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Libel in Mississippi, 1798-1832

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by

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ABSTRACT

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The Mississippi Territory officially became part of the United States in 1798. The territory was to be governed under the rules of the Northwest Ordinance, but those who went to govern the area found a culture that required the use of common law to settle the disputes arising from prior governments under other nations. With no precedents on which to rely, disputes led, at first, to dueling and then to libel cases. Both common law and common sense prevailed while many of the disagreements were aired publicly in newspapers. Mississippi's first printer, Andrew Marschalk, using his First Amendment rights, wrote about the public conduct of officials. The officials took him to court on libel charges, where some issues and court decisions were ahead of decisions reached in libel law in the courts of the United States. Areas of concern were the liability of printers, the right of discussion of politics and official conduct, and the right of printers to be free from prosecution by courts and grand juries who were influenced by public officials.

DEDICATION

The dissertation is dedicated to Dr. Arthur J. Kaul whose love for learning and passion for teaching was so unselfishly passed on to his students,

and

to Billie and Jim Everton whose love and support always will be with me.

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CHAPTER I

INTRODUCTION

Early in the history of Mississippi, people and events combined to make the Mississippi Territory a virtual battleground for speech and press freedoms. The history of libel in the Mississippi Territory began with some heroes of the American Revolution.

Both appointed judges and future editors who came or were sent to the territory included politicians and soldiers who fought for the freedom of the colonies. Their families were involved in the earliest developments for free speech and free press in the colonies. For example, Mississippi's first printer, Andrew Marschalk, was descended both from a member of the Mayflower voyage and also from a member of the jury who decided the John Peter Zenger free press case in eighteenth century New York.

George Poindexter, the man who sued printer Marschalk for libel, wrote the first laws for Mississippi, and was also known for his defense of Aaron Burr in both the Mississippi Territory and in the United States Senate.

David Ker, a territorial judge who sued another judge Edward Turner for libel, came from a family well known in Scotland for its pursuit of religious freedom before settling in the United States. Judge Ker was known for his firm belief in education for all and founded the University of North Carolina prior to his move to the Mississippi Territory. Once in Mississippi, he founded the first school for girls in 1802.

The other judge mentioned, Edward Turner, created the first Mississippi Digest of laws with then printer to the territory, Peter Isler.

Peter Bryan Bruin, also involved with the libel suit against Judge Turner, had been taken prisoner in the Revolutionary War assault on Quebec and, after his release, settled in Natchez. He was one of the first three territorial judges who helped write laws and set up the court system.

Walter Leake, territorial judge and later governor, was said to be a "deserter" during the Revolutionary War. His father, a colonial officer, left Walter at home because the boy was too young to join the Continental Army. According to the story told by Gen. Lafayette, Walter "deserted" home to join the army. As a judge, Leake presided over the libel trial of printer Marschalk.

Col. Thomas Rodney, member of the Continental Congress and later territorial judge, wrote descriptive diaries of the Revolutionary War and of the southwest frontier. After Rodney's death, some of his diaries were submitted to Congress which had them published. The diaries described firsthand some of the events of the Revolutionary War such as George Washington's crossing of the Delaware. Rodney's brother Caesar signed the Declaration of Independence. Caesar Augustus, Rodney's son, was the attorney general in Thomas Jefferson's cabinet and was a manager of the impeachment proceedings against both John Pickering and Judge Samuel Chase. Chase ruled on some of the early libel trials in the United States.

Together these men had a big impact on the development of the Mississippi Territory and wrote the laws favoring speech and press freedoms. While their backgrounds are known in American history, their contributions to free speech and a free press through libel suits and through the court system in the Mississippi Territory are not

as well documented. They and other future leaders brought with them the seeds for speech and press freedoms and Mississippi became an early testing ground for First Amendment rights.

This study concerned specific cases from the Mississippi Territory and then the cases from early statehood in both Mississippi and Alabama since Alabama was created from the Mississippi Territory and used many of the same laws. Relevant cases from the neighboring state of Louisiana were included to trace the course of libel in the area during the 1798-1832 time period. The study examined the development of speech and press freedoms through the study of libel before the development of modern technology when communications and the delivery of news were changed forever.

Legal historians, such as Lawrence Friedman (1985) in his book *History of American Law*, have pointed out that legal history is an often overlooked area of study. This study sought to fill a small part of the gap in the legal history of America with respect to libel and slander by examining the unusual circumstances and personalities that formed the basis for cases which, in turn, led to the development of First Amendment laws in the Mississippi Territory.

The cases analyzed included those that have been mentioned only in passing as part of the history of Mississippi by historians such as Richard McLemore. The libel cases had not been researched previously to specifically determine their journalistic and legal contributions as groundwork for current libel laws.

Nor could the cases have been researched since many of the decisions disappeared from courthouses and, only recently, were rediscovered and returned to their original

venues. The returned original cases are currently being filed, labeled, and stored in boxes at the Natchez Foundation. Often there are missing pages or judgments, but the documents reveal the growing concern and developments in free speech and free press in the Mississippi Territory.

Important sources for the study included constitutional law current at the time, books and journal articles about legal and Mississippi history, cases that set precedents for the rulings, and legal encyclopedias. Other sources included were letters from some of the litigants, the codes and statutes of both the states involved in the study, Congressional history and hearings, personal collections of letters, and newspaper articles. Two notable sources were the Natchez Foundation, whose directors bought the early court records on E-bay for about $7,000, and Mrs. Betty Stewart, whose husband William is a descendant of Andrew Marschalk.

Rationale

Much of the history of law has been seen traditionally as a neglected topic. While the history of a case or a law can be followed, there are few historical or legal studies of the development of regional law with the exception of constitutional law. As in the study of the background of any topic, one vital question asked is; “How did we get here?” In the area of libel, the history of speech and press freedoms in the early life of the United States is documented, but its development in many other states, other than the original 13, has not been clearly written.

While other studies looked at the beginning of free press and its development through politics, this study looked at the development of libel law that gave rise to the

freedoms of speech and press in the Mississippi Territory. The bordering states of Louisiana and Alabama had some influence on the territorial law especially when West Florida became part of the Mississippi Territory in 1812. While much of the writing was description and explanation, research for the writing used legal analysis and primary sources such as case law and statutes. Both legal authorities and briefing techniques were used to analyze case law. Several pathways were used to analyze decisions. The decisions were reasoned through analogy, precedent applied, or cases synthesized. Comparison showed how many of the cases were similar. Secondly, the study looked at the authorities or precedents used in the cases to explain how a particular decision was reached. Lastly, cases were synthesized or grouped together to show how they developed a point of law.

Much of the history of Mississippi and the area previously known as the Mississippi Territory has been written in later terms of secession, the Civil War, and the struggle for civil rights. The territory and the early years of statehood of Mississippi and Alabama are worthy of study because of the unusual circumstances faced by writers, editors, readers, and judges. The decisions reached by the courts were often as unique as were the circumstances.

The study of the legal history of mass communications law is important for a better understanding of the issues faced by newspaper editors and printers at the time. Media law has evolved through the decisions of judges and juries in the early cases. The basis of law and ethics evolved through time, and with technological advances, it continues today. The laws formed from the decisions of the cases were building blocks in the growth of free press and free speech.

A final reason for the study of legal events in the Mississippi Territory and early statehood was to give Mississippi "a sense of place." Prenshaw and McKee (1979) defined a sense of place as the exploration of problems and the description of conditions to identify trends without the use of stereotypes. Indeed, the study of legal events in the Mississippi Territory adds to the area's "sense of place."

Purpose Statement

The Mississippi Territory consisted of present day Mississippi, Alabama, and the region then known as West Florida. The men who went or were sent there adapted their knowledge of law to the circumstances of the area. The legal systems set up by the succession of governments from England, France, and Spain combined with the local culture for some very unusual circumstances that demanded resolution.

Therefore, the political leaders, judges, printers, and writers worked to provide a framework of laws for the territory. The most immediate concern was land grants that were given by three different governments. The constant rumors of takeovers made it difficult to provide a framework for equal protection. The underlying foundation of protection for the inhabitants was provided by the U.S. Constitution and the Bill of Rights. As the problems of individuals moved through the courts, and as communication grew between officials and residents, the territory finally moved forward.

The delicate balancing act throughout the territory can be compared to the balancing act shown by the early libel cases. The question was how to balance basic freedoms while setting up a framework for the territorial government and the addition of new laws.

The explanation and the description used in qualitative research was combined with the information gathered from the primary sources used in the legal research. Thus, the study followed the development of libel in the Mississippi Territory. Laws and cases provided the description of the development of libel and were used to explain the rise of press and speech freedoms.

With the help of others involved in various aspects of research on Mississippi history, the author located some of the earliest attempts to legalize press and speech freedoms in territorial times. The study identified these early defenders of a free press and analyzed the cases found. How did citizens and editors fare under the laws of sedition that were enforced then? How were libel, slander, defamation, and trespass defined and prosecuted? Did the cases fall under civil or criminal jurisdiction? Did the laws of libel relate more to civil or common law?

Imprisonment was used to stifle the press during the War of 1812 in Louisiana. However, the remedy of habeas corpus quashed the effort to stop freedom of the press. What remedies were awarded in cases of libel and slander as the militia returned to the Mississippi Territory after the War of 1812? Evidence to answer the question was available from case law and statutes. Additional evidence about specific cases and the citizens involved in those cases was found in both newspapers and in personal correspondence.

New information concerning libel cases of the time was found in the Adams County court records recently purchased by the Natchez Foundation. Research continues on these records through the filing and the listing of the records.

While the study made use of the court records, it must be said that several of the judges in those early cases used wording and concepts that may not be understood by twenty-first century readers. Court decisions in the Mississippi Territory were not always built on simple concepts when judges and lawyers did not want to commit to specific ideas that might be unpopular with residents of the region. The author has used and explained the terminology and spelling of the early courts whenever possible. The intentional use of early writing styles can be recognized by the use of quotation marks around the terms and the paragraphs that are quoted directly from the decisions and the newspaper articles. Cases used were often located in boxes with a file for each case. Cases may have been only one or two unnumbered pages with no index or judgment book references included. Hence, the decisions quoted have no page numbers available in many instances.

Definitions and Context

An important part of the study was to find and analyze the earliest attempts in the territory to create the basic freedoms of press and speech guaranteed by the U.S. Bill of Rights. It was important to analyze the early cases to show the foundation for later decisions and for the formation of statutes in early statehood.

Early defenders of press freedom in the area were identified and the study showed how the defenders were limited by the laws of sedition advocated and enforced during the early years of the territory. Legal remedies available to the courts were defined.

The definitions of libel and other terms used in the cases have changed over time. Even current definitions vary from state to state. Current definitions usually place libel as

a category under defamation defining libel as written defamation and slander as spoken defamation. *Barron's Law Dictionary* (1996) defines libel as "a tort consisting of a false and malicious publication printed for the purpose of defaming one who is living" (p. 295). The legal encyclopedia *Corpus Juris Secundum* (2005) defines libel as "a malicious publication, expressed either in printing or writing, or by signs and pictures, tending either to blacken the memory of one dead or the reputation of one who is alive, and expose him or her to public hatred, contempt or ridicule" (§220).

> One commonly used definition came from a 1933 case which stated defamation: tends to expose one to public hatred, shame, obloquy, contumely, odium, contempt, ridicule, aversion, ostracism, degradation, or disgrace, or to induce an evil opinion of one in the minds of right-thinking persons, and to deprive one of their confidence and friendly intercourse to society (*Kimmerle v. N. Y. Evening Journal,* 1933).

However, the definitions used in this study came from *Webster's 1828 Dictionary.* Defamation was defined as:

> the uttering of slanderous words with a view to injure another's reputation; the malicious uttering of falsehood respecting another which tends to destroy or impair his good name, character, or occupation; calumny. To constitute defamation in law, the words must be fast and spoken maliciously.

In the 19th century, libel was a term used in three ways. One way was libel in civil and admiralty law, another way was in satire, and the third way was in criminal law.

The word “liber” meant a little book made from the stripping and separating of bark. Therefore, liber as the book, and liber, meaning free, are the same word (*Webster,* 1828).

In 1828, *Webster* described libel as “any book, pamphlet, writing or picture containing representations, maliciously made or published, tending to bring a person into contempt, or expose him to public hatred and derision.” The definition also asserted communication of the writing to a single person considered as publication. To be punished criminally for libel, only proof of provocation was needed. Only in civil action was it necessary for the libel to appear false and scandalous. Libel was used also as a verb to describe a defamatory writing which was used to lampoon or satire, or to spread defamation (*Webster,* 1806).

Defamation which is written and published is a libel. Slander was “a false tale or report maliciously uttered” (*Webster,* 1828). Slander tended to injure the reputation of another by lessening him in the esteem of his fellow citizens or by impairing his means of living. Slander as a verb meant to defame or injure by maliciously uttering a false report. Slander also meant to tarnish or impair the reputation of one by false tales maliciously told or propagated (*Webster*, 1828).

Sedition was “a factious commotion of the people or a tumultuous assembly of men rising in opposition to law or to the administration of justice; disturbance of the peace.” Sedition was defined to be less than an insurrection or a rebellion (*Webster,* 1828).

Obscenity was impurity in expression or representation. Words or things which present what is offensive to chastity or purity of mind were obscenities. Obscenities were also unchaste actions or lewdness *(Webster,* 1828).

A tort was any wrong or injury done to the person or property of another. The tort of trespass was used in many early defamation cases. At that time a tort could have been mischief also (*Webster,* 1828).

Traducement was used then as a noun for misrepresentation or defamation.

Trespass was used often in place of libel or slander. Trespass was the unlawful interference with one's person or rights (Garner, Ed., *Black's Law Dictionary,* 2009).

Many terms in the study were used with definitions from the 19th century, particularly to help in the explanation of a case or a newspaper article. Many of the definitions came from the context of court decisions or from their use in personal correspondence. In quotations from newspaper articles or cases, phrasing and spelling was written as presented in the original publications.

The region studied was the former Mississippi Territory. Before the territory was formed, the area included present-day Georgia and the entire region was called Georgia. In 1798, the Mississippi Territory was formed and included the area of the current states of Mississippi and Alabama. However, only the southern counties of Pickering and Adams in Mississippi, and Washington in Alabama were ceded by the Indians at the time of the formation of the territory. The current six southernmost counties in Mississippi consisting of Pearl River, Stone, George, Hancock, Harrison, and Jackson were part of Spanish West Florida.

To set the context of the time, Thomas Jefferson was the president and negotiated the Louisiana Purchase from Napoleon. The Lewis and Clark expedition set out from St. Louis, and Aaron Burr was charged with treason. Both Lewis and Clark had ties to Mississippi and some of their notes were first printed in Mississippi. Aaron Burr traveled through Mississippi and was brought before a grand jury there. He escaped and was caught in the eastern part of the territory and taken to Washington, D.C. to stand trial. In 1810, the United States population was just over seven million.

By 1810, the Mississippi Territory consisted of the western counties of Warren, Claiborne, and Jefferson to the north. Adams, Franklin, Wilkinson, and Amite counties were to the south. In the eastern part of the territory, Washington was split into two counties and the new county was named Baldwin. The six southernmost Mississippi counties and the Mobile district did not become part of the Mississippi Territory until 1812.

In the second decade of the 1800s, events of the country included the annexation of West Florida by the United States and the Battle of New Orleans which was fought after a peace treaty had been signed two weeks earlier, ending the War of 1812. Andrew Jackson led troops into Florida to stop raids by Indians and white outlaws. By 1820, the population of the United States was almost ten million.

Mississippi became a state in 1817 and the counties of Franklin, Amite, and Wayne had been split into nine counties. Lower southwest Mississippi was Hancock County and southeast Mississippi was Jackson County. Monroe County in the northern part of the state had been added, but the rest of the land still belonged to the Indians.

The Alabama Territory was created in 1817 when the Mississippi Territory was divided and Mississippi was admitted to the United States. Andrew Jackson led troops from the United States against the Creek Indians which resulted in a treaty with the Indians that opened up 23 million acres of new land for settlement. The Alabama Territory consisted of Baldwin, Clarke, Madison, Mobile, Monroe, Montgomery, and Washington counties. In 1819 Alabama became the 22nd state.

By 1830, Mississippi spread eastward from the Mississippi River to include Washington, Yazoo, Madison, Hinds, Rankin, Copiah, and Simpson counties. Lowndes split from Monroe County in northeast Mississippi. By 1840, all of the land of current day Mississippi had been ceded by the Indians, and counties were formed throughout the area.

By 1835, the Indians ceded land east of the Mississippi River in exchange for western lands and the land in Alabama was completely open to new settlement.

Organization of the Study

The Mississippi Territory was created by Congress on April 7, 1798. Its government was to be patterned after the government set up in other territories by the Northwest Ordinance, approved by Congress on July 13, 1787.

Territorial government was to consist of the appointments by the U.S. President with the approval of the Senate. Appointments were made for a territorial governor with a term of three years, a territorial secretary with a term of four years, and three territorial judges with no term time limits set.

Andrew Ellicott and Thomas Freeman had been asked to set the boundary of the territory with Spain. Ellicott wrote to the secretary of state Thomas Pickering and included some potential names for appointment to the territorial offices. He asked that the appointees all come from the Atlantic states because men from that area had good character and were industrious (Carter, 1937). Ellicott suggested the appointees also be military men who could contend with the lawlessness of the area.

Thus, Maj. Winthrop Sargent was appointed governor, Col. John Steele was appointed secretary, and Col. Peter Bryan Bruin was appointed judge. Daniel Tilton, a veteran of the Indian War, was appointed as the second judge, and later, William McGuire, a veteran of the Revolutionary War, was appointed Chief Justice of the Mississippi Territory. Bruin was the only one of the five appointees who lived in Natchez. Bruin moved to Natchez about 1792. Of the judges appointed, the only one with a legal background was McGuire which may explain the lack of the use of precedent in the early cases. It was not until the summer of 1799 that all the judges were present. Many of the early libel and slander decisions came from the personal knowledge and experiences of the judges. They brought with them basic political and military understanding.

Therefore, the first chapter set the rationale and organization of the study. The second chapter of the study identified cases and rulings that formed the legal basis for libel including the authorities and philosophies used at the time the Mississippi Territory was formed. Then background information for some of the key figures who came to Mississippi was included. The beginning of printing and the first provisions for a free press in the government of the Mississippi Territory occurred at that time.

In early territorial days someone accused of libel often would plead his case in one of the newspapers before an indictment was presented. In other disputes, the way to defend against a character attack was a challenge to a duel.

The first laws were written by Gov. Sargent and presented to a grand jury in 1799. He asked "that the laws be published so the officials would know what they are before the citizens break them" (Carter, 1937, 5: 65). Sargent's Code was developed and adopted without input from the inhabitants or regard for the other established procedures in the territory.

Often a group of men would write and present a plea or memorial signed by the residents to send to Congress or to the U.S. Secretary of State. At times objections between the new government and the residents were voiced, usually in the local newspapers. Finally, when the laws that conformed with the stipulations of the Northwest Ordinance were written and printed, objections were raised. Opposition continued and as the views from each side were printed, some men took their objections to the territorial court. Those objections became the first libel cases in the territory.

Judges Tilton and McGuire remained in Natchez only a few months. The governor and Bruin were left to defend Sargent's Code against the growing opposition led by a politician and writer named Cato West. Soon judicial help was obtained and Seth Lewis was named Chief Justice of the Mississippi Territory. A new postmaster Abijah Hunt was named, but he was accused of slander by a politician.

David Ker petitioned Washington asking for Tilton's position and he was commissioned in January of 1803. Ker arrived just as Sargent was accused of

wrongdoing in office and a new governor was named. W. C. C. Claiborne was named the new governor and two men, Thomas Rodney and Robert Williams were named as surveyors. Edward Turner was named registrar of the land office by President Jefferson. Some of these early officials including Sargent, Turner, and Williams went to court with complaints that became libel suits.

In the third chapter, the "father of Mississippi printing" was introduced. Andrew Marschalk not only edited and printed newspapers and was the official territorial printer, but also was the adjutant general in the territorial militia. He fought for freedom of the press and speech in the territory and for justice as a magistrate and the printer of public laws.

Claiborne's term as governor was marked by the era of political factions. The era continued during the term of Robert Williams who was the second governor. Mississippi was a territory of family factions rather than party factions prior to 1811.

Thomas Rodney went from the position of surveyor to territorial judge. He had been a judge prior to arriving in Natchez, and he presided over the disputes of the territory using common sense and common law. He also brought Aaron Burr to court. His decisions about libel cases set the foundation for later cases.

Newspapers had become the voice of political views and each side had its own voice in the press. Each newspaper accepted articles discussing political events, but most were written under assumed names or titles.

The fourth chapter covers 1812-1816 which was a period of politics, war, and libel in the Mississippi Territory. The new governor David Holmes prepared the militia for

war, not knowing at first who the opposition would be. There were threats coming from both unresolved issues and Indians, as well as the advancing British during the War of 1812.

Columnists and newspaper printers began their own local war of words. Printer Andrew Marschalk and Judge George Poindexter continued voicing dislike of each other verbally and in newspaper columns. The result was a libel trial after the Battle of New Orleans. One libel trial did not stop the war of words and a second libel trial took place.

The fifth chapter covered the time of the first Mississippi state constitution. Precedents from the last set of codes and cases were incorporated into the new constitution. Several libel suits tested the strength of the statutes. The family factions were gone and a new political group formed outside Natchez and took over the politics of the growing state. Marschalk was tested in court by a printer new to the area and some of the court's rulings were far ahead of decisions reached in other states.

A final chapter of summary and conclusions summarized the study of libel law in the Mississippi Territory and early statehood. Libel cases moved on to a new era after the constitution was changed in 1832. New technology began the transformation of communications thus changing the types and basis for libel suits.

CHAPTER II

THE BEGINNING OF NATIONAL AND TERRITORIAL LIBEL, 1735-1801

In this chapter, several cases were chosen to show the legal issues that formed the basis of libel cases and decisions in the United States when the Mississippi Territory was formed. Specific cases were chosen for three reasons. One reason was to reveal how cases were decided through juries whose reactions and decisions were much like the jury's decision in the Zenger case. The second reason was to show the philosophy relied on by judges and lawyers ruling on libel cases during that time. Those cases demonstrate the law and reasoning behind the decisions which had direct influence on later Mississippi cases. Later in the study, the libel law developed in the Mississippi Territory was shown to advance free speech more clearly through the decisions of the judges whose rulings were closer to the reasoning of the jury in the Zenger decision than to the Federalist politics that brought sedition to the courts of the northeastern states.

Thirdly, these cases introduced some of the key figures who came to Mississippi. Both the press and the political climate brought to Mississippi can be understood better through the background of the early settlers. The settlers were chosen specifically because of their Mississippi Territory connections.

National Figures and Precedents

It was, indeed, a diverse group of men who came to the territory. Most of the officials were appointed by President John Adams with the advice and consent of the Senate. Few settlers of the territory had influence on making laws or on forming the

government. Some printers came to the territory looking for the new frontier while others stayed there because they had served in the militia sent to the area by the United States.

As with other printers of the time, some were paid to promote a particular political view. Clashes with officials and others with opposing political views were aired publicly through letters printed in the newspapers, often written under pseudonyms. At that time, individual grand jury members could bring serious community issues they had observed to court for consideration. Grand jury deliberations often produced indictments that turned political disagreements into libel and slander suits in the early territorial courts.

The beginning of Mississippi's libel and printing history can be traced back to the arrival of the *Mayflower* and the Puritans at the shores of North America in 1620. On board the *Mayflower* was a man named William White whose descendant, Col. Andrew Marschalk, was known as "the father of typographical art in Mississippi," according to Marschalk's obituary in the *Natchez Free Trader* in 1838.

Andries Marschalk was a Dutch baker who lived in New York City. Also living in New York City at that time was Joanna Zenger, whose husband died on the voyage to North America from Germany, and her three children. The baker Marschalk and Zenger's son, John Peter, met in a courtroom in 1735 for the first major libel trial in the British colonies.

John Peter Zenger was an apprentice to William Bradford, the official printer for the province of New York. After his apprenticeship, Zenger was approached by attorney James Alexander to publish a newspaper called the *New York Weekly Journal.* Zenger's mission was to expose the weaknesses of William Cosby who became governor of the

New York Province in 1731. The first edition of Zenger's newspaper was published November 5, 1733.

The newspaper attacks on Cosby went on for two months. Soon Chief Justice of the Province of New York James Delancey asked a grand jury to indict Zenger on charges of seditious libel. The grand jury refused. Cosby issued a statement saying an award would be given for the person who discovered the author of the printed "libels" and demanded that Zenger's newspapers be publicly burned. Then Cosby got the a judge to issue a bench warrant for Zenger's arrest. Zenger was arrested and remained in jail for the next 260 days.

Alexander tried to remedy the situation, but was disbarred for his attempts. Consequently, he hired a well-known lawyer from Philadelphia, Andrew Hamilton, to defend Zenger.

Most of what is known about Zenger's trial has come from his own account, *A Brief Narrative of the Case and Trial of John Peter Zenger,* written in 1736. His account of the choice of the jury members makes the verdict in the case even more surprising.

In Zenger's account, John Chambers who was Zenger's court-appointed attorney, made a motion for a struck jury. The court clerk immediately produced a list of 48 people. Normally, the jury list was taken from the landholders in the Freeholders' book. "Friends" of Zenger reported to him that many of the people on the list were not freeholders, but rather were people who held commissions and jobs at the pleasure of the governor. Those jobs included baker, tailor, shoemaker, and others. The clerk refused to revise the list and told the defense that only twelve could be dismissed. Chambers asked

the court to remedy the situation and he was told he could strike out those whom he wished. The next day the jurors were returned but not in the order in which they were struck. After an objection by Chambers, Chief Justice Delancey ordered the jurors called in the order in which they were struck. The baker, Andries Marschalk, remained on the jury.

Two important legal points were made in this case that were used in future cases (Steirer, 2001). One was that order was more important than justice in the early colonial courts. Another point was made by Attorney General Bradley who said truth could not be a defense, since truth was merely an aggravation of libel. The position of Chief Justice Delancey was the jury had only to find that Zenger was the printer and publisher of the articles, which the defense had admitted, and the court would determine whether they were libelous. The jury returned a verdict of not guilty despite the court's instructions.

Thus, the beginning of press freedom in the Mississippi Territory began in New York City with a group of stubborn jurors who did not ignore a plea for the liberty to speak and write the truth. It began, for Mississippi, with the Dutch baker, Andries Marschalk, who passed this kernel of press freedom and political activism through the family to his great-grandson, Andrew Marschalk, the father of printing in Mississippi.

However, the Zenger case was never used as a precedent in American law. It certainly had no effect on English law. According to Steirer, history professor who wrote in *Historic U.S. Court Cases* (2001), the Zenger trial became more of a myth. Truth, according to Steirer, was not defined in the trial and truth was usually seen as a matter of opinion based on particular situations. Attorney Hamilton had no intention of causing

people to rebel against the governor's administration, but he recognized the importance of truth and personal liberty.

The Puritans of the *Mayflower* were leaders in printing and press freedom in many other ways. They brought the first printing press to the colonies in 1638. The press was taken to Harvard College and used mainly to print religious literature. The Puritans were far ahead of their time both in uses for the printing press and in their beliefs in press freedom (Sloan & Startt, 1999). They believed by reading printed scriptures from the Bible, the ongoing search for truth was furthered through intellectual understanding and public discussion. During the time of slower communications, misunderstandings in the meaning of statements might be cleared up through the distribution of printed materials. The Puritans saw these publications as a way to promote intellectual discourse.

Anna Hardenbrook, a descendant of William White from the Mayflower, married the grandson of Andries Marschalk, the baker. Their child, Andrew Marschalk, became interested both in printing and in a military career. Military events took Andrew and his printing press to the Mississippi Territory.

Many of the first libel cases in the colonies were concentrated in the more populated areas of New York, Boston, and Philadelphia. Benjamin Franklin, colonial printer and later diplomat, had influence in all these areas. His influence extended to libel law and, with a family member who married a prominent printer, to the history of the Mississippi Territory.

A daughter of Richard Bache, Jr., a great-granddaughter of Benjamin Franklin, married Robert John Walker. Walker moved to Natchez in 1826 and joined Dr. Sam

Cartwright and John Claiborne in producing *The Statesman,* a newspaper that favored Andrew Jackson. Walker was elected a U.S. senator from Mississippi in 1836.

Of the two families discussed, one family that included the Franklins and the Baches, was wealthy and famous for printing and politics in Philadelphia. The other family, the Marschalks, not so wealthy, was involved in early free press issues and recognized the need for personal freedom of speech. Each family added something or someone to the early struggles to establish American speech and press freedoms. Each contributed a descendant who was involved in both politics and printing in Mississippi.

One other descendant of William White had extensive influence on libel law in Mississippi. Thomas Rodney was a surveyor and one of the first judges in the Mississippi Territory. Rodney's writings and decisions in libel cases set the precedents for later libel rulings.

After the trial of Zenger, libel law developed in Pennsylvania as it became the focus of government and the Federalists. Several examples of cases which set precedents, and the legal philosophy used to decide the cases, show the status of libel law in the United States at the beginning of the Mississippi Territory. The development of libel law in Pennsylvania can then be contrasted to the development of libel law in Mississippi. While the Federalists and jurists in the seat of American independence wrestled with English precedents, the jurists in Mississippi used common law to settle libel disputes.

The book *History of Philadelphia* (1884) described the history of local journalism, saying it had undergone a diversity and multiplicity of experiences. Contests between the press and public officials were numerous. "Libel suits, some of vast

magnitude and some of petty impact, are found in every decade," the history continued. "Through all these years the press has battled for a larger liberty" (Sharf & Westcott, 1884, p. 1962). The battle led to some interesting results in libel law.

One case had peculiar results in the lower court and was appealed to the Pennsylvania Assembly. The defendant in the case was Eleazar Oswald who was described as "a man of great courage and perfectly fearless in the discharge of what he thought was his duty" (Scharf & Westcott 1884, p. 425). Oswald was known for challenges. He had already challenged another editor, a colonel from Baltimore, and Alexander Hamilton to duels. Then tension began to grow between Oswald and Chief Justice Thomas McKean of the Pennsylvania Supreme Court. McKean wrote several decisions in libel cases and he was a close friend of the Rodney family.

The event that propelled Oswald into court began as an altercation between Col. Thomas Proctor, an artillery officer, and John Cling, an inspector at the voting poll (Bolles, 1890). Cling asked Proctor to show his certificate of oath when Proctor went to vote in the election of 1781. Since Proctor's service in the army was "well-known," he took the request as an insult and he assaulted Cling. Col. Proctor was summoned to court and appeared before Chief Justice McKean. Proctor admitted the facts of the incident and McKean chastised Proctor's arrogance. Proctor was fined £80.

Oswald wrote some negative comments about McKean and the Proctor incident in his newspaper, the *Independent Gazetteer*. For this he was summoned to appear before McKean. The Chief Justice gave Oswald a lecture and bound him over for trial. Unfortunately for McKean, the grand jury could find no wrongdoing on Oswald's part.

The grand jury and McKean got into an argument and 16 members of the jury published an appeal to the public saying they had acted within their rights (Scharf & Westcott, 1884).

The 1776 Constitution of Pennsylvania contained a provision in §35 that directed, "The printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any part of the government." This sentence had also been incorporated into the work of the Pennsylvania Provincial Council of 1721, but the wording continued:

> No law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man; and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty. (cited in Scharf & Westcott, p. 1962)

The statement continued that no prosecution should be made of publications related to the public conduct of officials where the wording was not malicious or negligently made, and that could be proven to the satisfaction of the jury (Scharf & Westcott, 1884).

In fact, freedom of the press had been heavily discussed in Pennsylvania during the time prior to the ratification of the U.S. Constitution. James Wilson of Pennsylvania was said to be the best judicial mind at the national Constitutional Convention as well as the best prepared through his extensive study of history and the science of government (Hanna, 1902). At the Pennsylvania convention to ratify the U.S. Constitution, he said, "What is meant by liberty of the press is that there should be no antecedent restraint upon

the press." "Every author is responsible when he attacks the security or welfare of the government, or the safety, character, or property of the individual," he continued (Hanna, 1902, p. 34). Wilson also said that a libel must be tried where the alleged offense occurred and that the trial must be brought before a jury of citizens of that state. He referred to jurors who had been brought in for trials, sometimes from other states, to pack the juries.

Another legal authority cited during that time was Sir William Blackstone. Blackstone was a judge of the Court of Common Pleas in England. When practicing law did not turn out well for him, Blackstone began giving lectures on English law. The first volume of his lectures was published in 1765 and the last volume was published in 1769. The contempt charge, like the one Oswald faced, was called "misprision" in Blackstone's work. Misprision is a French word meaning neglect or contempt. In book IV, chapter 9, Blackstone said misprisions were demonstrated:

> by arrogant or undutiful behavior towards the king and the government, behavior which included contempt against the king's prerogatives, contempt on the king's person and government, contempts against the king's title, and contempts against the king's palaces or courts of justice. (p. 150)

Blackstone also wrote liberty of the press meant the prohibition of prior restraint. He did not view freedom of the press as a limitation on punishment after publication (4 *Blackstone*, 1769). Libel, he wrote, included:

> malicious defamations of any person, and especially a magistrate, made public by printing, writing, signs, or pictures, in order to provoke him to wrath, or expose

> him to public hatred, contempt, and ridicule. The direct tendency of these libels is breach of the public peace, by stirring up the objects of the libels to revenge, and perhaps to bloodshed. However, in a criminal prosecution, the tendency which all libels have to create animosities, and disturb the public peace is the sole consideration of the law. (4 *Blackstone*, 1769, p. 150)

Whether the matter was true or false was immaterial. Blackstone wrote, in criminal libel, it is the provocation, not the falsity, that should be punished. However, in civil action, a libel must appear to be false and scandalous. He continued:

> The liberty of the press is indeed essential to the nature of a free state: but this consists in laying no *previous* restraints upon publications, and not in freedom from censure for criminal matter when published. Every free man has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press; but if he publishes what is improper, mischievous, or illegal, he must take the consequences of his own temerity. (4 *Blackstone*, 1769, pp. 152-153)

About one year later, Oswald was in court again. He had printed several articles, anonymously written, that questioned the character of Andrew Browne, who was the master of a female academy in Philadelphia (*Respublica v. Oswald*, 1788). Browne requested the name of the author of the articles but Oswald refused. Consequently, Browne sued Oswald for libel.

The Pennsylvania Constitution and the Bill of Rights gave voice to the same principles settled in England long ago. McKean wrote:

> Can it be presumed that the slanderous words, which, when spoken to a few individuals, would expose the speaker to punishment, become sacred by the authority of the Constitution, when delivered to the public through the more permanent and dissusive[*sic*] medium of the press? ...The true liberty of the press is amply secured by permitting every man to publish his opinions; but it is due to the peace and dignity of society to enquire into the motives of such publications and to distinguish between those which are meant for use and reformation, with an eye solely to the public good, and those which are intended merely to delude and defame. (*Respublica v. Oswald,* 1788, p. 6)

After all, the decision continued, law was the province of the judges, not the jury, to determine. This ruling clouded decisions in many libel cases to come. Oswald was sentenced to a fine of £101 and imprisonment of one month.

Other cases set limits at trial. In *Respublica v. Griffiths* (1790), the Pennsylvania court made clear that, in a libel suit, the attorney general was not required to file the motion for information unless he prosecuted for the people. A prosecutor must employ his own counsel. The information to be obtained was an oath of the falsity of the charges in the libel suit which was referred to as "quite immaterial." In *Respublica v. Askew* (1792), a man convicted of libel was not allowed to submit evidence of the provocation he had undergone as a mitigating circumstance in the sentencing phase. In Maryland, the plaintiff claimed he was filing a law suit for a reward for bringing in an offender who was the subject requested in an advertisement written by the governor of Maryland. He was not allowed to recover damages until he proved he was a public official and a resident of

the county and state in which the law suit was filed (*Kilty v. Hammond,* 1793). Precedent was being set that libel suits and charges must be filed in the jurisdiction where they occurred and by the appropriate local officials. In Delaware, the plaintiff in a slander suit asked for relief of damages, but he was not allowed to prove any specific instance of loss (*Crips v. Craig*, 1794).

One slander case in Pennsylvania set an interesting precedent in terms of publication. Two of the judges presiding over the hearing were Chief Justice McKean and Judge Yeates. The offending words were spoken in German and eight witnesses testified that the words spoken called the plaintiff either a liar or a murderer. The court ruled that the words were spoken in the heat of the moment but not repeated or published elsewhere. The jury found for the plaintiff for damages of $25 and 6¢ for costs (*Frederitze v. Odenwalde*r, 1797). Later, Judge Yeates mentioned the 1797 *Frederitze* case in the decision of another case. He said that the six cents recovery for costs was cut when the court sat "in bank" in March, 1799 (*Stuart v. Harkins,* 1811).

Therefore, the law of libel in 1797 relied heavily on English legal theory and philosophy. The writings of Sir William Blackstone and the theories of philosopher John Locke were sources cited in rulings. The truth or falsity of the material in question proved to be not as important in decisions as was the response of the readers to the writing. American juries, when not packed, leaned heavily toward the freedoms of press and speech. The juries seemed to want to break the old English ties and, instead, to form new traditions in the United States. New traditions included the clarification of the rights of the people.

The Mississippi Territory, 1798-1801

When the Mississippi Territory was created, the inhabitants of the area were immediately concerned about keeping their land. Whenever a new government took over the area, previous land grants often went unrecognized. New laws soon were passed that infringed on the daily lives of the citizens and added to the growing concern about land claims. In addition, the residents of the territory saw that the new government was not adhering to the mandates of the Northwest Ordinance under which the territory was created and was to be governed. Opposition to the new laws and dislike of the new government officials grew among the citizens. As opposition grew, so did the subsequent growth of libel as a way for the citizens to voice their concerns.

The Alien and Sedition laws were passed by the Federalists in Congress at the same time as the beginning of the territory. Some of the printers and publishers during this time tried to use the courts to force the repeal of the acts. On the other side, the Federalists sought to take the printers to court. For the printers, truth was not permitted as a defense to the charges and, at times, the judges used the charges to admonish the printers in court and to redefine the law of sedition.

The Mississippi Territory was created by a law passed in Congress on April 7, 1798. Thus began the turbulent years of 1798-1801 and the administration of the territory by Winthrop Sargent. They were turbulent years for the press also with the rise and fall of the national Alien and Sedition Acts. Was the law of libel in the Mississippi Territory developing similarly to the laws in the United States? The court decisions showed more blend and adaptation of the common law to the situation. The area was a mixture of

Spanish, French, British, and American laws. The territorial judges were not assigned the same authority as were the federal judges in the United States and they reached some creative decisions in the courtroom. It took several years to develop territorial law that blended with the laws as they were created in the new United States. In the meantime, the territorial judges combined the realities of the situation, the needs of the residents, and their knowledge of law to develop respect for the law and for the freedoms of speech and press.

The governing law for the territory, the Northwest Ordinance, was adopted in 1784 under the Articles of Confederation and approved by the U.S. Congress on July 13, 1787. The Ordinance set out the process by which the territory could be divided into states and then be admitted to the United States. The new states would be equal in status to other states in the country.

Officials of the Mississippi Territory were appointed and then were approved by Congress. The first officials consisted of a governor, a secretary, and three judges. When the population reached 5,000 men, the territory could elect a legislature and send a nonvoting member to Congress. The surveyor of the Northwest Territory was Winthrop Sargent, who became the secretary there and served from 1787-1798. Then Sargent was appointed by President John Adams as governor of the new Mississippi Territory where he served from 1798-1801.

Andrew Ellicott was chosen to survey the Mississippi Territory. Ellicott wrote to Timothy Pickering, U.S. secretary of state, on September 24, 1797, and proposed several names to be considered for territorial officials. Ellicott told Pickering that it was

absolutely necessary to take the officials from the Atlantic states because those chosen would be of good moral character and would be industrious (Carter, 1937).

The officials were not named until Pickering learned from the newspapers, including the *Philadelphia Gazette,* that the Spanish were gone from the territory. In addition to the appointment of Sargent from Massachusetts, John Steele of Virginia was appointed secretary. Peter Bryan Bruin, who already lived in the area, and Daniel Tilton of New Hampshire were named the second and third judges, and William McGuire of Virginia was named chief justice a month later. McGuire was the only lawyer of the three but all had served in the military; Bruin and Tilton served in the Continental Army and McGuire served in the Indian Wars.

Sargent's term of three years began May 7, 1798, but he did not arrive in the territory until August 6. He addressed the people of the territory ten days later, promising to appoint a militia and to adopt laws with the help of the judges. From all accounts, Sargent was an intellectual who had little respect for the common man. He called for a grand jury to "publish the laws so we will know what they are before the citizens break them" (Carter, 1937, 5, p. 64). The first part of the code was passed by the judges on February 28, 1799. Also, from some accounts, the code paid little attention to the needs or to the circumstances of the local people.

The 1799 code set up courts in the territory naming the Mississippi Territory Supreme Court as the court of last resort. Some of the courts were assigned new duties, including harsher punishments for offenses and higher taxes which angered the people of the territory.

Two days after Gov. Sargent's first address to the people, he wrote Pickering about the lack of judges because Bruin was still the only judge present. Another complaint from the governor was the lack of a printing press in the area. "We have no printing press in this country," he wrote. Without one, he continued, it would be impossible to get the new laws distributed to the people. "A small traveling press would be a blessing to the people of the territory," he urged (Rowland, 1925, p. 350).

Finally a printing press was located. It belonged to Lieutenant Andrew Marschalk stationed in Walnut Hills, close to present-day Vicksburg. Marschalk printed the laws as fast as they were made (Rowland, 1925). However, when Gen. Wilkinson was away from the territory, he left Capt. Thomas H. Cushing in command. Cushing ordered Marschalk to Walnut Hills which took the lieutenant away from his printing duties in Natchez. Sargent had been promised by Gen. Wilkinson prior to his departure that Marschalk would be able to stay in Natchez until the laws were finished (Rowland, 1925). On July 21, 1799, Sargent wrote to Cushing:

> Mr. Marschalk, having this evening announced unto me your order for his immediately removing to Walnut Hills, I owe it to public service to inform you I had the most positive assurance from Gen.Wilkinson that Marschalk should continue at Natchez to print the Laws of the Territory; that he has not completed that business; that it cannot be done at the place of his destination and, furthermore, that his removal will put it out of my power to avail myself of the much needed facility in disseminating information to the public, in my opinion, at

present of very great importance not only to this territory but also to the United States. (Cushing, 1799)

Marschalk did indeed finish printing the laws.

No mention was made of the local newspapers in Sargent's initial speech. Only the government that appreciates individual and national rights, he said, would cause the most zealous exertions on his part (Sargent, 1798). In Sargent's mind, it seems that the government alone would protect all civil liberties. Later he wrote, "The Privelege [*sic*] of Gentlemen tolerating full freedom of speech does not Warrant Indecorum" (as cited in Toulmin, 1953, p. 223).

The work on the code of laws for the territory was begun by an appointed General Assembly on January 22, 1799, and finally adopted on May 25, 1799. The code was signed by Gov. Sargent, and judges Bruin and Tilton. The U.S. Congress might disagree with the territorial laws, but the laws could be repealed only through territorial legislation. There was no enactment process written, but the printing of the laws was authorized. Only three actual copies of the code printed by Marschalk existed, according to Rainwater (1967), with one photocopy at the Mississippi Department of Archives in Jackson. The printed copies include only 25 of the original 46 laws that were written.

No press freedom was written into the early code of laws. Only perjury and forgery were serious enough to suspend civil liberties, and civil liberties were defined as jury duty and voting. However, Sargent used authority harshly. He stopped sedition when it occurred, specifically when he was displeased with what was written (Wunder, 1976).

Opposition quickly grew to Sargent's Code of Laws. The opposition group was led by a local resident, Cato West, who wrote the memorials or complaints sent to both Sargent and Congress. Helping him was a wealthy planter and his father-in-law, Thomas Green. Many other landowners and workers in the area supported West and Green. Two of the laws seemed to raise the most ire. Those were the appointment of a probate judge, deemed to be unnecessary by the faction, and the levy of heavy taxes. Costly licensing of everything from marriage to leaving or returning to the territory induced more anger. Sargent also insisted on choosing which attorneys could be named to practice in the courts.

Just after the laws were passed, a slander case came to the Court of Common Pleas. In August 1799, two tanners had a disagreement which took them to court during the November term (*Fisher v. Dayton*, 1799). Tanner Elias Fisher brought a charge of trespass against the other tanner, Ebenezer Dayton, who accused Fisher of embezzlement in front of at least one other businessman. Fisher, through his attorney William Conner, claimed that local merchants would no longer do business with him. Dayton, through his attorney, Robert Knox, claimed he had hired Fisher as a general agent and both agreed that the income generated would be split evenly. Dayton claimed Fisher did not live up to his part of the agreement and was, indeed, taking more of the money than their agreement allowed. Trespass, meaning slander in this case, was the charge. However, the mitigating circumstances of the tanners' agreement convinced the jury that the defendant was not guilty.

Two interesting things came to light in this case. Dayton was arrested, thus making this a criminal slander case. The other interesting thing was that the charge was trespass. The plaintiff charged that, even though he was a good and honest citizen, Dayton had "written, spoken, and published" words that were "scandalous, malicious, and opprobrious" about him. The words were referred thereafter in the plea as publication of the slander. Further, Fisher claimed that the opinion of others about him was greatly reduced and that he would not be able to find employment in the future.

The common law of England was to be recognized in the courts, according to Sargent. The same was being done in many United States courts as the jurists and the attorneys tried to balance local circumstances with the theories and cases they brought with them from England. However, with a lack of judges who had read law, the Mississippi Territory cases took on some interesting arguments that reflected more local than legal tones.

One example of local law was the *Denham v. Horton* (1800) case tried in the Common Pleas court during the February, 1801 term. Attorney Robert Knox represented Reuben Denham and claimed "he had been publicly reported to be a person guilty of that detestable crime called incest." Abram Horton, according to Denham's plea, told others that Denham was the father of his daughter Betsey's as yet unborn child. Denham claimed the malicious statement had caused him great pain and injured his good name and reputation. Denham asked for damages of $3,000.

A. L. Duncan and Lyman Harding, attorneys for Horton, entered a plea of not guilty. However, the jury found Horton guilty and awarded damages of $2,000 and court

costs. Horton appealed, but he signed a statement saying that, should the supreme court find against him, he would still pay damages and costs. The official who sealed the statement was Peter Walker, who had been named assistant secretary of the territory.

The only law cited was in Horton's response. The attorney wrote that the wording in the plea should be made in the form of the territorial statute in such cases. Had such a statute been written in the missing part of Sargent's Code?

At the same time in Pennsylvania, Chief Justice Thomas McKean found another member of the press to accuse of sedition. William Cobbet, writing as Peter Porcupine, was accused of attacking a prominent physician, Dr. Benjamin Rush, for his medical use of bloodletting. Dr. Rush sued Cobbet for libel and was awarded $5,000 by the jury (*Rush v. Cobbet,* 1798). Several other printers tried to get libel cases tried in a federal court. They were hopeful that the sedition laws might be declared unconstitutional in the federal court.

The prevailing anti-Federalist positions were laid out in the Kentucky Resolution written by Thomas Jefferson, and the Virginia Resolution authored by James Madison. The Kentucky Resolution was signed by Kentucky's secretary of state, Harry Toulmin, who would soon become an important figure in the Mississippi Territory. Why then had the Sedition Act passed? The Federalists, led by Alexander Hamilton and John Adams, relied mostly on the Blackstonian theory for justification.

Politics and the press were heavily involved in crossfire between the Federalists and the Democrat-Republicans. And the people of the Mississippi Territory were beginning to find that their new laws did not conform to the laws from the Northwest

Territory or to the laws passed in the U.S. Congress. The political controversy in Mississippi had begun when people aligned themselves with one or the other of two parties, hoping their favorite party would help them with their personal requests. The newspapers also aligned themselves with one or the other of the parties but, as changes took place, some editors were forced to change loyalties and others to begin newspapers with a different editorial voice than those already heard in the territory.

The memorial of dissatisfaction with Winthrop Sargent's Federalist administration, written by Cato West and others, was given to Tennessee representative William C. C. Claiborne to present to the House of Representatives. Claiborne presented the memorial on Friday, December 19, 1800, and it was referred to representatives Claiborne, Goodrich, and Nott to report back with a bill (H.R. 6th Cong., 1800). The following Monday, a motion was made to refer all the documents received from Mississippi to the President. After much discussion, the matter was given to a committee made up of Robert G. Harper (Fed., S.C.), W. C. C. Claiborne (Dem.-Rep. Tenn.), Chauncey Goodrich (Fed., Conn.), Abraham Nott (Fed., S.C.), Thomas T. Davis, (Rep., Ky.), John Bird (Fed. N.Y.), and Harrison Otis, (Fed., Mass.). The committee was charged to inquire into the official conduct of Sargent (H.R. 6th Cong., 1800).

A resolution from the committee was received by Congress on February 19, 1801, and was reported by Chauncey Goodrich (H.R. 6th Cong. 1801). The House of Representatives voted and passed one of the requests in the memorial. Sargent was asked to hold an election for the representative of Washington County to the Mississippi

Legislative Assembly. Also included in the report was the committee debate on the charges (H.R. 6th Cong., 1801).

The charges against Sargent included taking public funds for personal use, cheating, permitting dueling, and libel against many of the citizens. The charges were first presented in *Green's Impartial Observer* on June 14, 1800, and included the memorial made to Congress. A grand jury presentment was taken to Congress by William Dunbar. It included the accounts that Sargent was said to have falsified. The grand jury also accused Narsworthy Hunter of scandalous and malicious libels against Sargent and the territorial judges in his personal comments to Claiborne. All of the comments, the grand jury presentment, and the committee debate can be found in the Library of Congress, American Papers.

Finally, a resolution was brought to Congress in March. Of the accusation of improper and arbitrary behavior, the committee found no specific evidence or acts. On the second count, an unconstitutional exercise of legislative authority by Sargent and the judges, the committee said the territorial officials had misconceived the nature and extent of their authority. On the third count of unlawful fees for official acts, the committee report noted that such fees were charged legally through both the New York and the Pennsylvania codes, therefore Sargent was not deviating from practices of the original states. The resolution the committee brought to the House was that there appeared to be no cause for further proceedings against Sargent and it passed (H.R. 6th Cong., 1801).

With the matter of the governor's conduct decided, three charges were delivered to a grand jury by the presiding justice, William Dunbar, at the opening of the Court of

Quarter Sessions for Adams County (American State Papers, no. 143). Perhaps the Congress thought Sargent's policies were justified, but that did not mean that they were finished with the challenges to the policies in the territory. Dunbar told the members of the grand jury that some offenses against the common law including libel could be used for inquiry. He said presentments could be made either by a bill of indictment from the attorney of the territory, or through any resident who had proper evidence of some offense that they noticed. In a second charge, he also made it clear that the heinous crime of dueling should be punished with a fine and imprisonment. Even a challenge should be penalized (American State Papers, no. 143).

Narsworthy Hunter was a native of Virginia who received a Spanish grant for land in 1795. He became politically active and held several offices in the area. He was the first delegate to Congress from the territory, an office he held only a year before he died in Washington, D.C.

The libel charge against Hunter mentioned by Judge Dunbar in his address was sent to the state supreme court. "Narsworthy Hunter has been guilty of composing and uttering a malicious, scandalous, and false libel" against Sargent about a spending issue that was written in a letter to W. C. C. Claiborne, chairman of the Congressional committee that investigated Sargent (American State Papers, no. 143, p. 239). Later in the charge, the territorial judges were added as victims of the libel. The libels were said to have exposed the officials to public hatred, contempt, and ridicule thus breaking down respect for the officials and disturbing the peace of society. The court requested attorney

general Lyman Harding to process the charge. However, when Congress decided not to investigate Sargent, the charges of libel were rendered moot.

When news of Jefferson's election to the presidency reached Natchez, Sargent left for Washington hoping to defend his administration and to receive another appointment as governor. According to the Historical Records Survey done in 1939, Secretary of State Madison wrote a letter to Sargent for Jefferson which said, "It seems expedient in the interest of general harmony and mutual attachment between the people and public functionaries to fill the station of governor with another" (Rainwater, 1939, p.157).

In the absence of Sargent, the territory's secretary, John Steele, was the acting governor. Then on May 25, 1801, William C. C. Claiborne was appointed governor of the territory and he arrived in Natchez in November of 1801.

Congress had attached a sunset provision to the Alien and Sedition Acts and the acts expired March 3, 1801. There had been 15 indictments, 11 trials, and 10 guilty verdicts under the Acts. Jefferson pardoned all who were convicted or awaiting trial under the provisions of the sedition law.

Winthrop Sargent decided to move his family to Philadelphia, but he died at the beginning of the journey on a steamboat trip to New Orleans.

With the naming of a new governor the libel requests faded, but some accusations about money loaned by or to Sargent did not. The judges had been ordering continuances of any matters that pertained to Sargent, but some cases still on the docket were heard. Had it not been for the grand jury presentments of libel, Sargent may not have been replaced so quickly.

Summary

The legal issues before the creation of the Mississippi Territory had a direct bearing on the people who would take part in its beginning. The Zenger jury rejected the English rules and began the trend toward common law. Later, after the colonies became the United States, the Federalists and the Republicans continued to look to the English philosophers such as Blackstone and Locke for precedents. The decisions in court were to be made by judges while juries were relegated to decisions on fact-finding. The tests of the free speech and free press clause in the Pennsylvania Constitution such as those between Oswald and McKean did little to further common law decisions. Speaking critically of any government official was seen as an attempt to undermine authority. Truth was not permitted as evidence even to mitigate sentencing in libel trials.

However, the Mississippi Territory was to receive the philosophy of the Zenger jury through their first printer. The baker Andries Marschalk led his family to become involved in politics particularly freedom of speech and then freedom of the press. The family was involved in military service, petitions to the government, and service to their community throughout the next two generations. Then the next generation produced a son who learned the trade of printing and printed the first laws of Mississippi while in service to the United States.

Early American leader Benjamin Franklin learned the trade of printing and promoted press freedom. Succeeding generations of his family produced sons and daughters who promoted press freedom also. His grandson, Benjamin Franklin Bache, and his granddaughters became involved in printing. Husbands of two of the

granddaughters were political activists and printers and the granddaughters also participated. One family, headed by Robert J. Walker, went to Mississippi soon after it was granted statehood and he went into a newspaper business with two other men. Later, Walker was elected a United States senator from Mississippi.

The Mississippi Territory's first governor, Winthrop Sargent, did not show an interest in freedom of the press. It was during this time that the Alien and Sedition Acts became laws in the United States and Sargent was a Federalist who supported them. However, threats of libel suits were used against him perhaps contributing to the end of his term of office.

The time was coming when both common law and press freedom would be tested in the Mississippi Territory. Judges, including Harry Toulmin and Thomas Rodney, would bring common law but interpret it for the benefit of the citizens struggling to meet the requirements to ask Congress for statehood.

CHAPTER III

POLITICS AND LIBEL, 1802-1811

The “father of printing” in Mississippi, Andrew Marschalk, was the great-grandson of the baker Andries, who was on the jury in the Zenger trial. Andrew’s grandfather was Francois Marschalk who was listed as an innkeeper, gauger of flour, and a landowner of much of New York (Loula Marschalk, letter in possession of Betty Stewart, Natchez). Andrew’s father, also an Andrew, followed in the baking industry and was involved in politics.

One political incident involved an advertisement printed in a New York paper in 1769. Under the bold banner of “Liberty,” Andrew swore in an affidavit that Isaac Sears had come to Francois’ house and told Francois that, if he voted against a candidate named Mr. Scott, the city’s Board of Commerce would give him inspection of all of the flour to be shipped, thus naming him sole inspector. However, if he voted for Mr. Scott, Francois would not be employed at all (Sears, 1769).

Capt. Sears was a member of the Sons of Liberty of New York. The next day, Sears wrote in his defense that he visited Marschalk as a friend and his talk with Marschalk had been a friendly one, not deserving of public censure. The editor of the New York newspaper wrote that Sears’ great zeal in the election could be ascribed to his party spirit rather than to the real affection for his country that had been demonstrated in Sears’ actions with the Sons of Liberty. Sears was noted for his pamphlets which were on display for New York City’s 250th anniversary celebration in 1903.

Thus, it is not surprising that, with such a political family background, printer Andrew Marschalk was interested in politics and printing. The Mississippi printer, known as Col. Andrew Marschalk, was born in New York on Feb. 4, 1767 (Loula Marschalk, letter in possession of Betty Stewart, Natchez). By the time he was in his early twenties, Marschalk had bought a small mahogany press in London and brought it back to the United States (Patridge, 1860). He loaned the press for the following six years, but he retrieved it when he was ordered by the United States Army to the Mississippi Territory for the years of 1797-1798.

Marschalk said he constructed a larger press for the printing of the territorial laws. The larger press was sold to Ben M. Stokes who printed in Natchez only during the summer of 1799 (Patridge, 1860).

"A man from Baltimore" brought a press to Natchez in the spring of 1800 according to Marschalk in the 1837 letter. The man from Baltimore published a newspaper that lasted only a year and then the press was sold to James Ferrall. Ferrall and a man named "Moffatt" published the paper for a short time (Patridge, 1860).

The man from Baltimore may have been a member of the Green family who printed the *Maryland Gazette* from 1745-1839. Jonas Green worked with both Benjamin Franklin and Andrew Bradford in Philadelphia. His grandson J. (Jonas) Green printed the Maryland newspaper from 1811-1839 after the deaths of his father and uncle, Frederick and Samuel Green (Wheeler, 2009). He may have been the printer whose newspaper in Natchez, *The Impartial Observer,* printed the petitions from the Cato West group May 28, 1800, and the reply by Winthrop Sargent. The Green family of the Mississippi Territory

appeared to have only one J. or James Green and he would have been about eleven years old during the time of the printing of *The Impartial Observer*.

Marschalk's military career included some time with Maj. General Arthur St. Clair in 1791. St. Clair was badly defeated that year near Fort Recovery, Ohio, losing 750 men to the Indians' 40 dead. Marschalk was promoted to lieutenant in 1793 and to captain in 1794. He was retained in the military as a lieutenant of artillery and engineers beginning in 1796. He ended his United States military career as a lieutenant, resigning his commission in June of 1802 (Gardner, 1853).

Marschalk returned to the Mississippi Territory from Philadelphia in July 1802, where he began printing the *Mississippi Herald.* He had been recalled by the army, but Marschalk chose to resign and return to the Mississippi Territory rather than to stay in Philadelphia (Patridge, 1860).

Marschalk married Susan McDonale in New York in 1797 (Dutch Church Records, ed. 1940). Marschalk was sent to the Mississippi Territory that year. The couple had three daughters named Jane Elenora, Ann Maria, and Susan McDonale. Jane married Miller Stewart of Natchez on Oct. 7, 1824, Ann Maria married William Evens on July 5, 1818, and Susan married Robert Stewart. Marschalk's wife, Susan, died in Natchez on June 8, 1814, and daughter Ann Maria died at the age of 25 in 1825.

After Susan's death, Marschalk married again, to Sydney Johnson. The Marschalks had three sons and a little infant girl, Catherine Ann, who died on June 5, 1821. The sons were Abel Hardenbrook or "A.H.", Andrew, and Charles. Andrew and several other Marschalk descendants went on to be printers.

Marschalk printed the Mississippi Territory laws passed at the first and second sessions of the first general assembly in 1801, the acts passed at the third session of the first general assembly in 1802, and the laws passed by the second general assembly, first session in 1802. The printing imprints show that Marschalk printed the first two in 1802 and the third in 1803 (Boles Collection).

The Claiborne Years, 1801-1803

The Mississippi Territory continued to change politically and economically. William Charles Cole Claiborne was named by President Thomas Jefferson as the new governor of the territory succeeding Winthrop Sargent. Claiborne was born in 1775 to William Claiborne and Mary Leigh. The Claiborne family had come to the colony of Virginia in 1621. Claiborne's brother Nathaniel was a member of Congress from Virginia for 20 years.

William attended Richmond Academy and then William and Mary College with his older brother Ferdinand Leigh, but his schooling ended when he was 15. Their father lost the family estate trying to help with the high costs of the Revolutionary War. William moved to New York City where he worked for the clerk of the U.S. House of Representatives and then went to Philadelphia to work with the federal government. He studied law in Virginia and moved to Tennessee to practice law. He was appointed by the governor to serve on Tennessee's highest court where he served for a year before he resigned to run for a seat in the House of Representatives. He was elected to the House at the age of 22 and served from 1797 to 1801. Then, on May 25, 1801, President Jefferson appointed him governor of the Mississippi Territory.

Claiborne, 26, arrived in Natchez on Nov. 23, 1801. He brought with him his new wife Eliza Lewis.

When he arrived, the state of the highest court judges was in disarray. Judge Tilton, who had been appointed in May 1798, was gone by December 1799. Tilton did not actually resign until October 1802 (Carter, 1937).

Judge McGuire was appointed Chief Justice of the Mississippi Territory in June 1798, and was the only lawyer of the judges appointed. He returned to his home for a visit in September 1799, and did not return to the Mississippi Territory, finally resigning in January 1800. Consequently, Peter Bryan Bruin was the only high court judge left in the territory.

Seth Lewis was nominated by President Adams and confirmed as judge in May 1800. Lewis was from Tennessee and brought with him his wife and at least five children. Lewis's father was an early settler in the Natchez area and had arrived about 1774 (McLemore, 1973). Seth Lewis took a license from Gov. Claiborne to Adams County Court on July 3, 1801, where took the oath of office to be admitted as an attorney (Transcription of County Archives of Mississippi, 1942).

Two slander cases were reported in Adams County, one in 1801 and the other in 1802. The first case was in the County Court of Common Pleas. The parties to the lawsuit, Ann Martin and Ezekial Dewitt, seem to have both been frequent parties to lawsuits, particularly from 1801-1802. Martin complained that Dewitt had spoken where others could hear and said that he called her a thief and robber. She asked for $5,000 in damages (*Martin v. Dewitt*, 1801). Martin also complained that Dewitt said that she

taught her children, James and Samuel, to rob and plunder. Once again, statutes were mentioned but no law used and damage to her reputation was alleged. Abner Duncan, attorney for the defendant, entered a not guilty plea.

A jury of 12 local citizens was chosen and brought back a verdict of not guilty. The court told the defendant to recover his court costs from the plaintiff (Transcription of County Archives of Mississippi, 1942).

In the Supreme Court of Law, Adams District, in 1802, Micheal Moore sued Leonard Pomate for trespass and $2,000 damages (*Moore v. Pomate*, 1802). The language used in the complaint was similar to the other suits and stated that there were "scandalous and opprobrious English words published" about the plaintiff by the defendant. These were the same descriptive words used in the sedition laws of the United States and in other slander cases. Property was involved in this case because Pomate said Moore had stolen a heifer of his and killed it with the intention to defraud him. No decision was found in the file.

The new governor had trouble with events beyond the judiciary. While he tried to reorganize the government and the militia, Claiborne had problems with the Choctaw Indians over land boundaries and problems with the state of Georgia over land claims. A smallpox epidemic took place in New Orleans and then that city closed its port to American commerce.

While attention was being given to these problems, the local government was revised. The capital was moved to the nearby town of Washington, and the two counties, Adams and Pickering, were subdivided to make the five counties of Adams, Jefferson,

Washington, Claiborne, and Wilkinson. New judges, officials, and militia officers were named in April 1802. Cato West was the new secretary and the superior court judges were Tilton, Bruin, and Lewis.

Judge Tilton resigned later in the year. In a letter to Secretary of State James Madison, Gov. Claiborne wrote that a faction had arisen against Tilton seeking his removal or impeachment (Claiborne, 1880).

In the same letter, Claiborne said the printing of the new laws would be tedious. He complained that the only printer in the area, James Ferrall, was new at printing but had been hired. "I am surprised that printers from the older States do not turn their attention in this direction. I know of no quarter where a well-conducted paper would be more lucrative and of more advantage to society," Gov. Claiborne wrote (Claiborne, 1880).

Benjamin Stokes, to whom Marschalk sold his press, began printing the *Mississippi Gazette* in 1799. In 1800, Sargent sent a copy of the newspaper to the U.S. Secretary of State and said he would continue sending it (Rowland, 1925).

The elusive J. Green printed the *Impartial Observer* for only a year. Marschalk began to print the *Mississippi Herald* in 1801. Marschalk shared some of the public printing with the printer hired by Claiborne, James Ferrall. By 1804, Timothy and Samuel Terrell had begun printing the *Mississippi Messenger* (*Union List of Newspapers*, 1970).

As the publication of newspapers began in the Mississippi Territory, other libel suits were being filed in the United States which would later impact Mississippi libel law. In *Lyle v. Clason* (1803), publication was the issue. The N.Y. Supreme Court said that no injury was caused because a letter was mailed in a sealed envelope and, therefore, not

published. There was no damage or publication to others. The question considered was injury and criminal libel, not the truth of the letter.

In two other cases, the punishment for libel was changed from promises by the accused to keep the peace. The change was to promises of good behavior and only when a conviction had been obtained (*Commonwealth v. Davies & Commonwealth v. North,* 1804). Judges still found the biggest problem was the fear of disruption whether the alleged libel was true or false. The injury was important, but keeping the peace was still paramount.

By 1805, the Supreme Court of Pennsylvania was concerned about instructions to the jury in a libel case (*Respublica v. Dennie,* 1805). The jury was told that they must find whether the defendant intended to disturb the peace. A distinction was made between private discussion and public information. Public information with criminal intent was judged to be a libel.

In *People v. Croswell* (1804), the intent of the libel was foremost and could readily be determined by deciding if the libel could disturb the peace or cause citizens to think less of their leaders.

In Mississippi, Reuben Denham again was accused of trespass in calling George Dupassau a thief (*Dupassau v. Denham*, 1804). The wording in the attorney's brief accused Denham of injuring the reputation of Dupassau and damaging his business relationships among the citizens of the territory. Denham was alleged to have told others that Dupassau had stolen his hogs and he could prove it. At this point, the word slander

was used throughout the plea and no further reference was made to trespass. No judgment was included in the record.

Another aspect of slander in Mississippi was that defendants were arrested and posted bail until the trial could be held. One example was *Mellingen v. Burris* (1805). The recorder of the mayor's court wrote that the case was an action of slander brought to recover damages for words spoken by the defendant and the defendant was held to bail of $150.

In another case, William Robinson complained that John Robertson openly had called him a thief, declaring that he should be hanged for breaking open the desk in the firm of Wallace and Robertson and stealing about $100 (*Robinson v. Robertson*, 1805). The crime committed was said to be trespass on October 13, 1804, while the declaration called the offense the crime of slander. Curiously, what appeared to be a theft ended up in court tried as slander. The attorney Edward Turner, soon to be a judge, and the marshall Samuel Brooks, soon to be involved in a libel suit, were called for depositions. No trial papers were included.

Maj. Isaac Guion was one of the first to bring a United States detachment which included Marschalk, to Natchez, arriving there in December 1797, and he was the first to raise the American flag there. He was honorably discharged in 1802 and settled in Natchez. He married Sarah Lewis, who had been born in the Florida Territory, and whose family had been granted land in Natchez. They had four sons. One of their sons John Isaac Guion became a lawyer and judge in the Mississippi Territory and the interim governor after the resignation of Gov. John Quitman in 1851. Maj. Guion's reputation

suffered for a time when Aaron Burr stayed at his home while awaiting trial for treason (Rowland, 1925). However, while there were rumors, there was no connection proved between Burr's plans and Guion. The only proven connection between the two was that they fought together in the Revolutionary War. Therefore, Maj. Guion seemed to be an unlikely candidate to be in Adams District Court filing a slander suit.

Maj. Guion's attorney was former judge Seth Lewis, who filed a declaration of trespass against Simeon Hook in February of 1805 (*Guion v. Hook,* 1806). Hook had accused Guion of larceny in front of other citizens of the territory and Guion claimed injury to his reputation, asking $4,000 in damages. The jury found for Guion and awarded him $50 plus court costs.

In the Guion case, the language of the declaration was similar to the previous cases in the territory. The plaintiff was said to be an honorable citizen "since his nativity" and the slanderous spoken words were "scandalous, opprobrious, and malicious English words." The spoken words alleged great injury to his reputation and to have disgraced him among the citizens of the territory. No laws or prior cases were mentioned in support of the lawsuit.

During this time in the United States, the capital was moved to Washington, D.C. and the Library of Congress was begun.

Mississippi's first territorial delegate to the U.S. Congress, Narsworthy Hunter, had been a lobbyist in Washington. His other activities had included secretly presenting West's first petition to Claiborne in Congress, inflating population figures, and telling other members of Congress that the citizens of the territory could govern themselves

(Carter, 1937). Hunter also served in the Mississippi militia. He was elected to Congress as the Mississippi delegate to the Seventh Congress where he served from March 4, 1801 through March 11, 1802 (Congressional Biographical Directory, n.d.). Hunter died after only a year's service as delegate and he was buried in the Congressional Cemetery in Washington, D.C.

In the Mississippi Territory, the need for a new public printer was addressed in a letter from Claiborne to James Ferrall, printer for the territorial legislature (Carter, 1937). He wrote to Ferrall that the secretary for the territory was supposed to keep the printer supplied with copies of the acts that were passed. Claiborne noted there was a considerable delay in Ferrall receiving the copies to print and he wrote, if there was anything in his power that he could do to assist with the printing of the laws, Ferrall need only ask.

The judiciary, specifically Chief Justice Seth Lewis, had been an earlier casualty of the political war. Some of the lawyers who were unhappy with Claiborne had complained about Lewis. The legislators joined the lawyers and threatened to impeach Lewis; consequently, he resigned. Lewis stayed in Natchez as a practicing attorney until 1809 when he moved to Louisiana.

Two important positions remained to be filled. Thomas M. Green was named as the new delegate to the U.S. Congress. Thomas Rodney had come to manage the Natchez land office. President Jefferson wrote to Rodney to offer him the judgeship, asking Rodney to decide which office he preferred (Carter, 1937). Rodney chose to be a judge.

The Thomas Green family moved to the area from Virginia. Thomas Green, Sr. and Elizabeth Marston married in 1714 and had 10 children. Their son Thomas Marston Green was born in 1723 in Virginia and moved with his wife, Martha Wills, to the Natchez area in the mid-1760s. Five of their sons, Abner, Thomas, Jr., Everard, Abraham, and Henry, helped make many important decisions in the Mississippi Territory. They were helped by their allies, Anthony Hutchins and Cato West, forming the faction who first opposed Gov. Sargent.

Thomas Green, Sr. had two sisters who had married into the Clay family. Martha married Charles Clay and Lucy married his brother, Henry. Henry and Lucy had several children and one of them, Henry, became a U.S. Senator from Kentucky.

One of Thomas, Sr.'s daughters married Cato West. And one of Cato's daughters married Judge Edward Turner, who, at the time, was the land commissioner.

One of the daughters of Thomas Jr. married the son of Anthony Hutchins, but the couple ended up in a bitter divorce which did not split the political faction. Thomas, Jr. had another daughter, Laminda, who married the military hero of the Battle of New Orleans, Thomas Hinds. The strengthening faction not only had local power but had added war heroes and national connections to the family. They were early settlers, major landholders, Congressional delegates, attorneys, and local government officeholders. Just the connection with the land register alone caused other area residents to cry favoritism in land claims.

Thomas Marston Green, Jr., who had been elected as the delegate from the Mississippi Territory, served in the Seventh Congress from Dec. 6, 1802, to March 3, 1803 (Congressional Biographical Directory, n.d.).

Recognizing the extent of the political influence both locally and nationally of the Green/Hutchins/West faction, Claiborne quickly appointed several of them to offices. Thomas, Sr. was appointed county treasurer for Jefferson County, and his son Abner was appointed treasurer of the territory and a justice of the peace. Cato West was appointed secretary of the territory and, later, was acting governor of the territory. The group continued to be important in politics in the territory until 1809 when a governor was named who chose others for political appointments. However, the group had a new member, George Poindexter, who would prove to be an important citizen, politician, and libel litigant. The influence of the faction would be stretched into statehood and beyond.

George Poindexter was born in Virginia into what had been a wealthy family. George's father died when George was 16 and, unfortunately for his financial future, George was the youngest son. An even split of family assets would not have been profitable either, since there were 13 children. George's brother, a Baptist minister, gave George what schooling he could do personally, but George soon split with the church (Swearingen, 1934). George studied law and practiced for a short time in Virginia, but moved to the Mississippi Territory in 1802.

One of Poindexter's early cases in the territory involved slander. He represented tavern owner Patrick Connely who accused James Dunwoody of trespass (*Connely v. Dunwoody,* 1803). Connely had come to the territory in the late 1790s. He bought and

sold some land in the Natchez area but, later, he was arrested, imprisoned, and tried for felony larceny. He was acquitted and then sued Dunwoody for filing charges against him. Poindexter wrote that Dunwoody had brought the charge of felony larceny against Connely maliciously and with the intention to hurt and injure Connely's character and reputation among the worthy citizens of the Mississippi Territory. Connely "had been kept in prison for a long time, two days, and been greatly injured in body and mind." Connely asked for $5,000 in damages.While the outcome of the law suit has not yet been found, it is important to notice that Poindexter represented clients who believed they had been slandered soon after his arrival in the territory.

Two other cases involving slander were heard in Adams County Court that year. In October 1803, attorney James Wallace represented Essex Capshaw in a slander action against John Steen (*Capshaw v. Steen,* 1803). Capshaw claimed that Steen had damaged his reputation by saying that Capshaw was guilty of "felony, theft, swindling, cheating, and that he was part Negro." Steen also alleged that Capshaw's "oath could not be admitted in any law suit or condoned by white men." Wallace asked for damages of $950 for his client. No judgment was included in the file. Several of the slander cases may have been settled out of court or may have been won through default as cases of other types were.

The second case involved slander of a woman. She and her husband sued Joseph Strickland for trespass (*Quetzles v. Strickland*, 1803). Strickland allegedly said that Maria Quetzles was guilty of "whoredom" and fornication. This "rehearsed proclamation was published" before worthy citizens of the territory on more than one occasion, thus

causing “scandal, infamy, and disgrace” among her friends and neighbors. The plaintiff’s attorney was again James Wallace who asked for $999 damages. The outcome is not in the record. However, Strickland would soon be sued for libeling the mayor of Natchez.

Gov. Claiborne’s tenure was known for two things (Haynes, 1973a). One was the settling of many land claims that had been in dispute when he arrived. The other, also a land dispute, was settlement with Georgia over the northern part of the territory. Georgia sold the land to the territory for one and a quarter million dollars.

Yet another land problem developed that held the possibility of causing many financial troubles to the merchants of Natchez. “By express, the following intelligence arrived which we hasten to give to our readers,” was the headline printed at the *Mississippi Herald* office by Andrew Marschalk on Thursday night, Oct. 28, 1802. A letter was quoted from “a gentleman in New Orleans” who wrote, “Yesterday the Intendant issued orders, not only for shutting the port of New Orleans against American vessels coming with cargoes to sell, which was expected, but even to prevent their deposit--a step that must produce infinite embarrassment, as well as much loss to many of the citizens of the United States. Two boats that arrived from above yesterday, with flour, were not allowed to land; consequently, cotton, etc., coming from Natchez will be in the same predicament” (Marschalk, 1802).

Marschalk had begun the *Mississippi Herald* as a Federalist newspaper. On the other political side was James Ferrall, who was a Jeffersonian Republican (Haynes, 1973a). By 1804, Timothy and Samuel Terrell had begun printing the *Mississippi Messenger*.

However, politics were changing in the territory. Claiborne's plea to Washington that Tilton was unfit for judicial service finally brought Tilton's letter of resignation in October of 1802 (Carter, 1937).

After the resignation of Tilton, the members of the territorial bar petitioned Congress for several changes (Carter, 1937). They requested that a land office be opened, that officials of the territory be appointed by the governor with the advice and consent of the Territorial Council, and that judges be similarly appointed. Darius Moffatt, the printer mentioned in Marschalk's 1837 letter, and James Ferrall had been appointed to print the laws and handbills. Marschalk may have begun to see that printing a Federalist newspaper in the time of changing politics was a liability.

David Ker petitioned for the vacancy left by Tilton (Carter, 1937). In his petition he wrote, " It would give me pleasure to avail myself of the opportunity which a public station affords of spreading and cultivating the love of Republican governments" (Carter, 1937, 5:129). Ker was appointed first as a sheriff in Jan. 1802, and then commissioned and confirmed as a judge by President Thomas Jefferson, through James Madison who was secretary of state, on Jan. 25, 1803.

Ker had an interesting background in education. He was born in Ireland and attended Trinity College in Dublin. He moved to North Carolina where he founded the University of North Carolina. The university began with two buildings and one professor, Ker, in 1795 (UNC Library, 2005). After he moved to Natchez, Ker founded the first public school for girls in Mississippi in 1801.

Peter Bryan Bruin, David Ker, and Thomas Rodney were named the territorial judges. Claiborne could concentrate on settling land disputes, surveying Indian land boundaries, and trying to keep the West/Green faction in line. He also had a running feud with John Steele, the territorial secretary under Sargent and then interim governor until Claiborne had been appointed. Steele had been reluctant to turn over copies of the existing laws and financial records and delayed their delivery to Claiborne for months. Steele hoped that, despite his bad health, he might have been considered for governor or, at least, to have kept the job of secretary (Carter, 1937).

However, national politics and a large land purchase would ultimately shape Claiborne's future and introduce new possibilities for commerce to the Mississippi Territory. The Louisiana Purchase was a response, in part, to the closing of the port of New Orleans. President Thomas Jefferson dealt successfully with a question of constitutionality and fought opposition in the United States to conclude the purchase. On Oct. 20, 1803, the Senate passed the proposal and, on Dec. 20, the sale was closed. Then, in Jan. 1804, President Jefferson wrote a message to Congress to tell them that Gov. Claiborne of the Mississippi Territory and Gen. James Wilkinson had been appointed the commissioners to take possession of the Louisiana Territory for the United States. Claiborne assumed the duties of governor of Louisiana the day of the closing (Carter, 1937).

Claiborne remained governor of the Territory of Orleans until it became part of the United States in 1812. He was elected governor and served two terms and then was

elected to the U.S. Senate from Louisiana. He did not live to take his Senate seat, however, because he died Nov. 3, 1817.

Territorial and Legal Expansion, 1804-1807

The Mississippi Territory expanded from 1804-1811. The land that became the northern part of the territory was bought from Georgia by the United States. While settlers were moving into areas left by the Indians, many people began looking to annex the Spanish land along the Gulf Coast. These years were the height of factional and party differences and Gov. Claiborne found himself aligned with one faction while the other side did everything it could do to cause his downfall. The appearance of Aaron Burr on the Mississippi River with a flotilla of boats and secretive plans split the factions even more.

In the midst of the factional fighting came new territorial judges who hoped to help settle both the concerns of the people and the land disputes. Unfortunately, the judges who came were soon appointed to go elsewhere or died and thus left the territory to sort out its own problems. However, one judge, Thomas Rodney from Delaware, stayed and helped the territory through its rough times of factionalism. Rodney knew the law and he began to understand the people. He was also interested in what had happened to the territory beforehand, and uncovered some early libel cases as well as ruling on other libel cases while he sat on the bench.

One thing Rodney noticed during his tenure was that government used printers and newspapers to further its own agenda. Officials used newspapers to explain their sides of

issues. Even some grand jury indictments were used to further political and factional issues.

As then secretary of the Mississippi Territory, Cato West became the acting governor late in 1803. West was born in Halifax, Virginia, in 1765. West traveled with Thomas Green, first to Georgia, then to South Carolina, and, finally, to the Natchez district in 1782 (Natchez Court Records, 1767-1805). There he married Martha Wills Green, the daughter of Thomas Green, in 1783. The couple had ten children.

West had been chosen to write several of the early memorials from the inhabitants of the Mississippi Territory to Congress. He also wrote newspaper articles and important pieces of legislation. He was the chairman of the committee of citizens who sent Narsworthy Hunter with the petitions to Congress.

When West became the acting governor, he wrote to U.S. Secretary of State James Madison about the need for money with which to run the territorial government and to suggest that the recently passed laws of Congress be distributed to those in the territory who needed them (Carter, 1937). Madison replied through another official that West could count on money for a clerk to help West with his duties (Carter, 1937). Later, West officially informed Madison about the death of Judge David Ker.

While the Mississippi Territory was evolving and expanding, other historical events were taking place in the United States. Meriwether Lewis and William Clark set out on their expedition of the continent beyond the Mississippi River. Lewis had some interesting ties with Mississippi printing. He served with many of the territorial residents in the militia and some of his descriptions from the expedition were printed in

Mississippi. Elsewhere in the United States, Alexander Hamilton died from a gunshot in a duel with Vice-President Aaron Burr. After the duel, Burr went to Mississippi with some new ideas about how the government of the United States should be run. At the end of the year, Thomas Jefferson was re-elected president.

In Natchez, Timothy and Samuel Terrell printed the *Mississippi Messenger,* which was published from 1804 through August, 1808 (*Union List*, 1970). Andrew Marschalk began the *Mississippi Herald and Natchez Gazette* in 1806. The Marschalk paper was published through 1808, when he changed the name to the *Natchez Gazette* (*Union List*, 1970). The *Gazette* was published until 1818.

The political scene in Natchez in 1804 seemed to have settled into three factions (Haynes, 1973a). The faction representing the views of the Federalists were represented by William Dunbar, John Girault, and Philander Smith.

Philander Smith was a lawyer and judge in the territory. His family came from England and settled in Connecticut in the 1600s. When he was young, the family moved to Natchez. Later, he was elected as a representative to the territorial house from the Adams district in 1804 in an election that saw Smith, John Steele, Lyman Harding, and Ferdinand Claiborne win over other candidates that included George Poindexter. Smith was named speaker of the territorial house of representatives from 1804-1805.

Smith was one of the judges in the early court of quarterly sessions. He was also the foreman of the grand jury in 1807 that investigated and refused to indict Aaron Burr. He was appointed to the territorial finance committee just before the territory applied for statehood.

John Girault was born in London, England in 1755, and died in Louisiana in 1813. He married Mary Spain in 1788 and they had 13 children, all born in Mississippi. Girault was an early settler who had been granted Richmond Plantation in 1790 by the Spanish government.

William Dunbar, scientist, judge, and surveyor, was the most famous of the three. He was born into nobility in Scotland in 1749. He would have been described as a geek had he lived in the present day since he was more interested in astronomy and mathematics than in royalty. At the age of 22, he decided to try his luck across the Atlantic. After several reversals of fortune, Dunbar headed to Natchez where his land was overrun first by the Tories and then by the Spanish. He stayed in Natchez and developed a new kind of cotton gin that was used in the Natchez area for a long time.

Dunbar married Dinah Clark and subsequently three children were born at his plantation near Baton Rouge and another six children were born at The Forest, a mansion in Natchez. The mansion was said to be the earliest in Natchez, built in 1792. The Spanish rulers of Natchez asked him to be their official surveyor of the borderline between Natchez and Spanish Louisiana.

Dunbar was a naturalist and wrote about his observations. Thomas Jefferson used much of the data that Dunbar sent him to persuade Congress to favor the Louisiana Purchase. Dunbar had a laboratory at the Forest and began analyzing soil, hurricanes, plants, and animals. The territory had a link with science and culture when his writings were published nationally.

Dunbar's surveys were used in many land cases found in the Natchez County Court Records. Winthrop Sargent named him probate judge, and later, the first justice of the court of general quarter sessions of the peace. Dunbar was the speaker of the territory's house of representatives for the term just before Philander Smith became speaker. William Dunbar died on Oct. 13, 1810, just as The Forest was being renovated.

The fact that Dunbar continued to be a Federalist was surprising to many people. While serving under the Federalist governor Winthrop Sargent, Dunbar wrote, "I am on as good terms as it is possible to be with a man of his phlegmatic and austere disposition. However good his intentions, it is impossible that a man so frigid and sour can give satisfaction to a free people" (Kane, 1947, p. 116).

The second faction was the Green family with the new additions of Edward Turner, William B. Shields who came to the area with Rodney, John Shaw who was a doctor, and, until his death, Judge David Ker (Haynes, 1973a). It was the encouragement by this group that led the Terrells to begin the *Mississippi Messenger* (Haynes, 1973a).

Edward Turner was born in 1778 in Fairfax, Virginia, but his family moved to Kentucky when he was eight years old. The Turners bought a farm west of Lexington and Edward was educated at schools there and studied law at Transylvania University. Edward moved to the Mississippi Territory in 1802 and was joined by his older brother Fielding, also a lawyer, four years later. Edward was married to a daughter of Cato West, and, after her death, he was married to Eliza Baker in 1812. Fielding married the daughter of Winthrop Sargent.

Turner was first the private secretary to Gov. Claiborne and then was appointed as land register for the territory west of the Pearl River. At various times he was also clerk of the court, city magistrate in Natchez, and a representative of the general assembly. He was appointed to look over the laws and he wrote the second digest of statutes for the territory which was printed by Peter Isler in 1816. His home was built by the Spanish governor, Grand Pre, and there Turner hosted a ball for the Marquis de Lafayette. Turner was described as an "agitator and factional scribbler for newspapers" by Hamilton (1953, p. 161).

The third faction was made of Claiborne and his friends (Haynes, 1973a). The group included the younger brother of W. C. C. Claiborne, Ferdinand, Dr. William Lattimore, and printer Andrew Marschalk. Marschalk had changed from Federalist to Republican and used the *Mississippi Herald* to support the Claibornes.

All factions were concerned about who should be the next governor. While Cato West wanted to be governor, many of the local residents felt differently. West had not been able to get the promised support from the U.S. secretary of state and there were local objections about the way in which the former elections had been held. A memorial to West signed by 12 men, including George Poindexter, petitioned for a redress of grievances charging that legitimate voters in Adams and Wilkinson counties had been disenfranchised (Memorial, Library of Cong.).

President Jefferson offered the new job of Superior Court Judge of the Mississippi Territory to Judge Ephraim Kirby from Connecticut. Kirby was in the calvary during the Revolutionary War and was wounded 13 times. He compiled the first volume of law

reports printed in the United States for the Superior Court of Connecticut. Although he was ill, he went directly to Fort Stoddert north of Mobile, and is given credit for beginning the foundation of a new court system for what would become the state of Alabama (Congressional Biographical Directory, n.d.). He lived only a few more months and died leaving a wife and eight children in Connecticut. Today, he is still recognized as the father of national law reporters.

In late January and early February 1805, surveyor Isaac Briggs wrote several letters to President Jefferson. He wrote of the three factions that effectively kept the territorial legislature from accomplishing any important work and pointed out that they contested elections (Carter, 1937). One faction used the newspaper, the *Messenger*, to memorialize the late Judge Ker and to promote causes which often were not consistent with the views of the people, Briggs wrote. He suggested that Robert Williams be appointed as governor. He wrote that he thought Williams was well respected and could help bring the factions to work together for the good of the territory.

Judge Rodney wrote to the U.S. secretary of state, worried about the politics of the factions as well as the condition of the judiciary (Carter, 1937). U.S. Treasurer Albert Gallatin passed a letter from Robert Williams to President Jefferson (Carter, 1937). The letter was about the sale of some land by West. It seemed that each of the factions wanted to be heard in the national capital.

While the territory waited to hear who the next governor would be, there were some important libel cases being litigated in the United States that would affect libel decisions in the territorial courts. In *People v. Croswell* (1804), the New York court was equally

divided on whether the defendant was allowed to use truth as evidence in his defense on a libel indictment. The opinion of the court at trial was that jurors were confined strictly to considering facts alone and were not to consider the relevant law. The court based its decision on cases from England's Star Chamber and on Blackstone's writings.

In 1806, the question before a New York court was whether the defendant could state the general character of the plaintiff to mitigate damages (*Foot v. Tracy*, 1806). The judges wrote that the safest thing to do was to exclude such testimony about the character of the plaintiff. Since there was no precedent for the decision, the court was divided. Mississippi courts settled the matter soon afterward in the Marschalk libel case using common law.

Commonwealth v. Clap (1808) was an important libel case in Massachusetts. William Clap was indicted for putting up posters about Caleb Hayward, an auctioneer. The posters stated, "Caleb Hayward is a liar, a scoundrel, a cheat, and a swindler. Don't pull this down." The defendant had been convicted of libel by a jury. He had asked to use the truth of the publication in his defense, but the motion was rejected.

Editor William Duane was back in court in 1809 after having been indicted for another libel against Gov. McKean in his official capacity. The law passed by the Pennsylvania Assembly stated, in part, that no one would be subject to prosecution by indictment who had published papers examining the proceedings of the legislature or for investigating the official conduct of men who served in a public capacity. The second section of the law allowed the defendant who was prosecuted for libel to plead truth for justification or to give truth as evidence.

Robert Williams was named the new governor of the Mississippi Territory. He received his commission in a letter from Secretary of State James Madison and Williams began his duties in March of 1805 (Carter, 1937). Since Williams was already on the board of commissioners of the territory, there was some question as to whether he should hold both positions.

That question was asked of Secretary of the Treasury Albert Gallatin in a letter from surveyor Isaac Briggs who first had recommended Williams to President Jefferson. “It is earnestly the wish of all concerned that he should--it is the wish of the people generally, whose confidence in him is almost unbounded, and their joy at his new appointment universal” (Carter, 1937, 5: 399). The “wish of the people” for the two positions for Williams was to change very soon.

Gov. Williams was born Oct. 30, 1766, in Prince Edward County, Virginia. He was the son of Nathaniel B. Williams, Jr., a lawyer and planter, and Mary Ann Williamson. Robert Williams married Elizabeth Winston on Oct. 2, 1790, in Stokes County, North Carolina. She was the daughter of Joseph Winston, who fought in the Revolutionary War, and Elizabeth Lanier. The Williams family moved from Virginia to North Carolina. Both Robert and his brothers were involved in politics and Robert was a United States representative from North Carolina until his appointment as governor of the Mississippi Territory. His father-in-law, Joseph Winston, and his brother-in-law, Samuel L. Winston, were soon to be heavily involved in events in Mississippi.

Robert Williams became governor on May 10, 1805, and one of his first duties was to select nominees for his council. In a letter to President Jefferson he asked to have his

nominees approved. Jefferson wrote back, “The distractions in your legislature are not well understood here,” and told Williams to appoint whomever he wanted as long as they were not any of the old Federalists who had been associated with the previous government (Carter, 1937, 5: 400).

From the beginning, Williams told the President that he would remain in the territory only until the numerous land problems were settled (Carter, 1937). The first difficulty that Williams encountered was the hostile attitude of Cato West who still was upset that he had not been named governor. West’s son-in-law, Edward Turner, was relieved of his duties in the land office thus angering the entire West/Green faction. Also during the conflict of the time, Thomas Marston Green died, after serving only a short time as the territory’s delegate to Congress.

Cato West, still secretary of the territory, refused to turn over any of the official papers to Williams. West even took the papers to his home. Williams wrote the President and asked that West be removed and that Thomas H. Williams, no relation to the governor, be appointed as secretary of the territory (Carter, 1937). Isaac Briggs had come to the same conclusion and wrote the President asking for the appointment of Thomas Williams as well (Carter, 1937).

After he angered the West/Green faction, Gov. Williams then asked Judge Rodney to move the location of the court. Rodney’s answer was to say this was “the first time ever that a governor had tried to dictate what the Supreme Court and its officers should do” (Carter, 1937, 5: 408). However, it seemed that the legislature had removed the Board of Commissioners from their building and the Board was now throwing out the

court. In Rodney's response came the first mention of Judge Bruin who, Rodney wrote, was too sick to discharge his duties as judge.

West finally delivered the official seal of the territory, without the official papers, to Williams in June, about three months after Williams arrived (Carter, 1937). Then West resigned at the end of June in a letter to James Madison, but still no official papers were delivered by West until July 30, 1805. Williams had written the President about the lack of official papers and mentioned that Judge Bruin was unable now to go to his office (Carter, 1937). Still short one judge, someone was sought for the position. Finally, George Mathews of Georgia was appointed.

Thomas Hill Williams asked to be relieved of his duties as secretary of the territory at the end of three or four months. Isaac Briggs asked Secretary of the Treasury Albert Gallatin to appoint Samuel L. Winston, the brother-in-law of Robert Williams, as the territory "receiver of monies" for the area west of the Pearl River (Carter, 1937).

Thomas Hill Williams had been the acting governor for some parts of two years. Later, in 1810, he became the collector of customs in New Orleans, but he returned when Mississippi became a state. He served as one of Mississippi's senators from 1817-1829 (Congressional Biographical Directory, n.d.).

In 1804, a lawyer from Frankfort, Kentucky, Harry Toulmin, applied to James Madison for the judicial position of the deceased Ephraim Kirby in the growing Tombigby[*sic*] area of the territory (Carter, 1937). Toulmin became the second Superior Court judge of the Mississippi Territory. One of the first letters that he wrote requested land and money for schools in Washington County (Carter, 1937).

It came as no surprise that Harry Toulmin was concerned about education. He became president of Transylvania University in Lexington. The university was begun in 1780 and was known as the first college west of the Allegheny Mountains. He became secretary of state under Kentucky Gov. James Garrard from 1796-1803. Later, Toulmin helped found the University of Alabama. Toulmin became friends at Transylvania with the head of the first medical school in the West, Dr. Samuel Brown, whose words would be used in newspaper articles in the Mississippi Territory. Those words were used as evidence in the libel trial of printer Andrew Marschalk.

Toulmin was a prolific writer. He wrote *A Description of Kentucky*, published in London in 1792, and the *Laws of Kentucky* published in Frankfort, Kentucky in 1802. Three years after he moved to the Mississippi Territory, in accordance with the act passed by the general assembly, he completed the first digest of the laws of Mississippi. The printing of the laws was done by Samuel Terrell who completed them in September 1807. After some revision, the territorial assembly called the printed laws *Toulmin's Digest* (Rowland, 1925).

Since there was no newspaper printed in the eastern part of the territory, Washington County newspapers were "smuggled in" from New Orleans. Thomas Malone, the Washington County clerk, was angry about the newspapers coming in illegally and he threatened to sue for libel in admiralty against publishers Bradford and Anderson of New Orleans (Pickett & Owen, 1851). Newspapers printed in Washington County came much later than those in the western part of the territory.

Gov. Robert Williams continued his administration hoping to finish with the land problems so that he might return to North Carolina. While Judge Rodney was organizing the supreme court of the territory, there seemed to be some question as to the identity of the court clerk. Most of Rodney's time there, his clerk had been Theodore Stark. Gov. Williams apparently wanted Stark out and named James Dunlap as Stark's replacement (Shields, 1930).

Stark hired attorney William B. Shields who filed a motion against Williams to show cause why the governor should not be sued for Stark's removal. Seth Lewis, the attorney general, published and circulated an opinion that Dunlap was the clerk of the court (Kane, 1947). The motion never reached a decision in court, but the question of who made the appointment of court clerks was not settled for some time.

Other public officials in Adams County were in court too. In March 1806, a grand jury, R. M. Morrow, foreman, indicted Joseph Strickland for libel (*Mississippi Territory v. Strickland,* 1806). Strickland was the same man sued in the 1803 trespass case by Joseph and Maria Quetzles. According to the plea written by attorney George Poindexter, Strickland had injured and vilified the good name and reputation of Samuel Brooks, the mayor of Natchez. It was charged that Strickland called Brooks "a corrupt and unjust official who was little fit to be mayor and to be trusted by Governor Williams." Poindexter wrote that Strickland had written Gov. Williams saying he had positive proof against Brooks. Strickland alleged that Brooks had mismanaged and embezzled money in his official capacity. Brooks received bribes in office as well, according to Strickland.

Such accusations, Poindexter wrote, "offended the statute and disrupted the peace and dignity of the Mississippi Territory" (*Territory v. Strickland*, 1806).

The words used for libel were similar to those used in cases in Mississippi previously. The published words, written and spoken, were said to injure the good name and reputation of the plaintiff. The words were meant to bring him into contempt, "hated infamy," and disgrace while Brooks was labeled as a corrupt and unjust official. The case file had only George Poindexter's court filing to describe the situation, but it did cause Strickland to resign his official position immediately. By the time it got to trial before Judge Rodney, Poindexter had agreed to a *nole psc,* or *nolle prosequi* as it is currently known, meaning that the case would not be further prosecuted (Grifis, 1996; Hamilton, 1953).

Samuel Brooks was described as a merchant who stayed away from the factions even though his son married Anthony Hutchins' daughter. He was the first mayor of Natchez and the chief justice of the Adams County Orphans Court. He was described as a mild-mannered, popular Republican leader (James, 1968). The same year that the libel suit was filed, Brooks was one of the judges who had ruled against Strickland in *Strickland v. Woisiger* and Brooks assessed Strickland a fine of $116.49 (Transcription of County Archives of Mississippi).

Just after the conclusion of the Strickland trial, Gov. Williams chose to leave for North Carolina. Secretary of the U.S. Treasury Albert Gallatin asked him not to leave, believing the land problems might be settled more quickly if he stayed (Carter, 1937). However, Williams left in April 1806, leaving Cowles Mead, the newly appointed

secretary succeeding Thomas Hill Williams, in charge of the territory. Clark and Guice (1989) described the Old Southwest during this period of time as being like most frontiers, "the ambitious and volatile personalities both colored and obscured territorial developments" (p. 207). Later on, President Thomas Jefferson wrote Gov. Williams that "I have seen with regret the violence of the dissensions in your quarter; it seems the smaller the society, the bitterer the dissensions into which it breaks" (Carter, 1937, 5: 573).

A collector of monies was being sought, and Dr. William Lattimore made some recommendations. One of the men he suggested was printer Andrew Marschalk, editor of the *Mississippi Herald.* "Mr. Marschalk is esteemed, a very honest as well as industrious man," he wrote to Secretary of the Treasury Gallatin (Carter, 1937, 5: 452). Marschalk did not receive the commission and John Henderson was named to the post. However, Marschalk had some other ideas for his future, and he would make requests toward that future soon afterward.

The incident concerning the clerkship of Theodore Stark was not unique. While the West/Green faction was trying to make life difficult for Gov. Williams, other officeholders were trying to cause additional problems. The others included Cowles Mead, George Poindexter, Thomas Rodney, Ferdinand Claiborne, and William B. Shields, whose geographical center of operations was near Natchez in the small town of Washington.

Cowles Mead was born in Virginia in 1776, the son of William Mead and Martha Cowles. Mead was educated in England and returned to practice law in Virginia, but then

he moved to Georgia. Mead represented Georgia in the Ninth Congress for eight months in 1805. However, his election was contested by his opponent, Thomas Spaulding and Mead lost his seat. Nevertheless, Thomas Jefferson appointed him as secretary of the Mississippi Territory on Jan. 20, 1806.

Mead fought a duel with Capt. Robert Sample in Louisiana and was wounded in the right thigh thus making him lame for the rest of his life (Rowland, 1907). Not long after the duel, Mead was married to Mary Lily, the daughter of Abner Green, on April 2, 1806. The only child mentioned was born in 1818 and named Cowles Green Mead.

Mead settled in Mississippi and was very active politically. He served as secretary and acting governor concurrently in the territory during 1806-1807 and held other offices in Mississippi including member of the state house, delegate to the state convention, and state senator (Congressional Biographical Directory, n.d.). Mead died of heart disease in 1844 at his plantation Greenwood, and he was buried there next to Mary Lily, who died in 1834. Their son, who died in 1849, is buried there also.

Trouble had been brewing in the office of surveyor Isaac Briggs. Briggs had encountered trouble with his crews because they felt their work in the Orleans Territory was useless. Briggs wrote to U.S. Treasurer Gallatin that both men on the crews and also many citizens felt that the area would probably be Spanish again soon (Carter, 1937). About nine months later, one of the surveyors' crew, George Davis, filed a formal complaint against Briggs. Gallatin wrote Briggs about the problem and asked Thomas Hill Williams and William Dunbar to investigate the charges (Carter, 1937).

The territorial attorney general, George Poindexter, was glad to bring a complaint against Briggs. Probably Briggs, who had recommended Robert Williams for the position of governor, was seen by the factions as being on the other side politically. However, just prior to the investigation, another matter had to be settled in court and that was a libel case involving the grand jury, two of the surveyor's crew, and the *Mississippi Messenger.*

The case was tried in Adams County Circuit Court in October 1806 before Judge Thomas Rodney. George Davis and Charles DeFrance, surveyors on Brigg's crew, had actually tried to come to the defense of Briggs in the face of a grand jury indictment against Briggs. The *Mississippi Messenger* printed an article giving the surveyors' defense of Briggs against the grand jury presentment. The libel trial of the *Territory v Davis and DeFrance* against the Grand Jury began Oct. 23, 1806. Court records were available for the pleadings and Judge Rodney's notes of the trial were edited by Hamilton (1953).

Poindexter opened the proceedings by citing Blackstone on libel. He pointed out that the officers of the territorial government had been appointed by the United States government. But shouldn't the local government be permitted through the grand jury to make notice of the misconduct of local officials, he asked. The questions to be settled were whether the accused were guilty of having published the libel, and whether the libel was criminal. He read the presentment of the grand jury against Briggs.

"Terrell, (Timothy) the Printer," was the first witness and he testified that the alleged libel was printed in his newspaper. The defendants had obtained the manuscript from clerk Theodore Stark. Poindexter read the article as it appeared in the newspaper.

Stark, according to the printer, delivered the grand jury indictment to him and Terrell was told that it was done at the request of the jury.

George Poindexter labeled the two surveyors as men with vicious, evil, wicked minds and malicious dispositions. They were trying to injure and vilify the good names of the jurors who were peaceable and worthy citizens. The surveyors were bringing the jurors into great contempt and disgrace and to represent them as corrupt jurors. The false and scandalous libel was published in number 62 of the *Mississippi Messenger*, printed and published by Timothy and Samuel Terrell in Washington on Oct. 20, 1805. It reflected poorly on Isaac Briggs, surveyor general of the Mississippi Territory, who often was absent to attend to business in the Orleans Territory.

Davis and DeFrance saw it as their public duty to take the opportunity to make some observations on the statements from the grand jury presentment when the document was published in the newspaper. They said they would show that the information in the presentment was false and malicious.

On the first charge, of Briggs frequently being absent and not attending to the duties of his office, the two surveyors said that the fabricator of the charge was ignorant and pointed out that Briggs was also the surveyor general of the Territory of Orleans. The duties must necessarily divide his time. It appeared to the defendants and "to every other person except the ignorant and unreasonable jurors," that there were no sufficient grounds of complaint in the first charge against Briggs.

On the second charge, neglecting to appoint a sufficient number of deputy surveyors, the defendants asked whether each of the gentlemen who signed the

presentment could come forward and say that he was a competent judge of the sufficient number of deputy surveyors who were needed.

On the third charge, the defendants said it appeared that the jurors were saying Briggs lacked the necessary qualifications for the position.The charge was groundless as was the next charge that the deputy surveyors also lacked appropriate qualifications.The defendants claimed these two charges were evidence that the jurors were “disqualified” to judge the abilities of the surveyors.

The last charge was that the surveyors were augmenting their prices. The defendants explained that the work was divided between the surveyors who actually surveyed the lines and the surveyors who did the more troublesome task of making the complicated calculations needed. It took an amicable department, they said, to divide and then to do the work. The surveyor general could not attend to “all the extensive duties of his office.” Would anyone of common understanding, they asked, undertake to say that the surveyor general, by adopting the only mode that could be devised given the price allowed by territorial statute, has injured the public trust?

The conclusion from the defendants was that “the whole of the charges appeared to be so extremely vague and unfounded that nothing but a combination of the utmost malice and falsehood could have fabricated them.” They added that the grand jurors, a respectable portion of the territory, “should not submit to become the organ through which any individual might vent his spleen.” The statement was an alarm sounded of future territorial libel trials.

Poindexter portrayed the case as one of degradation of public authority that should be punished because the libel had been both published and circulated. Lyman Harding argued for the defendants that the publication was not a libel because they were writing a response to what they had read. By statute, nothing could be published about the court proceeding until after its presentment, but the manuscript had been published and the defendants had a right to reply to it. An important point made by Harding was that the grand jury had not taken an oath of silence. At that time, a grand jury had more investigative powers and was expected to take more responsibility to report what they saw as citizens (Hamilton, 1953).

Another lawyer for the defendants noted that they read the article and decided to answer the charges printed. Again Blackstone's definition was used concerning the definition of libel and libel's effects on public officials. The lawyer's conclusion was that what the law does not forbid is lawful. At that point, the court adjourned until the next day (Hamilton, 1953).

Seth Lewis, another attorney for the defendants, suggested that the grand jury, in overstepping its bounds, might itself be libelous. The instant that the presentment was published, any person might say or write what they pleased about it. Finally, the case was given to the jury. After an hour of deliberation, the jury returned a verdict of not guilty (Hamilton, 1953).

Hamilton, the editor of Rodney's case notes, wrote that the law at the time allowed a grand jury to investigate only civil crimes that might have been adjudged to be criminal. Unless there had been a statute to allow them, the jury could not release a report that

reflected on the character of a public official unless there was also an indictment. The editor believed that, particularly in the Mississippi Territory, grand juries used presentments for public reprimands and even for political propaganda (Hamilton, 1948, 1953).

Editor Hamilton was correct in his assessment of the political uses of grand jury presentments. Public reprimands often appeared as indictments in cases of libel. Officials sometimes used indictments for revenge on printers who may have been critical of their actions or decisions. However, the most public case testing this theory would not be heard until 1815. Judge Rodney still had some local common law precedents to develop with his decisions first.

Since the questions for the court had been whether the accused published the libel and whether the libel was criminal or not, there remained one more question. Briggs had appeared before the grand jury and Davis and DeFrance had written in reply to the charges against Briggs. After this, the two surveyors were indicted for libel.

Judge Rodney's ruling was a warning to the future of libel defense in the Mississippi Territory. He chastised Poindexter for unnecessarily trying to prove that the presentment was true (Hamilton, 1953). Poindexter, according to Rodney, should have prosecuted by proving the publication had printed the libel and that the words printed were libelous.

Rodney pointed out what seems to have been well known at the time that Poindexter and Briggs were not friends. Briggs, in recommending Robert Williams for the job of governor, angered the Green/West faction that included Poindexter. Rodney

believed and said so several times in his notes that Poindexter's desire to get back at Briggs cost him the two trials. Rodney wrote that eight of the twelve jurors were in favor of finding the defendants guilty, but were convinced otherwise by juror Maj. Guion and three others (Hamilton, 1953). Consequently, the surveyors were found not guilty of libel against the grand jury as well as not guilty of libel in the newspaper article.

Aside from an inspirational speech given to the legislature in Dec. 1806, Mead's administration is chiefly remembered for his action during the Aaron Burr incident in Jan. 1807. Robert Williams had been ordered to return to the territory by James Madison in a letter dated Nov. 4, 1806 (Carter, 1937). The appointed judge, George Mathews, was reassigned by Congress to the Orleans Territory after being in the Mississippi Territory for one month. To add to the problems of the judiciary, Judge Bruin's condition was worsening.

Outside the Mississippi Territory, President Jefferson was still trying to quiet the tension with Great Britain while it was estimated by James Madison that the number of impressed U.S. sailors was about 4,028. Despite the tension, both countries passed laws in 1807 against the importation of slaves.

Cowles Mead received a letter from Aaron Burr on Jan. 12, 1807. Burr wrote, "Being on my way down the river, a number of my friends are greatly surprised to hear that my views have been grossly misrepresented and that my approach has been made the subject of alarm to the country." He continued, "The reports that charge me with designs unfriendly to the peace & welfare of this and the adjoining territory are utterly false, are in themselves absurd, & are the invention of wicked men for evil purposes" (Burr, 1807,

pp. 6-7). He assured Mead that he had no intention of disrupting the peace and welfare of the citizens and he would not interfere with the government. He asked Mead to read the letter to the territorial militia.

That was just the beginning of a year of political struggles and fierce infighting in the Mississippi Territory. Aaron Burr's serious troubles began when he killed Alexander Hamilton in a duel, included a trip through the Mississippi Territory, and did not stop until his trial for treason had ended. While the trial was held in the nation's capital, the problems that Burr brought to Mississippi when he landed there rocked the territory, its politics, its officials, and its citizens through the magnification of factional differences. The accusations against the territorial officials were so numerous that, at one point, Gov. Williams asked a grand jury to indict two high level legislative officials and the editor of a newspaper who wrote political articles and editorials in favor of the opposing faction (Carter, 1937).

The disappearance of chief surveyor Isaac Briggs caused many problems in the settlement of land claims. It was said that he was on his way to the national capital to explain the charges filed against him. By Jan. 27, 1807, the territorial legislature wrote a memorial to Congress asking for some relief on the deadlines for settling the land claims and wrote that Briggs was willfully neglecting his duties (Carter, 1937). Briggs did not return to the territory but seemed to have come out of the fray well because, later, he was listed as one of the top managers in the construction of the Erie Canal.

The legislature also pleaded for the additional representation which was already under discussion in committee in Congress. The memorial was signed by John Ellis,

speaker of the territorial house of representatives, and Joshua Baker, president of the legislative council (Carter, 1937).

Soon, events in Mississippi would be concluded in federal court and in an investigation by Congress. The events began with Aaron Burr. Burr was nominated for the vice-presidency in 1801, but the vote ended in a tie for the presidency with Thomas Jefferson. Burr did not want to concede the election and forced the House of Representatives into 36 ballots before Jefferson won (Bowman, 1995). Jefferson rarely communicated with Burr while Burr was vice-president from 1801-1805.

Burr and Alexander Hamilton had an ongoing 15-year feud and, in 1804, Burr challenged Hamilton to a duel. The site was Weehawken, New Jersey, on the same field where Hamilton's son had been the victim of a duel three years previously (*Washington Post*, 1904). Duels, though outlawed, continued until individuals in Mississippi and the nation began taking slander and libel cases into the courtrooms.

Burr was indicted for murder in both New York and New Jersey, but he fled first to South Carolina and then back to Washington to finish his term as vice-president. Burr became involved in a conspiracy with Gen. James Wilkinson who had been in charge of the United States troops in the territory. It was rumored that the two wanted to start a new country in the southwest and name New Orleans as the capital (Bowman, 1995). However, in early 1807, no one was sure of their intentions.

Thomas Jefferson knew that Burr was up to something, and newspaper reports coming from Kentucky hinted at an invasion. Cowles Mead sent the militia to meet Burr when he arrived in the territory. No one could understand Wilkinson's role in the affair

and many thought that he was working directly with Burr to overthrow the country in the name of Spain. Another rumor circulated that Thomas Jefferson knew that Wilkinson was a United States agent who went with Burr only to report Burr's activities back to the President. Abernethy (1949) wrote that Wilkinson deserted Burr and went back to tell Col. Ferdinand L. Claiborne to block Burr's landing in the territory.

According to the *Mississippi Messenger,* Mead asked for Burr's unconditional surrender (Jan. 20, 1807). Burr surrendered and he and his men were taken to the territorial capital, Washington. Since no charges were pressed, Burr and his men were free to do as they pleased in the territory (Abernethy, 1949).

At this point, Gov. Williams returned. No one seemed to know what charges to bring against Burr. However, Judge Thomas Rodney took the matter to court and presented the information to a grand jury.

Judge Rodney wrote about his travels and military service as well as keeping notes about his cases. Much of what is known about Gen. George Washington was written by Rodney who was an eyewitness to many events during the Revolutionary War. After Rodney's death, much of his work was published by Congress. Rodney wrote about his journey from his home state of Delaware to the Mississippi Territory in 1803 and his diary of the trip was made into a book. He was born in 1744, received his education in law, and became a justice of the peace. He was a delegate to the Continental Congress and a colonel in the Delaware militia during the Revolutionary War. Rodney's brother, Caesar, was also a lawyer, a signer of the Declaration of Independence, a member of the Continental Congress, and a soldier in the Revolutionary War. However, Rodney's

decisions in the Burr events contrasted with those of the attorney general of the United States who was Caesar Augustus Rodney, Judge Rodney's son.

Thomas Rodney wrote many early legal opinions in Delaware that bear his name and the title in legal reporters of "Rodney's Notes." Much of the history of the Mississippi Territory can be found in Rodney's letters to his son. Caesar Augustus Rodney was heavily involved in politics, became a lawyer, and then a representative to Congress. He was one of the managers of the impeachment proceedings against both John Pickering and Samuel Chase. Some of the charges against Chase were for his handling of libel trials. Rodney's son was also the United States attorney general in charge of Burr's trial (Congressional Biographical Directory, n.d.).

Judge Thomas Rodney took his judicial responsibilities very seriously and brought Aaron Burr into the territorial court. Burr and his flotilla had arrived Jan. 10, 1807. Rodney took depositions from some of Burr's men by Jan. 15, and scheduled them to appear before the supreme court of the territory on Feb. 2. However, Rodney thought it premature to have used the militia and said he would support Burr if the militia tried to send Burr from the territory (cited in Hamilton, 1953).

Rodney was at dinner at a friend's home when he wrote an order that Burr signed allowing Burr to be free on his own recognizance (Hamilton, 1953). The order did not stand up in federal court later and made Rodney look foolish for being so casual. Rodney's son agreed with the federal court.

On Feb. 2, the territorial supreme court met with Judges Bruin and Rodney on the bench. The charges were read, but court was adjourned before a grand jury could be

chosen (Hamilton, 1953). The next day the grand jury was chosen and Judge Rodney gave them their charge. On Feb. 4, 1807, Attorney General Poindexter moved to have the grand jury dismissed because he believed there was no lawful charge against Burr to give them. He questioned the jurisdiction of the court and said the federal courts should have jurisdiction. That was a question for which Rodney had no answer. He researched the problem of jurisdiction in many cases throughout his time on the bench in the territory.

After the testimony of several witnesses, the grand jury was sent out. When they returned, they presented an acquittal of Burr and further said that it was not necessary to have called the militia to capture Burr. Judge Rodney told them immediately that the grievance about the militia was beyond their jurisdiction. There was a motion by the defense to dismiss charges against Burr. Judge Bruin agreed but Judge Rodney did not and, according to the rules, the court adjourned (Hamilton, 1953).

A note was added to the account by Rodney that the sheriff had not summoned the citizens that he had recommended for the grand jury. Rodney said he believed that the sheriff was favorable to Burr and chose citizens for the grand jury that were favorable to Burr (Hamilton, 1953).

The court met again on Feb. 7 and the sheriff was asked to bring Burr back to the courtroom. But Burr had fled the area by that time. The recognizance signed by Burr at the dinner had come back to haunt Rodney.

As Burr fled, he left his followers. The followers were arrested and Burr continued on. Late at night on Feb. 18, two travelers stopped at the home of Nicholas Perkins, who was the land register for the area east of the Pearl River. Perkins noticed something

strange in the travelers' dress and questions. He sent for the sheriff and then warned Fort Stoddert and Lt. Edmund Pendleton Gaines who was in charge of the fort. Burr was found and arrested (Abernethy, 1949).

Even though Burr was in the Mississippi Territory for only two months, he had added much to the dispute between the factions. Gov. Williams wrote a confidential letter to President Thomas Jefferson on March 14, 1807. Williams wrote that he had arrived on Jan. 26 and he "found the country in an uproar, occasioned not more by Burr's conspiracy, than the effects of Mead's administration about the incident and the conduct of a few others" (Carter, 1937, 5: 528).

Williams pointed out that the wound from the duel and "the attentions from Miss Green" were taking all Mead's attention. Mead's federal appointments had weakened confidence in the government. Mead and Poindexter both ran for the position of delegate from the territory to Congress and then united their supporters against anyone else running so that Poindexter was chosen (Carter, 1937). The supporters included Mead, Poindexter, F. L. Claiborne, William B. Shields, and Alexander Montgomery. The other faction consisted of people in the area who were mostly wealthy, lived a good life, and expected more than Mead's conspiracies from their government. To help his administration, Williams asked for Thomas Hill Williams to be reappointed as secretary.

Territorial court sessions resumed and, in Samuel Brooks' mayor's court in February, John Berry gave a sworn statement charging that George Lief had spread "slanderous reports" about him thus "damaging his reputation and character" (*Berry v. Leif*, 1807). Lief said that Berry offered him five barrels of beef as a bribe to keep the

secret that Berry brought 18 barrels of beef that he had been hired to deliver to a merchant but had not delivered them all. Abner Green was Berry's attorney and he was able to work out a settlement between the two men before the case went to court.

Two months later, attorney for Robert French, Seth Lewis, filed a complaint charging Charles Bosley with trespass (*French v. Bosley*, 1807). Just four days earlier Bosley, a planter, and his brother Tom, a laborer, had been indicted for assault and battery on William McIntosh. The Bosleys pleaded guilty and were fined (Hamilton, 1953). In the complaint filed for French against Charles Bosley, French accused Bosley of slander for calling him "a damned rascal, a liar, and a damned thief." French alleged that Bosley had rehearsed his comments and told them to others several times. Bosley also allegedly said that French had committed "willful and corrupt perjury." Lyman Harding represented Bosley and, after four hearings that lasted into October, Bosley was found not guilty.

Rascal must have been known then as a "fighting word." Seth Lewis had another slander case in the October term. He represented Philip Engel who filed a complaint for trespass against John Walton who was represented by Lyman Harding. Lewis was not to be successful in this case either. In May 1807 Walton's "dwelling" house burned. He told several others that Philip Engel, an old rascal, set fire to his house (*Engel v. Walton*, 1807). If Engel had not set fire to Walton's house then, according to Walton, Engel instigated it. After some motions and an investigation, the case was declared "finished" six months later. Engel fared better in a collection suit earlier against former Spanish aide-major in Natchez, Stephen Minor, and was awarded $4,890.64 1/2 plus the interest owed him (Hamilton, 1953).

During the fallout after the Burr incident, Gov. Claiborne and Gov. Williams supported Gen. Wilkinson in the disagreement over Wilkinson's true role with Burr. The opposition was led by Cowles Mead. Thomas H. Williams was again named secretary of the territory in June 1807. In addition, Mead managed to start a disagreement between George Poindexter and Gov. Williams.

Gov. Williams removed several officials from their offices in both the civil and the military areas. Included in the dismissals was printer Captain Andrew Marschalk, who lost both his civil and military commissions (Rowland, 1925). Seth Lewis was named the new attorney general for the territory and he was ordered by Gov. Williams to bring libel suits against George Poindexter, Col. Joshua Baker who was president of the legislative council, and printer John Shaw. Abner Green was removed as treasurer and was replaced by the mayor, Samuel Brooks.

Andrew Marschalk was caught in the middle of the dispute between the factions. Gov. Williams wanted to dismiss Col. Ferdinand Claiborne from his position in the militia. On Oct. 16, 1807, Marschalk wrote a letter to Gov. Williams to explain an incident with Col. Ferdinand Claiborne in Marschalk's office (Carter, 1937). Marschalk wrote that the Colonel asked him how the Adams County troops would muster in the coming review, meaning specifically the mode of their muster. While Marschalk said he believed they would muster very strong, Col. Claiborne said he was ignorant of the mode of muster. Claiborne continued saying that the Adams troops should muster with the First Regiment and it would be an insult to the regiment if they did not. Claiborne, Marschalk wrote, apparently wanted him to express an opinion and Marschalk declined to do so.

Marschalk was worried that some kind of incident would occur that day, but he said he was very busy and heard no further attempt that day by Claiborne to give orders to the Adams troops. This was actually an attempt to separate the Adams troops from the rest of the militia and Marschalk did well not to fall into the trap. The incident went on record and news of the event was sent to the President.

Marschalk sent a copy of the letter to James Dunlap, who had been employed by Marschalk (Carter, 1937). Dunlap forwarded the letter to Gov. Williams with a note that said he could not say that Claiborne's threat to take over the Adams troops was serious, but that Marschalk had treated Claiborne's observations with levity. He wrote that Marschalk's answers were appropriately evasive.

Col. Ferdinand Claiborne was the next official to be removed from his office. On Oct. 25, Claiborne wrote a letter to the secretary of state, James Madison, in which he said that Gov. Williams ridiculed the militia, sympathized with Aaron Burr, accused Capt. Marschalk of being a Federalist, and ended with, "I know no individual so generally hated and despised as Governor Williams" (Carter, 1937, 5: 565-566). Other officers resigned in protest soon afterward. The militia petitioned Thomas Jefferson to ask what authority the governor had to remove officials of the militia (Carter, 1937). The officials, they wrote, had been named by the U.S. government.

Gov. Williams again made his case to both the secretary of state and to the secretary of the treasury on Nov. 3. He wrote about the Mead/Claiborne/Poindexter faction and how they worked to injure him (Carter, 1937). He stated that Joshua Baker and Poindexter were indicted for libels in the superior court the previous month because

Baker had given Poindexter $60 to write and publish a letter in the newspapers that questioned the governor's decisions. Then he wrote they had "put John Shaw, that filthy and officially perjured wretch who he had dismissed from office, at the head of a printing press" (Carter, 1937, 5: 577).

For another view, newly appointed Judge Walter Leake, who happened to have been close to Thomas Jefferson in Virginia, wrote the President on Dec. 15, 1807. He said that the local Federalists seemed to have won over Gov. Williams (letter reprinted, ed. Jordan, 1979). Adding in some background events to support his claim, Leake pointed out a Republican, William B. Shields, who would have been a good choice for attorney general of the territory but was passed over by Williams. Instead, Williams appointed Seth Lewis, a Federalist appointed under the John Adams administration. Leake recounted the history of the militia review that involved Marschalk and ended in the dismissal of Col. Claiborne. Leake also believed that Williams had shown favor to Aaron Burr. And the reappointment of Thomas H. Williams as secretary of the territory was another Federalist appointment. He ended with George Poindexter, representative of the territory, and his activities that were despised by the Federalists, and the sincere hope that Williams would not be reappointed.

During Burr's trial in Washington, newspapers from cities along the Ohio and Mississippi Rivers printed local stories about what they had been told about the conspiracy. From Nashville, it was reported the Spanish were holding 10,000 men to help Burr. From Cincinnati, the people traveling the opposite direction from Burr reported large boats loaded with provisions and muskets that sailed only at night. In Frankfort,

Kentucky, word was received of hostile Spanish and French inhabitants and even named a date for the rebellion (*The Gettysburg Centinel*, Dec. 24, 1806).

At the Burr trial, events in Mississippi were reviewed. One incident seemed to have had a great effect on Burr's plans. According to witnesses, Col. Burr landed near Judge Bruin's home and the two discussed how Gen. Wilkinson had betrayed him. Bruin had evidence of the betrayal and gave Burr a newspaper. The *Marietta Gazette* printed a letter which had been written in code from Burr to Wilkinson under the signature of Querist. Burr read the newspaper and the coded answer confirmed his belief about Gen. Wilkinson, Burr left Bruin's and returned immediately to the boats (American State Papers, 10th Cong.).

George Poindexter was the most interesting witness from the Mississippi Territory, and he testified before Chief Justice John Marshall (American State Papers, 10th Cong.). He testified Cowles Mead had appointed Poindexter and Shields to visit Burr at his boats. They were to talk to Burr and convince him to surrender to civil authority. Burr told them that he was to meet Mead at a muster and asked the representatives sent to him if any of his boats looked militaristic. Then he agreed to meet Mead the following day. At the meeting, Mead and Burr quickly agreed on terms.

Then Poindexter, who was the territorial attorney general, was asked to give an opinion on the matter. Poindexter said there was no evidence to charge Burr and he believed the territory had no original jurisdiction. Judge Rodney had disagreed and a grand jury was impaneled. When the jury retired, Poindexter said he left because he told the court that he saw no reason for an indictment of Burr. When Poindexter was called to

hear the presentments of the grand jury, he testified, “I felt and declared my astonishment at such an unwarrantable proceeding, and I informed the court that I should take no further notice of the presentments” (American State Papers, 10th Cong. p. 569). Again, he left the court and testified that he had no idea what happened except through hearsay. Poindexter said he did not think that the recognizance instigated by Judge Rodney “was believed by one honest man in the territory.”

While Poindexter took a stand against what had been done in the territory concerning the militia and the grand jury, he also believed that Burr had done nothing that could be considered to be treason. Indeed, Burr was acquitted.

The Burr incident left many questions in Mississippi. Burr was helped by Judge Bruin at Bruin’s home. Judge Rodney, who had asked for an opinion as to his jurisdiction from the U.S. attorney general almost immediately upon his arrival, did what he thought a federal judge should do under the circumstances. Since the Burr incident occurred in his jurisdiction, he believed he had a duty to bring Burr to court to account for his actions. Poindexter, the territorial attorney general, definitely took a stand on the issue by walking out of court before the grand jury could return with an indictment. With Gov. Robert Williams away from the territory, Cowles Mead decided to call on the militia to meet Burr’s flotilla. However, the grand jury criticized Mead for his actions. The only one who received any negative mention nationally was Judge Rodney. No one else wanted to accept the responsibility of bringing Burr to court and, it seems, Burr had many friends in the territory. Despite Burr’s actions, he was not asked to explain his intentions. No one

acted to return him to the states who had warrants out for his arrest. And no one seemed to want to ask the hard questions in the territorial courts or in the United States courts.

When he returned, Gov. Williams took legal events a step further. On Nov. 11, 1807, he wrote a letter to the territorial legislature. He had seen enough to convince him that nothing meaningful was being done in the legislature; consequently, he used his authority to prorogue, or hold their session until the first Monday in February (Carter, 1937). Then he wrote a letter to President Jefferson to explain why he had taken such a step (Carter, 1937). Most of the letter blamed Mead for stirring up trouble in the legislature. Williams included the letters written to him by Andrew Marschalk and James Dunlap about the militia as evidence of the attempts to undermine his authority.

Libel Amid the Political Factions, 1808-1811

The year 1808 began with dissension in the Mississippi Territory and with the Embargo Act passed by Congress. All United States ships were forbidden to leave for foreign lands and foreign vessels were not to leave with American goods. Certainly, that hurt all ports including those close to Mississippi. Merchants and businessmen were in financial trouble in the territory. The law lasted through 1809 and promoted much smuggling of goods into the country.

By the end of the year, a new president had been elected to take office in March, 1809. Thomas Jefferson, like George Washington, refused a third term. The new president was James Madison and the new vice-president was George Clinton.

Gov. Robert Williams began 1808 with a letter to Albert Gallatin, secretary of the treasury, to complain, as usual, about Cowles Mead, but also he complained about editor

John Shaw (Carter, 1937). Shaw's newspaper "has become so notorious for its vile and false publications, that no person believes any thing it now contains on this score." Williams was particularly rankled by an anonymous letter to George Poindexter published in the newspaper "where every word and sentiment is false." He ended by writing "Mead, Claiborne, and two or three others make what fuss they can, together with this rascal Shaw" (Carter, 1937, 5: 596).

Not much has been written about Dr. John Shaw. From a short biography written by one of his descendants, Shaw was depicted as a dedicated Republican whose friends included Thomas M. Green, Cato West, Judge Ker, and Edward Turner (Moore, MSGENWEB). He had a disagreement with Judge Rodney over the qualifications of territorial judges, but did receive his commission as an attorney in 1806.

Shaw edited the *Mississippi Messenger* in 1807. Then the faction bought a press for him and the *Mississippian* newspaper was born, with an annual salary for Shaw (Hamilton, 1953). Attorney General Seth Lewis brought libel charges against Shaw and the others in that faction over giving so much trouble to Gov. Williams. In 1815, Shaw moved from Jefferson County to Franklin County and continued his many duties as doctor, lawyer, and postmaster. He was a legislator from Franklin County and a member of the Mississippi Constitutional Convention. Unfortunately, he died during the convention and was remembered by Edward Turner as, "a man of wit and honor, an ardent politician and a caustic writer" (Moore, MSGENWEB).

Judge Peter Bryan Bruin was a military hero in the Revolutionary War, a plantation owner, and a judge. He was born in Ireland and came with his father to the American

colonies in the mid-1750s. He was trained as a merchant and, in 1775, became a lieutenant with the troops from Virginia. On the final day of 1775, he was badly wounded in the battle at Quebec and was taken prisoner for six months. After he was exchanged, he was promoted to major and joined the 7th Virginia (Clark, 1995).

With his family and some other friends, Bruin settled in Natchez in 1788. He built a home at the mouth of Bayou Pierre which was at the northern point of land then settled. His home was famous for the arrival of two United States officials. One was the landing of Aaron Burr and his flotilla and, much later, was the landing of Gen. Ulysses Grant to begin the siege of Vicksburg. Bruin also had a plantation across the river.

When the Mississippi Territory was formed, Bruin was named one of the first three territorial judges, but he had no formal legal training. When Thomas Rodney arrived in the territory, he too landed at Bayou Pierre and was invited to "Castle Bruin" (Hamilton, 1953). He described Bruin as "a robust, talkative man, and a moderate Federalist." Rodney joined David Ker and Bruin on the bench, but Ker died the next year. It was Shaw who penned Ker's memorial which also attacked Rodney and Bruin.

Rodney further described Bruin as "a man with a good education, friendly with good sense, and upright in his judgment" (Hamilton, 1953, p. 74). When the two judges traveled the circuit, Bruin was often "ill." Sometimes he appeared intoxicated at court and the attorneys would ask that their cases be reassigned. Finally, on Nov. 27, 1806, Attorney General Seth Lewis repeated some of his argument and Bruin said to him, "I suppose you think I am drunk and not worth your notice, but I will let you know that I will support my dignity on the bench." Rodney's notes, made after court adjourned, told

of the encounter afterward with Bruin. He asked Bruin to return home with him. After Bruin was sober, he could return to court until the time period for the court session was over. Then, Rodney wrote, Bruin might resign with honor (Hamilton, 1953, p. 239).

However, others in the territory were not as compassionate as Rodney. A motion for the impeachment of Judge Bruin was passed on April 11, 1808, by the Mississippi legislature and sent to Congress through George Poindexter. The charges were that Bruin had neglected to discharge the duties of judge including failing to hold the superior and circuit courts (Congressional Documents, 10th Cong., no. 252). Poindexter was asked to arrange to have depositions taken (Carter, 1937). However, on Oct. 12, 1808, Judge Bruin wrote to Secretary of State James Madison to say that he would resign by March 1, 1809 (Carter, 1937).

The legislature did pass some meaningful legislation at its next session and those laws, plus some attachments, were printed by Samuel Terrell in 1807. Freedom of speech was addressed in the Constitutional Statutes, Article I, section 8, where it was stated, "Every citizen may fully speak, write, and publish sentiments on all subjects, being responsible for the abuse of that liberty." Judge Harry Toulmin, of the territory's eastern district, wrote a digest of all the laws of the territory and, later, for Alabama. The difference between the two sets of laws, besides names, dates, and places, was that the name Alabama was substituted for Mississippi.

Some other relevant sections included dueling, printing the laws, and the election of the official printer. In Chapter IV, Title 21, section 9, dueling, as before, was forbidden but, this time, so were the challenges. The statute stated that a $500 fine was to be levied

on anyone who published language such as saying someone was a coward, or any similar language for not accepting a challenge. Section 10 stated that, if any printer was summoned as a witness and refused to give up the name of the person who paid for the printing of a challenge, the printer would be found in flagrant contempt of the court and would be punished.

Under Title 40, section 4, the title of the digest was to be *The Statutes of the Mississippi Territory as of October 1, 1807.* The section also stated that English law cases were not to be used to support legal decisions; instead, the courts should use the common law and cases of the territory and the United States. Section 5 ordered the public printer to be furnished with the Constitution of the United States and other United States laws relating to the territory to be added to the statutes. Section 6 ordered the printer to give 200 copies to the governor to distribute to the proper authorities.

In Chapter II was a clause stating that the "indisposition" of Toulmin prevented him from correcting any possible printer errors; therefore, it was up to Samuel Terrell to publish and print the 607 pages of the statutes. The territorial secretary of state was ordered to keep a copy of the laws in his office as evidence that the laws existed.

Toulmin was appointed to have the laws printed for several years afterward (Title 40, Chapter XII). After statehood, the printer was to be elected annually (Title 40, Chapter XVIII).

The newest judge, Walter Leake, had been recommended by Thomas Mann Randolph to Thomas Jefferson on Feb. 20, 1807. Three days later Leake had been confirmed by the Senate. In Virginia, Leake lost a Congressional election to Randolph,

who was Jefferson's son-in-law, in a race decided by two votes (Rowland, 1907). Leake had just announced his intention to run again shortly before the writing of Randolph's letter of recommendation (Carter, 1937).

The first immigrants of the Leake family, William and Mary, came from England to the colonies in the late 17th century. They settled in Goochland, Virginia, and had six children.Their son, Walter, and Judith Mask were the parents of Mask Leake. Mask and Patience Morris were the parents of Walter, who was born May 20, 1762, in Albermarle, Virginia.Walter married Elizabeth Wingfield and they had eight children, two of whom were born in Mississippi.

Later, Leake became the first Mississippi senator, along with Thomas H. Williams, and was the third governor, taking office in 1822. He was governor until 1825 and died later the same year. While he was judge, he ruled on important libel cases in the Mississippi Territory.

A slander case was filed in the Mississippi Territory in 1808 by George Wallis who swore before Joseph Newman, alderman of Natchez, that James Dunn had publicly called Wallis' wife, Peggy, a whore and a lewd woman (*Wallis v. Dunn*, 1808). After writing further accusations said about Peggy, Wallis wrote that, by means of these false and scandalous declarations, he felt injured and aggrieved. With the sworn testimony was a subpoena issued by Andrew Marschalk of the court for James Dunn to appear on a plea of trespass before the Mayor's Court. The defendant was "held to bail in the sum of $300 on good cause shown by the affidavit filed." Marschalk also wrote on the back of the complaint a summary of the case and signed it as the clerk, "Action brought by plaintiff

against defendant for slander over words spoken by the defendant of and concerning the wife of the plaintiff." The plaintiff eventually dropped the case, but had to pay court costs.

Throughout January of 1808, Gov. Williams wrote to the President and the Secretary of the Treasury about Mead and the "vile rascal" Shaw (Carter, 1937). George Poindexter wrote a long letter to Secretary of War Henry Dearborn which began with Williams' appointment as governor and then he added comments on subsequent events. Poindexter's discussion included the local Federalist group of wealthy planters, the appointments that were mostly Federalist, the dismissals of several officials such as the collector of the port and the militia officers, the long absence of Gov. Williams from the territory, the governor's sympathy for Burr, the appointment of Federalist Seth Lewis as attorney general, the veto of many laws, and the proroguing of the legislature (Carter, 1937). Poindexter asked the secretary to remember the citizens of the territory who expected responsible government. He ended by saying that he wrote out of concern for the people and that he was not trying to get a political appointment. He wrote that he knew of no others seeking the appointment of governor.

Other letters from the territory expressed confusion about what was to be done since the governor's term was about to expire noting that Thomas H. Williams was out of the area. The answer came when Robert Williams was renominated Feb. 19 and confirmed by the Senate on March 10, 1808 for another term as governor.

Gov. Williams continued writing letters to Thomas Jefferson. He told Jefferson that he had dissolved the legislature again because they were not getting any work done

(Carter, 1937). He claimed that the factions wanted to have their way or nothing was to be done.

Judge Thomas Rodney wrote to the U.S. attorney general, his son Caesar (Carter, 1937). He sent two copies of the *Natchez Messenger* because the newspapers contained a charge to a grand jury that he had made and the grand jury told him to have the charge published. The charge had been a plea from them to remember the Constitution and the laws of the United States. He feared that all the new arrivals in the area might be easily misled because they did not know the laws. He wrote that he, too, had wanted Shields to be attorney general in the territory. Then he mentioned a request made to him by Andrew Marschalk to recommend Marschalk to the government to reinstate his former commission as captain in the militia. Rodney wrote that he would do so if the former officers of the militia would give him a certificate of Marschalk's conduct. Rodney thought Marschalk was a Federalist but, since no one else had made such a request, he thought that Marschalk would prove to be "an active officer."

Rodney wrote that he had been asked to run for Congress, but he declined (Carter, 1937). He did tell them that he would serve if he was elected. He thought that Mead was anxious to go to Congress.

The issue of who had the authority to appoint the clerks of the courts reached into October of 1808. A motion had been filed to hold the governor in contempt. The governor published a proclamation in the *Natchez Gazette* in which he questioned the decision of the court regarding the ruling to keep Theodore Stark as clerk (Hamilton, 1953). This issue was in court for many months.

Judge Rodney considered the clerk issue to be a very important question. The issue before the court was whether or not the governor had any authority to control or censure the decisions of the court (Hamilton, 1953). Rodney cited the first section of Article III of the U.S. Constitution where authority is given for a supreme court and necessary inferior courts. He also cited the Northwest Ordinance where authority is given for three judges to form a court with common law jurisdiction, and the agreement between territories and the U.S. government which stated that the inhabitants were entitled to judicial proceedings according to common law.

An important distinction was the definition of common law. Rodney defined it as the "administration of justice to the inhabitants of the territory in every case where an injury is done by one citizen to another citizen according to the course of the common law and was agreeable to the statutes of the territory" (Hamilton, 1953, p. 416). Even if the legislature altered the common law, it "could not deprive the Superior Court of the superior authority and judicial control which Congress vested in it," Rodney ruled.

In a letter to George Poindexter written Oct. 20, Rodney wrote his opinion on the clerk matter. He added, "The conduct of the governor is like that of a man deranged" Carter, 1937, 5: 656). Unfortunately, some authors since have used this quote in their advertisements for Rodney's book writing that he was talking about Thomas Jefferson.

Several examples have been cited that point to the use of the newspapers in the Mississippi Territory for furthering the two political agendas. Each side had its own newspaper and printer and used them to publicize opposing platforms. After *Toulmin's*

Digest was printed, the laws were changed to conform more to the laws of the United States.

> Andrew Marschalk printed a circular on Nov. 8, 1808 which, in part, stated: Various statements and reports having been made and circulated, against the governor of this territory, calculated to injure his private and political character, ...It becomes necessary for him to request that the public ...should wait the result of a development, which will be made, and by which it will be seen, that integrity and candor are liable to imposition and duplicity. This the governor pledges himself to do, if not to the satisfaction of a certain class of characters, to that of the public, and of those whose good opinions it has been his pride to possess. (Carter, 1937, 5: 661)

The circular has no signature and speculation was simply that the governor or his friends had written it. However, Gov. Williams wrote a letter to President Jefferson on Nov. 10, in which he wrote that he wished to "go out of office with you" (Carter, 1937, 5: 661). Following that letter, he wrote another on Nov. 16, 1808, in which he again used language including the words "imposition' and "duplicity" together. Williams also spoke of hoping to have it in his power "to expose shortly and as soon as justice to truth, and a detection of this wicked plan will warrant" (Carter, 1937, 5: 665). He also repeated his desire to resign and "go out with Jefferson" the following March 3.

Gov. Williams asked previously for the attorney general to file a libel case against the printer Shaw. In the *Territory v. Shaw,* Dec. 9, 1808, a motion was brought by attorney Shields to quash, or overthrow, the indictment against Shaw (Hamilton, 1953). The date

of the newspaper referred to in the indictment was not the same as the one in which the alleged libelous writing occurred and there was some difference in the wording. Therefore, Shaw was not prosecuted for libel.

With all the personal attacks, Robert Williams wrote to Thomas Jefferson that, when word leaked out that he intended to resign, efforts were made to get him out of office immediately (Carter, 1937). Williams wrote that, with his integrity being questioned, especially concerning the Burr incident, he could not resign yet. While Williams wanted to visit North Carolina, he wrote that he must stay in the territory to attend to public business.

Before the end of the turbulent year of 1808, just under 30 Congressmen led by John Pope of Kentucky, wrote a recommendation to Thomas Jefferson asking that George Poindexter be appointed to fill the judicial vacancy left by Judge Bruin (Carter, 1937). The year of 1808 ended with questions about who would be the next governor and who would be appointed to the bench with Rodney and Leake.

At the beginning of 1809 in the United States, the Congress of the United States discussed a bill introduced by John Randolph of Virginia that concerned libels (Annals of Congress, H.R, 11 Cong.). He asked whether the clause in the First Amendment concerning freedom of the press completely stopped Congress from legislating on the subject at all. Common law, he pointed out, does not allow the accused to give the truth in evidence for his defense, while the Sedition Act did. Could there be a federal law of libel that would allow truth as a defense? Randolph proposed a study to inquire as to prosecutions for libel and to ask what provisions might be necessary to secure freedom of

speech and freedom of the press. Samuel Dana of Connecticut said there did seem to be a problem with a printer who published something that was acceptable in one state but unacceptable in another state. Randolph continued his argument with a point that, with politics, sometimes an impartial trial could not be expected. Edward Livermore of Massachusetts said that if citizens could give truth in evidence, then they would suffer no injury from the jury. As the resolution was stated, it would become a law that did more to secure the right to an impartial jury than to secure truth as evidence in a prosecution for libel. The resolution was approved in both houses but realized only in the District of Columbia.

In Natchez, new printers came to the territory and began newspapers. Andrew Marschalk's consolidation of the *Mississippi Herald* and *Natchez Gazette* was named simply the *Natchez Gazette* and printing was begun under the new name by early 1808. Timothy and Samuel Terrell's *Mississippi Messenger* changed editors in 1807 to John Shaw and Timothy Terrell (*Union List,* 1970). Then, in 1808, John A. Winn and Co. began the *Chronicle.*

By early February 1809, word had begun to spread about the resignation of Gov. Robert Williams. Several letters were written to President Jefferson recommending David Holmes as the new governor. George Poindexter wrote to the Secretary of State not only recommending Holmes, but also giving reasons why Thomas H. Williams should not be chosen (Carter, 1937). Thomas H. Williams had supported Gov. Williams and, while Thomas was not a bad choice, he was a Federalist. Several names were recommended to fill the judicial vacancy.

On March 3, Gov. Robert Williams again dissolved the legislature even though his term ended officially on March 1. Also on March 3, he named John Winn as the new territorial printer and told him to print the laws of the last session of Congress.

On March 4, Thomas H. Williams was again the acting governor, but no one ever questioned the propriety of the earlier decisions made by Robert Williams (Carter, 1937). And on March 7, Frances X. Martin was confirmed as the new judge of the territory (Rowland, 1907).

David Holmes received his appointment as the new governor of the Mississippi Territory early in the year but did not get to the territory until June 30, 1809. By April 19, Acting Governor Thomas Williams wrote to the new secretary of state, Robert Smith, to let the secretary know that he had issued a writ of election so that things might be more settled when the new governor arrived (Carter, 1937).

The question of who could or could not appoint the court clerks was still on the minds of the judges and Judge Leake wrote to the attorney general, Caesar Rodney, who stayed under the Madison presidency, to get an opinion (Carter, 1937). There had been yet another question of who appoints the clerks and the clerk in question was Andrew Marschalk. Marschalk had been appointed by the governor as clerk of the city as well as clerk of the Mayor's Court. One of the questions raised concerned the duties of the clerk of the city and the necessity of having that clerk also as clerk of the Common Council. The same clerk would also be the keeper of the records of the city, thus leaving no time for other duties. Judge Leake thought the clerk appointed by the governor was to be clerk of the Common Council as well as clerk of the Mayor's Court. Judge Rodney referred to

the statute that stated, “and there shall also be in said city a city clerk who shall be clerk of the Mayor’s Court and a Marshal; which said clerk shall be appointed and commissioned by the Governor“ (Hamilton, 1953, p. 472).

Judge Rodney saw in the law an express authority for the Common Council to elect its own clerk. However, since Judge Leake was of a different opinion, Rodney ruled that there could be no decision reached. It was the end of the May term (Hamilton, 1953).

One more important item was sent to Congress before Holmes became governor. Judge Harry Toulmin represented many inhabitants of the district east of the Pearl River in a petition to Congress to divide the Mississippi Territory so that they might have their own government (Carter, 1937). The petition was taken to Congress where it was ordered to lie on the table (Carter, 1937).

Three slander cases have been found that were filed in 1809. The first one was filed against the estate of Polser Shilling who had lived in the area since 1782. He gave a deposition in 1804 in which he said he was 60. The deposition was part of the fight over the land that had been used as a public common area and market house in the time of the Spanish rule under Gov. Manuel Gayoso. Shilling testified as to its use when others were trying to purchase the land for other uses. Then, in 1807, Shilling was in court first in January in the county court, and then in Adams County Circuit Court in a case that was appealed in April. The plaintiff, Thomas Ragan (or Reagan), had been in jail for a debt owed from 1803. Shilling became surety for him and even took Ragan to his home. In a business transaction, Ragan sold some property to Shilling worth $600 and Shilling paid $400 with the extra $200 to be paid after the surety expenses had been deducted.

However, Ragan sued his benefactor for the money. Shilling appealed but did not show up in court. Rodney ordered that the judgment by the lower court was affirmed.

A complaint was filed against Shilling in April of 1808 but, by the time the matter got to court in May, 1809, Shilling was deceased (*Mickie v. Estate of Shilling*, 1809). David Mickie claimed that Shilling had accused him of stealing, receiving stolen goods, and killing his (Shilling's) cattle. Mickie allegedly had spoken about these things before other citizens of the territory. The complaint was filed by Fielding Turner and heard by Judge Bruin just before he retired. Executors of Shilling's estate were John Steele and Roger Dixon who appeared in court to answer the complaint of trespass against Shilling. The judgment was decided by default and a writ of inquiry in July of 1809.

A slander case was filed in Adams Circuit Court in September of 1809 but took until the next year to complete. Jones Shaw complained that Anthony Calvit had accused him of horse stealing (*Shaw v. Calvi*t, 1809). Calvit, who was born in 1762 in North Carolina, moved to the Mississippi Territory and bought land in 1794. He married Mary Mayes in 1798 and they had one son, James Anthony, born in 1808. Before the Shaw complaint, Calvit appeared before Judge Rodney in another matter in 1807. The Calvit family also figured prominently in libel cases later.

Now Calvit was accused of slander by Jones Shaw. Shaw's attorney, a newly commissioned lawyer named Minor Sturgus, wrote that Calvit said Shaw was hired by the government of West Florida to steal the horse. Sturgus, besides all the usual slander damages to Shaw, said, "people who used to have communication, commerce, or conversation" with Shaw before the slander no longer wanted to do so. Calvit was

defended by Cowles Mead who entered a not guilty plea. After the testimony of witnesses, the taking of affidavits, and five continuances, it appears that Rodney wrote in an amount to be collected by Shaw on the back of the plea.

The third slander case was a complaint by James Bell about Stephen Smith (*Bell v. Smith,* 1809). Bell was represented by Charles Green who wrote that Smith called Bell a thief on several occasions, saying he had stolen liquor. Cowles Mead entered a plea of not guilty for Smith. The plea is all that is available, but a judgment was recorded and court costs were assessed.

At this point, Judge Rodney had a little more than a year to live. He had written many things about the Revolutionary War when he was with George Washington, described the trip with William Shields from Delaware to the Mississippi Territory in 1803, and kept accounts of his cases in Mississippi. Hamilton (1953) calls Rodney's notes the first printed reports for Mississippi. Of his cases in Delaware, the written record listed in the reporter has only Rodney's notes as the official court record. One Delaware case came from the Court of Common Pleas in November 1800. Thomas Elligood complained that James O'Neal had called him "a rogue" and "a harborer of thieves" (*Elligood v. O'Neal,* 1800). Rodney ruled that calling a man a rogue was not actionable, but saying that he was a harborer of thieves was actionable. Citing Blackstone, Rodney ruled for the plaintiff and assessed fifty cents damages.

Rodney could be given much more recognition for his contributions to the law of the Mississippi Territory. In several areas of law, Rodney's rulings were ahead of the national discussion and other court rulings. Rodney adapted common law to the

circumstances that he found in the Mississippi Territory and raised jurisdictional issues that even today have no answers. The problem, as Hamilton (1953) noted, is that his rulings were not reported on a national level.

Thomas Rodney was 59 years old when he set out on the journey to Mississippi with William Shields and Richard Claiborne, and joined by Thomas Hill Williams. When they got to Mississippi, Rodney became both judge and land commissioner. However, the other land commissioner, Edward Turner, had married Cato West's daughter and Turner's integrity was questioned with regard to the big Green family and their extensive land holdings. When replacements for the land commissioners arrived, Rodney devoted himself to the judiciary. Judge Ker died within a year and Peter Bryan Bruin was the only other judge. With new counties like Franklin and Amite being added to the circuit, Rodney had a full calendar.

Finally, Judge Walter Leake arrived, but often the judges disagreed on rulings. After Bruin resigned, Francis X. Martin, a man known for his intelligence and his scholarly legal writings, was appointed as a territorial judge. Unfortunately for Mississippi, he was there for less than a year before he was reassigned to the Orleans Territory. And, while Judge Harry Toulmin was in the territory, he was too far distant to be of much assistance. Oliver Fitts was appointed as judge, but he, too, was gone in less than a year.

Rodney wrote many letters to his son about the factions that were splitting the territory. Strong local families took the place of party politics. Hamilton (1953) believed that Rodney preferred the Poindexter group.

Hamilton (1953) told of the many duties of a judge in the newly formed territory and wrote that he was amazed that Rodney escaped the furious political and factional disagreements. The two events that caused significant trouble for Rodney were the Burr conspiracy and the courthouse takeover by Gov. Williams.

As Rodney neared 70, he became feeble in body but not in mind. The date of his death is unclear, but historians have settled on Jan. 2, 1811. Indeed, he left quite a legal legacy in the Mississippi Territory.

One of the biggest problems for Rodney was the question of how much control the Supreme Court of the United States exercised over the territorial courts. The other territories had similar questions, but Rodney had to deal with special circumstances concerning all the confusion over land ownership. Were the territorial courts subject to Constitutional rights or were they the courts of last resort for the inhabitants? Jurisdiction and rights came up specifically over whether Peter Bryan Bruin and Seth Lewis could be impeached. Rodney took the position that the territorial courts were part of the court system of the United States as seen in the Burr case and the clerks' cases. Hamilton wrote a good review of the case history and pointed out that, up to publication of his book in 1953, there had never been a decision that would answer Rodney's questions.

Up to that time the only authority cited in libel cases had been Blackstone. Most of the territorial lawyers had little legal training and, as Hamilton put it, Blackstone and good stories were all that was necessary to tell a jury. Rodney cited about 80 authorities in his cases, but the most important authorities for him were Blackstone and Lord Mansfield, who Rodney said was the greatest lawyer of that time (Hamilton, 1953). Law

books found their way to the territory and, in Green's *Impartial Observer*, there was an advertisement offering 30 legal books for sale.

However, where the Mississippi Territory might struggle in some other areas with common law, the territory was well ahead of the federal courts in libel law. As early as 1802, according to Rodney's notes, an act had been passed that allowed the defendant to give truth in evidence of his defense. Then the jury was to determine both law and fact in the case with the direction of the court. None of this information was found in the currently available court records until, much later; Rodney noted that he found it in his research of earlier territorial records.

The officials in government found ways to attack the press through the judicial system. Thomas Rodney saw such attacks both in his court and through the findings and discussions in earlier records from the territorial courts. Rodney found court records showing that Andrew Marschalk, then editor of the *Mississippi Herald*, and Edward Turner printed a libel against the territorial house of representatives, Aug. 10, 1802. Some of the members of the house were against the election of Thomas M. Green as the territory's delegate to Congress. Marschalk and Turner were said to be "malicious and seditious men of depraved mind and wicked and diabolical disposition" (Hamilton, 1953, p. 142). Hamilton cited the minutes of the Superior Court for Adams District, 1802-1804, (p. 54), and recorded in Book 10, Adams County Criminal Judgments, 1802-1810, (p. 68, 70, 73), which are no longer available. Then, on Aug. 31, Marschalk and Turner wrote another article claiming that Judge Bruin and Judge Ker were so devoted to a particular faction that their judicial decisions favored those in the faction. Turner authored a column

on Sept. 11, 1802, that suggested the "learned judges were protectors of thiefs [*sic*]." In each of the cases, the offenders were fined $5 and costs. Some suggestion was made that the article written only by Turner was assessed $55 and costs (Hamilton, 1937).

Another example was the case of *Territory v. Davis and DeFrance* (1806) where the two deputies of Isaac Briggs wrote a defense of him against charges from the presentment of the grand jury. Later on, Marschalk was indicted for similar political reasons.

The new governor, David Holmes, arrived in Natchez on June 30, 1809. He was born in 1769, the son of Joseph Holmes and Rebecca Hunter, at Mary Ann Furnace, York County, Pennsylvania. The family moved to Virginia when David was a child and he was educated in Virginia, where he studied law, and began a practice in Harrisonburg, Virginia. He was elected to Congress where he served from 1797-1809, when he moved to the Mississippi Territory to become governor (Congressional Biographical Directory, n.d.).

Holmes wrote to the secretary of war, William Eustis, and asked that a brigadier general for the militia be named. He cited several reasons and suggested that Col. Ferdinand Claiborne be named (Carter, 1938). Claiborne was, at that time, speaker of the territorial house of representatives and helped with the nominations of candidates to fill the legislative council.

By the end of September, five of the nominees had been appointed by the President. They were Alexander Montgomery, David McCaleb, Thomas Barnes, Joseph Robert, and Joseph Carson. Holmes made other appointments such as the land register and sheriff.

Holmes wrote a letter to President Madison a week after he arrived and told him of the appointments he made. Then he wrote a description of the territory, in which he said that, in general, the people respected the laws and the government, but, “some divisions had arisen from local and personal causes” that he did not yet understand (Carter, 1938, 6: 12). He assured the President that he would do all he could to conduct the public business in a way so that the people would have peace and good will and, of course, respect the authority of the laws. However, he mentioned his poor health as a reason for not doing some things earlier.

Holmes wrote there was no provision in the ordinance that governed the territory for criminal courts and asked if the legislature could establish them. He also asked for an additional judge for the territory who would live in the distant new county of Madison (Carter, 1938).

In November, a petition from inhabitants of the part of the territory east of the Pearl River asked Congress for a division of the Mississippi Territory. Distances were great and they wanted to have their own local government (Carter, 1938). This time the petition was referred to a committee in Congress.

As the appointments continued, organization of the land offices, the election for the territorial assembly, and installation of new judicial officers were among the priorities. The territorial assembly signed and sent a petition to President Madison supporting the governor’s request for F. L. Claiborne to become brigadier general of the militia (Carter, 1938). By the end of 1809, a certain amount of harmony was restored to the Mississippi Territory.

In 1810, some calm came also to the national scene. Trade was restored with Britain and France under the condition that both countries stopped interfering with ships from the United States.

However, problems were developing with Spain because it was losing ground in the North American continent. A narrow strip of land along the Gulf Coast between the Mississippi River and the Perdido River was still claimed by the Spanish. The United States thought the land had been part of the Louisiana Purchase. Americans settled the area and, for a short time, declared it to be the Free and Independent Republic of West Florida.

While trouble over Florida was developing, closure came to a land deal that had been ongoing in the territory since 1795. Georgia sold 35 million acres in the Yazoo River area to some land companies for $500,000. Georgia's legislature rescinded the land sale in 1796, but Georgia had already ceded her claims in that area to the United States. The government tried to settle the problem by giving five million acres to those who bought the land in the original sale by Georgia in 1795. After much more debate in the Congress, the whole matter was decided by the Supreme Court in 1810. The Court was unanimous in ruling that Georgia had the right to sell the land, but not to rescind the sale (*Fletcher v. Peck*, 1810).

The Adams County Superior Court heard a slander case involving injury to a professional man. William Tharp, represented by attorney Cowles Mead, complained that Samuel M. Lee, represented by attorney William B. Shields, told other citizens of the territory that Tharp kept false accounts in his business (*Tharp v. Lee*, 1810). Tharp

charged that Lee told others that Tharp knowingly charged for goods and other articles that the buyers never received. The charges were particularly injurious because Tharp was a setler, someone who followed Army camps and peddled provisions to the troops. Tharp said that officers and soldiers no longer wanted to deal with him and that other citizens of the territory had withdrawn their dealings with him, thus preventing him from doing business. He asked $10,000 in damages.

Lee, through his attorney, filed a plea of not guilty. However, Lee must have been found not guilty because Shields appealed. Later, the clerk wrote that the plaintiff had not proceeded with the case, abbreviated with the Latin, *non pros*. Many of the early cases have no final judgment with them or the judgments are written on the back of the pleas by the clerk or judge.

In what must have been a high profile case in Adams County, Col. Thomas H. Cushing was sued by Lewis Dubrieul (*Dubrieul v. Cushing*, 1810). Cushing became commander of the United States troops on the Mississippi and Tombigbee rivers, succeeding Isaac Guion. Earlier, Cushing was the captain who refused to let Lt. Andrew Marschalk go to Natchez to print the laws of the territory thus angering Gov. Winthrop Sargent.

In 1810, Dubrieul sued Cushing for trespass and libel because, according to the complaint, Cushing wrote a letter to his officers and soldiers telling them that Dubrieul was not permitted in the cantonment without written permission from the commanding officer or other superior authority. Dubrieul was a clerk in a setler's business and lost his job as a result of the letter. The former clerk's attorney was Cowles Mead who wrote that

Dubrieul had been deprived of his employment as well as losing the confidence and good opinion of both the soldiers and citizens with whom he traded. Dubrieul asked for $4,000 in damages.

The plea written by Mead is all that has survived of the record, but there is an important fact that might have some bearing on understanding the case. Mrs. Cushing's son-in-law was also a setler, and Cushing had built a place for him to do business close to the cantonment.

Just three months later, a problem developed between Cushing and Tharp (*Tharp v. Cushing,* 1810). In an affidavit before clerk Theodore Stark, Tharp accused Cushing of damaging his business as a merchant by uttering and publishing false and scandalous words that touched on his character and reputation. He asked for $5,000 in damages. Cushing seems to have had some trouble in his professional relationships.

However, Cushing had more important concerns because he was arrested and taken to a court martial in Baton Rouge. Brigadier Gen. Wade Hampton brought the charges and Gen.Winfield Scott was the judge advocate for the military. Hampton preceded Cushing as commander of the U.S. troops in the territory and he had resigned because of a conflict with Gen. James Wilkinson (Carter, 1938). There was some delay in beginning the trial because Cushing developed a serious illness. Cushing was charged with unprofessional conduct in seven areas including improper delay in moving his troops, an improper and unauthorized attitude in his command, and conduct unbecoming an officer and a gentleman (Trial of Cushing on charges by Hampton, 1812). The outcome of the court martial was a severe reprimand of general orders and a guilty finding of conduct

unbecoming an officer, but not conduct unbecoming a gentleman. Cushing went on to become a brigadier general and was honorably discharged in 1815.

The Territory of Orleans faced its first libel trial in 1810 (*Territory v. Nugent*). The defendant was brought in and asked to answer interrogatories concerning a contempt of court through a libelous publication. The court required him to give security for his good behavior. One of the questions facing the court was whether bail should be required of a libeler. The judge cited Blackstone who wrote that "one may be bound to his good behavior for words tending to scandalize the government, or in abuse of the officers of justice, especially in the execution of their offices" (4 Blackst. 253).

Printer Nugent said that, though he wrote the libel, he had not intended any contempt of court or of its judges. The court ruled saying that a plea of no intention of contempt was no justification for the offense. The words used in the publication written by the defendant were "the judge was capable of all that is base and villainous." Giving no credit to the testimony, the judge fined the defendant $50 and sent him to jail for ten days.

However, Nugent was not finished with his case. The judge he accused left the bench for both of these hearings. Nugent asked for a new trial based on the fact that a continuance was denied him despite his affidavit requesting to procure witnesses, and that the court had rejected proper testimony while improper testimony was admitted (*Territory v. Nugent*, 1810). The judge agreed that the affidavit was strong, but that the trial judge thought the affidavit would give more time to the defendant to make his case to the public. Indeed, the affidavit was printed and circulated, hinting that he was being

prosecuted and hunted down as a martyr for the liberty of the press. The circular continued with the accusation that the court would act corruptly in their decisions at his trial. The court found that his reasons were frivolous and groundless.

In answering the request for the new trial, the court cited Blackstone's writing, "the provocation, not the falsity, was the thing to be punished" (4 Blackst. 150). Then the court wrote about the case of *People v. Croswell* (1804) and the distinction between the right of giving truth in evidence in a criminal prosecution and, in doing so, in an action for defamation. By not allowing witnesses to testify as to the truth of the facts, no proper evidence was rejected. No improper testimony was allowed to go to the jury. On the basis of this reasoning, the new trial was refused.

In yet another attempt, Nugent moved in arrest of judgment, or to withhold the judgment because of an error in the record (*Territory v. Nugent,* 1810). Again the words of Blackstone were cited, with the court stating that the decisions of courts of justice are the evidence of common law (1 Comm. 71). Thus the judges' knowledge of law is derived from experience and study and the established rule is to abide by former precedents. "The freedom of our Constitution will not permit that, in criminal cases, a power should be lodged in any judge to construe the law; otherwise, than according to the letter." The judgment was arrested on what today would be known as a technicality from some incorrect writing in the margin of the indictment. Judge Rodney, who often faced criticism for the same reasoning in favoring new trials, would certainly have agreed with the ruling. The final ruling in the *Nugent* case was made by the judge who was appointed

briefly to the Mississippi Territory, Francis X. Martin, who Rodney had referred to as a fine scholar.

Martin has been called one of the most notable of the 19th century territorial judges. He was born in France in 1762 and moved to North Carolina, serving in the state militia during the Revolutionary War. He became a printer and published legal treatises including translating some from French to English for the first time. He studied law and was admitted to the bar where he did well at both advocacy and scholarship. James Madison named him a judge in the Mississippi Territory and, soon afterward, to the Superior Court of Orleans. He tackled the problems as Rodney had by joining the new U.S. constitutional law with common law in the territories.

The remainder of 1810 saw a flurry of letters from two sources. Letters of recommendation for positions in the territory found their way to the President and the Secretary of State. Henry Daingerfield was named the new secretary of state for the territory, but he was not confirmed until January of 1811. Obadiah Jones was confirmed as a new judge. Parke Walton received a commission as the receiver of public monies west of the Pearl River (Carter, 1938).

Andrew Marschalk, brigade major, received a letter from Gov. Holmes requesting the number and types of arms that were in his possession for the militia as well as what condition they were in (Carter, 1938). The information had been requested from Washington, D.C. Later events proved that the order was both necessary and insightful.

Another item that provoked letters was the need for the 1810 territorial census to be taken. Some confusion arose over who was in charge of collecting the census since the

territorial secretary, Thomas H. Williams, had been appointed to the position of collector for the Orleans port. While Williams had not yet gone, neither had the newly appointed secretary, Henry Daingerfield, arrived.

More confusion arose when Gov. Holmes wanted the laws from the last legislative session. He was told that there had been some problems accomplishing their printing due to the contract made between the printer and the legislature (Carter, 1938).

By far the source of greatest concern that generated the most correspondence was that some of the residents in the eastern part of the territory were planning an expedition against Mobile, then a part of West Florida. Discussions about commerce and water travel had reached an impasse and Gov. Holmes wanted no part of the expedition. He sent letters to those who were said to be in charge of the proposed takeover and also to Judge Toulmin asking him to quell the plans immediately (Carter, 1938). Toulmin wrote to the President about an approaching crisis with West Florida. Both governors requested that troops be sent as security for the settlements at the eastern border of the territory.

In Mississippi Territory events of 1811, former governor Robert Williams was still in the courtroom. He was fighting a suit which had been filed four years previously. The plaintiff this time was William T. Voss, a brick mason who had held several offices including councilman and selectman. Williams fired Voss from the public offices, but the firing that finally sent Voss to court was when Williams fired him as a captain in the first regiment of the militia (Hamilton, 1953). Not surprisingly, Voss was known to favor the politics of George Poindexter.

At first, Voss filed a complaint of trespass against Robert Williams in Adams Circuit Court (*Voss v. Williams,* 1811). William Shields represented William Voss and brought an action against Williams, represented by Seth Lewis, to recover damages from the defendant for the use of defamatory words and actions. Williams was actually taken into custody on a warrant signed by Judge Rodney in 1807, but bail was not required. Voss wanted criminal charges brought against Williams.

Voss was born in North Carolina, but he and some of his family moved to the territory. He was a brickmason by trade and bought land in the area. He married Mary Caroline Willis in 1803. Recently, he had been appointed by the court to be an overseer of the poor in his district.

At the time of the filing of the lawsuit, Voss was an alderman and a justice of the peace. Shields wrote that Voss obeyed laws and carried out the duties of his office honestly, but Williams wanted to disgrace him in his office. On Aug. 6, 1807, Voss visited Williams, perhaps to discuss these issues with him. Just as in the trial of clerk Theodore Stark, Williams had written his version of the story and it was printed in the *Mississippi Messenger*, in volume 4, no. 50, according to the complaint. Williams wrote, "Voss and George Poindexter taught others their version and said that Voss was guilty of improprieties in his office" as alderman (*Voss v. Williams*, 1811).

Lewis countered that Williams had the right to dismiss officials. He pointed out that Williams was the governor and had many duties. And, also like the Stark trial, the court concentrated on what the governor could do or could not do. The trial was continued seven times. After several motions and the continuances and the expiration of Williams'

term as governor, the trial seemed to have just ground to a halt when one of the motions was not answered.

No evidence was found of the introduction of the newspaper, the printer, or further references to libel after the initial filings. The emphasis for the courts seemed to be the duties and rights of the governor, possibly another effort to push someone from office that the court or other officials did not favor.

A slander case involved a forgery in Adams County in 1811. Attorney Charles B. Green took a deposition of his client, John Brown (*Brown v. Henderson,* 1811). The slander was committed in this case only after William T. Henderson had committed a forgery. Brown complained that Henderson had forged his name on a note stolen from the desk of Daniel D. Elliott. Brown was sick and said that Henderson had taken advantage of his illness to steal the note. Henderson then said that Brown had accused Henderson of theft and spoke malicious words about Henderson. The grand jury did not agree with Henderson and issued a presentment against him for forgery.

Henderson did not stay in Adams County for the trial; instead, he left for Tennessee. Gov. Holmes wrote Attorney General Seth Lewis asking him to bring Henderson back for trial. Then Holmes wrote to the governor of Tennessee explaining that Henderson had been indicted for "counterfeiting the signature of John Brown" (Carter, 1938). A final ruling about Henderson has not been found yet, but the grand jury decided against the slander complaint in favor of the forgery.

The other two slander cases filed in Adams County were more personal matters of disagreement. Benjamin Van Benthusen swore before Samuel Brooks, justice of the

peace, that Isabella Baxter stood in front of his home and loudly called his wife Polly a whore and other similar names (*Benthusen v. Baxter*, 1811). She also, he complained, uttered the same kind of abuse frequently in front of other citizens. The peace of the family had been greatly disturbed according to the complaint. There were no further papers in the file.

In another family slander matter, George Schaeffer and his wife Sally were alleged to have spoken false and malicious words about the plaintiff, John Lape (*Lape v. Schaeffer*, 1810). Adams County sheriff Montfort Calvit bound Schaeffer and his friend, Henry Belsinger, over for a court hearing. Lape claimed injury from the slander and asked for $1,000 damages. Nothing further was found about either of these cases.

However, important events were setting the stage for major changes in the Mississippi Territory. For several years the Kemper brothers, Nathan, Reuben, and Samuel, had tried to engage others to help them remove the Spanish from West Florida. When the Kempers failed in a rebellion in 1804, President Jefferson asked Congress to pass an act with the purpose of claiming that the Louisiana Purchase had actually included West Florida.

In 1809 President Madison had the same idea. The problem was that those interested in obtaining West Florida were more interested in grabbing the land than in working with the United States government. The tension between men who wanted to invade West Florida and the Spanish was increasing and troops were standing by in Mobile. Gov. Holmes was beginning to worry about the western part of the territory too because it was feared that the French might try to drive out the Spanish near Baton

Rouge. He ordered Andrew Marschalk, brigade major, to move from Washington to Pinckneyville. Marschalk was ordered to raise the number of men on each patrol from four to eight (Carter, 1938).

The same day, Jan. 30, Holmes wrote to Secretary of the Treasury Albert Gallatin about some economic news. He also spoke of the "melancholy event" of Judge Rodney's death. Judge Leake lived some distance from Holmes. For those reasons, Holmes asked for another judge (Carter, 1938). Keeping peace in the territory with threats from the east and the west was difficult, but without law enforcement and a judicial system in place, peace was going to be impossible.

Then Holmes heard about an armed mob that was seen in Natchez. Judge Samuel Brooks wrote Holmes and asked him for some militia troops (Carter, 1938). As the rioters were "committing outrages on the citizens" of Natchez, Sheriff Montfort Calvit submitted his resignation and White Turpin was named as his replacement.

An armed group captured the Spanish fort at Baton Rouge. The group declared independence and asked Holmes for troops for protection. President Madison declared a crisis and asked the Mississippi Territory and Orleans Territory militias to occupy West Florida. By 1810, the Baton Rouge area was annexed into the Orleans Territory. By 1812 the Mobile district of West Florida became part of the Mississippi Territory.

David Campbell accepted the commission offered him for judge. However, Campbell would have only months to live. Ferdinand Leigh Claiborne accepted a commission as brigadier general for the Mississippi Territory militia. However, despite

the best efforts of Claiborne and Holmes, the actual commission for Claiborne did not arrive until much later at the end of October (Carter, 1938).

George Poindexter won the election for territorial delegate over Robert Williams. There was some problem with the election returns from the town of Washington. The returns did not appear to be added to the final count until two weeks later (Carter, 1938).

The sales of new land obtained from the Indians was announced by President Madison. Surveyor Tom Freeman wrote the President that his proclamation had been printed in Marschalk's *Natchez Gazette,* the newspaper most circulated and read (Carter, 1938).

In August, Holmes asked to return to Virginia to attend to some financial matters. Secretary of State James Monroe replied that Holmes could leave as long as his absence would do no harm to the territory (Carter, 1938). Henry Daingerfield became acting governor on October 16, and he held the position until the return of Holmes which did not occur until June 15, 1812.

David Campbell from Tennessee was given the oath of office to became a territorial judge. Three days later the territorial legislature sent a memorial to President James Madison which was the first request from the territory to become a state (Carter, 1938).

A grand jury from Baldwin County sent a presentment to Congress in November, asking for the removal of Judge Harry Toulmin of the Superior Court, in the eastern District of Washington. The year 1811 ended with some interesting requests of Congress as the territory wanted to expand to the north, east, and south, and wanted to be recognized as a supporter of the United States in whatever way possible.

Summary

The years of 1801-1811 saw the growth of politics and territorial government, the growth of courts, and the introduction of newspapers in the Mississippi Territory. While other areas of the country were involved in political parties, the Mississippi Territory saw the growth of political factions. The factions were split into three groups which consisted of the older Federalists, the Green family and friends, and the Claiborne family and friends.

The judicial system struggled because of the lack of permanent judges. Finally there was some stability with the arrival of Judge Thomas Rodney. Both the courts and the newspapers were used by the factions.

One new political figure arrived and made an immediate and lasting impact. George Poindexter moved to the territory and joined the Green faction. Soon Gov. Claiborne moved to the Orleans Territory and Williams was appointed as governor. It was Williams whom Poindexter disliked and wanted removed. Poindexter began by bringing charges against Isaac Briggs which led to the libel trial of the surveyors Davis and DeFrance. Briggs had recommended Williams for the position of governor. After Judge Rodney chastised Poindexter in court, Poindexter used the Burr incident to embarrass the judge when he testified before Congress about the grand jury charge.

Poindexter used the printer Shaw and his newspaper to harass Gov. Williams and the governor retaliated by seeking to bring a libel suit against Poindexter. Poindexter also sought the help of Congress to remove Peter Bryan Bruin from the bench. Poindexter

attempted to thwart Judge Rodney in his search for a solution concerning the appointment of court clerks.

Judge Rodney tried to solve the many legal problems of the territory through the use of common law and common sense. He remained as other judges were appointed only to be reassigned or to leave. He tried to solve the problems of jurisdiction concerning the court clerks and the Burr incident.

Newspapers were begun and abandoned also. Andrew Marschalk printed the first laws and the first local newspaper. Then Ferrall was appointed the official printer while Stokes, the Terralls, and Shaw began printing their own publications. The newspapers printed the news and opinions of the factions and lined up with one or the other of them. Shots were taken by grand jury presentments at the printers in attempts to deprive them of the rights granted them by the Constitution of the United States.

By the time the War of 1812 started, the Mississippi Territory had been through the times of strong factions who made clear their sides of the issues through whatever means of communication could be found. Each group set up its own newspaper to voice opinions and to print circulars. Important events like the closing of the New Orleans port were reported. New laws were passed and then published by the printers. Both printing and libel were slowed during the coming wars with the British and the Indians. News consisted mainly of eyewitness accounts sent to the printers or the reprints of articles from newspapers closer to the battles. The battles were covered by the newspapers and, in time, the coverage and letters provided information for the foundation of new libel cases.

CHAPTER IV

POLITICS, LIBEL, AND WAR, 1812-1816

The first quarter of 1812 saw the nation and the territory preparing for war. The inhabitants of the territory were anxious to show the federal government that they wanted to support and help the war efforts. Perhaps such support would help their chances of becoming a state with the same privileges as all Americans.

An agreement had been made in Congress for an embargo for 60 days while negotiations between the United States and Great Britain continued.The second quarter of the year saw the failure of the negotiations. On June 18, President James Madison sent a message to Congress.War against Great Britain was declared the same day. Soon events brought the war close to the Mississippi Territory.

James Madison was renominated unanimously at a congressional caucus. With his vice-president having died while in office, the candidate for vice-president was Elbridge Gerry of Massachusetts. Madison and Gerry won the election.

In the Mississippi Territory, the movement for statehood was on again, off again. In the Indian Wars and in the War of 1812 some highly acclaimed heroes were recognized from the territory; however, other men in the militia produced some questionable actions. The political strife was set aside in favor of saving the territory from the Indians and from the invading British troops. The disagreements between Judge George Poindexter and printer Andrew Marschalk would move soon after the war from the newspaper's columns into the courtroom.

In the eastern part of the territory, a presentment of the Baldwin County grand jury against Judge Toulmin was forwarded by Cowles Mead, speaker of the territorial house of representatives, to Congress. The charges against Judge Toulmin included acting partially in his office as judge, having refused a prisoner the right to talk with his counsel, and speaking with the governor of West Florida with regard to the dispute with the United States (H.R., 12th Cong., 1st sess., no. 300).

Toulmin wrote to President Madison to tell him that he knew nothing of the charges against him until he read about them in a Natchez newspaper (Carter, 1938). He had been afraid for some time that someone was trying to murder him because at J. P. Kennedy's trial about his leadership of the expedition to annex West Florida, Kennedy's friends came to the court heavily armed. Toulmin also wrote that Capt. Edmund Pendleton Gaines from nearby Fort Stoddert had been attacked.

Qualifications for judges were few at that time and some jurists were chosen only because they could read a little. Of the five justices in the eastern territory, three were fugitives from justice, the fourth a Tory during the Revolution, and the fifth had been a trader with the Creek nation for most of his life (Carter, 1938).

In another letter to the chief clerk at the U.S. State Department, Toulmin wrote that, of the judges who had been commissioned and approved by the Senate, Judge Kirby died, Joseph Chambers retired to North Carolina, Attorney General Nicholas Perkins and Thomas Maury left, and Judge Hale died of yellow fever. And only two attorneys remained that Toulmin thought he could trust (Carter, 1938).

After a committee investigation, George Poindexter submitted the following report to Congress about the grand jury presentment from Baldwin County concerning Judge Toulmin. The report was read in the U.S. House of Representatives on May 22, 1812:

> That the charges have not been supported by evidence, and from the best information that the committee has obtained on the subject, it appears the official conduct of Judge Toulmin has been characterized by a vigilant attention to the duties of his station, and an inflexible zeal for the preservation of the public peace and tranquillity of the country over which his judicial authority extends; the committee recommends the following resolution: that it is unnecessary to take any further proceedings on the presentment of the grand jury of Baldwin County, in the Mississippi Territory, against Judge Toulmin. (H.R., 12th Cong., 1st sess., no. 322, p. 184)

Josiah Simpson from New Jersey was nominated by Poindexter and he accepted the commission from Secretary of State James Monroe to become a territorial judge. Simpson was educated at Princeton and subsequently, began the practice of law. When he moved with his judge's commission to Natchez, he chose and preserved an older historic home in the area. Others have written that he was an intellectual and had a deep knowledge of law (Rowland, 1925). He would rule on a libel charge made against Marschalk, ruling in favor of freedom of the press. Later, his legal knowledge was helpful at the Mississippi Constitutional Convention, but he did not live to see the results.

Several appointments were made during early 1812. The appointee who was to publish laws of the United States for distribution in the territory, W. O. Winston, sold his

newspaper, the *Gazette,* to Peter Isler. Isler wrote the legislature to ask if he could publish the laws in his newspaper, the *Mississippi Republican* (Carter, 1938).

Finally, Gov. Holmes returned to the territory. One of the first things he did was to take over the job of preparing the militia that Daingerfield had begun. Holmes wrote to Gen. Wilkinson, giving the information about the strength and condition of the militia but added that no arms could be procured (Carter, 1938).

By 1812, the Mississippi Territory had grown immensely. According to geographer and writer Benjamin Wailes, the southwestern corner of the territory had a population of over 30,000 people. Natchez, he wrote, was gaining a reputation for luxurious living and had many of the same luxuries that the people enjoyed in the east (Sydnor, 1935). Natchez had four tailor shops, three blacksmiths, six carpenters, four boot and shoemakers, a bookbinder, a wagon maker, three barbers, four bakers, eight physicians, seven lawyers, three English schools, a Free Mason lodge, four magistrates, three printing offices with weekly newspapers, six public inns, and over 30 retail stores of various kinds. The new Bank of Mississippi, formed in 1809, claimed assets that rose to $500,000 by 1812. Wailes wrote that someone counted 83 boats in the mile-long area that constituted the Natchez docks (Sydnor, 1935).

To guard all this prosperity and the citizens, Gov. Holmes wrote Secretary of State James Monroe asking him to send arms because Holmes and the other officials were worried about an Indian uprising or, possibly, a slave revolt (Carter, 1938). Then Holmes wrote to the governor of the Orleans Territory, W. C. C. Claiborne, asking him to send information about the area and the people in West Florida. Claiborne's reply was that the

land between the Mississippi River and the Pearl River was populated with “a more heterogeneous mass of good and evil that was never before met in the same extent of territory” (Cox, as cited in Higgs, 2005). Then In July, Holmes received word that the United States had declared war on Great Britain.

Since the people of the territory wanted to show their support for the United States, resolutions to that effect were sent to Washington, D.C. from the towns and counties. To make sure that the support was publicized, the resolutions were published in the *Chronicle,* the *Mississippi Republican*, and the *National Intelligencer* (Carter, 1938).

In August, Gov. Holmes issued a proclamation organizing Mobile County after Congress voted on May 11, 1812 to enlarge the boundaries of the territory to include the land east of the Pearl River, west of the Perdido River, and south of the 31st degree, north latitude. Application by the citizens of West Florida to be annexed to the Mississippi Territory was made in November of 1811, but full Senate approval did not pass until February, 1812. Occupation of the area was undertaken by United States troops in 1812 and approved by the Senate in Feb. 1813. Elections were held in several areas including one in Pascagoula, one in the area next to the southern part of the Pearl River, and another one in the area around the Bay of Biloxi (Carter, 1938). Both Toulmin and Holmes asked for the help of the territorial legislature to answer the many questions that had been left open by the act of Congress that enlarged the boundaries (Carter, 1938).

Another request by the territorial citizens to become a state was sent to Congress only to “lie on the table.” However, by the end of the year, the people in the territory wanted statehood to be postponed (Carter, 1938). Too many changes had taken place and

the people wanted to work with the new territorial arrangements, particularly with the changes in shipping and in commerce.

More problems arose as the War of 1812 moved closer to the territory. Some writers have given much credit for heroism to Gen. Claiborne and a rising military star named Thomas Hinds. The militia also was anxious to prove the support of the Mississippi Territory to the United States government. There is no doubt that the war changed the Mississippi Territory in several ways, including political alliances, leadership of the militia, and the content of political news in the newspapers.

During 1812, frequent correspondence between the governors of Louisiana and Mississippi kept each other informed on the progress of the war. Commerce and the ports at Mobile and New Orleans were important for the stability of the two areas. The Mississippi militia had finalized preparations for war and awaited orders.

The *Mississippi Republican*, begun in 1810, was published by Peter Isler, who would remain with the newspaper until 1818. Another local newspaper at the time was the *Weekly Chronicle* which began in 1808 with John W. Winn and Company, publishers. A third newspaper would be started in April, 1813 known as the *Washington Republican*, but editor Andrew Marschalk would move it later to Natchez and combine newspapers (*Union List*, 1970).

Libel law had not changed much on the east coast of the United States, but it was stretched with new cases and different circumstances. Solomon Southwick, editor of the *Albany Register*, appeared twice in court in 1812. Of his cases, the first libel case, in New York Superior Court, was a tangle of the same news published in two newspapers, but

apparently the second printer, Southwick, did not know the information that he abstracted from the first newspaper was not the truth (*Coleman v. Southwic*k, 1812). Southwick published a correction but, sadly for Southwick, his assistant testified the information that the article could be libelous arrived just as the newspaper was going to press. Given the time that it would have taken to make the corrections, Southwick decided to ignore the changes and went to press. The lower court found the defendant guilty and awarded $1,500 damages to Coleman, the person in the article who was libeled.

Judge James Kent rendered the opinion on appeal. Kent has been called "the American Blackstone" because he wrote America's first legal thesis, *Commentaries on American Law* (Bowman, 1995). In the higher court's ruling, Judge Kent wrote "the meaning of the libel was apparent on the face of the paper and, all that was required to support the meaning of libel, was the production of the paper and proof of its publication. The meaning was obvious from the paper itself" (*Coleman v. Southwick*, 1812). Therefore, a new trial was denied.

The importance of the case could be applied to the territorial frontier. Much of the news in the local newspapers was information from other sources. Mail arrived with other newspapers and letters. Information for articles was taken wholly or in part from other newspapers and sometimes correspondence, and both sources printed the name of the original source. For example, the lead story in the *Washington Republican* on Sept. 8, 1813, was an extract from a letter from a territorial resident who was visiting Maryland. Letters to the editor were printed in columns with the other news. A letter from the same day with the headline "*For the Washington Republican*" came with the author's opinion

that “newspapers led minds astray and enveloped the people in darkness.” News of the war came from other newspapers several days later, but would be printed in a similar column labeled, for example, “From the *Chillicothe Gazette,*” or other newspapers close to the troop movements and battles. Without a way for verification, truth of the publications and the letters was an important issue to prevent libel lawsuits.

Later in the year, an appeal was heard in the same court that ruled on Southwick’s earlier case in New York, over language used by Southwick about a witness in the another case (*Steele v. Southwick*, 1812). The witness was not in danger of a perjury charge in court, but the words Southwick wrote about the witness allegedly were libelous. The witness sued the publisher Southwick, and the jury found that the words written were actionable. In the appeals case, the ruling was given by the whole court, *per curiam,* and the court ruled for the plaintiff based on evidence the defendant had given.

Libel cases in the Mississippi Territory were put aside during the final months of the War of 1812 while the Mississippi militia also fought on fronts against the Creek Indians. Many of the prominent citizens joined the militia or the regiments that were led by Andrew Jackson. The muster rolls were full of names of planters, businessmen, and officials who also enlisted to help in the protection of the ports of Mobile and New Orleans. While many U.S. troops fought in other coastal areas, the Mississippians fought to prove their loyalty both to the United States and to Andrew Jackson, both in fighting the Indians, and, later, in fighting the British.

In the Mississippi Territory, most of the battles with the Indians took place in 1814. As the Indian battles continued, citizens of the territory were embarrassed over the

ongoing confusion with land titles, and people were so divided over the issue that the quest for statehood was abandoned in February and would not be taken up again until the end of 1814.

Many things still needed to be settled concerning the annexation of West Florida. Harry Toulmin met with delays when he tried to get the public records, land titles, and civil contracts from the governor of Pensacola. Toulmin also asked for a new federal court in Mobile to take over the commercial cases and the maritime disputes (Carter, 1938). After months of delay, the missing West Florida public records were finally found in the home of a woman in Pensacola who said she did not know that there were military papers in the boxes she had.

Court and legislative appointments were made for the territory. Judge David Campbell died Nov. 21, 1812, and George Poindexter was appointed territorial judge after Senate confirmation on March 3, 1813. Alexander Montgomery, who had been appointed to the legislative council in 1809, died in November, 1812 as well, and Nathaniel Ware was confirmed to take his place the following February. Ware was practicing law in both Mississippi and Louisiana according to an ad in the *Washington Republican* on Aug. 18, 1813. Thus, the two territories were linked through ownership of property and through legal issues.

The *Mobile Gazette* began publication in April, 1813 under printer James G. Lyon. He had printed laws in New Orleans and wanted to do the same in Mobile (Carter, 1938). He wrote to Secretary of the Treasury Gallatin in May asking to do so. No other newspaper was published in Mobile until late 1821.

News of a newly invented printing press reached the territory from Philadelphia. The *Washington Republican* made the announcement in early 1814, saying that impressions on paper could be made now after only one pull by the printer instead of the usual two (Mar. 18, 1814). The printing offices in Paris made several attempts, costing nearly $6,000 to develop the press, but the work was actually finished in America. Three kinds of the new press were to be made available for purchase from Philadelphia.

Dr. William Lattimore was elected as the delegate from the territory to Congress serving from June of 1813 to March of 1815. He had been elected in 1802 to succeed Thomas M. Green as delegate to Congress and reelected in 1805. In 1813, Marschalk wrote that Lattimore was "modest, fond of retirement and confident of the good sense and justness of his fellow-citizens, he has been always willing to rest his services and reputation in the hands of a generous and discriminating public" (as cited in Rowland, 1907, 2: 56). Later on, Lattimore would favor the division of the territory which would cause him problems with voters in the Natchez area.

With the newly annexed land, and with battles with the Indians and the British likely, and with new judges and officials just coming into the territory, Gov. Holmes asked twice that the legislative session be prorogued for a short time. The governor's action was announced in the *Washington Republican*:

> David Holmes, Governor of the Mississippi Territory, by virtue of the powers in me vested DO HERE BY PROROGUE THIS SESSION OF THE GENERAL ASSEMBLY OF THE MISSISSIPPI TERRITORY from the first Monday in

> November until the third Monday in December UNTIL WHICH DAY THE SAID GENERAL ASSEMBLY IS HEREBY PROROGUED. (Oct. 20, 1813, n.p.)

The seal of the governor was printed below the announcement.

The preparation continued by Holmes in 1813 proved to be very helpful in 1814. Preparation had included the general orders to the militia of the Mississippi Territory to muster. The orders were printed in the *Washington Republican* and the notice was signed by Commander-in-Chief David Holmes and Lt. Col. Andrew Marschalk, adjutant and inspector. Each of the regiments both east and west of the Pearl River were given locations and dates to muster (*Washington Republican*, Sept. 4, 1813).

In his capacity as adjutant general to Gov. Holmes, Marschalk brought charges against Capt. James K. Cook of the Mississippi Dragoons (*Washington Republican,* Oct. 20, 1813). This James Cook does not appear to be the printer of the same name in the territory. A general court martial was held in March, 1814, with the specification of disobeying an order issued by the commander-in-chief on Sept. 10, 1813. Cook's plea was not guilty.

The decision of the court had some far-reaching effects. Cook was found guilty and sentenced to pay a fine of $40 and to be publicly reprimanded. In addition, Cook and two other officers had their commissions revoked and the Dragoons were dissolved. The other volunteers were to go back to the infantry companies to which they originally had belonged. Marschalk then dissolved the general court martial.

President Madison asked Congress to repeal the embargo of ports along the coast of the United States and Congress voted to repeal the act in April of 1814. In Mississippi,

no financial help could be expected from the U.S. government; however, clashes between settlers and the Creeks signaled the beginning of the Indian War. Andrew Jackson called out the Tennessee Volunteers and began a major offensive in the spring. Jackson's troops and the troops of his assistant, Gen. John Coffee, fought the Indians, killing so many that the remainder of the Creeks surrendered and moved from the eastern part of the territory. However, Ferdinand Claiborne received a wound while fighting the Indians, and he was not able to fight again.

Castigator v. George Poindexter

In May, a grand jury presentment that was critical of the press was handed down in Adams County. It was signed by 14 men including Ebenezer Rees and lawyer Abner Green who previously were both involved in slander cases. The presentment was printed on May 11, 1814, in the *Washington Republican* and included an editorial from Peter Isler's *Mississippi Republican*. Additional comments attributed to Marschalk were included in the edition.

The grand jury recognized the importance of freedom of the press. However, the jury wrote, "there had been too many essays and paragraphs in the public prints of the territory designed to bring into disrepute the officers of the government" (*Washington Republican*, May 11, 1814). In particular, the jury cited the dedicated work of Brigade Gen. Claiborne and the valuable services he had rendered to the territory and to the country.

From the *Mississippi Republican* came some satire about the meaning of the presentment. The writer pointed out the desire of the grand jury to censure newspapers,

but the jury seemed to have considered their words inapplicable to themselves. While the jury did not shrink from its own perceived duties, there was one point, according to the writer, where "there is a wide difference between *public* and *private* character." While the former could be the target of comment, "the other should never be drawn from the shade of privacy" for comment (*Washington Republican*, May 11, 1814).

The *Washington Republican* writer candidly perceived that it was the only newspaper alluded to in the presentment. There were four "public prints" in the territory; two in Adams County, one in Madison and one in Mobile, but the latter two by law were too far away to receive the wrath of the presentment. And the *Mississippi Republican* writer believed the newspaper was innocent of such charges judging by the tone of the editorial, the writer pointed out. The *Washington Republican* writer continued:

> Thus it is that we believe the *grand rebuke* was originally contemplated for the *Washington Republican*--We plead to the charge; and beg that it be remembered that we shall meet the subject in *plain homespun.*--We will take our time from now until the sitting of the next Superior Court in October, at which period we shall have the honor of another grand jury.
>
> We pledge ourselves to be just to 'the most deserving officers of our country, both civil and military' and 'connected with this subject' we will be so '*more especially*' to a 'meritorious citizen' mentioned in the presentment.
>
> The 'cause of truth' and 'the palladium of our rights,' the freedom of the Press, we will as we have done, ...We vow to the congregated juries of heaven and

of earth that we will dishonor neither knowingly or wittingly. (*Washington Republican*, May 11, 1814, n.p.)

Just one week later, the territory's delegate to Congress, William Lattimore, wrote that Congress had adjourned April 18 and would meet again the last Monday in October. Lattimore's letter to the newspaper gave a list of the items passed or sent to lie on the table until the next session. He included some news about the West Florida land claims, but some questions had arisen in the territory over British claims.

Below Lattimore's letter in the *Washington Republican* on May 18, 1814, was a letter addressed to Marschalk. The author was Philander Smith, who had been in the territorial legislature for several years and was the foreman of the grand jury that refused to indict Aaron Burr. Smith wrote that Lattimore complained in a previous edition of the newspaper that no mention of the British claims had reached him. Smith thought it was important to remind Lattimore that a resolution had passed the territorial assembly in 1811 asking Congress for admission as a state and included a request for some provisions to be made for the British and Yazoo land claims (*Washington Republican*, May 18, 1814). From Lattimore's comments, Smith believed the memorial from the territory had never reached Congress. Smith wrote that it was important to have the claims settled prior to petitioning for admission as a state.

Marschalk added a comment that the memorial about quieting the British claims was printed that day, May 18, in the newspaper. Following the comment, there was a column of "Observations" by a writer who called himself Theophrastus. The columnist wrote about the frequent news of interest sent to the newspaper by the territorial delegate

at Congress. When the news focused on the work done by the delegate and the work done was what the constituents hoped for, then the delegate should be recognized for his hard work. Lattimore, according to Theophrastus, had been a good public servant and done all that he promised before the election.

The columnist questioned whether the influence of Congress over the lone delegate had not caused him to forget some of the problems of the territory and perhaps made him forgetful of some of the needs of the constituents (*Washington Republican*, May 18, 1814).

In world events, Napoleon was overthrown in France, allowing the British to concentrate fully on the fight with the United States. In May, Andrew Jackson was named commander of the area from Mobile and west to New Orleans. While the War of 1812 began moving toward the South, the war between the Adams County Grand Jury, Judge Poindexter, and the *Washington Republican* continued in the territory.

In the May newspaper columns, no clear reference was made to any person who may have charged the grand jury to make its presentment. However in June, a column in the *Washington Republican* suggested someone may have been behind the presentment. "We fear the Grand Jury are out of patience waiting for us--we wish, however, that the case which they have ill-naturedly forced upon us, were in our judgments, of less importance both to our interest and the interest of the public," the column began *(Washington Republican*, 1814, June 1, n.p.). While the writer believed that the attempt to censure the press was not serious, the writer wondered what effect such an example

would have on future juries. It was the author of the column who would find out just what effects would be taken from this presentment only one year later.

The writer of the column in June continued by asking why the offending editors were not named by the grand jury. The writer suggested that the whole presentment was produced by an individual "who imposed it upon the Jury, and obtained their sanction to gratify his feelings toward the press" (*Washington Republican*, 1814, June 1, n.p.). The columnist noted, as Judge Rodney had done, that the presentment should come from members of the grand jury who had actual knowledge of the proposed charges.

Blackstone was cited as the authority in the cases from the United States when it was ruled that the case was to be tried in the county where the alleged libel took place. The writer of the June 1 column cited Blackstone as well, pointing out that the instant presentment could not be directed to all the "prints of the territory," but could refer only to writers in Adams County. Furthermore, the men of the jury must be "*thoroughly persuaded of the truth of the matter"* for it to be included in the presentment (*Washington Republican*, 1814, June 1, n.p.). Therefore, the writer concluded that the offending editor should have been named.

Two months later, a three-column article was written in the *Washington Republican*. Again, the article was not signed, but the writing sounded like future articles signed by the "Castigator." It was addressed to the grand jury that reprimanded the "public prints." The discourse began with the example of an unidentified king who said that he who understood the art of "dissimulation" was qualified to govern (*Washington Republican*, 1814, Aug. 10, n.p.). Using an analogy, the writer said that the Grand Jury must have

been “born and educated to govern by this admirable qualification.” That was the deception that distorted the thinking of the jury members, he continued, and was behind the jury’s attack on the press.

The writer of the Aug. 10 article apparently thought that the writing of the presentment was done by one person he referred to as *“little Ulysses*.” He said that *“little Ulysses*” had attempted to show impartiality by using the phrase “all the prints in the territory” but, by mentioning the investigation of Gen. Claiborne done by the newspaper, the writer of the presentment “was not shielded over by the mystery of dissimulation” (Washington Republican, 1814, Aug. 10, n.p.). Only the *Washington Republican* had done such an investigation.

However, the author brought up one very important point concerning the press. He wrote that the press was engaged in a particular service to the public and “we mean the pursuit or the attainment of truth” (*Washington Republican*, 1814, Aug. 10, n.p.). “Truth is invincible even to the pruning knife of the jury,” he wrote. He continued, saying, “If the hon. jury were disposed to interfere with publications in a newspaper, why did they not put their finger upon the wrongful and licentious line?” The reluctance of the grand jury to name the editor of the offending publication seemed to point to the presence of someone behind the charges in the presentment.

Assuming Marschalk was the author, he had tried to investigate the difference between what was written in the *Mississippi Republican* and the accounts in the *National Intelligencer* about Claiborne's actions when fighting the Indians (*Washington Republican*, 1824, Aug. 10). Reports from the two newspapers differed widely in their

accounts of the battles with the Indians at their Holy Ground and then at Fort Mims. Marschalk blamed Gov. Holmes for his "negligence and inactivity" in allowing both misfortunes to occur. The report in the *Intelligencer* came from Claiborne's official account of the battles written to the U.S. secretary of war. While the names of the writers of the accounts were fictionalized in the articles in his newspaper, Marschalk said the real names were left with the printer and could have been obtained by anyone concerned. Claiborne had written nothing contradicting the accounts in the *Washington Republican,* according to the writer of the column.

Two references were made in columns in the *Washington Republican* about other libel suits (1814, Aug. 10). The presentment mentioned by another grand jury was an alleged libel by the editor of the *Natchez Gazette* made against another prominent person. The description in the article quoted that presentment as saying it was " a matter of high offence [*sic*] demanding correction." The attorney general, "in a faithful and impartial discharge of his duty" gave the case to a justice of the peace and the editor did appear in court. The column writer was indignant that no news of the trial ever reached the public and the editor walked away with no reprimand. A reference was made to a case named *Winston v. Isle*r in the June 1 newspaper and the facts of this case could match those names. No further information was found concerning the alleged libel case.

The author of the column repeated his assertion that only one person not on the grand jury had written the presentment and the charges. Then he wrote that this game might continue to excite people who were "ignorant and uninformed, but be regarded by the understanding with disdain" (*Washington Republican*, 1814, Aug. 10, n.p.). Again, the

territorial precedent set by Judge Rodney about the right of only jury members making charges seemed to be ignored.

The person that Marschalk may have thought was behind the grand jury presentment was Judge Poindexter. Marschalk disliked Poindexter and his politics and took every possible occasion in the newspaper to oppose Poindexter. In turn, Poindexter used his judicial authority to harass Marschalk.

George Poindexter moved to the Mississippi Territory in 1802. He married Lydia, the 14-year-old daughter of planter Maj. Jesse Carter in 1804. Carter's family moved to Mississippi when it was still owned by the Spanish and, in 1799, he joined the political campaign against Gov. Sargent. Also, Carter was one of the militia officers who protested Gov. Robert Williams' actions by resigning his commission (Hamilton, 1953). Carter died in 1816 and mentioned Lydia and George, Jr. in his will.

George and Lydia had two sons, George Jr., called Littleton, and Albert G. Soon afterward, Lydia' s poor health was mentioned in several letters. However, she did accompany Poindexter to Washington for the second session of Congress that began in November, 1807. However, in 1815, the couple divorced. A record of their divorce showed that Lydia and her minor son, Albert Gallatin, were provided for by Poindexter (Miss. Court Records).

George married Agatha Chinn in Feliciana Parish on Aug. 13, 1816. However, there is an obituary for her in a Sept. 27, 1822 newspaper which says Agatha, consort of George Poindexter, died Sept. 10 at the age of 24. Apparently, a son had been born to the couple, but the infant died just before the death of Agatha. A Wilkinson County deed

showed that Poindexter, for the sum of one dollar, sold Agatha's mother, Susan, a house and plantation next to his plantation where she could live for the rest of her life.

George married for a third time to Ann Hewes from Boston, on May 5, 1832, in Washington, D. C. Apparently she outlived him because historian Benjamin Wailes told of trying to get George's papers from her for a museum (Sydnor, 1935). Someone else, however, beat him to the letters.

In 1828, from the Wilkinson County Deeds, Book E, page 3, son Albert apparently brought suit in Natchez against his father. The matter was settled out of court when Albert admitted that George had maintained him and tried to educate him (Miss. Court Records). The law suit was necessary because George, Sr. publicly accused Lydia when she was pregnant with Albert of having had an affair with Col. Thomas Percy. Poindexter said publicly that he had not believed that Albert was actually his son.

Meanwhile, in 1822, Lydia remarried to a minister named Lewis Williams and the couple left the area. She had tried to do what she could for Albert, but Albert was embarrassed over the rumors and speculation about his birth and he did not seek help from her (Nelson, 2008).

George Poindexter served the Mississippi Territory and the state for many years. He was a lawyer, he was attorney general of the territory, he was a member of the territorial assembly, he was elected as the territory's delegate to the U.S. Congress from 1807-1813, and he was a judge in the territory from 1813-1817.

Poindexter also was known for his temper, ego, gambling, and drinking. Abijah Hunt had a contract to deliver the mail and was a merchant in Natchez and a Federalist.

One day in 1811, Hunt spoke against Thomas Jefferson, and word of Hunt's comments reached Poindexter. Kane described the following events in great detail (Kane, 1947). It looked as though negotiations might remedy the differences between Hunt and Poindexter, but earlier, a friend of Hunt's also had a disagreement with Poindexter. Once Poindexter remembered that, the negotiation was ended. Hunt was placed under arrest when the talk turned to a duel since dueling had been declared unlawful. Poindexter was sought after Hunt was arrested, but Poindexter was not taken into custody. When Hunt was released, he was challenged by Poindexter to a duel.

The two men faced each other in June of 1811. After the firing, Hunt was wounded in the stomach and lying on the ground. Just before Hunt died, he told a friend that Poindexter fired before the signal (Kane, 1947). Since the entire event was not legal, no official action was taken against Poindexter concerning the accusation. And Poindexter wrote a bond for himself that stopped other legal action against him for the duel.

Printer Andrew Marschalk wrote columns that questioned many of the actions and political decisions of Poindexter. After the grand jury presentment, articles were written by other citizens describing some of Poindexter's actions in the community. For example, in the *Washington Republican*, Oct. 4, 1814, "A Bystander" wrote a letter titled "We shall come at the truth and the fact bye and bye." Bystander told of a memorial being circulated for signatures. It was a request to Congress to quiet British land claims in the territory. Poindexter had taken the memorial from the hands of a gentleman and had thrown it "scornfully" to the ground. Bystander wrote that Poindexter said "that no

gentleman would sign such a paper and that every man who did were[*sic*] a d_____d rascal" (*Washington Republican,* 1814, Oct. 4, n.p.).

Bystander wrote that he was not going to reason with Poindexter as to what constitutes either a gentleman or a d_____d rascal, but men of respectability and good standing in the territory had signed the memorial and it had unanimously passed the house of representatives of the territory in 1811. Since Poindexter at the time was the territorial delegate to the U.S. Congress, Bystander wondered whether the memorial would be laid before Congress.

An article signed by Ebenezer Rees, who had been involved in slander litigation previously, was in the *Washington Republican* and he stated:

> I certify that last month while in conversation with several gentlemen about the memorial now circulating for signatures by the people, that Judge Poindexter intruded himself on the company and snatched the memorial from my hand, looked at it a few minutes, and threw it down indignantly with an air of disapprobation, saying that 'no gentleman would sign such a rascally paper, and that any men who would sign the same, must be damned rascals'. (Oct. 12, 1814, n.p.)

It was the same memorial that Philander Smith questioned Lattimore about in the earlier newspaper article.

Also in the Oct. 12 issue of the *Washington Republican*, Marschalk printed a letter to Poindexter from "Castigator," a name meaning to punish by criticizing severely. The author repeated the charge sworn by Rees and then addressed what Poindexter said. Castigator reminded Poindexter that he had spoken on a subject important to the citizens

of the territory, “If our intelligence, our understanding have not reached the importance of this memorial, we have high authority and example for our ignorance and the error we commit; the collective wisdom of the territory, the house of representatives having unanimously memorialized Congress on this subject in the year 1811” (Oct. 12, 1814, n.p.). Castigator asked Poindexter to show how the attainment of the memorial could harm the territory or its inhabitants. Castigator challenged Poindexter to make good his charges or acknowledge his lie.

Then, Castigator asked that Poindexter investigate these charges because, “We may have been led astray, representatives and all, by a few designing characters.” If the charges were not explained within a reasonable time, Castigator wrote, “I shall take it for granted you are content to receive a mute conviction”. The article ended with an explanation for addressing the issue through the medium of the public press by saying the occasion was public. “The attack you made involves not an individual or a neighborhood but the whole people of the territory. Our defence[*sic*] therefore, as well as your justification, should be equally extensive” (*Washington Republican*, Oct. 12, 1814, n.p.).

The next letter was to all the people of the territory written by “The Author” for the Oct. 16 newspaper. The basic theme was that liberties will become “idle things” unless they are defended and maintained. Rights of the people, he wrote, can be taken by degrees. One precedent creates another thus accumulating and constituting law, he explained. When examples are sought and do not fit the circumstances exactly, analogies are used. “In this way the vital principles of free government are stopped and liberties taken from the people” (*Washington Republican*, Oct, 16, 1814, n.p.).

The Author wrote that destroying the liberties can only be done by men in power who are holding office. “They cloak their designs under the sanction and authority of office and power, unlike private individuals who can only destruct liberties with rebellion and insurrection” (*Washington Republican*, Oct. 16, 1814, n.p.) he reasoned. He believed that where people know and support their rights and appreciate them, they would support them. A word describing the sum of the rights, palladium, was used both in the Oct. 16 and in the earlier May 11 columns.

The Author stated that communication of public opinion is so essential to free government and liberties that the liberty of the press was the only way the liberties could be effected. Through free discourse, people can counterbalance power and influence.

The Author knew that private malice and personal slander should be restricted by legal means, but the “investigation into the conduct of public men should be promoted and encouraged.” However, respect should be given to public officers as they discharge their duties. “So sensible were our forefathers of this that they inhibited the highest constitutional authorities of our government from passing any law abridging the liberties of the press,” he ended *(Washington Republican*, Oct. 16, 1814, n.p.).

The Nov. 2, 1814 edition of the *Washington Republican* ran an ad at the bottom of a page that stated, ”Castigator’s Letters to the *honorable* George Poindexter, will be published and for sale at this office, on Friday next--price 50 cents.” Nov. 2, 1814, n.p.).

The letters continued. On Nov. 9 the seventh letter was published (*Washington Republican*, Nov. 9, 1814). Castigator wrote that he was publicly addressing Poindexter again because Poindexter had not followed his advice from the previous letter. The

charge was repeated, meaning that Poindexter had attacked the people but denied them the right to investigate his conduct in the newspaper.

In retaliation, since Marschalk was an adjutant general on Gov. Holmes' staff, Poindexter made an effort to have Marschalk fired (letter from Poindexter to Holmes, Oct. 6, 1814). Poindexter justified his action with sarcasm saying that Marschalk could not be a candidate for a lawsuit since he was insolvent.

However, Poindexter threw Marschalk into jail for contempt, charged him with libel, and set a hearing date for the next session of court in April. Poindexter then tried to place Marschalk under surety not to publish more letters. Marschalk refused and was sent to jail again. Castigator told the story in his column of Nov. 9, 1814:

> That your sentence against the printer, (col. Marschalk), for him to remain in prison until he should give security to keep the peace and be of good behavior, connectedly with the charge of libel, is contrary to law....Nor could you or your obsequious attorney general produce a syllable of law, or a single authority in support of your judgment. But numerous were the authorities and adjudged cases, both in England and the United States, shewing[*sic*] the law and the practice to be otherwise. And, in affirmation of which, your colleague, Judge Simpson decided, on writ of *habeas corpus*, to release the printer. (Washington Republican, 1814, Nov. 9, n.p.)
>
> Judge Simpson, in delivering his opinion, took occasion whilst your honor (Poindexter) was by his side, to declare that 'to bind a man to his good behavior, before conviction for libel, was not only contrary to law, the genius and spirit

> of our government, but to common sense and reason. That it would be in the court, prejudging the law of libel, when it had no such power. That it belonged exclusively to the jury, to say whether this publication was a libel or not--That they were judges of the law and of the fact, & were not bound by the opinions of the court; altho' they would generally respect them.' The last part of your sentence, 'that he should not in the mean time print, &c. in any form' was abandoned and stricken from the record *sub silentio*. (Nov. 9, 1814, n.p.)

In other words, the opinion reached a result contrary to the controlling authority so it was overruled since the prior ruling was necessarily implied (Grifis, 1996).

Castigator continued:

> Even to countenance the reading of such an arbitrary and unconstitutional act, exercised on a fellow citizen, in a case involving the rights of all, was calculated to exercise horror and contempt, ...resistance and fury in the people--dismay and terror in its author. (*Washington Republican,* 1814, Nov. 9, n.p.)

Castigator ended this letter with a summary and a warning:

> These proceedings, odious and contemptible as they are, have been born with by a prudent and generous people, who witnessed them. Do you not suppose, that self preservation will influence the most moderate, to make common cause even with a man they do not like, but censure, when they see him persecuted in a way, which neither the letter or the spirit of the law will justify and authorize. (*Washington Republican*, 1814, Nov. 9, n.p.)

The final words were:

> Lest the perusal of this letter should attract attention beyond a given point and alarm your honor, I will avow the objects I have in view. The first is to warn the people against similar invasions of their rights--the second may lead to much more important scenes, as respects yourself, in which your honor may probably be called upon to act, if not to suffer" (*Washington Republican,* 1814, Nov. 9, n.p.).

Also in the article in the newspaper of Nov. 9 was a statement by Theodore Stark, clerk of the Superior Court of Adams County. He certified that the book of the letters from Castigator to Poindexter was taken by Andrew Marschalk to Stark's office to be registered with the Congressional act entitled "An act for the encouragement of learning by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times mentioned" that was passed May 3, 1790.

The Nov. 16, 1814 letter published from Castigator included a little rhyme that proved to be prophetic:

He who fights and runs away,
Has lived to fight another day.
But he who is in battle slain,
Will never rise to fight again.

At the time the rhyme was published, Poindexter had addressed the public concerning the articles. Castigator responded:

> Your official acts alone attract public notice, and are worthy of Castigator. The people wait your explanation or condemnation. The first is for your own ingenuity to accomplish--the last for Castigator to perform. The former may cost you much

> time and trouble--the latter Castigator very little (*Washington Republican*, 1814, Nov. 16, n.p.).
>
> Castigator continued:
>
> Your honor seems disposed to talk about military affairs. Some men are such bad judges of themselves, as always to conceive that they can do that best, they are qualified to perform. I assume that the U.S. government was aware of this when your application for a military appointment was rejected. Perhaps it was thought that the territory should be for a time, afflicted judicially, than to commit the interest of the nation and the safety of a regiment. (*Washington Republican*, 1814, Nov. 16, n.p.)

Castigator suddenly changed to the pronoun "me" when he wrote the end of the letter.

"Your honor cannot charge me," Castigator wrote. And then he switched back to the discussion about the printer Marschalk. Castigator wrote that Marschalk would never give a bond and would never be put under recognizance to refrain from liberty of the press (*Washington Republican*, 1814, Nov. 16, n.p.).

Poindexter called upon the sheriff and asked for the newspaper that contained the slanders that that "fellow" and "culprit" had written. Many citizens realized the hostility and resentment of the judge over Castigator's writing.

On Nov. 23, 1814, Castigator wrote again about the public address made by the judge. "I have waited for your second, but like other times, you create a quarrel, give one blow, and run away." Castigator summarized the judge's address by writing that it should

be no surprise that the judge should seem bewildered because, like a man trying to explain illegal acts and maintain falsehoods, he is sure to speak nonsense.

Castigator continued on Nov. 23, 1814, to say that truth required the correction of the judge. Castigator, he wrote, is "the hero of his own pen" and, while the judge might invite hostility from others, he could not from Castigator. Castigator "writes for the public good" and "used the name of the judge only to point out the authors of the evils." "You can't get clear of Castigator through the same methods you do others. It has been your habit to wince as you fight" (*Washington Republican*, 1814, Nov. 23, n.p.).

Castigator wrote that the judge had maneuvered his appointment to the bench while he was still in Washington, D.C. Poindexter was still being accused of not taking the memorial of the territorial house of representatives to Congress. "Come forward and admit crimes and error like remanding Marschalk to prison, and his subsequent sham trial for vengeance rather than compliance with the law" (*Washington Republican*, 1814, Nov. 23, n.p.). Then Castigator baited the judge, challenging him to use the influence of the attorney general to find out who the writer Castigator was.

In Poindexter's address he had asked for "reasonable allowances," but Castigator wrote that he did not concentrate on influence. Castigator, he wrote, focused only on acts. Poindexter also said that to be investigated using a civilian proceeding would introduce a precedent and set a dangerous principle. But Castigator did continue to focus on acts such as the sentence of Marschalk for refusing to comply with the judge's illegal decrees and committing a citizen to jail for a private quarrel (*Washington Republican*, Nov. 23, 1814).

Still, Castigator was not finished with the accusations against Poindexter in the lengthy column. He accused Poindexter of striking Marschalk while the printer was in the custody of an officer and of assaulting the printer with brick bats on his way to prison. On an even higher level, Castigator wrote that Poindexter had "deleted" a grand jury presentment for assault and breach of the peace against him. In another judicial act, Castigator wrote that Poindexter had ruled that a clerk of the court, meaning Marschalk, took a citizen into a private room to obtain an affidavit. In another act, the judge left a gentleman in confinement for more than a week to get him to contradict what he had certified as truth against the judge. Castigator ended by telling Poindexter that he had disgraced the judge to honor the man, himself (*Washington Republican*, Nov. 23, 1814).

Also in the newspaper of Nov. 23, was a small piece with the title "Deferred Article." A public printer had been elected at the beginning of the territorial legislative session with the election results of 14 votes for Peter Isler and 12 votes for Andrew Marschalk. The use of the pronoun "we" seems to indicate that Marschalk wrote the comments. The editor had made a proposal based on calculations while Isler had promised to do the printing "as low as any other person." The committee reported that the printers' terms were similar, Marschalk wrote, but he said that Isler's friends made "great exertions to exonerate him from one of the conditions offered by us; that is copying the journals" (*Washington Republican*, Nov. 23, 1814).

"We have only to observe," Marschalk wrote, "that had we been chosen to print, the journals of both houses would have been printed, and laid on the respective clerks' tables, every Monday morning" (*Washington Republican*, 1814, n.p.).

Philander Smith, former speaker of the territorial house of representatives who had written previously about the memorial concerning British claims, wrote a letter to Marschalk. The letter was printed in the Nov. 23 edition of the *Washington Republican*. Smith wrote that Poindexter had not seen the memorial because it had not been forwarded to him by the current speaker of the house. When he spoke previously, Smith said he did not know how or by whom the memorial had been forwarded nor had he heard that Cowles Mead, who was to have sent the memorial on to Congress, had acknowledged it. Later, a friend told Smith that Mead sent a statement saying that he had not forwarded the memorial to Poindexter. Smith wrote that he had asked many of his friends but found no one who knew anything on the subject; consequently, he believed that news of the memorial was not generally known.

Smith wrote that now the public would know how such an important memorial had been suppressed. However, he pointed out that memorials take the same route as do bills in the territorial legislature from readings to committee to voting in the house of representatives. Acknowledging that he had no journal to refresh his memory, but, if the house had permitted the memorial to pass with all the imperfections it was said to contain, then it did merit contempt from the constituents. Smith commended the speaker of the house for withholding the memorial until it could be corrected at the next session *(Washington Republican*, Nov. 23, 1814).

A letter addressed to the editor of the *Mississippi Republican* from N. D. appeared on Nov. 30 (*Mississippi Republican*, 1814). The writer acknowledged that liberty of the press is essential to the happiness of the people and that public characters were open to

comment by the newspaper. However, he wrote that decency should accompany truth. The writer made clear that the private lives of public officials must not be attacked merely for the gratification of personal hatred or vengeance. Castigator, he wrote, was such a person as was the editor of the newspaper that published his writings.

Just before the Mississippi troops went to New Orleans, Castigator took another shot at Poindexter. On Dec. 7, Castigator wrote, since he had heard nothing from the judge, he would take the opportunity to amuse him with reminiscing. But first, Castigator complimented Poindexter on having published some other comments such as, "The well-being of society may depend upon the faithful discharge of the respective duties of public officers." Poindexter even said something about the liberty of the press and its usefulness. Further, the judge said publicly that public officers are fit objects for praise or censure (*Washington Republican,* 1814, Dec. 7, n.p.). Thus Castigator believed that Poindexter had benefitted from advice given the judge from the articles .

Castigator's reminiscences included the tavern scene where the judge had dismissed the memorial, and the assault on the printer. While Castigator wrote that he didn't have the power of the judge, he had more regard for truth and evidence. Then he asked whether the judge would be impartial in a trial for libel against the printer Marschalk. With the prosecution pending before the judge, Castigator wrote that the judge had been known only to accuse and vilify the printer (*Washington Republican,* Dec. 7, 1814).

Still writing on Dec. 7, 1814, Castigator pointed out that Poindexter had said that to bring the personal character of the judges into public contempt was subversive of order and could be the final destruction of the courts of justice. Castigator replied that people

have a right to see public officials who are attempting to take away liberties of the citizens and that could not cause the destruction of justice.

Castigator wrote that Poindexter considered the idea of creating another party for more citizen participation, but Castigator wrote he saw only that the judge wanted the destruction of the older party. Castigator reminded Poindexter that Judge Simpson saw the importance of liberty for the press and for the rights of the people was the better end (*Washington Republican*, Dec. 7, 1814). Castigator signed this letter Philo Castigator. Given the tone of this letter, perhaps Castigator was referring to himself as a philosopher as well.

At the end of the letter from Castigator in the Dec. 7 issue, there were some comments that were not signed but looked as through they were letters to the editor. The first comment was that the people only had to put up with the judge for six months yearly, but there were always poor printers. A second comment was that Poindexter had turned up a card against Castigator when he found someone else to blame. A third comment was that Poindexter answered nothing to the charges made against him. The writer of the comment said that a lie allowed the teller to come up with more stories and answers, but the truth puzzled a liar (*Washington Republican*, Dec. 7, 1814).

Another written comment was an analogy. The writer said that Castigator was playing Poindexter as a fisherman with a fish. He beseeched Poindexter to nibble no more as there was a hook under the bait. A writer suggested that as Poindexter ran along, he should take care of Castigator since the writer was someone who stayed close and did not bolt.

The final comment told the story of Poindexter who had returned to Natchez and was asked about the territorial legislature. Poindexter replied that they were legislating for d____d rascals. The writer asked whether " his worship" meant all the constituents or was he speaking only of a part of them? The privilege of denouncing a whole community as d____d rascals, he wrote, was claimed exclusively by George Poindexter (*Washington Republican,* Dec. 7, 1814).

The comments and the column from Dec. 7, 1814 took up most of two pages. However, there was a comment titled "Card" that began, "Tho' we were handled very roughly by his honor, judge Poindexter, we are bound to grin and bear it. We are under recognizance to be very polite to him for several months." The author wrote that the judge had found a card which let him play out the game against Castigator and referred to Poindexter as the knave, thus letting him out as the winner. Currently the knave in a deck of cards is the jack, but an older use of the word means rogue.

A very long column was written by Castigator on Dec. 14, 1814. The print is hardly readable and a piece has been torn from the first column. However, Castigator made some unmistakable charges against Poindexter that ranged from diversion of public attention to some hint of murder.

Castigator accused Poindexter of saying some misleading things to the public to divert their attention through persuasive tactics. The grand jury of Wilkinson County made a presentment that Castigator wrote was a disgrace to all civil institutions and evidence of the influence of power and corruption. The presentment may not have been signed by the grand jury and Castigator wrote that Poindexter tried to impose public

sentiment for such weak evidence to support him (*Washington Republican,* Dec. 14, 1814).

Several footnotes were entered by the editor that included his knowledge of Poindexter's mismanagement and attempts to persuade the community. Again a murder involvement was suggested. The editor was critical of Castigator's use of the name Shields because he thought Castigator should have remembered that the attorney general had the same name. It had become more apparent that Castigator was someone other than Marschalk due to possible inside legal knowledgeable, but Castigator might have worked with someone else to make a point.

Meanwhile, Poindexter allegedly referred to Castigator as a blackguard and Castigator reflected on Poindexter's other verbal abuses of the writer. Castigator wondered why Poindexter had not confronted him if the charges in the newspaper were false. At the end of the column Castigator bid Poindexter adieu (*Washington Republican,* Dec. 14, 1814).

The same day, the *Mississippi Republican* printed two letters. One was from N. D. who also had written in the Nov. 30, 1814 edition. The other letter was from Fiat Justitia who made some interesting though unfavorable points about the appearances of Marschalk in court.

N. D. was characterized as a man with no connection to Judge Poindexter. Instead he was "a high minded independent citizen whose good sense prompts him to step forward in the defence[*sic*] of the laws and in support of an injured and faithful public servant" (*Mississippi Republican*, 1814, Dec. 14, n.p.). N. D.'s letter was filled with

literary references and ended by saying that the judge attacked was young and vulnerable but covered with honesty and truth.

The other letter in the *Mississippi Republican* on Dec. 14, 1814, was addressed to the newspapers' printers and began by calling the *Washington Republican* a "polished medium" through which the editors cleaned up the writings of others. Then the writer divided his points into sections. The first section posed the question of who actually ordered Marschalk held to security for good behavior. He asked whether the order was given by Judge Poindexter or by Judge Simpson.

In another question he asked whether Judge Poindexter had not told Judge Simpson that he "would give no further judicial opinion on the subject." The third question was about the opinion rendered by Judge Simpson. The judge had strongly criticized the statute of the territory which limited the punishment for contempt of court and said that some cases might occur that would lead to a total disregard of the statute (*Mississippi Republican*, Dec. 14, 1814).

In the fourth section, the writer queried whether the judge might not have been too lenient with Marschalk and continued by asking whether it seemed that the judges agreed in their assessment of the proceedings. The writer concluded that no error of law had been committed (*Mississippi Republican*, Dec. 14, 1814). However, at no point, was the issue of liberty of the press or any actual or presumed libel discussed.

Since Castigator accused Poindexter of "a great feat of law several days after the event," it seems safe to assume that Poindexter was trying to cover up something through the use of his judicial powers. The something had to do with murder. It is also possible

that Poindexter was close to revealing the identity of Castigator, so Castigator bid Poindexter adieu. The day of the column was the same day that Marschalk later used in an ad that suggested Poindexter left his judicial position to go to war.

Before the events unfolded in the Battle of New Orleans and the April 1815 term of the superior court, other matters had come to the judges. Perhaps the writings of the Castigator stirred up more slander because there were four other cases before the end of 1814. The litigants involved some prominent names in the Mississippi Territory.

Other Cases

The first known slander case that year involved more private citizens in the area. Elias Mills sued Peter Crayon for damages in a trespass case (*Wills v. Crayon*, 1815). Mills accused Crayon of slander because Crayon had apparently told others that Mills was guilty of perjury. The perjury was said by Crayon to have occurred in a previous matter before justice of the peace Thomas Buford. The court found in favor of Mills and assessed Crayon one cent plus court costs.

The next case involved the local postmaster, Gabriel Tichenor, who sued Isaac Franklin for slander (*Tichenor v. Franklin*, 1814). Tichenor appeared before George Poindexter and filed a complaint against Franklin swearing that Franklin accused him of fraud before other citizens of the area. Franklin said that Tichenor had taken a check for $800 from him to the bank and, before cashing it, wrote an additional $50 by the $800. Franklin told others that the Bank of Mississippi had charged his account for the extra $50. The complaint included six counts; the first count was the alleged fraud and the other five counts were for slander. Franklin was accused of saying that Gabriel was a

damned rascal. The cashier had noticed the difference in handwriting on the check, but Franklin said Tichenor told the cashier that the check was not written at the bank and he was just bringing it to be cashed. However, the jury found the defendant not guilty and court costs were not mentioned with the verdict.

A mail carrier and the brother of Gov. William C. C. Claiborne were involved in a slander lawsuit. William Brooks was the mail carrier who was soon to take the new Nashville to Huntsville route. Dr. Thomas A. Claiborne's position had been the courier of mail, too, but his route was from Gov. Holmes to Gov. Claiborne in New Orleans.

An interesting facet of this case was that the file included a deposition from Charles Miles that told of a conversation that he had with Dr. Claiborne (*Brooks v. Claiborne,* 1814). Claiborne told Miles that Brooks had stolen Claiborne's horses. Miles said Claiborne told him that the horses were stolen during the earlier widowhood of Claiborne's present wife, nee Wooldridge. Claiborne decided to look into the matter of the "gang of horses" that she inherited from her father, Anthony Hutchins. He told Miles that Brooks had taken several of the horses, branded them and sold them, giving no account of their whereabouts. Claiborne said that the conduct, in his estimation, amounted to stealing and said he could prove his assertion through his brother, Gen. Claiborne. This deposition was taken on June 20, 1814. The attorneys for both sides were there with Cowles Mead sitting in for William Shields and the defendant, and Philo Andrews present for the plaintiff.

In the Superior Court for Adams County during the October term, the same story was told and the defendant pleaded not guilty. After some inquiry into the matter, it ended

in default. Perhaps Claiborne could produce no actual proof that slander was actually involved (*Brooks v. Claiborne*, 1814).

A case concerning arson and slander was filed in 1814 in what had become the Superior Court of Law and Equity in Adams County, but the case was not completed until the April term in 1815. Dr. David Lattimore, brother of Congressional delegate, Dr. William Lattimore, had Stephen Minor, former Spanish representative in the territory, taken into custody on a charge of slander (*Lattimore v. Minor*, 1814).

Stephen Minor was still important in the territory. He was a native of Pennsylvania, but had joined the Spanish forces when they fought the British in the Louisiana area. He stayed on in the area because the citizens preferred his leadership over the rule of the Spanish governor and because he married John Ellis' daughter. Ellis inherited much land in the territory from his father Richard, an early settler.

Another reason for Minor to stay in the area was suggested by Holmes (1980). Holmes suggested that Minor stayed because he was an undercover agent for Spain. In 1805, Minor had a visitor, Aaron Burr, who may have told Minor of his invasion plans (Holmes, 1980). Later, Minor told Gen. Wilkinson about Burr's plans and Wilkinson, in turn, informed President Jefferson.

However, the reason for the law suit came from Minor's success with indigo and tobacco at his plantation. When the cotton gin reached the territory, he began growing cotton and became a leading producer of cotton. He owned much land in Mississippi and Louisiana, including one 40,000-acre tract that included both Ship Island and Deer Island just off the Mississippi Gulf Coast. He was also one of the organizers of the Bank of the

Mississippi, and was its president during the time of the *Tichenor v. Franklin* (1814) check fraud and slander trial.

In the 1814 complaint, Dr. Lattimore said Minor had accused him of arson (*Lattimore v. Minor*, 1814). Minor's cotton gin had been burned, and he said he suspected that Dr. Lattimore had done it. Minor allegedly told this to others and Dr. Lattimore sued him. Minor was taken into custody but no bail was required. None of the language of the pleas had yet changed and both of these men could reasonably say that they had good reputations. The matter was not settled until November of 1815, and plaintiff's attorney William Shields noted that the time limitation for the pleading was past.

Outside of the matters of the territorial court and just before the Battle of New Orleans on Dec. 24, 1814, peace negotiations opened to end the War of 1812. News of the signing of an agreement reached New York on Feb. 11, 1815, and was ratified by the Senate two days later. None of the original reasons for going to war such as the impressment of sailors or the blockades seemed to have been settled.

Mrs. Dunbar Rowland (1921) wrote a book about Mississippi in the War of 1812 that chronicled the movements of the Mississippi militia and the events that occurred at the battle of New Orleans. While it heavily favors the Americans, and especially Andrew Jackson, there are many facts and local stories in the book that describe the role of the territory and its citizens during that time. The leaders of the U.S. Army in the southwest were Andrew Jackson and his subordinate Gen. Coffee. The Mississippi Dragoons were under the leadership of Maj. Thomas Hinds.

The 14th regiment of Mississippi volunteers was led by Capt. Baker under the command of Gen. Coffee. Rowland wrote that the Mississippi troops did well, especially Maj. Hinds, who was responsible for watching the movements of the British troops. Hinds and his troops charged the British to determine their strength and then reported the information to Jackson.

The battle ended with the retreat of the British troops. Maj. Hinds and Reuben Kemper, organizer of the insurrection to take over Mobile, were sent to hurry the British back to their ships and to report to Jackson on the retreat. Finally, Andrew Jackson sent a letter to Gov. Holmes announcing victory for the Americans. Missing the action was Ferdinand Claiborne, who died from a wound sustained while he was fighting the Indians. Maj. Hinds was promoted to brigadier general and commander of the Mississippi militia.

However, one Mississippian, George Poindexter, "came out of the battle with a poor reputation". Rowland (1925) made the comment in a footnote with no further explanation.

Marschalk v. Poindexter: Round Two

Printer Andrew Marschalk was listed as an adjutant-general on the muster roll during the Battle of New Orleans. Marschalk heard the rumors and began looking into the allegations made about Poindexter's "poor response" in battle. Marschalk received word that Poindexter had not been at his post during the battle. The information came from Dr. Samuel Brown, who had been at Transylvania University at the same time as had Judge Toulmin.

Dr. Samuel Brown, the son of the Rev. John Brown, was born in Virginia in 1769. Samuel graduated from Dickinson College in Carlisle, Pennsylvania, and studied medicine as a private pupil of Dr. Benjamin Rush in Philadelphia. Brown also studied in Scotland at Edinburgh and Aberdeen universities (*Ky. Encyclopedia*, 2000). After practicing for a short time in Maryland, he was named professor of anatomy, surgery and chemistry at Transylvania University, making him the first professor of medicine in the west. He was an early supporter of the vaccine for smallpox and began vaccinations in Lexington, Kentucky, in 1802. Later, he invented a method of distilling spirits using steam, helped clarify ginseng for the Chinese market, and helped introduce lithography into the United States (History of Transylvania, n.d.).

Dr. Brown's connection with the Mississippi Territory began with his marriage in 1808 to Catherine Percy. Catherine was the sister of Col. Thomas Percy, the man whom Poindexter had accused of having an affair with his first wife, Lydia. The Browns settled on a plantation near Natchez and had three children. Catherine died in 1813 and Brown returned to Lexington. Later, he retired and moved to Huntsville, Alabama, where he died in 1830 (*Ky. Encyclopedia*, 2000). An ad in the *Washington Republican* on Jan. 4, 1815, offered for sale "household and kitchen furniture, & farming utensils; also a valuable flock of cattle and stock horses" (n.p.) through Thomas G. Percy. The sale was to be held at the plantation of Dr. Samuel Brown in Wilkinson County and the date was just over a year after the death of Catherine.

Dr. Brown was the source of the information about Poindexter's alleged retreat during the Battle of New Orleans. It does not appear that Brown had much to gain from lying about the incident.

The first question asked about Poindexter's military contributions. According to the *Washington Republican* of Jan. 4, 1815, government court officers such as judges, clerks, and sheriffs had been exempted from military duty so that the civil administration of the government could continue its work. At least two writers in that day's newspaper criticized Poindexter for leaving his salaried job as judge when he was exempted from duty.

In the Jan. 4, 1815 *Washington Republican,* an apology to the readers for the lateness of the edition was printed. The journeyman was gone to service in the militia along with the editor, who also had military duty. The newspaper hoped to get additional help soon. In the next column was the first of the critical comments about Poindexter's absence from court and included a comment about giving way to the following column written by Castigator, the preferred writer about Poindexter.

Castigator opened his column writing that he thought his last letter would have closed their correspondence, but for some unsatisfactory reason, the editor of the newspaper had not yet published the letter. Castigator did not understand why Poindexter had deserted his job and gone into the military since Poindexter was neither asked or forced to do so. "Were I more your enemy than I am, I should not so often expose your errors by reminding you of your duty," Castigator wrote (*Washington Republican*, 1815, Jan. 4, n.p.).

Judge Simpson was gone also from the territory, apparently on some important family business. Castigator asked, “Do you suppose that any man will be obsequious enough to attribute this desertion from your official station to patriotism?” (*Washington Republican,* 1815, Jan. 4, n.p,). The column was dated Jan. 2 and Castigator’s last comment was, “Your honor professes to be a stickler for public opinion. Run home then. Do not disgrace the military character of the nation as you have its judicial. All, for once, will applaud your prudence; none will miss your bravery, though many experience your knavery” (*Washington Republican*, 1815, Jan. 4, n.p.).

One other item of interest was printed as an ad in the same newspaper. Marschalk wrote the ad that was titled, “One Cent Reward.” Marschalk wrote:

> Deserted about the 14th (December), from his official situation, in the Mississippi Territory, the hon. GEORGE POINDEXTER.
>
> He is supposed to be making for the *enemy*, as he was seen about twenty miles in the direction of New Orleans.
>
> He is about 38 years of age, near six feet high, slender in stature, thin and meager visage, long peaked nose which he often perfumes from a large box with the pulverized weed of America, called tobacco, wide mouth, small blue eyes, downcast look when in conversation, light complexion, thin hair which he wears qued.
>
> Persons disposed to apprehend said deserter, must be cautious in *seizing*, for he is of considerable agility, and great speed, especially when danger approaches.

Any person delivering his *honor* to his official station, shall be paid the above reward, without cost and charges, in specie, Louisiana, or Natchez notes.

A SUITOR

January 3d, 1815.

By Jan. 18, Poindexter was still with the militia and he had chosen to write for the *Mississippi Republican* newspaper. Marschalk wrote a postscript in the *Washington Republican* that day to comment on the judge's activities. Poindexter "intends on continuing in *service for the purpose of watching the progress of the enemy, ascertaining his views and communicating them to his fellow citizens*," the editor wrote probably taking the explanation from the *Mississippi Republican*. Marschalk saw the idea as humorous and "humbly presumed that this would have been done by hands abler than his honor" (*Washington Republican,* 1815, Jan. 18, n.p.).

The last line of Marschalk's comments in the Jan. 18 postscript appears to be the first mention of any possible injury to Poindexter. "This has as much meaning as the 'high style' whistling of the volley of rockets, grape, & round shot, which his honor received along the lines!" (*Washington Republican*, 1815, Jan. 18, n.p.). The tone of the comments ranged from sarcasm to wit.

The first mention of possible cowardice in battle by Poindexter came in a letter from New Orleans addressed to the editor of the *Washington Republican* dated Jan. 25, 1815, and an extract was printed in the newspaper on Feb. 1, 1815. The letter was said to be from "a gentleman of respectability, and high in rank, in Gen. Jackson's army."

> I am told that Judge Poindexter has written letters to Washington relative to his prowess since his arrival here, and particularly, on (Jan. 8). He has returned to Natchez, should you hear him spoken of in this way, you are authorized to contradict it. It is a notorious fact, that on the commencement of the cannonading, which commenced the action on the 8th, instead of repairing to his post by the person of Gen. Carroll, he mounted his horse and rode full speed to New Orleans, six miles from the battleground, and was actually met by the officer charged with the prisoners taken in the action, returning to camp, after the firing in every quarter had ceased. His conduct and flight is notorious in camp, and he is mentioned by both officers & men, with indignation and contempt.
>
> By turning back a few numbers our readers will observe we foretold the probable result of his honor's desertion from official station. He has made a demonstration on New Orleans in high style.--Poor Judge!--Poor Poin! (*Washington Republican*, 1815, Feb. 1, n.p.)

Marschalk continued to print letters about Judge Poindexter's incident in New Orleans. He printed another extract from the letter mentioned in the previous edition. "I am aware that he (Judge P.) will deny the charge of running; but I shall produce such proof of the fact as will (illegible) conviction on the minds even of the most bigotted of his creatures" (*Washington Republican*, 1815, Feb. 1, n.p.).

Marschalk printed part of another letter dated Jan. 27, 1815, whose author was identified as a private militia man:

> On January 8th, when the first or second cannon was fired from the British, the judge was in the act of rising from the bed,--a negro boy was struck by the ball and killed near his honor: who dressed himself and immediately ordered his horse and rode off to New Orleans full speed, where he remained 'till the action was over--The officer who had charge of the British prisoners, on their way to town, met his honor returning to camp, and not knowing him, enquired 'Where are you going' was answered that 'he had been to town to have his wounds dressed.'
>
> He has completely disgraced himself here. I am told he has pushed off to Natchez, with publications to forestall the report. This I have from one of his best friends. (*Washington Republican,* 1815, Feb. 1, n.p.)

After the extracts from the letters, Marschalk wrote comments about a column chidding[*sic*] the *Mississippi Republican* for printing whatever Poindexter gave to the editor. "He places his balker of filth on the shoulders of accommodating printers, and they, with uplifted hands, (as his honor did with the brickbat) attempts to break our head" (*Washington Republican,* 1815, Feb. 8, n.p.).

Marschalk continued with the analogy to his own situation previously with the judge:

> The public have long since witnessed his unlimited abuse heaped upon us by his honor when too, we are bound in a recognizance, as it seems he conceives to say nothing about him (except to make him out the reverse of what he is)--and after an imprisonment of five days, because we would not comply with his illegal sentence, such as no judge in any land of liberty, or under a government of laws,

ever before pronounced against citizen or subject! (*Washington Republican*, 1815, Feb. 8, n.p.)

Marschalk referred to the editors of the *Mississippi Republican* as "brother editors" and declined to say anything against them. He lamented that many thought of printers as men for their own use, but printing was a trade and was not to be used to "father and support abuse and falsehoods." Marschalk reminded them of a quote "that he (Marschalk) had no character to lose," however, he held both civil and military offices. "You may," he warned his brother editors, "lament your confidence, and want of caution, when too late" (*Washington Republican*, 1815, Feb. 8, n.p.).

Marschalk charged Poindexter with harassment in the final part of the column. He accused Poindexter of riding past his (Marschalk's) house and scaring his little children. When Marschalk saw Poindexter coming down the street again, he retreated inside his house. Then Poindexter requested to know the name of the writer Castigator. Referring back to the brick bat incident, Marschalk ended the column with a warning, "We will not be brick-batted out of author's names" (*Washington Republican*, 1815, Feb. 8, n.p.).

It was clear that Marschalk thought Castigator would reveal himself in the near future. However, Marschalk wrote, "We hope Castigator will have pity on his honor and spare him in future--he is really casting water on the head of a drowning rascal" (*Washington Republican*, 1815 Feb. 8, n.p.).

Another charge was printed about two weeks later. "C" raised a query to Poindexter asking if he had spoken to a gentleman on the way to New Orleans. Poindexter stopped at this gentleman's house and allegedly told him that he had raised a volunteer company to

fight in New Orleans, but Gov. Holmes refused to commission the officers (*Washington Republican*, Feb. 22, 1815). The writer stated that he had good authority for believing such a statement was made to a Capt. McMurcheon, and did not believe that Poindexter had raised or could raise such a company.

The *Mississippi Republican* printed a letter from "Aristides" on March 1, 1815. It was over two columns in length and he addressed the "receiver of the camp slanders." He contended that the accusations recently printed were calculated to cast doubt on the character of George Poindexter (*Mississippi Republican,* Mar. 1, 1815). Poindexter, he wrote, should be judged by those under whom he served as well as witnesses of the events. From the use of terms such as "camp slanders," it could be reasoned that the article was written by Poindexter. Similar terms and reasoning were used by Poindexter later when he refuted the charges made by the writer from the *Washington Republican.*

Judge Poindexter was arrested five days before the March 8, 1815 edition of the *Washington Republican.* He was arrested on a territorial warrant for the assault of Marschalk at the door of the newspaper office. The news story contained the following information about the arrest:

> ...and being brought before the justice who issued the warrant, refused to enter into recognizance for his appearance at court (the justice not requiring security)...he withdrew from the courthouse, and was followed, and taken into custody by the deputy sheriff. He then issued a habeas corpus for himself, before the hon. judge Leake; and left town on Sunday morning, in custody of an officer, for the residence of the judge in Claiborne county, after giving bond and security to the sheriff, that

> he would not escape.--Since which we have no account of him. (*Washington Republican*, 1815, Mar. 8, n.p.)

Just under the announcement of the arrest of Poindexter was a reprint of an article written on Feb. 26 from the *Mississippi Republican.* The column was signed "Aristides" and preceded with comments from Marschalk. Marschalk wrote that there was no doubt in his mind that the piece had been written by Poindexter. The *Mississippi Republican* printers offered the name of the writer to those who asked (*Washington Republican,* March 8, 1815).

Aristides called the purveyor of alleged lies against him "*camp slanders*" and somebody who "would not hold his head quite so high at court." He pointed out that there were daily articles printed with lies and signed by people with descriptions such as "a high-ranking official." The last paragraph of the column by Aristides was:

> Judge Poindexter is well known to the people of this territory;--he has filled the most honorable and dignified stations...and after six years of public service under the eye of the President of the United States; he retired with the full confidence of the administration. The sanction of the highest authorities of the national government, is a testimonial of his worth, of which no faction can rob him. The duties of the office he now holds have been discharged with a promptitude and ability which has drawn forth the approbation of every individual, whose interests are not arrayed against a vigorous enforcement of the laws. A jealousy of his talents and integrity, has alone given rise to the volume of contumely which is thrown on him from the columns of a venal press. I am happy to learn that it is the intention of

> the honorable judge to treat with merited contempt, everything which may hereafter appear through that channel not accompanied by the name of a man whose standing in society gives him a name of distinction. (reprint in *Washington Republican*, 1815, Mar. 8, n.p.)

Aristides ended with a statement that he had, in his possession, letters from authorities which would prove the accusations from the battle of New Orleans to be false.

Castigator appeared again with a long letter to "Anti-Castigator" printed in the *Washington Republican* on April 5. Castigator wrote that the matter and not the person was given attention; so he had addressed Poindexter as a public person and investigated only his public conduct (*Washington Republican*, April 5, 1815). He discussed an article from the *Mississippi Republican* and came to the conclusion that Poindexter did not write alone. Castigator believed that some of the terminology did not reflect legal knowledge that Poindexter would use.

Even though the column was long, Castigator dealt mostly with previously discussed events. He wrote that he had tried to stop the correspondence and articles in the newspaper, but believed Poindexter had continued to make it necessary to write about his public actions. Through the arrest and charges preferred against Poindexter, he would have to suffer and not interfere with the rights and liberties of others (*Washington Republican*, April 5, 1815).

The grand jury for the Superior Court of Adams County for the April term in 1815 consisted of twelve "good and lawful" men. The men chosen were Peter Settler, Enoch Rose, Clement Gore, James Surget, Nathaniel Hoggatt, William Murray, Abram Galtney,

William Bernard, Ezekial Newman, Robert Turner, Catesby B. Minnis, Edmund Andrews, Hezekiah Kibby, George Wilkinson, John Anbrett, James Luckett, Israel Leonard, and Richard Sessions (Adams County Superior Ct, Book 15, 1815). Some records of all of the men except one, Peter Settler, could be found in Adams County. The chosen grand jury handed down an indictment against Marschalk.

The two petitions circulated throughout the territory about the British land claims were signed one before and one after the April libel trial. Enoch Rose later signed the second petition about the British grants, along with Edmund Andrews, Israel Leonard, Ezekial Newman, Abram Galtney, and Andrew Marschalk (Carter, 1938). The earlier petition, the subject of the news articles, was signed by Rose, Hezekiah Kibby, and Marschalk. Both petitions were referred via Lattimore to the Congressional committee on public lands.

Edmund Andrews and Ezekial Newman later signed a shorter petition against the entire territory's proposed admission to the United States. The memorial contained the names only of those in agreement who lived west of the Pearl River.

The Surget family had lived in the area since Pierre Surget was awarded a Spanish grant of 2,500 acres in southeast Natchez (James, 1968). When Pierre died in 1796, his wife Catherine gradually acquired more land for a total 7,090 acres by 1805. The oldest brother Frank had a huge amount of acreage in southern Arkansas, Louisiana, and Mississippi. The second son and grand juror James had nine plantations and built his acreage to 93,000 in Louisiana and Mississippi by the 1850s. Kane (1947) referred to them as the golden Surgets.

Frank Surget did not get along well with the press because writers attacked him for owning so much land and not making improvements on it or leasing it. While the articles were printed much later, it was obvious that the Surgets held great influence both in the territory and beyond.

Frank was in the news earlier in 1808 when he was charged and acquitted of rape (Hamilton, 1953). Frank's defense was to blame the woman. Later Frank married the daughter of William Dunbar and the marriage was conducted by the same judge who would preside over the Marschalk libel case.

The Surgets began the Jockey Club and the family who joined them in the venture was the Hoggatts. Nathaniel Hoggatt was on the grand jury. Both families were wealthy members of the Natchez elite.

Grand juror Robert Turner had been a supporter of the territory for quite some time. He signed a memorial to Congress as early as 1800, asking Congress not to create a second level of government. The 1812 census showed him as head of a household with a wife and seven children. Turner had also been a justice of the peace for years.

Edmund Andrews won a case tried before Rodney in 1806 (Hamilton, 1953). The judgment was for $79.34.

Hezekiah Kibby had been a witness in a murder case tried before Judge Leake in 1809 (Hamilton, 1953). The charge was manslaughter in the death of a slave from a prominent family. The verdict was not guilty, but the case certainly was noteworthy because someone was tried for killing a slave. Kibby must have been a coroner because he testified about the condition of the body at the inquest.

George Francis Wilkinson was married to Elizabeth Freland in 1813 and he, too, had been in court over a less important matter.

James Luckett was a military man who fought with the First Mississippi Regiment against the Creek Indians.

Three William Murrays were listed in the area and one died in 1805. The other was the Lord of Mansfield who visited from England on several occasions. He was the judge who Rodney referred to as the greatest legal mind currently in the world and Rodney used Murray's writings frequently in his decisions. Evidence showed that a third William Murray may have lived in the area, but he was in the census much later. One can only hope that the only Murray there at the time, the judge, was not the one called to serve on the grand jury.

Israel Leonard appeared on the census for the period of 1792 through 1830. He had both British and Spanish land grants and was listed frequently in the County Archives as a juror beginning in 1801.

As for Clement Gore, Catesby Minnis, and William Bernard, they were mentioned in the records, but nothing special appeared about their backgrounds that might relate to the grand jury presentment against Marschalk. Today, Poindexter might have been asked to recuse himself as the Louisiana judge had done in Nugent's case, due to his personal interest in the case. However, in April of 1815, Poindexter kept his seat on the bench during the presentment and the trial. Other legal officials on the grand jury included a coroner and a justice of the peace. Three of the men had been participants in trials previously and one was in the military. Most of the grand jurors were recorded as having

signed petitions; therefore, they were actively interested in the future of the territory and in the protection of their lands. However, today, several of the men might have been challenged had they been members of the trial jury.

On the second Monday in April of 1815, the presentment of the grand jury was read in court before Judges Walter Leake and George Poindexter in the Superior Court of Adams County (*Territory v. Marschalk,* 1815). The presentment accused Andrew Marschalk, printer in the county, of being "a wicked, malicious, and ill desposed person." Marschalk had, according to the presentment, "unlawfully, wickedly and maliciously devised, contrived, and intended to scandalize, traduce, and vilify the Honorable George Poindexter, one of the Superior Court judges of the Mississippi Territory." Further, Marschalk had represented Poindexter as "regardless of his duty as a judge and unfit to be entrusted with the administration of justice." Marschalk was said to have brought Poindexter "into great hatred, evil, unfit, and disgrace with all the good citizens of the territory" (presentment is part of the trial record, *Territory v. Marschalk*, 1815).

The printing that brought Marschalk to court had been in the *Washington Republican* on Jan. 4, 1815, where Marschalk had "unlawfully, wickedly, and maliciously printed and published and caused and procured to be printed and published a certain false, scandalous and malicious libel in the form of an advertisement." Marschalk had written that a one-cent reward was offered for the return of the Hon. George Poindexter who, on Dec. 24, "deserted his station with a design of avoiding duty against the United Kingdom of Great Britain and Ireland, who were invading the City of New Orleans." In

fact, the ad on Jan. 4 had charged Poindexter with leaving his job as judge. It said nothing about Poindexter deserting his military station.

The same day, April 10, territorial Attorney General Shields wrote a letter to Andrew Marschalk that was printed in the *Washington Republican* on April 12:

> As the ends of public justice would be better promoted by the punishment of authors of certain libelous publications which have appeared in your paper respecting the honorable George Poindexter, than by the punishment of the printer, through whose press they were introduced to public notice, although the publisher is in the eye of the law equally guilty with the writer of these libels; I am instructed to say to you that if you will forthwith furnish me with the name of the author or authors of certain anonymous publications which have issued from your press signed "Castigator," "Philo-Castigator," and "A Suitor," they and not yourself will be prosecuted for said libels. (*Washington Republican*, 1815, April 12, n.p.)

Marschalk's answer, written on April 11, was printed just after Shield's letter. Marschalk wrote that he had received the letter at 11 p. m. on April 10:

> Justice to myself, and the community of which I am a member, must be my apology for declining "*forthwith*" to comply with your request, made, you say, for the 'ends of public justice.' But after twenty-four hours reflection, I am still extremely at a loss how to reply to one occupying your station, and who has made such a demand upon my honor. Your desire to come at the writers of the pieces to which you allude, is not so exceptionable to honorable sensations, as the *means* you have proffered to effect the seducement. Were I even sensible of having offended

against good character, order, and government, the offer of your clemency to screen such vices from the just operations of the law, could only be received as attempts upon reputation in their nature and origin *base* and *insulting!*--The offences[*sic*] with which I am charged are public offences[*sic*].--The atonement is due to the public; yet you as the minister of that very public, propose by way of seducement, to shelter me from the penalties of the law to come at some private person unknown to law, and, of course, to your official duty.--Were others concerned in the commission of these offences[*sic*], it is your business, I presume, as public prosecutor, fairly and impartially to bring all to the rest of the laws, and see that they are punished, and *not barter away your authority and the public interest for ends no way connected to public justice.* As to the character so libelous, which you have been pleased to affix with the sanction of your name and station, I presume, sir, that a jury of my country is only competent to ascertain that fact.

Even were the writers required under your official signature, given to you as citizens of Louisiana, how would the 'ends of justice' be complied with by your honor? The publisher would then be clear by the operation of your seduction, and the writer by his distance from your justice and power. The trust in your hands for the public good, would be exhausted in the price you would pay for private and individual gratification. That so far as you evidently wished to tamper with my honor, pardon me, sir, I SCORN YOUR PROFFER.

But the question is not between your duty and my honour. Your[*sic*]tell me that you are instructed to make the precious pledge, that I shall not be

> prosecuted. INSTRUCTED! Gracious God! and have we come to this end at last? *Instructed!* Where? When? By whom? Who is your *superior* in cases of prosecution for inroads upon the order and dignity of the territory? *Are you dealing for private ends through official means? Is the authority of the territory made subservient to private instructions?*
>
> Yes sir, to accede to your generosity would be a silent acknowledgment of my guilt; and I assure you I am not conscious of having done an injustice to any one through the medium of the press. As a public printer in a free land, after the insults and injuries which I have received, I will now see whether the press is to be made liable to *previous restraints upon publications.* I wish too, to see how far *truth* and *falsehood* respects the offence[*sic*] of libel. I will not be seduced into your accommodations.
>
> Farther, sir, as I am resolved that attacks upon my reputation and rights shall never be studiously hidden, I shall give your letter and this reply to the public in my paper of tomorrow. (*Washington Republican,* 1815, April 12, n.p.)

Andrew Marschalk appeared before the court and grand jury on Wednesday, April 19, to hear the charges from the grand jury indictment against him. William B. Shields was the attorney for the territory and he had asked the sheriff to summon 51 "good and lawful men" for possible jurors. Marschalk pleaded not guilty and the trial date was set. No mention was made of counsel for Marschalk.

The jurors who were chosen were men of high standing in the territory. Of the jurors chosen, four signed the Oct. 10, 1814 memorial from the territory to Congress

about the adjustment of claims concerning the British grants (Carter, 1938). Eight of the jurors signed the 1815 memorial of the citizens west of the Pearl River to Congress concerning the British grants (Carter, 1938). In addition, juror and attorney Richard Ellis had been recommended as a judge for Monroe County.

More specifically, juror Thomas J. Grafton was listed on the tax rolls of Adams County beginning in 1810 and fought as a private in the War of 1812. He married Mary Forman in 1816 and they had 10 children. He, Marschalk, and juror Simpson Holmes appeared on a jury summons in an earlier case (Miss. Court Records).

Juror John Hutchins was the son of early settler and British Col. Anthony Hutchins. Later, he was listed as a leading stockholder in the National Protection Insurance Company. John was part of the faction opposing Gov. Winthrop Sargent. John married Elizabeth Green and they later divorced, but the Green/ West/ Hutchins faction continued.

Juror Richard Ellis was the brother of wealthy planter Maj. John Ellis and both were involved heavily in politics. Richard stood up to the early Spanish commissioners and was jailed for his efforts (James, 1968). Later on, he gave money to help build the Trinity Episcopal Church and was a vestry man there.

Juror Philip Engle once sued Stephen Minor on a matter concerned mostly with slaves. The case was heard by Judge Rodney who believed that the suit had been filed too early and prejudiced the jury against Engle (Hamilton, 1953). Attorney Fielding Turner argued with Judge Rodney over the law in the case, and the law suit was finally settled with Minor owing Engle $4,890.64 1/2 (*Engle v. Mino*r, 1808).

Three jurors had been in the territory in 1802 to sign the petition asking for a land office to be opened and praying for a change in Sargent's laws (Carter, 1938). Five jurors signed the petition written by Philander Smith in 1802 attesting to the merits of former secretary of the territory, John Steele.

Simpson Holmes had been living in the area since 1807 and William Nealand had lived there since 1800. Adam Bower, also a long-time resident, was married twice in the area, in 1812 and 1820.

Juror William Foster and his wife Mary were neighbors of juror Richard Ellis and close friends of Cato West's son, Thomas. Foster's claim to a Spanish grant from 1790 was rejected by then land officer Thomas Rodney in 1807. Foster was named a constable about 1800 and may have had some legal training to represent heirs in probate cases.

Juror Joel Pate was listed on the tax rolls in 1810. Juror Stephen Justice was married in 1805 and was on the tax rolls afterward, while juror John Holiday was on the tax rolls from 1800.

The jury consisted of men who had long been residents of the area. Of the jurors, one was an attorney and possible judge, one was a constable, three were close friends and neighbors, and each one had declared his political position in some way before the trial. With half of the jurors declaring against Sargent, they may already have had some prejudice against Marschalk because Marschalk sided with Sargent and printed Sargent's laws.

Nothing further is said of the trial or the deliberations of the jury. The record showed only the ruling that Marschalk was found guilty. The court assessed a fine of

$891.91 and ruled that Marschalk would be imprisoned for three months. He was also to pay court costs.

The *Mississippi Republican* scooped the *Washington Republican* newspaper about the trial. Just as the Washington newspaper was going to press, the rival newspaper arrived with news of the trial. Marschalk asked the public to withhold judgment until his side of the trial was printed. He wrote that the notes from the trial were being prepared for publication (*Washington Republican*, April 26, 1815).

The *Mississippi Republican* wrote mainly about the speeches given in the courtroom. The writer said nothing about the trial itself, but he did write about who made the best speeches. Last names were used, but some of the speakers were not identified.

It is not entirely clear when the trial account by Marschalk was published. There are two editions labeled May 3 but with accounts at different times during the proceeding. Fortunately, each part of the account was given consecutive numerals.

Castigator returned and his new target was William Shields. Castigator addressed Shields and told him that he was the one now under investigation because he had "not performed the important duties of his office faithfully" (*Washington Republican*, May 3, 1815). Castigator discussed the right of free people to investigate their government officials. Any partial execution of laws or corrupt administration must be alarming and thus investigated, he wrote. He promised the investigation would be fair and the fact that Shields had the power to prosecute printers would not stop him. Castigator particularly wanted to investigate Shield's source of the instructions he received that were mentioned in the letter of April 12 to the printer Marschalk.

A letter to the public from Marschalk, who was in jail, also was printed on May 3:

> Lest it should be supposed that the prosecutions I have experienced (which from the cause of proceedings became persecutions) for the exercise of a Constitutional right may dampen my zeal in the cause of freedom, and which is guaranteed through the liberty of the press, I feel it a duty to make known, my unalterable determination to persevere in my legal and constitutional rights; and that the privations I am now suffering by imprisonment so far from producing the effect shall only stimulate my exertions to support my rights and freedom of the press. The sufferings of an individual is of minor importance in a cause of such magnitude. (*Washington Republican*, 1815, May 3, n.p.)

Marschalk continued by writing the circumstances of his imprisonment so as not to influence his readers, but to allow them to make up their own minds on the subject. He spoke of the letters written by Castigator and his first court appearance:

> I made every effort to procure my witnesses, some of whom reside fifty or sixty miles distant. Notwithstanding, on Wednesday morning, I was absolutely rolled into trial (as my counsel declared) in opposition to an affidavit, which agreeably to law and practice, was entirely sufficient for a continuance. My attorneys (Reed and Rankin) then notified the court they should abandon my defence[*sic*], conceiving it unnecessary after such a decision to attempt defending me. My trial was immediately hurried on, without my preference or giving me time to make other arrangements, or of assigning me counsel for defence[*sic*]. A jury selected agreeably to the choice of the prosecutor (Judge Poindexter) many challenges being made

> on the part of the prosecutor, found a verdict against me, which was followed by an *immediate* sentence of three months imprisonment on the advertisement.
>
> Far be it from me to make any insinuations against the jury--they could not do otherwise on such an ex parte trial. (*Washington Republican*, 1815, May 3, n.p.)

On May 13, the editor of the *Washington Republican* told his readers that with the new letters from Castigator that had been appearing in the newspaper, Shields had the right to respond (*Washington Republican*, May 13, 1815). The point clearly was that freedom of the press included Shields as well. The editor also mentioned an all-night card game attended by a certain judge and questioned the judge's fitness for the bench the following day. Poindexter was known for his gambling habits, but he began court that day by calling the attention of the grand jury to the evils of gambling (*Washington Republican*, May 13, 1815).

Elsewhere in the May 13 newspaper were letters from Philo Castigator to Judge Poindexter and Castigator to Attorney General Shields. The letters together took up an entire page of the edition.

Philo Castigator wrote that this letter was "to present a concise view of your vain and fruitless attempts to prosecute the printer for publishing the writings of Castigator." The judge was said to impose these illegal acts on the community, he wrote, meaning the attempt to punish the printer for publishing the writings of Castigator. Prior to the lawsuit, however, two things were necessary for the prosecution; that truth should not be given in evidence, and that the mass of people should be lost to a sense of morality and respect for laws "as yourself" (*Washington Republican*, 1815, May 13, n.p.).

With much of the court record missing, details of the proceedings may be seen only through the eyes of Philo Castigator and Castigator. Philo Castigator commenced a chronological look at the proceedings against Marschalk, beginning with the previous October term when Marschalk was bound over to answer the charge of libel from the first letter published that was written by Castigator. In court, Castigator wrote that Judge Poindexter added charges from subsequent letters. In describing the October proceedings, Philo Castigator wrote:

> A *kind* of a trial was had, on one of these indictments--a verdict found with one hundred dollars fine, the defendant being deprived of giving the truth in evidence, except in mitigation of damage, and of the most material points of defence[*sic*], contrary (as was conceived by himself and counsel) to law and an express statute of the territory, authorizing the truth to be given in evidence on indictments for libels. Judge Leake however afterward, gave judgement on said verdict. The other indictment, you and the attorney general, were prudent enough not to try, nor did you continue it agreeably to the usage of law and practice; but did it in a way calculated to fulfill your promise of persecution.
>
> If you are innocent, why not try the second indictment, and why dismiss the first? If a libel six months ago, why not so now?--unless you conceive (which you may with propriety) that your conduct since, renders it otherwise? Why not bring a civil action, which will test your character? (*Washington Republican,* 1815, May 13, n.p.)

A note was added, "Poindexter swore to a gentleman (an officer) that he would *persecute* certain characters." Philo continued:

> You have, with the knavish assistance of the attorney general,....effected the conviction and imprisonment of Col. Marschalk, by a most shamefully conducted prosecution, and an ex-parte trial, respecting a publication not connected with the subject matter of Castigator's letters. (*Washington Republican*, 1815, May 13, n.p.)

Again, Philo Castigator reminded readers that he never wrote about the judge's personal or private life, but only his public conduct and official acts. The latter is the business of the public which "no legislative or judicial restraint could check." Then Philo summed up the official acts that he charged Poindexter had done:

> They are as follows: to wit--that you have acted the part of a blackguard, hypocrite, and liar--given judicially illegal, and unconstitutional decisions--violated the statutes of the territory, and the rights of the citizen--imposed on the public your own, for the opinions and writings of others--attempted to abridge the liberty of the press--disregarded your oath of office--acted the coward--committed murder, and disgraced the judicial character; for none of which you have ventured to prosecute, and test the truth of before a jury of your country. If many and all of these acts, do not constitute knavery, (the term charged to be libelous) then the term must have lost its technical and literary meaning. (*Washington Republican*, 1815, May 13, n.p.)

Philo ended with the comment that by telling all of Poindexter's trickery, including the partial conviction of the printer, Col. Marschalk, Poindexter might not be successful again.

However, Castigator wrote his second letter to Attorney General Shields. Castigator began his column by discussing the letter Shields was instructed to write to Marschalk. By being instructed to write the letter to Marschalk, Castigator asked whether punishment to Marschalk or Shields by not fulfilling his obligations would satisfy public justice? (*Washington Republican*, May 13, 1815).

Then Castigator asked for the source of some statements made by Shields. For example, Shields wrote that the printer was guilty equally with the writer. Castigator wrote that Shields was lacking in knowledge of the law.

Castigator asked who had the right to instruct Shields on his duties as attorney general. Castigator made the assertion that Shields was not instructed by anyone. However, if Shields was instructed, then Castigator wrote that justice would be best served by releasing the name of the official who instructed him to write such a letter (*Washington Republican*, May 13, 1815).

The third letter from Castigator to Shields began with a job description for the attorney general. An attorney general was to prosecute fairly, to investigate all points pertaining to the pending charges, and to establish the guilt of the defendant. Then Castigator went on to determine whether, in the trial of Col. Marschalk, Shields lived up to his job description (*Washington Republican*, May 17, 1815).

The record of the Marschalk trial showed neither the defense counsel nor the defense witnesses. Answers to direct questions asked by Poindexter of the judge of record, Walter Leake, were a refutation of the charges made in the public arena against Poindexter.

Poindexter did not believe that the trial and the jury's decision cleared him of all the charges made against him by Marschalk. Nor were the rumors that had been circulated against him addressed to his satisfaction. Therefore, he chose to refute the charges further by publishing his own pamphlet to respond to the rumors spread about him. In Aug. of 1815, Poindexter published letters he had solicited from those in authority to refute the charges and rumors (Poindexter, 1815).

Poindexter's anger was directed toward Dr. Samuel Brown. Poindexter wrote that Brown and his confederates made it necessary for him to try to quiet all the rumors he referred to as "camp slanders" (Poindexter, 1815, p. 1). The confederates mentioned were Gen. John Adair and Col. William Preston Anderson.

Gen. Adair served as both U.S. senator and congressman from Kentucky. He served in the Revolutionary War and later fought the Indians under the command of Gen. Wilkinson. He was commander of the Kentucky rifle brigade that fought at New Orleans under Gen. Andrew Jackson (Cong. Biographical Directory, n.d.). Gen. Adair's daughter, Margaret Lapsley, was married in 1814 to Col. William Preston Anderson, who was the other confederate mentioned by Poindexter.

Gen. Adair was told by those who were in the house with Poindexter during the battle of New Orleans that Poindexter received what he "supposed was a wound at the

commencement of the attack" (Poindexter, 1815, p. 2). As Gen. Adair was told, Poindexter immediately rode to New Orleans in search of a doctor. Poindexter referred to Adair and his associates as libelers for telling this version of the events (Poindexter, 1815).

Poindexter reiterated the tense situation and his desire to help the country during the battle. His version of the event was that an eighteen-pound shot passed through the quarters of Gen. Carroll. A number of bricks fell from the wall onto Poindexter's left side and arm which he said "disqualified him from active exertion for some time after that" (Poindexter, 1815, p. 4). He admitted that he was only bruised and "no skin was broken" (p. 4). He said he never left the battleground before the cessation of action.

To support the story, Poindexter published a letter written by J. W. Hamilton in February, 1815. Hamilton wrote that he was in New Orleans and had not seen Poindexter on the road when he rode from the camp to the action. When the battle was over, he rode back to Gen. Carroll's quarters where he saw Poindexter with his arm in a sling. Someone in the room suggested, according to J. W. Hamilton, that Poindexter should ride with Hamilton to New Orleans to have his arm "attended to" (p. 4). Hamilton wrote that he, Poindexter, and another man, W. L. Anderson, left the camp after the firing had ceased on both sides. The letter was signed by Hamilton and certified by Anderson. The letter was written in answer to a query by Poindexter asking for the circumstances of Hamilton's visit to New Orleans on Jan. 8. It would appear that, by the time of Hamilton's arrival, Poindexter had already been "attended to," since his arm was in a sling.

After the Hamilton letter, Poindexter wrote that he left the house only when the camp was quiet and his services were no longer needed. In great detail, he described the condition of his arm as being paralyzed by a blow received to the point of the elbow. He quoted several surgeons who said that he might have been killed had the ball not been slowed down by the wall of the house before it hit him. Poindexter summarized the information given by Hamilton to counter the supposed slanders of Brown, Adair, and W. P. Anderson. Much later on, Hamilton and, by then, Gov. Poindexter would disagree and only the interference of Andrew Jackson would stop a duel between the two (Claiborne, 1880).

Next in the 22-page refutation was a letter from Gen. Carroll accepting the resignation of Poindexter. Carroll wrote that he would remember Poindexter's "zeal and meritorious efforts" while serving his country.

Poindexter wrote that he heard nothing about the "tale" until he reached Natchez. He sent the newspaper with Marschalk's ad about him to both Gen. Carroll and Col. Grayson, adjutant general of the Tennessee militia. Poindexter wrote that the article was intended to erode public confidence in him.

Col. Grayson wrote from New Orleans on Feb. 12, 1815. Grayson said he had been instructed by Gen. Carroll and "a number of other officers" to thank Poindexter for services rendered at New Orleans (p. 6).

Poindexter wrote that the letters in the refutation showed that he performed his duty to the satisfaction of Gen. Carroll, that his visit to the city took place after cessation of the firing, and that he remained in the city for one hour before he returned to the camp. He

wrote specifically to Gen. Adair who had written that his acquaintance with Poindexter did not allow him to comment further on Poindexter. Poindexter wrote that Adair was trying to further his chances to become governor in one sense while trying to gratify political and personal animosity in another sense.

Poindexter played an interesting word game with Adair over the "no comment" sentence (p. 8). Adair had been arrested by Gen. James Wilkinson in 1807 and was accused of conspiring with Aaron Burr. Poindexter noted Adair's comment that he had no reason to disbelieve the story about Poindexter. Poindexter now reminded Adair that he had been accused of treason and Poindexter had no reason to disbelieve the tale about Adair either. However, Adair had countersued over the accusation of treason and Wilkinson was made to apologize and pay damages to Adair (*Ky. Encyclopedia,* 2000). Poindexter did not mention the countersuit.

Poindexter quoted the end of Adair's letter in which Adair wrote that he did not want to "speak or repeat that which would be injurious to any man" (p. 9). Poindexter answered that he was too well known and too well thought of in the United States to be concerned with what was written or spoken by Adair. In fact, Poindexter wrote that he was held in such good esteem that citizens would not be swayed by the words of Adair. Poindexter spoke of the courage of Adair, but he accused Adair's friend, Dr. Brown, of resting under an oak tree during the battle.

Poindexter took up the matter of the other named confederate, W. P. Anderson. He accused Anderson of saying that he could say no harm of Poindexter except that "his private character was of the basest sort, he was a corrupt judge, and the worst of

husbands" (p. 10). Poindexter took up each of those accusations in turn and ended with a rhyme, "Optics sharp and keen, to see what is not to be seen" (p. 10). Anderson also mentioned the lawyer George Bell who said that he had horsewhipped Poindexter, saying that Poindexter was no judge. Poindexter explained that no such act had ever taken place and then took up the matter of the duel with Abijah Hunt.Witnesses accused Poindexter of firing too early. Poindexter dismissed both events as hearsay.

Poindexter went on to accuse Brown and Brown's brother-in-law, Thomas G. Percy of Mississippi, of further damaging his reputation through secret communication with a man at Kentucky's Department of State. Percy was said to have published a lie, calling it a difference of opinion instead. The two men were accused by Poindexter of impeaching his character as a gentleman. Poindexter further accused them of having been influenced by what they read in the "prostituted" newspaper. And Poindexter then refused to say more about the "hearsay" repeated by Brown and Percy (p. 12).

Poindexter continued his refutation with letters from others who spoke highly of his character. John Steele, for several years the neighbor of Poindexter, wrote on July 12, 1815, that Poindexter had indeed been a good neighbor. While Poindexter and he had differed on issues, Steele wrote that nothing escalated "to interrupt the harmony existing between the neighbors" (p. 17). Again referring to the newspapers, Poindexter wrote that Steele obviously had not been influenced by the slanderous articles.

Poindexter compared what William Jackson wrote earlier to what he answered in a letter to Poindexter. Jackson was an early settler and landowner in Natchez and won election to the territorial house of representatives in 1815. Jackson had written earlier he

"had never heard the character of Poindexter well spoken of" (p. 17). In a letter to Poindexter, Jackson wrote the two had much contact in the last year and that he had never discovered anything incorrect on Poindexter's part. Jackson also said that he had not personally known of Poindexter injuring anyone in private life. Poindexter pointed to the fact that no one could live in Natchez without having heard the rumors about him.

Poindexter directed many of his comments toward the "vile slanderer," meaning Marschalk but never naming him. Another letter added was signed by several members of the bar in the Superior Court of the territory. This letter was to answer William P. Anderson's comment calling Poindexter a "corrupt judge". The letter read in part, "the undersigned beg leave to express to you our high approbation of the promptitude, ability, and impartiality with which you have discharged the arduous duties of your judicial station" (p. 18). The attorneys understood that Poindexter was to leave the territory for some time. Those who signed the letter included W. B. Shields, Lyman Harding, Charles Green, Edward Turner, and Cowles Mead. Poindexter said he could not understand how Anderson, who had never seen him in court, could know more about his conduct on the bench than those who practiced before him.

Then Poindexter turned his attention directly to the "vile slanderer." He posed four questions to Judge Leake who answered him on July 29, 1815. The main object of Marschalk's newspaper, according to Poindexter, was to "withdraw from me the good opinion of the people in that country." Poindexter found it necessary to bring charges for libels "against the Editor" (p. 19). The "very tedious" trial was described by Judge Leake.

Leake wrote that he did preside over the trial of Marschalk for two counts of libel printed in his newspaper, the *Washington Republican.* The defendant was allowed by law, he said, to present evidence including the truth in his defense, and the defendant had availed himself of that privilege to the fullest extent. Leake said that Marschalk was allowed to do so at the instance of Poindexter. There was one exception during the trial on which Poindexter and Marschalk disagreed and Leake termed it "an affair of honor." One of Marschalk's witnesses had not come voluntarily to court and the attorney general objected. The witness's testimony would have implicated himself in "an affair of the most serious danger." Consequently, the testimony of the witness was rejected by the court on the grounds that it should not have to investigate every rumor. Had the witness come forward on his own, it appeared that he might have had to testify, thus leading to an investigation of his testimony.

Leake wrote that the trial lasted three or four days and that Poindexter had "exhibited as much purity as any man could have done," when subjected to such "rigid scrutiny" (p. 20). Then he said that the evidence against Poindexter may have been given by those who had been in disputes with him previously. Thus the witnesses were more influenced by their own experiences with Poindexter and had set agendas for their testimony. No person at the trial, Leake continued, could say that the opportunity afforded the defendant was in the least neglected, but was "pursued with the most rigid assiduity" (p. 20). Judge Leake said he was surprised, since there were so many scandalous charges printed against Poindexter, that Marschalk offered no evidence against Poindexter. Leake quoted " a prominent citizen" who said he was disappointed

that nothing was proven about Poindexter's character (p. 20). Others quoted by Leake said that Poindexter was a judge who ruled fairly, but Leake mentioned no specific names.

In the last paragraph of his letter, Judge Leake wrote that the counsel for the defense did not pretend to have proved the truth for the defense of Marschalk. Instead, counsel spoke about the latitude that should be given the press to discuss a wide range of issues concerning the conduct of public officials.

Freedom of the press seemed to have been given only an afterthought by Judge Leake. He wrote one sentence, the last sentence in the letter, about Marschalk's defense.

The record shows that Poindexter was on the bench during the trial. The witnesses may have been intimidated by his presence on the bench and it would have been most difficult for the jury to have returned a not guilty verdict (Claiborne, 1880). Should Poindexter have met only with the grand jury, the same reasoning would apply. Also, it does not seem likely that Judge Leake would have ruled against his colleague.

The last two letters included by Poindexter in his refutation came from men he had served with in Congress. Gen. Joseph Desha was a representative from Kentucky serving in Congress from 1807-1819, and then Desha was elected governor of Kentucky serving from 1824-1828 (Cong. Biographical Directory, n.d.). Poindexter asked Desha to comment on his standing and conduct while he was the representative to Congress from the Mississippi Territory. Desha replied that Poindexter's standing was good and Poindexter's conduct was honorable both to himself and to the country.

The last letter was from Col. Richard Mentor Johnson, a Congressman from Kentucky. Johnson studied law under Dr. Brown's brother, James, who was later a senator from Louisiana. Johnson fought as a young man in the Battle of New Orleans and returned to Kentucky. Johnson was a Congressman from 1807-1818, a U.S. Senator from 1819-1828, and, again, a Congressman from 1829-1836. He was vice-president of the United States under Martin Van Buren from 1837-1841. He returned to Kentucky and was a state representative until his death in 1850 (Cong. Biographical Directory, n.d.).

Johnson answered Poindexter's inquiries on July 31, 1815. He replied that Poindexter was a useful member of Congress for the territory and for the United States. Johnson added that he had no personal knowledge of the events concerning Poindexter at the Battle of New Orleans.

Poindexter ended his refutation by saying that he may have made some unintentional errors in his life, but that he would always take care to detect and correct errors.

Poindexter did not let only the pamphlet speak for him. He wrote to the *Mississippi Republican* in early July of 1815 and the letter was printed in the newspaper on July 26. Five other letters were printed and they all spoke favorably of Poindexter. The letters began with an excerpt from John Bickley from Lexington in which he wrote that Judge Poindexter had been driven into a war with Brown and Percy. Bickley hinted at some circumstances that prevented Poindexter from calling on Brown in the manner intended. Bickley said that Poindexter was looked on as "an injured and persecuted man" in

Lexington who was doing whatever it took to defend his reputation (*Mississippi Republican*, July 26, 1815).

A handbill had been circulated, according to Poindexter, in which Brown had lied about everything other than the abusive language used against him by people in Louisiana and the Mississippi Territory. The party politics and the abuse had been spread to Kentucky and elsewhere to damage both his private and personal reputations according to Poindexter. In the handbill, Poindexter accused Percy of having warned him of a possible physical attack. The confrontation was commented on by witnesses and he referred readers to those accounts which followed. He ended the letter by saying that he had forgiven Dr. Brown and urged Brown to "go and sin no more" (*Mississippi Republican*, 1815, July 26, n.p.).

However, an altercation occurred and thus changed the dynamics between Thomas Percy, Brown's son-in-law, and Poindexter. Five accounts of the incident followed Poindexter's statement printed in the *Mississippi Republican* on July 26, 1815. John Bickley, on July 7, wrote that he and Poindexter were on their way to meet a friend of Bickley's in Lexington, Kentucky. They happened to pass Percy who heard Poindexter say something. Percy turned around and asked Poindexter what he said to which Poindexter replied, "You are a damned rascal, sir" (*Mississippi Republican*, July 26, 1815). The two continued when Percy reappeared with a cowhide whip. Poindexter stepped into the nearby law office of John McKinley to obtain a weapon to defend himself whereupon the two fought until they were separated. Poindexter warned Percy to

defend his life whenever they might might meet again and Bickley concluded saying that Poindexter had acted with firmness.

The second letter was from an eyewitness, Ben Stout, who had been in McKinley's office when Poindexter came in to grab a chair. Before Poindexter reached the chair, Percy struck him twice with the whip. Then Poindexter caught Percy's face and began beating him. Stout said that Percy stopped any resistance while Bickley and Dr. John Todd stopped the fight. At that point Stout said that Percy appeared to be confused. Poindexter accused Percy of some "terrible crimes" and threatened him. Percy turned and said, "I am done with you" (*Mississippi Republican*, July 26, 1815).

Dr. John Todd, Jr. wrote that, after hitting Poindexter twice, Percy made no further attempt to return blows. Poindexter accused Percy of entering his home as a friend and stabbing him. Percy said he had nothing to fear from Poindexter. John McKinley refused comment and wrote that he had read the statements of the others and "additional recital by him was not needed" (*Mississippi Republican*, July 26, 1815).

Poindexter finished the accounts of the altercation by writing that he had been informed that Dr. Samuel Brown was engaging in slander thus harming Poindexter's reputation. Poindexter had called on Brown who refused to discuss the matter with him. The comments sounded as though Poindexter challenged Brown to a duel which was not answered by Brown. Then Poindexter ended calling Brown a liar and a coward.

Summary

During the period of 1812-1816, the people of the Mississippi Territory had begun to dissolve the old political lines and to think in terms of what was best for the territory as

a whole. They fought both the Indians and the British. They wanted to get problems such as the land claims settled. West Florida was added to the territory bringing significant problems to be resolved. The residents wanted to show the United States they were supportive of national endeavors and could be a great asset as a new state.

The territorial militia was ordered to muster and printer Marschalk was busy with his duties as Gov. Holmes' adjutant general. He printed orders both to prorogue the legislative sessions and to get instructions to the militia.

The legal war was a new front that began when a grand jury presentment took the press to task for "bringing officers of the government into disrepute." It appeared that Marschalk's newspaper was the target since he alone had printed news about Ferdinand Claiborne that compared the difference in the local outlook with the news about Claiborne that was printed in the Washington, D.C. newspapers.

Thomas Rodney's former admonishment to the grand jury seemed appropriate at the time. He had warned that a presentment must come from the actual knowledge of the jury members and not from charges made by one outside individual. Without specific editors named, it seemed a bad precedent to set for other grand juries, according to one area newspaper writer.

Poindexter wrote to the governor and tried to have Marschalk fired as the adjutant general, threw Marschalk into jail, hit Marschalk while he was in custody, and tried to secure Marschalk's behavior through surety. Finally, Judge Simpson released Marschalk from jail. Perhaps Castigator was correct when he wrote that Poindexter used his office to get revenge on the printer. While Poindexter gave lip service to liberty of the press, he

seemed determined to thwart it. Poindexter seemed to place himself above the law when he wrote a habeas corpus for himself and gave bond to stop prosecution both for his assault on Marschalk and the charges that he had frightened Marschalk's children in their own home. Nor was Poindexter ever arrested for his illegal duel with Abijah Hunt.

Poindexter must have approached General Jackson with a request to be of service during the defense of New Orleans. Poindexter probably joined Jackson's subordinate, Gen. William Carroll, as an aide when Carroll's troops arrived in Natchez via the Mississippi River. Carroll arrived in New Orleans on Dec. 20, 1814, and his troops became the center of Jackson's line. Descriptions of the battle claimed that Carroll's Tennessee volunteers were shattered and routed, thus making it seem unlikely that Carroll or his men were concerned with the whereabouts of Poindexter. Poindexter's name is not on any muster role of the Tennessee militia or on the record of enlistments in the U.S. Army in the War of 1812. Strangely, the only time his name appeared on the Army enlistment role is when he recommended Thomas Percy for an appointment as captain.

The question about why Poindexter left his court duties is an interesting one. He was exempt from any service and Judge Simpson also was out of the territory. Therefore, the questions posed in the newspaper about Poindexter's whereabouts were legitimate observations. The ad printed on Jan. 4 describing Poindexter as a deserter from the bench was no different from many ads with descriptions of others who were missing from their posts. The only words that were different indicated that he was "running from danger." However, Poindexter began damage control as early as Jan. 27, 1815. Some of the terms

such as “camp slanders” used by Aristides were used by Poindexter later in the pamphlet he wrote in his defense.

Certainly the articles written in the *Washington Republican* spoke of Poindexter’s public actions such as the incident at the tavern, the actions related to the Battle of New Orleans, and his reactions during the 1814 arrest of Marschalk. However, nothing other than the ad of Jan. 4 was cited as libelous in the 1815 trial.

Then Attorney General Shields was instructed to get the real name of Castigator. It was strange for an attorney general to be told to make a deal with the printer for the names of the writers suggesting the printer might remain uncharged. Marschalk believed that releasing the names would be equal to admitting guilt as well as allowing a form of prior restraint. Why did Poindexter continue the use of such methods to refute Marschalk?

The 1815 Marschalk trial was conducted, according to the trial record, with the plaintiff actually on the bench. Other judges of that time had ethically recused themselves whenever there was the appearance of a conflict. Furthermore, at least three of the jurors serving on the jury had been law enforcement officers and several others had declared allegiance to the political party opposing the one that Marschalk supported. The trial record shows nothing related to the case for the defendant and no defense motions or rulings. Only the side of the prosecution was recorded.

Next Castigator turned his attention to prosecutor Shields and wrote that Shields had not performed his official duties competently at the trial. Marschalk saw no reason to stop Castigator’s written comments because he saw it as necessary to defend freedom of

the press in the Mississippi Territory. He believed that his own constitutional right to a fair trial had been compromised when he was not allowed witnesses and counsel. The decision was based only on the jury's perception of the ad without stated concern for First Amendment rights.

Poindexter's letters in the pamphlet written in his defense never proved that any of Castigator's or Marschalk's comments were in error. Hamilton and Anderson saw Poindexter's arm in a sling after the firing had ceased. Carroll, who was popular and later a six-term governor, accepted the resignation of Poindexter without specific comment on Poindexter's duties. Dr. Brown was also exempted from military duty, but he and other medical personnel certainly had no time to rest under trees while making observations during or after the battle.

Poindexter blamed the spread of the rumors in Kentucky on state officials or on the words of the "prostituted" Natchez newspapers. Others wrote that Poindexter was a good neighbor or that he was never suspected of injuring anyone. Johnson knew nothing of the rumors but commented on Poindexter's usefulness in Congress. The rumors and writings were never specifically addressed.

None of the letters in Poindexter's defense referred to any comments as inaccurate. Judge Leake was surprised that Marschalk never tried to prove the truth of the allegations. However, the trial record and Marschalk's own written account showed lack of the real defense that should have been presented in a libel trial. Marschalk knew that he must rely on the constitutional rights that gave him the right to investigate and comment on the public conduct of an elected or appointed official.

During a time when cases in the United States concerned jury eligibility, Mississippi courts were concerned with crucial libel cases of the right of the press to find political corruption and then to print those findings. It was not a case of the Federalists versus the Republicans. The Mississippi press sought the truth about officeholders and judges who said that freedom of the press was important and then worked to undermine that freedom through personal influence in the courts.

Marschalk's focus was freedom of the press, and he clearly kept that focus. He knew well that liberty of the press must be recognized and supported firmly in the Mississippi Territory even at the risk of his own personal freedom.

CHAPTER V

EARLY STATEHOOD, 1817-1831

1817-1824

Petitions to Congress had been sent in 1811, 1814, and 1815 asking permission for the Mississippi Territory to form a constitution and become a state. One more attempt was made through a memorial from the territorial legislature to Congress. In a memorial that was referred to a Congressional committee in January of 1817, members of the state legislature continued to assert that the interests of the territory were the same as those of the United States and that people of the territory wanted to become full citizens. The memorial reminded Congress that the original agreement from 1798 included a promise that the territory would be admitted as a state when the required population was reached. The memorial included a request that the territory not be divided (Carter, 1938). However, residents in the Natchez area favored such a division.

Judge Toulmin and the territorial delegate to Congress, Dr. Lattimore, both favored division of the territory into two states. Toulmin voiced his opinion in a letter to H. B. Slade of Baldwin County (Carter, 1938). Later Toulmin wrote to Congress and stated his case for two states and requested modification of the bill for statehood pending in Congress (Carter, 1938). The inhabitants west of the Pearl River also wrote a memorial requesting division of the territory.

The month of March saw many changes in the Mississippi Territory. Several requests had been made to appoint a new judge to the eastern area of the territory.With the addition of West Florida, the area was too wide to be covered by one judge. On March

20, 1817, Stevenson Archer accepted an appointment as judge in the territory (Carter, 1938). He had served in Congress from Maryland for about nine months.

Also in March, an act was approved to establish a separate government for the eastern part of the territory to take effect when Mississippi became a state.Congress passed legislation on March 1 to permit residents of western Mississippi to write a constitution.The delegates to the constitutional convention were elected and 48 of them gathered in Washington, Mississippi on July 7. The first Mississippi constitution was adopted on Aug. 15, 1817.

Article I of the new constitution was the declaration of rights. Section 5 stated, “no person shall be molested for his opinion on any subject whatever, nor suffer any civil or political incapacity, or acquire any civil or political advantage in consequence of such opinions.” The phrase ended with “except in cases provided for in this constitution” which was added by Poindexter in committee and upheld by the whole convention (Drake, 1956). The exceptions were listed in Article VI.

Article I, Section 6 stated, “every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty.” Section 7 stated, “no law shall ever be passed to curtail or restrain the liberty of speech or of the press.”

Article I, Section 8 pertained to prosecutions for libel. Truth could be given in evidence and the jury was given the right to determine both the law and the facts under the direction of the court.

Article I, Section 22 gave citizens the right to peaceably assemble and to petition for redress of grievances.

In Article V, the powers of the courts and of the judges were defined. One supreme court was given appellate power while original jurisdiction was given to the superior court. Courts of probate were to be formed in each county. Justices of the peace were created for cases when the damages requested amounted to $50 or less. Each court was to appoint its own clerk.

In Article VI some general provisions were addressed. The General Assembly was given the right to pass laws "to suppress the evil practice of dueling." Lattimore tried to change the language to pass a law forbidding duels, but he received little support (Drake, 1956).

Freedom of speech seems to have been somewhat repressed in the general provisions. "No person who denies the being of God" could hold any office in the state and no minister was eligible for the offices of governor, lieutenant-governor, or delegate to the General Assembly (Miss. Const. 1817, Art. VI).

The final document was signed by David Holmes, president and delegate of the convention, and by 45 of the 48 delegates. The constitution was not voted on by the people of the new state (Drake, 1956).

Poindexter was said to have been the leading member of the convention (Swearingen, 1934). However, Drake (1956) pointed out that Lattimore and Cato West played large parts in its creation also. Drake wrote that the document was conservative in nature but was liberalized 15 years later with a more democratic document.

On Thursday, Dec. 11, 1817, the Senate was read a statement from U.S. Secretary of State James Monroe that confirmed the President had signed the bill the previous day for Mississippi to become a state.Thus Mississippi became a state and the two senators appointed by the Mississippi legislature, Walter Leake and Thomas H. Williams, produced their credentials and took their seats in the United States Senate on Dec. 11, 1817.

While Mississippians were organizing their state government, Alabama became a territory and then a state within two years. A bill to establish the Alabama Territory was introduced Feb. 4, 1817, and passed by both houses of Congress on March 3, 1817. St. Stephens was named the capital.

Dr. William W. Bibb was appointed by President James Monroe as governor of the Alabama Territory on Dec. 16, 1817 (Carter, 1952). On the same day, John Williams Walker was appointed secretary.

William Wyatt Bibb moved to the territory from Georgia where he had served as a United States senator and as a representative. He was born in Virginia in 1780 and graduated from the University of Pennsylvania medical school in Philadelphia in 1801. He set up his medical practice in Georgia and became involved in politics as well (Cong. Biographical Directory, n.d.).

John Williams Walker was born in Virginia in 1783. He graduated from what is now Princeton University and then studied law. He began his law practice in Huntsville, Alabama, in 1810. He served in the territorial house of representatives and was speaker of

the state constitutional convention. Later he served as a United States senator from Alabama (Cong. Biographical Directory, n.d.).

The new Alabama constitution was adopted Dec. 6, 1819. In Article I, section 8, the rights were given to every citizen to "freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty."

Immediately there was "universal alarm" in Alabama, according to Judge Toulmin in a letter to John C. Calhoun (Carter, 1952). A petition from Mississippi had been sent to Congress to ask that more of the territory of Alabama be given to Mississippi. The petition stated that Alabama stood to gain 3,200,000 more acres than Mississippi as well as much of the population who had been residents of the Mississippi Territory. Mississippi was left with only a small coastline which was the "verry[*sic*] small and unimportant portion" between the Bay of Pascagoula and the Pearl River (Carter, 1952, p. 211). The memorialists suggested that Alabama could be extended to the Apalachicola River while giving Mississippi the Bay of Mobile.The memorial was signed by about 35 people from 13 counties in Mississippi including David Holmes, Josiah Simpson, Edward Turner, Walter Leake, George Poindexter, and Cowles Mead (Carter, 1952). The memorial was received by Congress in December of 1817.

However, Gov. Bibb received a letter from Senator John Williams of Tennessee in Jan. of 1818, assuring him that "the integrity of your territory will be maintained" (Carter, 1952, p. 235).

The press in Alabama was instrumental in shaping political opinions during the formation of the state. Like the early Mississippi newspapers, most of the news at first

came from other newspapers and editorial remarks were limited to political comment (Abernethy, 1965). The first newspaper, the *Mobile Centinel,* was published in Fort Stoddert in 1811. The publication lasted less than two years.

The *Madison Gazette* was published in Huntsville beginning in 1812. In 1816 the name was changed to the *Alabama Republican* but was merged with another newspaper to become the *Southern Advocate.* John Boardman from Massachusetts edited the *Republican* and then the *Advocate* (Abernethy, 1965). Boardman was also involved in local politics.

Several newspapers were involved in public printing. Boardman printed a pamphlet that chronicled the proceedings of the constitutional convention in Alabama. While Thomas Eastin, editor of the *Halcyon* in St. Stephens, was appointed the public printer of the laws in the southern part of the territory, Boardman was appointed the printer for the northern region (Abernethy, 1965). Other editors wrote asking that they be appointed public printers, but their requests were rejected by John Quincy Adams, then United States secretary of state (Carter, 1952).

Also in 1816, the *Mobile Gazette* began publication under owner George B. Cotton. The newspaper was mostly for commercial use (Abernethy, 1965). The newspaper was bought in 1821 by the owner of the *Montgomery Republican*, John Battelle of Boston, who partnered with J. W. Townsend to form the *Mobile Commercial Register* (Abernethy, 1965).

Toulmin stayed on as a judge and was joined by Henry Y. Webb of North Carolina as another appointed judge. Samuel Cook was named as chief justice. The judges

were to keep their positions “during good behavior or for the existence of the government” (Carter, 1952, 18: 238). Stevenson Archer resigned his position as judge.

During this time, the United States was growing rapidly. The population of the country was estimated at almost 10 million. Andrew Jackson fought the Seminoles in Florida, thus leading to the acquisition of the land from the Spanish. The Bay of St. Louis was nearly swept away when a hurricane estimated today as a category 3 or 4 came ashore, killing almost 200 people and capsizing a United States ship killing 39 of the crew.

In Mississippi, the court system underwent some revision. Lyman Harding was elected the first attorney general of the state. Until 1824, most voters in the state of Mississippi were Jeffersonian Republicans, but Harding was a Federalist. He had a promising future with his appointment, but he did not live to finish his first term.

Mississippi was divided into four judicial districts and each district was represented by a judge of the state supreme court who was elected by the state legislature. The legislature also had the power to remove a judge. Otherwise, the judges could serve until the age of 65 (Skates, 1979).

Gov. Holmes appointed judges during a recess of the legislature caused by yellow fever. He appointed John Taylor to replace the new senator, Walter Leake, and Powhatan Ellis to hold superior court east of the Pearl River. Later, when a vote was taken,William B. Shields, John Taylor, John P. Hampton, and Powhatan Ellis were elected for each of the four districts. John Taylor soon would be involved in the state’s first libel cases.

Powhatan Ellis had an interesting public service career. Ellis served Mississippi as both a state and, later, as a federal judge. He was also elected as a United States senator. He was appointed by presidents Jackson and Van Buren to positions in Mexico where he received mixed reviews for his work there. While in Mississippi, he had disagreements with George Poindexter which extended to both groups of their friends as well. Ellis was a friend of Andrew Jackson and Poindexter disliked Jackson. Cobb (1968) wrote an article defending Ellis and said that Ellis's mild demeanor was often mistaken for weakness. Cobb wrote that Ellis probably did the best that he could under the unusual circumstances in Mexico, but he was criticized in a New Orleans newspaper for failing to take vigorous action. Ellis finally returned to Virginia and died there in 1863.

During the time that Taylor and Ellis were on the bench, two men were involved in libel suits. One man was James Hackett. He has been described as a teacher or tutor because, according to court records in Jefferson County, he received $20 for tutoring John P. Smith, a ward of Joseph Dunbar. Hackett did not appear in the Mississippi Territorial census until 1816. Apparently, he was new to the area.

The other man was Richard C. Langdon, newspaper editor, who appeared in public records when he married Lucretia Hancock in 1810. Langdon became editor of the *Mississippi Republican* in 1818. The publication had been established in 1810 by Peter Isler. Langdon was a candidate for public printer and was elected by the legislature over both Peter Isler and incumbent Andrew Marschalk in January 1820.

However, Langdon was called before the legislature in February to answer a charge of contempt for publishing "two pieces highly defamatory on the members thereof and

calculated to disturb the coolness and deliberation of that body" (Rowland, 1925, p. 616). Langdon was defended by a popular attorney of the time, Joseph E. Davis, but Langdon was still dismissed from his office as public printer.

Later, Langdon established the *Ariel,* which became the *Natchez* in 1825, and the *Natchez Newspaper and Public Advertiser* in 1826. Langdon probably left Mississippi by 1827. A Richard C. Langdon was printing a newspaper in Greene County, Ohio by 1829.

In November of 1818, the State of Mississippi sued James Hackett, the teacher. On June 7 of that year, Hackett went to Langdon and had a handbill printed. Hackett accused Andrew Marschalk of being a corrupt official. An Adams County grand jury brought back an indictment during the November term against Hackett for falsely libeling Marschalk (*State v. Hackett,* 1819).

The grand jury charged Hackett with "unlawfully, wickedly and maliciously, a certain false, malicious, and scandalous and libelous writing against the said Andrew Marschalk, maliciously framing" him. The jurors charged that Hackett "had caused to be written and published in the form of a handbill libel and malicious matter of and concerning Marschalk." The partial contents of the handbill are as follows:

> Andrew Marschalk, Esq., who from his age, the responsibilities not only attached to his office, but those of the head of a respectable family, was not to have been expected to stimulate a stranger for the sake of fees to accuse me of theft and to asperse my character without evidence, for, I will venture to assert, contrary to his own belief. But the public are now told that the man was capable of such baseness.

> But Marschalk who knew my standing and character in society, a citizen of the same city with myself, should lend the aid of his official situation to cast a stigma upon me, an humble individual, in an act of perfidy and of meanness which, in an enlightened community of honest citizens will not fail to be stamped with its true character.
>
> For it is capable of proof that the magistrate verbally published me as guilty, but finding he had no ground to occupy, endeavored to excite Corcoran falsely to accuse me. If you therefore are prepared to countenance such official villainy as has been done me, you are preparing only the poison for yourselves. (*State v. Hackett*, 1819)

The indictment was written and signed by acting Attorney General William B. Griffith, who concluded that Hackett's handbill and accusations were "contrary to the form of the statutes" and "against the peace and dignity of the State."

Marschalk had been accused by Hackett of perfidy which was defined as "being disloyal or faithless, or was a deliberate breach of faith, or treachery (*American Heritage Dictionary*, 1994). The charge of perfidy is no longer defined in *Barron's*, a legal dictionary.

The witnesses listed were Andrew Marschalk, George Newman, Edward Broughton, James Whitehead, Joseph Evans, and William Stidgen. However, one of the witnesses, Broughton, was unable to attend and Marschalk swore in a deposition on Nov. 23, 1818 that Broughton was necessary to the state's case. Marschalk also said that he was not trying to stall the matter. On this deposition and other court papers, the case was

titled *State v. Hackett* and *State v. Langdon*. There was no mention of a *Langdon* decision, only a judgment in the *Hackett* case. Also in the record was the statement that the subpoenas for the witnesses had been executed.

The result was that the case was postponed until the next term held in May of 1819. While no further record of the trial can be found, some conclusions can be reached from the few pages left by Hackett's attorney and from a short note written on the back of the jury's indictment.

The note on the back of the indictment was written by the jury foreman. "We of the jury find the defendant guilty in manner and form in the indictment and assess his fine to fifty dollars." Hackett had been found guilty of libel against Marschalk (*State v. Hackett*, 1819).

While the defendant's attorney is not listed with the record, the attorney left three exceptions to the trial proceedings and they were signed into the record by Justice Powhatan Ellis. In the first exception, the attorney introduced a witness named Abner Mardiz and asked him whether Marschalk had been guilty of instigating and stimulating prosecution and strife before the publication of the handbill. The answer to the question was in the handbill itself, but the prosecutor then objected because new questions were being asked introducing new evidence and the court agreed. Consequently, some evidence was excluded from the trial record, and the defense counsel wanted his objection to the exchange to be part of the case record.

The second objection was when the defense attorney asked state witness William Stidgen if he knew that general dissatisfaction prevailed against the justice of the peace at

the time the handbill was printed. Again there was an objection by the state which was sustained and the question was not answered.

The third objection was about a question asked to the same witness, Stidgen, about the general character of Marschalk at the time of the publication of the handbill. Again the state objected and again the objection was sustained. Apparently, comments about Marschalk's character and reputation were not allowed in the proceeding. The question before the court was whether the handbill libeled Marschalk and the jury found that it did.

Marschalk was not content to set idly while the state's case against Hackett slowly worked its way through the new court system. He filed a bill of trespass against Hackett in court in May of 1818 (*Marschalk v. Hackett,* 1820). The action was to recover damages against Hackett for printing and publishing the libelous handbill. The case went to trial in May of 1820, after the state's case against Hackett was decided.

Edward Broughton, the witness unable to attend trial earlier, gave his statement on May 17, 1819, and he told the court about the exchange that had taken place when the mention of robbery against James Hackett occurred. Cochran, referred to as the complainant by Broughton, went to Marschalk to lodge a complaint against Hackett for stealing about $194 from him.

The robbery allegedly took place when the complainant was intoxicated. Cochran told Marschalk that Hackett had taken the money from his pocket when he was unable to "help himself." The money was contained in a small tin box which the complainant produced and said that Hackett had taken the rest. Marschalk suggested to the complainant that he retire to his lodgings to sleep for the night and perhaps his opinion

may have changed by morning. The complainant took Marschalk's advice and left (*Marschalk v. Hackett*, 1820).

In May of 1819, Marschalk appeared before the clerk of the court, J. T. Griffith, and told him that a witness, Samuel Dillon, was in Maryland. The witness asked the court for the appointment of someone in Maryland to take his deposition.

The deposition of James Steen was taken May 26, 1820, in preparation for the case of *Marschalk v. Hackett.* After he was sworn in, Steen said that in June of 1818, he went early to market and met with Marschalk at the railing. He related that Marschalk said to him, "What do you think? Hackett is about to be hauled up for stealing money out of a local." Then Steen said that Marschalk told him that a warrant had or would soon be issued against Hackett.

At that point Marschalk asked the deponent, "What is my general character as a man and as a magistrate?" The deponent replied that he had heard more speak favorably than unfavorably about him.

Then Hackett asked the deponent about his general character, and the deponent replied that as far as he knew Hackett was honest, fair, just, and upright. The deposition was signed by Woodson Wren, justice of the peace.

Marschalk v. Hackett went to trial before Judge John Taylor of the second judicial district in Superior Court in May of 1820. Marschalk charged that Hackett accused him of misusing his office as magistrate. Hackett, according to Marschalk, also told others that Marschalk was guilty of perfidy and prostituting his official office. Hackett had published and then posted the handbill with libelous information in it.

In his defense, Hackett had accused Marschalk of telling others that he was about to be “hauled up” for stealing. Hackett told the court that Marschalk had “prostituted” his office as magistrate.

Marschalk asked for $5,000 damages. The jury found for the plaintiff Marschalk but awarded him only $50. Hackett had been found guilty of libeling Marschalk.

At about the same time, Marschalk sued the publisher of the handbill, Richard C. Langdon *(Marschalk v. Langdon*, 1818). This law suit was heard by Judge John Taylor as well. Marschalk charged that Langdon “fraudulently and maliciously intended to injure his good name and bring him into public scandal, infamy, and disgrace with the worthy citizens of the state.” Marschalk charged that Langdon had published Marschalk was guilty of misconduct thus subjecting him to penalties by the laws of the state. The date of June 16, 1818, was when Langdon published a “scandalous and malicious libel” in the form of the handbill which was addressed to the public and signed James Hackett. Hackett, who had accused Marschalk of paying a stranger to accuse him of theft, signed the handbill.

Due to the statements on the handbill, Marschalk charged that citizens of the community refused to do business or be friends with him and they had done so before the publication of the handbill. He asked for $5,000 damages.

Langdon replied that he was not guilty of Marschalk’s charges. Langdon further said that Marschalk was guilty of the charges claimed in the handbill.

Jurors were summoned and the jury consisted of John B. Taylor, Joseph R. Lyons, James I. Rowan, William Lemon, Edmund Andrews, Daniel Woodward, Catesby B,

Minnis, Thomas Bolton, Abijah Hull, Luther M. Thomas, Nathaniel Hoggatt Jr., and Isaac Mann.

The jury decided that Langdon did not undertake the publication of the handbill in manner and form as Marschalk complained against him. The jurors awarded Langdon $39.43 1/4 and payment of court expenses. While Hackett, the author, was found guilty of libel, the printer of the handbill, Langdon, was found not guilty.

The actual charge by Hackett was subornation of perjury or the crime of procuring another to make a false oath (Grifis, 1996). The evidence required to prove such a charge was the perjury in fact and proof that the statement was given by the accused. Proof would have to be shown that the accused knew or should have known that the testimony would be false (Grifis, 1996). Since the charge would have been so difficult to prove, Hackett chose to write the handbill about Marschalk instead.

Some repetition occurred concerning the men on the juries who decided the Marschalk cases from 1815-1820. Eight men were on two of the juries when the jury's verdict was against Marschalk. They were Edmund Andrews, Daniel Woodward, Isaac Mann, Luther M. Thomas, John B. Taylor, Thomas Bolton, James Roman, and Joseph B. Lyons. All were on the *Langdo*n jury and Lyons and Andrews were on the grand jury in 1815. The other six were on the jury that ruled against Marschalk and his partner in a case concerning a debt of the printers.

Nathaniel Hoggatt, a member of the grand jury that indicted Marschalk in 1815, was also a member of a non-libel trial that went against Marschalk and his printing partner Evans, and was also a member of the jury that ruled against Marschalk in the libel

suit against Langdon. Catesby B. Minnis, who was a member of the grand jury in 1815, was also a member of the same two juries as was Hoggatt. In all three legal matters in five years, the two men ruled against Marschalk three times. Hoggatt was also a member of the grand jury in the Mississippi hearing concerning Aaron Burr.

In another Mississippi case, Daniel Bollings accused George Francis Wilkinson of slander concerning the marking of livestock. The case was dismissed in 1817 (*Bollings* v. *Wilkinson*, 1816).

Also that year, Josiah Martin sued Daniel Boyce for slander (*Martin v. Boyce*, 1816). Both men were new to the area,but both also became involved in local politics and signed petitions to be sent to Congress. The outcome of this case was not in the record but may have gone to trial since a dismissal was erased in 1817. Walter Leake was the judge of record in both slander cases.

Other libel cases throughout the United States dealt with more narrow issues. In a South Carolina case, a ruling by the Constitutional Court of Appeals found that a rule accepted at that time was not valid in all cases. The appeals court with five justices present ruled against the "universally accepted" premise that "the greater the truth, the greater the libel" (*Calhoun v. M'Means*, 1819). Continuing the thought, they also ruled that, because a libel was false, it did not remedy the problem or mean that the plaintiff had not suffered any injury. The ruling in this case was cited in an important Alabama libel trial early in the state's history.

Jury instructions and damages awarded seemed to be the issues in libel trials during this time. In Kentucky, however, a ruling on a libel case was delivered that contrasted

sharply with the *Langdon* case in Mississippi. In *Metcalfe v. Williams* (1823), an appeal was filed in the case of a publisher who had been found guilty for the printing of a libel. The words published were upheld as a libel and the instructions to the jury were upheld as correct. However, the Kentucky Court of Appeals found that whether the publisher was the author or not was "wholly immaterial." The only issue that had to be shown to prove guilt was that he published the words.The lower court judgment stood and the publisher was guilty because he printed the libel.

Another issue brought out in a Marschalk case, the one against Hackett, was the admission of evidence of the general character of the litigants. This issue was addressed later by the Supreme Court of New York. An appeal brought before the court included the question and the evidence was allowed in mitigation of damages (*Paddock v. Salisbury*, 1824). The important words were general character and not specific instances which might cause further injury. Earlier, testimony of the general characters of Marschalk and Hackett had been given in deposition but not allowed as new evidence.

A good summary of libel law in 1825 was given by Circuit Justice Story of Rhode Island in *Dexter v. Spear* (1825). A printer is bound not to print anything libelous and it is no apology for him that he is not the author because he is just as guilty as the writer. "The author may write from private malice, but the injury is done by the publication," Story ruled. He ended by defining malice as willfulness. The same ruling had also been used earlier in Mississippi.

A very long libel trial began in Mississippi when a man believed that he was libeled by several people in Adams County over the death of his wife (*Nevitt v. Chambers*, 1818).

John B. Nevitt was concerned about a statement given by David Chambers who accused him of giving Mary Nevitt something in her drink to poison her. Others voiced the same opinion and Nevitt added at least three other names to the law suit and asked for $40,000 damages.

Capt. John B. Nevitt was a planter and a leading Roman Catholic layman in Natchez (James, 1968). He was president of the Roman Catholic Society of Natchez and president of the board of a girls orphanage. Before the organization of the Catholic church in Natchez, he attended the Presbyterian Church. He also raised funds for the building of the Washington Methodist Church. He ran for state representative in 1818, but there were two offices and he came in third (James, 1968). His written record books survive and contain descriptions of politics and culture in Natchez.

Andrew Marschalk, as the justice of the peace, took all of the depositions required before the trial. The facts were that Mary lost a child and subsequently became ill. The depositions were from women who attended Mary during her illness. The women were from some prominent families. Barbara Calvit lived in Rapides Parish in Louisiana and supported Nevitt. Both Mrs. (no first name listed) Dunbar and her testimony were hostile to Nevitt.

Capt. Nevitt had been a naval officer and married Mary Schilling in 1810. He had at least one son George from a previous marriage. There was some testimony that the loss of Mary's baby was caused by an abortion. Whatever the cause, Mary became ill, and Nevitt hired a nurse to attend to her.

The first deposition taken by Marschalk was that of Barbara Calvit. Nevitt specifically asked that hers be taken first since she did not live in Mississippi. Calvit said she had known Mary for several months. She was at the Nevitt home when Mary said that she was well enough for Nevitt to leave to go to court. The nurse would remain at the home. Calvit rode some of the way with Nevitt. Calvit also raised some questions about the biological father of the baby.

Next the nurse Jane Long was deposed. She testified that Mary seemed to have every comfort and was well attended. She said Nevitt was affectionate and stayed with Mary the whole night before her death. The next morning Nevitt rode to Homochitto where his mother lived.

In his defense, Chambers, through his attorneys, Griffith and Quitman, said that he was not guilty of the charges and that he was ready to verify the truth about his published statement concerning the guilt of Nevitt.

Mrs. Dunbar's testimony was not included, but there were references to her calling in a doctor who was alarmed at the condition of the patient. An external application of some medicine to treat the blisters in her jaw was prescribed.

As the depositions continued, the rumors spread and statements ranged from the “happy couple” to the “unfaithful husband.” Col. John Steele had been a friend to Mary and he checked in on her regularly.

The case was filed in November of 1822 and continued through 1824. Then, in February of 1825, Nevitt asked for a change of venue citing hostility that was shown him by law enforcement officials. He charged that rumors and hostility had spread throughout

the community and remained in the minds of the public. Therefore, Nevitt believed that he could not get an impartial trial in Adams County.

The trial was moved to Franklin County, and the record there was not included in the file. All that was left were two appeals by George Poindexter and the defendant's attorneys to have the Adams County court costs paid. The last paper in the file was the list of questions asked of potential jurors by Judge Edward Turner in January of 1826.

Marschalk kept meticulous records of the depositions including when and where they were given. The statements were done in question and answer form and it appears that he asked the questions and took down the answers without comment. His records are the only ones that have survived. The charges were written by the judges and attorneys on the back of the official forms. Only those notes and the subpoenas were in the case file. However, during the course of four years, the case never went to trial. In the request for the change of venue, Nevitt seemed to be bitter about the rumors or libels that he believed continued to be spread about him.

Nevitt may have eventually been vindicated because there is a record of another marriage to Sarah Banks and references in other family histories and church records that refer to him as an honorable man.

In Alabama, one of the first slander suits, *Coburn v. Harwood* (1822) was appealed to the state Supreme Court. Harwood got a judgment against Coburn in the Circuit Court of Monroe County in which innuendo had been ruled as actionable. The Alabama Supreme Court, however, ruled that the crime indicated in the innuendo was not

actionable and thus neither were the words spoken. Consequently, no damages were awarded and the lower court was reversed.

The next year, the Alabama Supreme Court heard an appeal again from Monroe County. In *Perdue v. Burnett* (1823) the words recorded had been amended by the court to clarify their meaning and then ruled the words were indeed malicious. The lower court ruled that if damages were awarded that they should be called debt rather than damages. The Alabama Supreme Court ruled that it was immaterial as to which word was used. Therefore, the lower court ruling was affirmed. Clarification of wording became an issue in Louisiana courts as well.

A third Alabama case was settled using the last two cases as precedent. In *Taylor v. Casey* (1824), Judge Minor discussed the difference between the phrases, "You have killed my brother" and "You have murdered my brother." While the first may mean that the death was ruled as an accident, saying those words usually refers to "a felonious killing" and thus were actionable. In citing the two above cases, Minor held that the words in each were spoken maliciously and agreed that the words spoken in the instant case were also malicious thus affirming the judgment of the lower court.

In Louisiana, the Supreme Court ruled differently about an agreed change of wording in the lower court in New Orleans. In *Freeland v. Lanfear* (1824) the lower court refused to let the amended wording be read to the jury because it had not been served on the defendant. The amended wording was not, in the Louisiana Supreme Court's opinion, actionable and that the jury would not have returned a guilty verdict had they rendered the opinion on the second wording. The court reversed and remanded the case back to the

lower court to have the issue stated correctly to the jury. The difference between the Alabama case and the similar Louisiana case was in what the jury was allowed to hear. It also appeared that in the Alabama case the wording clarified the issue, but in the Louisiana case the change weakened the effect of the wording and thus the case.

During this period, the Mississippi legislature passed an act on Feb. 12, 1821, to revise the state statutes. George Poindexter, who had become governor in 1820, was requested to do the work and then present it to the legislature. He was asked also to take the code to the Mississippi Supreme Court for the judges to examine. The judges then sent it to the secretary of state where the new statutes were kept. They were titled "The Revised Code of the Laws of Mississippi" but were more commonly known as "Poindexter's Code."

Former Judge Walter Leake, who was one of the first senators from Mississippi, resigned to run for governor and he won the election. However, Judge John Taylor died and Leake filled in as judge until his inauguration. Leake served as governor from 1822-1825, but died before the end of his term.

Other judges included Joshua Clarke who served from 1818-1821, Powhatan Ellis who served from 1818-1825 when he was appointed senator, and, later, second chief justice of Mississippi, and John Hampton who served from 1818-1825 when he became too ill to stay on the bench. Bela Metcalfe served briefly in 1821 and William Shields, who came to Mississippi with Rodney, served as judge from the beginning of statehood through 1818 when he was appointed a federal judge. Richard Stockton served from 1822-1825 and then became attorney general. Two of the judges fought in duels. Shields

fought a duel with James Speed, and then Stockton died in a duel in New Orleans. Duels, though illegal, were still recognized as part of the solution to slander.

1825-1832

In American politics, John Quincy Adams had been elected president and John Calhoun elected as the vice-president. Political groups who supported Adams became National Republicans and the men who supported Andrew Jackson became the Democratic Republicans or Jacksonians. In 1827, Andrew Jackson was elected as president and Calhoun repeated as vice-president.

In Mississippi, David Holmes was governor from 1817-1820 and for a year in 1826 before he became too ill to serve. George Poindexter was governor from 1820-1822, and Walter Leake served as governor from 1822-1825. Then Gerard Chittocque Brandon became governor. He was lieutenant governor and served out the terms of both Leake and Holmes when they became ill. Brandon won elections in 1827 and 1829 and served as governor until 1832. He was the first native Mississippian to be elected governor.

A slander case was heard by the supreme court of Mississippi in 1825. The jury rendered a verdict in 1823, but the law suit was filed in 1819. In 1822 the law was changed concerning the award of damages and the damages almost became more important than the slander charge. Judge Edward Turner wrote that the law provided that any issues decided or commenced under former laws would be decided as though the later law had never been written. Since the higher court was to decide only the facts, the damages would remain as ruled by the circuit court (*Gayden and wife v. Bates and wife*,

1825). This case has been positively discussed in cases before the Fifth Circuit and in other cases as recently as 2003.

The Mississippi Reports from 1817-1825 were gathered and published in book form by a new resident of the state, Robert John Walker. When Walker moved to Mississippi in 1826, a working relationship between Mississippi's first printer, Marschalk, who was said to resemble Benjamin Franklin, and the printer who was married to Franklin's great-granddaughter was forged through both politics and printing.

Walker was born in 1801 in Pennsylvania. After he graduated from the University of Pennsylvania, he studied law and began a law practice in Pittsburgh (Cong. Biographical Directory, n.d.). He was married to Mary, the daughter of Franklin Bache and the great-granddaughter of Benjamin Franklin.

Walker moved to Mississippi to join his brother Duncan and Duncan's law partner Edward Turner in their practice. He had several other influential friends in the area. He was also a Jacksonian, but there was no newspaper support in Mississippi for Jackson. In 1826, citizens including Thomas Hinds and Walker formed a society to support Jackson. They needed a newspaper voice and bought the *Mississippi Statesman,* retaining Marschalk as the publisher (McLemore, 1973). Marschalk merged the *Statesman* and his *Natchez Gazette* and named the new newspaper the *Mississippi Statesman and Natchez Gazette*. Walker helped guide the newspaper in support of Jackson for the 1828 election.

The center of politics moved as the population grew. Natchez was often viewed as the area of the elitists and the population began to grow more quickly around Vicksburg and Jackson. Thus the tide of state politics turned toward Jacksonian Democrats. Several

candidates for public office moved from the Natchez area to identify more with the new Jacksonian movement growing in other parts of the state.

The new group that formed in Natchez for the Jackson cause was referred to as the "Junto" and consisted mainly of Robert H. Adams, James C. Wilkins, and the Walker brothers. The members ran for public office and helped support other candidates who were close in philosophy to the Democrats. Financial support came from Adam L. Bingaman, Stephan Duncan, Alvarez Fisk, and Wilkins (James, 1968).

Robert Huntington Adams was born in Rockbridge,Virginia in 1792. After college, he established a law practice in Knoxville and, in 1819, moved to Natchez. He served as state legislator and then was elected to fill the vacancy in the U.S. Senate created by the death of Thomas B. Reed. He served in the United States Senate from January until July of 1830 (Cong. Biographical Directory, n.d.).

Thomas Buck Reed was supported by the "Junto." He was born in Kentucky in 1787 and moved to Natchez in 1809. He served as city clerk, attorney general for five years, and then filled the vacancy left by Holmes in the U.S. Senate from January of 1826 to March of 1827. He failed in the next election bid, but he was elected in 1828 and served in the Senate from March of 1829 to November of 1829 (Cong.Biographical Directory, n.d.).

James C. Wilkins was one of Walker's friends from Pennsylvania. Wilkins moved to Natchez in 1805 and he was helped to prominence in the area through his marriage to Maj. Stephen Minor's daughter Katharine. He became a wealthy and respected leader who had been chosen to write the original proposal to Congress that asked for the split of

the territory. Later, he was the leader who chaired the meeting to make decisions for rebuilding Natchez after the 1840 tornado (James, 1968).

Stephen Duncan was also wealthy and influential and a cousin of Robert Walker. He was a writer as well and, according to other writers of the time, the largest producer of cotton in the South. The writers also said Duncan built the first plantation home in the South to have two-story columns in the front of his home, beginning a trend that was copied by other builders. In addition to being a planter, he was president of the Bank of Mississippi (James, 1968).

These men and their financial backers supported winning candidates of four of five of the first U.S. Senators from Mississippi, five of seven of Mississippi's representatives for its one seat in the U.S. House of Representatives, five of the attorney generals of the state, five of seven of the Mississippi house speakers prior to 1830, and two of the first four governors (James, 1968).

Walker did not run for political office immediately, but he remained a staunch Jacksonian (Miles, 1960). He was busy with his law practice and speculative land deals. Unfortunately, he borrowed money to acquire many acres of land, and he was heavily in debt by 1834 (Miles, 1960).

Five newspapers of more than one or two years duration were in publication during the period of 1825-1832 in Mississippi. The *Ariel* was edited by James K. Cook and William P. Foster and published by Richard C. Langdon. Langdon was no longer associated with the newspaper by 1826 (*Union List*, 1970).

Andrew Marschalk's long history of printing continued with the *Washington Republican* which became the *Washington Republican and Natchez Intelligencer* and was moved to Natchez in 1813. The name of the newspaper was changed to the *Mississippi State Gazette* until 1825 when it became the *Natchez Gazette*. The name changed again in 1827 to the *Mississippi Statesman and Natchez Gazette* and, finally, the *Natchez Gazette* from 1830 to 1833 (*Union List*, 1970).

The other three newspapers of longer than one or two years being published during this time in Mississippi were the *Port Gibson Correspondent,* 1818-1847; the Vicksburg *Advocate and Register,* 1828-1834; and the extant *Woodville Republican* that began publication in 1823.

Andrew Marschalk was back in court in 1828 when he filed a law suit charging trespass against a man whose last name was Harper. Marschalk charged that Harper had slandered his wife Sidney[*sic*] intending to injure her and bring her name into infamy, scandal and disgrace by speaking ill of her in front of other people. Harper alleged that Sidney had spread mischief among other citizens. Judge Taylor heard the pleas and then dismissed the case.

Two Mississippi slander cases brought a new dimension into the state's libel law. In 1827, the appeal of a slander case was based on the issue of words which were not actionable, but became so when other factors at the time were included becoming slander per quod (*Davis v. H. Farrington,* 1827). Citing section 9 of the 1822 revised code, Judge Child wrote that the words should be insulting and abusive thus leading to a breach of the peace to be actionable. Each count, he said, must have special damages stated in the plea.

In Alabama, the courts were concerned about the evidence presented in mitigation of circumstances, but ruled differently. In a slander case brought in 1827, the circuit court jury ruled that a charge of perjury in itself was actionable and that proof of an actual oath was not necessary *(Lea and wife v. Robertson*, 1827). The Alabama Supreme Court affirmed the lower court decision.

The same year in Alabama, a case was appealed which concerned the same charge as the one in the Mississippi case against Hackett. Subornation of perjury and the competency of the magistrate were addressed in *Harris v. Purdy* (1827). Again the words spoken charging perjury were actionable and no special evidence of malice was required. However, another legal concept came in a lawsuit that fell more into the common law rulings.

Specificity of the slander was the question in *Thirman v. Matthews* (1828) in Alabama. Robert Matthews brought a law suit against John Thirman for accusing him of being a counterfeiter. The lower court jury found for Matthews and awarded $1,400 damages.

The case was appealed. In the higher court's opinion, Judge Crenshaw wrote that the accusation of counterfeiting "is seldom used in an innocent sense." Therefore, an accusation of counterfeiting meant that the accused was guilty of a crime and should be punished by the law. The court saw the charge as damaging to the character of the accused. In this case had there been a type of counterfeiting spoken, then the outcome may have been different. However, calling the plaintiff the "counterfeiter of the county" implied an illegal act, according to the court.

As the decade of the 1830s began in Mississippi, the influence of the "Junto" was beginning to decline, but the influence of Walker had not declined. He was elected to the United States Senate from Mississippi and served from March of 1835 to March of 1845, including unseating Poindexter in the election of 1836. He left Mississippi to become the secretary of the treasury under President Polk from 1845-1849.

The legal interpretation of innuendo continued in Mississippi in the case of *State v. Chace* (1830). An obscene song was written and the questions to be answered in court were whether it applied to the plaintiff and whether there was evidence of publication. The court found in the affirmative on both counts. The ruling by the court was based on the use of disguised names that were commonly understood and interpreted by the public. The public could see the plain truth of the information even when innuendos were used to disguise the meaning of the words.

The decision in the case *Torrance v. Hurst* (1831) was appealed because of a question about interrogatories, but the Mississippi highest court made a point about libel:

> A letter written confidentially by one to another, under an impression that its statements are well founded, is not libelous. For if a communication, which is not meant to go beyond those who are immediately interested in it, were to be made the subject of an action for damages, it would be impossible for the affairs of mankind to be properly conducted. (*Torrance v. Hurst* (1831, n.p.)

During this period in Louisiana, the libel cases set legal principles. In *Stackpole v. Hennen* in 1828, the Louisiana Supreme Court ruled that attorneys are responsible for malicious statements in the courtroom, but they are not responsible for statements

pertinent to the client's cause. Louisiana was in the process of forming a basis for its laws and the decision was based on the Roman Code, Spanish law, and *Blackstone's Commentary*.

This case was cited in two more cases in Louisiana within the decade. In *Carlin v. Stewart* in 1830, the Louisiana Supreme Court had to decide on damages for a slander case even though damages for slander had been repealed in the Civil Code of 1825. The code had been passed in order to remove some of the older French and Spanish laws. Now the court ruled that an action for damages for slander could be sustained even under the new code, citing *Stackpole* (1828) as a precedent. Another ruling allowed witnesses to be called to testify to Dr. Stewart's professional services and charges even though, as a professional doctor, he was unable to testify directly on facts in his own behalf.

Former Mississippi jurist, Francois X. Martin pointed out in his writings in Louisiana that the jury should not be instructed "if the words charged the plaintiff falsely and maliciously with moral turpitude, so as to injure his character and standing in society, they might find for the plaintiff, without showing any special damages." In his view and former opinions, the jury should decide both the verdict and the damages.

Summary

Libel changed as did the status of Mississippi from territory to statehood. While state government was implemented, new codes were adopted and compiled, and the court system was revised. Libel cases began in circuit court and were often appealed to the highest new court of the state, the Mississippi Court of Errors and Appeals.

The new state constitution included a declaration of rights that upheld freedom of speech and press but warned of the inherent responsibility not to abuse those privileges. Truth could be given as evidence to mitigate damages in a libel trial, and the jury was given the right to determine both the facts and the law of the case. But it was up to the General Assembly to pass laws which would prohibit duels.

Alabama implemented its new state government just two years later. The constitution for Alabama also included a provision for free speech and the freedom to publish sentiments on subjects as well as the responsibility not to abuse those privileges.

Both Mississippi and Alabama residents looked to newspapers for current events and political opinions. All the new laws were printed in newspapers in both states with the job of public printer seen as an important position.

Of the Mississippi judges appointed, John Taylor and Powhatan Ellis soon heard libel cases in their courtrooms. Turnover in the judiciary occurred due to illness or due to the rise of some Mississippi residents to prominent positions at the national level.

However, in the courtrooms of Mississippi, libel law developed more quickly. The principles established were often ahead of decisions rendered by other states. For example, the Hackett, Langdon and Marschalk disputes were lengthy but resulted as precedents used in other states. Hackett, the author, was found guilty of libel while the publisher of the libel was not convicted. Truth was admitted as evidence while evidence of character was allowed only in depositions.

The repetition of jury members in the Mississippi libel trials was troublesome. The use of eight men on two juries and three men on all three juries resulting in verdicts

against Marschalk seemed unnecessarily repetitive. The sheriff was ordered to gather the potential jurors, but it is not clear under what circumstances the men were chosen.

In other United States courts at that time, the issues were over the truth or falsity of the evidence, whether all the information published should be introduced, or whether intent was malicious. Several states had no precedents about truth as evidence as did Mississippi, and those states continued to rely on English cases as precedent for their rulings.

Evidence proved to be a continuing issue. Even proving that the libel was false did not protect the defendant because injury may still have occurred to the plaintiff. The nation's courts became interested in hearing all the specifics thus changing the "greater the truth, the greater the libel" precedent.

Another area where Mississippi seemed advanced in libel litigation was finding Langdon, the editor, not guilty of printing a libel. For example, Kentucky's Court of Appeals found in *Metcalfe* (1823) that it was immaterial whether the accused wrote or published the libelous material in question as both were in the wrong. Judge Story of Rhode Island agreed with the Kentucky Court of Appeals and ruled similarly.

Common law was the basis for the first libel decisions in Alabama.The questions at court concerned innuendo and local interpretations of the questionable words.The rulings were appealed because of how the wording was introduced or clarified in court. In Mississippi courts, the jury decided the facts and law of libel cases.

Mississippi's common law approach to judicial decisions was changing rapidly as was the political situation. The new constitution reflected changes in the state as it grew

in population and influence in the newer northern sections. The old families and the Jeffersonian Republicans gave way to the "Junto" and Jacksonians. Natchez was looked on as the old elitist population while growth and influence spread on to Jackson and Vicksburg. Wealth was concentrated in the areas where new land could be acquired. Lawyers and businessmen were drawn to the area to invest. Printers and the new political factions formed alliances. The problems of innuendo in slander and publications found their way into Mississippi courts.

Mississippi was now ruled by new statutes and interpreted by new judges in a new court system. When common law and the statutes clashed, the statutes ruled. In Louisiana, the judge who was first a judge in Mississippi, Martin, judged cases trying to reach commonality among the competing legal systems through systematically setting up standards and precedents. By 1840, Louisiana's statutes had changed, leaving Martin to write in dissent that the established legal system he had worked for years to help create, was being overthrown.

In Mississippi, legislation from the bench did not cease until 1844. New statutes were passed to avoid the kind of judgments reached in the early Marschalk and Judge Poindexter cases. Hutchinson, compiler of the Mississippi Code, had written that judges must put aside personal resentments and not censor the press. Courts ruled against punishing printers for criminal contempt. Instead, new rulings set precedents for the growth of libel law. However, growth slowed as the landscape changed, and newer issues would put libel on the back burner in the Old Southwest until after the Civil War.

CHAPTER VI

SUMMARY AND CONCLUSIONS

The history of libel in the Mississippi Territory began with lawsuits as early as 1802. The lawsuits against Andrew Marschalk and Edward Turner were found in the records left by Judge Thomas Rodney. Rodney found them in the courthouse records he researched, but have since been lost.

Indeed, according to several writers, Mississippi was ahead of other areas in libel law. As of the time of the first lawsuits in 1802, Mississippi was the model to follow and at least two other states did. From these early cases, the territorial judges tried to limit contempt in libel.The early use of truth as evidence in defense and the jury's right to determine both law and facts of the case were also included in *Toulmin's Digest.* They were certainly ahead of England's Fox's Libel Act of 1792 where such ideas were considered to be radical. Hamilton (1953) wrote that Mississippi was behind in debtor's law, but certainly abreast of the times in libel law.

The chief justice of the Texas Supreme Court wrote in the decision of a case 1992, that Mississippi's Constitution of 1817 was the first to permit evidence of truth in libel prosecutions in Article I, section 8. In 1833, the judge wrote that the libel law of Texas mandated only that printers not disturb the peace. He claimed, "the authoritarianism and unresponsiveness of Mexico to attempt to exercise and establish protection of free speech were a contributing factor to Texas' revolution and independence" (*Davenport v. Garcia,* 1992, n.p.).

Prior to the 1802 law suits, the threat of libel was used against the first governor of the territory, Winthrop Sargent, but dropped after his resignation. Like many of the early records, the information about libel suits can be found in letters or in newspapers. Some early court records survive, but most of them contain land or probate issues. Any surviving information contains only the judgment and those present at the hearings.

When the territory was formed in 1798, the political and military leaders were appointed by the government of the United States. The requirements for the appointments were loyalty and service to the United States in the creation and development of the new country.

The basis for law in the Mississippi Territory was the Northwest Ordinance. However, there were circumstances that were not covered by the ordinance. Just making decisions about the land issues kept the courts busy for years.Very few officials had legal training and often the judges who went to the territory did not stay long enough for precedents to be set.

Libel suits filed against the first governor may have contributed to his resignation. He thought of newspapers as did most Federalists during the time of the Alien and Sedition Acts. The newspapers printed the laws that were passed and Sargent objected to any criticism of public officials. Andrew Marschalk printed the 1799 laws which were passed by two judges and Sargent.

Since many 19th century records were taken from the courthouse in Adams County, much of the information in this study was taken from letters and newspapers. Fortunately, some of the county records were purchased and returned to the county by the Natchez

Historic Foundation.The returned records have not been fully indexed and many records are in bad condition. Judgments were not found with the files, but are separate and do not necessarily match the case numbers.

Using the writings of Judge Thomas Rodney, the available case records, and newspaper articles that have survived, the history of libel in the Mississippi Territory could be seen more broadly. The time frame was 1798-1832 and some threads from the decisions of the time can be traced to current law. Moreover, some of the cases showed that the rulings in Mississippi were ahead of libel law as it developed elsewhere in the United States.

The men chosen to begin the development of the Mississippi Territory were former military men and many of them who migrated to the territory later had also studied law. Some had served their states in a legal or political capacity. All were looking for a new challenge, but many believed they were to serve for short periods before returning to their home states.

When the appointees arrived in the territory, they found different circumstances than they had expected. The inhabitants in the area were mixed in background and culture, but most of them had settled on land granted them by the English or the Spanish governments. Many had not joined in service during the American Revolution. Very few had undergone training for judicial or administrative positions. However, their roots were firmly in the lands that had been granted them.

While land distribution problems occupied the inhabitants, the appointed officials began to set up a new government and a new judicial system. Few English precedents

could be used in territorial courts, but the English cases had been relied on by American jurists in other states. Since the laws of the territory had been designed through both English law and Spanish Roman law, sometimes answers to the problems required unique rulings that required the application of common law and common sense.

One of the first printers in the area was Andrew Marschalk. He helped by printing the first laws created by Gov. Sargent and the first appointed judges. Marschalk began as a Federalist but changed political loyalties with the times. Marschalk gave up his Army commission to settle in Natchez and continue printing.

The second governor of the territory, Robert Williams, arrived to find the citizens split into family political factions. Newspapers were the voices of the rival factions; consequently, libel suits began to appear in the courts as dueling was being outlawed.

Judge Thomas Rodney moved to the territory to find the judicial system struggling for lack of trained judges. Lawyer and future governor, George Poindexter arrived about the same time.

The growth of newspapers gave voices to the factions. One of Rodney's first libel trials was over comments printed in a newspaper concerning the grand jury presentment about Isaac Briggs.

George Poindexter and the Green family faction disliked Gov. Williams and sought his removal. As an attorney, Poindexter had been chastised in court by Rodney. More bad feelings between the two occurred when Poindexter used the Burr incident to publicly humiliate Rodney in hearings before the United States Senate. Then Poindexter used John Shaw's newspaper to harass Gov. Williams.

When the political factions were not using the newspapers for their rhetoric, citizens appointed to grand juries used presentments to admonish the printers. As a result of one of their presentments, Marschalk and other printers wrote articles reminding the citizens of rights granted to the press by the Constitution of the United States.

Thomas Rodney died in 1811, leaving the bench to Walter Leake and George Poindexter. Rodney's legacy was that he set up the first state court system in Mississippi. He adapted his decisions to the circumstances and the culture. He chose common law over English law. And he set precedents outlining the duties of the grand juries, outlawing dueling, and trying to define the jurisdiction of the territorial court. He wanted to settle the problem of choosing court clerks, but that wasn't settled for many years in the United States. The 1817 Constitution eventually settled the question for the new state.

The jurist who was moved from Mississippi to Louisiana was a scholar and legal writer like Rodney. He set up Louisiana's court system in much the same way that Rodney set up the Mississippi territorial courts. However, Francis X. Martin lived long enough to see the changes in politics and government while Rodney did not. Both jurists realized the importance of common law and setting precedents for the cultures that already existed.

The War of 1812 slowed both local printing and libel suits, but provided some events which continued the growing hostility between printer Marschalk and lawyer Poindexter. The war of words began before the war and continued afterward.

Marschalk's writer was known as Castigator. Castigator commented only on the public acts of Poindexter, specifically staying away from his personal life. He raised

questions about how Poindexter handled public situations. He never shared the sources of his information. Some sources wrote letters under their own names and sometimes one of the local officials would write to clear up a point.

While it is assumed that Marschalk wrote the Castigator letters, he may have had some help on some of the legal points he discussed. Marschalk accused one writer of the *Mississippi Republican* letters of probably not being Poindexter because of the seeming lack of legal knowledge. However, the writing styles of both of the major opposing writers, including terms used frequently, were very much like the writing styles of Marschalk and Poindexter.

When Marschalk's case was heard after the war in 1815, plaintiff Judge Poindexter sat on the bench in judgment of Marschalk. Three of the jurors were law enforcement officials. Other jurors publicly had claimed allegiance to the political faction to which Poindexter belonged. The only record of the trial preserved was the side of the prosecution. Comments about the trial made by Judge Leake appeared in a pamphlet published by Poindexter in defense of his own actions.

On one hand, Poindexter said that latitude was to be given members of the press. On the other side, First Amendment issues took a back seat to politics. For example, Judge Leake wrote about the lack of proving the truth against Poindexter in the 1815 trial against Marschalk; while on the other hand, he allowed new charges to be brought against Marschalk that had nothing to do with the ad mentioned in the grand jury indictment.

Furthermore, the jury appeared to have decided Marschalk's guilt on their perceptions of the January ad without written or stated regard for First Amendment rights.

Based on the wording of the ad in Marschalk's newspaper, it would have been difficult to have proven actual damages to Poindexter. Other ads appeared in the newspapers about deserters from battle duties, but Marschalk's ad had nothing to do with battle desertion.

Equally questionable was the offer proffered by the attorney general Shields to stop prosecution of the printer if Marschalk would reveal the identity of Castigator. Marschalk continued to take up cases of other printers with Shields when they, too, found themselves victims of contempt charges.

The question that needs to be answered is why Poindexter continued to try to prove Marschalk wrong even after Marschalk was found guilty by the jury. Poindexter did not actually prove any of the articles written in Marschalk's newspaper were in error. Poindexter sought letters from friends and military superiors to create a pamphlet. Then he had the pamphlet published. His pamphlet of letters did not address any of the published material. Indeed, one of the writers said he knew nothing of the rumors written about Poindexter.

Marschalk clearly stated his belief of the true meaning of the First Amendment. He kept the focus on freedom of the press and was prepared to defend his position. He wrote that his suffering was small compared to the magnitude of the cause. It is obvious from the available records, that the 1815 trial was not about the First Amendment. The Marschalk trial was another example that the courts were often used for personal attacks. Another view about the use of newspapers came from James (1968) and other writers. Newspapers were the most important and best sources for education.

Libel law continued to develop in Mississippi during the period of early statehood. Trials that began prior to statehood were treated under the laws current at the time of the filing. Libel suits continued as one party to the original lawsuit sued another party. Some important precedents from territorial law continued to influence new common law decisions.

One important point made by Johnson in an encyclopedia of historic cases, is truth was not used as a defense for libel in the United States courts until the interpretation of *People v. Croswell* (1804). New York adopted a law in 1864 that conformed to the Croswell decision. Mississippi wrote truth for evidence in libel trials in the first territorial laws in 1799 and in the Constitution of 1817. Mississippi territorial statutes and state statutes also recognized the right of the jury to determine both facts and law in a libel case earlier than did other states.

Much is known about Poindexter. He continued speaking in other cities and being seen at all the right political functions. Others, however, had begun to see through his facade and articles about him from newspapers of the time are plentiful. The accusations were never completely put behind him. One incident brought him back into the public view and that was when he was seen with a man the night before an assassination attempt on President Andrew Jackson. The man Poindexter was seen entertaining was the man who made the attempt on Jackson's life. The ensuing Senate investigation reached the conclusion that Poindexter was innocent of conspiracy.

The information about the printer Andrew Marschalk has not been widely publicized. It could not have been because there was no trial record available. Nor could

there have been much knowledge about his stand for freedom of speech without the pieces of the puzzle coming together to show his intent and purpose. He wrote within the bounds of fair comment before it was fully developed in other areas of the country. He understood the principles of freedom of the press and how to use those principles to write about public figures without attacking their personal lives.

Marschalk was focused on the rights and responsibilities of the press. Poindexter's stories changed as he retold them.

However, Marschalk was noticed. According to the New Zealand Maritime index, a ship appeared in Auckland on Sept. 22, 1945. The name of the ship was the *Andrew Marschalk* and it had been built as a Liberty Ship but used as a tanker after World War II.

One of the letters belonging to Betty Stewart, a Marschalk descendant, included some information about the Marschalk descendants in an article that may have been written about 1940. It is not possible to tell who the owner of the letter was, but the author was listed as Blaine Russell and he talked about "one of the most remarkable newspaper families in America for all times." Russell wrote about two bachelors who were living in an old cottage at Port Gibson. Their names were A.H and H.A. Marschalk. Col Andrew Marschalk, the printer, was the great-grandfather of these men.

Col. Marschalk's son Andrew, "true to his training and instinct," became another "father of journalism in the southland" Russell wrote. One of his newspapers was the *Acworth Weekly Advocate* in Georgia. The son Andrew was born in 1818 and lived to an old age. When he became too ill for a short time to run the newspaper, his two daughters stepped in until his return (letter from Betty Stewart, unknown origination).

The second Andrew's three sons were A.H, father of the two bachelors, W. A. and Francis. A. H. edited the *Demopolis Exponent* in Alabama and the *Marengo Journal* in Alabama simultaneously. The second son operated the newspaper in Demopolis for awhile. The third son, Francis, was first an officer in the C. S. Navy and then ran the *Port Gibson Correspondent*, the *Pensacola Advance-Gazette* in Florida, a newspaper in Hope, Arkansas, and finally the *Gregg County Clarion* in Longview, Texas. The Texas newspaper's legend was "Independent in Everything, Neutral in Nothing." Even some cousins named Ferris became printers and editors (as cited in Betty Stewart's letter).

What did Col. Marschalk contribute to journalism? Besides a continuing family of printers, he was the first printer to fight corruption by public officials in Mississippi. His wit, his sarcasm, his writing skills, and his skills of observation became the foundation for press freedom in Mississippi.

For a more clear view of the continuation of press freedom in Mississippi, a new study could continue after the second Mississippi constitution was adopted. Newer ways to communicate information were developed and libel law was changed to adapt to the new constitution and technology.

REFERENCES

Abernethy, T. P. (1949). Aaron Burr in Mississippi. *Journal of Mississippi History 15*(1): 9-21.

Abernethy, T. P. (1965). *The formative period in Alabama 1815-1828.* Tuscaloosa: University of Alabama Press.

American heritage dictionary, *Webster's II.* (1994). Boston, MA*:* Riverside.

Blackstone, W. (1769). *Commentaries on the laws of England.* Retrieved from Avalon Project at Yale Law School. http://www.yale.edu/lawweb/avalon/blackstone/blacksto.htm

Boles Collection of Southern Imprints. (1802). Natchez: Marschalk.

Bolles, A. S. (1890). *Pennsylvania province and state history.* (vol. 2). New York: Burt Franklin.

Bowman, J. S. (Ed.). (1995). *The Cambridge dictionary of American biography.* Cambridge, U.K.: Cambridge University Press.

Burr, A. (1807, March 18). Letter. *The Centinel,* Gettysburg, Pa., pp. 6-7.

Carter, E. C. (1937-1952). *The territorial papers of the United States, Vol. 5,6, &18.* Washington, DC: U.S. Government Printing.

Claiborne, J. F. H. (1880). *Mississippi as a province, territory, and state.* Jackson, MS: Power & Barksdale.

Clark, N. B. (1995). Peter Bruin. *Mississippi River Routes, 2*(3): 5-9. Vicksburg, MS: Genealogical Society.

Clark, T. D. & Guice, J. D. W. (1989). *The old Southwest.* Norman: Oklahoma Press.

Cobb, E. L. (1968). Powhatan Ellis of Mississippi: A reappraisal. *Journal of Mississippi History 30*(2): 91-110.

Congressional biographical directory. (n.d.) Retrieved from http://bioguide.congress.gov/biosearch/biosearch.asp

Connor, R. D. W. (1919). *History of North Carolina*. Chicago, IL: Lewis.

Corpus Juris Secundum. (2005). (vol. 53). Eagan, MN: West.

Cushing, T. H. (1799-1800) *Letterbook* (M297). McCain Library, Hattiesburg, MS: University of Southern Mississippi.

Cushing, T. H. (1812). *Trial of Col. Thomas H. Cushing before a general court martial.* Philadelphia, PA: Thomas & Maxwell.

Documenting the American South. (2005). Chapel Hill: University of North Carolina Library. Retrieved from http://docsouth.unc.edu/global/getbio.html

Drake, W. M. (1956). Mississippi's first constitutional convention. *Journal of Mississippi History 18*(2): 79-110.

Dutch Church (Reformed). (1940). *Marriages, 1639-1801,* New Amsterdam/New York. (vol. 9). New York: no pub.

Flaherty, D. H. (Ed.). (1969). *Essays in the history of early American law.* Chapel Hill: University of North Carolina Press.

Friedman, L. M. (1985). *A history of American law* (2nd ed.) New York: Simon & Schuster.

Gardner, C. K. (1853). *A dictionary of all officers who served in the Army of the United States.* New York: Putnam.

Garner, B. A. (Ed.). (2009). *Black's law dictionary.* Eagan, MN: Thompson West.

Gettysburg Centinel. (1806, December 24). p. 14.

Grifis, S. H. (Ed.). (1996). *Barron's law dictionary.* Hauppauge, NY: Barron Educational Series.

Hamilton, W. B. (1953). *Anglo-American law on the frontier: Thomas Rodney and his territorial cases.* Durham, NC: Duke University Press.

Hanna, C. A. (1902). *Scots-Irish: The Scot in North Britain, North Ireland, and North America.* (vol. 2). New York: Putnam.

Haynes, R. V. (1973a). The formation of the territory. In R. A. McLemore (Ed.), *A history of Mississippi* (pp. 174-216). Jackson, MS: University & College Press.

Haynes, R. V. (1973b). The road to statehood. In R. A. McLemore (Ed.), *A history of Mississippi* (pp. 217-246). Jackson, MS: University and College Press.

Higgs, R. (2005). *"Not merely perfidious but ungrateful": The U.S. takeover of West Florida*. The Independent Institute, working paper 55. Retrieved from http://www.independent.org

Holmes, J. D. L. (1980). Stephen Minor: Natchez pioneer. *Journal of Mississippi History 42*(1): 17-26.

James, D. C. (1968). *Antebellum Natchez.* Baton Rouge: Louisiana State University Press.

Johnson, J. W. (Ed.). (1992). *Historic U.S. court cases: An encyclopedia.* Florence, KY*:* Routledge.

Jordan, D. P. (Ed.). (1979). Partisan politics in territorial Mississippi. *Journal of Mississippi History, 41*(3): 231-240.

Jordan, J. W. (1911). *Colonial and revolutionary families of Pennsylvania*. (Vols. 1-3). New York: Lewis.

Kane, H. T. (1947). *Natchez on the Mississippi.* New York: William Morrow.

Kentucky Encyclopedia. (2000). Retrieved from http://www.kynec.org/info/

McLemore, R. A. (1973). *A history of Mississippi.* (vol. 1). Jackson, MS: University &kl

Marschalk, A. (1802). *Mississippi Herald:* Port of New Orleans closed. Library of Congress, Printed Ephemera, portfolio 85, folder 1.

Miles, E. A. (1960). *Jacksonian democracy in Mississippi.* Chapel Hill: University of North Carolina Press.

Mississippi Court Records. (1799-1835). King, J. E. S. (Ed.) (1936). n. p.

Mississippi Republican. (1810-1824). Natchez, MS: Isler.

Morrow, R. B. & Morrow, J. B. (Eds.). (1976 ed.). *Encyclopedia of American history.* New York: Harper & Row.

Moore, S. B. (n.d.). Dr. John Shaw. Jefferson County, MS. biographies. Retrieved from MSGenWeb project, U.S. GenWeb project (MSGENWEB)

Natchez Court Records. (1767-1805). Retrieved from http://content.ancestry.com

Nelson, S. (2008, March 27). Poindexter's accusation against his wife. *Concordia Sentinel.* Retrieved from http://www.concordiasentinal.com

Patridge, I. M. (1860). The press of Mississippi. *Debow's Review, Agricultural, Commercial, Industrial Progress and Resources, 29(*4). Pack, E. (Ed). Retrieved from http://natchezbelle.org/sw/press/htm

Pickett, A. J. & Owen,T. A. (1851). *History of Alabama and incidentally Georgia and Mississippi.* Birmingham, AL: Webb.

Poindexter, G. (1815). *To the public*. (microfiche in 1963). Louisville, KY: Lost Cause Press.

Prenshaw, P. W. & McKee, J. O. (1979). *Sense of place, Mississippi.* Jackson: University Press of Mississippi.

Rainwater, P. L. (1967). Sargent's code, *The American Journal of Legal History, 2*(2), 152-206.

Rosenberg, N. L. (1986). *Protecting the best men.* Chapel Hill: University of North Carolina Press.

Rowland, D. (1907). *Encyclopedia of Mississippi history.* (2 vol.) Madison, WI: S. A. Brant.

Rowland, D. (1925). *History of Mississippi: The heart of the South.* Chicago, IL: Clarke.

Rowland, Dunbar, Mrs. (1921). *Mississippi Territory in the War of 1812.* New York: Macmillan.

Sargent, W. (1798). *Address to the people of the Mississippi Territory.* Retrieved from http://www.rootsweb.com/mssterr/winthrop.htm

Scharf, J. T., & Westcott, T. (1884). *History of Philadelphia 1609-1884.* (vol. 1-3). Philadelphia, PA: L. H. Everts.

Sears, I. (1769). Imprint from Library of Cong., Printed Ephemera portfolio 103, folders 20 & 20a.

Shields, J. D. (1930). Murray, E. D. (Ed.). *Natchez, its early history.* Louisville, KY: Morton.

Skates, J. R. (1979). *Mississippi.* New York: Norton.

Sloan, W. D. & Startt, J. D. (1999). *The media in America.* Northport, AL: Vision Press.

Steirer, W.S., Jr. (2001). Myth and reality: The case of John Peter Zenger. In J. W. Johnson (Ed.), *Historic U. S. court cases: An encycolpedia* (2nd ed., pp. 897-200). New York: Routledge.

Swearingen, M. (1934). *The early life of George Poindexter.* New Orleans: Tulane University Press.

Sydnor, C. S. (1935). The beginning of printing in Mississippi. *The Journal of Southern History 1*(1): 49-55.

Toulmin, G.B. (1953). The political ideas of Winthrop Sargent, a New England Federalist on the frontier. *The Journal of Mississippi History, 15*(4): 207-229.

Transcription of county achives of Mississippi. (1942). Jackson: Board of Supervisors of Adams County.

Transylvania University. (n.d.) Retrieved from http://www.transy.edu/about/history.htm

Union list of newspapers. (1970). (vol. 2). Mississippi Library Commission.

Washington Post. (n. a.) July 10, 1904. p. 28.

Washington Republican. (1813-1815). Washington, MS: Marschalk.

Webster's dictionary 1806. Retrieved from http.//www.baptistink.com

Webster's dictionary 1826. Retrieved from http://www.yourdictionary.com/languages/html

Webster's dictionary 1828. [CD]. Independence, MO*:* Christian Technologies.

West, C. (circ. 1817). Memorial to Cato West. Library of Congress, American Time Capsule, printed ephemera, portfolio 85, folder 4a.

Wheeler, J. T. (2009). The *Maryland press, 1777-1790.* Archives of Maryland Online. Retrieved from *h*ttp://aomol.net/000007/000438/html

Wunder, J. (1976). American law and order comes to the Mississippi Territory: The making of Sargent's Code, 1798-1899. *The Journal of Mississippi History, 38*(2), 131-155.

Zenger, J. P. (1736). *A brief narrative of the case and trial of John Peter Zenger.* Retrieved from http://www.law.umkc.edu/faculty/projects/ftrials/zenger/zengerrecord.html

Cases prior to 1798, creation of Mississippi Territory

Crips v. Craig (1 Del.Cas. 359 (Del.Supr.) 1794)

Kilty v. Hammond (3 H. & McH. 149 (Md.Gen.) 1793)

Frederitze v. Odenwalder (2 Yeates 243 (Pa.) 1797)

Respublica v. Askew (2 U.S. 189 (Pa.) 1792)

Respublica v. Griffiths (2 U.S. 112 (Pa.) 1790)

Respublica v. Oswald (1 U.S. 319 (Pa.) 1788)

Stafford v. Richards (1 Del.Cas. 66 (Del.Com.Pl) 1795)

Cases prior to 1817, year of Mississippi statehood

Bell v. Smith (Natchez Foundation, 1810-1-43-1809)

Benthusen v. Baxter (Natchez Foundation, 1810-2-58-1811)

Berry v. Lief (Natchez Foundation, 1800-15-123-1807)

Bollings v. Wilkinson (Natchez Foundation,1810-34-47-1816)

Brooks v. Claiborne (Natchez Foundation, 1810-29-60-1814)

Brown v. Henderson (Natchez Foundation, 1810-3-53-1811)

Capshaw v. Steen (Natchez Foundation, 1800-12-76-1803)

Coleman v. Southwick (9 Johns. 45, (N.Y. Super.) 1812)

Commonwealth v. Clap (4 Mass. 163, 1808)

Commonwealth v. Davies & Commonwealth v. North, (1 Binn. 97 (Pa.) 1804)

Connely v. Dunwoody (Natchez Foundation, 1800-8-17-1803)

Denham v. Horton (Natchez Foundation, 1800-24-69-1800)

Dubrieul v. Cushing (Natchez Foundation, 1810-3-49-1811)

Dupassau v. Denham (Natchez Foundation, 1800-5-3-1804)

Elligood v. O'Neal (2 Del.Cas. 139, 1800)

Engel v. Walton (Natchez Foundation, 1800-33-73-1807)

Engle v. Minor, 1808 (in Hamilton, 1953)

Fisher v. Dayton (Natchez Foundation, 1800-23-1-1799)

Fletcher v. Peck (6 Cranch 87 (U.S. Mass.) 1810)

Foot v. Tracy (1 Johns. 46 (N.Y. Sup.) 1806)

French v. Bosley (Natchez Foundation, 1800-18-47-1807)

Guion v. Hook (Natchez Foundation, 1800-14-7-1806)

Lape v. Schaeffer (Natchez Foundation, 1810-33-105-1810)

Lattimore v. Minor (Natchez Foundation, 1810-33-14-1814)

Lyle v. Clason (1 Cai. R. 323 (N.Y. Sup.) 1803)

Martin v. Boyce (Natchez Foundation, 1810-34-51-1816)

Martin v. Dewitt (Natchez Foundation, 1800-27-54-1801)

Mellingen v. Burris (Natchez Foundation, 1800-8-83-1805)

Mickie v. Estate of Shilling (Natchez Foundation, 1800-22-24-1809)

Mississippi Territory v. Strickland (Natchez Foundation, 1810-3-126-1811)

Moore v. Pomate (Natchez Foundation, 1800-29-92-1802)

People v. Croswell (3 Johns.Cas. 337(N.Y.Sup.) 1804)

Quetzles v. Strickland (Natchez Foundation, 1800-30-108A-1803)

Robinson v. Robertson (Natchez Foundation, 1800-13-73-1805)

Respublica v. Cobbet (3 Yeates 93 (Pa.) 1800)

Respublica v. Dennie,(4 Yeates 267 (Pa.) 1805)

Rush v. Cobbet (2 Yeates 275 (Pa.) 1798)

Shaw v. Calvit (Natchez Foundation, 1800-17-69-1809)

Steele v. Southwick (9 Johns. 214 (N.Y. Super.) 1812)

Stuart v. Harkins (3 Binn 321 (Pa.) 1811)

Territory v. Davis and DeFrance (Hamilton, 1953) and (Natchez Foundation, 1810-3-94-1811)

Territory v. Marschalk (Natchez Foundation, 1815)

Territory v. Nugent (1 Mart. (O. S.) 103, La., 1810)

Territory v. Shaw (Sup. Ct. Miss, 1808) found in Hamilton (1953) pp.427-428

Tharp v. Cushing (Natchez Foundation, 1810-3-18-1810)

Tharp v. Lee (Natchez Foundation, 1810-14-74-1810)

Tichenor v. Franklin (Natchez Foundation, 1810-26-3-1814)

Voss v. Williams (Natchez Foundation, 1810-2-1-1807)

Wallis v. Dunn (Natchez Foundation, 1800-19-84-1808)

Wills v. Crayon (Natchez Foundation, 1810-26-3-1815)

Cases after 1817, after Mississippi Statehood

Calhoun v. M'Means (1 Nott & McC. 422 (S.C.Const.App.) 1819)

Carlin v. Stewart et al (2 La. 73 (La.) 1830)

Coburn v. Harwood (12 Am.Dec. 37 (Ala.) 1822)

Davenport v. Garcia (859 S.W.2d 1 (Tex.) 1992)

Davis v. Farrington (1 Miss. 304 (Miss.) 1827)

Dexter v. Spear (4 Mason 115 (C.C. R.I.) 1825)

Freeland v. Lanfear (2 Mart.(n.s.) 257 (La.) 1824)

Gayden & wife v. Bates & wife (1 Miss. 209 (Miss.) 1825)

Harris v. Purdy (1 Stew. 231 (Ala.) 1827)

Kimmerle v. N.Y. Evening Journal, (262 N.Y. 99 (1933))

Langdon v. Marschalk (Natchez Foundation, 1820-2-50-1819)

Lea & wife v. Robertson (1 Stew. 138 (Ala.) 1827)

Marschalk v. Hackett (Natchez Foundation, 1820-2-40-1820)

Marschalk v. Langdon (Natchez Foundation, 1820-2-37-1818)

Metcalfe v. Williams (3 Litt. 387 (C. App. Ky.) 1823)

Nevitt v. Chambers, (Natchez Foundation, 1818)

Paddock v. Salisbury (2 Cow. 811 (N.Y.) 1824)

Perdue v. Burnett (Minor 138 (Ala.) 1823)

Stackpole v. Hennen (6 Mart. (n.s.) (La.) 1828)

State v. Chace (1 Miss. 384 (Miss.) 1830)

State v. Hackett (Adams County Super., 1819, Natchez Foundation 1820-11-17-1822)

Taylor v. Casey (Minor 258, (Ala.) 1824)

Thirman v. Matthews (1 Stew. 384 (Ala.) 1828)

Torrance v. Hurst (1 Miss. 403 (Miss.) 1831)

Congressional Hearings

Memorial of conduct of Gov. W. Sargent motion to send to committee. Library of Cong., Annals of Cong., (H.R. 6th Cong., 2nd sess., Dec. 1800, p. 838). Discussion of motion pp. 839-854.

Result of investigation into the conduct of Gov. W. Sargent. Library of Cong., Annals of Cong., (H.R. 6th Cong., 2nd sess., Feb. 1801, pp. 1074-1075).

Dunbar's charge to grand jury at opening of court of quarter sessions, Adams Co., August 1800. Library of Cong., (American state papers, Misc., v. 1, no. 143).

Appointment of Cowles Mead to be secretary of the Miss. Territory. Library of Cong., American Memory, (Sen. J., 1805-1815, Jan. 20, 1806).

Evidence of George Poindexter. Library of Cong. American state papers, (10th Cong. 1st sess., Misc. v. 1, no. 230, p. 568).

Complaint against Judge Peter B. Bruin. Library of Cong. (U.S. Cong. Documents & Debates, 10th Cong., 1st sess., Misc. v. 1, no. 252).

Doctrine of Libels. Library of Cong. (Annals of Cong. H.R., 11th Cong., 1st sess., May, 1809, pp. 76-90).

Complaint against Judge Harry Toulmin. Presented by Cowles Mead. Library of Cong., American State Papers, (H.R., 12th Cong., 1st sess., Misc., v. 2, no. 300, p. 162).

Decision of complaint about Judge Toulmin. Presented by George Poindexter. Library of Cong., American state papers, (H.R. 12th Cong., 1st sess., Misc., no. 322, p. 184).