
Federal Trials and Great Debates in United States History

United States v. Smith
and
United States v. Ogden

by

Winston Bowman

Associate Historian
Federal Judicial History Office
Federal Judicial Center

Federal Judicial Center
2021

This Federal Judicial Center publication was undertaken in furtherance of the Center's statutory mission to "conduct, coordinate, and encourage programs relating to the history of the judicial branch of the United States government." While the Center regards the content as responsible and valuable, these materials do not reflect policy or recommendations of the Board of the Federal Judicial Center.

Contents

Part 1. The Cases in Context, 1

A Short Narrative, 1

The Judicial Process in *United States v. Smith* and *Ogden*: A Chronology, 27

Part 2. Media Coverage and Public Debates, 31

Part 3. The Federal Judiciary, 35

Legal Questions Before the Federal Courts, 35

The Federal Courts and Their Jurisdiction, 38

Part 4. Biographies, 41

Judges, 41

Defendants, 44

Lawyers, 46

Other Actors, 51

Part 5. Historical Documents, 57

Document 1: Neutrality Act, June 5, 1794, 57

Document 2: Thomas Jefferson, Special Message to Congress
on Foreign Policy, December 6, 1805, 58

Document 3: Letter from Francisco de Miranda to William Smith,
December 14, 1805, 60

Document 4: Letter from James Biggs to Unknown Correspondent,
February 5, 1806, 61

- Document 5: Attributed to Carlos Martínez de Yrujo, “Serious Questions to Mr. Madison,” ca. February 1806, 62
- Document 6: “Voluntary Examination of Col. Smith,” March 1, 1806, 64
- Document 7: Letter from John Breckenridge to Thomas Jefferson, March 18, 1806, 67
- Document 8: Pretrial Arguments, April 8–9, 1806, 68
- Document 9: “Memorial of Samuel G. Ogden,” April 18, 1806, 70
- Document 10: Letter from James Madison to Thomas Jefferson, May 28, 1806, 72
- Document 11: Letter from James Madison, Henry Dearborne, and Robert Smith to the U.S. Circuit Court for the District of New York, July 8, 1806, 72
- Document 12: Cadwallader Colden, Argument in Support of Defendant’s Motion for an Attachment Against Absent Witnesses, July 14–15, 1806, 73
- Document 13: Nathan Sanford, Argument Against Defendant’s Motion for an Attachment Against Absent Witnesses, July 14–15, 1806, 75
- Document 14: Ruling on Absent Witnesses, July 17, 1806, 76
- Document 15: Testimony of Samuel Ogden, July 18, 1806, 79
- Document 16: Testimony of John Swartwout, July 21, 1806, 84
- Document 17: Testimony of John Fink, July 21, 1806, 88
- Document 18: Josiah Ogden Hoffman, Closing Argument for the Defense, July 26, 1806, 90
- Document 19: Letter from Pierpont Edwards to James Madison, July 30, 1806, 93
- Document 20: “The Miranda Case,” *National Intelligencer*, August 8, 1806, 96
- Document 21: “The Miranda Trial” *New York Weekly Inspector*, ca. September 24, 1806, 98
- Document 22: Letter from Henry Ingersoll to Johnathon Ingersoll, October 26, 1806, 100
- Document 23: Letter from John Adams to James Lloyd, April 5, 1815, 101

Bibliography, 103

Image Credits, 105

1

The Cases in Context

A SHORT NARRATIVE



Smith

The 1806 trials of Colonel William Stephens Smith and New York merchant Samuel Ogden are largely forgotten today, but they were among the most controversial criminal cases of the Early Republic. Smith, the son-in-law of former president John Adams, was accused of helping to orchestrate an audacious military expedition to Venezuela led by revolutionary Francisco de Miranda. Ogden, the owner of the expedition's flagship, was charged with "fitting out" the vessel for the mission to

liberate the Spanish colony. Federal prosecutors, working at the behest of President Thomas Jefferson, alleged that these actions violated the Neutrality Act of 1794, which barred private individuals from initiating military undertakings against nations with which the United States was “at peace.” (See [Document 1](#).)

In the defense’s view, America was not genuinely “at peace” with the Spanish Empire when Smith and Ogden helped prepare the expedition. The United States had not declared war on Spain, but tensions ran high amid a rash of maritime skirmishes. Outright war seemed imminent when Miranda set sail in early 1806. More controversially, the defendants also claimed that Jefferson and Secretary of State James Madison had tacitly authorized the mission and changed their tune only after Miranda’s expedition became a diplomatic embarrassment. Defense attorneys subpoenaed Madison and several other high-ranking officials, but Jefferson ordered them not to comply on the seemingly tenuous ground that the trial would interfere with their duties.

This refusal raised significant questions about the powers of the judicial and executive branches. The defendants argued that the administration was denying them the right to a fair trial and flouting the authority of the judiciary. Federal prosecutors believed the subpoenas were merely a ruse to politicize the trials. They argued that the officials’ testimony would be immaterial to the case because Jefferson and Madison did not have the power to authorize private citizens to violate either the peace or federal law. The defendants countered that the president could determine whether a state of war existed in fact even if Congress had yet to make a formal declaration in law. The parties’ positions thus made the power of the presidency and the status of America’s relations with Spain questions for federal jurors, who ultimately acquitted both defendants in separate trials.

The *Smith* and *Ogden* trials drew national attention, with many observers casting them as proxy contests between the Jefferson administration and Adams’s Federalists. The trials, which took place in the U.S. Circuit for the District of New York, also proved a substantial test for the political independence of the federal judiciary. Federalists sharply questioned the propriety of District Judge Matthias Tallmadge’s¹ conduct before and during the trials. The unusual appearance of another federal judge, Pierpont Edwards of the District of Connecticut, as a prosecuting attorney led some to question the courts’ neutrality.

The *Smith* and *Ogden* cases demonstrate how federal trials can distill and crystallize otherwise abstract social forces at a fixed moment in time. The trials are useful tools for teachers and scholars investigating the political and legal culture of the Early Republic. They provide a vivid illustration of the power of juries in early federal trials and the

1. Surname spellings were not regularized in the early nineteenth century. For example, Judge Tallmadge’s name was spelled “Talmadge” in the published record of the case and in Thomas Jefferson’s letter of nomination to the Senate. Similarly, Justice William Paterson’s was routinely spelled “Patterson.” These materials attempt to use the most commonly accepted spelling wherever possible.

significant role that the judiciary played in the development of early American foreign policy. Just as importantly, the cases illumine the complex interaction between juridical interpretations of the law and the social and political milieu in which those interpretations percolate.

International Politics and the Neutrality Act

The *Smith* and *Ogden* cases arose during a tumultuous period for the western world. The French Revolution (1789–1799) initiated decades of war, revolution, and counterrevolution in Europe and the Americas. President George Washington believed that the United States had little to gain from entanglement in these conflicts and made neutrality in European affairs a cornerstone of his administration's foreign policy.

That neutrality was hard to sustain, however, as war destabilized much of the Atlantic World. The Haitian Revolution (1791–1804) in the erstwhile French colony of Saint-Domingue produced the first successful slave uprising in world history. Imperial powers fretted that the revolutionary bug might bite the rest of the Western Hemisphere. By the same token, Britain saw the potential to gain power in the region at the expense of its continental rivals. British forces provided sporadic aid to Haitian revolutionaries and seized French ports in the Caribbean.

Interpreting treaties from the Revolutionary War broadly, France took the position that it had the authority to license private military ships in the United States for service against the British fleet. Without Washington's approval, France's ambassador to the United States urged Americans sympathizing with his nation's cause to launch privateer missions against the British.

Eager to avoid war with Britain, Washington made a formal proclamation of neutrality in 1793. This declaration was partly designed to authorize prosecutions against Americans breaching the peace. However, the government found it difficult to enforce Washington's neutrality proclamation in federal trial courts in the absence of a criminal statute. After a federal jury voted to acquit in the high-profile trial of an American privateer who had captured a British ship, Washington called on Congress to help resolve the crisis.

Lawmakers obliged on June 5, 1794, by passing the Neutrality Act. This law imposed a punishment of up to three years in prison and a fine of up to \$2,000 on Americans planning, outfitting, or undertaking military actions against any nation with whom the United



Washington

States was at peace. In doing so, the statute provided a mechanism for preventing further privateering. By predicating criminal trials on a state of peace, the Act also indirectly facilitated judicial interpretation of America's treaty obligations and neutral status. Finally, the Act gave the president significant power to combat violations of American neutrality with military force. The Act was initially designed to last two years, but it was extended in 1795 and several times thereafter (it remains in force in a modified form).

The Neutrality Act did not, however, resolve all debate over America's involvement in European conflicts. Shortly after assuming the presidency in 1797, Adams assumed a pro-British stance that drew the nation close to war with France. Increasingly, the nation's politics divided along party lines between Federalist supporters of the government's policies and Democratic-Republicans (also known as Jeffersonians) who opposed the government on a range of issues including Adams's pro-British inclinations.

These were not simply differences of opinion. Most of the Constitution's framers believed that permanent political factions would corrupt and corrode the nation's political system. Most Federalists viewed their opponents as illegitimate insurgents rather than the loyal opposition. Following the passage of the Alien and Sedition Acts of 1798, several Jeffersonian politicians and publishers were prosecuted in the federal courts for criticizing government policy. The Jeffersonians swept to power in the election of 1800, but partisan resentments continued to simmer in the years between the election and the *Smith* and *Ogden* cases.

Tensions with Spain

By the time Jefferson became president in 1801, the European conflict had assumed a different cast. French military leader Napoleon Bonaparte had executed a successful coup in 1799. His *Grande Armée* embarked on a series of invasions that elevated France to continental dominance for several years.

Spain's 1802 retrocession of the Louisiana Territory to France threatened to drag the United States further into European affairs. Spain had exercised a relatively loose grip over the large tract of land stretching from the Mississippi Delta to the Upper Midwest since acquiring it from France in 1762. Starting in 1795, for example, Spain had permitted American merchants liberal access to the Mississippi River through New Orleans. After this period of comparative tranquility, many found the notion of the bellicose Napoleon as America's next-door neighbor unsettling. Federalists demanded war with France, and even Jefferson predicted that the retrocession would be the "embryo of a tornado which will burst on the countries on both shores of the Atlantic."

Jefferson sent his trusted ally James Monroe to France to negotiate peace assurances from Napoleon. Monroe was astonished to find a very different offer on the table when

he arrived. Stung by France's inability to hang on to Saint-Domingue and convinced that Britain would seize the Louisiana Territory should full-scale war break out in the Western Hemisphere, Napoleon was prepared to sell the land to the United States.

The Louisiana Purchase nearly doubled America's territory, but it came with its share of diplomatic headaches. Spain initially objected to France's right to sell the land to the United States. Relations between America and Spain further deteriorated following quarrels over the boundaries of the purchased territories and the administration of Spanish subjects' land claims. Spain attempted to block access to New Orleans and seized several American vessels. Jefferson again dispatched Monroe as an envoy, but negotiations went nowhere.

By 1805, the crisis reached a point that prompted Jefferson to deliver an unusual message to Congress. While he stopped short of demanding a declaration of war, Jefferson laid out a strong case against Spain and left it to Congress to determine whether to make such a declaration. In the meantime, Jefferson promised to meet force with force and repel attempts to interfere with American maritime interests. (See [Document 2](#).)

Miranda's Expedition

It was against this backdrop that Miranda, a Venezuelan military officer turned revolutionary, planned a daring expedition to liberate his homeland from Spain with the assistance of sympathetic Americans. Miranda was a quintessential man of his time: intensely cosmopolitan and idealistic to the point of recklessness. For several decades, he had travelled extensively throughout Europe and the Americas, seemingly never straying far from the great events of the age. Having participated, to varying degrees, in both the French and American revolutions, Miranda perceived that South America was ripe for its own moment of deliverance.

By 1805, Miranda had spent several years in Britain attempting without success to enlist Prime Minister William Pitt the Younger's aid for South American liberation.

Miranda seems to have run out of patience by the time he set sail for the United States. It is probable that he would have relished any formal aid from the American government but had convinced himself that he could spark a successful revolution with just a few hundred men on a private mission. Although London had declined to back a full-scale mission in South America, Miranda had made important connections in Britain and appears to have



Miranda

believed that the British fleet would lend some form of aid to such a mission once at sea. He also had good reason to suppose that he could secure backing in the United States, having made lasting connections with several members of the American elite during a tour of the new republic in 1783 and 1784.

Arriving in New York in November 1805, Miranda sought out the assistance of Smith, his closest American ally. The two men had become firm friends while traveling in Europe in the mid-1780s and shared a venturesome, romantic spirit. Smith was also in a position to be useful. He was well connected with New York's Federalist political circles. And, as surveyor of the Port of New York, Smith knew many of the men best able to put together a viable expedition. For all that he supported his friend's aims, however, Smith told Miranda he would only go on the mission if he were authorized to do so by the government.

In December 1805, Miranda gained audiences with Madison and Jefferson. He knew both men from his previous journey to America and came to Washington bearing a letter of introduction from eminent founder Benjamin Rush. Miranda's main entrée, however, seems to have been diplomat Rufus King, who recommended that the administration meet with Miranda to find out more about British intentions in the Americas.

What Jefferson and Madison agreed to during their meetings with Miranda remains conjectural. Particularly encouraged by a meeting with the secretary of state, Miranda wrote to Smith that the administration's "tacit approbation and good wishes are evidently for us, and they do not see any difficulty that may prevent the citizens of the U. States in attending personally or sending supplies for this object, provided the publick laws should not be openly violated." (See [Document 3](#).) Madison insisted that he and Jefferson had been more tactful. He later told Monroe that "the Gov[ernment] proceeded with the most delicate attention to its duty; on one hand keeping in view all its legal obligations to Spain, and on the other, not making themselves, by going beyond them, a party ag[ainst] the people of S. America." Madison's claim that "I do not believe that in any instance a more unexceptionable course was ever pursued by any Gov[ernment,]" was probably a stretch. Even so, it is telling that Miranda warned Smith that Madison had deemed it "impracticable" to give Smith an explicit license to join the expedition and thought "it easier to take the risk upon yourself at once."

Smith shared Miranda's idealism and thirst for adventure; the Adamses sometimes groused that their only living daughter had married a well-meaning fool. Even so, it appears that Smith was not prepared to take the risk to which Madison had alluded. Though he would help Miranda secure the means for the expedition, he decided against embarking on it himself. Remarkably, he did allow his nineteen-year-old son, William Steuben Smith, to serve as Miranda's aide de camp. Miranda promised to treat the young Smith as he would a son, but all must have understood he would be in great danger. When President Adams

later discovered that his grandson “had been taken from Colledge, when senior sophister on the point of taking his Degree, and Sent with Miranda to liberate South America,” he “[s]aw the ruin of my only daughter and her good hearted enthusiastic Husband, and had no other hope or wish or prayer, than that the ship with my Grandson in it might be sunk in a storm in the Gulph stream.” (See [Document 23](#).)

The elder Smith introduced Miranda to Thomas Lewis, an accomplished ship’s captain, and Ogden, a young but influential merchant who owned several seagoing vessels. Ogden agreed to allow Miranda to use one such ship, the *Leander*. Ogden also equipped the *Leander* with artillery and printing presses (to produce propoganda) and underwrote much of the expedition. Miranda gave Ogden three promissory notes to secure his investment. He also agreed to execute commercial trades in Venezuela on Ogden’s behalf. If the notes were honored and the trades successful, Ogden would have made a considerable profit. Ogden may also have been motivated by the more speculative prospect that his aid would pay long-term dividends in the form of trade with a friendly South American nation.

Troop recruitment efforts probably drew on Smith’s name, and he may also have persuaded some men to join up himself. Some of Smith’s adversaries asserted that he used his position to hoodwink recruits into believing they would set sail in the service of their own nation, a claim given some credence at trial by Ogden’s associate John Fink. Some accounts from members of the *Leander*’s crew suggested that they may have been tricked into thinking they were to aid a mission to protect mail between Washington, D.C., and New Orleans. (See [Document 22](#).) A few gentlemen volunteered to serve as officers, apparently deducing the real purpose of the enterprise from Miranda’s reputation. Apart from this, however, Ogden and Fink assembled the makeshift invasion force from New York’s backstreets and butcher shops.

Miranda, Smith, and Ogden adopted a strange approach to secrecy. On the one hand, even the officers were mostly kept in the dark as to the exact aims of the expedition. One later swore to Spanish officials that he had been informed only that the *Leander* would sail to Haiti en route to an unknown destination. On the other hand, the expedition’s organizers did so little to conceal their preparations around New York harbor that all the relevant governments and several newspapers were aware that Miranda was putting together an expedition before he set sail. Simón Bolívar, who would eventually succeed where Miranda failed, read news of the expedition as far away as London. He rightly predicted that Venezuela would not welcome Miranda’s return.

Miranda set sail on February 3, 1806.² The *Leander* first sailed to Jacquemel (now the port of Jacmel, Haiti), where Miranda finally informed his men of the details of their mission. They were to wait for more ships (two schooners eventually arrived) and train for

2. Some accounts list the date as February 5, though this is apparently when the vessel cleared into open sea.

combat before sailing to the Spanish Main to liberate its inhabitants. Each of them was given the option of enlisting in the newly formed “Columbian Army” or abandoning the mission far from home. Almost all of them signed up, pledging to “be true and faithful to the free people of South America, independent of Spain,” although a handful of the men insisted on swearing a modified oath that reiterated their loyalty to the United States. Miranda hoisted a flag of his own design—one subsequently adopted in part or whole by three South American nations. It was an auspicious start to what would become a calamitous adventure.

Investigation and Indictment

Even as Miranda was setting sail, his expedition was beginning to cause diplomatic tensions. The day after Miranda left New York, Carlos Martínez de Yrujo,³ the Spanish Minister to the United States, wrote to Madison to urge him to take “effective measures to counteract . . . the scandalous violation of the neutrality of the United States by the traitor Miranda, and some American citizens.” Having previously demanded that Yrujo leave the seat of government as a consequence of the broader frictions with Spain, Madison did not respond to the minister’s complaint. Yrujo then anonymously published a series of pointed interrogatories to Madison in the *Philadelphia Gazette* questioning the administration’s apparent support for the expedition. (See [Document 5](#).)

Louis Marie Turreau, the French Ambassador to the United States, intervened as an interlocutor between Yrujo and Madison, passing on another complaint from the Spanish minister. Madison responded that Miranda’s expedition “was no sooner reported to the Government than instructions were given by the President for immediately investigating the facts, and putting in execution the law against whatever offenders might be within its reac[h].” Madison rejected insinuations that either he or Jefferson had countenanced the mission, assuring Turreau in later correspondence that “if the U. States should at any time find it necessary to engage in hostility with any foreign nation, it will be conducted by their Government [i]n a manner neither under hand nor unwarrantable, but in an honorable conformity to those rules which are prescribed by the laws of War.”

Over the course of 1806, however, it became increasingly clear that the United States would avoid war altogether. In February, Congress voted an appropriation of funds designed to enable Jefferson to negotiate the sale of disputed land from Spain. In April, Congress did not issue a declaration of war after debating Jefferson’s message on the crisis. And, in October, Spain and the United States reached an agreement under which part of

3. The prevailing spelling convention later changed to “Irujo.” These materials employ the earlier convention to remain consistent with the usage in primary source documents.

western Louisiana remained neutral territory. The *Smith* and *Ogden* investigations and trials unfolded in tandem with this fragile *détente*.

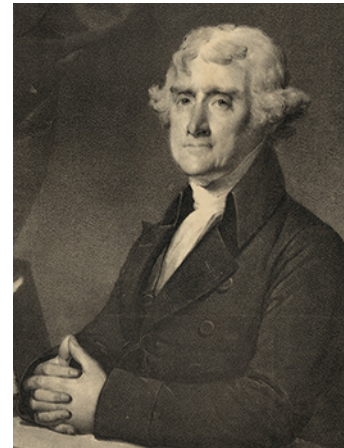
On February 13, Madison asked Nathan Sanford, New York's federal district attorney, to investigate Ogden. The inquiry quickly expanded to include Smith and Fink. Fink, however, was not prosecuted and later testified for the government.

Unusually, Judge Tallmadge conducted interrogations of Ogden, Smith, and Fink on arrest warrants and under threat of imprisonment. Judge Tallmadge's actions were considered sufficiently irregular at the time that the grand jury in his district later issued a presentment rebuking him for his conduct. The judge's involvement in the investigation may have reflected the importance the government had placed on showing France and Spain that the United States was taking its commitment to neutrality seriously. It may also have been a response to controversy surrounding Sanford's early conduct of the investigation. There is some evidence to suggest that Sanford burned Ambassador King's deposition testimony after King relayed a conversation he had had with Miranda regarding meetings with senior officials. Reports of this extraordinary conduct reached Madison and Jefferson from allies concerned that Sanford's actions might unintentionally strengthen the impression of "the [c]ountenance afforded [Miranda] by the executive department of the United States."

President Jefferson sent the statements Judge Tallmadge collected from Smith, Ogden, and Fink to Attorney General John Breckinridge, seeking legal advice on the case. On March 18, Breckinridge advised Jefferson that "there remains no doubt, but that the laws of the U. States have been flagrantly violated." The Attorney General confidently predicted that the defendants were certain to be convicted should they stand trial. He also dismissed the putative defense that the administration had sanctioned the expedition. No court would seriously entertain such an argument, Breckinridge contended, since it would constitute "a Weapon with which every conspicuous offender might attempt to wound the administration; as by only making the allegation, he would



Sanford

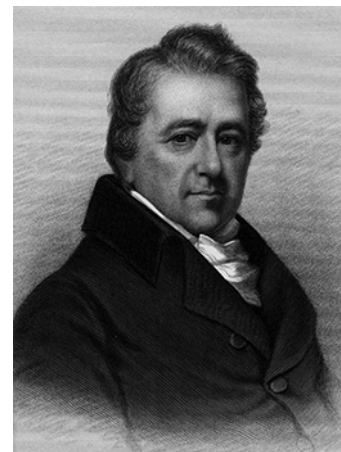


Jefferson

claim the right to call upon any of the High officers of the Government, to justify his defence, or to exculpate [himself].” (See [Document 7](#).) Jefferson authorized the prosecution to proceed. Much as Washington had pressed for the prosecution of privateers to persuade Britain of American neutrality in the 1790s, it is likely that Jefferson hoped the prosecution would help keep the delicate peace with Spain. He also may have been motivated to clear the administration of growing suspicion that it had operated in a less than honorable manner. If this was part of Jefferson’s hope for the *Smith* and *Ogden* cases, it backfired badly.

The statements Judge Tallmadge had taken during the investigation formed part of the evidence that led a grand jury to indict Smith and Ogden on April 7, 1806, for Neutrality Act violations. Smith’s statement, which acknowledged that he had given some aid to Miranda, also gave Jefferson cover to fire him from his government position. But Judge Tallmadge’s pretrial conduct was also to provide useful fodder to defense attorneys and journalists who argued that the prosecution was a politically motivated show trial.

This argument was lent further color by the appearance, “of counsel” to the prosecution, of Judge Pierpont Edwards of the District of Connecticut. Madison had authorized Sanford to select any cocounsel he wanted, “[c]onsidering the serious nature of the offence and the standing in society of some of the accused.” Edwards had only assumed his judicial post in February 1806, and it is likely that Sanford chose him for his reputation as an advocate, rather than because of (or solely because of) his status as a judge. This kind of extrajudicial legal practice would violate modern canons of judicial ethics, but federal judges were not bound by such formal ethical rules in the early nineteenth century. Even so, Sanford likely erred in selecting Judge Edwards, as the latter’s appearance at the prosecutors’ table tessellated with the defense’s critique of the government’s motives.



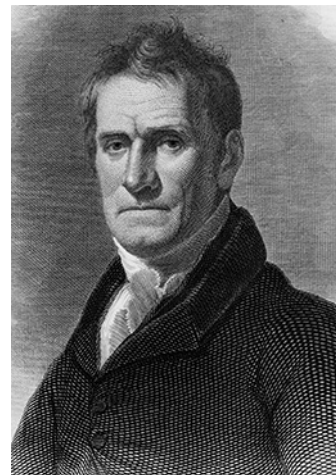
Edwards

Pretrial Arguments

Smith and Ogden were tried in separate trials before different juries. Even so, they were represented by the same lawyers (a team comprised of three of New York’s leading Federalist attorneys and a radical Irish advocate), and Judge Tallmadge applied the same rulings in both cases. Two of the legal issues raised before Smith’s trial—those regarding Judge Tallmadge’s interrogations of the defendants and the nonappearance of prominent witnesses—involved some of the most important questions raised by the cases and occupied almost as much public attention as the trials themselves.

On April 8, 1806, the day after the grand jury returned the indictments, lead defense lawyer Cadwallader Colden entered pleas in abatement on behalf of both defendants. This form of pleading (abolished in 1946) enabled defendants to challenge indictments for procedural irregularities. In this instance, Colden argued that the grand jurors who found the indictments “had before them illegal testimony.” The defendants claimed that Judge Tallmadge had improperly compelled their arrests, testimony, and signatures, and that the evidence thus procured should have been withheld from the grand jury.

The government’s response the following day precipitated the cases’ first frisson of courtroom drama. Sanford and Colden were already professionally acquainted. The year before, they had represented opposing sides in *Pierson v. Post* (1805), one of the most important property cases in American history. If their recorded comments are any guide,⁴ there was no love lost between the two advocates.



Colden

Sanford responded scornfully to the pleas, arguing that the defendants’ contentions were “so frivolous . . . that he would have been justified in taking no notice of them as pleas.” In truth, Colden could not have held out much hope for the pleas. Although Judge Tallmadge’s pretrial conduct was unorthodox, the court had already denied a motion requesting the suppression of the depositions during the grand jury proceedings just a few days earlier. Nonetheless, Colden responded, perhaps rashly, that he hoped “to convince, *even this court*, that the plea is not frivolous.” Though a member of the New York establishment (he later became the city’s mayor), Colden was a fierce and sometimes impetuous advocate. He had gone too far here.

Believing Colden’s tone “impressively contemptuous,” Judge Tallmadge interrupted the proceedings to demand that the lawyer explain his remark. When Colden responded that his words spoke for themselves, Tallmadge ordered the marshal to arrest him. Unwilling “to . . . make unavailing efforts against irresistible authority,” Colden attempted to extricate himself from custody by claiming that he meant only to indicate that it would be harder to persuade the judge who had taken and heard the defendants’ testimony than a judge “new to the business.” After demanding that Colden repeat his explanation in an apparent attempt to parse his wording, Tallmadge told the marshal to “discharge *that man* out of custody.” (See [Document 8](#).)

4. The record of the arguments (and of the trials) was partly presented in summary form, rather than as a verbatim transcript. Parts of the record, however, appear to include direct transcriptions, particularly where they involve the arguments of counsel and rulings from the bench.

When the attorneys finally moved on to the substance of the pleas, Sanford argued that the defense could not abate an indictment based on the nature of the evidence that the grand jury had been shown. Grand juries were often shown evidence that was not admissible at trial, he pointed out. Even if the grand jury had been shown evidence it should not have seen, the defendants' best remedy was a trial before an impartial petit jury, not the abatement of the indictment.

Colden responded by asking, "Is it not the right of every man that he shall not be put to answer an indictment, unless it shall have been found according to the rules of law?" Grand juries, Colden argued, were designed to serve as "a protection against ill founded accusations." If indictment proceedings were as free from the rules of law as the prosecutors supposed, however, they would serve the opposite function. "Does this fall short," Colden inquired with a note of hyperbole, "of what we have heard . . . respecting the most despotic tribunals in the most enslaved nations?"

Judge Tallmadge ruled in the government's favor on April 10, and the defendants pleaded not guilty. Though he had taken a risk by advocating so strongly for the iniquity of the judge's pretrial conduct, Colden was also giving a public preview of the defense's trial strategy by intimating that the court was in cahoots with an overzealous political prosecution. Though this ultimately proved a successful approach, it raised the stakes of an already high-profile case.

Judge Tallmadge set the trials to begin on July 14. This timing would allow Supreme Court Justice William Paterson to hear the case while riding circuit. The process of circuit riding assigned each of the justices to sit with district judges on circuit courts (then the primary trial courts in the federal system). Although district judges could hear circuit court matters on their own, Supreme Court justices often sat on major trials.

In May and June, the defense served subpoenas on several prominent officials including Madison and his cabinet colleagues Henry Dearborn (Secretary of War) and Robert Smith (Secretary of the Navy). To build their case that the defendants were operating with the government's approval, the defense attorneys wanted to question officials with direct knowledge of the administration's position on Miranda's mission. The defense also planned to lay out the tense relations between Spain and America in late 1805 and early 1806 to argue that the nations were not "at peace."



Tallmadge

The subpoenas posed a dilemma for the Jefferson administration: if the officials appeared in court, they risked being subjected to a humiliating public examination; if they did not appear, they would allow the defense to argue the government had something to hide. Nonappearance also risked publicly disrespecting the judicial process. Madison initially told Jefferson, “I find a strong impression existing that the attendance is inevitable.” (See [Document 10](#).) Nevertheless, Jefferson ordered the officials not to attend the proceedings. Writing to the court, Madison explained that although he and Secretaries Dearborn and Smith were “[s]ensible of all the attention due to the writs of subpoena issued in these cases,” they could not travel to New York due to the demands of their positions in Washington. (See [Document 11](#).)

On the eve of trial, Colden moved the court—now staffed by both Judge Tallmadge and Justice Paterson—to delay the trial and issue an attachment (an order compelling attendance) against Secretaries Madison and Smith and two other officials. Colden began what turned into a three-day argument by laying out two objections to the witnesses’ refusal to appear. First, he asserted that the officials’ absence had frustrated his clients’ exercise of their Sixth Amendment right to “compulsory process for obtaining witnesses in [their] favor.” Second, Colden claimed that the officials’ defiance of the subpoenas amounted to contempt of court, which Paterson and Tallmadge should punish to vindicate respect for the courts and the rule of law. Colden and cocounsel Josiah Ogden Hoffman, Thomas Addis Emmet, and Richard Harison argued that the officials were effectively claiming to be above the court’s authority by predicating their nonappearance on an order from the president, itself premised on the idea that executive-branch duties were more important than showing up for trial. (See [Document 12](#).)

This would have been a charged claim at any point in American history, but it was especially so against the political backdrop of the early nineteenth century. Many Jeffersonians remained hostile to the judiciary after the controversial prosecutions of critics of the Adams administration in the late 1790s. Only a year before Smith and Ogden stood trial, Jeffersonians in Congress had narrowly failed to remove Justice Samuel Chase, one of the judges most closely associated with those prosecutions. Jeffersonians had also accused Adams of filling new judicial positions with his cronies in the closing weeks of his



Madison

administration. In 1802, they had successfully fought to repeal the law that created these judicial positions, removing several federal judges from office. It would not have been lost on politically savvy observers that Smith's appointment to a prominent federal post had also come near the close of his father-in-law's presidency.

Jefferson's critics claimed that he was now trying to have it both ways: using the judicial system to prosecute his political enemies while refusing to respect the courts' authority over his surrogates. The defense attorneys attempted to leverage the situation by pressing the judges to show their independence and send a clear message about their authority. Yet such an act could be fraught with peril: should the judges issue orders against Cabinet members and fail to bring them to heel, the courts might appear impotent or subordinate to the executive.

Sanford and Edwards offered the court a way around these difficulties by arguing that the defendants were not entitled to compel the witnesses to testify, since any evidence they could provide would be immaterial to the case. For the prosecution, the only relevant questions were whether the defendants had helped Miranda to set in motion a military expedition against a Spanish colony and whether Congress had declared war on Spain. Executive officials in Washington were not competent witnesses to prove or disprove those facts. This line of reasoning arguably did not address the defense's claim that the witnesses' nonappearance showed contempt for the court. Indeed (perhaps indicating a tension between his roles as advocate and judge), Edwards declined to argue that issue other than to offer a vague panegyric to judicial independence. Sanford argued only that an attachment was not the correct procedural device to bring the witnesses before the court. Nevertheless, Edwards and Sanford's arguments did at least attempt to minimize the impact of the witnesses' refusal to appear.

The defense tried to meet the materiality issue with an affidavit from Smith claiming that the subpoenaed officials could prove that he had acted "with the knowledge and approbation" of the president and secretary of state. The affidavit also pointed to a potential issue of fairness. The witnesses, Smith claimed, could show that his prosecution was "commenced . . . by order of the president," who had then commanded his subordinates not to cooperate with the court by withholding potentially exculpatory testimony.

The government lawyers responded to Smith's affidavit by arguing that the president and the secretary of state were effectively powerless as far as these cases were concerned. Jefferson and Madison could not, the prosecution claimed, authorize Smith or anyone else to launch an expedition violating American neutrality. The president, moreover, did not have the power to authorize acts of war; that power lay with Congress alone. In the absence of a congressional declaration of war, Sanford argued, the defense was effectively claiming

that the president could empower citizens to break the law. Even an officer as formidable as the president did not have that power.

The defense counsel answered that while the president might not be able to authorize lawbreaking or declare war, he *did* have the power to recognize when a de facto state of war existed and respond as he saw fit. Jefferson had all but told Congress as much in his speech on the Spanish-American crisis. A state of war, each of the defense attorneys argued, could exist based solely on the aggressions of America's enemies, and the president was within his rights to act accordingly. To the government's claims that Smith's affidavit was insufficient to lay a foundation that this was what Jefferson had done, Emmet theatrically offered to put on the stand Vice President George Clinton, who was watching the proceedings from the gallery. That Clinton was Judge Tallmadge's father-in-law likely added a sting to Emmet's rhetorical offer.

Justice Paterson's ruling on the subpoenas helped to frame the trial that followed. He appears to have believed both questions more difficult than the government had suggested, at one point expressing regret that the full Supreme Court was not able to consider the matter prior to the trial. Nevertheless, he concurred with the government's position that the witnesses' absence did not deny the defendants' Sixth Amendment rights. The witnesses subpoenaed were not material to the case because, even if they could prove "every syllable" of Smith's affidavit, their testimony could not affect the question of whether the defendants had violated the Neutrality Act. The president, Paterson emphasized, "cannot controul the statute, nor dispense with its execution, and still less can



Paterson

he authorise a person to do what the law forbids." Were it otherwise, the execution of the law would be "dependent on [the president's] will and pleasure; which is a doctrine that . . . will not meet with any supporters in our government." Justice Paterson accepted the defense argument that the president had to have the power to defend the nation against foreign aggressors regardless of whether Congress had declared war. Nonetheless, he reasoned that "to repel aggressions and invasions is one thing, and to commit them against a friendly power is another." The president had the power to do the prior, but not the latter. As a result, Paterson denied the defendants' request for a delay pending the appearance of the absent witnesses. (See [Document 14](#).)

On the second issue—whether the court could issue an attachment against the recalcitrant officials to punish them for contempt of court—Justice Paterson and Judge

Tallmadge disagreed. This difference of opinion could have been significant. Until 1889, defendants had no right of appeal in most federal criminal cases. But an 1802 statute permitted appeals to the Supreme Court when the judges on a circuit court differed on a legal issue. Justice Paterson declined to state which judge had taken which position or why. It is possible that he did not reveal this information because the judges had agreed to state a pro forma division to permit an appeal should Smith or Ogden be convicted. Judges occasionally did so when they considered a legal issue particularly important or difficult.

Newspapers, however, reported that Justice Paterson had sided with the defendants. It is possible that these reports were based on speculation due to Paterson's perceived Federalist allegiances. As the presiding judge, Paterson's view would ordinarily have controlled the court's action, but the court did not compel the officials to answer contempt charges. This general rule may have been complicated in the *Smith* and *Ogden* cases, however. As he finished reading his ruling from the bench, Paterson announced that he was in an "infirm state of health" (his physical condition had been poor since he was injured in a coach accident while riding circuit three years earlier). Paterson would not be able to recover in time to preside over the trial, and duly left the bench before the trial commenced. He died less than two months later. Given his departure, it is plausible that Justice Paterson did not want to undermine Judge Tallmadge's authority by making his views known, since the district judge would now have to hear the remainder of the case alone.

The defense lawyers may have failed to get the cases dismissed or delayed, but they were already winning. As Judge Edwards put it in his postmortem report to Secretary Madison, Colden probably made his applications "without the smallest Idea, that the Court would, on these Grounds, postpone the trials; but for the purpose of affording an opportunity to the Counsel of the defendants to impress a belief, that the Story told in the affidavits was true, and to Excite Prejudice against the President and You and the whole Administration." (See [Document 19](#).) If so, Colden's tactic proved effective.⁵

The Prosecution's Case

Smith's trial began in earnest on July 18, 1806. The pool of potential jurors, like those for most federal petit juries of the time, had been assembled by the marshal of the court around the time the defendants were indicted in April. Only six of the forty-two men selected for the jury pool were Jeffersonians. The prosecutors complained that Marshal John Swartwout had intentionally stacked the deck in Smith's favor by selecting a sympathetic group of jurors.

5. It is not entirely clear from the record of the case how much of the attorneys' pretrial arguments the jurors heard. A statement made in Colden's opening statement in *Ogden* suggests that both juries may have heard all of the arguments. As there is no notation indicating that any argument took place away from the jury, this is entirely possible.

Paranoid as that suggestion might sound to modern readers, it was not altogether implausible. As fate would have it, Marshal Swartwout and Smith (who had been the first U.S. marshal for the District of New York) were close friends and political allies. In 1802, Smith had served as Swartwout's second in a politically motivated duel against DeWitt Clinton, the Jeffersonian Mayor of New York. (Clinton, who was a U.S. senator at the time of the duel, shot Swartwout in the leg but abandoned the duel when Swartwout stubbornly continued to demand satisfaction after several rounds of shooting.) On May 1, Madison had briefed the cabinet that Smith's "bosom friend [had] summoned a pannel of jurors, the greater part of which were of the bitterest federalists." The cabinet unanimously voted to remove Swartwout, and he was terminated in short order.

Sanford may have alluded to the possibility that the jury was not naturally favorable to his case during his opening statement. "If I supposed it possible that you had come to this seat of justice with any partialities whatever," he told the jury, "I would entreat you to lay aside every partial feeling, to dismiss every prejudice, and discard every passion." But it would, he assured the jurors with a hint of sententiousness, be an "insult" to assume they would be anything less than impartial. At the same time, his remarks were also suffused with an extravagant confidence in his case. "The duty which is now assigned to you may be disagreeable," he told the jurors, "but I think I can assure you it will not be difficult."

Consistent with that level of self-assurance, Sanford called Ogden as the first prosecution witness. With Ogden's own trial set to follow Smith's, any questions about the arrangements between the two men were sure to provoke questions about Ogden's Fifth Amendment right against self-incrimination. After a few preliminary questions, Hoffman and Colden interposed a series of objections along this line. The tone of Colden's objections, in particular, made it clear that he was hoping to impress upon the jurors that his clients were being railroaded. He sarcastically argued, for example, that it would be "obvious" why questions about the *Leander's* destination would tend to incriminate Ogden once Judge Tallmadge turned to his "records, and sees that there is an indictment on [the court's] files against the witness for the same offenses with which the defendant is charged." (See [Document 15](#).)

After Judge Tallmadge overruled this first round of objections, Hoffman and Colden continued with protracted speaking objections and Ogden refused to answer the questions. Apparently unwilling to play further into the narrative of a prosecution trampling the rights of the accused, Sanford declined to call on the court to enforce its ruling by compelling testimony. When Sanford asked Ogden whether he had ever chartered a vessel for Miranda, the defense attorneys again launched a lengthy and somewhat desultory series of Fifth Amendment objections, the result of which was again that Judge Tallmadge

permitted the question to be asked, Hoffman defiantly instructed his client not to answer, and Sanford again declined to ask the court to enforce its ruling.

On cross examination, Hoffman attempted to lay out Miranda's connections with leading New Yorkers, Madison, and Jefferson. Hoffman claimed he asked these questions "to remove any suspicions which may arise against Col. Smith, for being seen in company with Gen. Miranda." Even so, the jury would likely have understood that Hoffman also sought to lend substance to the widely reported account that the government had backed Miranda's mission until it became a diplomatic embarrassment. Judge Tallmadge interjected, however, preventing Ogden from responding.

The prosecution then brought to the stand several witnesses who testified that they had aided the preparations for the expedition, sold nautical or military equipment to Ogden or Captain Lewis, or helped recruit sailors and men for the mission. This evidence quite clearly laid out the scale of the expedition, showed that it was armed, and showed that Lewis and Ogden were heavily involved in the fitting-out process.⁶ As defense counsel pointed out, however, it mostly failed to tie Smith directly to these preparations.

To remedy this issue, Sanford took the risky step of calling Marshal Swartwout to the stand, on the premise that he could prove "the conversations and confessions of Col. Smith." This was a mistake. Swartwout testified that he was unable to remember any specific conversations that might have incriminated Smith. On cross examination, however, Hoffman asked the witness whether he recalled Smith telling him the president had authorized Miranda's expedition. After a series of arguments over the admissibility of this line of questioning, the defense was able to get Swartwout to testify that Smith had "complained to me . . . of this prosecution, as Miranda had always informed that [the] government [had] winked at the expedition." (See [Document 16](#).)

Fink was the prosecution's key witness. His testimony directly tied Smith to the recruitment of sailors and soldiers. He also suggested that Smith had misrepresented the mission as one on behalf of the United States to trick men into volunteering, a claim later repeated by another government witness. (See [Document 17](#).) If the jury was to accept this testimony and the prosecution's legal theory of the case, that would likely be enough to support a conviction.

The Defense's Case

In modern jury trials, defense counsel typically give their opening statements to the jury prior to the prosecutions' introduction of evidence. Like many early American cases, however, the *Smith* and *Ogden* trials followed the English convention of defense attorneys

6. Jefferson demanded that Sanford prosecute Captain Lewis on his return from the expedition, but it appears he never stood trial.

making their statements after the prosecution's evidence. Taking over from the prosecution on July 22, Colden made it clear that he intended to attack the empty chair, claiming that "[h]ad the witnesses whom we have subpoenaed been compelled to appear the whole mystery of [Miranda's meetings with the government] might have been explained, and the cause would have appeared to you in its true colours." Instead, he complained to the jury, the defense had been denied its right to "have compulsory process for obtaining our witnesses, which we had verily hoped was secured by the constitution to every person accused."

Colden then moved to the question of whether the nation was "at peace" with Spain at the outset of the expedition. To this end, he attempted to read President Jefferson's address to Congress outlining Spanish acts of aggression. At this point, Sanford objected, arguing that the president's views on Spain were immaterial to the case, so long as Congress had not formally declared war. This precipitated a lengthy series of arguments between Sanford and the defense attorneys as to whether any evidence short of a congressional declaration of war could be sufficient to demonstrate that the United States and Spain were not "at peace."

As Hoffman noted, recent events strongly implied that the United States could be in a state of war without such a formal declaration. From 1801 to 1805, for example, America had engaged in a military conflict with the Barbary pirates in the Mediterranean. The United States' use of military force was predicated on aggressions against American vessels operating near the Algerian coast, rather than on any congressional declaration of war. Hoffman also pointed to several federal statutes authorizing the president to employ military force in the event of acts of war against the United States without conditioning the use of force on a congressional declaration. According to the report of the case, Judge Tallmadge ruled that Colden could not read the president's message to Congress or any related document, but did so without "any . . . reasoning on the subject."

The defense called several men unsuccessfully recruited for the voyage. Some were under the impression that the government generally, or Madison in particular, had authorized the mission. Those recruited by Fink generally indicated that it was he, rather than Smith, who had intimated that they would be working in the service of their own country. After less than a full day's testimony, the defense rested.

Closing Arguments

Colden began his closing argument by stressing the political nature of the prosecution, emphasizing that the case was prompted by the president himself. Smith, he argued, was being offered up as a "sacrifice" to appease "Spain or France[, who] threaten us with their vengeance unless it be made." No matter how "willing our government may be to offer up

the victim,” he told the jury, “I trust in God that they will find that they in vain seek in a court of justice an altar, or in jurors the sacrificers.”

Colden also made hay out of the “extraordinary circumstance” of Judge Edwards’s appearance as a “zealous prosecutor.” While he stopped short of criticizing the impartiality of the judiciary, he so vigorously implored the jury to take no more heed of Edwards’s arguments than they would of any other lawyer that a jury primed to view the case with suspicion could not help but connect the dots. Above all, however, Colden stressed the power and independence of the jury. He repeatedly impressed upon the jurors that they were the judges of both law and fact in the case. It is important to grasp the meaning of this point. The jury’s role has evolved over time. Generally, jurors are solely finders of fact in modern trials, and attorneys are ethically barred from urging jurors not to follow the law as interpreted by the judge. Things were different in the early nineteenth century, however. Nullification—the ability to disregard the judge’s legal instructions in acquitting a defendant—was viewed as an essential protection of the accused and a prerogative of juries. Judges summed up the applicable law and pertinent evidence, often in quite pointed terms, but jurors were ultimately able to decide both legal and factual issues for themselves, and defense attorneys sometimes urged them not to follow judges’ words.

Clearly anticipating that Judge Tallmadge would sum up the case against Smith, Colden did not simply emphasize the jury’s autonomy; he stressed that this independence was a necessary check on the potentially dangerous power of appointed judges. Quoting from an English legal text, Colden told the jury that judges were “so few that they may be easier corrupted, they cannot be challenged, and may be apt to think themselves above any action, and thence encouraged to strain a point now and then.” He contrasted this against the moral authority of an American jury, urging the jurors to vote their conscience.

Moving to the substance of the case, Colden returned to the themes the defense had emphasized throughout: the administration had approved the mission; and the United States was not genuinely “at peace” with Spain. These arguments, he suggested, also went to Smith’s state of mind. If the defendant believed that the United States was not at peace with Spain when he assisted in the preparations for Miranda’s journey, he did not have the requisite mental state to commit a crime. Although the court had not permitted him to introduce Jefferson’s speech or other evidence substantiating his claim that a *de facto* state of war existed between America and Spain when Smith became involved in the expedition, he implored the jurors to rely on their own memory of tensions between the two nations at that time.

Finally, Colden urged the jury “never . . . to be persuaded that there are certain technical rules of law, so opposed to humane feeling, and common sense, as to oblige you to pronounce a verdict against the defendant, though you should be convinced in your own

minds, that he is not criminal.” And humane feeling, he argued, was on the defendant’s side. Smith, he reminded the jury in a direct call to their sympathy, “has a large and affectionate family, who are at this moment waiting with trembling anxiety, to learn his doom from your lips.” A guilty verdict, he argued, might well mean life imprisonment. Judge Tallmadge was likely to impose the maximum fine of \$2,000, and Smith, ineligible for release should he fail to pay, could not cover the fine, having been relieved of his position by Jefferson. Smith was sometimes irresponsible with money, but it is unclear how plausible Colden’s claim was.

Each of Colden’s cocounsel offered their own closing arguments, emphasizing similar themes at considerable length. Sanford attempted to make light of this by beginning his argument for the prosecution by promising not to “imitate the example of counsel for the defendant[:]”

I shall certainly not be so loud; for my lungs would fail in the attempt. I shall certainly not be so long; for, if I should not exhaust my subject, I should, at least, exhaust myself in less time than any one of them has occupied in addressing you. I shall undoubtedly be less eloquent than they; for the arts of eloquence are not mine. I cannot address you with vehemence, for it is not my manner. I shall not invoke God, as they have done; and, I shall not even attempt to move your passions.

Resort to passion and sympathy were not necessary in a case where the jury’s only duty was to determine whether Smith had assisted in the organization of a military expedition against Spain.

Sanford also criticized the defense’s “extravagant” view of the jury’s ability to base their decision on anything outside of the evidence they had heard in court. “There could not be a more dangerous principle in the administration of justice,” he argued, “than that the jury should be at liberty to adopt as proofs rumours and newspaper information, to substitute hearsay for legal evidence, and to overrule evidence regularly given upon oath by the imaginary weight of circumstances not personally known to them, and not disclosed to them under any legal or moral sanction of truth.” And, looking at the evidence properly before them, the jury could only conclude that Smith had helped to organize a military expedition to a colony of Spain, against whom the United States had never declared war. In their reliance on extraneous tittle-tattle and sentiment, the defense had all but admitted as much, Sanford argued.

Although Sanford had rebuked the defense for appealing to the jury’s emotions, he concluded his argument with as severe and ominous a warning as an attorney is likely to have given a federal jury:

If you acquit the defendant, you say to the world that the United States no longer rank with the civilized nations of the earth; that they have renounced the law of nations; that they permit their citizens not only, to violate their own laws with impunity but to

invade the people of other countries with hostile force, in a time of peace, as avarice, ambition, or the thirst of plunder may dictate. Such a decision would justify the acts of the pirate on the ocean, and would sink our national character to the barbarism of savage tribes. I need not repeat to you the consequences to which this offence may yet lead. The government of Spain may undoubtedly consider it a justifiable cause of war, and the nation may yet expiate with its blood the crimes of its citizens.⁷

Summing Up and Verdict

Judge Tallmadge began his summary of the case to the jury on a similar theme to the one on which Sanford had ended. Were the government to “permit offences of this nature by passing them over with impunity,” he reasoned, “war and a participation in the quarrels and bloodshed of Europe must necessarily ensue.” This, Judge Tallmadge told the jurors, placed a heavy burden on them to ensure they reached their decision in an impartial manner. While he acknowledged that the jury was the trier of both fact and law, he stressed that this did not make jurors a law unto themselves. Rather, “[i]n exercising this right[, jurors] attach to themselves the character of judges, and as such are as much bound by the rules of legal decision as those who preside upon the bench.”

Those rules were not Smith’s friends. Judge Tallmadge emphasized that he and Justice Paterson had agreed that the United States and Spain were at peace at the time of the alleged crime. Similarly, the judge instructed the jurors that “the previous knowledge or approbation of the president to the illegal acts of a citizen can afford him no justification for the breach of a constitutional law.” While he stopped short of telling the jurors they were bound by these opinions, Judge Tallmadge warned them to exercise “great circumspection” before disagreeing with a jurist as “learned” as Justice Paterson, “whose opportunity for correct legal decisions is obviously so far superior to what falls to the common lot of jurors.”

In summarizing the evidence arrayed against Smith, Judge Tallmadge laid out a narrative replete with testimony substantiating Smith’s involvement in a military escapade against a nation with which the United States was at peace. While he conceded that Miranda may have informed Smith that the administration had approved of the mission, he explained that “a belief that the defendant was deceived in this respect by the equivocal or false representation of Miranda . . . can never justify [Smith] in the illegal act charged by the indictment.” Judge Tallmadge’s summing up finished with a reminder that the jurors should not be swayed by partisan politics or sympathy for Smith. “The attribute of mercy,” he reassured them, “is in other hands and no doubt will be discreetly exercised.”

The jurors, it would seem, ignored Judge Tallmadge’s advice. After deliberating for two hours, they returned a verdict of not guilty. In the eyes of many, particularly most

7. Judge Edwards also gave a closing argument in both cases, but his speeches were omitted from the record.

Federalists, it was a stinging rebuke not only to the prosecution, but to the Jefferson administration.

The *Ogden* Trial

Ogden's trial began on July 25, 1806.⁸ As the trial was substantially shorter than Smith's, involved most of the same legal issues, and featured virtually identical testimony from several witnesses, this summary is less detailed than that of Smith's trial and focuses primarily on the small number of distinct issues that arose in the second trial.

Although the prosecutors privately claimed that both juries were stacked against them from the start, it was the defense who—during jury selection in the second case—overtly challenged juror bias. Hoffman called a witness who testified that he had heard the third juror drawn from the pool opine that “Smith was a clever man; that on account of his important merits, he ought to have some favour shown him, but as for Ogden it was no matter how much he suffered.”

Today, attorneys may challenge the impartiality of jurors and have them eliminated “for cause,” but this determination is made by the judge. In *Ogden*, however, another juror was drawn to sit with the two drawn before the contested juror, and Judge Tallmadge charged the three jurors as “triers” of the impartiality of their prospective colleague. These three jurors determined that the potential juror was not impartial, and he was withdrawn from the jury. (Judge Tallmadge relieved the next juror of his duties since he had already served on the *Smith* trial; the remaining jurors were drawn without incident.)

Sanford offered broadly the same opening statement, and the prosecution adduced substantially the same evidence of the preparations for the expedition, as in the *Smith* trial. Presumably since there was less doubt that Ogden had been directly involved in these preparations, the prosecution did not call Fink or Swartwout. The prosecution rested on July 26.

Colden began the case for the defense by informing the court that he wished “to offer evidence to prove the consent and approbation of the president in the expedition of Miranda.” Judge Tallmadge replied that “[t]he court have the same reason to refuse now which they had before.” Undeterred, Hoffman interjected that the defense was willing to call Ambassador King to prove the defense's point, but Judge Tallmadge declined to permit the testimony. The point had been made to the jury, however. Rather than call any further witnesses, the defense proceeded directly to closing arguments.

Colden again emphasized the themes of government approval and the lack of peace with Spain. Faced with stronger evidence of Ogden's direct participation in fitting out the

8. The record of the case appears to have confused the dates of Ogden's trial. It incorrectly lists the first day of trial as Friday, July 26, and correctly records the next day as Saturday, July 26.

Leander, Colden also stressed a point that he had made with less urgency during Smith's trial in suggesting that the evidence was consistent with a commercial mission as much or more than a military invasion. All that had been proved, he claimed, was that Ogden had sold someone guns and supplies on credit. If that became a crime because the buyer later committed illegal acts, every merchant in New York was in trouble. If Miranda's expedition was a military one, he argued, it became so only after reaching Haiti, when things were beyond Ogden's—and the United States'—ken or control.

The other defense counsel also offered lengthy arguments to the jury, following substantially similar lines as Colden's. Hoffman, in particular, emphasized Smith's exoneration in the earlier trial and the political nature of the prosecution. "I had trusted," he claimed somewhat facetiously, "that the triumphant acquittal of col. Smith, would have furnished a deep and effectual admonition to his prosecutors; and I little expected, that they would have attempted to atone for their defeat, by the conviction of Mr. Ogden." (See [Document 18](#).) Ogden's innocence, he argued, had been established by the first case. That the prosecution had continued to seek Ogden's conviction after this finding revealed the political and vindictive nature of the prosecution.

Judge Tallmadge offered substantially the same summing up as he had done in the *Smith* trial. Although his exact remarks were not recorded, according to the report of the case, the judge stressed that the evidence was "clear and decisive against Mr. Ogden." As before, however, the jury returned a verdict of not guilty following a short deliberation.

Aftermath and Legacy

Miranda's expedition was at sea throughout both trials. Although its ultimate success or failure was still uncertain, things were not going well by the evidence phase of Smith's trial; one of the prosecution witnesses was a crew member who had abandoned the mission. He was among the lucky ones.

On March 27, Miranda left Jacquemel with two schooners accompanying the *Leander*. After a stop in Aruba, he attempted to land at Porto Cabello, on the northern coast of Venezuela. The landing did not go well. Spanish coast guard ships attacked the makeshift fleet, capturing the two schooners with approximately sixty men and officers, including Smith's son, aboard. After summarily killing one of the schooner's captains, the Spanish held the rest of the would-be liberators captive and attempted to ransom the young Smith. Smith managed to escape and return to America, but most of the rest of the men were not as fortunate. Ten were hung and beheaded in front of their compatriots and the rest sentenced to between eight and ten years' hard labor.

Miranda escaped the combat aboard the *Leander*, travelling to Grenada and then Barbados, where he eventually managed to persuade a British admiral to give the vessel a

naval escort to Venezuela. Miranda finally reached the mainland outside the city of Coro on August 3. He did not stay long. Apart from a minor skirmish on approaching the city, Spanish troops (apparently expecting a larger invasion force) simply abandoned the city. Most of the inhabitants evacuated. The few who remained had never heard of Miranda and presumed the new arrivals were hostile outsiders. Aside from a handful of prisoners, whom he freed from the jail, no one hailed Miranda's arrival.

A few days after the landing, Spanish troops attacked a detachment of Miranda's men stationed near the *Leander*. The troops killed several of the men and took others prisoner. This encounter, along with a tragicomic incident in which Miranda's men accidentally attacked each other, seems to have persuaded Miranda that his force could not match what he took to be imminent Spanish reinforcements. Finding no meaningful support from the locals, he left his homeland on August 13. After planning his mission for years, Miranda had spent less than two weeks on home soil.

In a sense, the Jefferson administration's attempt to prosecute Smith and Ogden looked not much less quixotic. The administration may have believed the cases would show its commitment to neutrality, and the United States did at least avoid war with Spain. But many drew from the trials the conclusion that the two most powerful men in the nation had been complicit in an ill-advised revolutionary flight of fancy. Those less favorably disposed to the prosecutions saw them simply as manifestations of a vendetta between Jeffersonians and Federalists, or even between Jefferson and Adams personally. This view finds little support in the politicians' papers, but it arguably says much about the spiteful partisanship of the times that this seemed a plausible explanation to many Federalists.

The trials were a more mixed success for the federal courts. Federalists sharply critiqued the conduct of Judges Tallmadge and Edwards, arguing that the proceedings revealed these Jefferson appointees as unalloyed partisans. Yet these critics also praised the institution of the federal jury, arguing that the verdicts had thoroughly exonerated the defendants. Jeffersonians, by contrast, pointed to the selection of a supposedly pro-Federalist jury as the dispositive event in the trial. The acquittal, they argued, flew in the face of the clear command of the Neutrality Act and threatened the fair administration of justice.

These debates were revisited a year later during the treason trial of former Vice President Aaron Burr, who had been accused of putting together his own far-fetched expedition to create a new republic in the Spanish territory of Texas. The *Smith* and *Ogden* trials became common reference points for those arguing that the *Burr* trial showed that Jefferson was prosecuting political enemies through the courts. (Burr also escaped conviction after Chief Justice John Marshall adopted a narrow definition of treason.)

Much about the *Smith* and *Ogden* trials could only have occurred in the early nineteenth century. One could not today imagine a federal judge interrogating witnesses under

threat of imprisonment or taking off his robes to assume a prosecutorial brief. But many of the broader themes that the cases raised—the separation of law from politics, the relationships between branches of government, the roles of judge and juror—have continued to play defining roles in the federal courts ever since. Few cases, though, have presented these issues in such stark and vivid terms as *Smith* and *Ogden*. Coming to terms with the events of these unique cases thus helps to bring such big themes in legal history into sharper focus and to better understand the role of the federal courts in both contemporary and historical contexts.

The Judicial Process in *United States v. Smith and Ogden*

A CHRONOLOGY

March 1, 1806

District Judge Matthias Tallmadge takes “Voluntary Examination[s]” of Samuel Ogden and William Smith; he also conducts Ogden’s more formal deposition. Judge Tallmadge questions John Fink in a similar process at around the same time.

March 18, 1806

Based on his reading of the evidence collected by Judge Tallmadge, U.S. Attorney General John Breckinridge advises President Thomas Jefferson that Smith, Ogden, and Fink have flagrantly violated the Neutrality Act of 1794. Breckinridge advocates prosecution and predicts that conviction is all but inevitable. Shortly thereafter, Jefferson authorizes the prosecution to proceed.

March 21, 1806

Secretary of State James Madison orders District Attorney Nathan Sanford to bring charges and authorizes him to hire cocounsel.

April 2, 1806

Grand jury proceedings begin against Smith and Ogden in the U.S. Circuit Court for the District of New York. Attorney Cadwallader Colden moves the court to exclude the statements taken by Judge Tallmadge from the grand jury’s consideration. Judge Tallmadge denies the motion on April 7, 1806.

April 7, 1806

The grand jury returns indictments against both Smith and Ogden for violating the Neutrality Act of 1794.

April 8, 1806

Attorney Colden enters pleas in abatement, seeking to have the court dismiss the indictment on the ground that the grand jury should not have been shown the evidence Judge Tallmadge procured by questioning the defendants.

April 10, 1806

Judge Tallmadge denies the defendants' pleas. Both defendants plead not guilty.

May 28, 1806

Secretary Madison and several other senior executive officials are served with subpoenas requiring them to testify at the trial.

July 8, 1806

Secretary Madison and fellow cabinet members Henry Dearborne and Robert Smith write to the court stating that President Jefferson has ordered them not to attend the trial as it will conflict with the demands of their official duties.

July 14, 1806

Attorney Colden moves the court to suspend the trial pending the appearance of witnesses resisting subpoenas and to issue an attachment against three witnesses to appear to show why their absence was not contumacious.

July 17, 1806

Justice William Paterson rules against the defense's motion to postpone the trial. He indicates that the judges have disagreed as to the other defense motion. Justice Paterson then leaves the bench for the remainder of the proceedings due to ill health.

July 18, 1806

Smith's trial begins.

July 22, 1806

The jury finds Smith not guilty.

July 25, 1806

Ogden's trial begins.

July 26, 1806

The jury finds Ogden not guilty.

2

Media Coverage and Public Debates

Much of the press coverage of the *Smith* and *Ogden* cases was refracted through the prism of party politics. The claim that the Jefferson administration approved Miranda's plan before turning on the defendants to avoid embarrassment resonated with Federalist newspapers eager to highlight the president's perfidy. This version of events became commonplace in these outlets as early as February 1806 with Spanish diplomat Carlos Martínez de Yrujo's publication of a series of pointed questions about Secretary of State James Madison's involvement in Miranda's venture. (See [Document 5](#).)

In April 1806, the press was treated to a more detailed preview of evidence of the administration's supposed complicity in Miranda's exploits when defendant Samuel Ogden submitted a memorial to Congress protesting his prosecution. The memorial insisted that Ogden's involvement in the case was innocuous. It also included copies of several letters, including correspondence from Miranda to Madison and Jefferson. Ogden claimed that these letters showed that the president and secretary of state were at the very least aware of the expedition and did nothing to stop it, despite having ample time to do so. The memorial was also highly critical of Judge Tallmadge's pretrial interrogations, arguing that they were "as illegal as they were oppressive and tyrannical."

Ogden's memorial, one of several related to the case that Massachusetts Federalist Josiah Quincy introduced to the House of Representatives, gained little traction in the legislature. Indeed, the Jeffersonian-dominated House declared the allegations against the administration "insidiously calculated to incite unjust suspicions" and expunged reference to the memorials from congressional records over Quincy's objection. However, Ogden's memorial was reprinted in several papers, helping to perpetuate the Federalist account of a politically driven prosecution.

The response to the verdicts in *Smith* and *Ogden* also divided sharply along party lines. Jeffersonian papers rejected any implication that the defendants' acquittals lent credence to allegations of impropriety on the government's part. For instance, the *National Intelligencer*, a Washington-based Jeffersonian paper, asked, "shall it be said that one man who actually enlisted troops, and another who actually fitted out a vessel, both with a full knowledge of her destination, are innocent of all crime, while those who at most knew that such a project existed, are criminal?" (See [Document 20](#).) Unsurprisingly, Federalist papers took the verdicts as repudiations of the government's handling of both the expedition and the prosecutions. Several also offered paeans to the virtues of the jury system. The *New York Commercial Advertiser*, for example, claimed that the jurors "have acquired to themselves immortal honor, by rescuing two of their fellow-citizens from an unparalleled exertion of executive power, to effect disgrace and ruin, for purposes merely personal and selfish."

Miranda's expedition continued to generate controversy over the next few years. Some of the men on the voyage wrote narratives of their travails, all of which were broadly critical of Miranda. The epistolary account of James Biggs, a junior officer on the *Leander*, went through multiple editions. (See [Document 4](#).) Both Jefferson and former president John Adams read it. It presented the aims of the mission as laudable but portrayed Miranda as impulsive and incompetent.

The plight of the American expeditionaries held captive in South America provided perhaps the most lasting point of controversy from the cases. In 1808 and 1809, the tenth and eleventh Congresses debated whether to issue a resolution urging first President Jefferson, and later President Madison, to secure the men's release, accompanied by an appropriation of funds for that purpose. These debates devolved into a relitigation of the *Smith* and *Ogden* cases. A committee inquiring into the detentions found plausible the prisoners' allegations that Smith had tricked them into thinking they were on a government mission. North Carolina Federalist Congressman Joseph Pearson, who argued that the United States owed it to the unlucky soldiers of fortune to secure their release, made a strong case that the not-guilty verdicts had established that the expedition was "begun, prepared, and set on foot, with the knowledge and approbation of the President of the United States

and the Secretary of State.” Republicans disputed these claims with such vehemence that Pearson later challenged Virginia Representative John George Jackson to a duel. (Pearson shot Jackson in the hip, leaving him disabled for the rest of his life.) The final vote on the resolution ended in a tie in the House and was thus not carried. Nevertheless, Spanish authorities later released most of the prisoners.

3

The Federal Judiciary

LEGAL QUESTIONS BEFORE THE FEDERAL COURTS

Was it improper to disclose to the grand jury copies of Judge Matthias Tallmadge's pretrial interrogations of the defendants?

No. The defense raised this issue in a motion to suppress evidence during grand jury proceedings and in subsequent pleas seeking to abate the indictments. In both instances, Judge Tallmadge ruled against the defendants without providing legal reasoning. It is plausible, however, that his reasoning followed a similar line to the prosecution's argument against the pleas in abatement. District Attorney Nathan Sanford argued that, even if the evidence was improperly taken and could not be submitted to a petit jury, the same strict rules of evidence did not apply in grand jury proceedings. The prosecution did not attempt to introduce the interrogations into evidence during the trials.

Did the Sixth Amendment require the court to postpone the trial pending the appearance of senior officials under subpoena?

No. Justice William Paterson and Judge Tallmadge agreed that the defendants' Sixth Amendment right to use compulsory process only applied when the testimony subpoenaed witnesses could supply would be material to the case. Defendant William Smith

had claimed that three executive officials who had resisted subpoenas could confirm that the Jefferson administration had approved Miranda's plan to liberate his homeland with the assistance of American citizens. Justice Paterson's ruling on the question, however, stressed that the president and secretary of state did not have the power to authorize law-breaking. Given that, the administration's views on Miranda's mission could have no bearing on whether the defendants had violated the Neutrality Act. The defendants were thus not entitled to a delay of trial to preserve their Sixth Amendment rights.

Should the court issue attachments against senior executive officials who refused to testify under subpoena?

This question was not fully resolved. Defense counsel had urged the court to bring the refractory witnesses to court to show cause why they should not be held in contempt of court for ignoring their subpoenas. Justice Paterson indicated that he and Judge Tallmadge differed as to whether the court should do so. Though Paterson did not reveal which judge assumed which position, it appears most likely that Tallmadge opposed issuing attachments against the officials. Neither judge stated any reason for their position. After Paterson departed from the bench, the trial proceeded without any effort to bring the witnesses before the court. Had jurors convicted one or both of the defendants, Smith or fellow defendant Samuel Ogden could have appealed based on the division of the judges on this question. The defendants' acquittals rendered this question moot, however.

Did the prosecution's examination of Ogden in Smith's trial violate Ogden's right against self-incrimination under the Fifth Amendment?

No. The defendants were tried separately and were not charged as coconspirators. Even so, the prosecution's decision to call Ogden as the first witness in Smith's case raised concerns that he might be compelled to give evidence tending to incriminate himself. At several points during Ogden's testimony, defense counsel objected that answers to prosecution questions might incriminate Ogden. In each instance, Judge Tallmadge ruled that the questions were proper, but prosecutor Nathan Sanford opted not to compel Ogden to answer his queries. The government did not call Smith as a witness against Ogden.

Were the defendants guilty of violating the Neutrality Act of 1794?

No. Section 5 of the Neutrality Act made it a crime to "begin or set on foot or provide or prepare the means for any military expedition or enterprise to be carried on from [the United States] against the territory or dominions of any foreign prince or state with whom the United States are at peace." Judge Tallmadge's instructions to the jury stressed that the prosecution had supplied ample proof that the defendants had "set on foot" and provided

and prepared “the means” for Miranda’s expedition. Both he and Justice Paterson also ruled that the United States was “at peace” with Spain at the time of the defendants’ involvement in the expedition. Defense attorneys urged the juries, which were then considered the ultimate judges of both fact and law, to disregard these judicial pronouncements. The defense also argued that Miranda’s mission was not fundamentally a “military expedition or enterprise” and that it was “carried on from” Haiti, rather than the United States. Both juries responded by finding the defendants not guilty.

The Federal Courts and Their Jurisdiction

U.S. Circuit Court for the District of New York

All the proceedings in the *Smith* and *Ogden* cases took place in the U.S. Circuit Court for the District of New York. Circuit courts were established by the Judiciary Act of 1789 and operated from the passage of that Act to their abolition on January 1, 1912. During most of that period, the circuit courts were the primary courts in the federal system. At the time of the *Smith* and *Ogden* trials, the circuit courts had jurisdiction over most major federal crimes, civil suits predicated on diversity of citizenship, and suits to which the United States was party. The circuit courts also had some appellate jurisdiction over cases decided in U.S. district courts, which primarily heard minor criminal trials and admiralty and maritime suits. Today, the district courts have assumed most of the trial jurisdiction once exercised by the circuit courts.

Except for a brief interlude from 1801 to 1802, most circuit courts did not have their own judges until 1869. The exceptions were the District of Columbia (from 1801 to 1863) and far-flung California (from 1855 to 1863). Most early circuit courts were staffed by a combination of U.S. district judges and Supreme Court justices riding circuit. Under the circuit-riding system, each justice was assigned to one or more geographically organized circuits. The justices periodically traveled to hear cases within their circuits alongside the local district judge. This travel was often arduous, sometimes dangerous, and always unpopular among the justices. Advocates of circuit riding maintained that the process kept justices from becoming aloof or isolated from the lived realities of the legal system. At a time when criminal appeals were rare, circuit riding also ensured that Supreme Court justices passed on most high-profile federal criminal cases.

Congress divided New York into northern and southern districts in 1814, effectively abolishing the U.S. Circuit Court for the District of New York. This statute, however, did not create separate

circuit courts for the two districts. Instead, appeals from the U.S. District Court for the Northern District of New York were heard by the U.S. Circuit Court for the Southern District of New York. Congress assigned this appellate jurisdiction to the Supreme Court in 1826 and finally created a separate circuit court for the Northern District in 1837.

4

Biographies

Judges

Matthias Burnet Tallmadge

Judge Tallmadge presided over most stages of the *Smith* and *Ogden* cases in the U.S. Circuit Court for the District of New York. His pretrial role in questioning the defendants and their associate John Fink proved controversial and played into the defense argument that the cases represented a coordinated political attack. Although Judge Tallmadge's summings-up made it clear that he considered Smith



Tallmadge

and Ogden's guilt proved beyond doubt, the jurors appear to have disregarded his instructions in voting to acquit both defendants.

Tallmadge was born in 1774 in Stamford, New York, to a relatively prominent family. His father was a colonel in the American Revolutionary War and his brother served in Congress. Tallmadge attended Yale College, receiving his degree in 1795. He read law and practiced privately until his appointment to the

federal bench. Like defendant William Smith, Tallmadge married the daughter of one of America's founding luminaries. His father-in-law, George Clinton, was the first governor of New York and vice president to both Thomas Jefferson and James Madison. Clinton was named as a defense witness and attended Smith's trial but never testified.

Jefferson gave Tallmadge a recess appointment to the U.S. District Court for the District of New York on June 12, 1805. At just 31 years of age, Tallmadge was among the youngest members of the federal bench up to that point. Jefferson nominated Tallmadge for a permanent commission on the court on December 20, 1805. The U.S. Senate confirmed the nomination three days later.

Tallmadge's fourteen-year tenure on the court was often punctuated by unrest. By the early 1810s, handling almost the entire federal caseload for New York state had proved to be an unworkable task for a single judge, particularly as Judge Tallmadge was frequently absent through illness. Congress created a second judgeship for the District of New York in 1812, but Tallmadge and his new colleague William Van Ness quarreled so incessantly that Tallmadge prevailed on Congress to divide New York into two separate districts in 1814.

In 1818, Judges Tallmadge and Van Ness were the subjects of a congressional investigation after it emerged that a court employee who had worked for both men had embezzled a vast sum in court fees. Though the judges were cleared of any complicity, some criticized them for negligent supervision. The next year, Congress held a second inquiry, this time investigating Judges Van Ness and Tallmadge's performance in office. Although the two judges were now in separate districts, Tallmadge's repeated absences had required Van Ness to cover many of his duties. Moreover, the 1814 district-splitting legislation did not create a circuit court in Tallmadge's Northern District and gave Van Ness's U.S. Circuit Court for the Southern District of New York appellate jurisdiction over some cases from the Northern District. The counterproductive animosity between the two judges had continued, and some lawyers complained of the dysfunctionality of New York's federal courts. The inquiry report was critical of Judge Tallmadge's failures to hold court but concluded that impeachment was not appropriate. Nevertheless, Tallmadge resigned from office on July 1, 1819. He died on October 1.

William Paterson

As circuit justice for the Second Circuit, Justice Paterson presided over important hearings preceding the *Smith* trial. He ruled that the potential testimony of cabinet officials was immaterial to the case but differed with Judge Tallmadge as to whether the court should compel the officials to appear and answer contempt-of-court charges.

Paterson was born in County Antrim, Ireland, in 1745. His family emigrated to the United States when he was a young boy. They eventually settled in Princeton, New Jersey. Despite his family's modest means, Paterson gained entry to the College of New Jersey (later renamed Princeton University) after excelling at a school run by Aaron Burr, Sr., the college's founder and second president. He took his baccalaureate in 1763 and earned a master's degree in 1766.

Paterson read law and engaged in private practice in New Jersey until the American Revolution drew him into politics. From 1775 to 1776, he served as assistant secretary, and later secretary, to New Jersey's Provisional Congress, a transitional body between colonial and independent governments. Later in 1776, he was a delegate to New Jersey's Constitutional Convention. He served as New Jersey's attorney general from just after the ratification of the state's constitution until 1783.

In 1787, Paterson served on the New Jersey delegation to the Constitutional Convention in Philadelphia. There, he played an important role in drafting the Constitution of the United States. Paterson was the primary architect of the New Jersey Plan, a counterproposal to James Madison's Virginia Plan, which advocated for proportional representation in both houses of Congress. Paterson's plan would have retained a unicameral legislature in which each state received one vote, thereby preserving the power of small states. The "Great Compromise" between these competing plans produced many of the basic contours of American government.

After the U.S. Constitution's ratification in 1789, Paterson served as a U.S. senator for New Jersey. Although his tenure lasted less than two years, Paterson made an important contribution in helping future Supreme Court colleague Oliver Ellsworth draft the Judiciary Act of 1789, the statute that created the federal judicial system. Paterson left the Senate to become New Jersey's governor in 1790.

On February 27, 1793, President George Washington nominated Paterson to the Supreme Court. Because Paterson had been in the Senate when the Judiciary Act became law, however, his appointment would have violated Article I's Incompatibility Clause. This



Paterson as a young man

provision forbids legislators from taking federal offices created “during the Time for which [they were] elected” until the expiration of that period. Although he had left to become governor, Paterson’s Senate term did not end until March 3, 1793. Washington withdrew Paterson’s nomination and renominated him on March 4, when he became eligible to hold judicial office. The Senate confirmed him the same day.

Arguably Paterson’s most influential rulings as a justice came on his circuit-riding duties. In *Van Horne’s Lessee v. Dorrance* (1795), Paterson instructed the jury that a Pennsylvania statute violated the state constitution and was thus void. Some scholars have suggested this ruling played an important role in presaging the Supreme Court’s landmark decisions in *Marbury v. Madison* (1803) and *Fletcher v. Peck* (1810). In 1795, Paterson also presided over the successful prosecutions of several of the leaders of the Whiskey Rebellion, a major uprising centered in western Pennsylvania against an unpopular tax on whiskey.

In 1803, Justice Paterson was badly injured in a coach accident while riding circuit. He never fully recovered. Paterson left the bench due to ill health after issuing the pretrial rulings in *Smith* and died on September 9, 1806.

Defendants

William Stephens Smith

Colonel Smith’s connection to the Miranda expedition raised the stakes of the case to an international scale. As a federal appointee and relative of former President John Adams, his involvement in the scheme lent color to Spanish accusations that the United States had approved and abetted Miranda’s mission. Smith’s status was arguably a double-edged sword. On the one hand, it may have led the administration to seek his conviction with greater than usual alacrity to allay fears of war with Spain. On the other hand, Smith’s standing allowed defense attorneys to argue that the prosecution was a vindictive political act.

Smith was born in Long Island, New York, in 1755, the son of a wealthy merchant. He graduated from the College of New Jersey in 1774 and briefly studied law. In 1776, he broke off his legal career to join the Continental Army. The dashing young officer distinguished himself throughout the Revolutionary War. Working closely with the Marquis de Lafayette and George Washington, Smith rose to the rank of lieutenant colonel by age 21. In 1781, he became General Washington’s aide-de-camp. Washington wrote glowingly of Smith’s “fidelity, bravery, . . . gallantry, intelligence, and



Smith as a young man

professional knowledge.” Arguably, however, Smith’s civilian career never lived up to the promise he had shown during the Revolution.

With the war over, Smith moved to England in 1784 to serve as secretary to the American Legation in London. There, Smith met and wooed Abigail “Nabby” Adams, the daughter of American Ambassador John Adams. When Francisco de Miranda, who had befriended Smith while travelling in New York, visited him in London, Smith’s courtship with Nabby appeared to be over. The two men travelled around Europe and formed a lasting bond. On his return to England, Smith resumed his relationship with Nabby, and the two married. He became related by marriage to the Adams clan a second time when his sister married the future president’s second son, Charles, in 1795.

Smith moved back to the United States in 1788. Shortly after his return, President Washington appointed Smith the first U.S. marshal for New York. In 1791, Washington appointed him supervisor of revenue, a position responsible for the unpopular task of collecting the first federal tax, a levy on whiskey. Adams appointed him to the lucrative post of Surveyor of the Port of New York in 1800. He was fired from this position shortly before his trial.

Following his acquittal, Smith moved to upstate New York. He successfully ran for Congress in 1812 but served only a single term. He lost his seat in unusual circumstances. Smith appeared to have narrowly won reelection in 1814 and was initially declared the winner of the election. However, Westel Willoughby, Jr., Smith’s Democratic-Republican opponent, successfully challenged the election result on the ground that around 6% of the electorate had cast votes for “Westel Willoughby,” without the suffix. Smith died a little over a year after losing office on June 10, 1816.

Samuel Gouverneur Ogden

Ogden owned the *Leander*, the ship on which Miranda embarked for South America. He also helped the revolutionary arm, outfit, and man the vessel. The prosecution claimed that this was sufficient to warrant Ogden’s conviction under the Neutrality Act, but the jury found Ogden not guilty.

Ogden was born in 1779 in New Jersey. Starting in 1795, he undertook an apprenticeship with the prestigious commercial firm of Gouverneur and Kemble in New York City. In 1800, he began his own shipping firm, which quickly became successful.

By all accounts, Ogden lost a substantial sum on the Miranda expedition. The commercial goods he had entrusted to Miranda were either sold or lost as Miranda traveled



Ogden as an older man

around the Caribbean. In 1807, Miranda abandoned the *Leander* in Trinidad. British authorities sold the ship to pay off the small number of remaining crew members, but Ogden was never reimbursed for the loss of the vessel or its cargo. Years later, Gran Colombian president Simón Bolívar offered to compensate Ogden for his role in the expedition, which had come to be viewed as a precursor to later South American liberation efforts, though it seems that Ogden never took Bolívar up on this offer.

In the immediate aftermath of his acquittal, Ogden continued his shipping business in New York. In 1815, he moved to Bordeaux, France, again working in international trade. Ogden returned to New York in 1825, successfully operating as an agent for several French trading concerns. He died in 1860.

Lawyers

Nathan Sanford

District Attorney Sanford was the lead prosecutor in both the *Smith* and *Ogden* cases. His work in that capacity earned praise from Judge Tallmadge and Sanford's cocounsel Judge Pierpont Edwards, who saluted the prosecutor's "industry and great ability." Reports that Sanford had destroyed the deposition testimony of Ambassador Rufus King, however, led to claims that the government's lead attorney had been overzealous in seeking a conviction.

Sanford was born in Long Island, New York, in 1777. He attended Yale College and took up a successful private practice after reading law. In 1805, he prevailed over Cadwallader Colden, his main foil in the *Smith* and *Ogden* cases, in the appeal in *Pierston v. Post*. Although the case notionally decided the seemingly trivial matter of the right to a dead fox, the complex legal and philosophical questions presented in the dispute helped to define the meaning of property and ownership in the new republic.

President Jefferson appointed Sanford New York's district attorney in 1803. Sanford continued, however, to practice law privately and to pursue local political roles while in office. He was elected to the New York Assembly in 1808, and briefly served as the Assembly's speaker in 1811, before leaving office for health reasons. He finally left his prosecutorial post in 1815 to join the U.S. Senate. Although he lost his seat in 1821 to future president Martin Van Buren, Sanford was appointed Chancellor of New York, the state's highest judicial post, two years later. He returned to the Senate in 1826, serving a single term without standing for reelection. Sanford died in 1838.



Sanford

Pierpont Edwards

Judge Edwards served alongside District Attorney Sanford as a prosecutor in the *Smith* and *Ogden* trials. As a sitting federal judge, his appearance as an advocate arguably aided the defense attorneys' critique of the fairness of the process.

Edwards was born in Northampton, Massachusetts, in 1750. His father, Johnathan, was one of the most influential theologians in eighteenth-century America and a driving force behind the First Great Awakening. When Johnathan's son-in-law, Aaron Burr, Sr., died in 1857, Johnathan took over Burr's presidency of the College of New Jersey. After moving to Princeton with his father,

the young Edwards briefly lived with his infant nephew Aaron Burr, Jr., who later became Thomas Jefferson's first vice president. Edwards's father died in 1858, however, forcing the oldest of the eleven Edwards children to assume the obligation of raising his younger siblings, including Pierpont. The family initially returned to Massachusetts before relocating to Elizabethtown, New Jersey.

In 1768, Edwards graduated from the college his father had briefly run. Shortly thereafter, he moved to New Haven, Connecticut. He began practicing law in 1771, before joining the Continental Army during the American Revolutionary War. After the war, he became involved in state politics, serving as a Connecticut state representative in 1777, 1784 to 1785, and 1787 to 1790. From 1787 to 1788, he served in Congress under the Articles of Confederation, which were superseded by the U.S. Constitution the next year. After leaving Congress, he established himself more firmly as a leader of the Connecticut bar.

President Jefferson nominated Edwards to the U.S. District Court for the District of Connecticut on February 21, 1806. The Senate confirmed his nomination three days later. Shortly after the *Smith* and *Ogden* trials, Jefferson appears to have considered Edwards for the Supreme Court seat to which he eventually nominated Henry Brockholst Livingston. Newspaper reports at the time speculated that Edwards's association with the out-of-favor Burr had weighed against his nomination. Edwards died in office on April 5, 1826.



Edwards

Cadwallader David Colden

Attorney Colden took a leading role in presenting the defenses of both Smith and Ogden. Colden adopted an aggressive approach to his task, impugning the motives of the prosecution and, occasionally, Judge Tallmadge. At the conclusion of both trials, Colden successfully argued that the jury should disregard the judge's pronouncements on the legal issues in the case and vote to acquit.

Colden was born in 1769 to an eminent New York family. His grandfather and namesake had twice served as the colonial governor of the province during the 1760s. His father remained loyal to Britain during the War of Independence, and much of the family's property was confiscated by the New York legislature during the war.

In 1784, Colden accompanied his father when he moved to London seeking restitution for his losses. Colden's father died shortly after arriving, however. Colden's mother died just a month later, leaving the teenager orphaned and stranded in Britain. Judge George Ludlow, another elite New York loyalist in London, assumed the young Colden's guardianship and secured him a modest government pension.

After a brief period in which he was tutored in London by a distant relative, Colden moved to New Brunswick, Canada, in 1785. Ludlow had recently been appointed chief justice of the new province, which had become a major point of confluence for American loyalist émigrés. There, Colden worked as an articled clerk (a form of legal apprentice) to an American loyalist lawyer. In 1787, Ludlow managed to win a £2,720 restitution award for Colden's father's lost estate. Though far less than the actual value of his family estate, the substantial award helped stabilize Colden's finances.

Two years later, Colden returned to New York, where he read law with Richard Harison, who was married to Ludlow's daughter. Then New York's federal district attorney, Harison later served as Colden's cocounsel in *Smith and Ogden*. Colden became a member of the bar in 1791. From 1798 to 1801, he served as a state assistant attorney general.

In the 1810s and 20s, Colden became increasingly involved in electoral politics. In 1818, Colden served in the New York assembly, before becoming mayor of New York City the following year. He left that position in 1821 to serve as a member of the U.S. House of Representatives for a single term. From 1825 to 1827, he served in the state senate. Colden's career in state politics is often associated with his advocacy of the abolition of slavery and support for the construction of the Erie Canal, both of which were achieved in the mid-1820s. Colden died in 1834.



Colden

Josiah Ogden Hoffman

Attorney Hoffman was one of New York's foremost Federalist politicians and lawyers when he served as defense counsel for Smith and Ogden.

Hoffman was born in Newark, New Jersey, in 1766. He read law and became an attorney at an early age.

In his twenties, Hoffman became heavily involved in New York's Federalist politics. From 1791 to 1797, he served seven intermittent terms in the state assembly. From 1795 to 1802, he served as the state's attorney general. In that capacity, he prosecuted the important criminal libel case *People v. Frothingham* (1799) before a court that included *Smith* and *Ogden* cocounsel Richard Hari-

son. Hoffman prevailed over future-Justice Livingston in arguing that a newspaper had libeled Alexander Hamilton by accusing him of suppressing a Jeffersonian publication. Nevertheless, the jury recommended clemency, and the case is sometimes viewed as an initial step towards the liberalization of libel standards (a position that, perhaps ironically, Hamilton championed in defending Jefferson's critics in the early 1800s).

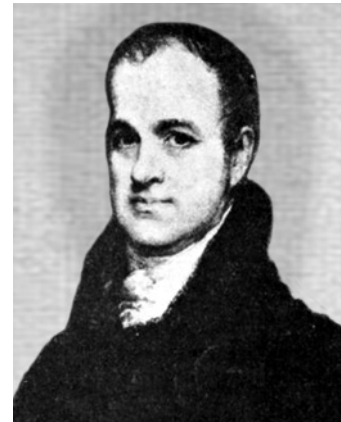
In the 1810s, Hoffman twice served as recorder of New York City, a role that blended administrative and judicial duties. Between his two terms as recorder, from 1813 to 1815, he again served in the state assembly. In 1828, Hoffman was appointed a justice of the newly created New York City Superior Court. He served in that post until his death in 1837.

In 1789, Hoffman married *Smith* and *Ogden* cocounsel Cadwallader Colden's sister Mary. She died in 1797 and Hoffman had remarried by the time of the trial, but it appears that Hoffman and Colden retained close ties. Hoffman's son with Mary, Ogden Hoffman, was a member of Congress and served as New York's attorney general. Ogden's son, Ogden Hoffman, Jr., became a prominent federal judge.

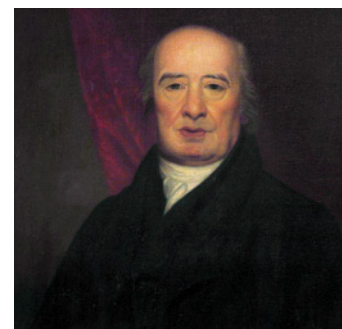
Thomas Addis Emmet

Attorney Emmet was the only member of the defense team who was not a prominent Federalist. Indeed, Emmet occasionally referenced the fact that he did not share Smith's politics during the trial proceedings. It is plausible, however, that Emmet's own revolutionary leanings may have made him sympathetic to Smith and Ogden's involvement in Miranda's mission.

Emmet was born in 1764 in Cork, Ireland. He studied at Trinity College in Dublin and the University



Hoffman



Emmet as an older man

of Edinburgh. Emmet originally trained as a physician but took up the law after the death of his older brother, who had been a prominent barrister (an attorney specializing in litigation in the British system). He read law at Temple's Inn, London, and was admitted to the bar in 1790. For all these hallmarks of comfortable respectability, Emmet quickly focused his energies as a lawyer on advising and defending radical republican groups in Ireland, which was then under British rule.

In 1796, Emmet was imprisoned on charges of treason and conspiracy for his association with a group plotting an anti-British uprising. In 1802, he was released from prison, but exiled from the British Empire. Emmet initially went to France but moved to New York in 1803 following the execution of his brother for participation in another unsuccessful rebellion. Upon his arrival, several Federalist attorneys objected to Emmet joining the bar based on his revolutionary politics and his status as an alien. In 1805, however, the New York Supreme Court of Judicature issued an order permitting Emmet to join the bar.

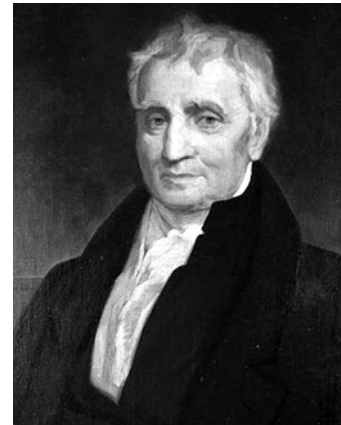
In the aftermath of the *Smith* and *Ogden* cases, Emmet established himself as one of New York's most prominent lawyers. He argued several cases before the Supreme Court of the United States, including the landmark Commerce Clause dispute *Gibbons v. Ogden* (1824) (Aaron Ogden, Emmet's unfortunate client in that case, was distantly related to Samuel Ogden). Emmet died in 1827.

Richard Harison

Attorney Harison was perhaps the most experienced and least vocal of the defense attorneys in *Smith* and *Ogden*. As Attorney Colden's mentor, it is possible that he also lent expertise to the team outside the courtroom.

Harison was born in New York City in 1747. He was educated at King's College (now Columbia University) before joining the New York bar. By the 1780s, Harison had established himself as one of the most prominent lawyers in the city. He served as a delegate to New York's constitutional ratification convention in 1788 and in the New York Assembly that year and the next.

In 1789, President Washington appointed Harison New York's first district attorney. He served in that role until President Jefferson assumed office in 1801. In 1794, Washington nominated Harison to the U.S. District Court for the District of New York, but Harison declined the nomination after the Senate postponed consideration of his candidacy. From 1798 to 1801, Harison served as recorder of New York City in addition to his duties as district attorney. As recorder, he presided with two other officials over the major libel trial *People v. Frothingham* (1799). He died in 1829.



Harison

Other Actors

Sebastián Francisco de Miranda y Rodríguez de Espinoza (commonly known as Francisco de Miranda)

General Miranda's expedition to liberate Venezuela from Spanish rule was at the heart of the *Smith* and *Ogden* cases. Both defendants were charged with helping Miranda to organize the expedition. Although the mission proved disastrous on its own terms, many in South America came to herald it as a harbinger of later successful independence movements. Indeed, Miranda is sometimes known as "The Precursor" and "The First Universal Venezuelan" in his homeland. Historians have portrayed him as a prophet of revolution, a cultured world citizen, a conman, and a hapless adventurer. There is evidence to support all these labels.

Miranda was born in 1750 into a wealthy Spanish family that moved from Cape Verde to Caracas shortly before his birth. At that time, Venezuela was a province with the Viceroyalty of New Grenada, a vast quasi-autonomous Spanish territory that encompassed much of the northern portions of South America. Despite his family's affluence, doubts about the ethnic "purity" of the Miranda lineage dogged the family for much of his youth. Although Miranda's father eventually secured proof of the family's "whiteness," the Mirandas were never fully accepted among Caracas's elite.

Miranda studied at the Royal and Pontifical University of Caracas from 1762 to 1767. In 1771, he moved to Madrid to continue his studies and pursue a military career. He would not return to Venezuela until his 1806 expedition. In 1773, he joined the Spanish military as a captain. Miranda's first action came in North Africa. During the American War of Independence, he fought in Florida, the Gulf of Mexico, and the Caribbean. Miranda generally distinguished himself militarily, eventually earning the rank of colonel—an unusually high rank for a colonial. He also earned a reputation for indiscipline and self-dealing. In 1783, Miranda was accused of smuggling and spying for the British during his exploits in the Caribbean. He ignored orders to report to Cuba for return to Spain to face these charges and fled to the United States.

Multilingual, well-read, and charming, Miranda found a warm welcome in the new republic. Trading on exoticism and an exaggerated account of his involvement in the Revolution, Miranda ingratiated himself into elite circles in Charleston, Philadelphia, and New York (where he met Smith). Moving in this elevated postrevolutionary society, Miranda began to float the idea that he might one day lead Venezuela to independence as Washington (whom he also met on his travels) had led his nation to freedom from British rule. Miranda appears to have told Alexander Hamilton that he planned to lead a revolutionary expedition from the United States to Venezuela as early as 1784.

Leaving the United States that year, Miranda moved to Europe, where he again met up with Smith, by then the secretary of the United States Legation in London. Miranda and Smith toured the low countries and central Europe together and formed a close friendship. Despite repeated attempts by Spanish agents to arrest Miranda, he continued his travels around the continent after Smith returned to Britain. In the late 1780s, he made an extended stay in the Russian Empire. According to several accounts, Miranda became Empress Catherine the Great's lover.

In 1791, Miranda left Russia to join the French revolutionary army, gaining the rank of general. He won some important victories early in his tenure and was later celebrated as a hero of the Revolution on the Arc de Triomphe. Nevertheless, beginning in 1793 Miranda was twice tried for cowardice and undermining the revolutionary cause following an embarrassing defeat. Although he managed to avoid conviction on both occasions, he spent nearly two years in jail. After his release, a disillusioned Miranda increasingly assumed a counterrevolutionary stance that put him at odds with the government.

Narrowly avoiding capture and execution for an alleged monarchist plot, Miranda fled to Britain in early 1798. There, he again succeeded in gaining the ear of influential figures, including Prime Minister William Pitt the Younger. Miranda repeatedly urged Pitt to support an expedition to New Grenada. Pitt saw some potential for Britain to gain from a South American uprising against Spain but was wary of giving any official approval to such an expedition. Miranda spent the next several years in England hoping for an international situation more propitious for his revolutionary aims. He married a British woman and appeared to have settled in London, his home and Masonic lodge serving as meeting points for a small but vibrant group of South American expatriates in London.

The rift between Spain and America gave Miranda an opportunity to return to the United States with the goal of launching the revolutionary expedition he had long hoped to lead. Frustrated with Britain's inactivity, Miranda appears to have believed the United States would prove a better base for him to take the matter into his own hands.

Not everyone welcomed Miranda's return to America. The Adams family distrusted Miranda's motives even before his expedition took shape. John Adams referred to him as a "vagabond." And Abigail Adams presciently warned her son John Quincy Adams that "every movement should be carefully watch[e]d. [W]e shall hear more of that man. [H]e is capable of troubling the waters, and fishing in them too."

After the failure of his mission, Miranda traveled to Trinidad, where he abandoned the *Leander*, but again attempted to persuade the British to aid him in a full invasion of Venezuela. The British appeared willing to launch a military operation in early 1808, until French Emperor Napoleon Bonaparte invaded Spain, briefly aligning British and Spanish interests. Miranda returned to Britain in failure.

In 1810, however, Miranda's luck seemed to take a spectacular turn for the better. A revolutionary militia overthrew the colonial authorities in much of Venezuela and invited Miranda back to his homeland to help form a government. He finally received the hero's welcome he had expected when he had landed at Coro in 1806. In 1811, Miranda helped draft an independent constitution. By the following spring, however, royalist forces had recaptured much of Venezuela and the fledgling republican government strained under the weight of several crises. Miranda was declared dictator and assumed significant power over the regions under republican control, but his rule was short-lived. After Miranda's ally Simón Bolívar suffered a military reverse against the royalists, Miranda believed his position hopeless and agreed to an armistice. During the armistice, Miranda attempted to escape to Britain, but was turned over to the Spanish by Bolívar and other revolutionaries who viewed his escape attempt as a betrayal.

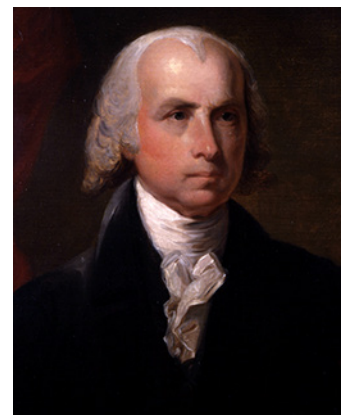
Miranda died in a Spanish prison in 1816. He did not live to see the success of the independence movement he had championed. Bolívar eventually scored a decisive victory for the independence of New Grenada (renamed Gran Colombia) in 1821. Venezuela became an independent nation in 1830.



Miranda in prison (painted in 1896)

James Madison

Secretary of State Madison played an influential role in the *Smith* and *Ogden* cases without ever appearing in court. Madison claimed that his meetings with Miranda were unexceptionable, but Miranda took from them the impression that the Jefferson administration supported his plan to liberate his homeland. Smith and Ogden's defense was built in part on the notion that Madison had authorized the mission and changed tack only when Miranda's activities became a diplomatic embarrassment. Madison privately denied these claims, but he declined to testify at the trial under orders from President Jefferson. Defense attorneys pointed to the secretary's absence as a



Madison

tacit admission that the Jefferson administration had originally supported the actions they sought to punish through the trial.

Madison was born in 1751 into a family of wealthy Virginia slaveholders and tobacco planters. He was educated at the College of New Jersey, receiving his bachelors' degree in 1771, after which he studied law without ever joining the bar. Although he remained personally ambivalent about electoral politics throughout his life, Madison served in the Virginia General Assembly and in the Continental Congress from 1780 to 1783 and 1787 to 1788.

As a delegate to the Constitutional Convention in 1787, Madison was perhaps the most influential figure in drafting the Constitution of the United States. His Virginia Plan, which served as the starting point for negotiations during the Constitutional Convention of 1787, arguably reflected his interests as a wealthy slaveholder from a populous state. But it was also the embodiment of years of theoretical exegesis on the structure of representative government. Attempting to balance the value of representation against the dangers he perceived in a genuinely democratic scheme of government, Madison advocated a bicameral legislature with members of one house appointed by state legislatures. Seats in both houses under Madison's scheme would have been allocated by population, a proposal that concerned delegates from small states and raised vexed questions about the proportional representation of slave states. Madison also advocated the creation of a federal judiciary headed by a "supreme tribunal." Aspects of each of these proposals, though modified through a series of compromises, became cornerstones of America's constitutional system. By the same token, the failure of Madison and others at the Convention to adequately reconcile the institution of slavery, which was given special protection throughout the document, with the Constitution's loftier goals remained an inescapable flaw in the national system of government for decades.

Madison also played an influential role in the Constitution's ratification. With Alexander Hamilton and John Jay, he was the author of a series of essays defending the document and encouraging its ratification in the key state of New York. Known as the *Federalist Papers*, these essays, alongside Madison's notes from the Convention, are among the most widely studied sources for scholars investigating the early history of the Constitution.

After the ratification of the Constitution, Madison served in the House of Representatives. He took an important role in the construction of the first several proposed amendments to the Constitution. Congress passed twelve of these amendments, ten of which were ratified and came to be known as the Bill of Rights. These amendments were designed to assuage the concerns of the Constitution's detractors and played an important role in the constitutional settlement. They remain vital protections of the rights of individuals and state governments.

The political culture of the 1790s became increasingly fractious. In the second half of the decade, Madison sided with the Jeffersonians against Federalist policies. In particular, Madison believed that the Alien and Sedition Acts of 1798 violated the rights to free speech and press protected by the First Amendment. These federal laws penalized critics of the Adams administration amid tensions over possible war with France. In response, Madison wrote the Virginia Resolution of 1798, which, along with Thomas Jefferson's Kentucky Resolutions, propagated the theory that states could legitimately oppose or negate unconstitutional federal laws. Some historians have pointed to these resolutions as founts of constitutional theories that eventually bolstered Southern secession in the 1860s.

In 1801, President Jefferson appointed Madison secretary of state. At the time, this role carried domestic as well as diplomatic elements. Among the most important of these was responsibility for many of the administrative duties necessary to the operation of the courts. Almost immediately after his assumption of the office, Madison became embroiled in controversy when he refused to deliver the commissions of several judges appointed to their offices in the closing moments of John Adams's administration. Jefferson had taken office after a lengthy and ugly confrontation with Adams's Federalists, and many Jeffersonians claimed that the so-called "midnight judges" appointed in Adams's final days were illegitimate Federalist partisans. William Marbury, who had been appointed to a judicial position in the new capital city of Washington, D.C., sued Madison, demanding his commission. Madison declined to defend the suit. Madison's predecessor, Chief Justice John Marshall, held that the secretary should have delivered the commission but ruled against Marbury based on the unconstitutionality of the provision that authorized him to sue in the Supreme Court. The case marked the first time the Supreme Court invalidated a federal law.

Madison's political career was not significantly harmed by the *Marbury* decision or by the criticisms of his refusal to appear in the *Smith* and *Ogden* cases. In 1809, he was elected the fourth president of the United States, serving two terms. Arguably the signal event of his presidency was the War of 1812 against Britain. Madison narrowly avoided defeat, having famously been forced from the White House amid a British assault on Washington. The war's aftermath, however, gave rise to an outpouring of patriotic feeling in many parts of the nation.

Madison retired to his Virginia plantation after the conclusion of his presidency, though he remained influential in American politics and political theory into his old age. He died in 1836.

5

Historical Documents

Document 1: Neutrality Act, June 5, 1794

The law under which William Smith and Samuel Ogden were charged was passed in 1794, initially as a temporary measure with a two-year lifespan. Amid increasing concerns over the prospect of the United States being drawn into international conflicts, however, the statute was subsequently extended several times. In addition to the statute's criminal sanctions, the most pertinent of which is included below, the Neutrality Act also empowered the president of the United States to suppress violations with military force.

SEC. 5. And be it further enacted and declared, That if any person shall within the territory or jurisdiction of the United States begin or set on foot or provide or prepare the means for any military expedition or enterprise to be carried on from thence against the territory or dominions of any foreign prince or state with whom the United States are at peace, every such person so offending shall upon conviction be adjudged guilty of a high misdemeanor, and shall suffer fine and imprisonment at the discretion of the court in which the conviction shall be had, so as that such fine shall not exceed three thousand dollars nor the term of imprisonment be more than three years. . . .

Document Source: 1 Stat. 381 (1792).

Document 2: Thomas Jefferson, Special Message to Congress on Foreign Policy, December 6, 1805

Thomas Jefferson's unusual message to Congress regarding the Spanish-American crisis outlined the source of the tensions between the two nations and called on Congress for guidance. Though the president did not go so far as to ask Congress for a declaration of war, his promise to protect American interests by meeting force with force was taken by some as a sign that war was imminent. Smith and Ogden's lawyers frequently pointed to this message as evidence that the United States and Spain were not "at peace" when the defendants aided Miranda's expedition.

To the Senate and House of Representatives of the United States:

The depredations which had been committed on the commerce of the United States during a preceding war by persons under the authority of Spain are sufficiently known to all. These made it a duty to require from that Government indemnifications for our injured citizens. A convention was accordingly entered into between the minister of the United States at Madrid and the minister of that Government for foreign affairs[.] . . . Before this convention was returned to Spain with our ratification the transfer of Louisiana by France to the United States took place, an event as unexpected as disagreeable to Spain. From that moment she seemed to change her conduct and dispositions toward us. It was first manifested by her protest against the right of France to alienate Louisiana to us, which, however, was soon retracted and the right confirmed. Then high offense was manifested at the act of Congress establishing a collection district on the Mobile, although by an authentic declaration immediately made it was expressly confined to our acknowledged limits; and she now refused to ratify the convention signed by her own minister under the eye of his Sovereign unless we would consent to alterations of its terms which would have affected our claims against her for the spoliations by French subjects carried into Spanish ports.

To obtain justice as well as to restore friendship I thought a special mission advisable, and accordingly appointed James Monroe minister extraordinary and plenipotentiary to repair to Madrid, and in conjunction with our minister resident there to endeavor to procure a ratification of the former convention and to come to an understanding with Spain as to the boundaries of Louisiana. It appeared at once that her policy was to reserve herself for events, and in the meantime to keep our differences in an undetermined state. . . . After nearly five months of fruitless endeavor to bring them to some definite and satisfactory result, our ministers ended the conferences without having been able to obtain indemnity for spoliations of any description or any satisfaction as to the boundaries of Louisiana, other than a declaration that we had no rights eastward of the Iberville, and that our line to the west was one which would have left us but a string of land on that bank of the river

Mississippi. Our injured citizens were thus left without any prospect of retribution from the wrongdoer, and as to boundary each party was to take its own course. That which they have chosen to pursue will appear from the documents now communicated. They authorize the inference that it is their intention to advance on our possessions until they shall be repressed by an opposing force. Considering that Congress alone is constitutionally invested with the power of changing our condition from peace to war, I have thought it my duty to await their authority for using force in any degree which could be avoided. I have barely instructed the officers stationed in the neighborhood of the aggressions to protect our citizens from violence, to patrol within the borders actually delivered to us, and not to go out of them but when necessary to repel an inroad or to rescue a citizen or his property; and the Spanish officers remaining at New Orleans are required to depart without further delay. It ought to be noted here that since the late change in the state of affairs in Europe Spain has ordered her cruisers and courts to respect our treaty with her.

. . . [W]e have reason to believe that [France] was disposed to effect a settlement on a plan analogous to what our ministers had proposed, and so comprehensive as to remove as far as possible the grounds of future collision and controversy on the eastern as well as western side of the Mississippi.

The present crisis in Europe is favorable for pressing such a settlement, and not a moment should be lost in availing ourselves of it. Should it pass unimproved, our situation would become much more difficult. Formal war is not necessary—it is not probable it will follow; but the protection of our citizens, the spirit and honor of our country require that force should be interposed to a certain degree. It will probably contribute to advance the object of peace.

But the course to be pursued will require the command of means which it belongs to Congress exclusively to yield or to deny. To them I communicate every fact material for their information and the documents necessary to enable them to judge for themselves. To their wisdom, then, I look for the course I am to pursue, and will pursue with sincere zeal that which they shall approve.

TH[OMAS] JEFFERSON.

Document Source: Thomas Jefferson, Special Message to Congress on Foreign Policy, Dec. 6, 1805, "Presidential Speeches," *University of Virginia Miller Center*, accessed at <https://millercenter.org/the-presidency/presidential-speeches/december-6-1805-special-message-congress-foreign-policy>.

**Document 3: Letter from Francisco de Miranda to William Smith,
December 14, 1805**

This letter from Miranda to Smith suggests that Smith may have had a good-faith belief that the president and secretary of state had given their tacit approval to Smith's involvement in Miranda's scheme. The "gentlemen" to whom Miranda refers were Jefferson and Madison ("Mr. M"). A close reading of the letter perhaps also lends color to the prosecution's view that Jefferson and Madison had chosen their words to Miranda carefully and that the administration had done little other than observe that American citizens were free to do anything the law did not forbid.

DEAR FRIEND,

I saw yesterday for the second time, both the gentlemen, and after talking fully on the subject, I think I brought the business to a conclusion. Yet Mr. M. upon hearing my determination of quitting this city tomorrow for New York, appeared surprised, and persuaded me not to leave it before Tuesday next, the 17th, when he expected me to dine with him, and have a little more conversation I suppose. On consideration, I thought that a stay three days longer, might show calm and patience on my part, which would give to this step all the dignity I intended, though I am persuaded that no more will be obtained, than what is already imparted. Their tacit approbation and good wishes are evidently for us, and they do not see any difficulty that may prevent the citizens of the U. States in attending personally or sending supplies for this object, provided the publick laws should not be openly violated. Your demand of permission or leave of absence is considered impracticable, and Mr. M. thinks it easier to take the risk upon yourself at once; however, we shall consider this subject with much reflection when we shall meet at New York. On the 18th, early, I shall certainly leave this for Philadelphia, from whence I will write to you again, and without much delay proceed to New York. In the mean time, I request you to have every thing ready for departure before the last of December, and I beg of you to show to our worthy commodore as much as is necessary of this letter, not thinking prudent in[sic] me at this moment and on so delicate a subject to write any more; do the same with the major, and repeat to both my most sincere friendship and permanent esteem. When we meet, you and they shall hear more on this subject, in the mean time act with much caution and great activity.

Yours, M_____.

Document Source: James Biggs, *The History of Don Francisco de Miranda's Attempt to Effect a Revolution in South America, in a Series of Letters*, 2d ed. (Boston: Oliver and Monroe, 1809), at 272–73.

**Document 4: Letter from James Biggs to Unknown Correspondent,
February 5, 1806**

This letter from a junior officer in Miranda's troop of volunteers was written early in the Leander's sea voyage and suggests the volunteers' motives and their understanding of the nature of the expedition. Biggs's later letters evinced a gradual souring on both the cause motivating the expedition and the character of General Miranda.

Dear Friend,

PUBLICK rumour has probably given you some information of a mysterious expedition, said to be fitting out at New-York, under the auspices of a celebrated character. . . . You may perhaps fear that I have been seduced by the glitter of fair promises, or the allurements of novelty; or prompted by a spirit of adventure to speculate too largely on the favours of fortune. It may be so; but I have deliberated much on the subject, and think I am justified in the resolution I have taken. I confess, however, that in forming it, the opinion of men, whose fortunes and characters are staked on the issue, had great authority. . . .

You naturally inquire what is the object and destination of this ship? what do we propose and whither are we going? I am unable to give a positive answer to either of these questions; for only a few confidential persons concerned are let into the secret; nor do I know the extent of that knowledge relating to it, that possibly might be obtained, were I to make it my business to importune for particular information. . . . Generally, I can say that we are engaged in an expedition to some part of the Spanish dominions, probably in South America, with a view to assist the inhabitants in throwing off the oppressive yoke of the parent country; and establishing a government for themselves, upon which we are told by our general they have resolved; and for which he says they are entirely disposed and prepared. For this purpose the Leander was engaged and fitted out, as we understand, by the credit and funds of Don Francisco de Miranda, the commander in chief of the expedition. The vessel is laden with arms of various descriptions, ammunition, clothing, and every kind of military equipage necessary for a campaign. A number of Americans, some of them gentlemen, and persons of good standing in society, though mostly, I believe, of crooked fortunes, have embarked. Few of us, before entering the ship, saw our leader, but had our communication with those, who were his acknowledged agents and advocates. . . . Do you ask, whether our taking a part in this enterprise consists with our relation to our country, or with moral right, to say nothing of common discretion? I hope it is inconsistent with neither. I will not say that there are not some of our company desperate or base enough to disregard these weighty considerations. . . .

We are encouraged in the belief that our government has given its implied sanction to this expedition, and this circumstance, taken in connexion with the official language of the President, and the known sentiments of some of the political party that now prevails, leads us to suppose that our government expects or intends, very soon explicitly to authorise the use of force against Spain. Under such impressions, we think we shall not be called to account as violating the pacifick relations of the United States. The project of appearing for the relief of the oppressed, under the banners of a celebrated chief, who is said to be their greatest friend and favorite; of lending our assistance to found an independent state, in extensive, fertile and populous regions, where the spirit of the people is crushed and the resources of nature are kept down by a vile colonial policy, presents itself to our imaginations and hearts in the most attractive light, and makes us rejoice that it has fallen to our lot, to attempt the deliverance of a large portion of our fellow men. We flatter ourselves it is honourable and humane to be thus engaged; still I am sensible that nothing short of complete success will ensure such a design the approbation of the mass of mankind. If we succeed, our fame will take care of itself. To quiet the revoltings of our humanity and satisfy us that we are not going upon cruel work, we are told that a revolution can take place in the country proposed, with little violence and perhaps without the loss of much blood: the people are said to be now awake to their sufferings, and inclined and competent to remove the cause, as the government by which they are oppressed is weak and inefficient. On this disposition of the inhabitants to join the standard of our leader in such numbers as to compel the few friends of the old order to make terms without delay, we place our expectations of success. It is also intimated that we shall receive, as far as occasion shall require, the countenance and co-operation of the British. After all, it must be confessed, we may be “plucking a thousand dangers on our heads;” but we presume our conductor knows what he is doing, and will lead us to great exploits and splendid fortunes.

Document Source: James Biggs, *The History of Don Francisco de Miranda's Attempt to Effect a Revolution in South America, in a Series of Letters*, 2d ed. (Boston: Oliver and Monroe, 1809), at 1–8.

Document 5: Attributed to Carlos Martínez de Yrujo, “Serious Questions to Mr. Madison,” ca. February 1806

This series of questions addressed to Secretary of State James Madison attempted to embarrass the Jefferson administration, strongly implying that it had authorized the Miranda expedition. Several sources attribute these interrogatories to Spanish Minister to the United States Carlos Martínez de Yrujo, whose more formal complaints Madison initially ignored. This was a strategy Yrujo employed frequently, often to American politicians' annoyance. According to Henry Adams, a noted nineteenth-century historian descended from the Adams political dynasty, Yrujo

“remembered his diplomatic dignity only when he could use it as a weapon against a secretary of state. If he thought the Government to need assistance or warning, he wrote communications to the newspapers in a style which long experience had made familiar to the public and irritating to the Government whose acts he criticized.”

Did Miranda go to Washington about the middle of December last?

Had he two long interviews with you?

Did he not present you a plan of an expedition against the province of Carracas?

Did he support the probability of success by the exhibition of various letters, either real or spurious, supposed to be written to him from his friends in that country?

Did he shew you a plan of the Government he intended to establish in those provinces?

Did the President pursue the said plan of Government, keep the manuscript 24 hours in his possession, and return it afterwards to Miranda approving it in general terms?

Did you observe to Miranda that Congress did not appear inclined to go to war with Spain?

Did Miranda reply that if government was not so disposed he could carry the plan into execution himself, if they did not interfere about his preparations?

Did you answer him, after a long pause, that Government would *shut their eyes*, provided he would act with necessary caution so as not to commit them?

Did Miranda return immediately to New-York to make his preparations and act in consequence?

Is it possible, is it credible, that if Miranda had not met from you with a kind of indirect encouragement he would immediately on his return from Washington have proceeded to expenses that a little vigilance alone would have rendered useless?

Is it credible, that, without that indirect support, two officers of the Federal Government, at the port of New-York, could have engaged in such a nefarious proceeding?

Is it credible, that one of them would have permitted his eldest son to attend General Miranda in his depredatory expedition, in the capacity of his aid?

Is it true, that the Leander, in which this young man embarked, had on board many muskets, rifles, pikes, field-pieces, howitzers, ammunition of all kinds, regimentals, two printing-presses, with ten or twelve journey-men printers?

Is it true, that this vessel remained in port a fortnight after clearing out at the custom-house, to embark recruits, and that the objects of the delay were generally known at New-York?

Is it to be supposed, that if the administration had even not had any previous information of the scheme, they could be ignorant of these transactions, known to every body else?—Even admitting for supposition sake, that they had not a previous knowledge, would not their supposed ignorance be a glaring proof of the most criminal neglect?

Has not the honour and neutrality of our country been committed in the most scandalous manner by an hostile armament fitted in our ports under the eyes of *public officers*, consisting of *American* ships under the *American* flag, with *American officers*, *American* crews *American* volunteers, *American* arms, and many other *American* implements of war, with the object of attacking the colonies of a *nation* with *whom we are at peace*?

Are not all these circumstances, together, sufficiently weighty to influence the Spanish commanders, if Miranda's attempt takes place, to lay an embargo on all *American* property within their jurisdiction?

Will not the innocent merchant of the United States be exposed to the most ruinous and disastrous consequences if an event of this nature should take place?

And should they not consider either a criminal connivance or a not less culpable neglect on the part of those through whose authority such scandalous proceedings could have been checked and prevented as the true causes of their misfortunes?

These questions are made by every body—and we must confess that daily circumstances occur which in our opinion render a satisfactory answer more and more difficult. We submit them to the public, as immediately interested in the clearing up of a mystery which appears to hang over this affair, and which seriously threatens the interest of our fellow citizens.

Document Source: "From the Philadelphia Gazette: Serious Questions to Mr. Madison," *New York Evening Post*, Feb. 21, 1806, 2.

Document 6: "Voluntary Examination of Col. Smith," March 1, 1806

Judge Tallmadge made examinations of both defendants prior to their prosecution. Smith's testimony during his examination laid out many of the facts on which he was later prosecuted, as well as his defense that he believed that Miranda's plan had the tacit approval of both Jefferson and Madison.

William S. Smith brought up by a warrant issued against him upon suspicion of his having been concerned in preparing the means of an expedition against a foreign state, on board of the *Leander*, on his examination voluntarily says, that he knows general Miranda—his christian name is Francisco. This examinant has every reason to believe, that general Miranda sailed in the *Leander*, which vessel was bound to Jacquemel. Gen. Miranda stated to this examinant, that he had been invited by his friends at Caraccas, his native country, to return to his native place. . . . That gen. Miranda invited this examinant to accompany him there, which this examinant declined, unless it should be by the permission of this government. That gen. Miranda thereupon went to the city of Washington, and as he stated to this examinant, communicated the object of his return to Caraccas to the president of the United States and the secretary of state; and, if they should admit him to a second interview, he, the said general Miranda was at liberty to ask of them permission for this examinant to return with the said gen. Miranda to his country. That while gen. Miranda was at Washington, he wrote to this examinant, that he had had those interviews with the president and secretary of state, and made the request in favour of this examinant aforesaid, that he was answered by the president and secretary, that it would not be correct for them to give this examinant a letter of service, as it might commit our government; but that this examinant was at liberty to go if he pleased, and this examinant did thereupon relinquish the idea of accompanying him the said gen. Miranda. That gen. Miranda inquired of this examinant about a vessel proper to be employed for his use in returning to his country. This examinant, for the purpose of procuring a fit vessel, introduced him to a captain Lewis, who had commanded a vessel in the West-India trade, and Mr. Lewis referred him to Samuel G. Ogden, of this city, as the owner of a vessel proper for his use, and as being then in the West-India trade. That this examinant was informed, that Mr. Lewis and gen. Miranda, went to Mr. Ogden's to treat with him about the engagement of the said vessel; and this examinant has been informed, by the said gen. Miranda and Lewis, that the agreement was made with Mr. Ogden, that the vessel called the *Leander* should go out with gen. Miranda, bound to Jacquemel, and from thence should take him over and land him upon the Spanish Main, as near the town of Caraccas as might be; or if this could not be conveniently clone, was to bring him back again to the city of New-York. That this examinant has been a long time an intimate friend of gen. Miranda; and when this examinant was by him solicited to suffer the son of this examinant, William Steuben Smith, to accompany the said gen. Miranda to the Spanish Main, this examinant consented, and suffered his son to go with him on board the said vessel *Leander*, under promises from his said friend the said gen. Miranda, that the said William Steuben Smith should be taken care of by him as a father. That gen. Miranda represented to this examinant the distressed and oppressed situation of the people of that country to which he was bound, and that the people were generally desirous that a change

should take place as to their political situation, and that the said gen. Miranda had that object very near his heart, and it was his wish and intention to effect it if it could be done; and the said gen. Miranda represented to this examinant, that on his arrival there he should be in the bosom of his friends, whom he expected would join him in endeavouring to heave off the yoke of the present Spanish government from the people of that country; and this examinant understood from gen. Miranda, that he was to proceed to extremities to separate that country from the Spanish government, if he found the people favourable to such an event; that gen. Miranda told this examinant, that he had freely and openly communicated his views and plans to the president of the United States and Mr. Madison, upon the subject of his return to his native country, and that the president and secretary told him, the said gen. Miranda, that they were not now ready to go to war, and could not give him any public aid or countenance, but that they had no objection that any individual citizens of the United States should engage in such an enterprise, provided they did not thereby infringe any of the laws of the United States. That on the Saturday before the said gen. Miranda left this city, on board the said Leander, he wrote two letters—one to the president of the United States, and the other to the secretary of state of the United States, which this examinant saw and read, and which this examinant put himself into the post-office of this city, to be forwarded; the contents of which were, that the said gen. Miranda had finished his business in this city in a decorous manner, and in a way, he hoped, that would be pleasing to them, the president and secretary; but that the said letters did not explain what that business was, nor what he the said gen. Miranda had done. That gen. Miranda informed this examinant, that he was on good terms with the British government, and had been some time in England, and lately came from there to this city, and that the said British government were now favourable to the project of liberating the said Spanish country from the oppression of that government. That this examinant's son went with Miranda as a companion, who was to take care of him and provide for him for life; and it was left to gen. Miranda, in case there was a necessity to proceed to extremities in favour of his friends, and to free his native country, to provide for this examinant's said son as he should think fit, in relation to promotion and command. . . . This examinant is positive, that there were no representations made or authorised by him, that the engagement was for the service of the United States, nor any false objects held out to view—the service was declared to be secret and optional. . . . This examinant knew that this expedition was going on from the time of the return of gen. Miranda from Washington, and supposed it was with the knowledge and consent of the president and secretary. . . .

W. S. SMITH.

The above examination was taken and subscribed before me this first day of March, 1806.

MATTHIAS B. TALMADGE.

Document Source: *The Trials of William S. Smith, and Samuel Ogden, for Misdemeanours, Had in the Circuit Court of the United States for the New York District, in July, 1806* (New York: I. Riley and Co., 1807), at xxi–xxiv.

**Document 7: Letter from John Breckenridge to Thomas Jefferson,
March 18, 1806**

President Jefferson asked Attorney General John Breckenridge to analyze the statements Judge Tallmadge took from Smith, Ogden, and Ogden's associate John Fink. Breckenridge's opinion letter strongly condemned the illegality of the deponents' conduct and rejected the defense he rightly anticipated they would make if charged.

SIR

The papers containing the examination of William S. Smith, Saml. G. Ogden and John Fink which you were pleased to direct should be laid before me, I have duly considered.

From the facts disclosed in that examination, there remains no doubt, but that the laws of the U. States have been flagrantly violated. The attorney for the U States for the District of N. York is now proceeding in a course of legal prosecution against the offenders, which I have no doubt will result in their Conviction.

Something in the nature of a defence, or rather in extenuation of the offence, appears to be attemptd, which I think may not be unworthy of remark;—which is, that they were induced to the commission of the act by the suggestions & assurances of Genl. Miranda, “that he had communicated his project to the President & Secretary of State of the U. States, & that they had given their sanction to his proceedings.”—It cannot I presume escape the notice of the Attorney for the U. States, that this defence must be wholly inadmissible; or if even admissible, wholly ineffectual. Independant of the extravagant idea of justifying, or even excusing themselves for the commission of an offence, by their relyance on the declarations of Genl. Miranda, of the assent of the Government to its commission, it would be admitting a principle by which the honor & dignity of the Govert. might be wickedly assailed. To presume that those who administer this Government would stoop to vindicate their honor of that of the Government, from the charges or calumny of any offender who may be arraigned before our tribunals, & who may attempt to implicate them in his Guilt, is presuming on a state of personal as well as National degradation of which this government will not furnish an example. It would be affording a Weapon with which every conspicuous offender might attempt to wound the administration; as by only making the allegation, he would claim the right to call upon any of the High officers of the Government, to justify his defence, or to exculpate themselves. A practise so embarrassing & humiliating cannot possibly I presume be attempted to be introduced in any court whatever.

But admitting such testimony could be asked for, it would, if introduced, be wholly irrelevant; for the President having no power to arrest, or dispense with the operation of

this act, his assent, or even order that it should be violated, would not shield from its pains & penalties those who offend against it.—It appears to me therefore, that the defence disclosed by the examination ought, in the first view I have taken of it, to be repelled upon every principle; & in the second view as irrelevant, & as furnishing no legal grounds of defence, or even of extenuation; because the declarations of Miranda cannot be considered as legal evidence; & if even legal, as affording them any justification for committing the offence.

I have the Honor to be most respectfully Your Obt. Ser.

JOHN BRECKINRIDGE

Document Source: John Breckinridge to Thomas Jefferson, 18 March 1806, "Founders Online," *National Archives*, accessed at <https://founders.archives.gov/documents/Jefferson/99-01-02-3430>.

Document 8: Pretrial Arguments, April 8–9, 1806

Prior to trial, Smith and Ogden's defense counsel filed pleas in abatement, legal pleadings challenging the validity of the process by which the defendants had been indicted. The defense counsel alleged that the grand jury should not have been shown the statements that Judge Tallmadge collected from the defendants. These excerpts from the hearings on these pleas illustrate the delicacy of the attorneys' positions, as they were forced to argue the impropriety of Judge Tallmadge's conduct without appearing to challenge his impartiality.

On Tuesday the 8th of April, Messrs. Ogden and Smith, being separately called upon to plead to their indictments, respectively put in their pleas in abatement, verified by affidavit, which pleas were substantially as follows: That the grand jury, by whom the bill of indictment was found, previously to the finding thereof, had before them illegal testimony, and such as, by the laws of the land, ought not to have been before the said grand jury previously to their finding the said bill of indictment; and that the said defendant, on the first day of March last past, was arrested by virtue of a warrant issued by the honourable Matthias B. Talmadge, esq. district judge of the United States for the district of New-York, and thereupon carried before the said judge, and was then and there sworn, and examined by the said judge touching the supposed offences charged in the said indictment, and was then and there illegally, and against his will, forced and compelled by the said judge to answer certain questions touching the said supposed offences, in the said indictment contained, which said, examination and deposition of the said defendant were reduced to writing by the said judge, and the said defendant was then and there by the said judge illegally, and against the will of him the said defendant, compelled to sign the same, and to

swear to the same as the same were so reduced to writing and signed, and that the deposition in writing of one (the defendant in the other cause) taken before the said honourable Matthias B. Talmadge, esq. in the absence of the said defendant, together with the aforementioned legal deposition and examination of him the said defendant, were, before the said indictment was found, illegally laid before, and were before the grand jury, who found the said bill of indictment, and this he is ready to verify, &c.

. . . On the next day, the district attorney filed his demurrers to those pleas; and the counsel for the defendants prayed time to join in demurrer till the next day, in order that they might be prepared for the argument. This was resisted by the district attorney [who] . . . said, that the pleas were frivolous; so frivolous that he would have been justified in taking no notice of them as pleas. Mr. Colden, in reply, . . . asked, is it frivolous to allege, that the party has been indicted on illegal testimony? Is it frivolous to allege that testimony, which the party was compelled to give against himself, has been laid before the grand jury which found the bills? We hope to be able to convince, *even this court*, that the plea is not frivolous. Here he was interrupted by judge Talmadge, who immediately called on him for an explanation of what he meant by the words, *even this court*, and asked him whether he had intended to say that the court was prejudiced or partial? Mr. Colden answered, that the words must speak for themselves; that he did not think they imported any such meaning; that he thought the court ought not, and could not examine him, so as to draw from him answers which might criminate himself, and that he was not prepared to give any explanation on the subject. The judge then ordered him into the custody of the marshal. While the order of commitment was preparing, Mr. Colden appeared to consult with some of his friends immediately about him, and again addressed the court, stating that he knew it had the power of committing him, and that he had no appeal to any other tribunal; that he had no disposition, where professional duty did not require it, to enter into a struggle with such disparity of strength, or to make unavailing efforts against irresistible authority; that he had therefore committed to paper an explanation, which he begged leave to read, and which was as follows: "By the words, *even this court*, I meant to express a hope, that (notwithstanding the court was composed of the magistrate who took the depositions below, and who therefore may be supposed to have his mind influenced by testimony, which he ought not to have heard, and which it was supposed could not have been offered in court here). I should be able to convince, even this court, though it might be more difficult so to do, than to convince a court, the members of which were new to the business.—I meant no contempt of the court."

Judge Talmadge then asked Mr. Colden for the paper he had in his hand, which the latter declined giving, saying it was only his notes, from which he had spoken. He,

however, by desire of the judge, again read over the paper he had written; upon which his honour said, the apology was sufficient; and told the marshal that he might discharge *that man* out of custody.

Document Source: The Trials of William S. Smith, and Samuel Ogden, for Misdemeanours, Had in the Circuit Court of the United States for the New York District, in July, 1806 (New York: I. Riley and Co., 1807), at xxiv–xxvi.

Document 9: “Memorial of Samuel G. Ogden,” April 18, 1806

Ogden wrote to Congress protesting his treatment and laying out his argument that the government was aware of, and approved, the mission that he helped to organize and equip. The memorial was subsequently reprinted in the press. In this excerpt, Ogden describes and criticizes Judge Tallmadge’s conduct of Ogden’s interrogation.

Your memorialist . . . respectfully represents, that on the first day of March last he was arrested on a warrant, issued by the hon. Mathias[sic] B. Talmadge,[sic] Esq. judge of the district court of the United States for the district of New York, and thereupon was carried before the said judge, whom he found attended by the district attorney of the United States, and some other officers of the court—that your memorialist was informed that he was then before the court in three[sic] capacities; that in the one he was to be examined as a person charged with the offence mentioned in the warrant; and in the other as a witness against others who were parties to the same offence—that he would be at liberty to answer or not, as he should think proper, such questions as would be put to him in the first capacity; but that the court would compel him to answer the interrogatories that would be put to him as a witness. That your memorialist was first examined by the said judge and attorney as a party accused, which examination having been reduced to writing, was signed by your memorialist. That your memorialist was then sworn as a witness; and the judge having informed your memorialist that he would then be compelled to answer such questions as should be put to him, your memorialist remonstrated with the judge as to the legality of obliging your memorialist to answer in any capacity, whether as a witness or as an accused party, questions which might tend to criminate himself—that the judge thereupon informed your memorialist, that he was not bound to make an answers by which he would be criminated; but notwithstanding, questions were immediately put to your memorialist the answers to which must directly exculpate or criminate him; and among other questions of this character, your memorialist was asked of what the cargo of the ship *Leander*, which lately sailed from the port of N. York consisted, and to what place or port she was bound; that on these questions being put, your memorialist said, that he did not conceive by law he was bound to answer, and finally refused to answer them; whereupon the judge ordered

your memorialist to be committed, and directed a warrant to be made out for sending him to prison; that your memorialist being ignorant of the laws, and not being certain how far he was justifiable in refusing to answer the questions that were put to him; prayed that the examination might be postponed for a little time, that he might have an opportunity of considering whether he ought to make the answers required of him. But the judge insisted on your memorialist's answering immediately; that your memorialist then prayed leave to send for counsel; but this prayer the judge peremptorily refused. That your memorialist finding that he should be sent to prison if he persisted in his refusal, and that if he should be so, that it would be ruinous to his mercantile concerns and distressing to his family, did answer the questions that were put to him, not however without objecting from time to time, to such questions as your memorialist thought were illegal, but which were always insisted upon, by the district attorney, and judge; that the testimony thus given by your memorialist was reduced to writing and signed by your memorialist, and your memorialist was required again to swear to the same, and upon his objecting to do so, he was threatened with imprisonment, and thereby compelled to swear a second time. He was then required to give security as a principle for his appearance at the then next circuit court of the United States for the New York district, himself in ten thousand dollars, with two sureties each in five thousand dollars, and this being done, after a detention of about eight hours, your memorialist was set at liberty.

Your memorialist is persuaded that no comments are necessary to set these proceedings in their true light. If they are authorized by the laws of the United States, then indeed has the inquisition found a sanctuary under their dominion. But your memorialist is advised that these proceedings against him were as legal as they were oppressive and tyrannical, that there is no law by which a magistrate of the U. States can force a citizen to be a witness out of court in case of misdemeanor, that the laws of this country do not permit a citizen either by threats of imprisonment or by any other species of torture to be compelled to answer interrogatories before any secret tribunal in the absence of the accused, much less interrogatories, the answers to which may tend to criminate himself, when the laws shall delegate to a magistrate or to an executive officer, holding his place at the will of the president, powers in any wise analogous to those that have been exercised against your memorialist, there must be an end to that liberty which is the boast and blessing of Americans and which the constitution of the United States professes to secure; one view of the subject will be sufficient alone to shew the enormity of the power that has been assumed in the case of your memorialist. If a magistrate may examine an accused person on interrogatories, and should be actuated by feelings of gratitude for his appointment, or allured by prospects of future promotion might wish, and seek to criminate the very man whose conviction might appear necessary to shield his patrons from reproach and infamy.

In such a case, a magistrate so corrupt, would put such interrogatories only as would serve to convict the accused, but would be silent as to such questions as might draw forth answers tending to exculpation or excuse. . . .

Document Source: Reprinted in "From the United States Gazette," *Aurora General Advertiser*, May 28, 1806, 2.

**Document 10: Letter from James Madison to Thomas Jefferson,
May 28, 1806**

This brief letter between Secretary of State Madison and President Jefferson suggests Madison's attitude towards the defense's position in the Smith and Ogden cases. It also intimates that Madison believed cabinet officials would likely have to comply with subpoenas in the case, though Jefferson later ordered them not to do so.

DEAR SIR,

. . . Subpœnas have this day been served on Genl. Dearborn, Mr. Smith & myself. The absence of Mr. Gallatin postpones the service on him. Mr. Wagner, Doctr. Thornton, & Mr. Duncanson, & Mr. Bradley of Vermont, are also on the list of Witnesses, brought by the Messenger, and either have been or will be summoned. It is perhaps not unfortunate that so aggregate a blow has been aimed at the administration, as it places in a stronger view the malice of the proceeding and the inconvenience to the public business which would result from an attendance of all the heads of Dept. Still I find a strong impression existing that the attendance is inevitable. Yrs. &c.

J. MADISON

Document Source: James Madison to Thomas Jefferson, 28 May 1806, "Founders Online," *National Archives*, accessed at <https://founders.archives.gov/documents/Madison/02-11-02-0581>.

Document 11: Letter from James Madison, Henry Dearborne, and Robert Smith to the U.S. Circuit Court for the District of New York, July 8, 1806

Acting on instructions from President Jefferson, Madison and two other cabinet members refused to appear in obedience to the subpoenas the defendants had served on them. This refusal prompted a significant discussion about the propriety of the refusal, the materiality of the cabinet officials' potential testimony, and the court's ability to punish the defiance of the subpoenas.

To the Honorable the Judges of the Circuit Court of the District of New-York.

We have been summoned to appear, on the 14th day of this month, before a special circuit court of the United States for the district of New-York, to testify on the part of William S. Smith and Samuel G. Ogden, severally, in certain issues of traverse between the United States and the said William S. Smith, and Samuel G. Ogden. Sensible of all the attention due to the writs of subpoena issued in these cases, it is with regret we have to state to the court, that the president of the United States, taking into view the state of our public affairs, has specially signified to us that our official duties cannot, consistently therewith, be at this juncture dispensed with. The court, we trust, will be pleased to accept this as a satisfactory explanation of our failure to give the personal attendance required. And as it must be uncertain whether, at any subsequent period, the absence of heads of departments, at such a distance from the scene of their official duties may not equally happen to interfere with them, we respectfully submit, whether the object of the parties in this case may not be reconciled with public considerations by a commission issued, with the consent of their counsel and that of the district attorney of the United States, for the purpose of taking, in that mode, our respective testimonies.

We have the honor to be

With the greatest respect,

Your most obedient servants.

JAMES MADISON.

H. DEARBORNE.

R. SMITH.

Document Source: James Madison to Judges of the Circuit Court of New York, 8 July 1806, "Founders Online," *National Archives*, accessed at <https://founders.archives.gov/documents/Madison/02-12-02-0156>.

Document 12: Cadwallader Colden, Argument in Support of Defendant's Motion for an Attachment Against Absent Witnesses, July 14–15, 1806

The defendants argued that the court should compel Madison and the other recalcitrant witnesses to appear before the court and punish the witnesses for contempt of court in disobeying the subpoenas. They also requested a delay of the trial pending the witnesses' appearances. This excerpt from the arguments in support of these motions focuses on the power of the court to compel witnesses to appear regardless of their position.

If the witnesses who have been summoned stand on the same level with their fellow-citizens; if there be not something in their high offices to raise them above those laws which are above the rest of the community; then there can be no doubt but that they are subject to that provision of the constitution, which in its terms seems to pay no respect to official dignity or station; but, as it appears to me, gives the accused a right to demand compulsory process against any man whose testimony he may deem necessary to make his innocence appear. . . . I proceed to inquire whether Mr. Madison and the other heads of departments have offered a sufficient excuse for their disobedience to the process of the court, by saying they are members of the executive government—whether these dignified sounds elevate them above the constitution and laws.

. . . I [will not] suppose that the learned counsel who are opposed to us mean to say that there is any thing in the official dignity with which the witnesses are clothed which saves them from the operation of the laws. The peers of England have not thought that their titles or stations afforded them any such exemption. And even the king of that country, who claims his title by divine right, has yielded to the obvious moral obligation of giving his testimony when the administration of justice rendered it necessary. . . .

But it may be said that there are certain political motives which should induce the court to excuse the secretary of state and other heads of departments from giving testimony. That were they to be examined as witnesses they might disclose state secrets! If I were to admit that there are certain secrets between the president and his secretaries which they would not wish to disclose, (and I have no doubt there are many such) or which ought not to be disclosed; still the witnesses who have been duly summoned owe obedience to the process of the court; they must appear and be sworn, and when on their oaths, they may avail themselves of this excuse if questions are put to them which they ought not to answer.

But the court must judge and not the witnesses, whether they shall or shall not answer. Much less shall the witnesses be allowed to determine for themselves whether they will be obedient to a mandate of the judicial authority.

. . . Let us suppose that we could prove that the acts charged against the defendant, were done by the express order of the president of the United States; would not such an order be a complete justification? That the president might have authority to give such an order, cannot be questioned. Congress have the power of declaring war; and when that is done the president is to act under it, and may authorize any military or hostile measures against the enemy. If it be said that there was no declaration by congress, it is sufficient for us to answer that there might have been. . . . Must [Smith] inquire the chief magistrate was or was not authorised to give their order, and must the defendant be punished if it turns

out that the president has acted illegally. No; it would be an oppressive and tyrannical doctrine to say the defendant may be charged with a crime under such circumstances. . . .

Document Source: *The Trials of William S. Smith, and Samuel Ogden, for Misdemeanours, Had in the Circuit Court of the United States for the New York District, in July, 1806* (New York: I. Riley and Co., 1807), at 13–19.

Document 13: Nathan Sanford, Argument Against Defendant’s Motion for an Attachment Against Absent Witnesses, July 14–15, 1806

Like the defense, the prosecution attorneys relied heavily on the maxim that no one is above the law, though they deployed this idea in a very different way. U.S. Attorney Nathan Sanford argued that the president and cabinet officials did not have the legal power to authorize Smith and Ogden to violate the Neutrality Act. As a result, he claimed, the witnesses’ testimony would have been immaterial to the case and the court should not compel the witnesses to attend or delay the proceedings.

The principal allegation of the defendant in his affidavit, is, that the military expedition against Carracas, and his agency in it, took place with the knowledge and approbation of the president, and the secretary of state. It is said by his counsel, that this amounts to a complete justification of the offence, or that at least, it must operate in mitigation of punishment and, that in either view, they are entitled to the testimony. This we altogether deny. It can neither operate in justification or in mitigation. The most superficial attention to our constitution and form of government will be sufficient to convince any one that this sort of defence is wholly inadmissible. It proceeds altogether upon the idea that the executive may dispense with the laws at pleasure; a supposition as false in theory as it would be dangerous and destructive to the constitution in practice.

The defendant is indicted for a breach of a positive statute of the United States. Do his counsel seriously contend that the president dispensed with the law in this instance? Where will they find an authority of this nature vested in the president?

. . . These principles result from the constitution, or rather, they are found in the constitution itself. The constitution of the United States is a delegation of limited powers.—The powers delegated are not only defined with accuracy, but are with equal caution allotted to different branches of the government. . . . If the president has acted improperly, or failed in the execution of his duty, his conduct may be the subject of inquiry before another tribunal. If he has been guilty of crimes or misdemeanors, he is answerable upon an impeachment. The defendant is answerable for his conduct before this court, and a jury of his country.

. . . Colonel Smith does not state that he expects to prove any thing respecting the state of peace or war, by the absent witnesses. On the contrary, he states that their testimony will relate entirely to other objects. The affidavit states that the expedition was set on foot with the knowledge and approbation of the president; but contains not a word of a war With Spain. But this is not the only answer which may be given to this idea of war with Spain. . . . But, the counsel say that an actual state of war may exist without the declaration of congress, and have attempted to cite instances of such wars. There is no instance in which the president has undertaken to make war, but in pursuance of the provisions of the constitution and laws passed under it. He certainly has power to repel invasions, and suppress insurrections; but even this is a power not vested in him by the constitution, but is expressly delegated to him by a statute.

. . . If the court then are satisfied that no contempt was intended, and that the testimony they could give, were they here, would be immaterial and inadmissible, this surely is not a fit case for attachments. . . .

Document Source: *The Trials of William S. Smith, and Samuel Ogden, for Misdemeanours, Had in the Circuit Court of the United States for the New York District, in July, 1806* (New York: I. Riley and Co., 1807), at 27–34.

Document 14: Ruling on Absent Witnesses, July 17, 1806

Justice William Paterson announced the court's unanimous opinion that the trial should not be delayed for the testimony of subpoenaed officials. He also noted that he and Judge Tallmadge disagreed as to whether the court could require the witnesses to appear and show cause why they should not be held in contempt. Paterson declined to detail the reasons behind this split decision or to explain which judge had taken which position. Most contemporary sources believed that Paterson thought the court could and should issue an attachment against the witnesses. If this is so, it is possible that Paterson declined to give details on the ruling to allow the trial to continue according to Judge Tallmadge's views as Paterson stepped down from the case due to ill health. The division also opened up the prospect of an appeal to the Supreme Court should the jury find the defendants guilty.

Paterson, J.

It appears to the court, that James Madison, secretary of state, Robert Smith, secretary of the navy, and Jacob Wagner and William Thornton, who are officers under the department of the secretary of state, have been duly served with subpoenas to attend as witnesses on the part of the defendant, and that they do not attend pursuant to the process of the court.

. . . [T]he defendant has come forward with an affidavit stating the material facts, which he conceives he will be able to prove by the evidence of Mr. Madison, Mr. Smith, Mr. Wagner and Mr. Thornton. This part of the affidavit runs in the following words: “And this deponent further saith, that he hopes and expects to be able to prove, by the testimony of the said witnesses, that the expedition and enterprise to which the said indictment relates, was begun, prepared and set on foot with the knowledge and approbation of the president of the United States, and with the knowledge and approbation of the secretary of state of the United States. . . . And the deponent further saith, that he is informed, and doth verily believe, and hopes and expects to be able to prove, by the testimony of the said witnesses, that the prosecution against him for the said offence charged in the said indictment, is commenced and prosecuted by order of the president of the United States. And the deponent further saith, that he has been informed, and doth verily believe, that the said James Madison and Robert Smith are prevented from attending by order, or interposition of the president of the United States.”

The first question is, whether the facts stated in the defendant’s affidavit be material, or ought to be given in evidence, if the witnesses were now in court, and ready to testify to their truth? Does the affidavit disclose sufficient matter to induce the court to put off the trial? As judges, it is our duty to administer justice according to law. We ought to have no will, no mind, but a legal will and mind. The law, like the beneficent author of our existence, is no respecter of persons; it is inflexible and even-handed, and should not be subservient to any improper considerations or views. This ought to be the case particularly in the United States, which we have been always led to consider as a government not of men, but of laws, of which the constitution is the basis. The evidence which is offered to a court must be pertinent to the issue, or in some proper manner connected with it. It must relate and be applied to the particular fact or charge in controversy, so as to constitute a legal ground to support, or a legal ground to resist the prosecution. For it would be an endless task, and create inextricable confusion, if parties were suffered to give in evidence to the jury whatever self-love, or prejudice, or whim, or a wild imagination might suggest.

. . . The defendant is, indicted for providing the means, to wit, men and money, for a military enterprise against the dominions of the king of Spain, with whom the United States are at peace, against the form of a statute in such case made and provided. He has pleaded not guilty; and to evince his innocence, to justify his infraction of the act of congress, or to purge his guilt, he offers evidence to prove, that this military enterprise was begun, prepared, and set on foot with the knowledge and approbation of the executive department of our government. Sitting here in our judicial capacities, we should listen with caution to a suggestion of this kind, because the president of the United States is bound by the constitution to “take care, that the laws be faithfully executed.” These are the words

of the instrument; and, therefore, it is to be presumed, that he would not countenance the violation of any statute; and, particularly, if such violation consisted, in expeditions of a warlike nature against friendly powers. The law, indeed, presumes that every officer faithfully executes his duties, until the contrary be proved.

. . . The statute, which is the basis of the present indictment, was passed the 5th June, 1794, and was temporary; but congress found it expedient, and perhaps, necessary, to continue it in force, without limitation of time, which was done on the 24th April, 1800. This 5th section, which prohibits military enterprises against nations with which the United States are at peace, imparts no dispensing power to the president. . . [I]f a private individual, even with the knowledge and approbation of this high and pre-eminent officer of our government, should set on foot such a military expedition, how can he expect to be exonerated from the obligation of the law? Who holds the power of dispensation?—True, a *nolle prosequi* may be entered, a pardon may be granted; but these presume criminality, presume guilt, presume amenability to judicial investigation and punishment; which are very different from a power to dispense with the law. Supposing then, that every syllable of the affidavit is true, of what avail can it be on the present occasion? Of what use or benefit can it be to the defendant in a court of law? Does it speak by way of justification? The president of the United States cannot controul the statute, nor dispense with its execution, and still less can he authorise a person to do what the law forbids. If he could, it would render the execution of the laws dependent on his will and pleasure; which is a doctrine that has not been set up, and will not meet with any supporters in our government. . . . If then, the president knew and approved of the military expedition set forth in the indictment against a prince, with whom we are at peace, it would not justify the defendant, in a court of law, nor discharge him from the binding force of the act of congress; because the president does not possess a dispensing power. . . .

The suggestion, that the evidence should be permitted to pass to the jury, that they may determine whether the offender ought to be recommended for mercy, is utterly destitute of foundation. It does not merit a serious thought. The jurors are to hear such evidence, as the court think pertinent and material, and nothing more. But if matters, which may induce the jury to recommend the offender to the pardoning power, should be received in evidence, I do not know where we are to stop, or how to draw a line between the admission and non-admission of testimony. We should be without land marks; and afloat on the ocean without any compass to direct our course.

. . . On [the subject of whether the court should issue an attachment against the absent witnesses] the judges disagree, or, as the statute expresses it, their opinions are opposed. When this happens, the judges do not assign any reasons in favour of their

respective opinions, but merely state the point of disagreement, that either party may carry it to the supreme court for ultimate decision, according to the 6th section of the act to amend the judicial system of the United States, passed the 29th of April, 1802.

One of the judges is of opinion, that the absent witnesses should be laid under a rule to show cause, why an attachment should not be, issued against them. The other judge is of opinion, that neither an attachment in the first instance, nor a rule to show cause ought to be granted.

. . . The court have considered [whether to delay the trial] and determined that the trial should proceed. [Justice Paterson's] own infirm state of health had for a moment inclined him to agree to a few days delay, with the hope that he might then be able to sit on the trial; but he was convinced that he should not in that time be sufficiently recovered. He therefore relinquished the idea of delay on his own account; and he did not perceive any benefit which could result to the defendant by granting the application.

Judge *Paterson* then left the bench.

Document Source: The Trials of William S. Smith, and Samuel Ogden, for Misdemeanours, Had in the Circuit Court of the United States for the New York District, in July, 1806 (New York: I. Riley and Co., 1807), 80–90.

Document 15: Testimony of Samuel Ogden, July 18, 1806

The prosecution called Ogden as the first witness in Smith's case. This bold move may have backfired as the repeated arguments over Ogden's right against self-incrimination (unexpurgated here to give readers a sense of the tenor of the trial) resonated with the defense's claim that the prosecution was politically motivated and unfair.

SANFORD. Do you know Colonel William S. Smith? A. Yes.

Q. How long have you known him? A. A great many years.

Q. How many years? A. Three or four years. I have known him as a gentleman.

Q. Have you ever seen Col. Smith and Gen. Miranda in Company together? A. I have seen them together, but I do not recollect the precise day when. I think it was about the beginning of January; but perhaps it might be the latter end of December.

Q. Did Col. Smith introduce Miranda to you? A. He did.

Q. Was it in this city? A. Yes.

Q. Are you sure whether it was in January or December that you saw them together? A. It might be December, but I can not recollect.

Q. When they were together with you, was there any particular conversation? A. There might be a great deal, but I cannot say what it was.

Q. Do you know what was the object of the first meeting between you, Col. Smith and Miranda—did you hear? A. The object of the first meeting was to make me acquainted with Gen. Miranda as a man of science and a great traveller.

Q. What was the object of the expedition that was fitting out at that time? Was it against the Spanish dominions in South America? A. I decline answering that question.

Q. Did you ever hear Col. Smith speak of an expedition to the West-Indies?

HOFFMAN. To answer such questions as would tend to criminate himself will not be required by the court. By this mode they can not expect to criminate Col. Smith. Mr. Ogden is now required to show the destination of the Leander, without which they will be defeated in establishing the counts in the indictment ; with it, they may, perhaps, be enabled to bring sufficient testimony to establish their charge.

OGDEN. If you ask this as a particular question, I decline to answer. If you put it as a general question, I answer, yes.

COURT. It appears a proper question. You must say if you know anything of a conversation or declaration of Mr. Smith, made relative to the matters charged in the indictment.

COLDEN hoped the court would hear him on this point; he expected to show that the witness is not obliged to answer questions like that now proposed; he cannot be compelled to give testimony as to confessions or conversations of the defendant, which may be made use of against the witness when it comes to his turn to be a defendant, and which will tend to criminate him.

COURT, the question is, if the witness heard Col. Smith say anything as to his agency or procuration of this expedition. It is proper he should give testimony on that point.

COLDEN. I hope this is not a positive decision of the court, but that they will hear us on so important a point. The court is now to make a decision of the utmost consequence, not only to this defendant and to the witness, but to every citizen, inasmuch as it involves a fundamental principle in the administration of justice. A witness is not bound to give testimony which may tend to criminate himself; the witness ought not to be called upon to give the testimony required of him, because it may tend to criminate himself. And that it may do so, will be obvious to the court when it turns to its records, and sees that there is an indictment on its files against the witness for the same offences with which the defendant is charged.

EDWARDS said, that the question might be well understood, he would put it in a new form: Did you ever hear Col. Smith speak of the expedition of the Leander to South America, and what did he say?

COLDEN. This mode of putting the question by no means removes our objections. We contend, not only that a witness shall not be compelled to answer a question, when the answer may criminate him immediately, but that he shall not be compelled to answer a question which may tend to criminate himself.

COURT. You must show how this tends to criminate Mr. Ogden.

COLDEN. Nothing can be more obvious than that it may do so. If Mr. Ogden were not indicted for having participated in the offence, with which the defendant is charged, still, inasmuch as he would be liable to be indicted at any time hereafter, if it should appear that he was a *particeps criminis*, he might object to answer the question, on the ground that his answer would disclose his participation in the acts of which the defendant is accused. But when the court finds that the witness is indicted for the very same offence with which the defendant is charged, the force of our objection must be immediately felt. The defendant and the witness are indicted for fitting out in the Leander, a military expedition against the Spanish colonies. Now, in order to convict the witness on the indictment which is preferred against him, it will be incumbent on the prosecutor to prove, not only that the witness did provide and prepare means which might be applied to a military expedition; but he must show upon the trial of the witness, that the witness knew that the means he did provide were intended for a military expedition. For without such knowledge there can be no criminality. The witness would be no more criminal than any other person, who may have provided, or bought and sold articles of the same description. Now, if the witness in answer to the question put, should say, I had conversations with Colonel Smith, in which conversations we talked of the Leander; he told me that she was destined to carry on a military expedition against the Caraccas, and he engaged me to provide means for the expedition; would not this tend to criminate the witness? Would it not be conclusive against him to show that he had a knowledge of the expedition; and would the public prosecutor have anything more to do, when he comes to put the witness on his trial, than to prove by the testimony of some by-stander, that the witness, in answer to the question then put, gave such testimony as I have supposed; and could not this tend to criminate him? Nay, it would directly criminate him, for it would be making him supply, by his own testimony, an essence of his crime. Let us suppose, that the witness really participated in the offence with which the defendant is charged; that he knew the destination of the Leander and the intent of the expedition connected with her; that there exists at present no evidence of the witness having such knowledge; and that the witness was now on his trial, is it not certain that he would be acquitted for the want of proof of what is so necessary to make his acts criminal? To supply this want of testimony by management, Colonel Smith is first put on his trial, and Mr. Ogden called

on as a witness to furnish testimony against himself. It is not necessary for us to show, how the answer to the proposed question may criminate the witness. It is sufficient that the witness says it would furnish matter for his own accusation. You cannot call upon the witness to explain how he would be implicated by his answer, because if you did, you would contravene the reason of the rule, and draw him from that protection which he ought to find under the rule. For if the witness is to tell you how his answer would criminate himself, he must first tell you what his answer would be, and show its bearing and connection with other circumstances, before you could judge whether it would criminate him or not. We contend, therefore, that it must rest on the witness's own declaration. If he says the answer would criminate him, he will not be obliged to give the answer. If it should be objected that if this doctrine prevails that then a witness in every case would have it in his power to arrest his examination and to conceal the truth by saying that his answer would expose his own guilt; we shall not deny that this would in a great degree result from our construction of the rule of law. But all human institutions have, and must have their imperfections; and it is one in the administration of justice that it may happen that a witness may avail himself of this rule to suppress the truth. But then let it be remembered, that he must do so by committing a perjury; for he must say upon his oath that the answer required of him would criminate himself; and you have then the same assurance for the truth of this declaration that you have for any other fact that depends upon the oath of a witness. Mr. Ogden having declared on his oath, that he cannot answer the questions which have been proposed to him without criminating himself, we trust the court will say he cannot be compelled to give an answer.

HOFFMAN. One word. No accomplice can ever be forced to give testimony against himself. It is a general rule of law, and recognised by the practice of all our courts of justice. If the attorney-general wants to make use of the testimony of Mr. Ogden on this point, he must first enter a *nolle prosequi*, and discharge the witness from the prosecution.

COURT. He is only to say whether he has heard any confessions or admissions on the part of the defendant; but he is not called on to say in what degree he may have been an accomplice.

HOFFMAN. What I stated is an universal principle, and the court must be sensible that if Mr. Ogden stood here in the character of an accomplice, he could not be called upon to give testimony at all. If he be a principal or co-principal in the offence, it cannot be inquired of. Nothing can entitle the prosecutor to his testimony but a *nolle prosequi*, according to all the rules of the English law.

OGDEN. If I was to answer the question it may tend to criminate myself. I am indicted for the same offence, and a mutual communication on the subject would imply that each of us knew of the setting on foot and fitting out the expedition. I therefore decline the answer.

SANFORD. Do you mean to submit or do you refuse to answer? A. I have already refused, under the particular circumstances which I have stated.

SANFORD. At present we do not call on the court to enforce its decision in respect to this answer; but we do not waive our right to call upon it for that purpose hereafter.

Q. Did you see Smith and Miranda together more than once? A. I did, but I do not remember how often.

Q. Was it after Miranda's introduction to you? A. Yes. I have seen them walking on the battery together, that is in the month of January last.

Q. Did Miranda apply to you to charter a vessel? A. I do not think that question legal. If he had applied to me to charter, and I acknowledged it, it may be followed up to prove that I knew of the expedition that was set on foot.

SANFORD. Did you charter a vessel to Miranda? Mr. Ogden was about to answer, when Emmet arose and said, he objects to that question. Ogden adds, I do.

EMMET. We not only object to this question as it forms a link in the chain of proof, which, if once obtained, fastens round the witness as well as the defendant. If Mr. Ogden says that he did charter a vessel to Gen. Miranda, then they might, by coupling other testimony, show that she was fitted out and laden with arms and ammunition; then show the particular object of her destination; and upon Mr. Ogden's trial it will be competent to give in evidence, by the testimony of a by-stander, that he had a knowledge or concern in the undertaking; he therefore cannot be called upon to answer whilst he is under prosecution. I will state a decision which has taken place on this head, which goes farther than we contend for. It is the case of Dr. Deman. The attorney-general filed an information, *ex officio*, for a libel. It was competent to be proved by the printer. In his defence, he stated that the printer was indicted also. The court immediately declared that the printer should not be asked a single question whilst he remained under indictment, or until a *nolle prosequi* was entered. But our objections go farther; we stand on the grounds of the constitution, and not the common law; and we must say that our lips are hermetically sealed, as to answering any questions which may tend to criminate ourselves. We say that no questions can be asked of the witness in relation to any acts done by himself which by some subsequent testimony may be so connected as to tend to his own crimination.

EDWARDS wished the gentlemen had been prepared with more authorities to support the point they have taken up. The one that had been referred to, was a case not in England, but in Ireland. The books which generally serve as precedents in the United States, are precedents from the courts of England. We know not what modifications there are of English law in Ireland; therefore we do not rely more on the cases in that country, than in France; we are prepared to discuss this question of the *nolle prosequi*, and wish it to be decided on principle. I wish as much as any man to protect every person in the full enjoyment of his rights and privileges. I do not wish to go beyond the legal length in this examination.

Court. Lest this point may be supposed to rest on a principle of law, I shall only say, that I cannot see how this question can tend to criminate himself. It could not be given in evidence on his indictment, as has been urged by the defendant's counsel, because it is not a voluntary confession on his part Hoffman and Emmet both declared that it could be given in evidence by a third person.

EDWARDS asked again, how could it be given in evidence against himself? The chartering of a vessel is an innocent act, therefore, it does not criminate him. If I ask if he chartered his vessel to go to the Caraccas on a military expedition, that would criminate him; therefore he must not answer it. I admit to its fullest extent, that he must not answer a question, by which he may expose himself to be charged with a crime.

OGDEN. My answer might lead to the fountain-head; they might supply by other witnesses what is wanting in mine, and thereby fill up the chasm. Yet my answer shall be determined by the opinion of my counsel.

HOFFMAN. The opinion of your counsel is, that you are not bound to answer the question; and we advise you not to answer it.

SANFORD. We reserve our right to call on the court to enforce its decision, though we do not call upon it, at this time, for that purpose.

HOFFMAN. You have seen Gen. Miranda in company with Mr. Smith; have you not seen him in company with others? A. I have seen Gen Miranda frequently in company with the first characters in New-York.

Q. Did you ever hear from any of the officers of government, that he had dined with them and a number of other gentlemen in the city? That he is known also to Mr. Madison and to the president. I ask these questions with a view to remove any suspicions which may arise against Col. Smith, for being seen in company with Gen. Miranda.

COURT. You may conceive that you may have a right to ask these questions, but I do not see to what purpose the answer would serve. It is nothing but hearsay, which is not evidence.

Document Source: The Trials of William S. Smith, and Samuel Ogden, for Misdemeanours, Had in the Circuit Court of the United States for the New York District, in July, 1806 (New York: I. Riley and Co., 1807), 95–100.

Document 16: Testimony of John Swartwout, July 21, 1806

Swartwout occupied an unusual place in the story of the Smith and Ogden trials. As the court's marshal, he was responsible for assembling the jury pools for the two trials. Both the prosecutors and Secretary Madison complained that he had handpicked known Federalists. The prosecution also opted to question him as a witness, believing that Smith had made incriminating statements to Swartwout. His testimony arguably aided Smith's defense, however.

SANFORD, in answer to a question from the defendant's counsel. I am going to prove by this witness, the conversations and confessions of Col. Smith to him.

Q. Are you acquainted with Col. Smith? A. Yes.

Q. Have you had frequent conversations with him on the subject of Miranda's expedition? A. Yes.

Q. When was the first conversation? A. I cannot recollect particularly, but it has been often since the subject was first publicly talked of. I cannot say whether it was before or after the vessel sailed—perhaps it was both. But I rather think it was not till after the *Leander* had sailed.

. . . Q. What did you understand from him as the nature and tendency of the expedition? A. I understood it to be destined against Spanish America, or the Caraccas.

Q. For what purpose? A. I understood for revolutionizing the Spanish colony; but whether that impression arose from my conversation with Col. Smith, or others, I cannot determine. It is probable then that it might be from him, but I cannot speak positively. I never wished to ask Col. Smith a question on this subject since the indictment has been commenced.

Q. Do you recollect any thing more on this subject? A. It is probable that much more was said, but it is impossible for me to recollect it.

Q. Do you recollect whether you conversed with Col. Smith on the object of this expedition, before it became notorious? A. I do not recollect that I did.

Q. Did you, before the examination before the judge, on the commencement of this prosecution? A. Yes, I think I did; but it is so mingled in my mind with other circumstances that I can not say positively. I believe he mentioned to me while Miranda was here, that the object of the expedition was to revolutionize the Caraccas. Col. Smith and [General Jacob Morton, a prominent New York Federalist and freemason] both mentioned it to me, or it was in company, that it was mentioned that it was his object to revolutionize the Caraccas. The first person who told me of it was, I think, Col. Smith; the next Gen. Morton. This took place on the 25th of November, at a corporation dinner, where Gen. Morton mentioned to me that Miranda had been invited as an officer of distinction.

Q. Did he inform you how he was to effect this purpose? A. No. But I understood from him since, or from the public prints, that Miranda was to be aided by the British.

Q. by HOFFMAN. Did not Miranda leave this city and go to Washington, after the 25th of November? A. Yes.

Q. by COLDEN. Did not Col. Smith tell you that the vessel *Miranda* went in was bound to *Jacquemel*, as well as the Caraccas? A. Yes.

. . . Q. by COLDEN. In these conversations, of which you have spoken, did you understand that the expedition was set on foot with the approbation of the government of the United States?

SANFORD. We do not object to this question as it relates to any one conversation between Col. Smith and the witness, and any part of which the witness has related, but we object to the question as applying generally to any conversation whatever which the witness may have had with Col. Smith.

EMMET. We do it in the way that you have conducted your examination, in order to get the truth out of the witness by aiding his memory.

COLDEN. I understand the objections to this question are that it is too general, and that it is a leading question. It is too general, because it relates to all the conversations that may have passed between Col. Smith and the witness. But it must be recollected that the witness has not attempted to detail any one conversation that passed between him and the defendant; on the contrary, he has told us that he could not recollect what passed between them at any one time—and he has only given us the impressions which were made on his mind by all their conversations taken together. Now if the public prosecutor is to have the benefit of these impressions so far as they may be favourable for him, shall we not be intitled to the same kind of testimony, so far it may be favourable for us. Had the examination of the witness been confined to any particular conversations, undoubtedly we could only have inquired as to what passed in these conversations. But when the witness has been asked by the gentlemen on the other side, what he understood from all the conversations generally, certainly we must have a right to put the same general question. As to its being a leading question, it must be remembered that the witness is now on his cross-examination, and upon a cross-examination we have a right to put leading questions. . . .

SANFORD. It is the law that where a witness swears to a conversation or the admissions of a defendant, the whole is to be taken together. But that does not comprehend the right of putting questions on the cross-examination not relative to the issue. Questions connected with the cause, I am willing to admit, but not those which are unconnected with it. It is necessary to adhere to the rules of evidence, but this would be a violation of all rules. It would produce the absurd effect that the defendant might make testimony in his own favour, by subsequent declarations. This would involve a violation of fundamental rules of evidence.

COLDEN. With permission of the court, I will put our question in such a way as that the extent of our inquiry may be distinctly seen. In these conversations, from which you collected the testimony you give with respect to the destination of the *Leander*, did not Col. Smith tell you that it was set on foot with the approbation and consent of government?

. . . TALMADGE, J. It is proper to examine the witness on any particular conversation, of which he must relate the whole, as far as his recollection serves, and then particular interrogations will be proper.

COLDEN. Then, I trust, his testimony, as to conversations between him and the defendant, will be rejected altogether; for he has repeatedly said he does not recollect any one conversation. Is it intended to receive or reject the whole of his testimony?

TALMADGE, J. That is a subject for after consideration; no doubt, it will have all the weight it is entitled to.

EMMET. We ask, whether the whole of Mr. Swartwout's testimony is not legal; or is it to be abandoned, because he cannot particularise each conversation, but speaks only of the general result? We ask for the same latitude in our inquiries as has been indulged to the public prosecutor.

TALMADGE, J. It is proper to interrogate the witness as to the conversations which he has had with Col. Smith, on all matters relevant to the issue. The conversation at one time might be of one kind, at another of another; they mutually explain each other. But if he says that he does not recollect the conversations, it is proper to put questions that may remind him of it.

COLDEN. Then the court overrule the question?

TALMADGE, J. No, I do not.

COLDEN. I will then again state the question as I conceive it would be proper. From the several conversations you have had with Col. Smith, did you understand that the expedition was fitted out with the knowledge of the president?

TALMADGE, J. He may answer that question if he can identify the particular conversation.

COLDEN. Can you identify the particular conversation? A. No, I cannot; the testimony I have given is the general result of the conversations I have had with Col. Smith.

HOFFMAN. Do you undertake to say that this is a result from the whole of your conversations? A. I think it is.

. . .

EMMET. Have you then a positive knowledge of any particular conversation in which Col. Smith mentioned he had the approbation of the president?

TALMADGE, J. Have you any recollection of a particular conversation respecting this expedition? Repeat the whole of that conversation.

EMMET. Can you recollect any particular conversation respecting the destination and the object of the expedition by the Leander?

EDWARDS. You are to state what you know of the destination of the Leander; but did he ever mention to you, in any particular conversation, that those circumstances were known to the president? If so, repeat the whole.

TALMADGE, J. The question must certainly be understood by this time.

SWARTWOUT. I never heard him converse on the subject of this expedition, but that I understood from him, that he believed, from Miranda's representations, that government winked at the expedition; and he has complained to me since of this prosecution, as Miranda always informed him that government winked at the expedition.

. . . EMMET. Can you give any detail of the conversation respecting an interview between the president and Miranda? A. I understood from Col. Smith that Miranda had waited on the executive, and was informed that government would wink at it.

SANFORD. Did you draw your information upon this point from Col. Smith, or from other sources? A. I drew it from Col. Smith.

. . . HOFFMAN. Do you remember whether you were informed by Col. Smith that Miranda dined with the president and the secretary of state? A. Yes.

HOFFMAN. Did you understand that Miranda was pressed to stay a day or two longer at Washington, after he was prepared to return to this city? A. Yes, I understood so from a letter Colonel Smith received from him.

HOFFMAN. Do you remember the date of that letter? A. I cannot say.

HOFFMAN. Was there a letter from Miranda, desiring Colonel Smith to conduct himself with secrecy? A. I was informed there was such a letter.

HOFFMAN. Throughout the whole of these conversations, did he not uniformly state that he was acting with the sanction and approbation of the government? A. Yes, no doubt, but I never questioned him as you do me. What I state is to be more relied upon as the general result, than any particular or precise information I had from him. I thought that Miranda's project was to revolutionise South America, but how I got the idea I do not recollect. . . .

Document Source: *The Trials of William S. Smith, and Samuel Ogden, for Misdemeanours, Had in the Circuit Court of the United States for the New York District, in July, 1806* (New York: I. Riley and Co., 1807), 114–19.

Document 17: Testimony of John Fink, July 21, 1806

Fink's testimony was arguably the most damaging for Smith. One of three individuals Judge Tallmadge interrogated in the late winter of 1806, Fink had helped to recruit men for Miranda's voyage and testified that Smith was directly involved in that process.

Q. Do you know Col. Smith? A. Yes. He applied to me last winter to enlist some men, or rather to engage some men for government service. I told him I did not know of any men. But a few butchers, were idle. I was to give the colonel news the next morning. Instead of six, as he told me yesterday, there was wanted twelve men, a sergeant and corporal. They asked a good price, it was \$15 per month. There were fourteen at that time and went on as far as twenty. I was authorised by him. He represented to me that they were for the service of the United States, but it was afterwards found they were to go on board the *Leander*. He would not tell us where they were going to. He said he could not disclose the particular object. That he could have a great deal of money to explain it to a certain man, and therefore could not tell the sergeant or me. These men saw Col. Smith. Several of them, not all. I saw him often; he said they were to go on a detachment. They boarded at my house. His son was to command the company and had a commission for to go. I have seen Smith several times at my house. He shewed me a bundle of papers which he said were his orders to get these men. Smith informed me that an expedition similar to this was to go from other states. He said his son was a captain. They went on board; the mate abused them, and they would not stay. There was fifteen dollars and a half a piece given to them. There were twenty of them. I received this money from Col. Smith. He put it in parcels for each man, and delivered it to me for them. It was for a month's pay. The men came to my house after they left the *Leander*. They said they would not go on board the vessel.

Q. When on shore did Col. Smith or his son come to notice them to go on board? A. Col. Smith told me to say if they would not go on board the ship, he did not want them. They might make a new agreement with Capt. Durning. He was nominated to the command. As Smith was to be an aid, Col. Smith said he was going to take the command of this expedition, in the spring. They were to serve as cavalry, as the general's guard. I was informed that horses were prepared for them, where they were to land, and that clothes and every equipment belonging to a horseman was on board.

. . . Q. by HOFFMAN. Was it intimated to them that they would stop at a place where they would have an opportunity to return, if they did not like the service? A. I believe it was mentioned to them.

. . . Q. by HOFFMAN. Recollect yourself. Did you say that Col. Smith told you he wanted to engage them for government? How was that? Had you not just before engaged men for government? A. These were the first men that I raised.

. . . Q. by EMMET. Was you never under any apprehension of being prosecuted for this transaction? A. Never.

Q. by EMMET. You thought him then a good man, and that he had the approbation of government; how came you to believe this? A. I called upon the Colonel, and he showed me his orders.

TALMADGE, JUDGE. I will submit to this mode of examination, if it is with the consent of the district attorney.

EMMET. I submit to the court, but I beg to understand what there is illegal in my course of examining the witness.

TALMADGE, JUDGE. The question is irrelevant to the point in issue.

EMMET. Then I am ignorant of the manner of examining into the credibility of a witness, and therefore excuse myself from my ignorance.

Document Source: *The Trials of William S. Smith, and Samuel Ogden, for Misdemeanours, Had in the Circuit Court of the United States for the New York District, in July, 1806* (New York: I. Riley and Co., 1807), 121–23.

Document 18: Josiah Ogden Hoffman, Closing Argument for the Defense, July 26, 1806

In his closing arguments for the defense in Ogden, Hoffman argued that the key issues in the case had already been decided by the Smith jury. He also made a forceful argument that the case showed that the Jefferson administration was motivated by political vengeance, rather than a desire to see the law enforced.

MR. HOFFMAN. Gentlemen of the Jury, I had hardly expected it would again have been my lot to address a jury of my country, on the subject of the present prosecution. I had trusted that the triumphant acquittal of col. Smith, would have furnished a deep and effectual admonition to his prosecutors; and I little expected, that they would have attempted to atone for their defeat, by the conviction of Mr Ogden.

The question in the present cause is the same as that of col. Smith's; its merits have, therefore, already received a patient, minute and ample investigation. An impartial and independent jury, selected from various classes of society, and from the different political sects into which our citizens are divided, have honourably acquitted col. Smith; and in his acquittal the innocence of Mr. Ogden was virtually pronounced. It was hoped, and indeed expected, that the irksome and odious business of prosecution would here have ceased. The innocence of those gentlemen, touching the transaction in question, had been thus established—the correctness of their conduct, as it concerned the enterprise of gen. Miranda, had been made manifest. The spirit, nay, the very letter of the law had been tested, with regard to their agency in that affair—both the spirit and the letter had pronounced the agency of col. Smith, and consequently that of Mr. Ogden, innocent.

If then, it was merely the wish of government and its agents, to ascertain the culpability of these defendants, such object was fully answered; and on that verdict being pronounced, the prosecution of Mr. Ogden should have

been dismissed. If it was not the individual, but the crime, that was the object of this judicial process, then the prosecution, should have ceased, when the non-existence of the crime was proved. But it seems, from motives best known to those who have instituted this inquiry, that another, and a similar experiment is to be made on the discernment and justice of a jury. Vain effort! The verdict so lately rendered in this very court, on the subject of this very trial, is still glowing in the public mind. You have all witnessed the general and unequivocal sentiment of approbation which it excited—you have heard the jurors who delivered that verdict, honoured with the heartfelt applause of their fellow-citizens; and can it be expected that you will act in direct opposition to so noble an example—in direct opposition to every just and generous principle, and sacrifice the defendant to the lawless pleasure of the government.

. . . The president's approbation of the enterprise is a ground on which Mr. Ogden's conduct may be justified, even if you believe the charges of the indictment to be established. This approbation was clearly substantiated on the late trial. It was the polished buckler which protected col. Smith from the shafts of his adversaries, and reflected back the scorching rays of accusation, on the power which directed them. The proceedings, and the termination in that cause, have fixed the responsibility in the quarter, where public good and private justice require it should be placed. Fortified by the decision on that trial, I am emboldened to assume the principle as an established one in these prosecutions—that the approbation and encouragement, given by the executive to the enterprise of general Miranda, with his knowledge of the intended agency of Mr. Ogden, acquit the latter from the charge of intentional crime, and insure him from the penalty of the particular statute on which he is indicted. . . .

. . . You must all be sensible that Mr. Ogden has done every thing in his power to give you entire satisfaction on this subject, and to dispel every shade of mystery that might be cast upon it. The proceedings of this very court testify his solicitude to establish his innocence by the declarations of his very prosecutors. At an expense equal almost to the pecuniary penalty which would follow his conviction, he has endeavoured to enforce the attendance of those witnesses, who alone could elucidate the equivocal circumstances of this transaction. But his adversaries shrink from the inquiry—they disobey the process of this court—they withhold the positive proof important to this defence; and yet it is insisted, that by positive proof only shall he be justified. To keep back or suppress evidence in civil cases, affords to the opposite party the right of drawing the strongest inference of a fact; and for the most cogent reasons—for it is clearly to be presumed, that if the evidence suppressed could destroy such inference, it would unquestionably be produced. Are the rules of evidence, then, more rigid and less equitable in criminal cases? . . . It would be idle and absurd for the opposite counsel to tell you, that this is a prosecution conducted in the ordinary way. Does not one of the witnesses, whose attendance is withheld from us, declare in his own letter, that this prosecution was ordered by the president? Do we not behold at this bar one of our most celebrated advocates,

a judge of the United States for a neighbouring district, retained as counsel to assist the attorney general? From these and other obvious circumstances, it is evident, nay it is notorious, and I may add, it is avowed, that this prosecution derives its origin from the exalted source which I have designated. . . . The more dignified the situation of the prosecutor, the more extensive his influence, the greater is the danger which may result to public safety from his misconduct.

The president of the United States, and the secretary of state, have been openly and expressly charged with a knowledge of general Miranda's intentions; they have been represented as encouraging and participating in his plans—as directing a perfidious and oppressive prosecution against those whom their countenance had beguiled. The complaints and charges of Mr. Ogden have even been proclaimed by him in congress chamber, before the assembled representatives of the Union. What an attack on the spotless reputation of these immaculate statesmen? But they treat it with a dignity characteristic of themselves. Theirs is a philosophy of no common stamp—a philosophy to which we humble mortals are total strangers, which is elevated equally above our powers and our emulation. It is a philosophy which bathes their souls in the torpid waters of insensibility, and renders them, like the Grecian hero, impervious to the weapons with which ordinary beings are assailable.

The love of popularity, common to our nature—the impatience of reproach, which every honourable mind must possess—the jealousy of reputation, inseparable to a heart of sensibility, can achieve no entrance in, bosoms superior to the weak feelings of mortality. Though exposed to the severest censures, charged with a participation in deeds, which they themselves have pronounced criminal, and against which they have levelled the heaviest artillery of the law—accused of, artifice, hypocrisy, persecution—stigmatised as men, as statesmen, as rulers—yet can these illustrious dignitaries calmly submit to the load of opprobrium heaped upon them; though, by a plain tale, a frank avowal, these calumnies might be silenced for ever.

Gentlemen, can we possibly believe in this stoical apathy—this proud contempt for the opinions of others? Can we be persuaded that these chiefs of our nation are of such different construction from their fellow creatures—of minds more transcendent—of virtues more conspicuous—that they take no pleasure in the empty acclamations of the million—that the License of popularity imparts no delight to their senses—that the lustre of official rank creates no palpitation in their hearts, nor does the rod of power afford any pleasure to their grasp? Or shall we be inclined to scepticism on these points—to suspect that after all, they are but men—mere common mortals; subject to the same heat and cold—the same summer and winter as ourselves? Inspired, like us, with the same love of fame—the same desire for popular approbation—and that their apparent indifference to these objects of human ambition, is owing to some other cause, than that of insensibility? Yes, gentlemen—it is too evident that they have reasons for their conduct, secret and imperious. Believe

me, if the witnesses withheld could have purified the character of the executive from the foul stain of reproach, they would never have been refused to this tribunal; the president would undoubtedly have found means to spare some of them—he would not, to use their own language, “specially have signified to them, that their official duties could not, consistently therewith, be at this pressing juncture dispensed with.”—What pressing juncture? Has any extraordinary circumstance occurred, sufficiently important to render their united wisdom essential to the cabinet deliberations? Our foreign affairs are in a state of amicable, if not honourable adjustment. Peace offerings have been made to sooth the angry powers of Europe, and we are flattered with assurances of their wonderful efficacy and permanent effects. Are we then disturbed by domestic broils—by internal commotions—requiring the paternal vigilance of the executive? No, we are in the full tide of successful experiment—we are sailing on smooth water; our bark glides majestically along, with all the advantages of wind and tide—no lowering in the horizon—no symptoms in the elements of an approaching storm; the very pilot seems to cloze securely at the helm, and to lull the crew asleep with his song. What then is this juncture, which so specially demanded their attendance at Washington? We had trusted, that the very season of the year would have insured us their presence. It is their customary season of recreation—when they lay down the heavy burthen of national concerns, and seek relaxation and amusement in the various scenes which travelling presents—nay, I am much deceived in my expectation, if we do not hear, in a little while, when this trial shall be finished, that the mighty pressing juncture has passed, and the secretary is taking his annual excursion. Away then with such fictitious, such deceptive excuses; they glaringly betray the very secrets they would conceal. We want no ghost to tell us—“there is something rotten in the state of Denmark.” . . .

Document Source: *The Trials of William S. Smith, and Samuel Ogden, for Misdemeanours, Had in the Circuit Court of the United States for the New York District, in July, 1806* (New York: I. Riley and Co., 1807), 263–75 (emphasis omitted).

**Document 19: Letter from Pierpont Edwards to James Madison,
July 30, 1806**

In this letter, Judge Edwards offered an account of the case to Secretary of State Madison. In Edwards’s view, the jury selected for the trial was sympathetic to Smith and Ogden’s arguments, and the defense attorneys successfully exploited this sympathy.

Sir,

Before this will reach you, you will have learned from the Newspapers, that the trials of William S. Smith, and Samuel G. Ogden have been finished; and that both have been

Acquitted: an Event foreseen by the Counsel for the U. States from the moment that they were informed, who the men were that Constituted the Pannel.

That the Pannel would be Composed of Such Materials was anticipated at the Conclusion of the April Term; And Government were notified of the facts and circumstances, which were then imagined to Authorize this Anticipation.

Events have proved the accuracy of the deductions made from those facts and circumstances.

Removed as you are, far from the Theatre of this business, and of course not possessing the means of noticing the Occurrences and observations, which those who live on the Spot have seen and heard, it is impossible for you, to have a perfect knowledge of all the Causes, which have Operated to produce that State of things, which existed regarding these trials, before they were brot on, and during the progress of them; nor is it in my power, by any thing which I can commit to paper, to do Complete Justice to the Subject.

. . . I can Say with truth, and it is a debt which I owe to the Attorney for this district to say, that he prepared them with industry and great ability, and managed them through their whole course in a most satisfactory manner

But the means, which had been used to excite prejudice against the prosecution, proved too successful; and Evidence Law and Argument were too feeble weapons to combat against them

The People had been persuaded that Miranda, in a most ingenuous manner, before he advanced a Single Step in setting on foot this Expedition, had unfolded to the President, and to you his purposes; that you both approved of them, that under this Approbation he came back to New York, & Communicated to Smith and Ogden, what had been said to the President and to you, and informed them, that both fully approved of his plan, That Ogden & Smith, impressed so with these ideas, from the purest and best of Motives engaged in Mirandas Plan, But that the President, having discovered that Mirandas Expedition was likely to involve Government in a Serious Controversy with Spain, thought proper to disavow the whole transaction; and, in order to preserve it from blame, had ordered these prosecutions, intending thereby to Exculpate himself, and throw the whole blame on Smith & Ogden, the only innocent Agents concerned in it.

It was for the purpose of fixing upon the public mind a belief that these allegations were true, that, at April Term, a Motion was made to postpone the trials, on the Ground of the absence of Mr. Maddison and other heads of Departments, whose Testimony, it was Urged, was Material and Necessary to their defence; and for the same purpose were the affidavits of Smith & Ogden then made out and filed. The same Motions were renewed

at this Term, and the affidavits of these men again made and filed, in which they Stated, that they had been informed and verily believed, that Mr. Maddison &c if present would and Could prove, that the Expedition of Miranda was set on foot with the Knowledge and approbation of the President and Mr. Maddison; and that they both well Knew all the Agency which Smith and Ogden had in it and approved of their Conduct; and that these prosecutions were instituted by the Express order of the President. All this was done, I Venture to say, without the smallest Idea, that the Court would, on these Grounds, postpone the trials; but for the purpose of affording an opportunity to the Counsel of the defendants to impress a belief, that the Story told in the affidavits was true, and to Excite Prejudice against the President and You and the whole Administration.

The Motions were resisted, on the Grounds, which the Court afterwards assumed in Giving their Opinion--because the Testimony which was Stated in the affidavits, was wholly irrelevant.

The Attendance of the Witnesses from Washington was never either desired or expected by the defendants or their Counsel: But all this Farce of serving Subpœna's, making these various affidavits, Motions and Arguments upon them, was intended to create a prejudice against the prosecution, and thereby prepare the minds of the Jurors for that disregard of evidence, Law, and Argument which afterwards displayed itself in the Acquittal of the defts.

On no occasion have greater exertions ever been made by the whole tribe of Federalists, than during the progress of these trials. To disgrace the President and you, and the present administration, was the point aimed at from the Start, and it is a source of infinite Mortification to the Friends of the administration here, that conduct, Springing from such motives, should be crowned with so much success, and have such Cause of triumph.

If ever Charges were clearly proved those against Ogden & Smith were. If ever Evidence, Law and reason, were compelled to Yield to Prejudice and party rage it was on this Occasion. I have the honor to subscribe myself with the highest respect and consideration your Obed Serv

PIERPONT EDWARDS

Document Source: Pierpont Edwards to James Madison, 30 July 1806, "Founders Online," *National Archives*, accessed at <https://founders.archives.gov/documents/Madison/02-12-02-0262>.

Document 20: “The Miranda Case,” *National Intelligencer*, August 8, 1806

This article, in a Washington-based Jeffersonian paper, offered a robust defense of the Jefferson administration’s conduct before and after the trial amid increasingly sharp criticisms of that conduct.

Party malignity will not permit the circumstances attending this case to take their natural course. It has seemed too precious an occasion for the gratification of personal or political pique to pass unimproved. Emboldened by an unexpected result it has the temerity to hope that an impression favorable to its views may be made on the public mind as to the alleged agency of the executive in the expedition of Miranda. With this view assertion is piled upon assertion that the administration countenanced this expedition, and by their countenance induced Messrs. Smith and Ogden, and their subordinate agents, to take a part in it. It is alledged, that as soon as the administration feared the influence of this conduct on their popularity, they instantly changed their course, hypocritically disavowed all participation in the expedition, and resolve on sacrificing Smith and Ogden, to establish their innocence. Not satisfied with this daring libel on the virtue of men raised by their country to the highest places in its power to confer, an effort is made to excite the sympathy of the public with regard to the fate of the unfortunate men in captivity, and their lives, already forfeited in the imagination of these libellers, is laid to the account of the administration. Such is the account of the administration. Such is the atrocity of the motives ascribed to them; and the public indignation and abhorrence are invoked on their heads. Be it so. Be the appeal to the nation. If they have not already decided, let them now decide, with inflexible justice.

But when the nation is thus called on to pronounce its judgement, let it be recollected that there are two parties, the accuser as well as the accused, and that if the accusations are not supported, they will recoil on those who have made them. Let it be remembered that he who accuses a virtuous man of crimes of which he does not believe him guilty is a calumniator who merits and will receive the public scorn and detestation.

. . . No proofs whatever, derived from an impartial and disinterested source, have been adduced of the participation of the administration. We venture to affirm that none can be adduced, and we challenge the libellers of the administration to adduce them.

But, if the truth of the story set up by Smith and Ogden be admitted, what does it prove?

That the President and Secretary of State gave Miranda a hospitable reception, permitted him to open himself to them on his plan of revolutionizing the Spanish possessions

in South America, and declared themselves friendly to such a measure, but qualified the intimation with the declaration that the “government could afford neither succor nor aid to the enterprise in which he was engaged.” Other equivalent expressions are said to have fallen from the Secretary, which may all be comprised in that stated in Smith’s deposition, that the government had no objection to any citizens engaging “*in such an enterprise, provided they did not thereby infringe any of the laws of the U.S.*” What then are we to infer from this statement, admitting it, for arguments sake, to be correct.

In the *first* place that the government felt a laudable interest in collecting all the information it could respecting the possessions of a nation from friendly to us, and with whom we might at no distant period be engaged in war. This was not censurable; but it would have been censurable to have declined it.

Secondly, that the President and Secretary avowed *their speculative opinions* in favor of the emancipation of the provinces of Spain. Is there any diversity of opinion on this point in the U.S.?

But that, *thirdly*, as soon as Miranda spoke of their active aid towards the accomplishment of his scheme, he was told they “could afford neither succor nor aid to the enterprise in which he was engaged”—“that the merchants would advance money whenever they became satisfied that they had an interest in doing so”—“that they could not give him any public aid or countenance, but that they had no objection that any individual citizens of the U.S. should engage in such an enterprise, provided they did not thereby infringe any of the laws of the U.S.”—This was, indeed, the only answer a secretary of state or the U.S. could make to the interrogatories propounded to him. . . .

. . . Whatever knowledge the Executive might have had of the motives of Miranda, it was not their duty to take any legal steps against him, they could not legally take them, until those motives were displayed in his actions. As soon as they were apprised of the course he had taken, the most efficient measures were taken, the only legal measures in their power to take—thus discharging every duty required by law, and avoiding the commission of every act not legally authorized.

The whole of these remarks, it will be observed, have been made on the admission that the statement of Smith and Ogden is correct. But nothing is less probable. Their statement is a chain of assertions made by interested and disappointed men, who may be dupes themselves, or who may want to make dupes of others. . . .

. . . The Head of Departments did not *refuse* to attend the court. They only respectfully suggested to the court the propriety of taking their depositions, inasmuch as of the public affairs did not admit of their then leaving the seat of government. . . . It is true that

one member of the court, judge Paterson, declared himself of a rule to shew cause why an attachment should not issue; but, after his declaration that the testimony expected was not material, we can only consider this course as recommended to him, not from an opinion of the importance of the evidence, but solely from the opinion that the witnesses had rendered themselves liable to attachment for disobeying the process of the court.

. . . The charge of participation is, in the last place, maintained from the verdict of acquittal; it being contended that the innocence of Smith and Ogden implies the criminality of the administration.

The species of reasoning used on this head is so extremely weak and puerile as scarcely to merit notice. What! shall it be said that one man who actually enlisted troops, and another who actually fitted out a vessel, both with a full knowledge of her destination, are innocent of all crime, while those who at most knew that such a project existed, are criminal? . . .

Document Source: "The Miranda Case," *National Intelligencer*, Aug. 8, 1806, 4.

Document 21: "The Miranda Trial" *New York Weekly Inspector*, ca. September 24, 1806

Written in response to the National Intelligencer's editorial, this article assails the defense of the Jefferson administration's actions and calls for Jefferson to deny the allegation made against him in the case or apologize for his conduct. Jefferson never directly responded to such calls.

Instead of publishing insolent paragraphs against the federalists, for which no other apology can be assigned, than the indiscreet zeal of judge Talmadge, in causing a state secret to be divulged, it would be well for the partizans of the administration to come forward, and fairly meet the question before the public.

We enquire, whether Miranda did not explicitly inform Mr. Jefferson and Mr. Madison of the nature of his intended enterprize? Whether, having the power to restrain the enterprise, they did not allow it to proceed, under engagements on the part of Miranda, that it should be conducted with discretion? And whether Smith and Ogden were not known as Miranda's agents several weeks before the sailing of the Leander?

The public expect answers to these questions:—sophistical suppositions and cunning evasions will not be accepted, except by the base gudgeons of party.

If, as is most sincerely believed, Mr. Jefferson dare not give negative answers to these questions, then other questions arise of more serious import.

Ought Mr. Jefferson, after having connived at and abetted Miranda's expedition, to have directed Smith and Ogden to be criminally prosecuted? If a prosecution had been inadvertently commenced, ought he not to have directed a *nolle prosequi* to be entered. . .? If the agents had been convicted, was not Mr. Jefferson bound . . . to pardon his accomplices, and assume the consequences of their violation of law upon himself?

. . . The Ostrich is said to imagine that its body may be concealed merely by running its head into a brake: and it would seem that the administration have as wisely concluded, that by shutting their own eyes, all the world may be involved in darkness. . . .

. . . No person has pretended that Mr. Jefferson or Mr. Madison can dispense with the laws; their example, precept, or authority, has never, and will never be pleaded to justify the commission of any crime. No: the legality or illegality of Smith's conduct depended solely on political circumstances, of which, according to the law of nations, the constitution of the United States, and the express provisions of a statute of Congress the President was the sole and exclusive Judge.

. . . How profound is Jeffersonian philosophy! How happy this Madisonian delineation of the distinctive features of a free government, exercising only delegated powers, and "avoiding every act not legally authorized!"

. . . Mr. Jefferson well knows, that . . . the judiciary department has never been expected to take the lead in measures which directly affected the intercourse of the United States with foreign nations.—He knows that the act of June, 1794, placed the responsibility for all restraining measures on the executive department, in consequence of *suggestions from the Judges*, of their incompetency to notice and duly estimate these political considerations, by which the execution of a statute of that nature must be modified: The paltry ground defence which has been taken, is therefore wholly overthrown; and the attempt to deceive the people by directing their attention from the real object of responsibility is an aggravation of that *insincerity* which is the essence of the offence now denounced to the public.

. . . Let Mr. Jefferson rise in the presence of his countrymen, and, inclining forward, with his hand on his heart, let him declare upon his honor, that he knew nothing of Miranda's expedition, until he was too late to prevent its departure. The declaration will not injure his private character, and will be merely considered as an *official act*, for the benefit of his party, done in the character of a magistrate, whose *moral duties* are "DIRECTLY INVERTED."

Document Source: Reprinted in the *New York Evening Post*, Sep. 24, 1806, 2.

**Document 22: Letter from Henry Ingersoll to Johnathon Ingersoll,
October 26, 1806**

This letter, written by one of the participants in Miranda's mission from a jail in Cartagena, describes the failure of Miranda's first attempt to land on the Spanish Main and the plight of the captured participants.

DEAR BROTHER,

I embrace a very uncertain opportunity of informing my friends of my unhappy situation. I left New-York under promising circumstances, in good spirits, and with an idea of soon returning to enjoy with my friends the reward of prudence and industry—but, alas! Vain hope! Behold me now doomed to groan in a foreign country, under the galling chains of slavery, for a term of TEN YEARS, deprived of liberty, and all I hold dear in life.

I shall give you a particular account of the expedition in which I was engaged, as well as what happened to myself, Francis de Miranda (born in this country) with the assistance of a few friends in the United States, fitted out the *Leander*, Captain Lewis, with the intention of revolutionizing some of the Spanish provinces in South America.—Colonel Smith, of New-York, was Miranda's principal agent in engaging men to go on the expedition, who kept the destination of it a secret, but assured them it was air and honourable, and likewise *authorised by the United States*. There was a company of dragoons engaged, under the idea of guarding the mail from the city of Washington to New Orleans. A number of officers engaged, who were to take the command of their companies, &c. at their destined port: four *Printers*, besides myself, were likewise engaged—whole amounted to about two hundred.

We sailed from New-York the 2d Feb. 1806, in the *Leander*, of 16 guns, and arrived at Jacquemel the 17th, where we lay until the 27th March, during which time two [schooners] were chartered for the expedition, viz, the *Bee* and *Bacchus*—the former of which I was put on board, together with two of my fellow *Printers*, as well as sixteen of the dragoons, and four officers.—On board the *Bacchus*, the other two *Printers*, besides a number of officers and men, were ordered—The reason of this was, to make room on board the ship for a number of officers who came from Port au Prince. . . . During the time we remained in Jacquemel, I grew very suspicious of the designs of Miranda, and wished to leave him and his expedition, and return to America, but was not allowed to.

We sailed from Jacquemel on the 27th of March. Nothing material occurred until the 27th of April, when we arrived off Cavallo, on the Spanish Main, where it was intended to make a landing near the place; but two guard coasters appearing in fight, we stood on for them till near night, when not being able to find out their force, we stood off from land that night—the next day we came on to action, when the [schooners] *Bee* and *Bacchus*

were taken. Captain Huddle, of the Bee, was killed. The Leander cowardly deserted us, and made her escape. We were taken into Porto Cavallo, there put in irons, and confined in a most loathsome prison, with scarce sufficient air to breathe. In a few weeks our trial took place—the result of which was, that *Ten* were condemned to be hanged and beheaded at Porto Cavallo[.] . . . Their sentence was dated the 12th of July, and read to them on the 20th—the execution took place on the 21st, in the presence of all the prisoners.—At the same time fifteen were condemned to ten years slavery in the Castle of Omoa, among whom I am classed—thirteen for the same term to Porto Rico, and nineteen for eight years to Boco Chica.—Shortly after our trial we were ordered from Porto Cavallo to Carthagena, where we now remain, waiting an opportunity to sent to our respective places.

Such has been the fate of Miranda's expedition, as far as I know, which I think could not have sailed from New-York with out the knowledge of the government of the U. States. If however, it did sail without her knowledge, I am convinced that if she knew of the manner in which her citizens were deluded from New York by Col. Smith, John Fin[sic], and others, she would intercede for their liberty, and punish those who fitted out a vessel in one of her ports, with the intention of committing depredations against a nation with whom she is at peace.

Not knowing what courts the government of the U. States steers, I wish, if she interests herself in the affair of Miranda, you would exert yourself on the side of humanity, in procuring the liberation of her unfortunate and deluded citizens, who are now suffering in prison for Miranda and his followers.

Document Source: Reprinted in *The Weekly Franklin Repository*, May 19, 1807, 1.

Document 23: Letter from John Adams to James Lloyd, April 5, 1815

Writing to a political ally and former U.S. senator nearly a decade after the trial, former President Adams reflected bitterly on the expedition that had drawn his son-in-law and grandson into legal and mortal peril respectively. While most Federalists reveled in the embarrassment the Smith and Ogden trials caused the Jeffersonians, Adams appears to have taken a different view of the cases, telling Smith in 1812 that he had been “inexcusable in your open Affront both to Jefferson and Madison.”

I shall . . . proceed to Something, which has harrowed up my soul, and all its Feelings. I neither know nor suspect, nor have ever heard a Conjecture, who the Author of this History is. I know not whether I had heard a rumour, retired as I was, of the Arrival of Miranda in America, when I received a Letter from Dr Rush informing me, that General

Miranda had been in Philadelphia had visited him and dined with him, and given him an Account of the Politicks of all the Courts of Europe, as familiar[ly] as if he had been in the inside of all the Kings and Princes. Miranda was then upon his return from Washington, where he had conversed with Jefferson and Madison: and Rush assured me, that Miranda had assured him, that We should have no War with Spain. I thought little more of the Matter. I considered Miranda as a Vagrant a Vagabond, a Quixottick Adventurer, and cared no more about him, than about Abraham Brown or Parson Austin.

How can I proceed in the Narration? The next News I heard was that Miranda had sailed, a fortnight or three Weeks before, with military and Naval Armament, to sett South America free; and that my Grandson, William Steuben Smith, had been taken from Colledge, when senior sophister on the point of taking his Degree, and Sent with Miranda to liberate South America. What do you think were my Sensations and Reflections? I shudder to this moment at the recollection of them. I Saw the ruin of my only daughter and her good hearted enthusiastic Husband, and had no other hope or wish or prayer, than that the ship with my Grandson in it might be sunk in a storm in the Gulph stream, where I had myself been for three days in momentary danger and Expectation of perishing in 1778. Eight and twenty Years before.

I had never the most distant Intimation or Suspicion of this Expedition till I heard it had been at Sea for Weeks. I can truly Say that Information, that the Ship had gone to the Bottom, would at the Same moment have been an Alleviation of my Grief. I gave up my Grandson as lost forever. But what could I think of his Father? Was he more mad than Pitt and King?

In course of time, News came that my Grandson was in Prison at Caraccas with many of his Companions, waiting for Tryal and Execution. Yrujo, who had known me in Europe and America came forward with an Offer to interpose for a Pardon for my Grand Son. I took no notice of it. No! my blood should flow upon a spanish scaffold, before I would meanly ask or accept a distinction in favour of my Grandson. No! He should share the Fate of his Colleagues Comrades and Fellow Prisoners. Col. Smith answered Yrujo in a Style, that attoned in some measure for his previous Imprudence, in a language consistent with his professed principle, however erroneous, in the whole Enterprize: in short in the Tone of the elder Brutus when he sacrificed his sons for conspiring with Tarquin.

. . . Mirandas Expedition from New York was infinitely better known to Jefferson and Madison than to me. I never had the least Intimation or Suspicion of it, till he had been three Weeks at Sea. . . .

John Adams

Document Source: John Adams to James Lloyd, 5 April 1815, "Founders Online," *National Archives*, accessed at <https://founders.archives.gov/documents/Adams/99-02-02-6448>.

Bibliography

Archival Materials⁹

The Adams Papers.
The Alexander Hamilton Papers.
The Thomas Jefferson Papers.
The James Madison Papers.
The Papers of George Washington.

Published Primary Sources

Annals of Congress.
Biggs, James. *The History of Don Francisco de Miranda's Attempt to Effect a Revolution in South America, in a Series of Letters*, second edition. Boston: Oliver and Munroe, 1809.
Edsall, John. *Incidents in the Life of John Edsall*. Catskill, NY: self-published, 1831.
“Mechanics of New York, read the heart-rending Truth!” New York, 1806. Broadside.
“Miranda and the British Admiralty, 1804–1806: Documents,” *American Historical Review*, vol. 6, no. 3 (April 1901): 508.
Miranda, Francisco de. *The New Democracy in America: Travels of Francisco de Miranda in the United States, 1783–84*. Wood, Judson P., ed. Norman: University of Oklahoma Press, 1963.
Report of the Committee to whom was Referred the Petition of Sundry Citizens of the United States, confined at Carthagena in South America. Washington, 1809.
Roper, Donald M. “The Elite of the New York Bar as Seen from the Bench: James Kent’s Necrologies.” *New York Historical Society Quarterly*, vol. 56, no. 3 (July 1972): 199 (reprinting Chancellor Kent’s necrologies of prominent New York attorneys).
The Trials of William S. Smith and Samuel G. Ogden, for Misdemeanors, had in the Circuit Court for the United States for the New-York District, in July 1806. New York: I. Riley & co. 1807.
United States Statutes at Large.

Secondary Sources

Ackerman, Bruce. *The Failure of the Founding Fathers: Jefferson, Marshall, and the Rise of Presidential Democracy*. Cambridge, MA: Belknap Press, 2005.
Arana, Marie. *Bolivar: American Liberator*. New York: Simon and Schuster, 2013.

9. All archival materials accessed through the National Archives’ *Founders Online* website, <https://founders.archives.gov/>.

- Arlyck, Kevin. "The Courts and Foreign Affairs at the Founding." *Brigham Young University Law Review*, vol. 2017 (2017), 1.
- Barrett, Walter. *The Old Merchants of New York, vol. II*. New York: Thomas R. Knox & co., 1885.
- Brown, Stephen W. "Satisfaction at Bladensburg: The Pearson-Jackson Duel of 1809." *The North Carolina Historical Review*, vol. 58, no. 1 (Jan. 1981), 23.
- Feldman, Noah. *The Three Lives of James Madison: Genius, Partisan, President*. New York: Random House, 2017.
- Hill, Peter P. "An Expedition to Liberate Venezuela Sails from New York, 1806." *The Historian*, vol. 78, no. 4 (2016), 671.
- Hoffman, Eugene A. *Genealogy of the Hoffman Family: Descendants of Martin Hoffman with Biographical Notes*. New York: Dodd, Meade & Company, 1899.
- The Ill-Fated Expedition of Miranda, the Venezuelan Liberator (Translation from the National Library Bulletin of Caracas). *The Pan American Magazine*, vol. 37 (Sept. 1924), 419.
- Jones, E. Alfred. "Letter of David Colden, Loyalist." *American Historical Review*, vol. 25, no. 1 (1919), 79.
- Racine, Karen. *Francisco de Miranda: A Transatlantic Life in the Age of Revolution*. Wilmington, DE: Scholarly Resources, Inc., 2003.
- Roof, Katharine Metcalf. *Colonel William Smith and Lady: The Romance of Washington's Aide and Young Abigail Adams*. London: Constable and Co., 1929.
- Schakenbach, Lindsay. "Schemers, Dreamers, and a Revolutionary Foreign Policy: New York City in the Era of Second Independence, 1805–1815." *New York History*, vol. 94, no. 3–4 (Summer/Fall 2013), 267.
- Thorning, Joseph F. *Miranda: World Citizen*. Gainesville: University of Florida Press, 1952.
- Wheeler, William Ogden. *The Ogden Family in America, Elizabethtown Branch, and their English Ancestry*. Philadelphia: J.B. Lippincott Co., 1907.

Image Credits

William Stephens Smith, [page 1](#)

Stuart, Gilbert. *Colonel William Stephens Smith (1755–1816)*. Circa 1794. Oil on canvas, 30 1/8 × 25 3/16” (76.5175 × 63.9763 cm). Mead Art Museum, Amherst College. <https://museums.fivecolleges.edu/detail.php?museum=all&t=objects&type=all&f=&s=AC+1945.146&record=0>.

George Washington, [page 3](#)

Stuart, Gilbert. *George Washington (Lansdowne Portrait)*. 1796. Oil on canvas, 97 1/2 × 62 1/2” (247.6 × 158.7 cm). National Portrait Gallery, Smithsonian Institution. https://npg.si.edu/object/npg_NPG.2001.13.

Francisco de Miranda, [page 5](#)

Tovar y Tovar, Martín. *Francisco de Miranda, el “primer criollo universal.”* 1874. Colección Capitolio Federal de Venezuela. http://www.cervantesvirtual.com/portales/francisco_de_miranda/imagenes_iconografia/imagen/imagenes_iconografia_03_francisco_de_miranda_retrato_tovar/.

Nathan Sanford, [page 9](#)

Portrait of Nathan Sanford. 1880 copy of circa 1825–1830 original. Court of Appeals Collection, Historical Society of the New York Courts. <https://history.nycourts.gov/figure/nathan-sanford>.

Thomas Jefferson, [page 9](#)

Pendleton’s Lithography. *Thomas Jefferson, third president of the United States*. Circa 1825–1828. Lithograph, 41.8 × 34.1 cm. Library of Congress Prints and Photographs Division. <https://www.loc.gov/pictures/item/96523332>.

Pierpont Edwards, [page 10](#)

The Miriam and Ira D. Wallach Division of Art, Prints and Photographs: Print Collection. *Pierpont Edwards*. Circa 1790–1890. Engraving. New York Public Library Digital Collections. <https://digitalcollections.nypl.org/items/510d47da-3189-a3d9-e040-e00a18064a99>.

Cadwallader Colden, [page 11](#)

Durand, A. B., Engraver; Samuel Waldo and William Jewett, Painters. *Hon. Cadwallader D. Colden Esqr.* Circa 1840–1886. Engraving. <https://www.loc.gov/pictures/item/98504704>.

Matthias Tallmadge, pages [12](#) and [41](#)

Ames, Ezra. *Matthias Burnet Tallmadge (1774–1819)*. Circa 1810. Oil on canvas, 36 × 28” (91.4 × 71.1 cm). Historical Collections, New York State Museum, Albany; Mabel Brady Garvan Collection, Yale University. Reference image courtesy of the New York State Museum.

James Madison, [page 13](#)

Sully, Thomas (derived from Gilbert Stuart). *James Madison*. 1809. Oil on panel, 27 1/2 × 19 1/2 × 1 1/2” (69.9 × 49.5 × 3.8 cm). National Portrait Gallery, Smithsonian Institution. https://npg.si.edu/object/npg_NPG.2019.32?destination=node/63231%3Fedan_q%3DJames%2520Madison.

William Paterson, [page 15](#)

Sharples, James; etched by Max Rosenthal. *Portrait of William Paterson*. 1794. The Supreme Court Historical Society. <https://supremecourthistory.org/associate-justices/william-paterson-1793-1806>.

William Paterson (as a young man), [page 43](#)

Ralston, William. *William Paterson*. Miniature portrait, graphite and watercolor on paper, 9 × 8.9 cm. Massachusetts Historical Society. <http://www.masshist.org/database/4115>.

William Stephens Smith (as a young man), [page 44](#)

The Miriam and Ira D. Wallach Division of Art, Prints and Photographs: Print Collection. *William S. Smith*. New York Public Library Digital Collections. <https://digitalcollections.nypl.org/items/b9b8db5c-25ff-0160-e040-e00a18064d4a>.

Samuel Gouverneur Ogden, [page 45](#)

In Wheeler, W. Ogden. 1907. *The Ogden family in America, Elizabethtown branch, and their English ancestry: John Ogden, the Pilgrim, and his descendants, 1640–1906, 154–55*. Philadelphia: J.B. Lippincott. <https://hdl.handle.net/2027/loc.ark:/13960/t7fr0b624>.

Nathan Sanford (sketch), [page 46](#)

Biographical Directory of the U.S. Congress / U.S. Senate Historical Office. <https://bioguideretro.congress.gov/Home/MemberDetails?memIndex=S000052>.

Pierpont Edwards (older), [page 47](#)

Jennys, William. *Portrait of Judge Pierpont Edwards*. Circa 1795. Oil on canvas, 30 1/8 × 25 1/8” (76.5 × 63.8 cm). Yale University Art Gallery, Gift of the Estate of Geraldine Woolsey Carmalt. <https://artgallery.yale.edu/collections/objects/8737>.

Cadwallader David Colden (painting), [page 48](#)

Waldo, Samuel Lovett. *Cadwallader D. Colden*. 1819. Oil on canvas. City of New York, City Hall Portrait Collection. <https://www1.nyc.gov/site/designcommission/public-programs/city-hall/portraits/portrait.page?portraitId=21>.

Josiah Ogden Hoffman, [page 49](#)

The Miriam and Ira D. Wallach Division of Art, Prints and Photographs: Print Collection. *Josiah Ogden Hoffman*. New York Public Library Digital Collections. <https://digitalcollections.nypl.org/items/510d47df-fe71-a3d9-e040-e00a18064a99>.

Thomas Addis Emmet, [page 49](#)

Thomas Addis Emmet. 1812. Historical Society of the New York Courts. <https://history.nycourts.gov/figure/thomas-addis-emmet>.

Richard Harison, [page 50](#)

Rosenthal, Albert (derived from a 19th-century portrait miniature by Francis Martin Drexel). *Portrait of Richard Harison (1747–1829)*. Oil on canvas, 30 1/8 × 25 1/8” (76.6 × 63.8 cm). Art Properties, Avery Architectural & Fine Arts Library, Columbia University, Gift of the descendants of Richard Harison. https://www.si.edu/object/npg_COO.117_CU.

Francisco de Miranda (in prison), [page 53](#)

Michelena, Arturo. *Miranda en La Carraca*. 1896. Oil on canvas, 197 × 245.2 cm. Galería del Arte Nacional, Portal del Arte Venezolano. http://vereda.ula.ve/gan/?page_id=1232&cual=titulo&que=Miranda+Carraca.

James Madison (biography), [page 53](#)

Durand, A. B. and Gilbert Stuart. *James Madison (1750/51–1836)*. 1835. Oil on canvas, 30 1/4 × 25 1/4” (76.8 × 64.1 cm). New-York Historical Society. <http://digitalcollections.nyhistory.org/islandora/object/nyhs%3A1588>.

Federal Trials and Great Debates in U.S. History

Since 2006, the Federal Judicial Center, in partnership with the American Bar Association Division for Public Education, has hosted Federal Trials and Great Debates, an annual summer institute for teachers of history, law, and government. Participants from across the country come to Washington, D.C., each June to meet with federal judges, scholars, and curriculum experts to examine the history of the federal judiciary and to study three historic cases in the federal trial courts. The materials on these cases, while designed for teachers, are valuable resources for all seeking to learn more about the role the federal judiciary has played in our nation's history.

United States v. Smith and *United States v. Ogden*, Winston Bowman, 2021

United States v. Albert B. Fall: The Teapot Dome Scandal, Jake Kobrick, 2020

The Pentagon Papers in the Federal Courts, Jake Kobrick, 2019

United States v. Guiteau: Assassination and Insanity in Gilded Age America,
Winston Bowman, 2019

U.S. v. Clay: Muhammad Ali's Fight Against the Vietnam Draft,
Winston Bowman, 2018

The Flag Salute Cases, Winston Bowman, 2017

The Rosenberg Trial, Jake Kobrick, 2013

*Olmstead v. United States: The Constitutional Challenges of Prohibition
Enforcement*, Richard F. Hamm, 2010

The *Debs* Case: Labor, Capital, and the Federal Courts of the 1890s,
David Ray Papke, 2008

The Chicago Seven: 1960s Radicalism in the Federal Courts, Bruce A. Ragsdale,
2008

Ex parte Merryman and Debates on Civil Liberties During the Civil War,
Bruce A. Ragsdale, 2007

The Aaron Burr Treason Trial, Charles F. Hobson, 2006

Chew Heong v. United States: Chinese Exclusion and the Federal Courts,
Lucy Salyer, 2006

The Sedition Act Trials, Bruce A. Ragsdale, 2005

The Trial of Susan B. Anthony, Ann D. Gordon, 2005

Bush v. Orleans Parish School Board and the Desegregation of New Orleans
Schools, Davison M. Douglas, 2005

Amistad: The Federal Courts and the Challenge to Slavery, Bruce A. Ragsdale,
2002

The Federal Judicial Center

Board

The Chief Justice of the United States, Chair

Judge Carol Amon, U.S. District Court for the Eastern District of New York

Magistrate Judge Tim A. Baker, U.S. District Court for the Southern District of Indiana

Judge Duane Benton, U.S. Court of Appeals for the Eighth Circuit

Judge Nancy Freudenthal, U.S. District Court for the District of Wyoming

Judge Thomas Hardiman, U.S. Court of Appeals for the Third Circuit

Judge Raymond Jackson, U.S. District Court for the Eastern District of Virginia

James C. Duff, Director of the Administrative Office of the U.S. Courts

Director

John S. Cooke

Deputy Director

Clara J. Altman

About the Federal Judicial Center

The Federal Judicial Center is the research and education agency of the federal judicial system. It was established by Congress in 1967 (28 U.S.C. §§ 620–629), on the recommendation of the Judicial Conference of the United States.

By statute, the Chief Justice of the United States chairs the Center's Board, which also includes the director of the Administrative Office of the U.S. Courts and seven judges elected by the Judicial Conference.

The organization of the Center reflects its primary statutory mandates. The Education Division plans and produces education and training for judges and court staff, including in-person programs, video programs, publications, curriculum packages for in-district training, and web-based programs and resources. The Research Division examines and evaluates current and alternative federal court practices and policies. This research assists Judicial Conference committees, who request most Center research, in developing policy recommendations. The Center's research also contributes substantially to its educational programs. The Federal Judicial History Office helps courts and others study and preserve federal judicial history. The International Judicial Relations Office provides information to judicial and legal officials from foreign countries and informs federal judicial personnel of developments in international law and other court systems that may affect their work. Two units of the Director's Office—the Information Technology Office and the Editorial & Information Services Office—support Center missions through technology, editorial and design assistance, and organization and dissemination of Center resources.