

***History on Trial***  
***Episode 3***  
***The United States v. Reuben Crandall***  
***Research and Written by Mira Hayward***

***PROLOGUE***

In August 1831, rebellion broke out in Southampton County, Virginia. Like the American Revolution only 50 years before, the revolt in Southampton was motivated by a desire for freedom – but the stakes here were much graver than taxation without representation. The rebels in 1831 were enslaved and free Black people, led by a charismatic enslaved man named Nat Turner, and they were fighting for their freedom. Over the course of two nights in late August, Nat Turner and his followers rode from plantation to plantation, freeing enslaved people and killing their masters, before they were stopped by white authorities on the morning of August 23rd. By that time, more than 50 white Virginians were dead.

Nat Turner's Rebellion sent shockwaves through the United States. Slave uprisings were not uncommon - the historian Herbert Aptheker identified at least 250 revolts and conspiracies throughout the history of American slavery -- but the scale and violence of Turner's rebellion was unprecedented.<sup>1</sup> The violent retribution against Southampton's Black community in the wake of the rebellion was even deadlier than Turner's rebellion itself – mobs and militiamen killed dozens of free and enslaved Black people, many of whom had no affiliation with Turner. Still: all that slave owners could think about was that they might be next.

One such worried slave owner was Francis Scott Key. Yes, that Francis Scott Key, author of our national anthem, which features lyrics extolling “the land of the free.” Though Key publicly criticized the cruelty of the slave trade, he owned slaves himself, most of whom worked on his Maryland estate and at his Washington, D.C. home. It was only a matter of time, Key fretted, before a rebellion like Nat Turner's broke out in his neighborhood.<sup>2</sup>

Four years later, on August 4th, 1835, Key's fears appeared to come true. In the middle of the night, Anna Thornton, a prominent Washington socialite whose late husband had designed the U.S. Capitol, awoke to a terrifying sight: standing silhouetted in the doorframe of her bedroom was a figure clutching an ax. She recognized the man: it was Arthur Bowen, an enslaved teenager who Thornton owned. Thornton also owned Bowen's mother, Maria, who was asleep in the same room that night. Terrified,

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<sup>1</sup>Herbert Aptheker, *American Negro Slave Revolts* (New York: International Publishers, 1974), 162.

<sup>2</sup>Jefferson Morley, *Snow-storm in August: Washington City, Francis Scott Key, and the Forgotten Race Riot of 1835* (New York: Doubleday, 2012), 59.

Thornton raced out of the house and onto the street, screaming for help. In the meantime, Maria managed to get her son out of the house, and Arthur Bowen disappeared into the darkness. Bowen had been drunk, Maria realized, so drunk that he might not have even known what he was doing.

But to Anna Thornton's neighbors, Bowen's drunkenness was no excuse. He had appeared in a white woman's bedroom with an ax. And then he had fled, with the ax still in his hand. This was Nat Turner all over again - it had to be. Newspapers leapt hungrily on the story, embellishing as they went - Bowen was a maniac, they said, driven to murder by the shocking language of abolitionist pamphlets that had recently begun popping up across Washington.<sup>3</sup>

When Bowen turned himself in at his mother's urging, three days later, Washingtonians bayed for his blood.

Francis Scott Key, now the District Attorney for the District of Columbia, was responsible for seeing that justice was done. To Key's credit, he wasn't interested in mob justice - when an unruly crowd gathered outside the jail and called for Bowen to be lynched, Key talked them down. But he also wasn't interested in granting clemency to Bowen, despite the protestations of Bowen's owner and alleged intended victim, Anna Thornton, who had now come to believe that Bowen had simply been drunk and never meant to hurt her.

Key wasn't really that interested in Bowen at all, truth be told. He cared more about what he believed had *motivated* Bowen: the abolitionist pamphlets that had inundated the city's mailboxes that summer. These pamphlets, Key thought, were more dangerous than one man with an ax. With their graphic depictions of the horrors of slavery, and their frank appeals for immediate emancipation, these pamphlets might very well inspire a whole army of men with axes, in Key's view. The pamphlets had to be shut down. And Key thought he knew the pamphlets' source: an unassuming recent transplant from the North named Reuben Crandall, whose neighbors claimed he kept abolitionist pamphlets in his office.

Quickly, Key convened a grand jury, who granted him a warrant to search Crandall's home and office. This search would set off a chain of events more shocking and destructive than anything Arthur Bowen had ever done, and lead to a trial that questioned the very nature of the right to free speech.

Welcome to History on Trial. I'm your host, Mira Hayward. This week: The United States v. Reuben Crandall.

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<sup>3</sup> Morley, *Snow-storm in August*, 130.

## ACT I

By the time of Reuben Crandall's trial in 1836, it had been more than two decades since the act Francis Scott Key is best known for today: writing the lyrics to "The Star-Spangled Banner." Key had written the lyrics, originally a poem called "Defence of Fort M'Henry," in 1814, inspired by events he witnessed during the War of 1812. Key composed the poem to fit the meter of a popular British song. After the poem was printed, it quickly caught on, appearing in newspapers across the country with a note about the tune it could be sung to. The resulting song, which became known as "The Star-Spangled Banner," was a mainstay of patriotic performances throughout the 19th century.<sup>4</sup> Though it wouldn't become the official national anthem until 1931, Key was well-known in his day for his work on the poem and song.

Key was only an amateur poet. His true profession was lawyering. He worked in private practice for more than three decades, before a close political relationship with President Andrew Jackson led to his nomination as District Attorney for the District of Columbia in 1833. In his early career, Key had been an idealist, and had defended Black people in court often enough to be known by some as, quote, "the Blacks' lawyer." Jefferson Morley, in his book about the events surrounding the Crandall trial, titled *Snow-storm in August*, describes the young Key as "a pious dreamer, a sensitive poet, a tranquil philanthropist."<sup>5</sup> But after becoming close with President Jackson, Key changed. Morley calls this new Key "a militant warrior of galvanized conviction."<sup>6</sup> Key became a political operator, determined to defend the status quo as defined by the president. Part of that status quo was slavery.

As District Attorney, Key controlled a group of constables ostensibly charged with enforcing the law. What his constables mainly did, however, was harass people of color for fun and for profit. When an editor named Ben Lundy wrote in his newspaper that, quote, "there is neither mercy nor justice for colored people in this district," Key was furious, and filed charges against Lundy.<sup>7</sup> Despite Key's role in prosecuting runaway slaves and anti-slavery activists, he still liked to think of himself as a humanitarian.

Key was a founding member of the American Colonization Society, a group which advocated for the resettlement of free-born Black Americans and emancipated slaves in

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<sup>4</sup> "Star-Spangled Banner," The Star-Spangled Banner Project at the National Museum of American History, <https://www.si.edu/spotlight/flag-day/banner-facts>.

<sup>5</sup> Morley, 64.

<sup>6</sup> Morley, 64.

<sup>7</sup> Morley, 80, from Lundy in *Genius of Universal Emancipation* no. 13 (June 1833), 127-28 and Key's indictment in Docket Book, vol. 70, in the National Archives.

Africa. Colonization proponents argued that their cause was in the best interest of Black Americans, and that they only wanted to provide Black Americans with their own country. But the truth was that many of the Colonization Society's members were racist and believed that a racially integrated society was impossible. By the 1830s, a portion of anti-slavery advocates had begun to reject colonization, and supported immediate emancipation instead. To ardent colonization believers like Key, immediate emancipation was a horrifying idea. As district attorney, he was determined to keep Washington, D.C. free of even a whiff of abolition. And in Key's mind, Reuben Crandall practically reeked of the stuff.

First of all, Reuben Crandall was from the North - New York, to be exact, home to the American Anti-Slavery Society, the abolitionist group founded in 1833. Several of Crandall's friends from Yale, where he had earned a medical degree in 1828, were high-ranking members of the American Anti-Slavery Society. And Crandall had an even closer tie to advocates of racial integration: in 1832, his schoolteacher sister Prudence had become notorious nationwide for welcoming a Black woman into her classroom. When Prudence's white students quit her school in protest, Prudence decided to double down and make her school only for Black women. An angry mob eventually forced Prudence to flee Connecticut, but she never abandoned her belief in the equal right to education.<sup>8</sup>

At first glance, Crandall himself didn't seem as politically active as his friends and family. He was known to be an outspoken advocate for temperance –abstaining from alcohol– but besides that, his main passion outside of his medical work was botany. 29 years old, he had originally come to Washington D.C. as the live-in physician for a family from Peekskill, New York. Liking what he saw of D.C, Crandall had decided to stay. He secured a position as a science teacher at a school in nearby Alexandria, Virginia, and found a home and office space in the Georgetown neighborhood of Washington.

A month after Crandall's arrival in June 1835, mysterious pamphlets began appearing all across Washington. Copies of abolitionist papers like *The Anti-Slavery Reporter* and *The Emancipator* arrived by the bushel. These pamphlets spoke out strongly against slavery, discussing the cruelty of slave masters, the humanity of enslaved people, and the arguments for immediate emancipation. The pamphlets were addressed to influential political, intellectual, and religious leaders across the city. Government officials were baffled. Where had they come from?

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<sup>8</sup> Debra Michals, "Prudence Crandall," National Women's History Museum, 2015. <https://www.womenshistory.org/education-resources/biographies/prudence-crandall>

In truth, these mailings were the work of the American Anti-Slavery Society. In May 1835, at the society's second annual meeting, members had approved a plan to send pamphlets to the entire country.<sup>9</sup> They wanted to shake white Americans out of their apathy about slavery. They wanted to start a conversation. They would certainly get their wish. But even the most radical of the Anti-Slavery Society's members could not foresee what impact their pamphlet plan would have in Washington, D.C.

In the summer of 1835, no one in Washington knew yet about the Anti-Slavery Society's role in the pamphlet campaign. No one was quite sure where these pamphlets were coming from. But Reuben Crandall's neighbors had an idea. Though Crandall seemed like a mild-mannered man, several Georgetown residents had uncovered a shocking secret when visiting his office: alongside his boxes of plant specimens and medical instruments, visitors noticed that Crandall possessed many abolitionist pamphlets. Some of the pamphlets, people observed, even had a handwritten note at the top: "Read and circulate." When news of what Crandall's neighbors had seen reached Francis Scott Key, he was sure that he had found the man responsible for sending out the pamphlets to prominent Washingtonians, and, in turn, inspiring Arthur Bowen's alleged attempted murder of Anna Thornton. On August 10th, having obtained a warrant to search Crandall's office and home, Key sent two of his constables to detain the man. He believed that by arresting Crandall, he could cut off the source of agitation at its root. But in reality, Key's actions would spark something far, far worse.

## ***ACT II***

Word quickly spread that a man was being arrested for, in Key's words, "exhibiting and circulating dangerous and insurrectionary writings and thereby attempting to excite an insurrection."<sup>10</sup> As two constables searched Crandall's residence, a crowd gathered outside, waiting to hear what the men found. They would not be disappointed - when one of the constables, Madison Jeffers, stepped out to fetch a torch, a voice in the crowd asked how many pamphlets he had found: "More than I expected," Jeffers responded, "We found a hundred fifty, maybe a hundred and sixty pamphlets."<sup>11</sup> The crowd was outraged. "We ought to take the damned rascal and hang him up on one of those trees[!]" a man shouted.<sup>12</sup>

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<sup>9</sup> Morley, 109.

<sup>10</sup> Morley 139, from "Duplicate of the Warrant and Commitment in the Case of *United States v. Reuben Crandall*, National Archives Record Group 21, entry 6, Case Papers, box 544, November Term 1835, Criminal Appearances.

<sup>11</sup> *The Trial of Reuben Crandall, M.D. Charged with Publishing and Circulating Seditious and Incendiary Papers, &c. In the District of Columbia, with the Intent of Exciting Servile Insurrection. Carefully Reported, and Compiled from the Written Statements of the Court and the Counsel* (Washington, D.C.: 1836), 33. <https://www.gutenberg.org/files/28197/28197-h/28197-h.htm>. Hereafter referred to as "D.C. Transcript."

<sup>12</sup> D.C. Transcript, 33.

Seeing that the crowd might just do such a thing, Crandall and the constables agreed that jail was the safest place for him. As the group made its way by carriage to the jail behind city hall, the constables started questioning Crandall. Why did he have so many pamphlets?, they asked. To get information from, Crandall said. When they pushed him on why he had multiple copies of certain pamphlets, Crandall refused to explain, but also stood firm on his principles: “I’m an anti-slavery man,” he said.<sup>13</sup> “Don’t you think it very dangerous, at the present time, to set all the slaves free?” Constable Henry Roberston asked. Crandall did not. From Crandall’s responses, it became clear to the constables that Crandall believed that, quote, “the slaves ought to be all free, and had as much right to be free as we had.”<sup>14</sup>

To the constables, Crandall’s proclamations were as good as a confession. Yes, he had denied distributing the pamphlets when they had asked him about it in the house. But he wasn’t denying his abolitionist views. What else could an abolitionist want with so many pamphlets, if not to distribute them? “Don’t say too much or speak too freely,” Constable Robertson warned Crandall. “We might be witnesses against you.”<sup>15</sup> The rest of the carriage ride passed in tense silence. Upon arriving at the jail, Crandall was escorted to a cell on the first floor, and locked in.

Back in Georgetown, the crowd gathered outside Crandall’s house was growing increasingly angry. They had been denied the chance to lynch not one, but two men. Both Arthur Bowen and Reuben Crandall sat safely, if uncomfortably, in jail cells. What kind of justice was this?

Over the next two days, their discontent only grew. Many in the crowd were white men, who felt they had been replaced in the labor market by D.C.’s growing population of freed Black men. Many in the crowd were also poor, and felt that they had suffered disproportionately in the recent economic crisis caused by President Jackson’s war with the banks.<sup>16</sup> These men were sick of the freedoms granted to Black people, just when they felt their own voices were being suppressed. They were racist, and they were angry. Arthur Bowen and Reuben Crandall’s alleged crimes were the final straw. On Wednesday, August 12th, more than three thousand men gathered in Judiciary Square,

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<sup>13</sup> *The trial of Reuben Crandall, M.D. : charged with publishing seditious libels, by circulating the publications of the American Anti-Slavery Society, before the Circuit Court for the District of Columbia, held at Washington, in April, 1836, occupying the court the period of ten days* (New York: 1837), 43. <https://www.loc.gov/resource/rbcmisc.lst0092/?st=gallery>. Hereafter referred to as “New York Transcript.” N.B. Page numbers referenced are from the PDF transcription of this text, and do not correspond to the page numbers in the original images.

<sup>14</sup> New York Transcript, 44.

<sup>15</sup> New York Transcript, 44.

<sup>16</sup> Matthew Wells, “The Bank War,” in *Econ Focus* (Richmond, VA: Federal Reserve Bank of Richmond), Second Quarter, 2023. [https://www.richmondfed.org/publications/research/econ\\_focus/2023/q2\\_economic\\_history](https://www.richmondfed.org/publications/research/econ_focus/2023/q2_economic_history)

where both City Hall and the jail stood, and demanded that authorities hand over the prisoners. Key, who had just finished conducting an interrogation of the terrified Crandall, managed to calm the crowd, telling them, “Crandall will be punished if you let the trial progress.”<sup>17</sup> Grudgingly, the crowd dispersed, and slunk off home.

But the crowd’s anger wasn’t quelled for long. The next morning, a mob swarmed The Epicurean Eating House, a restaurant run by a free Black man named Beverly Snow. A rumor had spread that Snow, a well-known, larger-than-life character, had spoken inappropriately either to or about a white woman. That was enough for the crowd to demand his life. Snow managed to slip out of the back of his restaurant and run to safety, but the mob destroyed his business. And that was only the beginning of the violence. The mob split into small raiding parties, and began destroying Black-owned businesses and cultural centers across the city. They tore apart schoolhouses and boarding houses, brothels and churches. It was a targeted campaign, designed to terrorize D.C.’s Black residents. These events became known as the “Snow Riot,” after the destruction of Beverly Snow’s restaurant. *Metropolitan* newspaper, reporting on the violence, said, “The property of every colored person who rendered themselves obnoxious [to the mob] was devoted to destruction.”<sup>18</sup> For the crime of being “obnoxious” – or, in other words, of thriving, or even of simply existing – many Black people lost everything they had spent a lifetime building up.

For twenty four hours, the mob held Washington hostage. By the morning of August 14th, their energy spent, the men began to disperse, though small groups continued to wreak havoc for the next few nights. Washingtonians would soon learn that they were not the only city subject to such chaos – throughout 1835, mobs popped up all across the country, most of them stirred to anger by the same anti-slavery pamphlet campaign that had led to Reuben Crandall’s arrest.<sup>19</sup> Many white Americans saw the American Anti-Slavery Society’s writings as a direct attack on their way of life, and they did not hesitate to fight back, physically. The United States had been founded on a central contradiction – a land of liberty undergirded by the institution of slavery – and in the summer of 1835 that contradiction seemed to reach a head. “The rule of law,” writes Jefferson Morley, “was buckling under the realities of a slaveholding democracy.”<sup>20</sup>

As District Attorney, Francis Scott Key both derived his power from that rule of law and was also sworn to protect it. But his actions after the “Snow Riots” showed that he was more interested in preserving the system of slavery than the rule of law. Yes, his office arrested and charged a dozen of the rioters, but when a jury recommended mercy in

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<sup>17</sup> Morley, 146, from the *Richmond Enquirer*, August 14, 1835.

<sup>18</sup> *Metropolitan* (Washington, D.C.) August 15, 1835.

<sup>19</sup> Morley, 159.

<sup>20</sup> Morley, 159.

sentencing after the men's trial in March 1836, Key did not object. Though he did not condone rioting, he was more interested in teaching a lesson to the radical abolitionists, who, in his opinion, were most responsible for the damage done by the mob. He wanted to send the abolitionists a message: they were not welcome in his city. That message would come, Key hoped, from the conviction and punishment of Reuben Crandall.

### ***ACT III***

By the time his trial began on Friday, April 15th, 1836, Reuben Crandall had spent more than eight months in jail. The city jail was a dismal place, and Crandall was feeling the effects of his imprisonment. Reporters in the courtroom noticed how pale he looked.<sup>21</sup>

Fortunately, Crandall had his lawyers to support him. His family had hired two respected Washington lawyers, Richard Coxe and Joseph Bradley, after his arrest, and the men had been by Crandall's side every step of the way. They stood by him now as he pled not guilty to the indictment, in which Key had accused Crandall of having, quote "most unlawfully, mischievously and seditiously" contrived "to traduce, vilify and bring into hatred and contempt among the good Citizens[...] the laws and government of the United States."<sup>22</sup> In other words, Crandall was accused of having committed seditious libel.

If you aren't a time-traveling early American lawyer, which you probably aren't, the charge of seditious libel is likely an unfamiliar one. Libel, in modern legal practice, is the publication of an untruth which will cause harm to its subject. Seditious libel is something different, in two ways: first, the subject of seditious libel is always the government; and second, the statement need not be untruthful in order to be found libelous. Seditious libel entered the American legal practice via English law. British government lawyers used seditious libel laws to punish citizens who criticized the state. In the late 18th century, the American Federalist party pushed for the passage of the Alien and Sedition Acts, which they used to prosecute journalists who criticized them. Americans were less sympathetic towards the government's use of seditious libel laws than their English forebears had been. The Alien and Sedition Acts were extremely unpopular with the wider public and expired in 1801.<sup>23</sup> At the time of Reuben Crandall's

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<sup>21</sup> Morley, 211. The *Metropolitan* noted that Crandall appeared "quite pale owing to long confinement in our close and noisome prison."

<sup>22</sup> Morley, 188. I'm using Morley's paraphrase of the indictment here. The original text is from *U.S. v. Reuben Crandall*, a True Bill, National Archives Record Group 21, entry 6, Case Papers, box 544, November Term 1835, Criminal Appearances.

<sup>23</sup> "Alien and Sedition Acts (1798)," National Archives, <https://www.archives.gov/milestone-documents/alien-and-sedition-acts#:~:text=Passed%20in%20preparation%20for%20an.brink%20of%20war%20with%20France>. Cite MTSU article on Seditious Libel (site undergoing maintenance atm)



trial in 1836, there was no seditious libel law in the federal books.<sup>24</sup> So what exactly had Francis Scott Key charged Crandall with?

The answer to this question requires a quick explainer of the District of Columbia's bizarre legal status. Unlike U.S. states, which are allowed to make their own laws, the ultimate authority over DC, which is not a state but a federal district, is the United States Congress. The Constitution grants Congress oversight of DC's laws. The city government of Washington was and is allowed to have some legal powers, but Congress retains the power to oversee and overturn any local DC legislation.<sup>25</sup>

The 1833 code of laws drafted for DC contained a provision that specifically covered Reuben Crandall's crime: people in DC were prohibited from, quote "knowingly publish[ing] and circulat[ing][...]any writing or pamphlet[...] among the free black or slave population of this district, tending to excite a discontent or insurrection."<sup>26</sup> Congress did not approve this provision when it approved the code of laws, but according to historian Neil S. Kramer, quote, "this code [accurately] represented[...]legal practice in the District of Columbia at the time it was compiled. Though it lacked the authority of law, the code was used by the Circuit Court."<sup>27</sup> It was this code that Key was relying on to convict Crandall.

Another note here about some legal terminology. Most of us think of the verb "to publish" as meaning to print a text and make it publicly available. But in this legal context, "publishing" simply means "making something known" to an audience that can be as small as one person. Key was relying on this legal definition because, unfortunately for his case, he had only one concrete example of Reuben Crandall giving an anti-slavery pamphlet to another person. And Key now called that person, a man named Henry King, as his first witness.

Henry King was a Washington physician whose office was just down the block from Crandall's. One day, King testified, he had dropped by Crandall's office to say hello. Finding Crandall busy with his botanical work, King, like any good visitor, had started to snoop. He was startled to find an abolitionist pamphlet on a table. "The latitude is too far south for these things," he told Crandall, meaning that Washington was too Southern of a city for Crandall to safely possess such pamphlets. Despite this warning to Crandall,

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<sup>24</sup> Douglas E. Lee, "Seditious Libel," Free Speech Center at Middle Tennessee State University, last updated December 2, 2023. <https://firstamendment.mtsu.edu/article/seditious-libel/>

<sup>25</sup> "District of Columbia Law," Justia, <https://law.justia.com/district-of-columbia/>.

<sup>26</sup> Neil S. Kramer, "The Trial of Reuben Crandall," in *Records of the Columbia Historical Society, Washington, D.C.*, vol. 50 (1980), 130. The original text of the code comes from *A System of Civil and Criminal Law for the District of Columbia and the Organization of the Courts Therein*, Senate Doc. 85, 22C, 2S, 275-276 (February 28, 1833).

<sup>27</sup> Kramer, 130. Judge Cranch "recommended [this code] to the Grand Jury as a basis for their deliberations," per the *National Intelligencer* (April 8, 1835), 3.

though, King was curious about the pamphlet's contents, and asked if he could borrow it. Crandall reluctantly agreed.

Crandall's lawyer Coxe objected here that King's testimony was irrelevant – he was a white man, not an enslaved or free Black man, the group that DC's quasi-legal code prohibited distribution of pamphlets to. Key responded that King's testimony was necessary to establish a chain of evidence, and the panel of judges – Judges Cranch, Morsell, and Thruston – agreed to admit it.

Key soon began to build the chain he had alluded to. His next witness, William Robinson, described seeing the pamphlet that Crandall had given King, and added a crucial detail – at the top of the pamphlet there was a handwritten note that said, “read and circulate.”<sup>28</sup>

So Crandall hadn't simply given one person a pamphlet. He had given them a pamphlet that instructed the recipient to read the pamphlet and pass it on. It sounded damning.

Key next read from the pamphlets Crandall was in possession of, hoping that their abolitionist sentiments would alarm the jury and make Crandall's seditious intentions clear. In one anti-colonization pamphlet, the author sarcastically claimed that, given the immigrant heritage of most white Americans, they were just as deserving of deportation to Europe as Black people were of being sent to Africa. For a colonization advocate like Key, such language was shocking.

Another pamphlet set bloody stakes for the conflict over slavery: “So long as slavery is tolerated, no[...]peace can exist,” the pamphlet read, before exhorting slaveholding states to begin the work of emancipation, lest they risk, quote, “the fiery indignation of Him to whom vengeance belongeth.” The threats contained in this pamphlet weren't just divine – “The slave,” the pamphlet continued, “will become conscious sooner or later of his strength[...]His torch will be at the threshold, and his knife at the throat of the planter.”<sup>29</sup> As Key read these words aloud – and he was a skillful, passionate speaker – he knew what he was evoking: the specters of Southampton, the bloody legacy of Nat Turner, and, more recently, here in their own city, the outrages of Arthur Bowen.

Key made that connection more explicit, describing Arthur Bowen as being inspired by pamphlets like the very ones he had just read from.<sup>30</sup> And he also raised the connection between Reuben Crandall and the pamphlet campaign that had flooded local mailboxes.

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<sup>28</sup> D.C. Transcript, 11.

<sup>29</sup> D.C. Transcript, 8.

<sup>30</sup> Morley, 220, from Key's version of his summation as presented in the *African Repository and Colonial Journal (1825-1849)* (November 1836) 12, 11; American Periodicals Series Online, 339.

But the judges were unsympathetic to this argument – in the months leading up to the trial, it had become clear that the American Anti-Slavery Society was responsible for these mailings. Unless Key could prove that Reuben Crandall was a member of the Society, he would have to drop this claim.<sup>31</sup>

So Key attempted to prove Crandall's membership. He had uncovered what he thought to be a trump card – a record in the Society's rolls of a member named Phineas Crandall, residing in Peekskill, New York - just where Reuben Crandall had lived before coming to Washington. The first names might not match, but what were the odds of it not being the same Crandall? Well, Crandall's lawyers were prepared for this argument, and quickly submitted two devastating depositions from secretaries of the Society, which revealed that the logs contained a typo – the Phineas Crandall in question was from Sandy Hill, not Peekskill– and certified that Reuben Crandall had never been a member at all.<sup>32</sup>

Key's evidence seemed weak, but in the political climate of the day, it might still have been enough for a jury to convict Crandall. The defense team would have to present a compelling rebuttal in their case.

Joseph Bradley delivered the opening for the defense. And he started strangely. As the jury listened intently, Bradley began to read a passage discussing the evils of the slave trade. It sounded a lot like the pamphlets Key had read during the prosecution's case. After some time, Judge Cranch interrupted Bradley to ask exactly what he was reading. "I'm reading," Bradley said, "From a speech made by the District Attorney at a colonization meeting." Cranch was shocked: "I thought you were reading from some of the libels given in evidence!" he said.<sup>33</sup>

That, of course, was Bradley's point. How libelous could these pamphlets really be, if the very district attorney prosecuting Crandall over them had himself spoken so similarly on the topic? Key was *furious* and demanded a chance to respond, but the judges told him, in essence, to get over himself.<sup>34</sup>

The rest of Bradley's opening was much more standard and outlined the defense's case: they would prove Crandall's good character, Bradley said, prove that he had no intention of distributing any pamphlets, and prove that he had no involvement in the abolition movement.

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<sup>31</sup> New York Transcript, 48.

<sup>32</sup> New York Transcript, 52.

<sup>33</sup> New York Transcript, 49.

<sup>34</sup> New York Transcript, 50.

To testify to Crandall's character, his lawyers had recruited prominent citizens who had known Crandall in New York, including former congressman A.T. Judson. Judson spoke highly of Crandall, and even revealed that Crandall had opposed his sister's integrated school and begged her to shut it down.<sup>35</sup> None of Crandall's New York friends or acquaintances had ever heard him speak about abolition.

The defense lawyers also brought in Crandall's former employers, Mr. and Mrs. Austin, who offered an explanation for how Crandall had even gotten the boxes of pamphlets to begin with. When Crandall had lived with the family in New York, a visitor named Mr. Denison had left behind some anti-slavery pamphlets. Ahead of Crandall's move to D.C., Mrs. Austin had helped him by packing up his library and scientific instruments. She had, she testified, used the abolitionist pamphlets as packing material to wrap the instruments.<sup>36</sup>

In jail, the night after his arrest, Crandall had been questioned by Key and several magistrates about the origins of the pamphlets. His explanation had been garbled and occasionally contradictory, which Key pointed to as evidence of his duplicity. But the general outline of his story matched what the Austins were saying, and Bradley pointed out that Crandall had been questioned under extreme duress, barricaded in a building as the crowds outside called for his head.

More than making any point about Crandall's character, or providing logistical explanations for the pamphlets, Coxe and Bradley used their time to argue against the validity of Key's moral and legal case. Bradley wondered about how Key could argue that these pamphlets were so dangerous that even the transmission to one person could lead to general rebellion – while also reading the pamphlets aloud in the courtroom, guaranteeing that their audience multiplied exponentially.<sup>37</sup>

Coxe followed up on his colleague's point, discussing how the language of the pamphlets was no different than that used by thousands of Americans as they discussed slavery. "There is not one sentiment or one expression bearing upon the subject of slavery," Coxe said in his closing, "which I shall not show you to have been uttered by slave-holders; by the statesmen and the legislators, the divines, the lawyers, and philosophers of the south."<sup>38</sup> He proceeded to do just that, pulling passages from a variety of famous texts – including ones by Thomas Jefferson, Patrick Henry, and Francis Scott Key himself – to show that there was nothing new or particularly libelous about the text of these pamphlets.

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<sup>35</sup> D.C. Transcript, 33.

<sup>36</sup> New York Transcript, 60-62.

<sup>37</sup> New York Transcript, 74.

<sup>38</sup> New York Transcript, 97-98.

What's more, Coxe continued, was that possessing a pamphlet could not be considered a crime. If, quote, "I shall be indictable, without any overt act, for sedition, and subject, as [Crandall] has been, to an incarceration for eight months, preparatory to trial, and then denounced before the community in the unmeasured terms you have applied to him, and be told that for such an offence as having in my private custody, under my own lock and key, publications such as he had, or for loaning one to an intelligent friend for his single perusal, I shall encounter such consequences, then to escape such tyranny would I fly to the remotest parts of this once free land."<sup>39</sup> This trial, Coxe implied, was an affront to the principles of free speech and democracy that the nation held so dear.

Key, in his closing, would not be subdued. He rejected Coxe's comparison of the pamphlets' contents to his own speeches, saying that he had never called for emancipation, let alone insurrection. His speech had been critical of the slave trade, but not of the slave system or of the government, unlike the pamphlets, which, in his words, "declare that every law which sanctions slavery is null and void...that we have no more rights over our slaves than they have over us. Does not this bring the Constitution and the laws under which we live into contempt? Is it not a plain invitation to resist them?" he asked.<sup>40</sup> Summoning up his most fiery rhetoric, Key argued that what was at stake was not freedom of speech, but the safety of the nation and the right of southerners to their way of life. If the jury allowed men like Crandall to, quote "whisper their principles in chimney-corners and in by-ways," to "come to the south in a cold-blooded manner" and "deluge the country with blood and give the dwellings to the flames," then "there was an end to all protection for the lives and property of the people of the south."<sup>41</sup>

Would the jurors, men of the south themselves, allow this? Francis Scott Key hoped they would not.

With this, the jurors were dismissed to deliberate. It did not take them long. After only an hour or so of discussion, the jury returned a verdict: on the charges of seditious libel, Reuben Crandall had been found NOT GUILTY.

#### ***ACT IV***

Reuben Crandall was free, but he did not yet feel safe. The papers and public officials who had once condemned him were now commenting on the weakness of Key's case, but Crandall knew that many Washingtonians still saw him as a scourge. Terrified that a

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<sup>39</sup> New York Transcript, 86.

<sup>40</sup> Morley, 220, again citing Key's version of his summation as presented in the *African Repository and Colonial Journal (1825-1849)* (November 1836) 12, 11; American Periodicals Series Online, 339.

<sup>41</sup> New York Transcript, 102, 104.

mob might seize him, Crandall asked to be taken back to jail until his safety was guaranteed. Later that night, Congressman William Jackson, a prominent anti-slavery activist, arrived at the jail to personally escort Crandall home. But Crandall was too afraid to return to Georgetown. Jackson invited Crandall to come to his own boarding house, where Crandall stayed for several hours before fleeing to his parents' home in Connecticut. Writing to a friend, Jackson wrote of the toll the past nine months had taken on Crandall: "Thus an amiable and respectable young man's prospects are all overturned, his property sacrificed and his health greatly injured by long imprisonment, And after full proof of his innocence, he is compelled to flee from the capital of his country for his life, like a felon in the dark."<sup>42</sup>

Jackson was not exaggerating about the ill effects imprisonment had had on Crandall. Sometime during his pretrial detainment, Crandall had contracted tuberculosis. His health never fully recovered, and he died less than two years later, on January 18th, 1838, aged only 32. He may have been acquitted, but Key's persecution had, ultimately, meant a death sentence for Reuben Crandall.

Crandall's actual role in the abolitionist movement is uncertain. Though Bradley and Coxe had made a compelling case that Crandall had only accidentally obtained the pamphlets, there were hints that he was more involved in the abolitionist movement than the public knew. Remember how Crandall's former employer, Mr. Austin, testified to a man leaving anti-slavery pamphlets at his home after visiting Crandall? That visitor was none other than Charles Denison, editor of the abolitionist newspaper *The Emancipator* and a leader of the American Anti-Slavery Society. Key seems not to have realized who Denison was during Austin's testimony, and did not dig into the relationship further, so it remained unexplored. Crandall's true connection to the abolitionist movement is still unknown.<sup>43</sup>

There are two more key players in the riots and trials of 1835 whose fates are worth mentioning. Beverly Snow, the Black restaurateur whose business had been destroyed by the mob, tried to return to Washington in the summer of 1836. He was immediately recognized and harassed by a group of white men who chased him down and threatened to lynch him. Luckily, the mayor, a personal friend of Snow, intervened and convinced the mob to release Snow. After spending a night in jail for his own safety, and undergoing a public interrogation, Snow and his wife left for Canada. He became a successful businessman in Toronto, opening several popular restaurants before dying in 1856.

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<sup>42</sup> Morley, 222, citing an article by William Jackson in *The Emancipator*, March 8, 1838

<sup>43</sup> Morley, 215.

The other man at the heart of Washington's tumultuous year was Arthur Bowen, the enslaved 19-year-old accused of attempting to murder his owner, Anna Thornton. Thornton had come to believe that Bowen never meant to harm her, and in the lead up to Bowen's trial, she had petitioned endlessly for his release. Key denied her at every turn. Arthur Bowen was convicted of attempted murder and sentenced to death on January 23rd, 1836. Horrified, Thornton intensified her campaign to free him. After a series of stays of execution, President Andrew Jackson issued Bowen a pardon on June 25th, 1836.

But a reprieve from prison did not mean freedom for Arthur Bowen. Anna Thornton believed that he would never be safe in Washington, D.C., given the notoriety of his alleged crime. She had always made it clear in her petitions to the authorities that she would sell Bowen out of the city if he was freed.<sup>44</sup> Upon his release, Thornton did just that. We know that Bowen was sold to a man in Florida. In June, 1837, he wrote to his mother Maria that his new owner mistreated him. Thornton arranged for the new owner to sell Bowen to a man who worked in the Pensacola Navy Yard, and in 1838, Bowen wrote to his mother that he was "doing well" and working on a steamboat. But after that he disappears from the historical record.<sup>45</sup> We do not know the ultimate fate of the teenaged boy whose drunken actions on an August night sparked a riot in the nation's capital and led to his exile from the only home he had ever known.

Unlike Arthur Bowen, Francis Scott Key is firmly enshrined in history. The words he wrote in 1814 are sung daily in the school room, on the sports field, and in the halls of government. Though he was criticized for his actions in the Crandall case, Key continued on as district attorney for another two years.<sup>46</sup> After eventually resigning from the post in 1840, Key worked in private practice until his death on January 11th, 1843.

His legacy as a lawyer would be a checkered one. In his earliest years of practice, Key had defended people of color against abuses of power. But as District Attorney, Key had abused the power of his office against the most vulnerable members of society, all in the interest of maintaining the status quo. He is certainly not alone in this. Throughout American history, particularly in times of unrest, the law has been used to penalize the most outspoken among us.

During Reuben Crandall's trial, one of the judges, Buckner Thruston, recognized the slippery slope that Key was hurtling down with this case. Thruston, a slave owner himself, was not sympathetic towards the abolitionist cause. But he was a passionate defender of Crandall's right to express his opinions. "Every man has an unquestionable

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<sup>44</sup> Morley, 126.

<sup>45</sup> Morley, 251, citing Anna Maria Thornton's diary, vol. 2, 1022.

<sup>46</sup> Morley, 222.

right to his own moral or religious sentiments: there is no crime in this,” Thruston said as part of his dissent on a certain evidentiary ruling. He further noted that, quote, “Bad as the tendency of these writings may be[...]I know not how much less danger would result, if, led by our feeling, we bend the rules and principles of law from expediency, or the supposed political necessity of convicting the accused. [...] if we invade the panoply which the law has provided for the protection of the accused against arbitrary or vindictive judgments, we establish precedents, the evil consequences of which cannot be calculated.”<sup>47</sup> In other words, Francis Scott Key may have thought he was protecting the “land of the free and the home of the brave,” by trying Reuben Crandall, but, had he succeeded in convicting the man, he would have created an even greater threat to our democracy.

That’s the story of the *United States v. Reuben Crandall*. After the break, one more look into Francis Scott Key’s surprising influence on the U.S. legal system.

## ***EPILOGUE***

Francis Scott Key’s most impactful legacy, besides the extremely difficult to sing national anthem that he wrote, might be the lobbying work that he performed on behalf of one of his best friends.

Key first met Roger Taney in the late 1790s, when they were both practicing law in Frederick Town, Maryland. The two men immediately hit it off, and their relationship only grew closer when Taney married Key’s sister Ann in 1806.

Taney, an ambitious man who admitted to desiring, quote, “high rank and social position,” was drawn to politics before Key was.<sup>48</sup> He became attorney general for Maryland in 1827, and then United States Attorney General in 1831. Francis Scott Key was instrumental in securing the latter job for Taney, negotiating the resignation of the previous attorney general and clearing the way for his friend.<sup>49</sup> While Attorney General, Taney became extremely close to President Andrew Jackson, and when Supreme Court Chief Justice John Marshall died in July 1835, the president nominated Taney as Marshall’s replacement. Again, Key acted as Taney’s chief support, lobbying senators to confirm the appointment. On March 15th, 1836, the Senate approved Taney, and two weeks later he was sworn in as the 5th Chief Justice of the United States Supreme Court.

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<sup>47</sup> New York Transcript, 26.

<sup>48</sup> Morley, 45, from Robert Taney memoir manuscript, written in 1854, handwritten, Maryland Historical Society, MS 645, box 8, 51

<sup>49</sup> Morley, 50.



Twenty years later, Taney would author the court's decision in *Dred Scott v. Sandford*. This was the notorious opinion that declared that people of African descent were, quote, "beings of an inferior order, and altogether unfit to associate with the white race," and not entitled to legal protections or the right of citizenship.<sup>50</sup> Further, the *Dred Scott* decision denied Congress's power to ban slavery in federal territories. The outcry over this decision is often regarded as one of the inciting incidents of the Civil War.

Just how the *Dred Scott* case would have been decided without Taney is impossible to know, but the inflammatory, racist language he used in writing the opinion made him infamous, and sparked outrage across the country. And it's likely that Taney would not have risen as high as he did, allowing him to have as much impact as he had, without the help of his best friend Francis Scott Key.

Thank you for listening to History on Trial. The main sources for this episode were the trial transcripts and Jefferson Morley's book *Snow-storm in August: Washington City, Francis Scott Key, and the Forgotten Race Riot of 1835*. For a full bibliography as well as a transcript of this episode with citations, please visit our website, [historyontrialpodcast.com](http://historyontrialpodcast.com).

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<sup>50</sup> Roger Taney, *The Dred Scott Decision: Opinion of Chief Justice Taney* (New York: Van Evrie, Horton, & Co., 1860), Image 18. <https://www.loc.gov/item/17001543/>