

MISSISSIPPI'S FIRST FEDERAL DISTRICT COURT AND ITS JUDGES, 1818-1838

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INTRODUCTION.....	987
I. JUDGE WILLIAM B. SHIELDS (1818-1823)	991
II. JUDGE PETER RANDOLPH (1823-1832).....	1002
III. JUDGE POWHATAN ELLIS (1832-1836)	1014
IV. JUDGE GEORGE ADAMS (1836-1838)	1022
CONCLUSION	1029

INTRODUCTION

“Our national history will not have been adequately written,” wrote Felix Frankfurter and James M. Landis in their seminal 1928 study of the federal judiciary, “until the history of our judicial systems can be adequately told through monograph studies of individual courts.”¹ Mississippians can celebrate 200 years of statehood in 2017, but April 3, 2018, will mark the bicentennial of the United States courts in the state, making the present an appropriate time to “tell and interpret” the story of the federal judiciary in Mississippi. From territorial times, federal jurisprudence in Mississippi adjusted to shifts in national and regional political terrain, and developed in roughly three phases: the antebellum courts, the reconstruction and Jim Crow era courts, and post-civil rights era courts. Historical and legal scholarship on the federal judicial system has primarily focused on the Supreme Court and the courts of appeals, but this history of the first United States district court in Mississippi is inspired by

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¹ FELIX FRANKFURTER & JAMES M. LANDIS, *THE BUSINESS OF THE SUPREME COURT: A STUDY IN THE FEDERAL JUDICIAL SYSTEM* 52 n.174 (Transaction Publishers 2007) (1928).

recent studies of the federal judiciary in regional, state, and local settings.²

Since their establishment in 1789, United States district courts have managed the heaviest labors of the federal judiciary, but they are shadowy figures for historians to trace. Early federal district judges wrote and published few opinions, and appellate reports tell us little about the machinery and personnel of the first Mississippi court. Fortunately, we have statutes, government documents, memoirs, correspondence, newspapers, and other sources that tell us about its physical surroundings, the volume of its litigation, and something about the character of its earliest judges. Established by Congress in 1818, the first federal district court in Mississippi convened at Washington (in Adams County), then at Natchez, and after 1835, met in Jackson. In 1837, the Mississippi district was assigned to the Ninth Circuit, with Alabama, Arkansas, and the eastern district of Louisiana, where it remained until the Civil War. In 1838, with so much white settlement of Indian lands in north Mississippi, Congress divided the state into two judicial districts: a northern district court in Pontotoc and a southern district court in Jackson.

Like other United States courts on the frontier, Congress welcomed the Mississippi tribunal into the federal judiciary on unequal terms, but in its first decade, the Mississippi district court had bad luck with judges, and in its second decade, the court suffered from the deleterious effects of the spoils system. Presidents Madison and Monroe appointed highly capable and experienced jurists to serve in the Mississippi District of the judiciary, William Shields and Peter Randolph, but both men died in office at relatively young ages. The third and fourth judges of the Mississippi district, Powhatan Ellis and George Adams, were partisan followers of President Andrew Jackson who, for their own reasons, departed from their federal judgeships after a few years on the bench. From 1839 until the Civil War, Judge Samuel Gholson brought continuity to the court, but Mississippi's first federal court fell on the sword of secession.

² See ROBERTA SUE ALEXANDER, *A PLACE OF RECOURSE: A HISTORY OF THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, 1803-2003* (2005); PETER GRAHAM FISH, *FEDERAL JUSTICE IN THE MID-ATLANTIC SOUTH: UNITED STATES COURTS FROM MARYLAND TO THE CAROLINAS, 1789-1835* (2002).

Mississippians faced similar challenges that other new states had faced in establishing federal courts in the Ohio area: the new federal district courts were located too far from the national capital to be included in the circuit rides of Supreme Court Justices, the dockets swelled with land cases almost immediately, the quality of jurisprudence was inconsistent, and the courts did not have the full federal jurisdiction in some key respects. On the southwest frontier, in Kentucky, Tennessee, Louisiana, Mississippi, and Alabama, slavery was part of the daily business of the court, and slaves regularly appeared as property in diversity suits, and occasionally as witnesses and defendants in criminal cases.

In the final months of 1817, having met the conditions set out for territories seeking admission by Congress to the United States (as stated in the Northwest Ordinance of 1787 and the Enabling Act of 1802), Mississippians petitioned Congress to join the union. The previous summer, forty-eight delegates from fourteen counties had met at the territorial capitol, Washington, and drafted a state constitution, which was soon approved by a popular vote. On December 10, Congress admitted the “people of the western part of the Mississippi Territory” as one of the United States of America, “on an equal footing with the original states, in all respects whatever.”³ As it turned out, Mississippians struggled for two decades to make their court an equal member of the federal judiciary, as part of a judicial circuit administered by a Supreme Court Justice with full appellate authority.

On April 3, 1818, Congress mandated that the federal judiciary in Mississippi would consist of a single federal district court.⁴ The act required a district court judge to reside in the district and hold a minimum of two sessions a year “at the seat of government,” which at the time was the old territorial capitol in Washington, “on the first Mondays in May and December.”⁵ The Mississippi judgeship paid two thousand dollars a year:⁶ annual

³ Act of Dec. 10, 1817, 3 Stat. 472 (admitting the State of Mississippi into the Union).

⁴ Act of Apr. 3, 1818, § 2, 3 Stat. 413 (providing for the due execution of the laws of the United States within the state of Mississippi).

⁵ *Id.*

⁶ *Id.* § 3.

salaries of district judges ranged from \$800 to \$3,000. The district attorney and the marshal received two hundred dollars a year plus their stated fees.⁷ On April 16, 1818, that appointment went to Bela Metcalfe, and the U.S. marshal's post to Henry G. Johnson.⁸ The Mississippi district court had the "same jurisdiction and powers which were by law given to the judge of the Kentucky district" by the Judiciary Act of 1789.⁹ The premise of the mandate, that "all the laws of the United States, which are not locally inapplicable, shall have the same force and effect" in Mississippi "as elsewhere within the United States," immediately placed a heavy charge on the court and its officers.¹⁰

After the formative 1789 court legislation, when establishing the federal judiciary in newly admitted frontier states, Congress used the Kentucky district as the model for new district courts that were, at the time, created outside the system of circuit courts administered by the Justices of the Supreme Court.¹¹ The act established district courts but provided them with all the powers of circuit courts, because at no time before 1866 were all district courts assigned to a circuit.¹² Until 1911, circuit courts were mainly trial courts with limited appellate jurisdiction, and the Mississippi district court had circuit court powers from its inception. Appeals from the Mississippi court went directly to the Supreme Court, but they were subject to restrictions: the Court only considered cases with claims in excess of two thousand dollars and allowed no criminal appeals. The Kentucky model made it possible for Congress to extend the federal judiciary to new states, but including those states within a settled system of circuit courts required additional legislation, and two decades passed before Mississippians had the benefits of full federal jurisdiction in their United States courts.

In the early republic, circuit courts and district courts were the workhorses of the federal judiciary. The 1789 Act limited the criminal jurisdictions of district courts to offenses punishable by

⁷ *Id.* §§ 4-5.

⁸ *Official Appointments*, in 14 NILES' WEEKLY REGISTER 203, 204 (H. Niles ed., 1818).

⁹ Act of Apr. 3, 1818, § 2, 3 Stat. 413.

¹⁰ *Id.* § 1.

¹¹ ERWIN C. SURRENCY, HISTORY OF THE FEDERAL COURTS 24 (2d ed. 2002).

¹² *Id.*

fewer than thirty lashes, fines less than one hundred dollars, or under six months imprisonment.¹³ District courts had sole jurisdiction in admiralty litigation and control of property seized under federal import, navigation, and trade laws.¹⁴ Admiralty cases required immediate action by the court, and district court judges were the only federal judges sure to be available for such purposes.¹⁵ They shared jurisdiction with circuit courts when aliens sued for torts, in suits against consuls, or when the federal government sued parties for amounts more than one hundred dollars.¹⁶ In 1790, district courts gained jurisdiction over some questions of patent law, and after 1800, they heard bankruptcy cases.¹⁷ As a trial court, with limited appellate powers, the Mississippi district court had the same authority as United States circuit courts, but as long as Mississippi and other new states remained outside the system of circuit courts, many south and middle westerners were second-class constituents of the federal judiciary.

I. JUDGE WILLIAM B. SHIELDS (1818-1823)

To fill the new Mississippi judgeship, on April 20, 1818, President James Madison nominated a loyal Jeffersonian Republican, William Bayard Shields (1780-1823). Before his appointment and Senate confirmation, Shields was one of the most capable attorneys, and the most experienced land administrator among the officials who governed the Mississippi Territory. Mississippi attorney, archivist, and state historian Dunbar Rowland knew only that Shields was born in 1780, to Archibald Shields and Rebecca Bayard of Delaware, and “connected with the Bayards and the Rodneys of that state.”¹⁸ A descendant wrote that both families were “of Scottish or Irish origin and naturally Episcopalian; in connection with the

¹³ Judiciary Act of 1789, § 9, 1 Stat. 73, 76-77.

¹⁴ *Id.*

¹⁵ SURRENCY, *supra* note 11, at 66.

¹⁶ Judiciary Act of 1789, § 9, 1 Stat. 73, 76-77.

¹⁷ SURRENCY, *supra* note 11, at 66.

¹⁸ DUNBAR ROWLAND, 1 HISTORY OF MISSISSIPPI: THE HEART OF THE SOUTH 407 (1925).

established church of the colony.”¹⁹ In 1801, at age twenty-one, Shields travelled west to the Ohio Territory, most likely carrying a general letter of reference from then Secretary of State James Madison recommending his “well-informed mind, irreproachable integrity, good qualifications for business in several branches, and . . . great modesty of disposition.”²⁰

Upon returning to New Castle, Delaware, Shields rapidly distinguished himself at the bar and in Republican politics. He read law with Caesar A. Rodney (1772-1824), a Delaware lawyer who served in the Delaware General Assembly, the U.S. Congress, and as a U.S. attorney general.²¹ The chronology of his ascent is somewhat illusory, but Shields made an impressive start, and in 1802, Democratic-Republican Governor David Hall appointed him to a stint as Delaware Secretary of State.²² In April of 1803, he was admitted to the Delaware bar.²³

Despite Madison’s claim, as a young Delaware attorney, Shields was not known for his modesty. In the same month he was admitted to the bar, Shields was embroiled in a dispute with a prominent local Federalist.²⁴ Dr. Elijah Barratt (1771-1809), a member of the Delaware State Medical Society, was “grossly insulted” by Shields, and sent Henry M. Ridgely, a Dover attorney, with a message challenging him to a duel.²⁵ What resulted from the meeting was that Shields challenged Ridgely to a duel, which he accepted, and then shot and severely wounded Ridgely in the exchange.²⁶ “[F]or a time it was thought he could not live,” a Delaware historian later wrote, but Ridgely “recovered

¹⁹ CHARLES WOODRUFF SHIELDS, 3 *PHILOSOPHIA ULTIMA OR SCIENCE OF THE SCIENCES*, at xiv (1905).

²⁰ Letter from James Madison to Thomas Worthington (June 20, 1801), in 1 *THE PAPERS OF JAMES MADISON: SECRETARY OF STATE SERIES 329-30* (Robert J. Brugger et al. eds., 1986).

²¹ WILLIAM BASKERVILLE HAMILTON, *THOMAS RODNEY: REVOLUTIONARY & BUILDER OF THE WEST* 62 (1953).

²² *Delaware Long Favored Ground of the Duelists*, *SUNDAY MORNING STAR*, Aug. 13, 1944, at 5.

²³ JOHN THOMAS SCHARF, 1 *HISTORY OF DELAWARE, 1609-1888*, 564 (1888).

²⁴ HENRY C. CONRAD, 3 *HISTORY OF THE STATE OF DELAWARE* 894 (1908).

²⁵ *Id.*

²⁶ *Id.*

after a painful prostration, and public feeling was so aroused against his antagonist that he left Wilmington never to return.”²⁷

What prompted Barratt to issue his challenge, and why Shields declined it, is unknown. How the affair escalated into a dispute with Barratt’s messenger is also a mystery. “[T]he reason why Mr. Shields refused to meet Dr. Barratt was,” a local historian later opined, “that Dr. Barratt was a noted shot and a most determined man, and that he (Shields) was afraid to take the risk with him.”²⁸ Another added that “Ridgely, although a good marksman, was not as cool or experienced” as Shields.²⁹ Delaware historians have relied on a version of the duel told by Barratt’s grandson, which asserted that after insulting his grandfather and shooting Ridgely, Shields cowered and fled. If Shields was wary of dueling the Federalist doctor, nine years his senior, he may have challenged Ridgely, a less formidable foe, to dispel any questions about his courage at arms. If so, he failed to address the conflict with Barratt and further sullied his reputation. By shooting the bearer of Doctor Barratt’s challenge, Shields made new enemies, even as his earlier insult stood.

In the weeks and months that followed, Shields may have realized that in Delaware, even if he could manage to guarantee his own personal safety, his reputation and prospects in public life had suffered. At some point in the summer of 1803, Shields decided to accompany Thomas Rodney (1744-1811), who was preparing to travel west and accept a commission as chief justice for the Mississippi Territory.³⁰ Like many young easterners, he saw opportunity on the frontier. By departing for the west, Shields left festering personal rivalries behind and repositioned himself for success at lawyering, and eventually, in government.

With the Barratt-Ridgely affair in the past, Shields initially enjoyed himself on what proved to be a hazardous and tumultuous trip. His sponsor, Thomas Rodney, was a Delaware lawyer and loyal Democrat who had served in the Continental Congress, the

²⁷ 1 BIOGRAPHICAL AND GENEALOGICAL HISTORY OF THE STATE OF DELAWARE 161 (1899) [hereinafter BIOGRAPHICAL AND GENEALOGICAL].

²⁸ CONRAD, *supra* note 24, at 894-95.

²⁹ BIOGRAPHICAL AND GENEALOGICAL, *supra* note 27, at 161; *see also* SCHARF, *supra* note 23, at 572.

³⁰ HAMILTON, *supra* note 21, at 62.

Delaware General Assembly, and as a justice of the Delaware Supreme Court.³¹ Rodney was the father of Caesar A. Rodney (with whom Shields had studied law), and at 59, he likely welcomed the younger man as a travelling companion.³² On August 21, 1803, Rodney and Shields left Wilmington for Wheeling, Virginia, “surviving the dirty taverns of Pennsylvania that swarmed with bedbugs and fleas.”³³ Joined by another job seeker at Wheeling, Richard Claiborne of Virginia, they procured a canvass-covered boat, thirty feet long and eight feet wide, to navigate the perilous voyage to Natchez.³⁴ On September 20, the three embarked, finding the water low, with exposed rocks and narrow channels.³⁵ For entertainment, Claiborne fiddled as Shields played the flute, and “[t]he young men boasted” of their exploits with women.³⁶ At one point, claims Rodney’s biographer, the two younger men “were thoroughly peeved” when the older man “would not let the boat wait upon an assignation they had made with some Indian girls.”³⁷ At Louisville, they took on Thomas Hill Williams (1780-1840), who later became secretary and acting governor of the Mississippi Territory, and one of Mississippi’s first U.S. senators.³⁸

“The hazards of the Ohio” took their toll, however, and Shields deserted the boat with the intention of continuing by land.³⁹ He rejoined the party after three days, in time to face the most harrowing experience of the voyage.⁴⁰ “[S]omewhere between . . . Memphis and Vicksburg, . . . the boat struck a snag and sank.”⁴¹ After much effort, the men rescued their belongings, beached the vessel, and made repairs.⁴² On November 28, after seventy-two days on the river, and just two days before Justice

³¹ *Id.* at 61.

³² *Id.*

³³ *Id.* at 62.

³⁴ *Id.* at 62-63.

³⁵ *Id.* at 63.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 63-64.

³⁹ *Id.* at 64.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

Rodney was statutorily bound to sit at the territorial land commission, their party reached the Natchez bluffs.⁴³

Upon arrival, Rodney, along with Robert Williams (1766-1836) and Edward Turner (1778-1860), organized “the commission for . . . land [claims] west of the Pearl River.”⁴⁴ They appointed Claiborne as clerk and hired Shields as his assistant.⁴⁵ After finding a Spanish translator, the board began enforcing the Land Act of 1803.⁴⁶ Filings trickled in, but by April 1804, about two thousand claims, many complicated and conflicting, awaited settlement.⁴⁷ Commissioners regarded Spanish deeds as valid, but their holders had the burden of proof against more recently surveyed British or American claims.⁴⁸

As the procedures mounted, an official to represent public interest proved vital, and in June, Shields was notified by Secretary of the Treasury Albert Gallatin that the appointment was his.⁴⁹ With authority to investigate and “oppose[] before the Commissioners all such claims as he may deem fraudulent & unfounded,” Gallatin instructed Shields on the kinds of claims to scrutinize and advised him of his salary.⁵⁰ President Thomas Jefferson named Williams territorial governor in 1805, who, in turn, appointed Shields to his military staff, with the rank of major.⁵¹ Absences, plodding surveyors, and public anxiety about

⁴³ *Id.*

⁴⁴ *Id.* at 67.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 68.

⁴⁸ *Id.* at 67-68.

⁴⁹ Letter from the Secretary of the Treasury to William B. Shields (June 2, 1804), in 5 THE TERRITORIAL PAPERS OF THE UNITED STATES: THE TERRITORY OF MISSISSIPPI, 1798-1817, 327 (William S. Hein & Co. 2006) (1987).

⁵⁰ *Id.*

Presuming that the laws and your knowledge of the several descriptions of claims will be a sufficient guide, I do not deem it necessary to give any instructions, but will only suggest that pretended claims under the Bourbon act, of which, it is believed, none can be valid, ante-dated & fraudulent Spanish grants, and settlement rights substituted to real Spanish grants for less quantities of land, form the three most suspicious classes.

Id. Shields’ salary was \$1,500 for the statutory duration of the board. *Id.* at 328.

⁵¹ ROWLAND, *supra* note 18, at 407.

land registry procedures made it difficult work, but the commissioners ended their sittings on June 13, 1807.⁵²

While a U.S. land agent, Shields took part in a November 1806 duel between Major Ferdinand L. Claiborne (1773-1815) and Captain Benjamin Farar.⁵³ Claiborne wounded Farar, and when Farar's second proposed to shoot instead, Shields halted the affair and withdrew Claiborne from the grounds.⁵⁴ Soon afterwards, Shields wrote a public letter explaining his role in the matter, assuring readers "that Major Claiborne, throughout the whole affair, acted with the firmness and intrepidity of a soldier and a man of honor."⁵⁵ His own conduct, he offered, was "influenced by a disposition to preserve unsullied the honor of my friend, to adjust the matter amicably, if practicable, to the satisfaction of both parties, and that in every attempt to effect that desirable object, I was governed by motives of humanity."⁵⁶ After three years in the Mississippi Territory, Shields had reinvented himself as a public servant. The letter on the Claiborne-Farar affair asserted his status as a gentleman and an enlightened authority, no less, on the code duello.

In 1807, the arrest and trial of Aaron Burr in Washington County thrust Shields into public view, and he solidified his position among the elites of the Mississippi Territory.⁵⁷ In November of the previous year, on the advice of James Wilkinson, Commanding General of the United States Army, President Jefferson had issued a public warning that Aaron Burr had launched a traitorous expedition on the Spanish-American frontier and ordered his arrest.⁵⁸ Burr was Vice President of the U.S. (1801-1805), following his protracted struggle with Jefferson over the presidency in the election of 1800, but after he killed Alexander Hamilton in an 1804 duel, Jefferson dropped him from

⁵² HAMILTON, *supra* note 21, at 71.

⁵³ NATCHEZ MESSENGER, Dec. 9, 1806, *reprinted in* J.F.H. CLAIBORNE, 1 MISSISSIPPI, AS A PROVINCE, TERRITORY AND STATE, WITH BIOGRAPHICAL NOTICES OF EMINENT CITIZENS 374-75 (1880).

⁵⁴ *Id.*

⁵⁵ *Id.* at 375.

⁵⁶ *Id.*

⁵⁷ FRANK E. EVERETT, JR., FEDERAL JUDGES IN MISSISSIPPI: 1818-1968, 12 (1968).

⁵⁸ *Id.* at 12-13.

the Republican presidential ticket.⁵⁹ With his political career finished, Burr left Washington in 1805 and travelled west, in search of fresh opportunities. Governor Williams was absent when orders to suppress the Burr expedition reached Natchez in December 1806, but on Christmas day, Acting Governor Cowles Mead (1776-1844) called in militia officers who had not done so to swear oaths of loyalty, and Shields, as the Governor's aide-de-camp, mustered the territorial militia.⁶⁰ When Burr, with his small flotilla, descended the Mississippi River as far as Greenville, Mead sent territorial Attorney General George Poindexter (1779-1853) and Shields to negotiate his surrender.⁶¹ They persuaded him to meet Acting Governor Mead on the shore, and when Burr arrived, Mead insisted that he surrender unconditionally to civil authorities and submit his boats to a search for arms and munitions.⁶² Burr consented, and Shields and Poindexter escorted him to the territorial capitol in Washington for arraignment.⁶³

After months of speculation about a treasonous expedition, and the flurried muster, Burr's trial was a flop, and his subsequent flight embarrassed Republican officials. His boats proved to be unarmed, and he vehemently disavowed any subversion. After the accused socialized in Adams County for a week, Judge Rodney set bail at \$5,000 and persuaded Burr's local host and his counsel to guarantee it.⁶⁴ On February 2, attorneys and spectators crowded into Washington, and with mild weather, court officials moved the proceedings outdoors under a canopy of live oaks.⁶⁵ Judge Rodney's associate on the bench was Peter B. Bruin (1754-1827), a friend of Burr, and also his recent host.⁶⁶ Poindexter argued that territorial courts had no original jurisdiction in criminal matters and moved that they transport the accused to be tried in the U.S. Supreme Court or a U.S. district court.⁶⁷ Judge Rodney was determined to proceed, however, and

⁵⁹ *Id.* at 20.

⁶⁰ *Id.* at 12-13.

⁶¹ *Id.* at 14-15.

⁶² *Id.* at 15.

⁶³ *Id.*

⁶⁴ *Id.* at 15-16.

⁶⁵ *Id.* at 18-19.

⁶⁶ *Id.* at 20.

⁶⁷ *Id.* at 16-17.

named a jury pool of seventy-two freeholders.⁶⁸ The next day, they narrowed the pool to twenty-three, Judge Rodney read charges of treason against Burr, and adjourned the court.⁶⁹ On day three, Poindexter moved to dismiss the jury, for a lack of evidence, and again pleaded no jurisdiction.⁷⁰ Again Rodney refused and directed the jury to deliberate.⁷¹ It soon returned, found Burr not guilty of any crimes, and denounced the military arrests of Burr and others as destructive of personal liberty.⁷² Rodney rebuked the jury, Shields moved to strike its grievances from the record, and Federalists gloated in the confusion.⁷³ Rodney refused to lift the bond, and that night, Burr fled.⁷⁴ He was soon arrested near Mobile and was eventually acquitted on all charges by the U.S. Supreme Court.⁷⁵

Shields, meanwhile, took root in the Mississippi Territory. On February 5, the day Burr failed to appear at court in Washington, Judge Rodney wedded Shields and Victoria Benoit, the daughter of a prominent Jefferson County family.⁷⁶ He later penned another public letter, defending the actions of territorial officials and attesting to Burr's good conduct throughout the affair. When taking him into custody, Shields had assumed responsibility for Burr's safety (if not his appearance in court) and at the inquest, joined the defense counsel. By avoiding partisanship and upholding the dignity of the proceedings, Shields emerged from the Burr fiasco as a voice of reason, enhancing his reputation as a capable and judicious officer of the territorial courts. In August, Attorney General Poindexter named Shields to manage his office while Poindexter appeared as a witness in Burr's Richmond, Virginia trial.⁷⁷ As always, when he perceived a

⁶⁸ *Id.* at 18.

⁶⁹ MISS. MESSENGER, Feb. 10, 1807, reprinted in CLAIBORNE, *supra* note 53, at 283.

⁷⁰ *Id.*

⁷¹ EVERETT, *supra* note 57, at 23.

⁷² *Id.*

⁷³ *Id.* at 24.

⁷⁴ *Id.* at 25.

⁷⁵ *Id.* at 26.

⁷⁶ *Id.* at 25-26.

⁷⁷ *Id.* at 26; DUNBAR ROWLAND, COURTS, JUDGES, AND LAWYERS OF MISSISSIPPI: 1798-1935, 65, 69 (1935).

challenge, Shields was quick to defend his personal honor.⁷⁸ The *Mississippi Messenger* reported in September 1807 that “[a] duel was fought . . . between major William B. Shields and doctor James Speed—On the second fire the doctor received a slight wound in the abdomen, from which he is rapidly recovering.”⁷⁹

With his work on the land commission finished, Shields practiced law and entered politics. In 1808, he was elected to represent Adams County in the territorial legislature. Along with Mead and Poindexter, Shields led a faction against Governor Williams, whose absences at the land commission had created delays, temporarily paralyzing the territorial government. Later that year, after David Holmes succeeded Williams as governor, he named Shields attorney general for counties west of the Pearl River.⁸⁰ When the Bank of the Mississippi was chartered by the territorial legislature, in 1809, Shields was among its directors.⁸¹ As a Jeffersonian Democratic-Republican, he favored territorial expansion and was re-elected to the legislature in 1813. As statehood approached, Shields and the Republicans opposed any division of the territory.⁸²

When their colleague Judge Josiah Simpson retired, territorial judges Walter Leake and George Poindexter recommended Shields to fill the vacancy, on the basis of “unimpeached integrity” and his legal experience.⁸³ “His long acquaintance with the practice of our Courts, and the usages of the Country,” wrote the judges, “give him, a decided advantage over a stranger, who cannot become familiar, with these essential subjects, until he has dwelt among us, for several years.”⁸⁴ Shields was never a territorial judge, but in January 1818, both houses of the Mississippi legislature elected justices for the state supreme court, and members chose him to represent the first of four

⁷⁸ See generally Letter from W.B. Shields to the Editor of the Messenger (Feb. 26, 1807), reprinted in CLAIBORNE, *supra* note 53, at 284.

⁷⁹ MISS. MESSENGER, Sept. 15, 1807.

⁸⁰ ROWLAND, *supra* note 18, at 473.

⁸¹ *Id.* at 446.

⁸² CLAIBORNE, *supra* note 53, at 297.

⁸³ Letter from Walter Leake & George Poindexter to James Monroe (Sept. 21, 1815), in 6 THE TERRITORIAL PAPERS OF THE UNITED STATES: THE TERRITORY OF MISSISSIPPI, 1809-1817, 556 (Clarence Edwin Carter ed., 1938).

⁸⁴ *Id.*

judicial districts on that body. That April came his appointment from President Madison to be the first United States judge for the District of Mississippi.

In its inaugural years, with Judge Shields on the bench, administering public land policy was the primary business of the Mississippi district court. Many farmers and planters had bought land on credit to expand their cotton production when global trade resumed after the Napoleonic Wars, but when prices plummeted after the Panic of 1819, they found themselves overextended.⁸⁵ Their main creditor was the federal government, which was owed twenty-two million dollars, over half of which was held by Mississippi and Alabama farmers.⁸⁶ The Land Act of 1820 lowered prices from \$2.00 to \$1.25 an acre, reduced the minimum purchase from 160 to 80 acres, and required cash payments but left existing debts unchanged.⁸⁷ Throughout 1821, the *Mississippi Republican* advertised land auctions held at various locations by U.S. Marshal, and later U.S. Senator, Walter Leake (1762-1825). In the early republic there was little separation between justice and politics, and in August 1821, Mississippi voters elected Marshal Leake their third governor.⁸⁸

In the early years of the federal courts, due to the scope of their authority and responsibilities, U.S. marshals exercised significant fiscal power and political influence. The office was created by Congress in the Judiciary Act of 1789 to assist the courts in their law enforcement functions. It was a four-year appointment, endowed with the power to hire deputies and command all necessary assistance to execute court orders. Marshals and their deputies served writs (subpoenas, summonses, and warrants) issued by the courts, made arrests, handled federal prisoners, and disbursed funds as ordered by the courts. They paid the clerks, U.S. attorneys, jurors, and witnesses. Marshals rented courtrooms, jail space, and hired bailiffs, criers, and janitors. Marshals and their deputies insured the appearance of prisoners,

⁸⁵ Porter L. Fortune, Jr., *The Formative Period*, in 1 A HISTORY OF MISSISSIPPI 273 (Richard Aubrey McLemore ed., 1973).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ See MISS. REPUBLICAN, June 5, 1821; MISS. REPUBLICAN, Sept. 8, 1821; MISS. REPUBLICAN, Oct. 9, 1821; MISS. REPUBLICAN, Nov. 6, 1821; MISS. REPUBLICAN, Nov. 27, 1821.

witnesses, and the availability of jurors. They distributed presidential proclamations, collected statistics on commerce and manufacturing, furnished the names of government employees for the national register, and administered the national census every decade through 1870. Before Congress created the Internal Revenue Service, the Federal Bureau of Investigation, and the Bureau of Alcohol, Tobacco, and Firearms, U.S. marshals and their deputies were the only officers available to enforce federal laws. Consequently, marshals were the principal representatives of the federal government within their districts.⁸⁹

In its early years, Congress adjusted the time and place of Mississippi district court sessions. On January 11, 1821, legislators changed sessions from the first Mondays of May and December to the first Mondays in January and July.⁹⁰ On April 26, 1822, Congress relocated the district court from the State Capitol at Washington to the Adams County Courthouse in Natchez.⁹¹ When and where the court met was subject to statutory limits but the law was, at most, a guidepost. United States judges had wide discretionary powers to convene their court sessions, and as the spring or fall term approached, the marshal usually notified area newspapers of the exact dates that the judge would hold court.

After five years as a federal judge, Shields suffered a stroke on April 16, 1823, and two days later, took his life.⁹² A Natchez newspaper reported that “he had a severe attack of Apoplexy, which was followed by an alarming derangement of his mind, which continued in violent paroxysms, with intervals of apparent rationality, until the evening of the 18th, when in a most agonizing exacerbation he relieved himself from sufferance by suddenly terminating his existence.”⁹³ On April 21, at a meeting of the state bar association, members recalled “his uniform, mild and conciliatory manner to the Bar, his firm and impartial administration of justice, and the patience and industry which he

⁸⁹ For an official history of the U.S. marshals, see www.usmarshals.gov/history/ (last visited June 1, 2015).

⁹⁰ Act of Jan. 11, 1821, 3 Stat. 611.

⁹¹ EVERETT, *supra* note 57, at 5.

⁹² MISS. ST. GAZETTE, Apr. 23, 1823; MISS. REPUBLICAN, Apr. 23, 1823.

⁹³ MISS. ST. GAZETTE, Apr. 23, 1823.

employed in the investigation of all legal points which were agitated before him.”⁹⁴ Under his “immediate auspices, and fostered by his judicial management,” remarked Secretary William Griffith of the Mississippi Bar Association, “the District Court was daily rising in importance and utility to the public.”⁹⁵ Judge Shields, wrote Mississippi historian J.F.H. Claiborne, “was patient, laborious, discriminating and scrupulously impartial.”⁹⁶ Shields succeeded at reinventing himself from his days as an haute young Delawarean and, in Mississippi, earned a reputation as a capable and judicious public official with a deep sense of personal honor. Claiborne added that “[h]e was a man of education and talent, of ardent and energetic temperaments, warm in his attachment, devoted to his friends and greatly beloved by them.”⁹⁷

As a lawyer, planter and judge, Shields was the archetypal antebellum southern aristocrat. He and Victoria established Rokeby, a Jefferson County plantation, twelve miles north of Natchez on Fairchilds Creek.⁹⁸ There, wrote a Mississippi historian, “one found cotton and slaves, horses and hunting, and all of the other facilities for happy plantation life.”⁹⁹ His legacy, in antebellum Mississippi at least, was significant. Judge Shields was a charter member of the Mississippi Society for the Acquirement and Dissemination of Useful Knowledge, and his law library attracted Seargent S. Prentiss (1808-1850), later a celebrated Mississippi congressman, to tutor the Shields’ children at Rokeby.¹⁰⁰

II. JUDGE PETER RANDOLPH (1823-1832)

After Shields died, Andrew Jackson recommended his then loyal friend (and second Mississippi governor) George Poindexter for the judgeship, but in a recess appointment on June 25, 1823, President James Monroe chose a former Virginian, Peter Randolph (1779-1832), as the second United States judge in

⁹⁴ MISS. REPUBLICAN, Apr. 24, 1823.

⁹⁵ *Id.*

⁹⁶ CLAIBORNE, *supra* note 53, at 260.

⁹⁷ *Id.*

⁹⁸ EVERETT, *supra* note 57, at 30.

⁹⁹ *Id.* at 30-31.

¹⁰⁰ D. CLAYTON JAMES, ANTEBELLUM NATCHEZ 231-32 (1968).

Mississippi.¹⁰¹ Monroe may have been anxious to fill the post and avoid inter-party squabbles in the confirmation process, but with years of judicial experience on the Fifth Circuit of the Virginia General Court, Randolph was a solid choice. At the time of his appointment, Randolph was forty-four, and had lived in Mississippi for almost three years.¹⁰² When he took office, the U.S. attorney was William B. Griffith, and the U.S. marshal was Charles M. Norton.¹⁰³

Peter Randolph was a native Virginian, not to be confused with other prominent Virginians of the same name.¹⁰⁴ His father, Peter Randolph, Sr., was a Lieutenant in the Revolutionary War and a clerk of court in Nottoway County when, in 1779, Peter, Jr. was born.¹⁰⁵ The Randolphs of Nottoway had moderate land holdings, but as a result, Peter, Sr. was often involved in litigation and abruptly moved to Georgia in 1805.¹⁰⁶ Peter, Jr. attended the College of William and Mary in 1801 and read law, probably in his father's office. In 1806, he married Sarah Cocke, a Nottoway County orphan, and the couple eventually had four children.¹⁰⁷ Around that time, Randolph gained admission to the Virginia Bar and joined the county militia.¹⁰⁸ He served briefly as a deputy attorney for the commonwealth but resigned in 1810 to represent his county in the Virginia House of Delegates. In 1812, the general assembly elected Randolph to the General Court of Virginia, and he resigned his commission as a Lieutenant Colonel in the state militia.¹⁰⁹

A feud over the succession to his militia post may have led Judge Randolph to relocate in Mississippi.¹¹⁰ Randolph's cousin, William Greenhill, won the appointment but angered a rival for

¹⁰¹ EVERETT, *supra* note 57, at 34.

¹⁰² *Id.* at 39.

¹⁰³ Thomas McAdory Owen, *Federal Courts, Judges, Attorneys, and Marshals in Mississippi, 1798-1898*, in 1 PUBLICATIONS OF THE MISSISSIPPI HISTORICAL SOCIETY 153, 155 (Franklin L. Riley ed., 1898).

¹⁰⁴ Better known was Peter Randolph of Chatsworth, Virginia (1717-1767).

¹⁰⁵ EVERETT, *supra* note 57, at 35.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 36.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 39.

the command, Major Tyree Bacon.¹¹¹ Probably as a result of this enmity, Captain Thomas Wells, a tavern keeper, shot Randolph and Greenhill as they entered his tavern yard at dusk on May 29, 1816.¹¹² Greenhill walked away, but Randolph was seriously wounded.¹¹³ Wells was indicted, tried, and acquitted by a local jury for the shooting.¹¹⁴ In July 1818, Greenhill, through a second, challenged Major Bacon to a duel.¹¹⁵ Bacon's son took offense, and a knife fight ensued, in which Greenhill's second was killed.¹¹⁶ County officials indicted and tried the younger Bacon for murder, with Judge Randolph presiding, but he was acquitted by the jury.¹¹⁷ Perhaps frustrated by bitter personal rivalries in Nottoway County, Randolph resigned his judgeship and in September 1820 moved his family to Wilkinson County, Mississippi, near Woodville, where he began practicing law.¹¹⁸ In 1824, his wife Sarah died in their Wilkinson County home, but in 1828, Randolph remarried to Elizabeth Leatherbury, with whom he had a son.

Randolph was a charter member of the first Mississippi State Bar Association, organized at the Adams County Courthouse in Natchez on May 26, 1821.¹¹⁹ His signature was absent from the rolls after 1823, and legal historian Michael Landon inferred that Randolph "surely must have resigned" his membership when appointed a federal district judge.¹²⁰ Mississippi had the first state bar association in the nation; it had twenty charter members, and by 1824, there were just under forty.¹²¹ During its existence, members met periodically at the Natchez courthouse or at a local tavern.¹²² Apart from promoting social intercourse between members, the association enforced a uniform set of fees for legal

¹¹¹ *Id.* at 37.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 38.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Michael de L. Landon, *The Mississippi State Bar Association, 1821-1825: The First in the Nation*, 42 J. MISS. HIST. 222, 223 (1980).

¹²⁰ *Id.* at 229.

¹²¹ *Id.* at 223, 228.

¹²² *Id.* at 228.

services and policed admissions to the bar.¹²³ At the June 18, 1825, meeting, there were not enough members to constitute a quorum, and the body lapsed until 1886, when Mississippi lawyers formed a second state bar association.¹²⁴ In its final year, members published a strongly worded protest to Congress about the limits on federal jurisdiction in newly admitted states like Mississippi and their lack of representation on the Supreme Court.¹²⁵

Mississippi barristers, following the actions of their Tennessee counterparts, resented their marginal status in the federal judiciary. On January 4, 1825, Tennessee representatives read a “Nashville Memorial” into the congressional record, protesting the fact that in nine western states there was only one circuit judge, and that Tennessee, Alabama, Mississippi, Louisiana, Indiana, Illinois, and Missouri were “entirely excluded from all the benefits to be derived from the presence and learning of a Judge of the Supreme Court.”¹²⁶ On January 10, Mississippi Attorney General Thomas Reed (1787-1829) submitted a similar draft memorial to the state bar association, which members unanimously adopted.¹²⁷ “[T]he Circuit Court System,” they groused, had “not been extended to them,” and as a result, they were “deprived of any participation in the administration of justice in the Supreme Court of the United States.”¹²⁸ Without a proper circuit court, they noted, in civil cases that involved sums of less than \$2,000 and in all criminal cases, decisions of the district court judge were final, with no appeals possible.¹²⁹ Mississippi and other newly admitted states, they held, “may well complain of injustice and the partial operation of a system which ought to be uniform throughout the Union.”¹³⁰

The memorialists urged Congress to adopt a second plank of reforms that addressed the peculiar juridical challenges in states

¹²³ *Id.* at 226.

¹²⁴ *Id.* at 240.

¹²⁵ *Id.* at 236.

¹²⁶ *Id.* at 235.

¹²⁷ *Id.* at 236.

¹²⁸ MEMORIAL OF THE BAR ASSOCIATION OF THE STATE OF MISSISSIPPI, H. Doc. 94, 18th Cong., 2d Sess., at 3 (Miss. 1825).

¹²⁹ *Id.* at 5.

¹³⁰ *Id.*

like Mississippi that were formerly under French and Spanish dominion. “And how,’ they asked, could ‘a Judge of the Supreme Court, situated upon the shores of the Atlantic, be *practically* conversant with those various and complicated codes?’”¹³¹ As a remedy, they recommended that Congress extend the circuit court system “to the new States in the West and Southwest, and the appointment of two or three additional Judges from those States, to the bench of the Supreme Court.”¹³² In language that echoed debates over nullification and sectional crises, they cautioned that their concerns were vital to the “repose and harmony” of the national union.¹³³ “The moment . . . that one part of the Union sees itself bereft, by a partial application of any system, of benefits enjoyed by another part, and in a matter especially where they think their voice ought to be heard,” they warned, “will be a moment of distrust, animosity, and mutual alienation.”¹³⁴

On February 21, 1825, the Mississippi Memorial was read in the U.S. House of Representatives and referred to committee that was considering a bill to reform the federal judiciary, but the bill died in the Senate the following year.¹³⁵ Congressional policymaking on the courts, especially the prospect of creating new seats on the Supreme Court to represent newly admitted slave states, threatened to disrupt the sectional balance of power. As a result, more than a decade would pass before Congress reformed the federal judiciary, adding Supreme Court justiceships and placing the Mississippi district court in the circuit court system.¹³⁶

The Mississippi memorialists, and all southern and middle west constituents of the federal courts, had a legitimate grievance. In addition to needing capable and experienced judges to sort out land titles, litigants in the frontier states relied on United States courts to mediate and decide cases involving parties of diverse and distant origins. Aliens and easterners were likely to receive better treatment in the federal courts than in state courts, and western attorneys regularly advised their non-resident claimants to seek

¹³¹ Landon, *supra* note 119, at 236.

¹³² MEMORIAL OF THE BAR ASSOCIATION OF THE STATE OF MISSISSIPPI, H. Doc. 94, 18th Cong., 2d Sess., at 7 (Miss. 1825).

¹³³ *Id.* at 6.

¹³⁴ *Id.* at 7.

¹³⁵ Landon, *supra* note 119, at 237.

¹³⁶ *Id.* at 237-38.

redress before federal judges.¹³⁷ Migration to western states increased the business of the federal courts. Credit relations flowed from east to west, and westerners regularly depended on eastern banks and mercantilists for cash and goods, which produced lawsuits in federal courts. Before 1825, when Supreme Court Justice Joseph Story ruled that admiralty jurisdiction did not reach past “the ebb and flow of the tide,” river traffic created cases in the federal courts.¹³⁸ Attorneys could usually avoid unpredictable jury trials there and win payments in gold, whereas state courts sanctioned paper money settlements. Another source of federal litigation in frontier states was offenses committed by whites against Native Americans on Indian lands.¹³⁹

With Randolph on the bench, debt-related property cases still filled the docket.¹⁴⁰ The Treaty of Doak’s Stand (1821) had opened Choctaw lands to white settlement, and despite a wave of foreclosures after the Panic of 1819, Mississippians still favored a liberal federal land policy.¹⁴¹ Congress regularly extended deadlines for payments on government loans, and the Relief Act of 1821 gave farmers three options for making payments: maintain their payments at the reduced rate of \$1.25 per acre; spread installments over a longer period of time; or forfeit part of their purchase while retaining the balance of their holdings.¹⁴² With these alternatives in place, almost all the debt owed by farmers to the federal government in 1820 was paid by 1832, but Natchez newspapers continued to advertise land auctions in various locations held by Deputy Marshal Horace Gridley.¹⁴³

In the 1820s, the greatest health hazard to Mississippians was mosquito-borne illness, and epidemics played havoc with government business. In the summer months, state government functions were regularly moved from Natchez inland to

¹³⁷ Curtis Nettels, *The Mississippi Valley and the Federal Judiciary, 1807-1837*, 12 *MISS. VALLEY HIST. REV.* 202, 204 (1925).

¹³⁸ *Id.*

¹³⁹ *Id.* at 205.

¹⁴⁰ Federal Court Records: Mississippi, 1823-1838, Microfilm Roll 1362 (Miss. Dep’t of Archives & History). In the Docket Book for April 1823 to May 1838, six of the first twenty cases named the Bank of the U.S. as Plaintiff.

¹⁴¹ Fortune, *supra* note 85, at 273.

¹⁴² *Id.*

¹⁴³ *Id.* For land auctions, see the *MISSISSIPPI REPUBLICAN* on Feb. 18, 1824, Mar. 3, 1824, and Mar. 17, 1824.

Washington. After a series of yellow fever outbreaks, on February 7, 1821, the Mississippi General Assembly temporarily chose Columbia, in Marion County, as a site for the new state capital. Officials quickly concluded that Columbia was too far south from the geographical center of the state, and in November, the assembly appointed a commission that selected Le Fleur's Bluff on the western shore of the Pearl River as a preferable location for the state capital. On November 28, 1821, legislators empowered the commission to survey the site, to be known as Jackson (in honor of General Andrew Jackson), and ordered state offices to relocate there within a year.¹⁴⁴

The Mississippi district court had its share of troubles with yellow fever. On September 20, 1823, in Washington, Deputy Marshal Gridley announced Randolph's order that the October court session, "in consequence of the prevailing Epidemic in the city of Natchez," would be held forty miles down the Great River Road (now known as Highway 61) in Randolph's hometown of Woodville, in Wilkinson County.¹⁴⁵ Some questioned his pluck as he faced the "American Plague" but Judge Randolph persevered. In October 1825, again citing the "prevailing epidemic" in Natchez, U.S. Marshal John H. Norton announced that the judge would hold court in Washington. A Natchez editor inserted his cynical "regret that the honorable Judge by whose order the session of the district court is removed to Washington, has fallen into the general error with regard to the REAL health of Natchez." Had the order read "that in consequence of a REPORT on the prevailing epidemic," he mockingly asserted, "it would have passed without comment." The statement that an epidemic prevailed in Natchez, "coming from such high authority," he barbed, "could not suffer to go uncontradicted." Washington was "more sickly than Natchez," he continued, "but of these facts we presume the judge was not apprised at the time of issuing his order, as he resides about 45 miles from here."¹⁴⁶ Sickness did, in fact, prevail in Washington and Randolph adjourned his court until December. Had it been "possible to have procured the juries necessary, and the witnesses," the same editor acknowledged,

¹⁴⁴ ROWLAND, *supra* note 18, at 516-28.

¹⁴⁵ MISS. REPUBLICAN, Sept. 24, 1823.

¹⁴⁶ ARIEL, Sept. 26, 1825.

“there is no doubt but the court would have gone on to transact business.”¹⁴⁷ With more than a hint of sarcasm, he praised “the readiness with which his Hon. Judge Randolph, sacrificing every sentiment of self interest, ventured among us, in these times of peril, to perform his duties as a judicial officer and a public servant.”¹⁴⁸ On Monday, December 19, the *Ariel* of Natchez reported that the district court met “on Monday last,” and was “still in session.”¹⁴⁹

With over half of the Mississippi population in bondage, many property cases that came before the district court involved slaves. In July of 1821, Judge Shields summoned Mississippian Israel Leonard to appear in Natchez and answer a Kentuckian’s complaint that he had illegally detained “two [slaves] Pharaoh and Molly.”¹⁵⁰ In another writ of summons, Judge Randolph ordered a Mississippi man to appear and answer to “a citizen of the State of Kentucky, of a plea that he render to him a certain male slave, named Edmond, aged about 22 years, the property of [the] plaintiff of the value of one thousand dollars.”¹⁵¹ Two of three extant warrants from this period refer to disputes over slaves.¹⁵² Slavery created peculiar problems for antebellum jurists: slave bodies were classified as property, subjected to the claims of whites and limited in power to act as witnesses, but slaves could also be held to account for themselves as defendants in criminal cases.

In the early republic, the federal courts did not usually draw much popular attention, but occasionally United States district courts heard cases that created a public spectacle. Property and admiralty cases were probably followed by few, if any, but the interested parties. Federal court historian Erwin Surrency observed that the “opening sessions of the federal courts failed to attract the attention of the public as did the opening of the state

¹⁴⁷ ARIEL, Oct. 10, 1825.

¹⁴⁸ *Id.*

¹⁴⁹ ARIEL, Dec. 19, 1825.

¹⁵⁰ The summons was obtained from the United States District Courts (Mississippi) Collection of the Mississippi Department of Archives and History and is on file with the author.

¹⁵¹ *Id.*

¹⁵² *Id.*

court.”¹⁵³ Some criminal cases, however, were an exception. On May 8, 1828, Marshal Norton announced that Judge Randolph would hold a special term at the Natchez courthouse on Monday, June 16, “for the trial of two slaves, Warner and John, (the property of D.W. Haley) committed under a charge of having stolen from the United States Mail . . . as to violate the penal laws of the United States upon the subject.”¹⁵⁴ In the weeks that followed, Natchez newspapers advertised the upcoming special session for trying the case, but Warner and John each dramatically eluded prosecution.¹⁵⁵

D.W. Haley (1793-1857), who owned the accused Warner and John, was a U.S. mail contractor in Mississippi.¹⁵⁶ In an 1829 letter to President Andrew Jackson, he claimed to have “contracted for the mail through the Choctaw nation for a number of years.”¹⁵⁷ In 1827, when the alleged theft (or robbery) took place, Haley already had experience investigating, and apprehending, postal perpetrators. An 1835 statement of rewards paid by the U.S. Post Office “to general and special agents, for the discovery, arrest, and conviction of sundry persons for robbery of post offices, or of the United States mail,” listed Haley as the recipient of two hundred dollars in 1820 for the “arrest, &c. of Morgan.”¹⁵⁸

After John and Warner allegedly “robbed the mail, and fled,” Haley caught the pair and delivered them to the Natchez jail.¹⁵⁹ Sometime after the May 8 announcement of the special session and before the June 16 trial, either John or Warner “broke jail . . . and escaped.”¹⁶⁰ Of the two, one remained and “was convicted before the district court of the United States in Mississippi, and sentenced to hard labor.”¹⁶¹ If Haley and Mississippi officials were

¹⁵³ SURRENCY, *supra* note 11, at 47.

¹⁵⁴ ARIEL, May 10, 1828.

¹⁵⁵ *Id.*; ARIEL, May 17, 1828.

¹⁵⁶ Letter from David W. Haley to Andrew Jackson (Oct. 8, 1829), in 7 THE PAPERS OF ANDREW JACKSON, 1829, 483, 484 (Daniel Feller et al. eds., 2007).

¹⁵⁷ *Id.*

¹⁵⁸ H.R. REP. NO. 23-103, at 891-92 (1835), available at <http://bit.ly/1Fcj010>.

¹⁵⁹ INDEX TO THE EXEC. DOC. AND REPS. OF COMMS. OF THE H.R. FROM THE TWENTY-SECOND TO THE TWENTY-FIFTH CONGRESS, BOTH INCLUDED, COMMENCING DEC. 1831, AND ENDING MAR. 1839, at 226 [hereinafter H.R. INDEX].

¹⁶⁰ Act for the Relief of D. W. Haley, 6 Stat. 713 (1838).

¹⁶¹ *Id.*

dismayed by the first escape, they must have been outraged when the “slave, who was convicted of robbing the mail, and sentenced to imprisonment . . . afterwards broke jail, and [was] not recovered.”¹⁶² There is nothing to suggest that the court or the marshals were sympathetic to slaves and lax in their custody of the accused, and the pair was no doubt confined in the Adams County jail without any special provisions, but the episode attests to the ingenuity and determination of Warner and John.

Years passed, and Haley expanded his postal business in Mississippi, but he failed to recover Warner or John. From 1830 to 1834, he earned six hundred dollars a year managing bi-weekly mail runs between Clinton and Vicksburgh, and in 1831, added a third weekly run for another three hundred dollars annually.¹⁶³ Initially, he may have asked the Post Office Department or the Mississippi district court to compensate him for the loss of Warner and John, or to reward his service in capturing them and surrendering them for trial. In any event, he continued to press for relief. On January 30, 1837, Mississippi Congressman Samuel Gholson submitted Haley’s petition to the U.S. House of Representatives “praying remuneration for the loss of two slaves, who broke jail and made their escape from the public authorities when confined on a charge of having robbed the United States mail.”¹⁶⁴

The House record muddled the events surrounding the trial and gave a conflated account of the escapes, but it confirms that both Warner and John successfully escaped from federal custody. It also suggests that Haley, perhaps on the advice of Gholson, initially sought relief in the form of compensation for lost property: his two slaves. On February 14, 1837, after a month and a half in the Committee of Claims, an Ohio congressman reported on Haley’s petition and introduced a bill for his relief, which “was read the first and second time, and committed to a Committee of the Whole House” the following day.¹⁶⁵ The bill was probably withdrawn by its sponsor, however, as it was neither tabled,

¹⁶² H.R. INDEX, *supra* note 159, at 333.

¹⁶³ S. DOC. NO. 23-138, at 141 (1834), *available at* <http://bit.ly/1Db3xRn>.

¹⁶⁴ H.R. JOURNAL, 24th Cong., 2d Sess. 308 (1837), *available at* <http://bit.ly/1KYtu5T>.

¹⁶⁵ *Id.* at 403.

referred elsewhere, nor otherwise discharged, but disappeared from the record. The following year, Haley presented another claim, this time for the value of a single lost slave. In 1838, the Committee of Claims decided “against” compensating him “for the value of his slave, who was convicted of robbing the mail, and sentenced to imprisonment, and afterwards broke jail.”¹⁶⁶ Haley may have hoped that an abbreviated version of his original claim might pass without scrutiny, or perhaps he reasoned that a better qualified claim (for the value of the slave who had the benefit of due process) might win favor, but the outcome was the same. His petitions for relief, seeking monetary compensation for escaped slaves, were objectionable on face to a growing number of house members who vociferously opposed slavery at every turn. Congress was not sympathetic to private claims of slave owners whose slaves were lost or illegally seized, unless they were carried off by the British or died while in government service.

Haley finally got financial relief, not for the value of his lost slaves, but for his services in capturing them. The same members of the claims committee that denied him compensation for the loss of his slaves approved a separate petition that passed through the House, the Senate, and, on April 20, 1838, into law, “rewarding D.W. Haley, for apprehending his two slaves who had robbed the mail, and fled.”¹⁶⁷ In an “Act for the relief of D.W. Haley,” Congress ordered the Postmaster General to pay Haley four hundred dollars “for apprehending, and surrendering for trial, two slaves charged with having robbed the United States mail, in eighteen hundred and twenty-seven.”¹⁶⁸ In addition, the Act directed the Postmaster General to pay Haley for his expenses in the matter.¹⁶⁹ After protracted efforts to win relief, Haley was surely disappointed with the outcome. Four hundred dollars was compensation for his time and efforts, but it represented only about a quarter of the value of his lost slaves. He may have regarded the differences between his petitions as trivial, or symbolic, but the anti-slavery constituency in Congress drew a significant distinction between compensating him for the loss of

¹⁶⁶ H.R. INDEX, *supra* note 159, at 333.

¹⁶⁷ *Id.* at 226.

¹⁶⁸ Act for the Relief of D. W. Haley, 6 Stat. 713 (1838).

¹⁶⁹ *Id.*

his slaves and rewarding him for bringing them to justice in the federal courts.

After 1830, Judge Randolph suffered an unfortunate physical decline, and his court fell behind in its business. In 1831, due to Randolph's illness, the court missed two full terms.¹⁷⁰ On July 13, he postponed the summer session until September.¹⁷¹ That fall came an announcement that Randolph was "detained in Georgia by sickness."¹⁷² These delays, noted one contemporary,

were very unfortunate, as they greatly embarrassed the business, and added to the expenses of that important court, and it was particularly hard on those who had taken the census of this State, as they could not get their pay till their accounts were allowed by the District Judge of the United States.¹⁷³

On Monday, January 30, 1832, at the age of fifty-three and after over eight years on the bench of the Mississippi District Court, Judge Peter Randolph died in his Wilkinson County home.¹⁷⁴ He was buried the next day, and on Wednesday, February 1, Mississippi Supreme Court justices and members of the state bar convened in Natchez to remember the judge and express sympathy for his family.¹⁷⁵ Former U.S. Attorney Felix Huston delivered a moving eulogy, describing Randolph as "dignified, without ostentation; firm and decided, without being dictatorial; and the disappointed suitor felt the anguish of defeat assuaged by the urbanity of his manner."¹⁷⁶ "Such was his courteous and respectful attention to the members of the bar, that the elderly were drawn to him by the ties of friendship, and the young advocate was assisted and cheered by his benignant smile. He united, in the fullest extent, the upright judge with the polished gentleman."¹⁷⁷ In private life, Huston recalled, Randolph

¹⁷⁰ *Courts*, NATCHEZ COURIER, Feb. 1, 1833.

¹⁷¹ *District Court of the United States for the Mississippi District*, NATCHEZ, July 15, 1831.

¹⁷² *At Home*, NATCHEZ, Sept. 9, 1831.

¹⁷³ *The Beauties of Jacksonian*, NATCHEZ, Aug. 10, 1832.

¹⁷⁴ *Died*, NATCHEZ, Feb. 3, 1832.

¹⁷⁵ E. Turner, *The Late Judge Randolph*, NATCHEZ, Feb. 10, 1832.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

“threw a charm around the most trivial civilities in life, that endeared him to all who came within his social circle.”¹⁷⁸ In closing, the mourners resolved to erect a graveside monument, and wear black armbands for a month.¹⁷⁹

The day of the Natchez memorial, members of the Wilkinson County Bar met to honor the Judge at Woodville.¹⁸⁰ Attorney John Henderson poignantly recalled that “[n]o matter what the condition of life,—the age, profession or calling of those who became his guests, all were greeted with the same assured welcome.”¹⁸¹ “[A]ll moral, political and religious partialities, however different from his,” he continued, “were tolerated beneath his roof with . . . propriety and grace”¹⁸² In the courtroom, Henderson declared, Randolph was “[n]ever arrogant, petulant or presuming,” but “heard patiently and respectfully the arguments of all, and ever encouraged by his kindness and amenity, the diffident and embarrassed.”¹⁸³ “No judge,” he concluded, “ever engaged more of the affections of the profession, and never did a judge discharge his official functions in a manner better to deserve them.”¹⁸⁴ Wilkinson County mourners also resolved to wear a crepe on their left arms for thirty days.¹⁸⁵ In an age that remains overshadowed by its republican aristocracy, Randolph was remembered by his contemporaries for his egalitarian virtues and democratic spirit.

III. JUDGE POWHATAN ELLIS (1832-1836)

Weeks and then months passed before President Andrew Jackson filled the post, compounding the delays of 1831. Some Mississippians denounced Jackson as vehemently as others supported him, and, as the summer wore on without an appointment, suspicions rose that the spoils system was at

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* Huston succeeded William Griffith as U.S. attorney for the Mississippi District on January 9, 1828. Owen, *supra* note 103, at 153.

¹⁸⁰ NATCHEZ, Feb. 17, 1832.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

work.¹⁸⁶ When President Jackson appointed Senator Powhatan Ellis to the Mississippi judgeship on July 13, 1832, detractors assailed both men for what they viewed as an egregious case of political patronage.¹⁸⁷ In 1827, the Mississippi House had elected Ellis to the U.S. Senate due to his enthusiasm for General Jackson, and he faithfully supported President Jackson while in office.¹⁸⁸ “The President,” railed a Natchez editor,

held the charms and the emolument of office, for six months before the eyes of one of our Senators in Congress, Mr. Ellis, and finally “rewarded” him for the most persevering course of subserviency ever witnessed in our government. Even as the halls of justice have been closed, the rights of suitors disregarded, and the public interest trampled on to effect this unhallowed purpose.¹⁸⁹

Public anxiety about the appointment, the editor claimed, was increased by a rumour that the office was offered to Senator Ellis, and that he had declined accepting it, unless it was held up for him till the end of the session of Congress *It was further stated that Gen. Jackson intended to suspend the appointment in order to give it to Mr. Ellis.*¹⁹⁰

This was confirmed, he declared, “by information from Washington city, and particularly by the manner in which Mr. Ellis spoke on the subject, in his letters to his friends, which were evidently intended to prepare them for the event.”¹⁹¹ Despite protests against the arrangement, it was “deemed by President Jackson of more importance that Senator Ellis should get his ‘reward,’ than that the courts of justice should be kept open and the public business done.”¹⁹²

¹⁸⁶ *The Beauties of Jacksonian*, NATCHEZ, Aug. 10, 1832.

¹⁸⁷ *Id.*

¹⁸⁸ See Fortune, *supra* note 85, at 275; Edwin Arthur Miles, *Jacksonian Democracy in Mississippi*, in 42 THE JAMES SPRUNT STUDIES IN HISTORY AND POLITICAL SCIENCE 11-12 (Fletcher M. Green et al. eds., 1960)).

¹⁸⁹ *The Beauties of Jacksonian*, NATCHEZ, Aug. 10, 1832.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

Critics of Jackson and Ellis had a strong case. There were highly capable candidates prepared to fill the judgeship, such as Judge John Black of the Mississippi Supreme Court and Vicksburg attorney Eugene McGee.¹⁹³ There is no doubt that Jackson suspended the appointment for most of the spring and summer of 1832, exacerbating the effects of delays in the previous two terms. “There has never been a more palpable breach of the Constitution, than the delay of the President to fill the vacancy occasioned by the death of Peter Randolph,”¹⁹⁴ wrote A. Planter to *The Natchez*.

Six weeks was more than sufficient to make a selection from amongst the applicants for that office, who were recommended by the bar and many of the most respectable citizens, and in that case the new judge could have entered on his duties near four months before the June term, yet the appointment was not made for upwards of six months after the vacancy occurred, and near four weeks after the time for the June term had passed.¹⁹⁵

Jackson took office determined to curb the spoils system, but political realities compelled him to embrace it, this time at the expense of the federal judiciary in Mississippi and its litigants. On July 14, 1832, the day after his nomination, Powhatan Ellis was confirmed by the Senate as Mississippi’s third federal district court judge. General Duff Green wrote that Ellis “holds his office at the price of the most disgraceful subservience to Gen. Jackson.”¹⁹⁶

Ellis was born on January 17, 1790, in Amherst County, Virginia.¹⁹⁷ He was the eleventh child of Josiah and Jane Ellis, who named him after the renowned Native American chief of the Tidewater region and the father of Pocahontas.¹⁹⁸ Ellis graduated

¹⁹³ *Id.*

¹⁹⁴ A. Planter, *Jackson vs. the Constitution*, NATCHEZ, AUG. 31, 1832.

¹⁹⁵ *Id.*

¹⁹⁶ Miles, *supra* note 188, at 51 (citing NATCHEZ GAZETTE, Mar. 7, 1832; NATCHEZ GAZETTE, May 11, 1832; U.S. TELEGRAPH, July 25, 1832).

¹⁹⁷ *Hon. Powhatan Ellis of Mississippi*, 37 S. LITERARY MESSENGER 241, 241 (1863) [hereinafter *Ellis*]; Edwin L. Cobb, *Powhatan Ellis of Mississippi: A Reappraisal*, 30 J. MISS. HIST. 91, 92 (1968).

¹⁹⁸ Cobb, *supra* note 197, at 92.

from Dickinson College, Pennsylvania in 1810.¹⁹⁹ He briefly enlisted in a Virginia rifle company.²⁰⁰ Ellis saw no action in the War of 1812, but rose in rank from private to captain and met his lifelong friend, Andrew Jackson.²⁰¹ After the war, he practiced law for two years in Lynchburg, Virginia.²⁰² In 1816, with letters of introduction from General Jackson, Ellis rode across Kentucky and floated down the Mississippi to Natchez.²⁰³

On August 20, 1816, Governor David Holmes commissioned Ellis as an attorney, and he began practicing in Natchez but soon moved to Winchester, then the Wayne County seat.²⁰⁴ Despite the reservations of a few in the assembly who thought him a newcomer, the first state legislature elected Ellis to the Mississippi Supreme Court for the fourth district.²⁰⁵ “He was the busiest judge on the bench,” claimed a biographer, “writing a substantial portion of the court’s opinions.”²⁰⁶ Ellis served on the court until September 1825, when Governor Walter Leake appointed him to fill an interim vacancy in the U.S. Senate created by the resignation of Governor-elect David Holmes.²⁰⁷ In January 1826, he lost a close vote in the state legislature to Thomas B. Reed, who served out the term.²⁰⁸ When it expired in January 1827, the legislature decisively elected Ellis over Reed for a full term as a U.S. Senator.²⁰⁹ On July 16, 1832, he resigned from the Senate and accepted his commission as judge of the Mississippi district court.²¹⁰

When Ellis took office, there was probably a sizeable backlog of cases, and personnel changes also posed challenges. George Adams (1784-1844), another staunch supporter of President Jackson, had succeeded Felix Huston as the U.S. attorney for the district on March 3, 1830, and his appointment was renewed on

¹⁹⁹ *Ellis*, *supra* note 197, at 241.

²⁰⁰ *Id.*

²⁰¹ *Id.* at 241-42.

²⁰² *Id.* at 242.

²⁰³ *Id.* at 242-43.

²⁰⁴ ROWLAND, *supra* note 77, at 52; Cobb, *supra* note 197, at 94.

²⁰⁵ Cobb, *supra* note 197, at 97-98 (citing ROWLAND, *supra* note 77, at 76-77).

²⁰⁶ *Id.* at 98.

²⁰⁷ *Id.*; ROWLAND, *supra* note 18, at 420.

²⁰⁸ ROWLAND, *supra* note 18, at 420.

²⁰⁹ Cobb, *supra* note 197, at 99 (citing Miles, *supra* note 188, at 10-12).

²¹⁰ *Id.* at 100.

May 12, 1834.²¹¹ U.S. Marshal John H. Norton had resigned his commission and was replaced by Anthony Campbell on May 28, 1830.²¹² When Marshal Campbell was removed from office after less than two years, Samuel W. Dickson received a temporary commission on January 18, 1832, which became permanent on December 11, 1832.²¹³ On February 1, 1833, the *Natchez Courier* reported that the “Supreme Court of the State, the Chancery Court, and the District Court of the United States” were all in session.²¹⁴ It was “now two years since a session of the latter was held here, owing to the sickness and death of Judge Randolph, and the delay in the appointment of his successor, Judge Ellis.”²¹⁵

Ellis kept busy at law and politics while on the federal bench. In the 1830s, the opening of Native American lands in Mississippi for white settlement produced an economic boom, a growing population, and a significant increase in litigation.²¹⁶ The nephew of Judge Ellis, Thomas Ellis, later recalled that “[a]t one term of his court, when the revulsions of the ‘Flush Times in Mississippi’ had brought before him a very heavy docket, he disposed of nearly four hundred cases.”²¹⁷ Judge Ellis remained an unflinching supporter of Jackson’s war against the Second Bank of the United States, and prior to the executive order that removed its funds from the treasury, he suggested to the President that two Natchez Banks were willing to serve as federal depositories. Consequently, on October 9, 1834, Secretary of the Treasury Roger B. Taney named the Planter’s Bank as one of Jackson’s “pet” banks.²¹⁸

Under Judge Ellis, the Mississippi district court fell under the influence of Jackson cronies, and became a bastion of state Democrats. After Marshal Dickson resigned in 1832 to become the court-appointed receiver, Jackson appointed William M. Gwin

²¹¹ Owen, *supra* note 103, at 153.

²¹² *Id.* at 154; see also *U.S. Marshals 1789-1989: Mississippi*, U.S. MARSHALS SERVICE, http://www.usmarshals.gov/readingroom/us_marshals/index.html (last visited June 1, 2015).

²¹³ Owen, *supra* note 103, at 154; see also *U.S. Marshals*, *supra* note 212.

²¹⁴ *Courts*, NATCHEZ COURIER, Feb. 1, 1833.

²¹⁵ *Id.*

²¹⁶ For a colorful account of this period that has attracted much scholarly attention and criticism, see JOSEPH G. BALDWIN, *THE FLUSH TIMES OF ALABAMA AND MISSISSIPPI* (1853).

²¹⁷ *Ellis*, *supra* note 197, at 244.

²¹⁸ Miles, *supra* note 188, at 73.

(1805-1885) as U.S. marshal for the District of Mississippi. At the time, Gwin was the “practical manager” of the Jacksonians, and the appointment marshal was a fitting reward for his service.²¹⁹ Early U.S. marshals, wrote an historian of the service, “working with the federal judges and U.S. attorneys in their districts, enjoyed a wide latitude in determining how they would enforce the law,” but their office was “a patronage job, subject to all the abuses of such a system.”²²⁰

After relocating from Tennessee, where they had close ties with Andrew Jackson, William Gwin, and his older brother, Samuel, had molded Mississippi Democrats into an effective political organization. They arranged conventions, public meetings, printed and distributed handbills and ballots, and rallied Democrats to the polls.²²¹ Until his death in 1838, as a result of a wound suffered in a duel, Samuel Gwin was the register of the U.S. land office at Clinton, Mississippi, an appointment he received from President Jackson. William Gwin’s appointment as marshal was initially defeated by Senator Poindexter, but supporters struck a deal securing his re-nomination, and on October 12, 1833, Gwin received his commission.

From 1833 to 1838, while serving as U.S. marshal in Mississippi, Gwin honed his partisanship and cultivated expansionist schemes tied to grandiose land speculation. Before the Civil War, according to U.S. Congressman, lawyer, and historian J.F.H. Claiborne (1809-1884), the office of the marshal in Mississippi was “the most lucrative office in the South.”²²² While marshal, Gwin became a large operator in lands with many partners, strengthened his political contacts, and developed a strong property interest in Texas.²²³ “Mr. Gwin,” continued Claiborne, “while Marshal of Mississippi, made it a point every summer to visit General Jackson, either in Washington or at the Hermitage.”²²⁴ Texas and Sam Houston, wrote Claiborne, were

²¹⁹ ROWLAND, *supra* note 18, at 586.

²²⁰ FREDERICK S. CALHOUN, *THE LAWYERS: UNITED STATES MARSHALS AND THEIR DEPUTIES, 1789-1989*, 6-7 (1989).

²²¹ Miles, *supra* note 188, at 164.

²²² CLAIBORNE, *supra* note 53, at 432.

²²³ *Id.* at 431.

²²⁴ *Id.*

“frequent subjects of conversation.”²²⁵ In 1836, when General Felix Huston was “with drum and fife, recruiting in Mississippi for the Texas army of Independence, it was remarked that the United States Marshal and District Attorney were unaccountably absent! While Mr. Gwin was at Nacogdoches . . . he made large investments in Texas lands!”²²⁶ As an agent of expansion, Gwin laid the groundwork for his political career in Mississippi and later in California. In 1841, he resigned his office when William Henry Harrison, a Whig, was elected President, but that year Mississippians voted William Gwin into Congress.

Gwin may have realized political gains from his post as marshal, but due to hard times and bad judgment, he failed to profit from the office. Supporters pressed him to seek re-election to Congress in 1843, but he declined, due to financial embarrassment. After the Panic of 1837, depositors who lost money to Mississippi banks sued in the federal district court to recover their assets. While marshal, charged with executing the settlements, Gwin accepted bank notes from several defendants to satisfy judgments in which the plaintiffs had insisted on receiving cash. The plaintiffs refused the bank notes, and sued Marshal Gwin, who had failed to pay them in gold or silver as the law required. A federal circuit court jury composed of Mississippians later decided in his favor, but their judgment was reversed in several Supreme Court rulings, saddling Congressman Gwin with a liability of several thousand dollars plus significant interest and costs.²²⁷ Consequently, he was forced to liquidate his considerable land holdings.²²⁸ Loyal Democrats like Gwin may never have questioned their support for President Jackson’s all-consuming war on the Second Bank of the United States, but after the general collapse of 1837, they had good reasons to doubt the economic policies of Old Hickory.

After less than four years on the federal bench, personal tragedy led Ellis to resign his judgeship on January 5, 1836, and accept an appointment by President Jackson to take charge of the

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ See generally *Gwin v. Barton*, 47 U.S. 7 (1848); *McFarland v. Gwin*, 44 U.S. 717 (1845); *Gwin v. Breedlove*, 43 U.S. 29 (1844); *Gwin v. Breedlove*, 40 U.S. 284 (1841).

²²⁸ CLAIRBORNE, *supra* note 53, at 437.

U.S. delegation in Mexico. While in the Senate, he had married Eliza Rebecca Winn in 1831, and they had two children: Powhatan Jr., born in 1832, and Rebecca, born in 1834. Not long after Rebecca's birth, Powhatan, Jr. died, and in the spring of 1835, Eliza Ellis died. "The death of his wife," Ellis' nephew later recalled, "was one of the reasons which induced him to consent to go abroad."²²⁹ In an 1863 eulogy to his uncle, Thomas Ellis remembered the Judge's "inflexible zeal for the administration of justice, the preservation of the public peace," and his desire to avoid "those delays which often weary the law-abiding suitor."²³⁰ Whenever possible, Judge Ellis would "extend favors, . . . but when this could not be done, all parties were rigidly compelled to a proper obedience."²³¹ In 1839, President Van Buren appointed Ellis ambassador to Mexico, an office he held until 1842. Ellis then practiced law in Natchez and remained active in state politics, but sometime after 1853, moved to Richmond, Virginia, where he practiced law until his death in 1863. On the bench Powhatan Ellis acquired a reputation as a legalist, and in politics, as a staunch loyalist.

By 1835, even before the departure of Judge Ellis, change was in the air at the Mississippi district court. On March 3, 1835, Congress moved court sessions from Natchez to Jackson.²³² In his December 7, 1835, message to Congress, President Jackson addressed the "defects" of the federal judiciary, as he had in 1831, 1832, and 1834.²³³ "[A]t present," he declared, "the States of the Union derive unequal advantages from the Federal Judiciary"²³⁴ Jackson urged Congress to "extend to all the States, that equality in the benefits of the laws of the Union, which can only be secured by the uniformity and efficiency of the Judicial system."²³⁵ Over a decade had passed since the first state bar association had pleaded with Congress for inclusion in the circuit court system, and Jackson's remarks on the state of the federal judiciary surely

²²⁹ *Ellis*, *supra* note 197, at 250.

²³⁰ *Id.* at 244.

²³¹ *Id.*

²³² Act of Mar. 3, 1835, ch. 34, 4 Stat. 773 (moving court sessions from Natchez, Mississippi to Jackson, Mississippi).

²³³ WOODVILLE REPUBLICAN, Jan. 2, 1836; Nettels, *supra* note 137, at 224.

²³⁴ WOODVILLE REPUBLICAN, Jan. 2, 1836.

²³⁵ *Id.*

resonated with federal officials, practitioners, and claimants in Mississippi.

IV. JUDGE GEORGE ADAMS (1836-1838)

When Ellis resigned his district court judgeship, President Jackson appointed his successor without delay. In late January, 1836, Mississippi newspapers were reporting the departure of Ellis and speculating on who would fill the judgeship, one adding that “our state is interested that this thing should be done more speedily than on any other occasion.”²³⁶ Jackson had, by then, already nominated U.S. Attorney George Adams as Mississippi’s fourth U.S. district court judge, and he was confirmed by the Senate on January 20, 1836.²³⁷

George Adams, born in 1784, was a native of Lynchburg, Virginia. As a young man he moved to Frankfort, Kentucky, where he read law and kept a private practice from 1810 to 1825 while serving in the Kentucky House of Representatives in 1810, 1811, and 1814.²³⁸ In 1811, Adams wed Anna Weissinger, and they had three children. Their sons, Wirt Adams (1819-1888) and Daniel W. Adams (1821-1872), were later Confederate Generals.²³⁹ The family moved to Natchez in 1825, where George Adams practiced law until 1828, when Mississippi voters elected him attorney general for a year. In 1830, after briefly resuming his law practice, Adams was appointed by President Jackson as the U.S. attorney for Mississippi, and in 1834, the President renewed the appointment.

Adams, like Powhatan Ellis, was a Jackson loyalist. In 1835, he and William Gwin had persuaded Robert J. Walker (1801-1869) to challenge George Poindexter for his Senate seat, and steered the Walker campaign to victory. At the time, many Mississippians disliked Jackson’s war on the bank and his opposition to nullification and as a result, statewide support for the Democratic

²³⁶ Letter from John Henderson, WOODVILLE REPUBLICAN, Jan. 30, 1836; *see also* WOODVILLE REPUBLICAN, Jan. 23, 1836.

²³⁷ *See Biographical Directory of Federal Judges: Adams, George*, FED. JUD. CENTER, <http://www.fjc.gov/servlet/nGetInfo?jid=10&cid=999&ctype=na&instat e=na> (last visited June 1, 2015).

²³⁸ *Id.*

²³⁹ EVERETT, *supra* note 57, at 63.

Party had suffered. While in the Senate, Poindexter had become Jackson's bitter enemy, and invariably opposed the Jackson platform. Poindexter favored nullification, backed the bank, attacked the removal of its government deposits, and opposed Vice President Van Buren, the President's hand-picked successor. So "when the office of District Judge became vacant by the resignation of Powhatan Ellis," wrote Vicksburg attorney Frank Everett, "a grateful Andrew Jackson did not hesitate in appointing George Adams."²⁴⁰

If the district court docket had mushroomed in the flush times before 1837, it swelled to unprecedented numbers in the years that followed. Probably to address a growing backlog, Judge Adams called the spring 1838 term to order in May, a month ahead of the customary June session. That term the clerk created a spreadsheet, in addition to the usual minutes, to help account for the proceedings. The oldest cases on the docket were listed first; the earliest dated back to April 1823, followed by four more cases that originated prior to 1832 (the Randolph Court). There were at least fifteen active cases from the Ellis Court; of those from the June 1835 and January 1836 sessions, Adams continued five, dismissed two, and assigned two for jury trials. When the clerk created the spreadsheet in May of 1838, he listed twenty-eight cases from the June 1836 and January 1837 terms: twelve were continued, seven dismissed, five assigned to juries, and four were decided *nihil dicit* (a judgment rendered against a defendant who refused or neglected to plead or answer). There followed forty-five cases from the May-June 1837 term and one hundred and forty cases from the November 1837 term: approximately forty-eight percent were continued, nineteen percent dismissed, twenty-five percent assigned to juries, five percent were judgments by default, and three percent were rendered *nihil dicit*.

The entries for May 1838, when the clerk created the docket, suggest the actual caseload per term of the court in the late 1830s. In addition to over two hundred active cases from previous terms, the clerk entered 235 new cases originating in the May term: at the end of the term, approximately thirty-one percent were continued, only seven percent dismissed, thirteen percent were

²⁴⁰ *Id.* at 67.

judgments by default, and forty-nine percent awaited a jury assignment. Many of the cases initially held over for a jury were later settled, or otherwise disposed, but the docket book confirms anecdotal evidence that the number of federal cases in the Mississippi district was rising, and sharply: in the fall term of 1838 and the spring term of 1839, the clerk added well over two thousand new cases to the docket.²⁴¹

At the time of Adams's appointment, many federal district courts were severely overworked or severely debilitated by the illness of a judge, and judicial reform was long overdue in Congress. In its 1835 and 1836 sessions, Congress made progress on a plan to organize the western states into circuits and expand the Supreme Court from seven to nine Justices. After Mississippi statehood in 1817, Illinois, Alabama, Maine, Missouri, Arkansas, and Michigan entered the union, but legislators made no changes in the organization of the judicial circuits, except to include Maine in the First Circuit. Since the "Mississippi Memorial" in 1826, one house of Congress had, on several occasions, passed bills creating a new western circuit and adding a seat to the Supreme Court, but forces opposed to President Adams, and later President Jackson, defeated the legislation in order to deprive the President of any appointments. Western congressmen always held firmly to the requirement that Supreme Court Justices "ride circuit" into their districts, in the belief that it insured their representation on the Court, and adamantly rejected bills that proposed to relieve the Justices of those duties, either by creating a separate staff of circuit judges, or by requiring district judges to hold circuit courts. This insistence, plus the fear of bestowing new presidential appointments, combined to derail congressional attempts at reforming the federal judiciary despite years of strain on the western districts and local agitation against prevailing conditions.²⁴²

Finally, on March 3, 1837, both houses of Congress agreed to create two additional circuits and two new seats on the Supreme Court. The Mississippi district, along with the districts of

²⁴¹ The author calculated these figures by reviewing the U.S. District Court Docket Book, Case No. 1 (Apr., 1823) to Case No. 2,731 (May, 1839), located at the Mississippi Department of Archives and History.

²⁴² Nettels, *supra* note 137, at 205-24.

Alabama, Arkansas, and the Eastern District of Louisiana, comprised the Ninth Circuit. The Act repealed the circuit court jurisdiction and powers previously enjoyed by the district courts, and mandated that new circuit courts be held in each district, by “the chief or associate justices of the Supreme Court . . . and the district judges . . . severally and respectively; either of whom shall constitute a quorum.”²⁴³ As part of a suggested schedule for visiting Justices, Congress set the Mississippi circuit court dates on the first Mondays of May and November. The 1837 act ended the clamor for western Justices on the Supreme Court. President Jackson nominated two southerners, John Catron of Tennessee and William Smith of Alabama, to the new seats. Smith declined, after his confirmation in the Senate, and President Van Buren later named Alabama Senator John McKinley to the Court in a recess appointment. After 1837, four of the nine Supreme Court Justices were from southern and western states.

Just over a year later, on June 18, 1838, Congress split the United States court for Mississippi into northern and southern districts.²⁴⁴ Twenty-two counties composed the Northern District, with Attala, Winston, and Noxubee Counties as its southern border.²⁴⁵ Legislators mandated that the new district court be held on the first Mondays of June and December in Pontotoc, the rapidly growing seat of Pontotoc County, which was organized by the state legislature in February 1836.²⁴⁶ In 1832, the Treaty of Pontotoc had opened the area to white settlement, and the federal government opened land offices near present day Pontotoc. In the spring of 1836, the town was laid out by its founder, Thomas C. McMackin. Between 1837 and 1840, its population nearly doubled, reaching almost three thousand.²⁴⁷ The June 1838 Act provided for a clerk, a marshal, and a district attorney in the northern

²⁴³ Act of Mar. 3, 1837, ch. 34, 5 Stat. 176, 176-78 (amending the judicial system in the United States).

²⁴⁴ Act of June 18, 1838, ch. 115, 5 Stat. 247, 247-48 (reorganizing the district courts of the United States in the State of Mississippi).

²⁴⁵ *Id.*

²⁴⁶ *Id.*; Guy Fulton Ferrell, A Study of Political, Social, and Economic Conditions in Pontotoc County Mississippi to 1860, 16 (1939) (unpublished M.A. thesis, University of Mississippi) (on file with the J.D. Williams Library, University of Mississippi).

²⁴⁷ Ferrell, *supra* note 246, at 46.

district court.²⁴⁸ Days later, President Van Buren appointed Samuel F. Buttersworth U.S. attorney for the district.²⁴⁹ On July 17, 1838, the *Mississippi Intelligencer* noted that the Pontotoc Board of Police had contracted for a county courthouse, to be completed by September 1, 1839.²⁵⁰

It was U.S. Senator James F. Trotter (1802-1866), according to an outside observer, who swayed the 25th Congress to reorganize the Mississippi district. Trotter had practiced law in Hamilton (near Aberdeen) beginning in 1823, served in the State legislature from 1827 to 1833, and then as a circuit court judge. When U.S. Senator John Black resigned on January 22, 1838, the state senate appointed Trotter, a Democrat, to fill the vacancy. Trotter served until July 10, 1838, when he resigned to accept an appointment to the Mississippi Supreme Court. His senate career was brief but productive. The *Mississippi Intelligencer*, a Democratic weekly, reported that while Mississippi Representatives Gholson and Claiborne were ill, and Senator Robert Walker was “indisposed,” Trotter was very effective:

This has been strongly illustrated by his getting up and carrying through two important measures for the benefit of the new counties in Mississippi, a long time in advance of their deferred position on the docket of the Senate. . . . We allude to the bill to reorganize the district court of the United States for the State of Mississippi, and the bill to confirm certain purchases of the public lands²⁵¹

The first bill, noted the *Intelligencer*, “establishes a court of the United States for the convenience of that large and important portion . . . of the counties formed out of the Choctaw and Chickasaw cessions of territory.”²⁵²

As a reward for his efforts, Trotter soon found himself at the center of a spat between two northeast Mississippi newspapers over the location of the new district court. Just a few days after he retired from the Senate, a Whig weekly in Columbus moaned that

²⁴⁸ Act of June 18, 1838, ch. 115, 5 Stat. 247, 248.

²⁴⁹ S. JOURNAL, 25th Cong., 2d Sess. 139 (1838).

²⁵⁰ See *Court House*, MISS. INTELLIGENCER, July 17, 1838.

²⁵¹ *Judge Trotter*, MISS. INTELLIGENCER, July 3, 1838.

²⁵² *Id.*

all the managing [in the Senate] devolved upon Judge Trotter, who has certainly managed as adroitly as another little man, Martin Van Buren, could himself. Commend us to little men for management—they are magicians every inch of them! First and foremost, this important Judicial location was made at Pontotoc, a small village nearly one hundred miles from the great metropolis of North Eastern Mississippi, Columbus. This location, of course will strengthen the Judge in that section of the State.²⁵³

Days later, the *Mississippi Intelligencer* defended Trotter and his advocacy of Pontotoc: “if the new Court had been fixed at Columbus,” its editor queried, “what accommodation would it have been to Desoto, Panola, Tunica, and Bolivar counties, to say nothing of others!”²⁵⁴ Journalism in the early republic regularly fanned rivalries of party and place, and Senator Trotter was sure to be maligned in other Mississippi towns after winning federal patronage for his own section, but the Pontotoc editor made a valid point: his town was closer to the geographical center of the new northern district than Columbus. For those on the losing end of Trotter’s triumph there was a silver lining: “to please the Whigs of Columbus,” smacked the *Southern Argus*, “by throwing them a sugar plumb, A.G. Weir, Esq. of this city, was appointed Marshall, an appointment which we certainly cannot condemn.”²⁵⁵

With the 1838 division, the district court in Jackson served the southern district of Mississippi. Washington and Holmes Counties were included in it, and Yazoo, Madison, Leake, Neshoba and Kemper Counties formed its northern border. With a new marshal in the northern district, President Van Buren reappointed William Gwin as marshal for the southern district.²⁵⁶ Neither the 1837 act placing Mississippi in the Ninth Circuit nor the 1838 act splitting the district had specified which location would host circuit court sessions, and the jurisdictions of the respective districts remained unsettled until February 16, 1839, when legislators amended the 1838 act.²⁵⁷ After 1839, the

²⁵³ *United States District Court*, S. ARGUS, July 17, 1838.

²⁵⁴ *Judge Trotter and the District Court*, MISS. INTELLIGENCER, July 24, 1838.

²⁵⁵ *United States District Court*, S. ARGUS, July 17, 1838.

²⁵⁶ S. JOURNAL, 25th Cong., 2d Sess. 139 (1838).

²⁵⁷ Act of Feb. 16, 1839, ch. 27, 5 Stat. 317, 317-18.

northern district court would continue to exercise full circuit court jurisdiction, with its appeals taken directly to the Supreme Court. To constitute a circuit court in the southern district a Supreme Court Justice would hold court, or in his absence, a district court judge. Appeals from the southern district court went to the U.S. Circuit Court in Jackson and then to the Supreme Court. "It became the custom," wrote Erwin Surrency of Mississippi, "to conduct all business in the Circuit Court except for those matters within the exclusive jurisdiction of the District Court, and these appeals became few in number."²⁵⁸

A national Democratic Party organ trumpeted that "[t]he late *renovation* in the constitution of [the Supreme Court] . . . may be regarded as the closing of an old, and the opening of a new, era in its history."²⁵⁹ This was especially true for the newest states, and Mississippians could anticipate visits from Supreme Court Justices for circuit court sessions in Jackson. On the very first such occasion, in late April 1839, court crier James H. Boyd punched Justice John McKinley in the nose after the Justice called him "a stupid jackass," an episode that discouraged any future trips to Jackson by the Justice and palpably slowed business in the new circuit court.²⁶⁰

The assault on Justice McKinley coincided with another unsettled period in the Mississippi federal courts. When legislators divided the district without creating an additional judgeship, they placed an unintended strain on its lone United States judge. The 1838 act required Judge Adams to travel 183 miles (and back) from Jackson to Pontotoc in June and December for northern district sessions, a long distance by horseback or carriage. In addition, he was statutorily bound to hold May and November sessions in Jackson for the southern district. Adams, at age 54, may have regarded this double duty as burdensome, and on September 30, 1838, after just two years and eight months on the bench, he resigned his federal judgeship. George Adams

²⁵⁸ Erwin C. Surrency, *Sketches of the Establishment of the Federal Courts by States [Jurisdiction] and Their Judges: Structure of the Courts Prior to the Civil War*, 212 F.R.D. 611, 713 (2003).

²⁵⁹ See *The Supreme Court of the United States: Its Judges and Jurisdiction*, 1 U.S. MAG. & DEMOCRATIC REV. 143, 143 (1838).

²⁶⁰ Steven P. Brown, *An Assault on Justice: John McKinley and the Affair at Jackson*, 36 J. SUP. CT. HIST. 83, 87 (2011).

resumed his law practice in Jackson and remained active in state politics until his death on August 14, 1844.²⁶¹

CONCLUSION

The federal judiciary got off to a rocky start in Mississippi. Initially, the district court was well served by the appointments of executives Madison and Monroe, but tragedy struck twice. It was not unusual in the antebellum period for federal judges to be active in politics, and the judges of the Mississippi district court who supported President Jackson were especially devoted partisans, but the business of the court eventually suffered under Democratic management. All the antebellum judges of the Mississippi district court migrated to the old southwest, and drew on national political networks to win their judgeships, which they cultivated prior to their lives in Mississippi: the first came from Delaware, the next three from Virginia, and all were Jeffersonian, and later Jacksonian, Democrats. None of the men were second generation lawyers, and only Judge Powhatan Ellis undertook any formal legal studies other than reading law as an apprentice. When George Adams gave up the judgeship in 1838, with its two districts to manage, Mississippians needed an able-bodied jurist willing to commit to the office. After two decades and four judges, and facing a backlog of cases from the “flush times” before the Panic of 1837, Judge Samuel Gholson (1808-1883) finally brought stability to the Mississippi federal judgeship from 1839 until his dramatic resignation in 1861. It was then, according to the newly proclaimed Confederate government of the state, that the first federal court in Mississippi was dissolved by the act of secession.

²⁶¹ See *Biographical Directory of Federal Judges: Adams, George*, FED. JUD. CENTER, <http://www.fjc.gov/servlet/nGetInfo?jid=10&cid=999&ctype=na&instat e=na> (last visited June 1, 2015).

