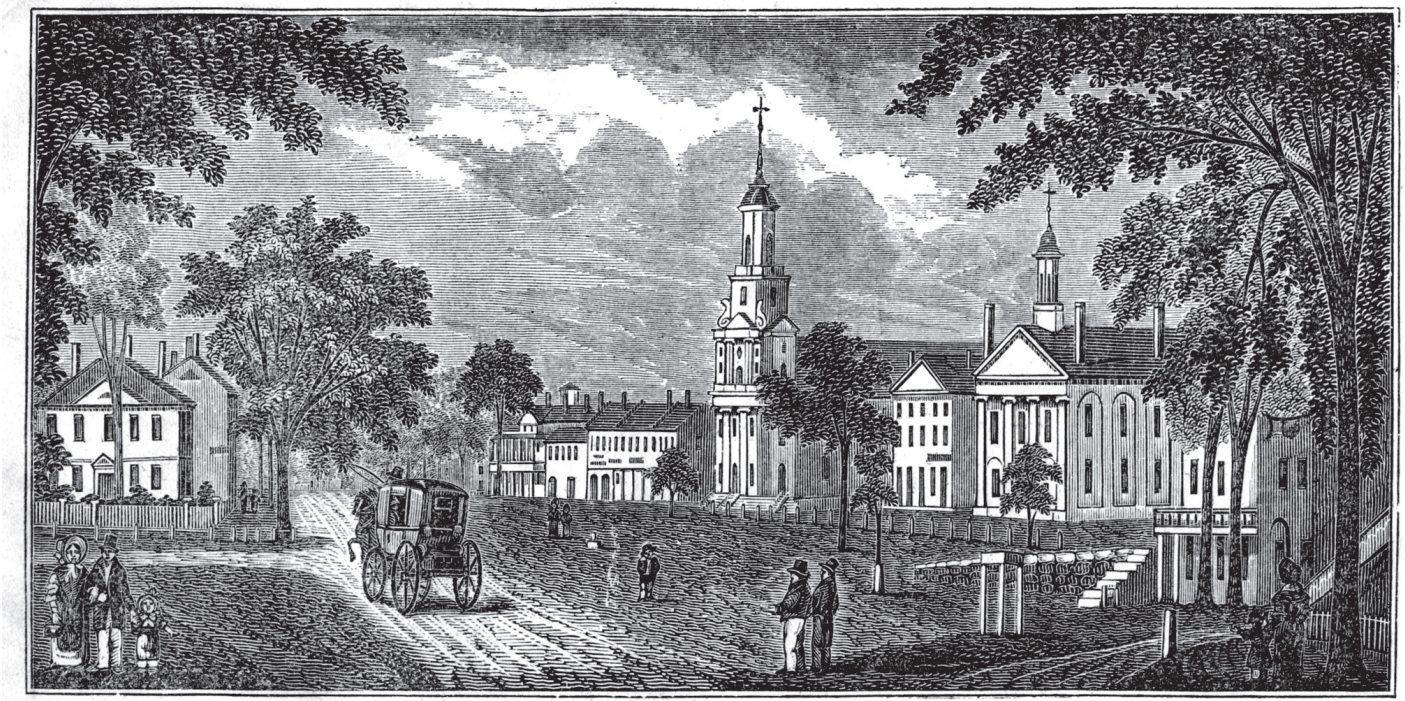

Northampton, Massachusetts, c. 1812

The town hall contained the courtroom where trials were held. Adjacent was the jail. Source: Wood engraving, from John Warner Barber, *Massachusetts Historical Collections, Being a General Collection of Interesting Facts, Traditions, Biographical Sketches, Anecdotes, Etc, Relating to the History and Antiquities of Every Town in Massachusetts* (Worcester, MA: 1839). Courtesy of the Historic Northampton Museum and Education Center.

"Murder by Counseling":
The 1816 Case of George Bowen (Northampton)

Jack Tager

Editor's Introduction: *On the day of his scheduled execution in 1815, Jonathan Jewett, convicted of murdering his father, was found dead by the Northampton jail keeper. According to the* Hampshire Gazette*, "His life of wickedness and folly had been rashly terminated by his own hands." Although the coroners were "unable to ascertain by whose aid he was enabled to wrest from the arm of justice his forfeited life," it was widely reported that another inmate, George Bowen, described as a "hardened and abandoned wretch," had frequently "instigated him to the horrid deed, and was heard by the other prisoners, conversing with him on this subject, from his window, but a short time before his body was discovered." Jewett's "last dreadful act" of suicide set in motion a trial whose verdict would set a significant precedent in American legal history.*

Local residents, however, had another concern. By taking his own life, Jewett had deprived them of the spectacle of a public execution. The Hampshire Gazette *admonished, "Although the thousands, who were drawn together for the purpose, were thus prevented from witnessing his public execution, they may still derive much benefit from a serious consideration of his wicked life, and his awful death." Dr. Jack Tager, who unearthed the story of this forgotten trial, is Emeritus Professor of American History at the University of Massachusetts at Amherst.*

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The 1816 trial for murder of George Bowen in Northampton, Massachusetts, was a short and seemingly minor affair, except that it raised a significant point of felony law that had impact for years to come.[1] Jonathan Jewett, an African American, faced execution for the murder of his father. George Bowen, a prisoner in the next cell who had been convicted of petty larceny, counseled Jewett to commit suicide rather than face the indignity of a public hanging. By taking this action Jewett would also rob the sheriff and hangman of their fees, thus flaunting the authorities. This nefarious scheme delighted the rebellious Bowen, whom the jailers considered a troublemaker.

Jewett did take his own life by hanging himself in his cell on November 8, 1815, the night before his scheduled execution. The sheriff found him the next morning dangling by a rope tied to the grating of the jail window. Throughout his imprisonment, Bowen had constantly urged Jewett to die by his own hand, leading the jail staff to threaten to put Bowen in a dungeon. After Jewett's death, the frustrated authorities claimed that Bowen's advice led to the capital felony of Jewett murdering himself: thus, Bowen shared in the crime and, therefore, was guilty of murder. Two murders were involved in the Grand Jury indictment. Jewett was charged for illegally committing suicide, and Bowen was charged not as an accessory to murder but as a participant. This case raised the interesting legal point of guilt by advice in an act of suicide. It is cited by legal scholar John D. Lawson in his collection of the most important and interesting criminal trials in American history.

According to Lawson, the Bowen case set in place a significant benchmark for a change in common law: the state must prove beyond a reasonable doubt that the suicide counselor actually "procured" or was responsible for the act itself. After this case, it appeared well nigh impossible to prove factually that advice or words could actuate the felonious deed of suicide. Hence, this legal precedent has long since penetrated the ethical climate of our nation.[2]

Northampton, Massachusetts, in 1816 was a sleepy commercial town off the Connecticut River. Besides the retail and wholesale trades, it contained a few manufacturers and had a population of a little over two thousand. Though small, it had its share of crime in 1806. It had become infamous for the trial and execution of two Irish wanderers, Dominic Daley and James Halligan, for highway robbery and murder ten years earlier. Today, that event is viewed as a gross injustice precipitated on nativism and class antagonism. In 1816, the indictment for murder against George Bowen was symptomatic of the zeal of the town authorities to

stamp out the criminal element in their midst. How else to explain that this was the first case in known legal history of an indictment for murder based upon "counseling"?

In 1814, Northampton, the seat of Hampshire County, built a new town hall, resplendent with faux Greek columns, white limestone facade, and red tile roof. It was in the prime location of the community, situated next to the 1812 white Congregational church, with its tall steeple, amid green lawns and healthy elm trees. Carriages and horsemen plied the cobblestone road dividing the town center. The town hall, in addition to housing the municipality's administrative services, contained the courtroom where the Grand Jury met and where trials were held. Adjacent was the town jail, or gaol, as spelled then.[3]

The indictment by the Grand Jury noted two murders. First, Jonathan Jewett "being seduced by the instigation of the Devil . . . did hang and strangle himself." According to Massachusetts' law, suicide was illegal and offensive to God, and therefore equaled self-murder. Moreover, the indictment claimed that George Bowen was also "seduced by the instigation of the Devil," did "feloniously, willfully and of his malice aforethought make an assault," and procured a "certain rope or cord," which he:

> did then and there procure to be tied and fastened, the end thereof around the neck of the said Jonathan Jewett and the other end thereof around the iron grate of a window, and the said George Bowen, with the rope and cord . . . then and there feloniously, willfully and of his malice aforethought, the body of him the said Jonathan Jewett did hang . . . strangle and suffocate and . . . then and there instantly died.

Thus, in the eyes of the Grand Jury, Bowen "did counsel, hire, persuade and procuring the said Jonathan Jewett the felony and murder of himself." Never before had Massachusetts seen an indictment for "murder by counseling." The authorities of the small town of Northampton made themselves conspicuous once again as they had in 1806.

George Bowen's trial for murder before the Supreme Judicial Court began on Tuesday, September 19, 1816. Chief justice Isaac Parker and associate justices Charles Jackson and Samuel Putnam presided. Perez Morton, the state's attorney general, led the prosecution. The court appointed Isaac Bates, later a U.S. Senator, and a Mr. Lyman [first name not specified in the trial record], for the defense.

Perez Morton
Prosecuting Attorney

Attorney General Perez Morton was a tall, full-figured man with a puffy face, long nose, and double chin. He was also known to sport a white lawyer's wig. The former Speaker of the Massachusetts House of Representatives spoke clearly and simply to the jury. In his opening, Morton stressed the perceived simplicity of the case. Bowen "could and did continually counsel, advise and urge Jewett," resulting in the fact that "Jewett hung himself on the night before his appointed execution."[4] He cited numerous legal authorities confirming that when one person helps another in the act of suicide, the legal responsibility falls on the still-living helper.

It should be noted that Bowen was not a sympathetic figure. He was a petty career thief — profane, querulous, hot-tempered, and mean-spirited. He publicly demonstrated time and again his hatred of blacks. The jurors would need to show strength of character not to prejudge this irascible criminal.

* * * * *

The state's first, and probably most important, deponent was Cephas Clapp, keeper of the Northampton Jail. Clapp was a short, stout, almost ugly man, with a huge wart on the tip of his large, bulbous nose, quivering jowls, and a bald head. In addition, Clapp also sported a large flowing black beard and fierce eyes. The jail keeper testified that he "frequently heard Bowen and Jewett conversing" through the cell walls.[5] In one conversation, Jewett allegedly asked Bowen how he could hang himself. The defendant replied that "it can [be done]; I would make a string of my bed-ticking, and hang myself to these grates in five minutes."[6]

The attorney general followed up about the rope, asking where it might have come from. The keeper had no idea: "The rope could not have come from his bedstead, which was made entirely of boards."[7] Clapp proceeded to speculate that the rope might have come from Bowen's "apartment" and described how the imprisoned Bowen "used to put his hand out of the

grate, and swing a string with a weight attached to it; Jewett had a stick to catch the string."[8] Clapp reported that the stick was nowhere to be found after Jewett's death. The attorney general continued to pound Clapp with questions about the rope, wondering whether it could have come from the cell above Jewett's, or even whether or not the deceased may have hidden a rope somewhere in his own cell. Finally, a juror asked directly: "Did you ever hear Bowen directly advise Jewett to hang himself?" To which the witness on the stand replied: "I repeatedly heard him say, 'if you let them hang you you are a d—m fool.'"[9]

Morton asked Clapp about the time a minister came to see Jewett. Clapp reported that he heard the visiting minister tell Jewett he would go to hell if he killed himself. Clapp said Bowen in the next cell retorted: "It was all d—d nonsense," as there was no hell, and "he could not die but once, and then it was all over."[10] Morton finished with Clapp, and defense attorney Lyman cross-examined him.

Lyman began whittling away at the jail keeper's testimony by getting him to add crucial information that might prove of interest to the jury. He asked Clapp about the physical arrangements, and Clapp admitted that "Bowen never saw Jewett to my knowledge. Mitchell and Upham [Bowen's cell mates] were in Bowen's room when Jewett hung himself; all of the prisoners talked with him, and were all noisy."

Lyman tried to change the focus of the case by centering in on Jewett and his personal conduct and personality. He asked the jail keeper to summarize Jewett's character and behavior, particularly when ministers came to visit the prisoners. Clapp responded that Jewett "would listen and be serious while they were there, and . . . as soon as their backs were turned, he would ridicule all they said." In the same vein, Clapp also testified that the deceased "had no more principle of religion in him than a brute." Lyman's cross-examination continued to damage the Commonwealth's case by making the jury question Jewett's character at least as much as Bowen's.[11]

Other highlights of the cross-examination included Clapp's claims that "Jewett was dull in conversation, in learning, and in natural capacity." Even though he "never heard Jewett say he intended to destroy himself," he heard him say that one prisoner advised him "to push his head against the wall, running from one side of the cell to the other." The jailer remarked that he often talked to Jewett about not hanging himself.

The next important witness for the state was one of Bowen's cell mates.[12] Isaac Mitchell, a counterfeiter, testified that Bowen was known in the jail as "Speaker of the House" because of his loquacious banter.[13] He

reported that Jewett seemed to learn from Bowen, when he answered the visiting ministers about answering to God for his sins. Mitchell related that Bowen did indeed spend much time talking with Jewett. Mitchell also passed along a conversation that Bowen had with the executioner, General Mattoon, in which Mattoon threatened to throw Bowen in the dungeon if he continued to advise Jewett to hang himself and escape a public execution. After a few days, however, Bowen was at it again, "as bad as he ever was."[14]

Mitchell's testimony also involved a chilling account of Jewett's actual hanging, as heard from the cell next to Jewett's:

> The night he hung himself, I was awake most of the time, and when the clock struck three, I heard Jonathan [Jewett] come across his cell to the wall next to us. He asked Bowen 'what o'clock?' Bowen said 'three, and you have but thirteen hours to live' . . . About fifteen minutes after that I heard a noise, as if some one had removed a stone in the room above; and soon after a sound like that of some one choaking [sic] . . . I soon heard something like a person thumping his toes on the floor.

When Mitchell went to call Clapp to the scene in the middle of all this, Bowen's response proved less than endearing: "Hold your tongue; what in h—ll do you care for a d—n—d negro?" Bowen allegedly proclaimed, "I am as glad as if I had a hundred dollars; now [jail keeper] Clapp and old Mattoon [the Sherriff's Executioner] have lost their fees, and I have saved the county two hundred dollars *slick*." This statement likely pleased the jury no more than his initial reaction when Mitchell related the exchange.[15]

Continuing with a theme that began during Clapp's time on the stand, a juror asked Mitchell whether Bowen could have given the rope to Jewett. "Not without some assistance," he responded.[16] On cross-examination, Mitchell reinforced this claim: "There was no cord, to my knowledge, conveyed from my room to Jewett's. Bowen could not have given him a rope without assistance . . . Bowen's legs were in irons the night on which the crime was committed."[17] Prisoner Mitchell then surprised the courtroom, and potentially damaged his own credibility, when he claimed that on several occasions after the hanging he saw Jewett's ghost wandering the prison.

John Partridge, the next witness, was a jail worker who claimed that jail keeper Cephas Clapp specifically asked him to monitor interactions

between Bowen and Jewett. He provided the court with some interesting information, stressing that he "was in that part of the jail where I could hear them distinctly as if I had been under their window." Highlights of Bowen's communication with Jewett included the defendant telling Jewett "he was a d—m fool to let Mattoon come and hang him," and also pledging to "help you [Jewett] all I can." Despite this promise, Partridge heard Jewett decline, telling Bowen that he preferred an "honourable" [sic] death." The witness also told the jury that he did not hear Jewett broach this subject with any other individual in the jail.[18]

The last witness for the state was Ebenezer Mattoon, high sheriff and executioner, who had been attributed earlier with threatening to confine Bowen if he continued urging Jewett to commit suicide. Mattoon, like Partridge, reported that Jewett said he had no intention of killing himself: "Jewett appeared rather penitent on the last evening, though when his cap was tied, he treated it very lightly."[19] The executioner went so far as to testify that on the eve of Jewett's hanging, the prisoner told Mattoon personally that he did not plan on taking his own life. The state closed and the defense, reserving any arguments for the closing, began calling its witnesses.

The defense faced onerous obstacles that were not easily overcome. It was usual in murder cases for the defense to parade a long line of witnesses and relatives who would testify to the past good character of the accused, thus making it unlikely that he would commit murder. The objectionable Bowen had no friends or relatives available to testify simply because his character and life was one of crime and deceit. The suicide took place in the confined setting of a jail, thus limiting the cast of characters available as witnesses. For all that, the defense did come up with three witnesses who had reportedly heard Jewett allude to committing suicide.

Nathan Turner, another worker in the jail, took the stand. He testified that when he was in jail during Jewett's confinement, Jewett would invite them to his hanging. After the prisoner's guests left, however, Jewett would apologetically confide to Turner: "Those men will be disappointed." In fear of potentially disappointing the jail workers as well as personal guests, the witness claimed Jewett warned him: "You expect a fine frolick [sic] on that day, but you will be disappointed." Attorney General Morton then asked Turner whether he had ever heard "Bowen make any remarks to Jewett after the clergymen had left him."[20]

Turner responded that only once he had heard Bowen say to Jewett: "You need fear no more hell than you are now in." The defense immediately followed up: "Did you ever hear Bowen advise Jewett to commit suicide?"

Turner replied: "Only in that manner." Attorney Lyman pushed the witness further to prove that Jewett knew his own mind, plying: "Was Jewett a smart, shrewd man?" To which Turner replied: "He was in his obstinate way."[21]

Shubael Wilder, another jail employee, backed up what Turner had said; namely, that Jewett clearly planned to take his own life before the state could get to it. Wilder's account had Jewett discussing various means of suicide, including diving onto the floor headfirst from the window. When Wilder questioned whether or not the prisoner had that kind of courage, Jewett replied: "You will see what my courage will do."[22] Wilder added, however, that he had "never heard Bowen advise him to hang himself."[23] At that point, the defense asked the court to invalidate the testimony of Bowen's cell mate, Isaac Mitchell, on the pretense "of his bad character."[24] Mitchell had been arrested with his cell mate Upham for passing counterfeit money. Lyman wanted to enter the evidence of his arrest. The judge held that such evidence was inadmissible.

Perhaps ironically after the attempted defamation of cell mate Mitchell's character, the defense's last witness was another prisoner. Elihu Sandford saw Jewett several times during his stay in jail. He claimed that Jewett had "told me last August that Gen. Mattoon should never hang him."[25] The defense, however, emphasized that Bowen was not yet in the jail at the time these witnesses reported their conversations with Jewett. With no more witnesses to cross-examine, the defense spent its energies on its closing. Both Lyman and Bates participated, citing numerous legal authorities to cast doubt on the charge of murder itself as being inappropriate and calling into question the facts presented by the state.

Isaac Bates
Defense Attorney

Attorney Lyman spoke to matters of law concerning murder and suicide.[26] His first words were either a serious mistake or an unsuccessful ploy of the defense. He told the jury that Bowen faced two charges of murder: "The first charges him as what the law denominates *accessory before the fact*, by aiding and abetting the murder; the latter as the actor or principal in the murder." Immediately, Chief Justice Parker interrupted Lyman,

pointing out that there was no charge of accessory to murder, but two counts of murder against Bowen as the "principal."[27]

The attorney apologized to the court; he said he would then have to modify his argument to the "hypothesis of the prisoners, [sic] being charged in both counts as principal in the murder."[28] This clarification seemed to be aimed at the jury because the state would have had to prove malice aforethought for both charges.

Without any hesitation, Attorney Lyman smoothly continued his argument by differentiating for the jury between murder and suicide according to the principles of English Common Law and Massachusetts' statute. Jewett, he said, was guilty of the crime of *felonia de se* [suicide] and Bowen "was guilty in a moral view, of counseling Jewett to the voluntary commission of the same crime."[29] Bowen was entitled to be acquitted unless the law recognized such counseling as murder.

Lyman then quoted from William Blackstone's commentaries. He defined a *felonia de se* as one who "deliberately puts an end to his own existence, or commits any unlawful malicious act, the consequence of which is his own death." Criminal homicide is the killing of another man, which may be murder or manslaughter. Lyman went on to cite several more legal precedents that gave the same definition. In an indictment for murder, it must say that the party "murdered," not "killed," another.[30]

Lyman then read from the recent Massachusetts statute of March 15, 1805, stating that "willful murder" by anyone, including those "aiding and abetting" of that crime of murder, and those not present who "shall have been accessory thereto before the fact, by *counseling, hiring, or otherwise procuring the same to be done* . . . shall suffer the punishment of death." He claimed, however, the language of the law "excludes the idea that the legislature had any reference whatever to *suicide*." Counseling suicide was not considered a crime or even an accessory to a crime — only counseling murder was a crime. Lyman declared that the state must prove that Bowen's counseling "procured" the death of Jewett, and in this it had failed.[31]

Lyman proceeded to analyze the evidence in light of the law. Both actors in the case were unknown to each other, were confined to separate cells, and landed in prison due to "unequal" crimes.[32] Jewett was in solitary confinement, while Bowen shared a cell with two others, Mitchell and Upham. The accused and the deceased had conversations that invariably had to be overheard by others because the wall separating them provided no privacy; thus there was no secret conspiracy between them. Bowen was a common thief, charged with petty larceny. He was in shackles because of his bad behavior and his disrespect towards the sheriff. The others in

the cell were free to move around. Bowen had nothing to do, and it was natural for him to join in conversation with Jewett.

In vivid language, Lyman claimed Jewett's "profane, hardened and abandoned character must have been immediately discovered, and the emulation natural to vulgar and dissolute beings led each to vie with the other in the expression of profane and immoral sentiments."[33]

Jewett, Lyman contended, would not have taken Bowen's advice seriously because it was merely "vulgar raillery" [banter] and continued merely to peeve the sheriff.[34] Lyman further argued that the jury should pay no attention to the "fabricated" testimony of Mitchell, whose "imagination is so pregnant with vampires and goblins that even credulity itself would hesitate to believe him."[35] He characterized Jewett as a "hardened character," who had committed a "ferocious and unnatural parricide," a "reprobate beyond hope."[36] Clearly, such a vicious murderer would never be influenced by a petty thief such as Bowen.

With a flourish, he finished: "We do not deny that the prisoner gave Jewett 'wicked' advice, but if he is guilty of this 'foul sin' there is no law, precedent, or parallel, that exists to punish him for it. He will receive his just punishment when he stands before God."[37] With that, Lyman turned to his colleague, Isaac Bates, to continue with the defense's closing arguments.

Defense attorney Bates stressed the fact that Bowen was indicted for two counts of murder, both of which required malice aforethought. The state contended that Bowen was "one efficient cause" of Jewett's death, "*committed* under the *influence* of his advice and by his instigation."[38] He was, therefore, merely a *principal* in the death. Yet the state's indictment maintained that Jewett's demise was *felonia de se*, that he "killed" himself. If it could be proved that Bowen did in fact persuade Jewett to kill himself, and he would have not done it otherwise, then the state could charge him as an "accessory," but not as a principal.

The indictment, as the court reminded the defense, did not accuse the defendant as an accessory. According to Bates, the legal authorities cited by the attorney general established "a principle fatal to this prosecution." It would take stronger evidence to convict Bowen as a "principal" than if he had been charged as an accomplice. Why? "Because the *person dead* was not a *felonia de se*; but was in judgment of law innocent of his own destruction."[39]

Bates reminded the jury that several witnesses reported that Jewett had allegedly contemplated suicide, on one occasion speaking to a jail worker about seeking an honorable death months before Bowen's incarceration.

Jewett's suicide was due to the murder of his father and the sentence of the court "combined with the principles and character of the man . . . as certainly as if the hangman had executed the sentence of the law." What role could Bowen have played in the suicide, he asked? If Bowen did cause Jewett's death, it was "by the influence of words merely."[40] After putting forth the possibility of verbal communication as the only means with which Bowen could have influenced Jewett to kill himself, the defense lawyer then set about blasting this concept of murder by counseling.

Bates declared that it was inconceivable that one man could influence another to take his own life. "Now it is easy to conceive that one man might persuade another to kill a third. But that I could persuade a man to kill himself, I have no conception." What great power did Bowen have over Jewett? They were strangers who had just met. Many friends, who were more likely to influence him than Bowen, had visited Jewett. He continued:

> It is farcical to pretend, that Bowen, considering his character and situation, had that influence over Jewett . . . All the facts were distinctly known, and present to the mind of Jewett without Bowen's suggestion. His execution was undoubtedly the predominant subject of his thoughts and of course the predominant subject of remark upon which each expressed his opinion as he pleased. [41]

The state had argued that Bowen prevented Mitchell from calling the sheriff, thus delaying discovery of the death. Bates responded: "To which we answer, that whatever Bowen did, or omitted to do, after Jewett had hung himself, could not have been the cause of his death, nor important in any view, except to shew [sic] that Bowen had no objection to it." Moreover, Mitchell's testimony was not worthy of credit. Bowen was in chains — Mitchell and his friend Upham were not — "and yet he would have you believe that he was awed to silence by Bowen, from an apprehension of personal injury." Mitchell could not to be trusted. He had been a witness against his friend Upham, who was sent to the state prison while Mitchell served as a witness for the state. This was the man who claimed to have seen Jewett's ghost walking the jailhouse.[42]

Here Bates ridiculed Mitchell's statements, arguing that the jury should reject such "ghostly testimony."

> He tells you on the stand, that he has seen Jewett since his death and burial, and not only Jewett, but the escort of Jewett, entering his room through an iron door; and this not in the night, but in the day; he not asleep, but awake, and in his sober senses . . . . Who would dare to take the life of a fellow-being upon such questionable and ghostly testimony?" Jewett's death, he concluded, "was in all things independent of Bowen, unmoved and uninfluenced by him.[43]

Furthermore, the government had not proved or even mentioned the significant point of all murder, malice aforethought. There was no grudge or quarrel between the two men. The fact that Bowen wanted Jewett to avoid a public execution, an act that would grievously anger the authorities, and entertain the accused, was not malice. He offered an analogy.

> Suppose from the best affections of my heart, I should advise a friend to take a little more than his usually quantity of laudanum [a preparation of opium], to put an end to the tortures of an hydrophobia or gangrene, you might call it any thing else, but you could not call it *malice.* Although one might be charged with assisting in suicide, they could not be charged with murder that requires deliberate malice, which constitutes a *cardinal part* of the offense of murder.[44]

Bates reiterated his colleague's legal interpretation of the law by discussing several previous legal viewpoints on the issue of counseling a felony. "There is not a case to be found among the records of criminal proceedings, in which a conviction has been had, for having *counseled, advised, or procured* a felony to be committed, in which the facts prove, [and] have not clearly shewn [sic] that the felony was committed in consequence of such counsel." He then summed up the case of the defense: "Before you can convict him, you must be satisfied beyond a reasonable doubt, and to a moral certainty, that he was the *procuring cause* of Jewett's death and that too with the *malicious intent*, which is required to constitute *murder*." [45]

Bates reminded the jury that the burden of proof, beyond a reasonable doubt, rested with the state. The jury should not be prejudiced by Bowen's low position in life. The law protects all "the high and the low, the rich and the poor, stand upon the same level and bow to the same tribunal of Justice." He exhorted the jury to resist all prejudice and passion. "I do not

stand here to justify his conduct. But he is not guilty of the crime alleged. If you convict him, you yourselves are guilty of murder under the form of law." Consider only the law and the evidence. He finished with a flourish: "AND SECRET THINGS BELONG TO GOD."[46]

The attorney general then came to the floor to deliver the closing for the government. In a terse and short closing, Attorney General Perez Morton admitted that "a trial of this nature has rarely occurred in England, and it is certainly new here." He noted that the English jurist William Blackstone made it abundantly clear that anyone who was the adviser of someone who committed a felony was just as guilty as the perpetrator.

> That the act of Bowen was innocent no one will pretend, but is his offence embraced by the technical definition of a principal in murder? Self-destruction is doubtless a crime of awful turpitude — it is considered in the eye of the law of equal heinousness with the murder of one by another. In this offence . . . the actual murderer escapes punishment — for the very commission of the crime which the law would otherwise punish with its utmost rigour, puts the offender beyond the reach of its infliction. And in this he is distinguished from other murderers. But his punishment is as severe as the nature of the case will admit — his body is buried in infamy, and in England his property is forfeited to the King. Now if murder of one's self is felony, the accessory is equally guilty as if he had aided and abetted in the murder.[47]

Attorney General Morton argued that witnesses heard the accused counsel Jewett to commit suicide. Bowen advised the deceased to use a rope. "If he took the means suggested by the prisoner it is enough. It is not necessary that Bowen should have been the sole adviser. . . . But Bowen was the most constant, and therefore, the most guilty adviser."[48] Clearly, Bowen's advice was one of the causes of Jewett's death. The defense themselves admitted that Bowen counseled Jewett to hang himself, but they said that this act did not amount to murder. It was up to the men of the jury to make that determination, Morton concluded.

It was now left to Chief Justice Isaac Parker to charge the jury. Parker, renowned for his closing charges to the jury in the Thomas Selfridge manslaughter case of 1806, had not aged appreciably. At forty-eight, he still gave the appearance of severity, with clinched lips in a pugnacious

looking face, bald, and with a long nose and puffy cheeks. He attempted to clarify the legal question for the jury:

> Considering the similarity between the nature of suicide and the murder of another . . . if you find the facts as alleged in the indictment, you may safely pronounce the prisoner guilty. The important fact to be inquired into is whether the prisoner was instrumental in the death of Jewett, by advice or otherwise. The question is, did this advice procure the death of Jewett?[49]

Advising someone to commit a crime was not lawful, but it must be shown that the counseling had that affect. The defense argued that Jewett "with his abandoned and depraved character furnishes ground to believe that he would have committed the crime without such advice from Bowen."[50] The judge agreed he was of such character and a "wretch." But it was not natural for men to kill themselves, no matter their character. If the deceased was unsure about suicide, a respectable person might have successfully advised him to abandon the idea. However, "the counsel of an unprincipled wretch" could induce the perplexed doubter to do the deed. The jury should consider that he might have been influenced by many other motives as well. If Jewett had already made up his mind to do the deed, then the counseling had no direct impact. He concluded:

> If you are satisfied that Jewett, previously to any acquaintance or conversation with the prisoner, had determined within himself, that his own hand should terminate his existence, and that he esteemed the conversation with the prisoner so far as it affected himself as mere idle talk, let your verdict say so. But if you find the prisoner encouraged, and kept alive motives previously existing in Jewett's mind, and suggested others to augment their influence, you will decide accordingly.[51]

Judge Parker cautioned that the jury should not concern itself with the fact that Jewett was soon to die in any case. Ask yourself whether Bowen's life should be terminated for an act done a few hours before Jewett's public execution. He said:

> the community has an interest in the public execution of criminals; and to take such an [sic] one out of the reach of the law is no trivial offence . . . . And you are not to consider the

> atrocity of the offence in the least degree diminished by the consideration that justice was thirsting for its sacrifice, and that but a small portion of Jewett's earthly existence could in any event remain to him.[52]

With that admonition, the judge sent the jury off to deliberate their verdict. They retired at 8:00 pm and returned after two hours. The jury foreman read the verdict: "NOT GUILTY."[53]

Based on hindsight, it is quite probable that you the reader/juror already concluded that Bowen deserved to be acquitted. Keep in mind the spirit and beliefs of the early nineteenth century, where a very long set of traditions condemned the suicide as one who would not enter heaven, and therefore was prohibited from burial in consecrated ground. In England, someone who counseled another successfully to commit suicide was thought also to be a villain who should suffer imprisonment and have his property taken by the state. The Bowen case demonstrated, however, that in American case law it was impossible to prove beyond a reasonable doubt that the recipient of the advice actually committed the deed solely because of the suicide counseling. Unless indicted as an accessory to a capital crime, from this point on the state had the impossible burden of proving that words, in the form of advice or counseling, kill. Shall we not give thanks to the "unprincipled wretch" Bowen for his significant contribution to the American legal system?

HJM

Notes

[1] All material and quotations from the Bowen case is from the actual trial record: *Report of the Trial of George Bowen, for the murder of Jonathan Jewett, who committed suicide on the 9th of November 1815, while confined in the common gaol of the county of Hampshire, under sentence of death for the murder of his father"* (Northampton MA, 1816). It should be noted that the trial record was privately printed and posted for sale. It was not a verbatim copy authorized by the state and was, therefore, subject to errors. No official state-sanctioned trial records existed in Massachusetts until 1892, probably the first being the *Trefethen* case of that year. The Commonwealth did establish the Office of Reporter of Supreme Judicial Court Proceedings in 1804, with Ephraim William being the first such reporter. These reports came out yearly in a journal, *Massachusetts Reports*, but they contained only the charge, name of the

accused, judges, and sentence, without any accounts of testimony or arguments by lawyers.

[2] John D. Lawson, *American State Trials: A Collection of the Important and Interesting Criminal trials which have taken place in the United States, from the beginning of our Government to 1920* (Wilmington, Delaware: 1972), Vol. I, pp. 107-113. Lawson provides excerpts from trials and notes on the legal issues.

[3] See the wood engraving reproduced on this article's cover page, circa 1812 from John Warner Barber, *Massachusetts Historical Collections, Being a General Collection of Interesting Facts, Traditions, Biographical Sketches, Anecdotes, Etc, Relating to the History and Antiquities of Every Town in Massachusetts* (Worcester, MA: 1839), on deposit at Historic Northampton Museum and Education Center, Northampton, MA.

[4] *Report of the Trial of George Bowen, for the murder of Jonathan Jewett, who committed suicide on the 9th of November 1815, while confined in the common gaol of the county of Hampshire, under sentence of death for the murder of his father"* (Northampton Mass., 1816), p. 4. [Hereafter abbreviated as *Report of the Trial of George Bowen]*.

[5] Lawson, p. 108.

[6] *Report of the Trial of George Bowen,* pp. 8-9.

[7] Ibid. p. 12.

[8] Lawson, p. 110.

[9] *Report of the Trial of George Bowen*, p. 13.

[10] Ibid. p. 9

[11] Ibid p. 10.

[12] Ibid.

[13] Ibid p. 13.

[14] Ibid. p. 14.

[15] All quotes in this paragraph from *Report of the Trial of George Bowen,* p. 14.

[16] Ibid. p. 14.

[17] Lawson, pp. 110-111.

[18] All quotes in this paragraph from Lawson, p. 111.

[19] Ibid. p. 111.

[20] All quotes in this paragraph from *Report of the Trial of George Bowen,* p. 18.

[21] Ibid.

[22] Ibid. p. 18.

[23] Lawson, p. 111.

[24] Ibid.

[25] Ibid.

[26] No information is available about the career or descriptions of either defense lawyer, Lyman or Isaac Bates. The standard references for early nineteenth-century history were consulted to no avail: foremost was William Davis,

Bench and Bar of the Commonwealth of Massachusetts, 1822-1907 (1895). Others include L. T. Bigelow, *Bench and Bar in Massachusetts* (1871); Alden Bradford, *Biographical Notes of Distinguished Men in New England* (1842); Massachusetts Historical Society, *Portraits in the Massachusetts Historical Society: an illustrated catalog with descriptive matter*; James Wilson and John Fisk, ed., *Appleton's Cyclopedia of American Biography* (1888); and other biographical volumes including *Encyclopedia of Massachusetts Biographical-Genealogical*; the *National Encyclopedia of American Biography*, and the U.S. Congress, *Biographical Dictionary*. The University of Massachusetts Du Bois Library's American Biographical Archive, while normally quite helpful, provided no information on Bowen's lawyers.

[27] All quotes in this paragraph from *Report of the Trial of George Bowen,* p. 22.

[28] Ibid. p. 22.

[29] Ibid.

[30] Ibid. p. 23.

[31] Ibid.

[32] Ibid. p. 30.

[33] Ibid.

[34] Ibid.

[35] Ibid. p. 31.

[36] Ibid.

[37] Ibid.

[38] Ibid. p. 32.

[39] Ibid. p. 37.

[40] Ibid. p. 42.

[41] Ibid.

[42] Ibid. p. 43.

[43] Ibid. p. 44.

[44] Ibid. p. 44.

[45] Ibid. p. 44.

[46] Ibid. p. 45.

[47] Ibid. p. 51.

[48] Ibid. p. 49.

[49] Lawson, p. 112.

[50] Ibid.

[51] Lawson, p. 113.

[52] Ibid.

[53] Ibid.

All quotes in the Editor's Introduction from "Jewett's Last Dreadful Act," *Hampshire Gazette*, (Northampton, MA), Nov. 15, 1815.