, and individual role cards for students/participants. These should be printed or PDFs distributed as appropriate. Teachers should review this guide for further information and guidance on how to do the classroom mock trials.

Essential Information:

Brentsville the Town

The town of Brentsville was established on 50 acres in 1820 to become the seat, functionally the local capital, of Prince William County. The new town was centrally located along the major east-west road that led from the port of Dumfries to the Shenandoah Valley. This move replaced Dumfries on the Potomac River, which was no longer convenient for most residents.

While Brentsville was the county seat, the courthouse was where trials were held and as a meeting place to determine how the county government should run.

Court days were held every month and ran for about four days before adjourning for the next session. While waiting for the courts to meet, people charged with a crime were held in the jail at Brentsville. Those convicted of a crime and sentenced to more than a year's confinement were transferred to the state penitentiary in Richmond.

During the American Civil War, soldiers from both armies encamped in the area along with civilian refugees. People were free to enter the abandoned government buildings. Many of the official government documents, like court records, were either stolen or destroyed during the war, and the brick building that housed these documents was destroyed by fire. The courthouse chimneys were removed, windows broken, doors broken off their hinges, and the roof were so severely damaged that after the war court sessions were held in a nearby church until 1867. The damage inflicted on Brentsville during the Civil War was so great that the town never fully recovered. This and the fact that the railroad did not come through town, encouraged the County seat's move to Manassas in 1893.

Courts in Prince William County

There were two distinct courts held in the Brentsville Courthouse. The most common was the county court, also called the monthly or magistrate's court, which heard minor criminal and civil cases. The county court was presided over by justices of the peace, sometimes referred to as magistrates. Each county was legally entitled to have thirteen justices of the peace who would lead county government in addition to sitting on county courts. Depending on the case, anywhere from three to thirteen magistrates would serve as judges. Magistrates were appointed by the governor to a life term and were not required to have a legal background or training.

The second court held at Brentsville was the circuit court. Unlike the county court, the judges serving on a district court were professional judges with a legal background. From 1831 to 1851 they were a member of Virginia's General (Supreme) court. The state was divided into various districts, with two or three judges assigned to individual circuit of counties within that district. Prince William County was part of the Sixth Circuit before 1851, then the Ninth Circuit which included all the northern Virginia counties, Fauquier, and Rappahannock. Today, it is still part of the Ninth Circuit. The circuit judges would travel to different counties each month; each county would have two circuit court sessions a year. From 1831 to 1851 the judge was a member of Virginia's General (Supreme) court. After 1851, they were appointed directly to their circuit.

Typically, any serious crime that would result in either the death penalty or long

incarceration would have been tried in the circuit court. The major exception was that serious crimes, such as murder, committed by enslaved Virginians could be tried by county courts in a special session called a Court of Oyer and Terminer. Citizens charged with a capital offense had the right to be tried by a higher court, but because enslaved individuals were not citizens, they could be tried by the magistrates. In addition to not having a professional judge sitting on their case, enslaved Virginians could be barred from testifying in court.

Rights in a 19th Century Courtroom

It is important to note that in the 1820s and 1850s when these court cases occurred, the United States had very different interpretations of civil rights. Notably, women were not allowed to vote and thus were not allowed to hold office. Tax paying was considered the ultimate bar to being able to vote and hold office, thus having a say in public affairs. As both of those were limited to white men over the age of 21 with sufficient assessed tax value, most free African Americans, all women, all enslaved people, and some white men had their rights limited.

For people of color (Black, multiracial, or Native American), state law[1] said that their evidence could only be against other people of color, without exceptional circumstances.[2] As they were not considered citizens of Virginia, they were afforded no protections in court and placed under a great many additional restrictions. Free people of color had it little better, facing difficulty calling witnesses or getting their cases heard. Other general rights such as one spouse not being compelled to testify against the other were regularly violated as well, as seen in Case #2. In 1856, the Supreme Court decision in Dred Scott v. Sandford formalized this stance by declaring that persons of African descent, "are not included, and were not intended to be included, under the word 'citizens' in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States."

In law, women are only mentioned when it comes to their status as wives, property owners, or crimes against them. In the 1810 New Virginia Justice below, most of the section titled "WOMEN" is related to forcible marriage, while the section on "WIFE" runs to a full four pages.

All of these would lead to the 14th Amendment in 1868, which made a legal effort to extend the federal civil rights protections to the state level. The Citizenship Clause, Privileges or Immunities Clause, Due Process Clause, and Equal Protection

[1] Revised Code of Virginia (1819) Chapter 181 Section 3, v.1 pg.517 of the edition linked below.
[2] Revised Code of Virginia (1819) Chapter 111 Section 44, v.1 pg.431 ditto

Clause were a result of decades of cases like these that denied people their rights as Americans based on their race, gender, and other factors. The 14th Amendment is still one of the most litigated parts of the Constitution, highlighting the continued struggle over rights in and out of court.

Exercise:

Selecting a Case

There are three different case options as part of this activity. Each touch on different aspects of civics, civil rights, the criminal justice system, and 19th century Virginia life. Each one will be briefly described here, but the individual case files contain a more complete summary for each one.

1. *Commonwealth v. Burgess (1824)* – This is a seemingly open-and-shut case of murder, the first heard in the Brentsville courthouse. However, there are some interesting points of 19th century law on self-defense that may keep Joseph Burgess away from the gallows. This case looks at community responsibility, and 19th century views on justice versus legality.
   Number of Roles: 12
   Applicable SOLs: VS.1, VS.7, USI.1, USII.3, CE.1, CE.3, CE.4, CE.8, CE.9, GOVT.1, GOVT.3, GOVT.8, GOVT.11, GOVT.16

2. *Commonwealth v. Bob, or Robert (1826)* – This case examines the difficult position an enslaved individual accused of a crime was placed in. Bob, also known as Robert, was an enslaved man accused of stealing meat from a white plantation owner. Because Bob was enslaved, it is not really a trial as we're used to, but more of a fact-finding inquisition. The case itself turns on the plaintiff's memory, a confusion of dates, and the forced testimony of Bob's wife.
   Number of Roles: 10
   Applicable SOLs: VS.1, VS.7, VS.8, USI.1, USI.9, USII.3, CE.1, CE.3, CE.4, CE.8, CE.9, GOVT.1, GOVT.2, GOVT.3, GOVT.8, GOVT.10, GOVT.11, GOVT.16

3. *Commonwealth v. Underwood (1857)* – Free speech, its application, and the extent it existed when threatening the institution of slavery is at the heart of this case. John Underwood was a prominent local businessman and magistrate justice with a history of speaking out against slavery. This time, the court has several ironclad witnesses to back their case. Deals with the 1st Amendment, views on how these Constitutional rights were applied by the states before the 14th Amendment, and how public discussion was

controlled by the government.
Number of Roles: 9
Applicable SOLs: VS.1, VS.7, VS.8, USI.1, USI.8, USI.9, USII.3, CE.1, CE.3, CE.4, CE.8, CE.9, GOVT.1, GOVT.2, GOVT.3, GOVT.8, GOVT.10, GOVT.11, GOVT.16

Trial Roles and How to Select Them

Each case has the same core of participants: at least one Judge, the Sheriff, the Clerk of Court, Commonwealth's Attorney, and the witnesses. Two also have defense attorneys and one has the defendant testifying on their own behalf. Who appears in a particular case is often part of the lesson in a trial (i.e. Bob does not appear in his own defense because he was not called to testify and could not chose to speak on his own behalf as an enslaved man). The rest of the group not chosen for a "speaking" part will form the jury. It is important to remind the group that this is a civic responsibility they may one day have; to listen closely, weigh the evidence, and make a decision based on what they learn. Historically, these juries decided the fates of actual people in each case.

Ultimately, you are the most familiar with your class or group. Whatever method works best for assigning tasks should work fine here! Some roles have more to say or do than others. For instance, the clerk does a lot of writing and repetitive speaking (swearing in witnesses, etc.), while individual witnesses may have a lot or a little to testify. For most groups, the teacher or class leader should take the role of the Commonwealth's Attorney (prosecution) rather than a student/participant. This helps set the pace of the trial and provides a good position to help everyone else if needed.

Setting up the Room

Recreating the courtroom at Brentsville is doable! The video can help guide you with the general appearance of the space, but to adapt for your classroom or space here are a few suggestions.

There should be a space in the front for the magistrates to sit, ideally at a table, with a separate desk in front of them for the clerk. You should select at least three, although in most cases only the Chief Magistrate (seated in the middle) speaks.

A chair to the magistrates' right side for the Sheriff, and the jailer on the other side if you choose to have one student portray them. Defense counsel and the defendant (speaking or not) should be on the right side of the clerk's desk and the Commonwealth's Attorney on the left. Whether they have tables is up to you, for

most of these cases they would not have historically.

The those serving as the jury could stay seated at their desks, or if you want to rearrange the room, could be concentrated in the middle facing the Judge but behind the defense and Commonwealth's attorney. See the illustration below.

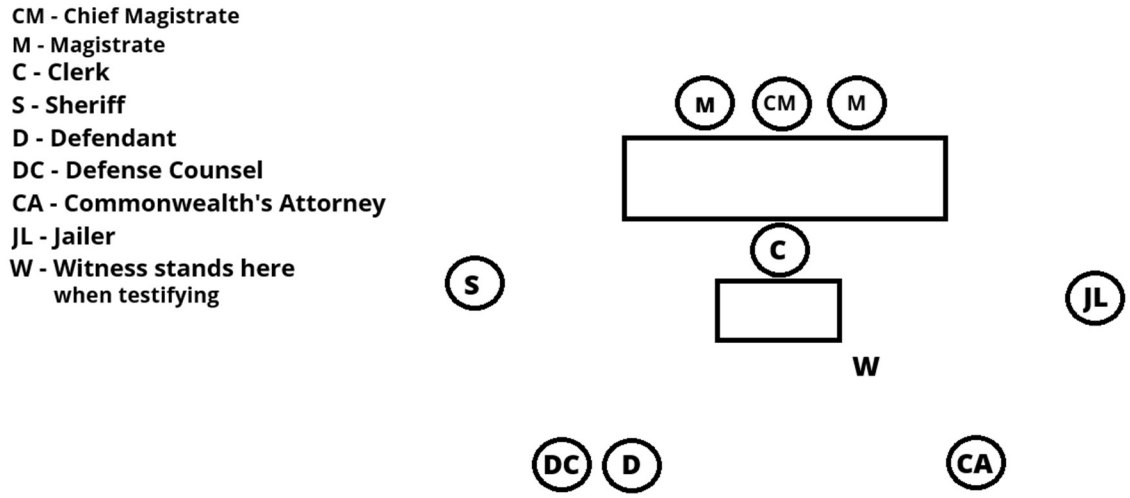

Figure 2 - Diagram of Courtroom Layout

Primary Source Information

All three cases are based on surviving paperwork in the Prince William County court records held by the Clerk of Court. They have been turned into script form to facilitate student use and to expand the summary recorded into dialogue.

If you want more information on the law and duties of the court of pre-Civil War Virginia, here are a few suggestions.

1. Revised Code of the Laws of Virginia (1819): The laws in force in Virginia at the time of Case #1 and Case #2. Chapter XI deals with court offices and officials, Chapter XII deals with "The Rights of Things and Persons," and Chapter XIV deals with crimes and punishments. https://catalog.hathitrust.org/Record/008596026
2. Code of Virginia (1849): Although altered by the time of Case #3 because of the new state constitution, these were officially the laws of Virginia in force. The law under which Underwood was charged is on Page 745 of Volume II. https://catalog.hathitrust.org/Record/008599136
3. New Virginia Justice (2nd Edition of 1810): Lays out the duties of court officials and has more detailed interpretation of the law in practice at the time of Case #1 and Case #2. https://archive.org/details/newvirginiajust00henigoog/page/n3/mode/2up

4. A Guide to Magistrates: The New Virginia Justice for a new set of laws, including the changes instituted by the new state constitution. This governed the conduct of court officials and advised them on matters of law. https://www.google.com/books/edition/A_Guide_to_Magistrates/h1ZNAAAAYAAJ?gbpv=1

Post Activity Discussion Topic Suggestions:

Commonwealth v. Burgess (Case #1)

1. What does self-defense mean? How far does it cover your actions? Why do you think that has changed?
2. How do you defend a client who's "obviously guilty" as a lawyer?
3. What responsibility do we have to defuse a situation before it escalates? What could the people of Dumfries in 1824 have done differently? What can we do today?
4. Do you agree with the original verdict?

Commonwealth v. Bob, or Robert (Case #2)

1. Why do you think the jury found Bob not guilty?
2. Do you agree with the original verdict?
3. How would you have defended Bob as his lawyer?
4. Would it have made a difference if he could testify for himself?
5. Was this a fair trial? Was it legally right to put someone on trial this way? Are those different things? Why?

Commonwealth v. Underwood (Case #3)

1. Do you agree with the original verdict?
2. Is the 1st Amendment absolute (you can say whatever you want)? Should it be? (Also consider discussing making threats, slander, libel, etc.)
3. Why do you think talking about abolition was illegal in Virginia?
4. Do you think Justice Underwood was protected by his position?

5. What do you think other people who opposed slavery in Virginia learned from this case?