

The Curious Court-Martial of Daniel Boone

Major Jonathan E. Fields*

*Colonel Richard Calley brought up a Complaint against Captain Daniel Boone. Their [sic] was a court Marshal [sic] called to try him. I was present at his Tryal [sic].*¹

I. Introduction

Frontier icon and militia officer, Captain (CPT) Daniel Boone, was court-martialed following the 1778 siege of Boonesborough² in a small log fort in modern-day Kentucky. Shrouded in mystery for over 200 years, historians and scholars present varied accounts of this controversial proceeding that tarnished the exemplary military career of a legendary woodsman and frontier hero. In the history of famous (or infamous) courts-martial that weave their way through the fabric of the Judge Advocate General's (JAG) Corps, the eighteenth century case against CPT Boone has been largely stricken from the record.

Daniel Boone was born in the upper Schuylkill River valley of Pennsylvania on October 22, 1734, to Squire and Sarah Boone.³ From an early age, Boone exhibited a particular tenacity that would serve him well as he sought to master an untamed wilderness.⁴ As a man, Boone stood five

feet, eight inches tall with a stocky build, dark hair, and blue-gray eyes.⁵ Between early forays into the lands west of the Appalachian Mountains searching for game and unencumbered land, Boone worked as a surveyor and trader—learning to read and write at an early age.⁶ His journeys into that vast and uncharted territory would introduce him to the Native American tribes who called this area home.⁷ He would also hone his skills as a scout and make him an indispensable asset for the United States' war against Great Britain on the western front.

Boone's military career would span decades, but began in the French and Indian War with enlisted service under British General Edward Braddock during the failed attack on Fort Duquesne in April 1755 near Pittsburgh.⁸ During the obscure episode known as Lord Dunmore's War between the colony of Virginia⁹ and the Shawnee and Mingo tribes in the Clinch River Valley in 1774, Boone would earn a commission

* Judge Advocate, United States Army. Presently assigned as Student, the Command and General Staff College, Fort Leavenworth, Kansas. LL.M., 2013, The Judge Advocate General's School, United States Army, Charlottesville, Virginia; J.D., 2009, Indiana University Maurer School of Law, Bloomington, Indiana; B.A., 2001, Indiana University. Previous assignments include Associate Professor, Administrative and Civil Law Department, Judge Advocate General's School, United States Army, Charlottesville, Virginia, 2013-2015; Chief of Client Services, Chief of Claims and Special Assistant U.S. Attorney, Civil Division, Southern District of Georgia, 3rd Infantry Division, Fort Stewart, Georgia, 2011-2012; Trial Counsel, 2nd Brigade Combat Team (Rear Provisional), 3rd Infantry Division, Fort Stewart, Georgia, 2010; G-3 Training Officer, 2nd Infantry Division, Camp Red Cloud, Korea, 2005-2006; Assistant S-3, 1-36 Infantry Battalion, 1st Brigade Combat Team, 1st Armored Division, Ray Barracks, Germany; Scout Platoon Leader, Task Force Spartan, 1st Brigade Combat Team, 1st Armored Division, Iraq, 2003-2004; Rifle Platoon Leader, B Company, 1-36 Infantry Battalion, 1st Brigade Combat Team, 1st Armored Division, Ray Barracks, Germany 2002. Member of the bars of the state of Indiana, the Northern and Southern Districts of Indiana, the United States Court of Appeals for Veterans Claims, and the United States Supreme Court. The author thanks COL (Ret.) Fred Borch, COL James Garrett, and COL (Ret.) Dan Lavering for their guidance and assistance in writing this article; and to Stephen Fields and Ginger Beatty who, though I was born and raised a Hoosier, often remind me of my Kentucky heritage that lies at the heart of this story.

¹ DANIEL TRABUE, WESTWARD INTO KENTUCKY 63 (Chester Young ed., 2004) (1981). Daniel Trabue was born in 1760 and died at the age of 80. Trabue served in the Revolutionary War with significant service in Kentucky. *Id.* at 1. Unique among his fellow frontiersmen (which included Daniel Boone), Trabue actually recorded contemporary events in a journal, of which 148 pages have survived. *Id.* Chester Young, professor and chair of the Department of History and Political Science at Cumberland College notes, "Trabue's account remains the principal evidence for the court-martial of Boone. His recalling, forty-nine years after the event, of the specific charges against the captain is remarkable in view of the fact that he witnessed this trial as an eighteen-year-old lad." *Id.* at 172.

² See JOHN M. FARAGHER, DANIEL BOONE: THE LIFE AND LEGEND OF AN AMERICAN PIONEER 199-202 (Henry Holt and Company, LLC 1992) (1993).

³ *Id.* at 10.

⁴ *Id.* at 15-30. The origins of Boone's tenacity and renowned tolerance for physical pain can be found in his strict Quaker upbringing. Relatives note that Squire Boone would beat his children until they asked for forgiveness, then cease doling out the blows. *Id.* One descendent wrote, "[T]he father [Squire], wishing to gain his point in government, would appeal to Daniel, 'Canst thou not beg?' But [Daniel] could not beg, leaving his anxious parent to close the matter at his pleasure." *Id.* at 13.

⁵ *Id.* at 30.

⁶ *Id.* at 16-17. Daniel Boone's ability to read and write on the eighteenth century frontier coupled with his experience and prowess on the frontier contributed to him attaining an officer's commission in the militia. See generally *id.*

⁷ *Id.* at 23. "But during that youth he also grew in his knowledge and ways of the American woods and of the culture of the Indians." *Id.*

⁸ *Id.* at 36-37.

⁹ Daniel Boone, though born in Pennsylvania and elevated to national prominence in Kentucky, has deep connections in Virginia as well. *Id.* at 2. Boone's travels led him to Charlottesville, Virginia, and the areas surrounding the present-day regimental home of the Army's Judge Advocate General's Corps (JAGC). *The Judge Advocate General's Legal Center and School*, JAGCNET, <https://www.jagcnet.army.mil/Sites/tjaglcs.nsf/homeContent.xsp?open&documentId=CBE94495746A8AF585257A98006F314C> (last visited Jan. 20, 2016). During the Revolutionary War, Lieutenant Colonel Banastre Tarleton led a raid on Charlottesville in an effort to capture members of Virginia's legislature and then-governor, Thomas Jefferson. Though Tarleton's main objective failed, he did manage to capture Daniel Boone in the process. JOHN C. FREDRIKSEN, REVOLUTIONARY WAR ALMANAC 209 (2006).

as a captain of frontier militia.¹⁰ Boone cherished this commission, and never ceased to carry it on his person.¹¹ Boone held the rank of captain into the Revolutionary War and was promoted to major—though under very unusual circumstances.¹² It was during his time as a commissioned officer that Daniel Boone found himself the subject of a ramshackle court-martial brought on by one officious commander’s attempt to maintain order on the western front.

This article frames Daniel Boone’s court-martial in the anthology of American military justice cases. It provides the historical context of the charges and places the reader into the thick log walls of the makeshift courtroom in Logan’s Fort during the autumn of 1778. First, the article describes Daniel Boone’s employment with the Transylvania Company—a strange endeavor by attorney Richard Henderson to create the fourteenth American colony. Second, the article details the spread of the American Revolution west of the Blue Ridge Mountains, along with Great Britain’s alliance with the Shawnee nation to attack American settlements along the frontier. Third, Boone’s surrender of an ill-fated expedition to make salt for the starving frontier settlements will be presented, along with his questionable tactical decisions during the eventual siege of Fort Boonesborough by the Shawnee. Finally, the article explains the charges, proceedings, and aftermath of CPT Boone’s court-martial, and undergirds the importance of an established trial judiciary for the American military during the infancy of the Republic. Judge advocates can glean valuable and contemporary lessons from the trial of a wildly popular senior military leader, which occurred in the midst of a war that would ultimately decide the fate of the Nation.¹³

¹⁰ See *id.* at 102-06.

¹¹ FARAGHER, *supra* note 2, at 105-06. The pride and value in which Boone would place in his commission is demonstrative of the personal disdain and disgust in which Boone would view his court-martial in the years following the trial. See *infra* note 33. Interestingly, Boone’s family submitted the document to the federal government seeking remuneration in 1840 for Boone’s service; the commission was lost by the government. *Id.*

¹² See TRABUE, *supra* note 1, at 63-64.

¹³ See FARAGHER, *supra* note 2, at 1. The American Revolutionary War was fought between 1775 and 1783. Tangentially, warfare between the Colonial settlers of the Ohio River Valley and the Native American tribes of the Shawnee, Delaware, Mingo, and Miami raged on the frontier until 1795 and the Treaty of Greenville. *The Treaty of Greenville 1795*, THE AVALON PROJECT, http://avalon.law.yale.edu/18th_century/greenvil.asp (last visited Jan. 20, 2016). Daniel Boone, as an officer of a colonial militia, served extensively in these conflicts. FARAGHER, *supra* note 2, at 2.

¹⁴ JOHN FILSON, *THE DISCOVERY, SETTLEMENT AND PRESENT STATE OF KENTUCKE* 7 (1784). John Filson wrote an extraordinary account of the land and history that compose the state of Kentucky. He relied heavily upon Daniel Boone’s personal accounts and exploits in the region to publish the book. *Id.*

¹⁵ FARAGHER, *supra* note 2, at 106. “Americans established a number of permanent settlements in Kentucky in 1775, Boonesborough was among them.” *Id.* Boonesborough exists to this day, and is located in the Fort Boonesborough State Park, Kentucky, south of Winchester, Kentucky.

II. Transylvania

In 1767, Boone made his initial venture into Kentucky—a land known as the Dark and Bloody Ground.¹⁴ Enamored with the boundless beauty and game of that region, Boone began a harrowing effort to settle this land, which culminated in the founding of Boonesborough in 1775.¹⁵ The journey to establish the frontier settlement that would ultimately bear his own name began with Boone’s bizarre employment to Richard Henderson. An attorney and entrepreneur, Henderson effectuated a treaty between a large company of his own creation and the Cherokee tribe to purchase an immense swath of land in 1775 that would compose nearly half of modern-day Kentucky.¹⁶ His end state was to establish a new colony west of the Appalachian Mountains to be called Transylvania.¹⁷ Once the treaty was executed, Henderson needed a pioneer to blaze a trail through the Cumberland Gap and establish a foothold in his fledgling colony to draw settlers and businesses to the region¹⁸; Daniel Boone was just the man for the job. However, war with England would drastically change the plans of both Boone and Henderson.¹⁹

The establishment of Boonesborough²⁰ would not come without a fight. Though the Cherokee tribe had signed the Treaty of Sycamore Shoals in which John Henderson had secured his purchase for Transylvania, not all the tribes in the region gave credence to the document or the Cherokee’s authority to unilaterally agree to the forfeiture of the land at issue.²¹ Perhaps even more striking is the fact that Henderson was establishing treaties and attempting to create a colony as a private citizen, and not clothed in the authority of the fledgling United States.²² A leading voice of violent dissent

¹⁶ ROBERT MORGAN, *BOONE: A BIOGRAPHY 171-75* (Algonquin Books 2008) (2007).

¹⁷ *Id.*

¹⁸ FARAGHER, *supra* note 2, at 109.

¹⁹ *Id.*

²⁰ *Id.* at 125. So happy was Henderson with Boone’s effort, that his company voted to bestow upon him a gift of 2,000 acres of land in Transylvania; the gift died along with Henderson’s attempt to create a new American colony. *Id.* “The Transylvania Company had voted ‘that a present of two thousand acres of land be made to Col. Daniel Boone, with thanks of the Proprietors, for the signal services he has rendered,’ but with the failure of their claims to Kentucky, Boone’s grant was forgotten and he never received any compensation.” *Id.*

²¹ *Id.* at 125-31. In addition to opposition from the Native Americans, the Second Continental Congress also spoke on the issue after Henderson brought his colony request to the fledgling government. *Id.* at 125. “Thomas Jefferson argued that ‘quit-rents is a mark of vassalage’”; John Adams noted that the Transylvania claim lay “within the limits of Virginia and North Carolina by their charters.” *Id.* Even the British weighed in by calling Henderson and his business venture “an infamous Company of land Pyrates.” *Id.*

²² *Id.* at 106. “Henderson had no authority to enter into such an agreement; the laws of both North Carolina and Virginia, as well as the British Proclamation of 1763, specifically enjoined private citizens from treating with Indian nations, especially concerning the purchase of land.” *Id.*

arose from Chief Blackfish of the Shawnee tribe.²³ Blackfish viewed the rising tide of settlers as trespassers on land that rightfully belonged to the Shawnee.²⁴ Fueled by the defense of his homeland, Blackfish would find an unlikely ally in the British Army, and would lead a protracted series of engagements against many of the frontier settlements, including Boonesborough.²⁵

The Revolutionary War slowly spread west across the continent after the first shots were fired in Massachusetts in 1775,²⁶ though a copy of the Declaration of Independence would not arrive at Boonesborough until August 1776, when it was read aloud to the residents.²⁷ Hoping to draw the finite combat power of General George Washington's Colonial Army away from the decisive action on the eastern seaboard, the British eventually opened a second front to the war against the colonies by aiding and encouraging the Native American tribes of the region to attack the settlers on the Western frontier.²⁸ Monetary rewards were given by British Lieutenant Governor Henry Hamilton in Detroit for American prisoners, or American scalps.²⁹ Hamilton would order scores of raiding parties to attack the Kentucky settlements.³⁰ A cry arose on the frontier as colonial families were viscously attacked and murdered by the British and the Native American tribes.³¹ The cry reached Virginia and the frontier militias commanded by George Rogers Clark, brother of the famous explorer from the Lewis and Clark Expedition.³² As the American government struggled to aid American families on the frontier and counter enemy forces on the western front, CPT Boone³³ began orchestrating a defense of the settlements surrounding and including Boonesborough.³⁴

III. Making Salt

The incessant attacks by the British and Shawnee on the western settlements made scratching out a life on the frontier even more difficult for the inhabitants of Boonesborough and the surrounding settlements. Hunting and farming became nearly impossible, with settlers spending their days within the fortified walls of their outposts.³⁵ In critically low supply, salt was needed to preserve the meat of what cattle remained to nourish the settlers to spring.³⁶ As a result, Boone led a party of approximately thirty men outside the protection of the garrison at Boonesborough to a salt spring on the Licking River on New Year's Day 1778 to undertake the arduous task of boiling down the salty spring water to produce salt and distribute it among the surrounding settlements.³⁷ This was a dangerous mission that would be critical for the survival of the frontiersmen and their families. This ill-fated operation would set the stage for Boone's subsequent court-martial.

According to John Filson's 1784 personal interview with Boone regarding this episode, Boone left the salt-makers on February 7, 1778, to procure game for the men as they worked.³⁸ Alone on the hunt, he was surprised and captured by Chief Blackfish and approximately 120 Shawnee warriors en route to destroy Boonesborough in a very unusual winter

²³ *Id.* at 128.

²⁴ *Id.*

²⁵ *See id.* at 98-125.

²⁶ *See generally id.* at 125-31.

²⁷ *Id.* at 141. A bonfire was lit in celebration by the residents. *Id.*

²⁸ *Id.* at 151.

²⁹ *Id.* Hamilton became known as the "hair buyer." *Id.* Allan Eckert attributes the following to Hamilton: "You will continue to honor our obligations, paying fifty dollars for each white scalp and one hundred dollars for each living prisoner." ALLAN W. ECKERT, *THE FRONTIERSMEN* 180 (1967). Eckert's citation and research is meticulous, though he adds dialogue to improve readability. "*The Frontiersman* . . . is the result of a close study of a multitude of documents written in the period 1700-1900 [C]ertain techniques normally associated with the novel form have been utilized, but in no case has this been at the expense of historical accuracy." *Id.* at xi; *see also infra* note 89 (discussing Eckert's research methods and the genre of historical fiction).

³⁰ FARAGHER, *supra* note 2, at 146-51.

³¹ ECKERT, *supra* note 29, at 387-88. Eckert records the vicious execution of one frontiersman at the hands of the Shawnee tribe as follows:

From a pole stuck in the center of the trail, Alex McIntyre's scalp-less head stared sightlessly at them. On another pole close by, his still dripping heart was impaled. His arm and legs had been hacked off and his body cut in two just under

the rib cage and these six grotesque pieces were hung with rawhide strips from limbs overhanging the trail.

Id.

³² FARAGHER, *supra* note 2, at 145. "So preoccupied was [Virginia's] government with preparations for war along the seaboard that it was unable to do little more than legitimize the existing military organization in the West, appointing George Rogers Clark [major] in command of the Kentucky militia, with John Todd, James Herrod, Benjamin Logan, and Daniel Boone captains at the American strongholds south of Harrodsburg, Logan's Station, and Boonesborough." *Id.* This was, perhaps, Boone's second commission as an officer though this commission was from the newly-created state of Virginia. *See generally id.*

³³ *Id.* at 101-05. In 1774, Boone would be promoted to the rank of captain by Colonel (COL) William Preston in 1774. "Boone may have come from lowly origins, but he seemed officer material nonetheless." *Id.*

³⁴ *Id.* at 145. "Even as Shawnees decided to launch a sustained campaign in Kentucky, the Americans, their supplies of ammunition nearly depleted, were abandoning the last remaining stations north of the Kentucky River and pulling back to fortified positions." *Id.*

³⁵ *Id.* at 154. The settlers were "almost destitute of the necessary article of salt." *Id.*

³⁶ *See id.*

³⁷ *Id.*

³⁸ FILSON, *supra* note 14, at 48.

offensive.³⁹ The war party had spotted the salt makers before capturing Boone.⁴⁰

The Shawnees outnumbered the salt makers by more than four to one, and Boone worried that the appearance of an Indian army at Boonesborough would come as a complete surprise and that there would be a bloody rout. Quickly he devised a stratagem that would forever be the subject of controversy.⁴¹

Understanding the odds and learning of the war party's mission to attack the under-defended Boonesborough, Boone led the war party to the salt makers and away from the settlement. As he approached the salt camp, he ordered the men to lay down their arms and surrender to the Shawnee.⁴² This decision would haunt him for the rest of his life.⁴³ The Shawnee marched their prisoners toward Chillicothe (the largest Shawnee village in the area), forcing them to also carry the large kettles and salt already produced by the work party, adding insult to the injury of defeat and capture.⁴⁴ Along the way, Boone was stripped to a breach clout and leggings and forced to run a gauntlet consisting of two lines of Shawnee warriors with sticks and clubs who viscously beat him as he sprinted past each man.⁴⁵

Already a legend on the frontier—even gaining recognition and respect among the Native American tribes of the region for his tenacity and prowess as a woodsman—Boone was a conspicuous prisoner for the Shawnee.⁴⁶ After

arriving at Chillicothe, Boone and ten of the men from the ill-fated salt party were marched onward to Detroit, where he was presented to General Hamilton.⁴⁷ In a move common among fellow officers at the time, Hamilton offered the militia officer parole.⁴⁸ The Shawnees refused to surrender such a prize to the British, but rather adopted Boone into their tribe, a custom that was prevalent among the Native Americans of the eastern United States.⁴⁹

By all accounts, Boone lived comfortably among the British and Indians, a fact that would also later trouble him at trial.⁵⁰ Boone maintained that his friendly relationship with the enemy was a ruse to ultimately aide in his escape.⁵¹ An uncanny hunter, Boone was eventually given leave to hunt without guards.⁵² In June of 1778, after spending nearly six months in captivity, Boone began to hear rumors of a large-scale summer offensive being mounted against the settlements in Kentucky.⁵³ Recognizing the critical nature of this intelligence, Boone slipped his captors.⁵⁴ According to Boone, “On the sixteenth [of June], before sun-rise [sic], [Boone] departed in the most secret manner, and arrived at Boonesborough on the twentieth, after a journey of one hundred and sixty miles; during which, [he] had but one meal.”⁵⁵

The reaction to Boone's homecoming was varied.⁵⁶ His family and close allies were ecstatic to see the return of their patriarch and military leader.⁵⁷ Morale in Boonesborough was low, and the living conditions had deteriorated to squalor in the six months following the capture of the salt party.⁵⁸

³⁹ FARAGHER, *supra* note 2, at 156-57. Frontiersman captured and executed Shawnee Chief Cornstalk at Point Pleasant, Ohio, in November 1777. *Id.* The Shawnee warriors were on a punitive expedition to avenge the death. *Id.*

⁴⁰ *Id.* at 156. “They [the Shawnee war party] were camped on Hinkston Creek and these four scouts were returning from the Licking, where they had already spied Boone's men at work.” *Id.*

⁴¹ *Id.* at 157.

⁴² *Id.* at 158.

⁴³ *Id.* at 201. Boone's decision, though highly criticized at the time, was arguably prudent given the force ratio of the parties, and the decision likely saved the lives of the men of his salt-party and the beleaguered settlers at Boonesborough. *See generally id.*

⁴⁴ *Id.* at 161.

⁴⁵ Boone was given the choice to run a gauntlet formed of the Shawnee war party on the way to Chillicothe or to wait and run at Chillicothe. *Id.* at 160. Boone chose the former, asserting that the women and children of the Shawnee inflicted worse and more humiliating torture to captured prisoners than the Shawnee warriors. *Id.*

⁴⁶ FILSON, *supra* note 14, at 49.

⁴⁷ *Id.*

⁴⁸ *Id.* “[A]lthough the Governor (General Hamilton) offered [the Shawnee] one hundred pounds Sterling for me, on purpose to give me [Boone] a parole to go home.” *Id.* The concept of granting parole for military prisoners was common among European armies of the day as long as the parolee would give his word not to take up arms against the paroling army

until hostilities had ceased. *See* Major Gary D. Brown, *Prisoners of War Parole: Ancient Concept, Modern Utility*, 156 MIL. L. REV. 200 (1998).

⁴⁹ Ten of the salt makers would eventually be adopted by the Shawnees. FARAGHER, *supra* note 2, at 164. The Shawnees commonly adopted enemy prisoners to replace their own sons lost in battle. *Id.* “During the eighteenth century hundreds of Europeans and Americans were captured and adopted into Indian tribes.” *Id.*

⁵⁰ FILSON, *supra* note 14, at 49. “Several English gentlemen there, being sensible of my adverse fortune, and touched with human sympathy, generously offered a friendly supply for my wants, which I refused . . .” *Id.*

⁵¹ *See* TRABUE, *supra* note 1, at 63-64.

⁵² FILSON, *supra* note 14, at 51.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ FARAGHER, *supra* note 2, at 175. “Boone found them sullen and suspicious.” *Id.*

⁵⁷ *See id.* at 175.

⁵⁸ *See id.* at 177. Sections of the stockade had actually rotted away in Boone's absence. *Id.*

Boone's return rekindled a spark of hope among the inhabitants.⁵⁹ On the other hand, rumors of Boone's surrender and preferential treatment by the enemy had circulated among the residents, and many were suspicious of Boone's return.⁶⁰ Pushing aside these distractions, Boone rallied the inhabitants of Boonesborough to ready the fort for battle.⁶¹

IV. The Siege of Boonesborough

*Indians [are] coming against us to the number of near 400 which I expect here in 12 days . . . we shall lay up provisions for a siege.*⁶²

Captain Daniel Boone orchestrated a protracted defense of the Boonesborough settlement in the late summer of 1778.⁶³ Employing settlers of all ages, Boone equipped about sixty rifleman for war.⁶⁴ He consolidated and pre-positioned his meager supplies, cleared surrounding vegetation to increase his fields of fire around the fort, and sent an urgent message to his chain of command in Virginia for reinforcements.⁶⁵

Among Boonesborough's residents was Colonel (COL) Richard Callaway.⁶⁶ Callaway was the son of a wealthy, landowning family in the Shenandoah Valley of Virginia.⁶⁷ He was Boone's superior in age, rank, and time in service, but Boone was in command at Boonesborough.⁶⁸ Callaway was described as "officious, bad tempered, and a bit of a blue blood."⁶⁹ He most definitely resented Boone's infectious leadership and his operational command of Fort Boonesborough.⁷⁰ Their adversarial relationship would come

to a head during the siege of Boonesborough as Callaway would vehemently challenge Boone's tactical judgments at every turn.⁷¹

The Shawnee gathered a force of roughly 400 men to attack Boonesborough.⁷² On September 7, 1778, the siege of Boonesborough began and would last for eleven days.⁷³ Two decisions during the siege would result in additional court-martial charges for Boone at trial.⁷⁴

The first decision came to be known as the Paint Creek Raid.⁷⁵ In late August, rumors were swirling around Boonesborough as the settlers waited for the Shawnee's assault.⁷⁶ Boone decided to undergo a preemptive attack on a nearby Shawnee village on the Paint Creek in late August 1778.⁷⁷ He reasoned that a raid using thirty soldiers would be successful against the weakly-defended village and yield plunder that would bolster the meager supplies of Boonesborough in anticipation of a siege.⁷⁸ Colonel Callaway vigorously opposed this course of action, reasoning that it would reduce the defenders at Boonesborough by half.⁷⁹ Regardless, the charismatic junior officer formed his raiding party and attacked the Paint Creek village without losing a soldier, but gaining only a modest amount of supplies.⁸⁰ Worse, the main body of the Shawnee attack had maneuvered closer to Boonesborough during the raid, and was now located between Boone's raiding party and the fort.⁸¹ Boone and his men were forced to take a long and indirect route back to Boonesborough.⁸² They arrived on September 6, 1778, to the news that the Shawnee's assault would begin the following day.⁸³

⁵⁹ FARAGHER, *supra* note 2, at 175. "'Bless your soul,' pronounced one of the men as Boone came up." *Id.*

⁶⁰ *Id.* at 169-70. Andy Johnson was a member of the salt party and had escaped prior to Boone. *Id.* He reported that "Boone was a Tory, and had surrendered [all the salt party] up to the British, and taken the oath of allegiance to the British at Detroit." *Id.*

⁶¹ *Id.* at 177.

⁶² *Id.* at 180. Boone pens these words on July 18, 1778, in a message to the Virginia legislature requesting reinforcements. *Id.*

⁶³ *Id.* at 177-78.

⁶⁴ *Id.* at 178. "Black and white, young and old, Boonesborough could count a total of sixty men at arms, defending perhaps another dozen adult women and twenty children." *Id.*

⁶⁵ *Id.* at 177-78.

⁶⁶ *Id.* at 181.

⁶⁷ *Id.* at 113.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ See TRABUE, *supra* note 1, at 57-61.

⁷¹ *Id.* Trabue notes COL Callaway's opposition and confrontation to Boone's decisions regarding the failed peace treaty and the Paint Creek Raid. *Id.*

⁷² FARAGHER, *supra* note 2 at 180.

⁷³ *Id.* at 198.

⁷⁴ LOFARO, *infra* note 106, at 105.

⁷⁵ See FARAGHER, *supra* note 2, at 181-82.

⁷⁶ *Id.* at 181.

⁷⁷ *Id.*

⁷⁸ *Id.* at 182. The venture would yield only a very modest amount of supplies. *Id.* This likely stoked the ire of Callaway against Boone by risking so great for so very little. See generally *id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at 182. "The Paint Creek raid had yielded little plunder." *Id.*

⁸¹ *Id.* at 182.

⁸² *Id.*

⁸³ Trabue notes, "[The Paint Creek Raid party] only got [back] to the fort a few hours before the Indean [sic] army got their [sic]." TRABUE, *supra* note 1, at 63.

The second decision found CPT Boone the victim of a well-played act of perfidy⁸⁴ by Chief Blackfish, the leader of the enemy siege force.⁸⁵ On September 9, 1778, early into the siege, Chief Blackfish entreated the settlers for peace under a flag of truce.⁸⁶ After a meal prepared by the women of the fort, Boone led ten of his principal leaders outside the walls to negotiate with the Shawnee.⁸⁷ Articles of peace were agreed to, recorded, and even signed by the parties.⁸⁸ However, as Boone and the men stood to shake their adversaries' hands, "[e]ach American was surrounded by at least two Shawnees."⁸⁹ Colonel Callaway was the first to react to the trap and violently "jirked [sic] away from them"⁹⁰ as gunfire erupted from the fort.⁹¹ A melee ensued as the frontiersman scrambled back to the garrison.⁹² Only Squire Boone Jr., Boone's brother, was injured, getting shot in the shoulder.⁹³ However, he was quickly back on his feet and fled to the safety of Boonesborough's embattled log walls.⁹⁴ Captain Boone narrowly escaped recapture by the Shawnee, along with ten of his top leaders.⁹⁵ The crack of rifle fire and the acrid clouds of black powder smoke would persist at Boonesborough for nine more days as the Americans repelled persistent assaults by the Shawnee warriors who laid siege to the frontier fort.⁹⁶

The Shawnee pressed their final attack on September 17, 1778, and were repelled.⁹⁷ The Americans killed more

Shawnee during this attack than during the previous days combined.⁹⁸ The siege was over, and the Shawnee warriors melted back into the wilderness.⁹⁹ In the end, no American lives were lost, but "several" Shawnee were killed.¹⁰⁰ The absence of American casualties is astonishing given the fact that 125 pounds of lead were removed from the walls of the fort following the battle.¹⁰¹ Captain Boone defeated a numerically superior force without receiving reinforcements from Virginia.¹⁰² Aside from preserving the settlement and the lives of his friends and families, CPT Boone had secured a significant victory on the western front of the American Revolution by defeating the Shawnee attack orchestrated and funded by General Hamilton.¹⁰³ However, Boone's celebration would be short-lived, as an angry COL Callaway immediately sought to convene a court-martial against the frontier hero.¹⁰⁴

V. The Trial

After the attack on Fort Boonesborough was quelled, COL Callaway and CPT Ben Logan¹⁰⁵ insisted that Boone be tried at a court-martial for a variety of charges involving Boone's conduct prior to and during the defense of Fort

⁸⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, U.N. Doc. A/32/144 [hereinafter Protocol I]. Literally speaking, perfidy means the breaking of faith, and the problem of bad faith may present itself in time of peace or in time of armed conflict with regard to the whole field of international relations whether at a political level—implicating only those participating in the decision-making process—or at the level of the application of the rules. *Id.*

⁸⁵ FARAGHER, *supra* note 2, at 188-92.

⁸⁶ *Id.* at 183.

⁸⁷ *Id.*

⁸⁸ *Id.* It is striking that the ruse by the Shawnee included recording the cessation of hostilities with pen and paper; perhaps this was an attempt to "sell" the Americans on the sincerity of the plan. *Id.* Regardless, it illustrates the responsibilities of a militia officer on the frontier. *See generally id.*

⁸⁹ *Id.*

⁹⁰ TRABUE, *supra* note 1, at 58.

⁹¹ FARAGHER, *supra* note 2, at 188-92.

⁹² *Id.* at 191.

⁹³ *Id.* at 192.

⁹⁴ *Id.*

⁹⁵ *Id.* "[B]ut our men all got to the fort safe." *Id.*

⁹⁶ *See id.* at 192-98.

⁹⁷ *Id.* at 198.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* Lead being a precious commodity on the frontier, its malleable and durable form most assuredly led to its subsequent recovery and recasting into new bullets. *See generally id.*

¹⁰² *Id.* at 190. "A few days later the reinforcements arrived from Virginia." *Id.*

¹⁰³ "On the eighth [of September, 1778], the Indian army arrived, being four hundred and forty-four in number[,] . . . marched within view of our fort, with British and French colours [sic] flying; and having sent a summons to me [Boone] in his Britannick [sic] Majesty's name, to surrender the fort . . ." FILSON, *supra* note 14, at 52. In addition to the capture of Fort Sackville the following year by George Rogers Clark, Boone's defense of Boonesborough against a multinational force represents one of the preeminent victories on the western front of the Revolution for the young United States. Robert C. Alberts, *George Rogers Clark and the Winning of the Old Northwest*, NAT'L PARK SERV. (1975).

¹⁰⁴ FARAGHER, *supra* note 2, at 199.

¹⁰⁵ In 1776, Virginia created Kentucky County in response to the rising threats on the western front of the American Revolution. *Id.* at 145. In addition to creating the government framework of this enormous county on their western flank, the Virginia legislature also appointed "George Rogers Clark [as] major in command of the Kentucky Militia, with John Todd, James Herrod, Benjamin Logan, and Daniel Boone as captains at the American strongholds south of Harrodsburg, Logan's Station, and Boonesborough." *Id.* It is unclear why Logan was so insistent that Boone be tried. However, Trabue notes that Logan's Station, a settlement near Boonesborough, was also affected by the warring Shawnee of the Boonesborough siege and that Captain (CPT) Logan (badly injured in the fighting) had only fifteen men assigned to defend his settlement. *See generally* TRABUE, *supra* note 1, at 60-62. These factors likely contributed to Logan's frustration with Boone following the action. *Id.*

Boonesborough¹⁰⁶ Interestingly, the very same officers demanding a court-martial of Boone also had nephews who were part of the doomed salt making party, and both soldiers had yet to be released or escape the Shawnees' grasp.¹⁰⁷

Author and historian Michael A. Lofaro, a professor of American and Cultural Studies and American Literature at the University of Tennessee, is a celebrated authority on Boone and frontier history.¹⁰⁸ In his book, *Daniel Boone: An American Life*, he notes the following:

The court-martial of Daniel Boone convened at Logan's Fort, with charges as follows:

- i. That Boone had taken out twenty six men to make salt at the Blue Licks, and the Indians had caught him trapping for beaver ten miles below on [the] Licking [River], and [that Boone] voluntarily surrendered his men at the Licks to the enemy.
- ii. That when a prisoner, he engaged with Gov. Hamilton to surrender the people of Boonesborough, to be removed to Detroit, and lived under British protection and jurisdiction.
- iii. That returning from captivity, he encouraged a party of men to accompany him to the Paint Lick Town, weakening the garrison at a time when the arrival of an Indian army was daily expected to attack the fort.
- iv. That preceding the attack on Boonesborough, he was willing to take officers of the fort, on [the] pretense of making peace, to the Indian camp,

beyond the protection of the guns of the garrison.¹⁰⁹

The charges set forth by Callaway might not withstand the scrutiny of the modern Rules for Court-Martial; however, there are conceivable analogs to the charges under the current Uniform Code of Military Justice by which a zealous trial counsel might develop a case. A contemporary charge sheet¹¹⁰ against CPT Daniel Boone may include violations of the following punitive articles (considered in the order presented above): Article 86, Absence Without Leave (AWOL),¹¹¹ in that Boone was accused of absenting himself from the duty of making salt for the inhabitants of Boonesborough and was captured allegedly trapping beavers¹¹² ten miles away from the work party; Article 99, Misbehavior Before the Enemy,¹¹³ including specifications for shamefully abandoning, surrendering, and delivering up command of his Soldiers¹¹⁴ in a cowardly conduct;¹¹⁵ Article 104, Aiding the Enemy,¹¹⁶ including specifications for improper communications with the British and Shawnee enemy at Detroit; and possibly Article 134, Reckless Endangerment,¹¹⁷ for executing the Paint Creek Raid and agreeing to a false peace treaty conference outside the protection of Fort Boonesborough.

It is doubtful that a written copy of the sixty-nine Articles of War, passed by the Second Continental Congress on June 30, 1775,¹¹⁸ was maintained at Logan's Fort, on the very fringe of American expansion into the continent, a mere three years following its passage. Similarly, the available historical documents suggest that neither a judge advocate nor military judge was present to oversee the conduct of the trial.¹¹⁹ Allan Eckert, a notable historian whose awards include the Pulitzer Prize, suggests that Boone's command even struggled with whether to follow the long-established and familiar British

¹⁰⁶ MICHAEL A. LOFARO, DANIEL BOONE: AN AMERICAN LIFE 105 (2010).

¹⁰⁷ *Id.*

¹⁰⁸ Editorial reviews of *Daniel Boone: An American Life*, KENTUCKY PRESS, http://www.kentuckypress.com/live/title_detail.php?titleid=1872#.VpQZSKOhrIU (last visited Jan. 20, 2016).

¹⁰⁹ LOFARO, *supra* note 106, at 105.

¹¹⁰ U.S. Dep't. of Def., DD Form 458, Charge Sheet (May 2000).

¹¹¹ UCMJ art. 86 (2012).

¹¹² “[A]nd that the Indians caught said Boon [sic] 10 Mile below these men [the salt-making party] on Licking [a river near Boonesborough], where he was a ketching [sic] Beaver.” TRABUE, *supra* note 1, at 63. Trabue's account makes this charge even more spurious in that it insinuates that Boone was away from his men pursuing personal business ventures (trapping beaver for fur), rather than procuring meat for his men as noted by Faragher.

¹¹² FARAGHER, *supra* note 2, at 154.

¹¹³ UCMJ art. 99 (2012).

¹¹⁴ UCMJ art. 99(2) (2012) (“[s]hamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend”).

¹¹⁵ UCMJ art. 99(5) (2012) (“is guilty of cowardly conduct”).

¹¹⁶ UCMJ art. 104 (2012).

¹¹⁷ UCMJ art. 134 (2012).

¹¹⁸ 28 JOURNALS OF THE CONTINENTAL CONGRESS, 1774-1789 (June 30, 1775), [http://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field\(DOCID+@lit\(jc00249\)\)](http://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(jc00249))) (last visited Jan. 20, 2016). Callaway's charge was synonymous with Article XXXI, which carried the following harsh penalty:

If any commander of any post, intrenchment [sic], or fortress, shall be compelled, by the officers or soldiers under his command, to give it up to the enemy, or to abandon it, the commissioned officer, non-commissioned officers, or soldiers, who shall be convicted of having so offended, shall suffer death, or such other punishment as may be inflicted upon them by the sentence of a general court martial.

Id.

¹¹⁹ ALLAN W. ECKERT, THE COURT-MARTIAL OF DANIEL BOONE v (A Bantam Domain Book 1993) (1973).

rules and regulations for court-martial or those of the newly-established Republic.¹²⁰

The trial was ultimately heard on September 28, 1778, only eleven days following the end of the siege, by a panel of officers from the Kentucky militia at Logan's Fort.¹²¹ The court-martial was open to the public and many local settlers attended the proceedings.¹²² Those facts aside, many of the specific details of the court-martial are less clear. Biographer John Mack Faragher suggests that "the official records of the proceeding disappeared, perhaps destroyed by a well-meaning friend who found them embarrassing."¹²³

The combined narratives of biographers Trabue, Filson, and Faragher imply that COL Callaway served as the de facto trial counsel, orchestrating the government's case against Boone.¹²⁴ Trabue summarized Callaway's theme at trial by writing, "[Colonel] Callaway insisted [Boone] was in favour [sic] of the bretesh [sic] and he ought to be broak [sic] of his commission."¹²⁵ Daniel Trabue, who was present at the trial, notes that Boone's pro se defense to the first charge regarding the salt making party was simple: "[Boone] had surrendered his men to keep the Indians from going to Boonesborough, where 'the fort was in bad order and the Indeans [sic] would take it easy.'"¹²⁶ To the second charge of Boone's collusion with the enemy at Detroit, Trabue records that Boone employed a "strategem" [sic] and that he "had told the Shawnees and the British 'tails to fool them.'"¹²⁷ Boone's defense to the charges associated with the Paint Creek Raid and the false treaty incident were less reasoned. Boone declared to the panel that "the outcome of the [successful] siege ought to speak for itself."¹²⁸ The witness list included COL Callaway and two members of the captured salt party

who had escaped, Andrew Johnson and William Hancock.¹²⁹ Captain Boone also testified in his own defense.¹³⁰

According to Faragher's account, the officers of the panel retired to deliberate, but came back quickly with a verdict: not guilty on all charges.¹³¹ Trabue records that "the court Marshal [sic] deseded [sic] in Boone's favour [sic]."¹³² In a surprising turn of events, the panel had reached another decision; they promoted Boone to the rank of major for his conduct during the siege.¹³³ The results were a complete vindication¹³⁴ for Boone by his fellow militia officers and simultaneously "heap[ed] scorn" upon Callaway and Logan.¹³⁵ "[Colonel] Calleway [sic] and Capt. Ben Logan was [sic] not pleased about it."¹³⁶ Callaway's disappointment would be short-lived. Eighteen months after the trial, he was killed by Indians as he worked with his slaves near Boonesborough.¹³⁷ "His body was scalped, mutilated, and rolled in a mud hole, leaving him, in the words of John Gass, 'the worst barbequed man I ever saw.'"¹³⁸

Long after the trial, the charges levied against Boone by Callaway continued to trouble Boone.¹³⁹ John Filson, a contemporary of Boone, was a historian and author. He wrote *The Discovery, Settlement and Present State of Kentucke* [sic] in 1784.¹⁴⁰ He cited Boone's experiences extensively throughout his work.¹⁴¹ The scars of the charges against Boone were fresh, as Filson presents a biographical and chronological description of Boone's exploits in Kentucky during the late eighteenth century.¹⁴² In accounting for the period of time in Kentucky immediately after the siege of Boonesborough and the iniquitous court-martial, Filson records Boone's sentiments as follows: "Soon after [the siege of Boonesborough], I went into settlement, and nothing worthy of a place in this account passed in my affairs for some

¹²⁰ *Id.* at 13. "Does this court-martial proceed under long-established British Crown regulations which set forth the limits under which it must be governed, or does it attempt to regulate itself under a new set of standards not really established by a developing independent Republic? In other words, is Captain Boone to be court-martialed under British or American rule?" *Id.* Allen Eckert's novel on the court-martial of Daniel Boone can be placed into the genre of historical fiction; however, Eckert was a meticulous and acclaimed historian who used source-documents for most of his work, including for his use of conversations and narrative throughout. *See generally id.* at v-1. Eckert notes, "What we do know of the court-martial of Daniel Boone has been painstakingly gleaned from numerous scattered sources and brief references to it which were made at the time in letters and diaries or in personal reminiscences which still exist today." *Id.* at v.

¹²¹ FARAGHER, *supra* note 2, at 199.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ TRABUE, *supra* note 1, at 64.

¹²⁵ *Id.* at 64.

¹²⁶ FARAGHER, *supra* note 11, at 200.

¹²⁷ TRABUE, *supra* note 1, at 63-64.

¹²⁸ FARAGHER, *supra* note 11, at 200.

¹²⁹ *Id.*

¹³⁰ *Id.* at 63.

¹³¹ *Id.* "After taking testimony from Callaway, the escaped captives Andrew Johnson and William Hancock, and Boone himself, the officers retired to deliberate and were quickly back with their verdict." *Id.*

¹³² TRABUE, *supra* note 1, at 64.

¹³³ *Id.* "[A]nd [the panel] at that time advanced Boon [sic] to a Major." *Id.*

¹³⁴ FARAGHER, *supra* note 2, at 200.

¹³⁵ *Id.*

¹³⁶ TRABUE, *supra* note 1, at 64.

¹³⁷ FARAGHER, *supra* note 2, at 201.

¹³⁸ *Id.*

¹³⁹ *Id.* at 199.

¹⁴⁰ *See* LOFARO, *supra* note 106.

¹⁴¹ FARAGHER, *supra* note 2, at 2-7.

¹⁴² *Id.*

time.”¹⁴³ It is telling that Boone omits such a significant event in his life—his court-martial—while simultaneously dismissing the court-martial as an event unworthy of record in his life. Faragher notes at the conclusion of the trial, “[F]or Boone, it was painful having these matters¹⁴⁴ aired at all, and he did his best to avoid any discussion of the whole affair for the rest of his life.”¹⁴⁵

By the 1850s, Boone’s youngest son Nathan would claim to know nothing of the trial.¹⁴⁶ Aside from Daniel Boone’s consternation regarding this chapter of his life, the soldiers under his command would often affirm the decision of the panel years following the court-martial.

A whispered debate, of which [Boone] was painfully aware, continued for years over his conduct. After they returned, the former captives were asked scores of times for their opinion. For the most part, they exonerated Boone of any blame for their ordeal. “It was Boons [sic] management that saved our lives at the Blue Licks [site of capture],” Richard Wade told his inquiring son. “It was conceded by all conversant with the circumstances that the course [Boone] pursued was the only wise, safe, and prudent course.”¹⁴⁷

VI. Conclusion

The court-martial of Daniel Boone is an insightful glance into how commanders attempted to maintain good order on the western front of the American Revolution—far different from the more established command structures of the Continental Army and the founding judge advocates of the JAG Corps. His ramshackle court-martial illustrates the need for judge advocates, military judges, and court reporters to marshal the court-martial process toward a just result that can be recorded for *stare decisis* and posterity. Daniel Boone died peacefully in his Missouri home on September 26, 1820, at the age of 85, with his family at his side.¹⁴⁸ Ironically, it was an early Federal Judge, John Coburn, whose eulogy at Boone’s funeral perhaps best captures the legendary woodsman’s gravitas: “Few men have excelled Col. Boone, for he has been the instrument of opening the road to millions of the human family from the pressure of sterility and want, to a Land flowing with milk and honey.”¹⁴⁹

¹⁴³ *Id.* at 54.

¹⁴⁴ Lofaro notes that “after a full investigation, Boone’s defense of his actions and loyalty [to the American cause] was upheld and he was honorably acquitted on every charge.” LOFARO, *supra* note 106, at 106. COL Callaway’s attempts to cast aspersions on Boone’s character as an officer failed. *Id.*

¹⁴⁵ FARAGHER, *supra* note 2, at 201.

¹⁴⁶ *Id.* at 199.

¹⁴⁷ *Id.* at 200-01.

¹⁴⁸ *Id.* at 318-19.

¹⁴⁹ *Id.* at 322.