

THE FILSON CLUB HISTORY QUARTERLY

VOL. 41

LOUISVILLE, KENTUCKY, APRIL, 1967

NO. 2

BENJAMIN HELM BRISTOW

THE MAN WHO WALKED IN FRONT OF DESTINY

By ROSS A. WEBB

University of Kentucky, Lexington, Kentucky

Paper read before The Filson Club, December 7, 1964

In our own day when the issue of civil rights lays heavy upon the American conscience, it is pertinent that our attention be drawn to another age when civil rights stirred men's passions. Perhaps we can take some comfort from the fact that there were sane men then, as now, who grappled with this problem.

I would like to discuss with you Bristow's career as United States Attorney for the District of Kentucky. His outstanding record, particularly in the field of civil rights, won such national recognition that when the office of Solicitor General of the United States was created in 1870, Bristow was selected as the first incumbent of that position.

Many years ago the correspondent (G.W.S.) for the *Evansville Courier* reported a conversation which he had overheard involving a young lawyer who was managing an important case for the Government. Having thrown "all his energy and integrity of character into the prosecution of the plunderers of the people's money," one observer turned to his friend and remarked: "I tell you sir, that man walks in front of Destiny." So was prophesied the future of Benjamin Helm Bristow.¹

Bristow was born on 20 June 1832 at Elkton, Kentucky, the son of Emily Edwards Helm and Francis Marion Bristow. His father was one of the most outstanding lawyers of southwestern Kentucky who had served eminently in both the State Legislature and in the National Congress. Through his mother, the boy was associated with such prominent Kentucky families as the Helms and the Edwards.

Educated at the Male Academy in Elkton and at the private school of Dr. W. D. Jones near Hopkinsville, he took his baccalaureate degree from Jefferson College in Canonsburg, Pennsylvania, after only

one year of study. He returned to Elkton, read law in his father's office and was admitted to the bar in 1854. He subsequently practiced his profession at Elkton, Hopkinsville, and Louisville.

Upon the outbreak of the Civil War, as an ardent Unionist, he helped recruit the 25th Kentucky Infantry and later the 8th Kentucky Cavalry. He saw service at Fort Donelson and Shiloh and assisted in the capture of the Confederate guerilla, John Hunt Morgan. Without his knowledge, he was elected to the State Senate in 1863 and thereby began a political experience that was to carry him to the very doors of the White House itself. His rise to fame was meteoric: he became United States Attorney for the District of Kentucky (1866-1870); first Solicitor General of the United States (1870-1872); Secretary of the Treasury (1874-1876). His insistence upon morality and honesty in Government made him the reform nominee for the presidency of the United States by the Republican Party in 1876, but because he refused to compromise his ideals and principles he lost the nomination to Rutherford B. Hayes.

Bristow now retired to New York City where he became an eminent corporation lawyer, participating in such significant cases as the Westinghouse Patent Cases, the Bates Refrigerating Case, and the Income Tax Cases. He was one of the founders of the American Bar Association and its second president. Although in later years he disclaimed any interest in politics, a succession of Presidents, Republican and Democratic, constantly sought his advice. While apparently in excellent health, he was stricken with acute appendicitis, and died at his home on 23 June 1896.

With the adjournment of the Senate in early June, 1865, Colonel Bristow returned to Hopkinsville to resume his practice of law. He had fulfilled the heavy political responsibilities thrust upon him in the fall of 1863. Not only had he maintained Kentucky's identity with the Union, but in so doing had helped to create the "radical" party, the ancestor of Republicanism.

Most of his ensuing legal work involved the collection of war claims which was neither satisfying nor remunerative and after earnest consideration, he determined to remove to Louisville where greater opportunities existed.² Among those with whom he discussed the projected change was the aspiring lawyer-politician John Marshall Harlan. Although the two men differed in politics, they "took to each other" immediately.³ Harlan, who was in political limbo at that time, was also considering moving to Louisville and encouraged his friend to do likewise.⁴ Bristow also talked with his father's old friend, Joshua Tevis, who was United States Attorney for the District of Kentucky.⁵ Since it was generally known that Tevis was looking for an assistant, Ben

hoped that such an appointment would make possible the transfer of his practice to Louisville. It was not by accident that he was subsequently appointed Assistant District Attorney, for the Attorney General at this time was James Speed, an old friend of the family and a fishing companion of many years' standing.⁶

Preparations were begun to move the family to Louisville in the fall. At first they boarded with a Mrs. Burgess, but with two children this was hardly satisfactory, and Ben began looking for a house. However the cost of living in such a thriving metropolis was "frightful," and they were forced at first to accept meager lodgings.⁷

As the Assistant United States Attorney, Bristow assumed a leading role in the prosecution of government cases, but he soon became frustrated in his efforts by the prevailing "spirit of rebellion" so rampant throughout the state. In the spring of 1866 he wrote a long intimate letter to the Attorney General in which he requested permission to arrest and prosecute formerly-indicted rebels. He further advised Speed "that pardon to Kentucky Rebels should be dealt out very sparingly" for "the leniency of the Government of the United States is not appreciated here." He called Speed's attention to the fact that both the Legislature and the State Courts were attacking "every citizen of the State who has been true to the Government and especially those who were officers of the Union Army."⁸

Bristow's observations were considered so important that the Attorney General showed the letter to the President. Johnson, already aware of "the troubles in Kentucky," promised Speed that he would "withhold further pardons to applicants from Kentucky," and instructed the approval of Bristow's "course in having rebels heretofore indicted, arrested."⁹

Without warning, Bristow submitted his resignation on 16 March 1866. Shortly after, however, the United States Attorney suddenly resigned. The reasons behind this are somewhat mysterious, although Tevis' poor health had something to do with it. Yet there is a hint that political pressures were brought to bear to make way for the ambitious Bristow, for upon the "special recommendation" of Speed, he was immediately selected as Tevis' successor.¹⁰

As Bristow assumed the responsibilities of his District Attorneyship, Kentucky was filled with unrest. A long standing antagonism against the Administration now flared into open resentment and violence. Several factors were responsible for this, most notably the promulgation of the Thirteenth Amendment and the establishment of the Freedmen's Bureau in Kentucky. Although the State Legislature, in conformity with the law, repealed the slave code and gave virtually all civil rights to the Negro, nevertheless it did withhold the right of Negro testi-

mony as evidence against Whites. This dissatisfaction grew even stronger with the passage of the Civil Rights Act of 9 April 1866. This measure not only attempted to define citizenship, but asserted the right of the Federal Government to intervene in state affairs if it became necessary to protect its citizens. Citizens "of every race and color" were declared to have the right in every state to sue, to give evidence, to inherit, hold, and convey property, and to be entitled "to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens." As a threat to delinquent states, the Federal Courts were given exclusive jurisdiction over offenders and the Federal military and naval forces were to be made available as enforcement agencies. In cases of dispute, the Supreme Court of the United States was to be a court of final resort.

In reaction to these measures, Kentucky became rife with bands of individuals, at first called Regulators, and afterwards Ku Klux Klan. Taking upon themselves the right to punish offenders of state law, a rule of terror developed in such counties as Marion, Boyle, Jessamine, Lincoln, Mercer, Nelson, Nicholas, and Franklin. Although "the invisible empire" believed that they were maintaining the virtuous morality of the state, in more than one instance, their judgments fell upon the innocent. Mob rule was fast becoming the order of the day as they rode through the countryside, armed and disguised, whipping and torturing.

But the man exercising Federal authority in Kentucky was equal to the task before him. George Alfred Townsend, a young and ambitious newspaperman of the day, met Bristow about this time. He recorded in his notebook that the District Attorney "conveyed a very marked impression of personal strength. Besides," Townsend continued, "he has a bluff, frank way which I liked." But the most outstanding characteristic which Bristow possessed was his "decided Unionism." "Whereas the average Southern Union man was a poor-spirited, half-way fellow" who continually apologized for his opinions, "Bristow did not do this." There and then, Townsend decided that he would "say a word in his favor" wherever the opportunity arose.¹¹

Bristow, as United States Attorney in Kentucky, was determined that the Civil Rights Act must be enforced. Almost immediately the officers of the Freedmen's Bureau began arresting Kentuckians charged with crimes against the Negro; turning them over to the United States Commissioner to answer indictments in Federal Courts. Boldly Bristow began to prosecute under the law. So impressive were his efforts that some ten years later the *Courier-Journal* reported that Bristow's actions gave "the first authoritative indication to the Kentucky people that slavery was indeed abolished, and that the despised Negro had rights

which the General Government would protect."¹² As a result of Bristow's action, Kentucky became the legal testing ground for the validity of the Civil Rights Act.

During the October term of Federal Court sitting at Louisville, Judge Bland Ballard ordered the grand jury to inquire into all offenses committed against the United States, but especially those "extreme outrages" committed upon the colored people in Kentucky. After pronouncing the Civil Rights Act constitutional, he called the jury's attention to the fact that Negro testimony was not acceptable in State Courts, despite the fact that in most states, even in South Carolina and Mississippi, Negroes were allowed to testify. This denial of a civil right had prompted the use of writs of *habeas corpus* transferring such cases from State Courts to Federal Courts.¹³

Among the offenses inquired into was one against John Rhodes, John Stewart, and Thomas Vickers (alias Texas) for committing "robbery, larceny, and burglary" upon three Negroes in Nelson County. In view of the inability of the Negroes to secure justice in the State Courts, the jury brought in an indictment against the three "Regulators" under the authority of the Civil Rights Act. The case was argued early in October, and so able was the District Attorney's prosecution that the jury "after a short deliberation," brought in a verdict of guilty. However, on the following day a motion was introduced for an arrest of judgment on the grounds that the indictment was fatally defective, that the case was not within the act of Congress, and that the Civil Rights Act was unconstitutional and void.¹⁴

A concerned United States Attorney "confidentially" wrote the author of the Civil Rights Bill, Senator Lyman Trumbull, outlining the facts of the Rhodes case. "Perhaps a greater outrage was never proved in a Court of Justice," claimed Bristow, yet a motion in arrest of judgment had been made. In view of this, he had made an "extended examination of authorities" and had been "reluctantly drawn" to the conclusion that the law did not confer upon the Federal courts jurisdiction, upon careful review of that section, he was not at all sure that such a prosecution was a "clause affecting" colored persons. To prove his point he cited the case of the *United States v. Ortega* (11 Wheaton 487) as "conclusive upon the question" and had "little doubt" that the Court would feel "compelled to follow the opinion in that case," thereby sustaining the motion in arrest of judgment. Should this happen, Bristow warned Trumbull that the Negro would be at the mercy of the Regulators and the Klan, for an adverse decision in the Federal Court at this time would "be disastrous beyond measure." Could not the Senator use his influence to correct this obvious defect in the law? Certainly "humanity and justice" demanded it.¹⁵

Distressed by Bristow's letter, Trumbull immediately called upon the Attorney General. After a lengthy discussion it was decided that if prompt action were not taken the Civil Rights Act would "fall" on this case. Accordingly Associate Justice Noah H. Swayne of the United States Supreme Court was encouraged by the Attorney General to go to Kentucky at once. Thus, when the United States Circuit Court convened on 26 June 1867, Swayne sat on the bench with Ballard to review the motion in arrest of judgment in the Rhodes Case.

Bristow, as District Attorney, insisted that the indictment was valid and in a "profoundly erudite speech" addressed himself to two questions: "Did the Civil Rights Act authorize such a proceeding?" and "Did Congress possess the constitutional power to pass the law?" In support of the latter assertion, he claimed that Congress was exercising no new power in making citizens of American-born Africans. As to the question of authorization of such proceedings, he charged that laws forbidding Negroes to testify had its origin in slavery and therefore could "only be regarded as incidents of that institution." The indisposition of the State Courts to do justice by its citizenry automatically conferred upon the Federal Courts the right of protection. Bristow was supported in his argument by the former Attorney General, James Speed, who was compelled to participate by his "ideas of right and wrong."¹⁶

These arguments were "tersely" countered by Messrs. P. U. Major, Henry Stites, W. T. Ward, and Isaac Caldwell who argued that under the Constitution of Kentucky anyone could commence an action regardless of his color. The present case against the defendants was for burglary and robbery. The Negroes upon whom the crime had been committed were in nowise interested or could be affected by the verdict or judgment. The Federal Court had no right to intervene in a purely criminal action to which the state was party. Therefore the indictment was unauthorized by the Civil Rights Act and should be dismissed. As Bristow had anticipated, the case of the *United States v. Ortega* was widely relied upon to support this position.¹⁷

Upon conclusion of the arguments, the Court took the matter under advisement. In the interim the Kentucky Court of Appeals had handed down a significant decision in the case of *Bowlin v. The Commonwealth*. Insisting that each state possessed the constitutional right "to regulate her own domestic concerns," including rules of evidence in her courts, the Court of Appeals bluntly stated that Congress had no constitutional authority "to repeal or essentially modify the law of Kentucky on the subject of Negro testimony."¹⁸ In other words, the Civil Rights Bill was unconstitutional and could not be sustained as an act for the enforcement of the Thirteenth Amendment.

In view of this decision, the opinion of Swayne and Ballard was awaited with great expectation.¹⁹ Satisfaction did not occur until the October term of the court when Justice Swayne made the pronouncement. Contrary to the claims of counsel for the defendants, the case was one which affected a person whose rights were denied under section one of the Civil Rights Act. The prosecution for burglary was "a cause affecting" the owner of the building entered and therefore within the meaning of the act. Since the owner was on account of her race adjudged incompetent by the laws of Kentucky to testify in support of the indictment as a white person might, this was a case for the Federal Courts under section one of the Statute. As to the constitutionality of the Civil Rights Act, Swayne traced out the history of the adoption of the first thirteen amendments to the Constitution. Whereas the first eleven amendments were aimed at the limitation of government and the protection of the people of the states, the Thirteenth Amendment "trenches directly upon the power of the states and of the people of the states." This measure was the consequence of the "throes and convulsions of a civil war" and represented the efforts to secure the country against a recurrence of such a sectional conflict. The authority of Congress to make colored persons citizens had been repeatedly exercised and once citizenship has been conferred, it automatically carried with it certain basic rights. Using as his axiom "that an act of Congress is not to be pronounced unconstitutional unless the defeat of power to pass it is so clear as to admit of no doubt," and that the Thirteenth Amendment "reversed and annulled the original policy of the Constitution, which left it to each state to decide exclusively for itself whether slavery should or should not exist as a local institution," Swayne entertained "no doubt of the constitutionality of the act in all its provisions." Amid a hushed court, the Justice overruled the motion in arrest of judgment and ordered the same to "be entered upon the verdict."²⁰ Consequently on 11 October judgment was finally pronounced: the men were found guilty of robbery and burglary and each sentenced to five years imprisonment.²¹

Satisfied that sufficient power rested in the Federal Courts to protect the Negro freedman, Bristow continued his adamant war against the Regulators, despite efforts to silence him. Political enemies already had begun searching Bristow's past for traces of scandal, but no evidence of corruption could be charged against the "uncorruptible."²²

Perhaps the most significant case which arose under the Civil Rights Act was that of the *United States v. Blyew and Kennard*. This was certainly one of the most sensational cases ever to come before the court. According to the record "towards eleven o'clock" two ignorant and bigoted white men by the names of John Blyew and George Kennard

went to the cabin of a Negro family by the name of Foster. They were invited in and "after sitting a while, coolly proceeded to kill the family." Previous to the tragedy, one of the defendants was heard to say that he thought that "there would soon be another war about the niggers; that when it did come he intended to go to killing niggers; and he was not sure that he would not begin his work of killing them before the war should actually commence."²³

The two murderers were "instantly pursued" by local authorities and arrested, but a few days later Federal officers from Louisville arrived and "compelled" the jailer to deliver up the prisoners. Critics of the District Attorney's action claimed that he had done so "under the (false) pretense that they could not be convicted there because the only witnesses were negroes." On the other hand, Bristow asserted that since the murder was of such "wanton cruelty," Blyew and Kennard were in great danger of being lynched; to save their lives, he had dispatched the United States Marshal to Lewis County.²⁴

During the October term of the United States Circuit Court, Bristow presented and secured four indictments against Blyew and Kennard from the grand jury under the Civil Rights Act.²⁵ The case evoked widespread interest throughout the state, not only because of the grossness of the crime but because of the "unwarranted invasion" of the state's legal prerogatives.

The presentation of evidence was long, tedious, and gory, but perhaps of most importance was the affidavit of the dying boy, Richard Foster, who, before he expired identified Blyew and Kennard as the murderers. It took the jury but twenty-four hours to find the culprits guilty of murder in the first degree. Almost immediately counsel for the defendants filed motions in arrest of judgment and for a new trial, but the Court took the matter under advisement.²⁶

Meanwhile a strong antagonism took place against, what the press referred to as, "Federal Usurpation in Kentucky." Judge R. H. Stanton of the Lewis County Circuit Court called the attention of the grand jury to the "atrocious crime" and to the fact that Federal officers had violated the rights of the court by "illegally" carrying the prisoners "out of the county and beyond the jurisdiction of this court." Bluntly Judge Stanton informed his jury that the Federal Courts had no jurisdiction over the criminal laws of Kentucky. The judge's action was immediately seized upon by dissatisfied antiadministrationalists as evidence of serious violation of states rights.²⁷

On the day prior to the courts removal to Covington, Judge Ballard overruled the motion. Publicly he stated that the only grounds which had any basis for an arrest of judgment was the question of the admissibility and competency of the dying confession of the little boy. It

had been charged that the boy was both too young and too illiterate to allow his testimony to be introduced. Furthermore, he had been influenced unduly while "on the brink of the grave." After careful consideration, Judge Ballard denied this as a basis for a new trial. He sentenced Blyew and Kennard to be hung on 22 January 1869. Despite the awfulness of the sentence, the press noted that both men "seemed quite indifferent" to the judgment. As was expected the defendants asked that an appeal be permitted to the United States Supreme Court.²⁹

Early in January the Kentucky Legislature convened in adjourned session. Governor John W. Stevenson called their attention to the case, asserting it to be an unwarranted invasion of states rights. He urged them to pass a joint resolution authorizing him to employ counsel and to take such steps as might be necessary "to test the Constitutionality" of the Civil Rights Act. Acting upon his recommendations, the Legislature voted the necessary moneys for the employment of two able lawyers: Jeremiah S. Black of Pennsylvania and Isaac Caldwell of Louisville.

When the Attorney General, E. R. Hoar, questioned Bristow regarding the delay in lodging the record in the Supreme Court, the District Attorney responded: "It is now said that the Counsel thus employed by the State of Kentucky decline to avail themselves of this case to test the Constitutionality of the 'Civil Rights' law, for the reason that the guilt of the parties was so fully established and the circumstances of the murder were so atrociously cruel that it is thought the real question which the State of Kentucky desires to present, would appear at disadvantage in this case."²⁹

Meanwhile Bristow was hopeful that some relief for the Negro was possible. On 30 January 1869 a number of outstanding Kentucky jurists had addressed the Legislature asking repeal of the Statute which prohibited Negro testimony in State Courts. They urged the passing of more liberal laws for the colored "in order to relieve the state from the unequal and oppressive civil rights act of Congress." But the Legislature was not favorable to such an action, not only did they quash the resolution but rejected as well the Fifteenth Amendment to enfranchise the Negro. Of these two events, Bristow wrote Hoar: "It is now obvious that the Statute of Kentucky excluding colored persons from testifying against whites will not be repealed or modified by State action, and it is a matter of the first importance to the 225,000 Colored people of this state that the so-called 'Civil Rights' law of Congress should be maintained and enforced." Not only did he urge that the Supreme Court hear the appeal of Blyew and Kennard at an early day, but he sent a copy of Swayne's opinion sustaining the Civil Rights Act in the case of the *United States v. Rhodes*.³⁰ The Attorney General

replied that he would try to get the case docketed at the October term, but until such time as this decision was forthcoming, he would "rely" upon the District Attorney to see that justice was done.³¹

Bristow tried to live up to the trust which Hoar placed in him. In a letter to the Attorney General dated 9 November 1869, he wrote: "I have proceeded with the trials of a large number of parties charged with felonies punishable by confinement in the Penitentiary and with misdemeanors under the Civil Rights Act and a number of those tried have been sentenced and are now serving their respective terms." Yet he warned Hoar that without a favorable decision by the Supreme Court in the Blyew and Kennard case, the condition of the Negro in Kentucky would "be sad indeed."³² The fact that Negroes were denied their right to testify in any civil or criminal case affecting a white person was "indefensible in a land of freedom." He could not understand how normally "sane intelligent men" could become "as mad as March hares" on the issue of civil rights.³³

Although Bristow was to resign his District Attorneyship before the decision was forthcoming, he prosecuted successfully some twenty-nine such cases under the Civil Rights Act.³⁴ Kentucky continued to feel the brunt of the burning cross, but the efforts of Bristow to ensure "equal justice before the law" for all individuals, deterred the continuation of lawlessness that threatened to plunge the state into anarchy. As a result of his vigilance, Kentucky was one of the few states where the Civil Rights Act was sustained. Some six years when a less jaundiced eye could evaluate his record of civil rights prosecution, the *Louisville Courier-Journal* reported: "The lawless persons who found in the commission of outrages upon defenseless negroes and Union whites their claims to 'chivalry,' met in the Federal Court one who dealt with them without fear or mercy."³⁵

As United States District Attorney, Bristow was also charged with the difficult task of prosecuting those who sought to defraud the government under the diverse revenue laws of the country. He regarded such activity as the lowest of criminal actions. To defraud the Government was in Bristow's philosophy not only unpatriotic but unethical and immoral. The widespread efforts of distillers and tobacco manufacturers to escape their financial obligations was early challenged by the District Attorney. Upon the convening of the Federal Court in October, 1866, Bristow began his "little war" on spirits and tobacco which he continued until his resignation in January, 1870. When a number of illicit "whiskey rings" attempted to use their wealth and influence to oppose him, Bristow attacked them boldly and openly, securing some one hundred and one forfeitures of separate lots of distilled spirits, ranging from two to two hundred barrels each, together with machinery

and implements for producing it.⁸⁶ His persistent and relentless prosecution of such law breakers can best be seen by reference to the records of the Federal Courts of Kentucky which show unexampled work in prosecution and conviction.

Significantly enough, the knowledge and techniques which Bristow learned during this brief moment of his career was to prove invaluable, when as Secretary of the Treasury he was to expose nationally the immorality and scandal of illicit whiskey manufacturers and dealers.

Bristow had not been long in office before people "regardless of party, began to understand that if he had the courage to punish the guilty, he knew how to be just" as well. It was said of him that while he rarely ever failed to convict a man, he never hesitated to dismiss a suit even in the midst of a prosecution when convinced that the testimony was insufficient. He believed that he was not simply a prosecuting attorney employed by the government to convict a man whether he believed him to be innocent or guilty, but that he had the right to use his own discretionary power to protect the prisoner when he felt convinced of his innocence. His presentation of a case to the jury was that of "a conscientious, earnest and courteous gentleman," who scorned the reputation of a successful advocate despite the testimony. His whole practice as United States District Attorney indicates that he was constantly governed by the maxim "a man is innocent until proven guilty."

As a government official, Bristow could not avoid being caught up in the political struggle that was going on between President Johnson and the Radicals of the party. Although Kentucky politics could be said to be in transition, by 1865 the Union Democrats had absorbed not only the antiadministrational elements within the state, but had added the strong supporters of states rights as well. It went without saying that they were opposed rabidly to Republicanism, charging it with being the party of military tyranny and Negro supremacy. Both Union Democrats and Republicans courted the strong influential Conservative vote that was attempting to find a middle ground, but the Democrats were to be the more successful in their courtship.

The subsequent extension of the life of the Freedmen's Bureau, together with the passage of the Civil Rights Act, further antagonized Kentuckians against the Radicals. The determined opposition of President Johnson to both of these measures had an interesting effect upon national politics. On the one hand he gained support among the more liberal Republicans and Democrats, while at the same time he solidified the Radical Republicans against him. Johnson was well aware that if he were to achieve any success for his policies he must win the support of moderates of both parties and for this reason made

decided efforts to court Kentucky officialdom. Late in August it was announced that the President would make a "swing around the circle" that would carry him to Philadelphia, New York, Buffalo, Cleveland, Chicago, and Indianapolis. To the great satisfaction of Kentucky, it was announced that the President would stop-off in Louisville. Politicians hastily began making plans for his reception and although Bristow was not one of the official planners, his political importance could not be ignored. He was subsequently appointed adjutant to the chief marshal of the day and in that role attended the "Presidential Reception Meeting" on the eve of Johnson's arrival.³⁷

The President arrived in Louisville at 3:30 p.m. on 12 September 1866 where "a concourse of fifty thousand" awaited him. The *Louisville Daily Journal* reported: "In every eye and in every face 'welcome' stood forth in gladsome twinkle or wreathed smile." He was welcomed to Kentucky by Senator James Guthrie who eulogized: "The day will come when, I trust, the united people will honor you for the stand you have taken, and for your turning back the tide of abuse that has been heaped upon you." A deeply moved President responded that he had come to give witness and to swear before God "that the Constitution of the Union, and the flag shall be preserved." Following an address by Secretary of State, William H. Seward, the Presidential party retired to the Louisville Hotel where a banquet had been prepared with "sumptuous entertainment."³⁸ Johnson was most pleased with his state visit and hoped that he had unified the dissenting political sects in support of the platform of the National Union Convention, a third party called into existence to support his policy in his fight with Congress.

Meanwhile a call had been issued to all Union soldiers and sailors "favorable to the President's policy" to meet in national convention at Cleveland, Ohio on 17 September 1866. Kentucky veterans immediately heeded the call and at a meeting at the Court House in Louisville on 12 September adopted six resolutions in which they announced their continuing support of the Constitution and the "restoration policy" of President Johnson. Seventy-nine delegates were duly elected, among whom were Major General L. H. Rousseau, General W. C. Whitaker, and Colonel B. H. Bristow. The delegation was to be led by Governor Thomas E. Bramlette.³⁹

At Cleveland, early in the convention proceedings, Governor Bramlette introduced the expected resolution endorsing the policies of the President. Immediately the young District Attorney from Kentucky, to the great surprise of the delegation, moved to amend the Governor's resolution by adding: "Understanding it to be the fixed and cherished policy of his lamented predecessor Abraham Lincoln." Bristow could only give his unqualified support to Johnson if he intended to carry out

"the policy of Mr. Lincoln." He could not endorse the President "in the language of every rebel meeting in Kentucky, nor in the way of those who while they endorse him, reassert the fundamental and originating principles of the rebellion."⁴⁰ Bristow made it abundantly clear that he was not a political compromiser. Although his words proved detrimental to his party in a state so strongly antiadministrational as Kentucky, he made no bones about his position. He was a Republican — for better or for worse.

After some three days of debate, the convention voted to approve the platform of the National Union Convention, believing it the only course open to those who, as a result of their common struggle, desired to save and preserve the Union.⁴¹

Moderates, like Bristow, tried hard to convince the Kentucky electorate that the Republican party presented "itself to the people of the State with a platform upon which every patriotic citizen may well stand." Pleading with Kentuckians to discard "the dead things of the irreparable past" and to grapple "with the living present" by burying their hates and prejudices, he invited the "co-operation of all in the great work before us."⁴² But despite such high ideals, the cause of Republicanism was not to flower in Kentucky. The sustained efforts of the national Republican Radical at military and political domination of the state over the years could not be forgotten.

A test of political power came in the state elections of August, 1866. Although not a significant election, sharp contention arose over the clerkship of the Court of Appeals. Making a strong bid for both the states right and the conservative vote, the Democrats nominated Judge Alvin Duvall. Although the Republicans were badly divided upon their candidate, they finally united to select General E. H. Hobson. Every effort was made to make the struggle appear as "between those who fought for the Union, and those who fought for the revolt all through the war."⁴³ Duvall's overwhelming victory (a majority of over 37,000 votes) was generally interpreted as an all out rebel victory. But in reality was it? Many historians strongly tinged with Confederate sympathies make a strong case for this interpretation. They ignore the fact that Duvall was symbolic in the Kentucky mind, not so much with "the lost cause," as with Federal military oppression. It should not be forgotten that Duvall had been the object of General Stephen G. Burbridge's dislike and had been forced to flee the state in the summer of 1864. Perhaps the most significant thing which can be said of the election was that the Republicans had been unable to swing the Conservative vote into their column.

Following the August elections came the necessity to elect a United States Senator. This would provide a better measure of the alliance

that had been so recently formed. Among the leading contenders for the nomination were: Garret Davis, Lazarus W. Powell, Aaron Harding, John A. Prall, and Benjamin H. Bristow. In addition there were a number of hopefuls: Thomas E. Bramlette, Richard T. Jacobs, and John H. Harlan, but none of these made any significant showing.

Much political maneuvering went on during January, 1867 as repeated ballots were taken in the Legislature. The Democrats consistently voted for Powell, while the Conservatives kept balloting for Davis. Although the Republicans at first cast their votes for William H. Randall, John A. Prall, and James Speed, ultimately they tied their star to the outstanding moderate, Benjamin Helm Bristow, whom they hoped would be sufficiently popular to attract the Conservatives. But again the Democrats united their ranks more quickly than the Republicans. By agreeing to the nomination of Davis they won the support of the Conservatives, with the result that on the twenty-first ballot Davis was elected by a vote of seventy-eight to forty-one for Bristow.⁴⁴ It was now evident to the Republicans that the Democracy had swallowed the Conservatives "body, bones, and breeches." Thus when the Democratic State Convention met at Frankfort on 22 February to select nominees for the pending August elections, it was a large and powerful body that with great ease nominated Bristow's cousin, John L. Helm, for Governor, John W. Stevenson for Lieutenant Governor, and John Rodman for Attorney General.

It was a rather depressed Republican party that gathered in Convention at Frankfort in February to make its nominations. Although the party had shown some signs of increase, it by no means matched the fantastic development of the Democracy. After some deliberation they nominated Sidney M. Barnes for Governor, R. Tarvin Baker for Lieutenant Governor, and John Mason Brown for Attorney General. But significantly they listened to the soft-spoken words of men like James Speed and Benjamin Bristow in drafting a platform that markedly toned down the extreme reconstruction measures.

The outstanding issue of the campaign was the Fourteenth Amendment. Needless to say the Republicans supported it while the Democrats vigorously attacked it as a further invasion of states rights. As a result the Democrats made a "clean sweep" of the May elections, electing all nine of the Congressmen. But even more distressing was the defeat of the Republican candidates in the August 1867 state elections. The editor of the *Semi-Weekly Frankfort Commonwealth* wrote of this moment: "The 'Lost cause' is found again in Kentucky."⁴⁵ This theme was subsequently picked up by other editors throughout the state and much was made of it. In truth they were so close to history that they misjudged the real tenor of the times: It was not a pro-Confederate

sentiment that had sent the Republicans down to defeat, but rather a strong antiadministrational sentiment that had erupted early in the war and now continued to find expression. It should not be forgotten that this was the first election free from Federal military intervention, and Kentuckians seized upon this opportunity to declare their dissatisfaction with the shabby treatment of Stanton's "pariah."

The Bristows had found life in Louisville to be very satisfying. Through their friendship with the Speeds, they had been introduced into a society that Abbie found particularly rewarding. However their social life was somewhat curtailed by two very active children, Nannie and Willie. Although they had lived in rented lodgings, which though small, were not uncomfortable, they enjoyed a certain quality of status, for when they left Elkton they had taken with them their two devoted Negro servants: Henrietta, the cook; and Henry, the house boy. These two family retainers were to remain with the family through the myriad of transitions that befell this "man of destiny."⁴⁶

Ben had purchased property on Third Street for a home but he was extremely hesitant to build and thereby use up their savings. Not until the spring of 1869 did he throw discretion to the wind and build "a fine house" at a cost of about \$23,000.⁴⁷ They were to be exceedingly happy in their new home which was to become well known in Louisville for its friendliness and for the high level of social milieu which frequented its doors. The Bristow library became one of the leading salons of the city where statesmen, politicians, writers and the like, gathered to smoke the finest of cigars, to drink the rarest of wines, and of course to discuss the affairs of the day.

Shortly after their removal to Louisville they became identified with the Presbyterian Church. This was a marked transition in their religious life, for both had been reared as Methodist. Writing to his sisters at Elkton, Ben informed them of their conversion: "I know you will be no less surprised than rejoiced to know that your poor, weak brother & his good wife have united themselves to the Presbyterian Church and thus publicly announced their purpose by the Grace of God, to abandon their sinful life & henceforth to live in humble efforts to discharge that duty which every mortal owes to our Great Creator and Protector."⁴⁸ This change of faith was not a sudden experience, for Ben had been strongly influenced by Presbyterianism while at Jefferson College in Pennsylvania. Perhaps most appealing to Ben was the concept of church government which the Presbyterians enjoyed. Furthermore he had long felt a sense of stewardship which perhaps contributed to his conversion. No one was more conscious of Bristow's "stewardship" than the press, for in 1876 the correspondent of the *Courier-Journal* wrote: "He took upon his broad shoulders the defense

of the weak, and henceforward the support of the principle of human rights and the inevitable results of the war for human liberty . . . became to this district attorney synonymous with official duty."⁴⁹

Because of his vigorous prosecution of fraud upon the government, in the spring of 1867 he was asked to take charge of the prosecution of certain mammoth tobacco frauds in Tennessee. It would appear that the Treasury Department put pressure on the Attorney General's office to temporarily release Bristow to help break the illicit tobacco ring that had developed at Memphis. Against his own better judgment, Bristow finally agreed to go. For two weeks he prosecuted the government's cases there, resulting in the first convictions in that court "for that class of offense."⁵⁰

Enroute home from Memphis, Bristow received a dispatch from Washington requesting him to come to the Capitol to assist in some important cases and since fees were "not to be slighted" he could not refuse.⁵¹ While in Washington he talked with the Attorney General and numerous Congressmen about the appalling growth of "rebel democracy" in Kentucky. Shortly after his visit, Senator Charles Sumner astounded Kentuckians by announcing in the Senate that "Nothing can be more certain than that Kentucky at this time, is without a republican form of government." This accusation resulted not only in the refusal to seat the Kentucky representatives, but in the appointment of a Congressional committee to inquire into the question of the loyalty of Kentuckians. However the excitement soon frittered away, the Democratic congressmen were seated, while the committee's work proved relatively ineffective. Yet the incident had a decided effect upon the Kentucky Legislature which, maddened by the insult, took political vengeance upon the Republicans when and wherever it could. One Republican wrote depressingly: "Union men are thoroughly hopeless and prostrate in Kentucky seeing no hope of relief or change."⁵²

This condition had a demoralizing effect upon the Republicans as they approached the elections of 1868. Since Governor Helm had died after only five days in office, the special gubernatorial election coincided with the presidential election. The Democracy, as expected, nominated the incumbent governor, John W. Stevenson, and backed Horatio Seymour as the national candidate for the presidency.

Bristow was elected delegate from Louisville to the Republican Convention which met at Frankfort on 27 February 1868.⁵³ Without difficulty the party nominated the ornament of the party, R. Tarvin Baker, for governor and by acclamation supported General U. S. Grant for the presidency. In the drafting of a platform, every effort was made to play down the radical nature of the party and to make an appeal to moderates of every political complexion. Bristow's influence

upon the platform can be observed, for at his insistence the first article demanded "equal and exact justice to all men" as the "only true basis of free government." Although this great maxim was not spelled out, and, purposely so, more was intended than merely the removal of Negro inequities before the courts. By implication the party was demanding the franchise for the Negro under the Fifteenth Amendment to the Constitution. Although the platform was silent on the impeachment proceedings against President Johnson, "almost every speaker applauded the action of Congress and predicted Andrew Johnson's speedy displacement."⁵⁴

It is doubtful if the Republicans expected success in the gubernatorial race, for Stevenson was unusually popular while Baker had already been defeated once in his bid for the Lieutenant Governorship. The state election showed as well a decided lack of campaigning upon the part of the Republicans, with the result that the victory of the Democracy was complete.

However, every effort was made by the Republicans to swing the state into Grant's column. Moderates, like Bristow, made attempts to characterize the party as one which promoted "the progress and advancement of man." He insisted that the party had "preserved the Government in war" and had "maintained its honor in peace." As such Republicans were not ready to hand the country "over to the party that conspired to destroy it."

"The magnanimous victor of Appomattox" was the centralizing figure around which all "moderates" could gather, and to this end, Bristow attempted to interpret Grant to Kentuckians as not only "the hero of forty battles" but the "gracious saviour of the Union." To champion "the warped ideals" of any other would, in Bristow's estimation, mean ultimate disunity and disaster. Despite such an appeal, the Republicans could not ride two horses into the main stream of politics and their efforts on behalf of Grant in the November election failed. The state went for Seymour and the Democracy.⁵⁵

About this time the party received a most important addition to its membership in the person of John Marshall Harlan. Disappointed by the narrow reactionary policies of the Democrats, he began moving over into the ranks of "the new Republicanism" that was being formed under the direction of Bristow, Speed, Burnham, and others. Harlan's proselytism was in part due to his increasing association with Bristow, for while Bristow had little time for legal counseling he had been persuaded by Harlan to participate in the somewhat famous "Presbyterian Church Case."⁵⁶

During the ensuing winter and spring of 1869 the controversial issue in Kentucky was the ratification of the Fifteenth Amendment.

The Democracy viewed this measure as an attempt by the Republicans to regain significant political strength by appealing to the grateful Negro. Certainly this was true, for the enfranchisement of the Negro would help a battered Republican party overcome the tremendous losses sustained in 1867 and 1868. In the minds of most Republicans if the enfranchising of the Negro meant the curbing of Democracy, then it was justifiable. This, however, was not true of Bristow who saw the issue on a much higher moral level. Since "the love of liberty" was "inherent in human nature," he argued that to stifle it would result in great danger to the state. He believed that it was as important to guarantee the liberties of the White as it was the Negro, for it was the government's responsibility to "protect its humblest citizen from outrage and injury."⁵⁷ But such arguments were beyond the understanding of the vast majority of Kentuckians who possessed strong racial prejudices and personal antagonisms against "high handed" Federal authority. The Democratic dominated Legislature emphatically rejected the Amendment by a vote of 27 to 6 in the Senate and 80 to 5 in the House.

The political picture did not become brighter for the Republicans in the August state elections of 1869. Their dismal defeat forced the party to take a good hard look at itself, with the result that the party leaders awoke to the realization that the Democracy had a virtual monopoly of the press. Of some eighty papers in the state, nearly sixty of them trumpeted the cause of the Democracy while only five attempted any apology or explanation of Republican policy.⁵⁸ Upon further analysis they discovered that Louisville had become the journalistic center, where George Prentice of the *Daily Journal*, Walter N. Haldeman of the *Daily Courier*, and John H. Harney of the *Democrat* held court. Significantly enough not one of them expressed the Republican position. Even more disturbing was the successful efforts of the ambitious Haldeman to consolidate the *Journal* and the *Courier*. On 8 November 1868, these two influential papers merged as the *Courier-Journal*, with Haldeman as president, Prentice as editor, and the ambitious young coxcomb, Henry Watterson as editorial manager. It was true that certain press agencies in Cincinnati, particularly the Cincinnati *Commercial*, made sporadic attempts to help their Kentucky Republican cousins, but their influence was often regarded as "foreign intervention" and did more harm than good.

At the urging of such leading Republicans as B. H. Bristow, W. A. Meriwether, A. A. Burton, Edgar Needham, W. E. Riley, and John T. Croxton a meeting was called for 27 November 1868 at Louisville to discuss the "feasibility of establishing in this city, a Republican newspaper, in the English language." Unfortunately the meeting stale-

mated on the issue of financing such a press. While Riley insisted upon utilizing public subscription, Needham believed success was only possible by the establishment of a joint stock company. Since no agreement could be reached it was decided to meet again early in December.⁵⁹

In the interim several suggestions were made: some would encourage Colonel Albert G. Hodges, editor of the Frankfort *Commonwealth*, to remove his paper to Louisville; while others facetiously suggested purchase of the *Courier-Journal* as a Republican organ. On the latter suggestion, Watterson waxed vituperant!⁶⁰ After mature consideration it was decided to establish a joint stock company for the publication of a "safe and sane" commercial journal that would cater "first and foremost" to the interest of the state.

A charter was subsequently procured from the Legislature creating the Louisville *Daily Commercial*. Its first directors were: Benjamin H. Bristow, W. A. Meriwether, and A. A. Burton. Significantly, none of these men were "radical," all were "moderate" Republicans. Thus leadership of the party had fallen into younger and more liberal hands who hoped to appeal to Kentuckians by creating "a live and able newspaper" representative "of progressive ideas and national feeling."

Great care was taken in the selection of the editor, but finally Colonel R. M. Kelley was chosen as editor and general manager. Thomas Bradley of Bradley and Gilbert was selected as business manager. The first issue of the Louisville *Daily Commercial* appeared on the streets on 29 December 1869 and fulfilled the hopes of its sponsors by the unusually "high tone" of its reporting. The Republicans at last had an effective organ through which they might introduce their political philosophy.⁶¹

The heavy legal and political responsibilities proved exhausting to the young District Attorney. For some time he had promised Abbie and the children that he would take them east. Late in July plans were made for an extensive trip to Cleveland, Niagara Falls, Montreal, Boston, and New York. The Harlans joined the Bristows at Niagara and travelled with them to Boston, but the pressures of business forced the Harlans to leave Boston early. Although Bristow was disappointed to discover that nearly "all the distinguished men of Boston" were out of the city, nevertheless through their good friends, the M. B. Belknaps, they managed to meet several important educators and politicians, among whom were the Lowells, the Lodges, and the Adamses. After a visit to the beaches, they left for New York where they stayed at the Fifth Avenue Hotel, the entrepot of that city. Their New York sojourn was extremely satisfying for they were royally entertained in the empire city. During their extended holiday, Ben managed to meet

and to cement friendships that were to prove invaluable in the years to come.⁶²

Upon his return to Louisville, Bristow began to show some concern for his own well-being. He wrote his Mother on 20 September: "I expect to be hard at work until next May unless Grant shall conclude to dispense with my services or I should conclude to resign." Bristow was expressing a certain frustration regarding the new presidential appointment policy which was attempting to end the association of Republicanism with the military tyranny of the war years by appointing a higher class of men to Federal offices. In so doing, Grant had often bypassed former Union men. This had confused many a faithful party man and Bristow was no exception: "In fact," he wrote, "I dont understand what the authorities at Washington mean by some things they have done in Ky- and if they dont do better, I dont care to be identified with the concern." "Heartily sick of all connection with politics" he expressed an earnest desire "to be established in an independent practice."⁶³

Continuing concern for the financial well-being of his family coupled with a desire to return to private practice motivated Bristow's resignation as United States Attorney on New Year's Day 1870. For some time Harlan had been encouraging Bristow to join him and John Newman in practice, and now the time seemed opportune. As a result of this merger the legal firm of Harlan, Newman & Bristow was created with offices at 178 and 180 West Jefferson Street in Louisville. For the next few months Ben was unusually happy, for a large and lucrative practice was almost immediately his. His political prominence, together with his remarkable record for honesty and morality, commended him to the citizenry of Louisville and its environs.⁶⁴ However his return to private practice was short lived for a destiny had already been decided. With the reorganization of the Department of Justice, Grant now called him to Washington as first Solicitor General of the United States.

In many ways the correspondent of the *Evansville Courier* was correct in his observations of the young lawyer, for while Napoleon was supposed to have been the "child of destiny," so nurtured to fame, Bristow was above and beyond the capricious fortune. Destiny was his slave!

FOOTNOTES

¹ The *Evansville Courier*, n. d., the Bristow Scrapbooks in the Benjamin Helm Bristow Papers in the Library of Congress (hereafter referred to as the Bristow Papers, L. C.).

² Benjamin Helm Bristow to Mrs. Emily E. Bristow, 12 August 1865 in the Mrs. James M. Gill and the Miss Mary Gill Collection of Bristow Papers in the Margaret I. King Library, University of Kentucky (hereafter referred to as the Gill Collection, U. K.).

³ David G. Farrelly, "John M. Harlan's One-Day Diary, August 21, 1877," *The Filson Club History Quarterly*, xxiv, no. 2 (April, 1950), 163.

⁴ Alan F. Weston, "The First Justice Harlan: A Self-Portrait From His Private Papers," *Kentucky Law Journal*, XLVI, no. 3 (Spring, 1958), 322.

⁵ Joshua Tevis to James Speed, 16 November 1865. Papers of the Attorney General, Letters Received, Kentucky, 1832-1870; National Archives, Record Group 60 (hereafter referred to as NA, RG.).

⁶ J. A. Rowland to Joshua Tevis, 21 November 1865. Papers of the Attorney General, Letter Book E, 316; NA, RG 60.

⁷ Bristow to Mrs. E. E. Bristow, 26 November 1865. The Gill Collection, U. K.

⁸ Bristow to Speed, 9 February 1866. Papers of the Attorney General, Letters Received, Kentucky, 1832-1870; NA, RG 60.

⁹ Speed to Bristow, 14 February 1866. Papers of the Attorney General, Letter Book E, 403; NA, RG 60.

¹⁰ Bristow to Speed, 16 March 1866. Tevis to Speed 24 April, 26 April 1866. Oath of Bristow as United States Attorney for the District of Kentucky, 12 May 1866. Papers of the Attorney General, Letters Received, Kentucky, 1832-1870; NA, RG 60.

¹¹ The Louisville *Argus*, 26 May 1878. Bristow Scrapbooks, Bristow Papers, L. C.

¹² The Louisville *Courier-Journal*, 22 April 1876.

¹³ The Louisville *Daily Journal*, 3 October 1866.

¹⁴ *Ibid.*, 13, 15, 16 October 1866.

¹⁵ Bristow to Lyman Trumbull 7 January 1867. Bristow Papers, L. C.

¹⁶ The Louisville *Daily Journal*, 27 June 1867.

¹⁷ *Ibid.*, 28, 29 June 1867.

¹⁸ *Bowlin v. Commonwealth*, 65 Kentucky (2 Bush) 5 (1867). *Century Edition of the American Digest*, 50 vols., St. Paul, West Publishing Co., 1899, X.

¹⁹ Not only was the decision eagerly awaited in Kentucky, but throughout the South as well. 7 *Am. Law Reg.* (N.S.) 233.

²⁰ *U. S. v. Rhodes*, 27 Fed. Cas. 785 (no. 16,151) (C. C. D. Ky. 1866).

²¹ The Louisville *Daily Journal*, 12 October 1867. Simultaneously with Swayne's Opinion was the pronouncement of Chief Justice Salmon P. Chase in the Matter of Turner, a case that had arisen in the Fourth Circuit during the October Term of Court, 1867. Much to the regret of the Chief Justice the case was submitted without argument, but he too decided that the Civil Rights Act was constitutional. Both of these opinions undoubtedly indicate the general attitude of the Supreme Court, and if either case had been taken there on appeal would have resulted in the upholding of the Civil Rights Statute. See Horace White, *The Life of Lyman Trumbull*, Boston, Houghton Mifflin, 1913, 274f.

²² Despite efforts to establish proof that Bristow had made certain illegal confiscations during the Civil War and used them for his own personal advantage, the affidavit of Bristow's former law partner and quartermaster, John Feland, dispelled any such questions. Affidavit of John Feland, 6 June 1866. Bristow Papers, L. C.

²³ *U. S. v. Blyew and Kennard*, 80 U. S. (13 Wall.) 642 (1872). The Louisville *Daily Courier*, 28, 29, 30 October 1868.

²⁴ The Louisville *Courier-Journal*, 9 November 1868.

²⁵ The Louisville *Daily Courier*, 8 October 1868.

²⁶ *Ibid.*, 27, 28, 29, 30 October 1868. The Louisville *Daily Journal*, 30, 31 October 1868, 7 November 1868.

²⁷ The Maysville *Bulletin*, 26 November 1868 as quoted in the Louisville *Courier-Journal*, 29 November 1868.

²⁸ *Ibid.*, 6 December 1868.

²⁹ Bristow to Hoar, 22 April 1869. Papers of the Attorney General, Letters Received, Kentucky, 1832-1870; NA, RG 60.

³⁰ *Ibid.*, 18 May 1869.

³¹ W. A. Field to Bristow, 20 May 1869. Papers of the Attorney General, Instruction Book A-1, 291f.; NA, RG 60.

³² Bristow to Hoar, 9 November 1869. Papers of the Attorney General, Letters Received, Kentucky, 1832-1870; NA, RG 60.

³³ The Louisville *Courier-Journal*, 22 April 1876.

³⁴ Allen Johnson and Dumas Malone (eds.), *Dictionary of American Biography*, 22 vols., New York, Scribners, 1928-1944, III, 55. *Some Facts About the Life and Public Services of Benjamin Helm Bristow, of Kentucky. Designed as a Reply to Inquiries Often Made Respecting the Leading Events of His Life*, New York, Evening Post, 12ff.

³⁵ The Louisville *Courier-Journal*, 22 April 1876.

³⁶ D. A. B. III, 55. *Some Facts*, 12ff. See also The Louisville *Daily Journal*, 2

October 1866, 20 June 1867, 8 October 1867, 15, 18, February, 1868, 12 October 1868, the *Louisville Courier-Journal*, 17 February 1869.

³⁷ The *Louisville Daily Journal*, 10 September 1866.

³⁸ *Ibid.*, 12 September 1866.

³⁹ *Ibid.*, 31 August, 13 September 1866.

⁴⁰ *Some Facts*, 19f. Henry Arnett Brown, "Mr. Bristow for President," Bristow Scrapbooks, Bristow Papers, L. C.

⁴¹ The *Louisville Daily Journal*, 20 September 1866.

⁴² The *Louisville Courier-Journal*, 22 April 1876.

⁴³ The *Cincinnati Daily Gazette*, 28 June 1866.

⁴⁴ Richard H. Collins, *History of Kentucky*, Louisville, Morton & Co., 1924, 176.

⁴⁵ The *Frankfort Semi-Weekly Commonwealth*, 9 August 1867.

⁴⁶ A number of unusually sensitive family letters exist in the Gill Collection, U. K., Bristow to Mrs. E. E. Bristow, 24 July, 6, 17 September 1867.

⁴⁷ Bristow to Mrs. E. E. Bristow, 7 October 1867. Gill Collection, U. K., Bristow to W. A. Meriwether, 13 November 1874.

⁴⁸ Bristow to Mrs. Mary M. Petrie, Mrs. Mat M. Gill, 30 March 1867. Letter in possession of author.

⁴⁹ The *Louisville Courier-Journal*, 22 April 1876.

⁵⁰ Abbie Bristow to Mrs. E. E. Bristow, 27 March [1867]. Gill Collection, U. K.

⁵¹ *Ibid.*

⁵² The *Cincinnati Daily Commercial*, 31 May 1867. Charles Kerr (ed.), *History of Kentucky*, 5 vols., Chicago, American Historical Society, 1922, II, 915f. E. Merton Coulter, *The Civil War and Readjustment in Kentucky*, Chapel Hill, University of North Carolina Press, 1926, 328.

⁵³ The *Louisville Daily Journal*, 18 February 1868.

⁵⁴ J. Stoddard Johnston, editor of *The Daily Kentucky Yeoman* wrote: "This platform as put forth is quite remarkable for what is admitted as for what it contains." The *Frankfort Daily Kentucky Yeoman*, 29 February 1868.

⁵⁵ "Bristow, His Record in Kentucky as a Republican," The *Cincinnati Gazette*, n. d. Bristow Scrapbooks, Bristow Papers, L. C.

⁵⁶ At the close of the Civil War the Walnut Street Presbyterian Church of Louisville was divided between pro-northern and pro-southern factions. The opposing groups of elders carried their dispute before the Kentucky Court of Appeals whose decision was in favor of the southern sympathizers. The losers then resorted to protracted interlocutory skirmishing to prevent the mandate of the court from being executed. In the meantime the northern elders had admitted to church membership William A. Jones, Mary J. Jones, and Ellenor Lee, citizens of Indiana, which laid the basis for transferring the fight to the Federal Court. Jones asked the United States Circuit Court for an injunction against the southern elders who had won in the State Court on the grounds that the General Assembly of the Presbyterian Church had expelled the southern group from its body and had recognized the northern elders as the rightful heirs to the church. The case was argued before Justice Swayne and Judge Ballard with Harlan and Bristow as counsel for the complainants and Isaac Caldwell as attorney for the defendants.

After taking the matter under advisement, the Court finally granted the injunction on 12 October 1868. In the opinion of Judge Ballard the continued association of the northern elders with the General Assembly of the Presbyterian Church gave no other recourse but to restrain the southern elders from hindering or obstructing "the true uses of the trust." The matter, however, was not to end here, for the defendants immediately appealed for relief to the Supreme Court of the United States. *Watson v. Avery*, 2 Bush 332 (1867). *Watson v. Jones*, 80 U. S. (13 Wall) 697 (1872). The *Louisville Daily Courier*, 10, 13 October 1868.

⁵⁷ The *Louisville Courier-Journal*, 22 April 1876.

⁵⁸ Johnston, *Memorial History of Louisville*, II, 71.

⁵⁹ The *Louisville Courier-Journal*, 28 November 1868.

⁶⁰ *Ibid.*, 17 December 1868.

⁶¹ *Caron's Annual Directory of the City of Louisville for 1871*, Louisville, Bradley & Gilbert, 1871, advertisement. Johnston, *Memorial History of Louisville*, II, 71. The *Louisville Commercial*, 29 December 1869 in the Louisville Public Library.

⁶² Bristow to Mrs. E. E. Bristow, 23 July 1869; Niagara Falls, 1 August 1869; Boston, 10 August 1869. Gill Collection, U. K.

⁶³ *Ibid.*, 20 September 1869.

⁶⁴ David Willcox, *Memorial of Benjamin Helm Bristow*, Cambridge, Wilson & Son, MDCCCXCVII, 8f. See John Marshall Harlan Papers, School of Law, University of Louisville, Day Book of Harlan, Newman and Bristow, 1870.