J ohn Ashford’s assailants leapt out from behind some bushes when they attacked him on a clear, starlit Saturday night in 1840. Wielding clubs of locust wood and black oak, they administered repeated blows to the head and neck that rendered Ashford’s bruised and swollen face virtually unrecognizable. The assault must have generated immense, if fleeting, gratification among the attackers, for all of them were enslaved, and Ashford was a member of the patrol, one of the Old South’s many informal, community-based police forces tasked with monitoring neighborhood bondmen’s nocturnal activities and sending back those who had strayed off the plantation.¹

It was February 29 – leap day evening – at about 9 p.m. when Captain Stephen B. Jones summoned brothers John and Francis P. Ashford and their kinsman Francis Ashford “to make their round” on patrol duty, as they had been doing the past fourteen months. During that time, the company had conveyed three slaves to the local magistrate for punishment. Twice the patrol itself had taken the liberty of punishing slaves, with consent of the master, without consulting the magistrate. Nothing in their history of regulating local bondmen could have prepared them for the magnitude of the events that were about to unfold. The evening got off to an unexceptional start. The four patrollers set off on foot, “entirely unarmed,” in the performance of their duty. As they traversed the Fairfax County, Virginia, countryside, they heard the ten o’clock “Bell, or Clock” reverberate over the landscape from the nearby town of Alexandria, part of the District of Columbia until 1846. Despite the late hour, the patrol found the roads abuzz with activity, for tomorrow was Sunday, slaves’
customary day off from the work routines that structured their lives. Saturday night afforded bondpeople welcome opportunities for clandestine parties in the woods, dancing, drinking, gambling, and sex. While the patrol was taking a break at Hunting Creek Bridge, “Mr. Foote’s negroes came up.” (See Figure 3.) The white men requested to see their passes, the precious slips of paper indispensable for slaves desiring to travel unmolested off their home plantations. Upon inspecting their tickets, the patrol, satisfied, discharged the bondmen without incident. Throughout the encounter, the slaves “behaved very civilly,” exhibiting the racial deference whites expected as their due.  

Not so the next group of slaves who approached. As John Ashford recalled, “some other negroes came up,” including Alfred, Spencer, Henry, Taylor, Dennis, John Mudd, and two unidentified “boys” aged fifteen or sixteen, both of whom reeked of fish, having recently marketed

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3 Map of the vicinity of the ambush. Source: Map of the Contiguous Parts of Alexandria and Fairfax County, Virginia, Executive Papers, Thomas Walker Gilmer, Box 1, Folder 6, map 755.23 1840, Library of Virginia, Richmond.
their catch in town. The patrol demanded they all produce their passes. Striking a match, they lit a candle and, by its faint glow, examined the tickets the newcomers presented. As Jones and Francis P. Ashford scrutinized the passes, one of the bondmen – either Alfred or Spencer – boldly “walked up & whistled in Jones’s face.” Captain Jones barked a warning to “go off” or risk incurring a “slap … in the mouth” or other punishment. The patrol took into custody the two enslaved “boys,” each of whom lacked a pass, tied them up with a rope, and ordered the remainder of the company on their way. Alfred and Spencer, two bondmen who had gained reputations as “rude and impudent” during previous brushes with the patrol, appeared reluctant to depart, perhaps not wishing to abandon their erstwhile companions to the whims of their captors. Instead Alfred and Spencer loitered, resting against the rails at the south end of Hunting Creek Bridge as they grumbled in hushed tones about the white men oppressing them. Francis P. Ashford “spoke to them about it,” and, after lingering momentarily, they begrudgingly ambled off into the night. The patrol, with two bound slaves now in tow, resumed its charge.

By 11 p.m., the patrol arrived at Samuel Catts’ tavern – a possible magnet for illicit frivolity on slaves’ Saturday nights – to assure “that all was quiet.” Following a brief respite, the patrollers moved on, fording Cameron Run, crossing paths with a hostile neighborhood dog, and arriving at a fork in the road. Rather than take the path to Occoquan, they tramped more than half a mile farther down the Mt. Vernon Road, in the Spring Bank neighborhood of Fairfax County. Around midnight or 1 a.m. on Sunday, Captain Jones halted his company so that his comrades might double-check the cords binding the two young slaves taken captive at Hunting Creek Bridge. As they did so, Jones detected a presence “in some thin bushes” alongside the road. Initially believing it foraging cattle, he did not realize in time that it was the second, troublesome band of slaves from the bridge, including the disgruntled Alfred and Spencer, crouched in ambush. Before Jones could utter a cry of warning, the slaves sprang upon the patrollers. The assailants first “attacked Jones,” felling the captain with “several clubs.” Francis P. Ashford was adjusting the enslaved prisoners’ ropes when he heard the commotion and turned, only to find Jones sprawled out on the ground.
He rushed to intervene, but the insurgent slaves struck him too, knocking him senseless. Clutching a stick, John Ashford entered the scuffle and scattered the attackers, but the bondmen quickly regrouped and landed several severe blows on his skull. A final shot from Spencer sent the stunned and reeling Ashford to the ground, unconscious.4

John Ashford’s desperate offensive allowed Jones a moment to recover, struggle to his feet, and battle the bondman John Mudd. The patrol leader seized “a stick from one of the slaves,” but “Spencer knocked him down,” commandeered the weapon, and used it to knock out Ashford. As Jones attempted to flee the chaotic scene, the rebellious slaves blocked the road in both directions, so he moved perpendicular to them, clambered over a fence adjacent to the path, and tumbled awkwardly into a field. According to the captain, “Spencer sprang up on the fence, struck him, and called out ‘Damn you, I will kill you.’” But Jones frantically scrambled away, fearful for his life, “and made his escape,” confident in his assumption that “two or three of the Patrol were killed” in the bedlam.5

Jones maintained enough of his senses to think to take sanctuary at the home of his brother-in-law, William Lawson, and to sound the alarm that a gang of slaves had waylaid the patrol. Lawson dispatched his son Charles to fetch Dr. Richard C. Mason to tend to Jones’ wounds. Dr. Mason remained with Jones and sent Charles Lawson on horseback to investigate the scene of the fray. Mason would not go until he knew whether the Ashfords required his services. Perhaps, as Jones feared, they were already dead.6

Charles Lawson was not soon in returning, probably because he could not locate the Ashfords at the site of the attack. Dr. Mason returned to his home, where, at 3:15 a.m., Michael Ashford – father to John and Francis P. – and another neighborhood white man named John Collard roused the physician to alert him that the injured brothers had reached home. Quite possibly Francis Ashford, knocked down during the skirmish but apparently not as seriously hurt, got the “severely beaten” victims to safety. Dr. Mason tended to their wounds the next morning. He first called briefly upon Captain Jones, whom he had administered to the night before. Though “lamed by a blow” to the hip and bruised on his limbs, Jones was otherwise free of “any
deadly or dangerous injury.” Dr. Mason next journeyed to Michael Ashford’s house, where the distressed father’s two sons convalesced in the same room. The doctor found John Ashford “terribly beaten indeed.” The slaves had inflicted “[o]ne very heavy blow,” a three-inch gash “over the left eye brow” as deep as the bone, as well as another “on the left side of his neck.” The swelling obscured John’s vision and left him dreadfully disfigured in appearance. Lesser injuries included “sundry cuts and bruises” to the top of the head, mouth, and right side of his face. Francis P. Ashford suffered a contusion above his left ear and other head injuries. Both brothers had an “excited pulse,” complained of intense, throbbing pain, and vomited profusely, indicating to the doctor a “high degree of disturbance of the brain.” Mason bled both men “copiously” and administered to Francis P. “active purgative medicine.”

The physician then proceeded to the location of the assault. Mason observed the impressions in the sand where the melee occurred. He saw one indentation in the ground “covered with blood, not with a mere stain, but clotted in a cake.” A slight distance away, he noticed “the spot where Francis P. Ashford” must have collapsed on to the sand: “there too was evidence of a free loss of blood.” The doctor’s examination left no doubt about the ferocity of the battle. Like the physician, the victims’ father also visited the site of the attack on Sunday morning. A scuffle had obviously taken place there. Michael Ashford picked up from where they lay on the ground the clubs that the slaves had wielded as weapons so that they might serve as evidence in court.

Antebellum Virginia did not permit slaves accused of felonies a jury trial. Instead, enslaved defendants in the commonwealth appeared before ad hoc courts of oyer and terminer, convened at the county level as the occasion warranted. At such courts, a panel of at least five justices of the peace heard evidence, determined the guilt or innocence of the accused party, and levied any punishment lawfully due the slave. Local authorities took into custody five bondmen identified by the victims of the attack on the patrol as perpetrators of the assault, and on March 11, 1840, less than two weeks after the ambush, they appeared for trial before a Fairfax County court of oyer and terminer, charged with beating and wounding with intent to kill Stephen B. Jones, John Ashford,
and Francis P. Ashford. Four of the defendants – Alfred, Spencer, Henry, and Taylor – counted among the human property of Dennis Johnston, a prominent local planter and owner of almost fifty enslaved persons. Unlike the rest of his co-defendants, the “negro Dennis” belonged to the estate of the deceased Daniel Monroe. (A sixth alleged attacker, John Mudd, owned by minors but under the guardianship of Dennis Johnston, appeared at trial separately.) All of the accused pleaded not guilty to the charge levied against them.9

Prosecuting the case against a complement of five enslaved defendants proved a formidable challenge. The patrollers could not agree definitively on the identities of all their assailants. The attack unfolded at night, as “the Big Stars shone,” bathing Fairfax County in gentle light – sufficient illumination for John Ashford to assert with certainty that he “recognized” the enslaved assailants “as the same negroes they had met at the Bridge” earlier in the evening. According to Ashford, Alfred, Spencer, Henry, and Taylor were all present. He believed Dennis was too, but that that bondman was preoccupied with the two “boys … who were tied,” one of whom was his son whom he presumably hoped to liberate from the patrol’s clutches. Whether as a result of the lighting conditions or the general pandemonium of the ambush, other patrollers did not share John Ashford’s confidence. Captain Jones testified that he could not be sure that Henry, Taylor, or Dennis was involved in the fray at all, recalling only that Henry and Dennis had been at the bridge earlier in the evening. Francis P. Ashford remembered Alfred, Spencer, and Dennis from the bridge, but could not identify any of the assailants. Francis Ashford recognized only Alfred and Spencer from the night’s mayhem. The accumulated testimony pointed most strongly toward those two bondmen. With the involvement of Henry, Taylor, and Dennis cast in some doubt, the magistrates holding court found those three not guilty and discharged them. But the terrible example set by the crime of assaulting the white men of the patrol could not go entirely unpunished. The court found both Alfred and Spencer guilty and, on March 12, 1840, condemned them to death. The pair of slaves – brothers, as it turned out – were to bide their time in jail until April 17, the third Friday of that month, at which time they would be escorted to Fairfax
County’s “place of Public Execution” and be “hung by the neck until they be dead,” sometime between the hours of noon and 2 p.m.10

The commonwealth of Virginia reimbursed masters the monetary value of any slave lawfully executed. Codifying its first compensation statute into law in 1705, Virginia set the precedent that masters of enslaved offenders should not suffer the full economic brunt of their bondpeople’s criminal behavior. Southern, slaveholding colonies and states (except Georgia, after 1793) all adopted some variation of a compensation scheme. Some states established a maximum dollar value that the owner of a capitaly convicted bondperson could receive. Others set compensation up to a specified fraction of the slave’s market price. More generously, Virginia offered masters the “full value” of an enslaved convict, but the commonwealth’s terminology was misleading. Many factors, including a bondperson’s age, sex, occupation or skill set, general character, and overall health, contributed to a slave’s sale price. Additionally, a Virginia statute newly implemented in March 1840 mandated that a convicted slave’s valuation assume the buyer’s “knowledge of his or her guilt,” which automatically reduced, to some degree, the anticipated market price at public auction. The law specified that each of “the justices who shall condemn … [a] slave shall value him or her.” The final payment to the enslaved convict’s owner was determined by taking an average of the magistrates’ appraisals. Alfred and Spencer would drain the state’s coffers of $900 and $850, respectively.11

The court’s pronouncement of sentence sparked an intense dialogue in Fairfax County over the propriety of the punishment. Such debates proved common in many instances in which antebellum Virginia’s courts of oyer and terminer convicted slaves like Alfred and Spencer of capital crimes. As of 1801, Virginia law dictated that, in all cases in which slaves were condemned to death, a record of the court proceeding be forwarded to the governor and his council so that the executive might commute the sentence to sale and transportation outside the United States or, in very rare cases, grant a full pardon. The commonwealth’s governors had occasionally reprieved slaves in the years before 1801, but after Virginia lawmakers codified the process for commutations of sentence into law, they virtually guaranteed that protracted, sometimes heated discussions would erupt in the affected communities over the
ultimate dispensation of slave criminal cases. Like Virginia, other southern, slaveholding states, too, especially those of the Upper South, permitted the same alternative to hanging. In many cases, they realized, sale and transportation disposed of troublesome bondpeople as effectively as death but without the grisly spectacle of execution. What made Virginia different was the magnitude of the practice. The commonwealth sold and transported almost one thousand convicted slaves between 1801 and 1864. By law, masters were compensated for such bondpeople the same as if they had been executed at the gallows.¹²

Several prominent citizens of Fairfax County corresponded with one another and with two successive Virginia governors, David Campbell and Thomas Walker Gilmer, from mid-March to May 1840 to ensure that the state meted out the death penalty as set forth by the court of oyer and terminer. Dr. Richard C. Mason, the physician who saw firsthand the bloody aftermath of the slaves’ attack upon the patrollers, strenuously championed Alfred’s and Spencer’s executions. He and George Mason—a planter in the vicinity of Alexandria, the committing magistrate in the bondmen’s case, and likely Richard C.’s brother—juxtaposed the relative characters of the two slaves with those of their white victims. George Mason, responsible for organizing the patrol company in January 1839, took pride in its composition. He described its members as “all young men of good Families & Character, regular & orderly [in] Conduct, industrious, honest & worthy.” He singled out for especial praise Captain Jones, “a man of much intelligence, integrity & courage,” “a most valuable and faithful officer.” Slave patrols occasionally drew criticism for the wanton abuse of slaves or for overenthusiastically correcting bondpeople’s perceived misbehavior, but throughout their lengthy tenure on patrol, not a single Fairfax County slaveholder had lodged any complaint against Jones or the men under his command.¹³

In contrast to the unimpeachable character of the patrol, Alfred and Spencer had gained reputations as neighborhood troublemakers. According to various reports, “they have always been reputed as men of very bad Character,” “not only Thieves, but turbulent & outrageous in their behavior.” Spencer had committed an unrelated “Felony” as recently as June 1839. The enslaved brothers were locally notorious as a “roguish” pair. One of them was rumored to have violently attacked their
former master, who was compelled to sell them as a consequence of their reportedly “turbulent and violent” natures. When presented with a petition encouraging Virginia’s governor not to interfere with the slated execution of Alfred and Spencer, Dr. Mason, though sympathetic to the sentiment of the memorial, declined to add his signature, fearing “that the remaining brothers of these men would murder him in a spirit of revenge,” for “the ferocious temper and disposition to revenge” was common “to the whole family.” Mason was petrified of the ramifications should the brothers’ kin “find out that he had signed that paper.”

Generally, whites in Fairfax County believed the scheduled executions of Alfred and Spencer the most appropriate fates for the enslaved brothers. As they saw it, the trial was undeniably fair. It had proceeded in accordance with the law and had been decided on the basis of the evidence. Plus, the court had reached a unanimous verdict, without “a moment’s doubt or hesitation.”

In addition, the Masons argued, heinous crimes deserved death, and the assault upon the patrol proved so vicious, so “wilful and malicious,” and so galling to public sensibilities, that nothing short of the bondmen’s hanging could soothe a society unnerved and on edge. Richard C. Mason described the attack upon “the Police Patrol of our County” as a “flagrant case of insurrection, and rebellion against the lawful authorities of the Commonwealth.” It must be met with “exemplary punishment” or risk “another Southampton Tragedy brought to our own doors.” The deadly Nat Turner slave revolt referenced by Mason had erupted less than a decade earlier in Southside Virginia, resulting in the deaths of almost sixty whites. Memories of the rebellion lingered, still fresh enough to induce the frightening specter of another slaughter at the hands of marauding blacks. According to Mason, failure to punish Alfred and Spencer with due severity would set a dangerous precedent for the future, embolden the commonwealth’s slaves, and spur them to additional crimes.

Certainly many whites in the Chesapeake believed themselves under siege by the slave population. They often spoke nostalgically of days past when slaves were supposedly better behaved and more obedient than they were now. Slaves’ “insolence and insubordination [are] greatly increased,” grumbled one resident. To him, Fairfax County’s close proximity to the nation’s capital only exacerbated the challenges of enforcing
slave discipline. “[T]he nearer you approach the district of Columbia the more unwilling the obedience … of the slave,” he complained. In the environs of the nation’s capital, “our Slaves are hearing Abolition Doctrines … preached every Day from the very Halls of Congress.” Under such circumstances, only Alfred’s and Spencer’s executions and the undeniable message they would send could ensure the safety and security of the neighborhood.\(^\text{17}\)

Proponents of execution dismissed the transportation of Virginia’s enslaved convicts out of the United States as impractical and unviable. When the commonwealth’s governors first accelerated the practice of commuting bondpeople’s punishment to sale and transportation in the early nineteenth century, convict slaves often went to Spanish Florida. After the United States acquired Florida in 1819, slaving vessels increasingly carried reprieved bondpeople to the West Indies. After Great Britain initiated the emancipation of slaves in its Caribbean territories in 1834, traders necessarily funneled those slaves most commonly to Spanish colonial holdings in the region. By 1840, an overabundance of enslaved Africans in the Spanish West Indies meant that convict slaves sent there for sale brought “nothing more than half the price” they could have attracted on the US mainland. Contemporary observers implicitly understood and resigned themselves to the fact that, throughout the history of sale and transportation from Virginia, some slave traders carried enslaved convicts surreptitiously to the South to sell at auction within the United States, contrary to the commonwealth’s laws, without divulging the circumstances of their removal from Virginia. The deception endemic to the slave trade meant that dealers could extract full price for convict bondpeople from buyers “ignorant of their crimes.” William Branch Giles, governor of Virginia from 1827 to 1830, once indicated to the state legislature that “the negro Traders who purchased the negro criminals” were evading “the law of transportation.” Likewise, William M. McCarty, during his brief tenure in 1827 as acting governor of the Florida Territory, complained to the legislative council that enslaved convicts “were brought into that Territory & there sold” contrary to statute. Lawmakers appeared at a loss to supply any legislative remedy for the illegal transport of convict slaves into Virginia’s sister states, and the covert introduction of enslaved criminals into the Deep South continued apace.\(^\text{18}\)
Alternatively, traders in 1840 might lawfully transport enslaved convicts to the foreign country of Texas, an independent republic since 1836, with a government friendly to slavery. For Virginians in favor of Alfred’s and Spencer’s executions, this solution, too, proved a source of “some uneasiness.” Correspondents in the Old Dominion wrote glowingly of Texas. They heaped effusive praise upon its “milder climate” and “richer soil” than Virginia’s, and readily contributed to the mythology that Texas was “a better country than any of our own.” Fairfax County slaves “are all perfectly aware of the condition of Slavery in ... Texas,” whites argued, the consequence of their “constant & extensive Commerce” “in the vicinity of Alexandria, the largest slave-mart in this part of the Union.” With the lands of an idyllic Texas already the stuff of legend, some Virginia whites concluded that the transportation of convict slaves there “is scarcely a punishment, for a ... Location better suited to the black cannot be called a punishment.” No doubt, they insisted, “in every possible respect their condition will be improved.” Under such perceived circumstances, transportation to Texas seemed to some white observers “a reward for the outrage” the enslaved convicts perpetrated and would incite other Virginia bondpeople to commit crimes as well, knowing that transportation “is only to go to Texas.” “[N]o slave, who has ever gone there,” wrote one pair of correspondents to Governor Gilmer, “will voluntarily return to Virginia” (not that slaves enjoyed such freedom of movement). According to Virginia whites, bondpeople viewed the prospect of removal to Texas with such “pleasure” that it “is in truth a favourite idea with them,” to the extent that slaves in the Old Dominion had purportedly run away from their masters, “placed themselves in the Jails of the Traders, & petitioned to be sold,” even sacrificing family ties to do so. Although such proclamations strain credulity, certainly a sizeable number of Virginia whites adhered to the belief that sale and transportation as a punishment lacked sufficient “terror” and preferred both the security as well as the example to other slaves that the execution of enslaved criminals afforded.19

Just as forces rallied to guarantee Alfred’s and Spencer’s executions, others in Fairfax County launched a petition drive to gather signatures imploring Virginia’s governor to commute the enslaved convicts’
sentences to sale and transportation outside the United States. Spearheading the effort for a reprieve was Bernard Hooe, close confidant to the enslaved brothers’ master, Dennis Johnston, and mayor of Alexandria throughout most of the 1830s and a portion of the year 1840. Within days of the court’s sentence against the two slaves, Hooe drew up a memorial in favor of commutation that he presented on the evening of Tuesday, March 17, at the Fairfax Courthouse, with an invitation for area residents to sign. After that night, slaveholder Dennis Johnston, desirous of seeing his slaves’ lives spared, carried it through the neighborhood in search of additional signatures. His quest was successful, attracting more than 350 likeminded citizens by April 10, one week before the scheduled execution. Some of those absent from home when Johnston stopped by later wrote the enslaved convicts’ owner that they, too, supported transportation and authorized the addition of their names to the memorial.20

George Mason, among the avid supporters of execution, was appalled that hundreds of Fairfax County whites would consider a reprieve for the pair of enslaved criminals. Upon learning of the counterpetition advocating transportation, he immediately wrote David Campbell, who would step down as governor on March 31, urging him not to act on any petition on Alfred’s and Spencer’s behalf until “the voice” of the community could be fully discerned. On March 19, George and Dr. Richard C. Mason requested a copy of the counterpetition from Bernard Hooe and Dennis Johnston, under the assumption that it contained untrue statements or errors that they hoped to correct. Hooe replied two days later that he had not seen it since he “left it in other hands” at the courthouse on the seventeenth, despite conflicting evidence that it had been spotted in his office since then. By early April, the Masons complained to the new governor, Thomas Walker Gilmer, that they had been unsuccessful in their attempts to view the counterpetition for Alfred and Spencer. George Mason rifled a letter to Silas Burke, the presiding judge at Alfred and Spencer’s trial, on March 27 seeking information about the court’s impression of the enslaved brothers’ character, the evidence arrayed against them, and any doubts the justices may have entertained as to their guilt. Judge Burke, Mason understood, had declined to sign Dennis Johnston’s counterpetition for the reprieve of the two convicted
bondmen, but Mason also wanted to know if any other justices were known to have committed their names to it. “These facts,” Mason explained, “we wish to be possessed of under your Signature, as the highest authority, to refute, if necessary, the baseless assumptions, said to be set up” in the memorial bound for the governor’s desk.  

Justice Burke replied on April 4. He had seen the petition for commutation in Bernard Hooe’s office on March 19 but had declined to sign it. “[N]o member of the Court … ought to sign it,” Burke observed, “as the petition conveys the idea and holds out the impression that there was doubt on the minds of the Court as to the guilt or criminality of slaves” – doubt that the judge denied was present. “I think it improper or rather indecorous for the Court who sat upon the trial to interfere in any way,” Burke continued. Nevertheless, he added, “many of the six justices that sat on the trial have signed the petition,” indicating their belief that the circumstances of the case did not merit the death penalty for the two convicted brothers. One magistrate, John Millan, scribbled a brief message on the memorial next to his name: “I would most respectfully as a member of the Court who sentenced Spencer and Alfred to execution recommend them most earnestly to Executive clemency and desire the sentence to be commuted, although I believe from the testimony delivered, they were guilty of the offences charged.” In refusing to sign the counterpetition, Burke and a fellow magistrate in the case, William H. Chichester, were the exceptions.  

All six of the Fairfax County justices present for the enslaved brothers’ trial could agree, however, that the scheduled date for the hangings must be changed from Friday, April 17. The decision had nothing to do with the debate taking place in the community or the petitions then making the rounds; rather, after the court had adjourned, the magistrates realized that they had inadvertently slated the executions for Good Friday. The justices thought it religiously insensitive and morally offensive to hold the “tragic event” of a public execution on “a day held in high veneration in every Christian community.” Although they did not mention it explicitly, the symbolism of putting two bondmen to death on Good Friday may also have too closely mirrored biblical accounts of Christ’s crucifixion. The Gospels tell of a pair of criminals, traditionally identified as thieves but in some translations described as rebels or revolutionaries, executed on either side of Jesus. Escorting two convicted
slave insurrectionaries to the gallows for a Good Friday afternoon execution, as few as sixty minutes before the hour Christ himself expired, surely smacked of irreverence and threatened to cast the law of Fairfax County into the discomforting position of antagonist in the unfolding, parallel drama. The six justices of the peace who convicted Alfred and Spencer begged Governor Gilmer for a five-week respite in “the execution of their sentences,” until Friday, May 22.  

A further advantage of postponing the hangings of Alfred and Spencer concerned another of their alleged accomplices. John Mudd, purportedly the sixth enslaved assailant on the night of the attack, evaded the authorities far longer than had his companions. Arrested only in March, he was slated for trial in Fairfax County during the April term of court. By May 22, then, John Mudd’s fate would be decided. The justices of the peace in Alfred and Spencer’s trial believed it “most desirable that the case of all the offenders should be acted on at the same time.” For the sake of convenience, they explained, “if the public execution of offenders be required,” it would be preferable to hang them all “on the same day, rather than to have two such exhibitions on different days, within a few weeks of each other.” Persuaded by the justices’ arguments, Governor Gilmer on April 9 issued the requested respite to the latter half of May.

The day after Gilmer delayed the executions of Alfred and Spencer, the executive received the counterpetition signed by hundreds of citizens of Fairfax County, including many slave owners, calling for the commutation of the brothers’ punishment to sale and transportation. This memorial argued that Alfred and Spencer were “but little more culpable than their Associates who have been discharged.” It denied “that the slaves meditated Insurrection or Revolt”; rather, they merely wanted “to rescue, from the custody of the patrol, two of their fellow servants belonging to the same Master.” Although the bondmen’s actions were unquestionably “highly improper,” they were not worthy of the death penalty. They had previously been obedient, the petition continued, and the patrollers were not hurt as badly as originally thought. Bernard Hooe added in a separate letter to Governor Gilmer that “three fourths of the Magistrates” of Fairfax County – eighteen of them in total – appended their names to the petition for banishment as a preferable alternative to death, bringing the total number of signatures on Alfred and Spencer’s
behalf to almost four hundred. By contrast, the petition that George and Dr. Richard C. Mason spearheaded, calling for Alfred’s and Spencer’s executions, mustered only sixteen signatures.25

For a portion of the white population in Fairfax County, the executions of Alfred and Spencer became absolutely compulsory upon the acquittal of their enslaved compatriot, John Mudd, at his separate trial in April. The bondman’s successful defense team included Alexandria mayor Bernard Hooe, the same man campaigning for Alfred’s and Spencer’s transportation. Mudd’s innocence generated a “clamor” in the environs of Alexandria. A number of Virginians contended that the legal discipline of errant slaves had grown too lax. White bloodshed demanded exemplary punishment, they claimed. Absent execution, the criminal justice system became, to the slaves themselves, an object of mockery. George Mason indicated that, among the annoyingly smug “Slaves in this Neighbourhood,” the “impression, near entirely prevails” – especially “since the most extraordinary acquittal of … John Mudd” – that Alfred and Spencer “will only be sent to the South” and not executed. As a result, the enslaved brothers’ “condemnation” produced “little effect” in striking fear into slaves and remediing their misbehavior. When another bondman in the spring of 1840 threw a rock at a Fairfax County patroller, he only magnified white impressions that northern Virginia’s slaves were running amok, turbulent and unchecked in their behavior.26

The postponement of Alfred’s and Spencer’s executions until May 22 gave time for parties on both sides to make their final pleas to Governor Gilmer. When Bernard Hooe journeyed to Richmond to consult the executive personally, likely in late April, the governor assured him that he would not decide immediately on the enslaved brothers’ fates so that further evidence would have ample opportunity to make its way to him. Those arrayed both for and against the execution of the pair of convicted bondmen believed themselves in the numerical majority of community opinion. “People here are generally in favour of transportation,” wrote one citizen from Fairfax Courthouse to the governor. Dennis Johnston, owner of Alfred and Spencer, “has been quite successful in obtaining names to his memorial” for commutation, conceded Thomas H. Jones of Prospect Hill, Virginia, but that was “before the people in this remote part of the country were fully aware of the nature of the offence.
committed by his slaves.” Jones labored under the impression “that it is the numerous wish of my neighbors that the execution of ... the sentence ... take its course” as determined by the court. Altogether, a new petition to the governor, dated May 8, “against the commutation of Punishment” for Alfred and Spencer garnered 355 signatures from among the citizens of Fairfax County. Gauged by the size of petitions alone, the number of residents supporting execution roughly equaled the number opposed.27

Like so many others in Fairfax County, Bernard Hooe waited anxiously for Governor Gilmer’s decision on the enslaved brothers Alfred and Spencer. With so many arguments marshaled in favor of execution on one hand, or transportation on the other, with whom would Gilmer side? What factors would sway him? “A day does not pass without rumours of the determination of the Executive not to move in this matter at all,” Hooe fretted. He resolved to send one final letter to persuade the governor to commute the bondmen’s sentences to sale and transportation. In it, he shared with Gilmer the latest chatter from Fairfax County “that Alfred was not on the ground, at the time of the conflict with the Patrol, and that the violent beating which was inflicted on those officers was perpetrated by John Mudd and Henry who have been tried and acquitted, and by another negro, not belonging to Mr. Johnston.” Hooe also added that his friend Dennis Johnston had already resolved, of his own accord, to send Henry and John Mudd “out of the limits of the United States,” despite both bondmen being found innocent of the charges against them stemming from the attack on the patrol. Ever since his acquittal, John Mudd had remained in an Alexandria jail, “where Mr. Johnston intends to keep him, until he can obtain an order from the Court ... to authorize his sale.” Because “orphan children and infants” were the lawful owners of John Mudd, and Johnston merely the acting master, he needed to surmount some legal hurdles before he could implement his plan. Hooe made his point explicit to the governor: “if it shall be your good pleasure to grant the prayer of the Memorialists for a commutation of the sentence against Alfred and Spencer, and to substitute Banishment from the country for their execution on the gallows,” Johnston would happily oblige.28

In mid-May, the week before Alfred’s and Spencer’s executions and likely before Hooe’s last missive arrived at the governor’s desk, Thomas Walker
Gilmer reached a decision. Weighing so much evidence for and against the executions of the enslaved brothers, the governor ultimately split the difference: he commuted Alfred’s sentence to sale and transportation out of the country but not that of Spencer. One attorney observed even before the brothers’ trial that “the murderous intent in Alfred’s case did not seem so clear as in Spenser’s [sic].” The governor likewise recognized a distinction. Spencer M. Ball, the clerk of the Fairfax County court, may have proven instrumental in forging that impression. Ball remarked to Governor Gilmer in the latter half of April that “Alfred … seems to have excited much sympathy. The general opinion being that he is much less culpable than others who were tried for the same offence – and were acquitted. His conduct previous to this affray had been good and orderly, and circumstances have transpired calculated to increase the interest in his behalf. I believe,” Ball concluded, “there are few in this community who would refuse to join in an application as regards Alfred.”

Upon learning of Gilmer’s commutation of Alfred’s sentence, Dennis Johnston penned a letter on May 18 thanking the governor “for that merciful act” sparing his slave “a violent death.” But Johnston then quickly pivoted to his other bondman, Spencer, still condemned to hang on May 22. He presented for the governor’s consideration a petition alleging that “there is not such a difference between the … negroes Alfred & Spencer in the degree of their guilt, as there is in the grade of their punishment.” The fifty-four signers requested sale and transportation for Spencer as well. But Governor Gilmer’s generosity had evaporated. After an additional, brief respite of less than two weeks, Spencer was taken from jail and executed on June 3, 1840. About two weeks before Spencer swayed lifeless from the noose, his brother Alfred had been carried some one hundred miles south, to Richmond. There, he bided his time in the Virginia State Penitentiary, awaiting purchase by a slave trader willing to convey him outside the boundaries of the United States.