

ORIGINS & EARLY DAYS

OF THE U.S. MARSHALS

United States September 25th 1789.

James Duane, Judge
 William S. Smith, Marshall
 Richard Harrison, Attorney } New-York.
 David Brearly, Judge.
 Thomas Lorry, Marshall.
 Richard Stockton, Attorney. } for the District
 and
 Thomas Jefferson for Secretary of State
 Edmund Randolph for Attorney-General
 Samuel Osgood for Post-Master-General

G. Washington



United States
 Marshals Museum

ORIGINS & EARLY DAYS

OF THE U.S. MARSHALS

Part of the USMM Educator Resource Series:
Teacher Guides for Civic Literacy Enhancement

New York 27 September 1789-

My dear friend

I congratulate you on your appointment
to the office of Marshal to the district of
Pennsylvania which was completed yesterday

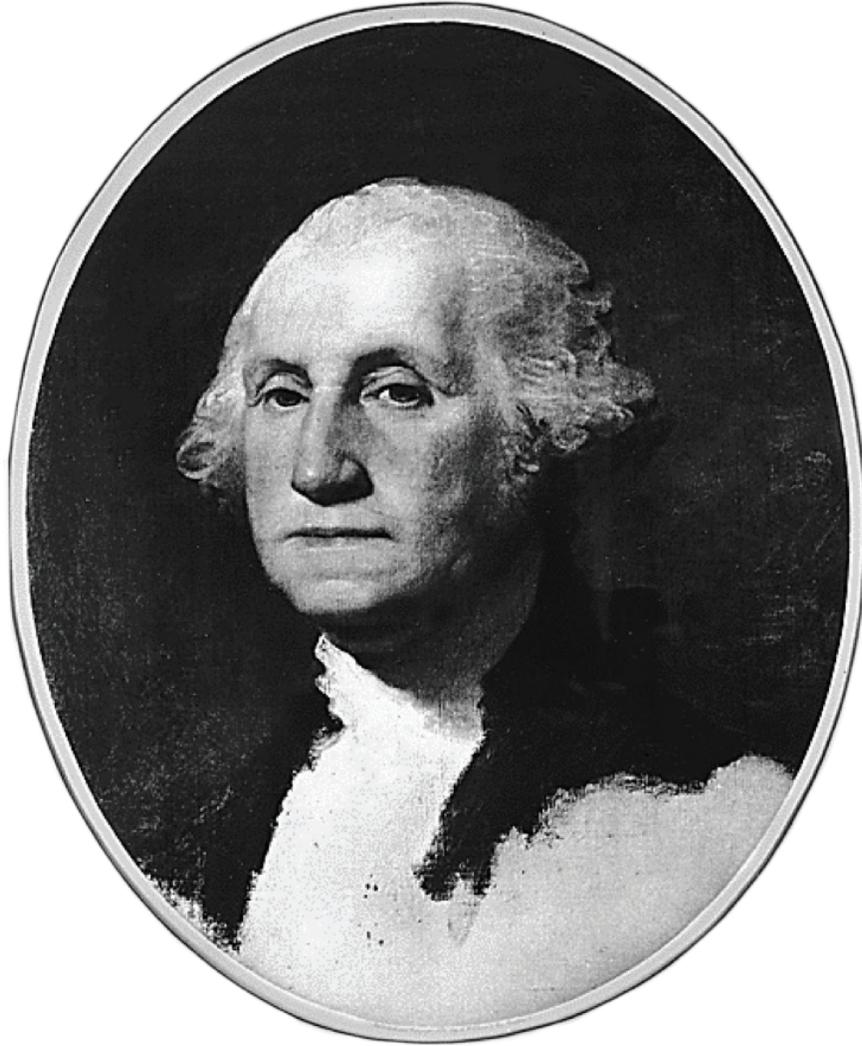
I was extremely unhappy to
hear of the acute misfortune of your lovely
boy. I hope he will yet recover the use
of his limbs, and be that strong comfort
to you which his abilities and disposition
seemed to promise — I refer me
respectfully to Mr Biddle. Our friend
Mr Moore is with us at present in
perfect health. I am my dear Sir
Your affectionate friend
H. Knox

Colonel Biddle -

Congratulations letter from Henry Knox to Clement Biddle on
his appointment as U.S. Marshal for the District of Pennsylvania.
Courtesy of the Papers of the War Department.

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George Washington. Courtesy of the National Archives and Records Administration.

INTRODUCTION

As the oldest federal law enforcement agency, the history of the U.S. Marshals Service is the history of our country. Their power and authority are rooted in the U.S. Constitution, and their involvement in many of our nation's most historic events helped shape our nation into what it is today.

The U.S. Marshals Service was established on September 24, 1789, when President George Washington signed the Judiciary Act into law. One of their main duties then, and now, was to protect the federal judiciary—not only federal judges, but the judicial process. In addition, U.S. Marshals were responsible for paying all court costs, juror and witness fees, district attorneys, and court clerks. They also rented courtroom space, jail space for federal prisoners, and hired bailiffs. Though many of their responsibilities have evolved over the last 230+ years, their protection of the judiciary has remained constant.

In the early years, U.S. Marshals were often the only federal agent in their district. As a result, they fulfilled numerous roles outside of their primary responsibilities. They were the original census takers (until 1870, and the creation of the U.S. Census Bureau), they protected tax collectors leading up to the Whiskey Rebellion, and they pursued counterfeiters prior to the formation of the Secret Service.

With the passage of the Fugitive Slave Law in 1850, the U.S. Marshals were authorized to enforce the law and return runaway slaves to their owners. For marshals in the Northern states this often put them at odds with their friends and neighbors. During a volatile time in our nation's history, U.S. Marshals often went against their own personal beliefs as they upheld the law and returned these enslaved men and women to the South. Fast-forward 100 years, and the U.S. Marshals Service protected African-American students during the desegregation of Southern schools during the 1950s and 60s.

Today, there are 94 U.S. Marshals across the country—one for each federal district. As in 1789, U.S. Marshals are still appointed by and serve at the pleasure of the President, while deputy marshals are civil servants. They play a vital role in our democracy—preserving the way our judicial system functions, protecting our streets, and so much more. This guide gives an insight into their humble beginnings, from 1789 to 1850.

CHAPTER ONE

ESTABLISHMENT OF THE U.S. MARSHALS

Judiciary Act of 1789

Officially titled “An Act to Establish the Judicial Courts of the United States,” the Judiciary Act was signed into law by President George Washington on September 24, 1789. The Act established the federal court system which, with some minor adjustments, is still the same system we have today.

Article III of the Constitution established the United States Supreme Court, but left it up to Congress to develop the rest of the federal court system. The Judiciary Act did the following:

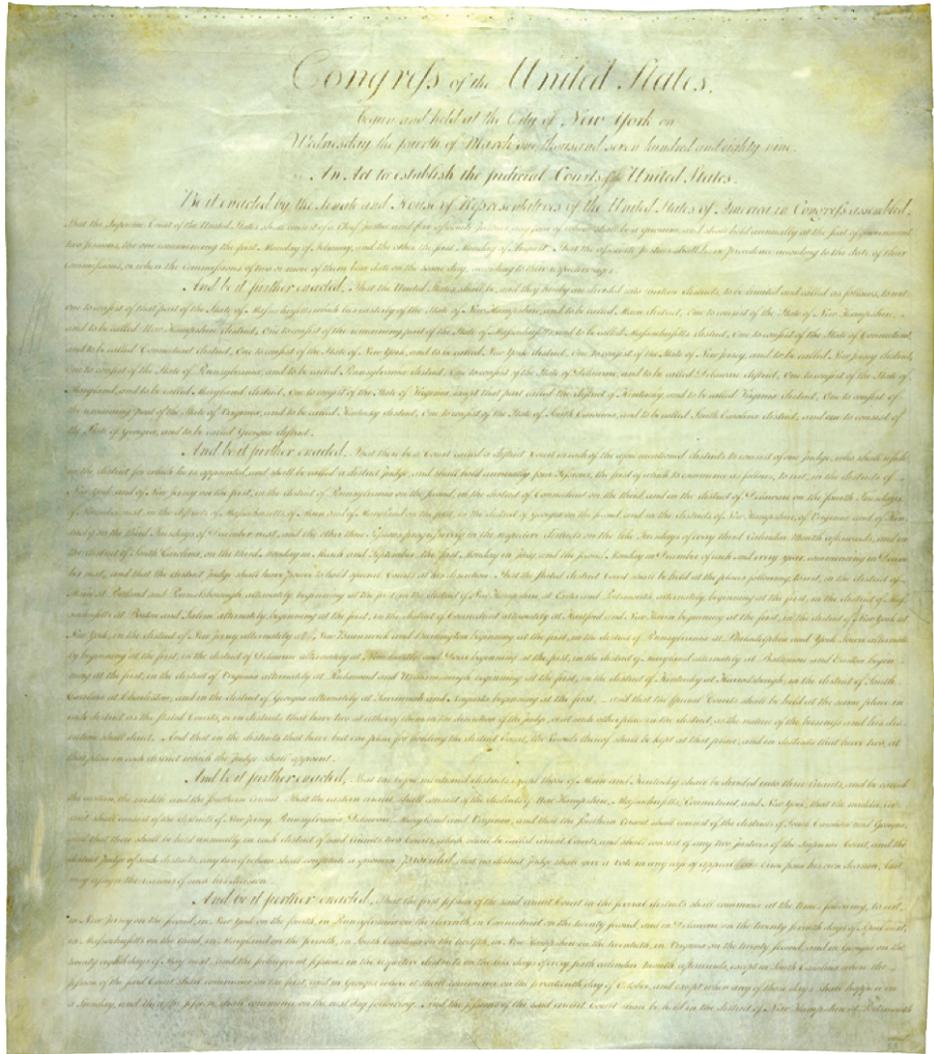
- Set the number of U.S. Supreme Court Justices at six: one Chief Justice and five Associate Justices.
- Created 13 judicial districts within the 11 states that had ratified the Constitution (North Carolina and Rhode Island were added in 1790 and other states were added as they were officially admitted to the Union).
- Established a circuit court and district court in each judicial district. The circuit court included a district judge and (originally) two Supreme Court Judges. In 1891, the appellate courts were created and the Supreme Court justices no longer had to “ride the circuit.”
- Created the position of Attorney General, and provided for the appointment of a U.S. Marshal (sections 27 and 28), one or more deputy marshals, and a U.S. Attorney for each district.

SEC. 27. And be it further enacted, That a marshal shall be appointed in and for each district for the term of four years, but shall be removable from office at pleasure, whose duty it shall be to attend the district and circuit courts when sitting therein, and also the Supreme Court in the District in which that court shall sit. And

to execute throughout the district, all lawful precepts directed to him, and issued under the authority of the United States, and he shall have power to command all necessary assistance in the execution of his duty, and to appoint as there shall be occasion, one or more deputies, who shall be removable from office by the judge of the district court, or the circuit court sitting within the district, at the pleasure of either; and before he enters on the duties of his office, he shall become bound for the faithful performance of the same, by himself and by his deputies before the judge of the district court to the United States, jointly and severally, with two good and sufficient sureties, inhabitants and freeholders of such district, to be approved by the district judge, in the sum of twenty thousand dollars, and shall take before said judge, as shall also his deputies, before they enter on the duties of their appointment, the following oath of office: “I, A.B., do solemnly swear or affirm, that I will faithfully execute all lawful precepts directed to the marshal of the district of under the authority of the United States, and true returns make, and in all things well and truly, and without malice or partiality, perform the duties of the office of marshal (or marshal's deputy, as the case may be) of the district of _____, during my continuance in said office, and take only my lawful fees. So help me God.”

SEC. 28. And be it further enacted, That in all causes wherein the marshal or his deputy shall be a party, the writs and precepts therein shall be directed to such disinterested person as the court, or any justice or judge thereof may appoint, and the person so appointed, is hereby authorized to execute and return the same. And in case of the death of any marshal, his deputy or deputies shall continue in office, unless otherwise specially removed; and shall execute the same in the name of the deceased, until another marshal shall be appointed and sworn: And the defaults or misfeasances in office of such deputy or deputies in the mean time, as well as before,

shall be adjudged a breach of the condition of the bond given, as before directed, by the marshal who appointed them; and the executor or administrator of the deceased marshal shall have like remedy for the defaults and misfeasances in office of such deputy or deputies during such interval, as they would be entitled to if the marshal had continued in life and in the exercise of his said office, until his successor was appointed, and sworn or affirmed: And every marshal or his deputy when removed from office, or when the term for which the marshal is appointed shall expire, shall have power notwithstanding to execute all such precepts as may be in their hands respectively at the time of such removal or expiration of office; and the marshal shall be held answerable for the delivery to his successor of all prisoners which may be in his custody at the time of his removal, or when the term for which he is appointed shall expire, and for that purpose may retain such prisoners in his custody until his successor shall be appointed and qualified as the law directs.



First page of the Judiciary Act of 1789. Courtesy of the National Archives and Records Administration.

The role of U.S. Marshal was modeled on a similar position in the British vice admiralty courts, which were created by England in 1697 to hear cases involving the law at sea, such as trade disputes and clashes between sailors. The British marshals of the admiralty courts performed duties such as serving warrants and subpoenas, taking possession of condemned ships, keeping custody of prisoners, and carrying out orders of the court. After independence from Britain, these duties, and others, were transferred to the position of U.S. Marshal. The Marshals were to become the enforcement authority of the new federal court system, and the first federal law enforcement agency created under the new system of government.

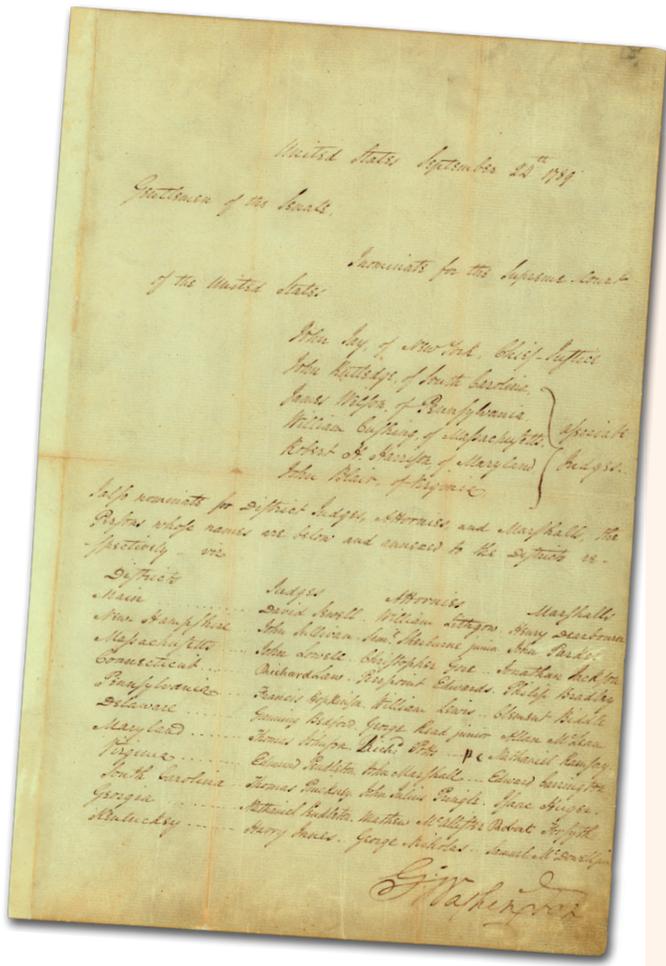
The First Appointments

On September 24, 1789, George Washington made his first presidential appointments for the offices of U.S. Marshal, U.S. Attorney, and District Judge for each of the

established districts. Several of his first appointees were military colleagues or men he knew personally. Of his selection of the original marshals, Washington stated on September 30, 1789:

The high importance of the Judicial System in our National Government made it an indispensable duty to select such characters to fill the several offices in it as would discharge their respective trusts in honor to themselves and advantage to their Country.

Nominees for presidential appointments rarely appeared in person in the 18th, and into the 19th, centuries. Office seekers often wrote the president or his officials petitioning for jobs. In the case of the first marshals, only one, Philip Bradley of Connecticut, actually requested the position of Marshal. George Washington originally appointed 13 marshals following the signing of the Judiciary Act. Those 13 are described on the next few pages.



George Washington's original nominations to the Senate for the positions of Judge, District Attorney, and U.S. Marshal, September 24, 1789. (*These declined their appointments.) Courtesy of the National Archives and Records Administration.

United States, September 24th, 1789

Gentlemen of the Senate,

I nominate for the Supreme Court of the United States

- John Jay of New York, Chief Justice
- John Rutledge, of South Carolina
- James Wilson, of Pennsylvania
- William Cushing, of Massachusetts
- Robert H. Harrison, of Maryland*
- John Blair, of Virginia

I also nominate for District Judges, Attornies, and Marshalls, the persons whose names are below and annexes to the Districts respectively~

Districts	Judges	Attornies	Marshalls
Main	David Sewall	William Lithgow	Henry Dearbourn
New Hampsire	John Sullivan	Samuel Sherburne, Jr.	John Parker
Massachusetts	John Lowell	Christopher Gore	Jonathan Jackson
Connecticut	Richard Law	Pierrepont Edwards	Philip Bradley
Pennsylvania	Francis Hopkinson	William Lewis	Clement Biddle
Delaware	Gunning Bedford	George Read, Junior	Allan McLean
Maryland	Thomas Johnson	Richard Potts	Nathaniel Ramsay
Virginia	Edmund Pendleton*	John Marshall	Edward Carrington
South Carolina	Thomas Pinckney*	John Julius Pringle	Isaac Huger
Georgia	Nathaniel Pendleton	Mathew McAllister	Robert Forsyth
Kentucky	Harry Innes	George Nicholas	Samuel McDowell

G Washington

Connecticut: Philip Bradley

Philip Bradley lived his entire life in Ridgefield, Connecticut. During the Revolutionary War, he assumed command of the 5th Connecticut Regiment, but that is all that is known about his military experience. After the establishment of the new federal government, Bradley wrote President Washington asking for a job. He was the only one of the original marshals to request the position of Marshal, and he held the position under both President Washington and President Adams. Little else is known about his life.

Delaware: Allan McLane

Allan McLane did not want to be a U.S. Marshal. When he petitioned President Washington for a job, he was hoping for something better paying. But in September

1789, Washington appointed him the first U.S. Marshal for the District of Delaware. McLane referred to the office of marshal as one of "...considerable trust, but not profit." He remained in the office until 1797, when he was appointed Collector of the Port of Wilmington. McLane was also a hero of the Revolutionary War. He served in Caesar Rodney's Delaware Regiment, then joined Washington's Continental Army. McLane took part in several major battles, and by the war's end had been promoted to colonel.

Georgia: Robert Forsyth

Robert Forsyth enlisted in the Continental Army soon after the start of the Revolutionary War. Following the war, he moved to Augusta, Georgia, where he quickly established himself as a pillar of the community. He was a Mason, reaching

the rank of Deputy Grand Master for the State of Georgia. In September 1789, he was appointed the first U.S. Marshal for the District of Georgia by George Washington. On January 11, 1794, he became the first U.S. Marshal to be killed in the line of duty when he was shot attempting to serve civil court papers. His killers were never caught. Forsyth left behind a widow and two sons. One son, John, grew up to serve as the U.S. Minister to Spain, a position in which he negotiated the treaty acceding Florida to the United States. He also served as Secretary of State under Presidents Andrew Jackson and Martin Van Buren.

Kentucky: Samuel McDowell Jr.

After serving in the Revolutionary War, Samuel McDowell and his family moved to Kentucky, where they fought in several battles against the local Native American tribes. McDowell's father was appointed a federal judge at the same time Samuel was appointed the first U.S. Marshal for the District of Kentucky. At age 25 when he received his commission, he was the youngest man appointed to the position by Washington. Intensely loyal to his family, McDowell hired many of his brothers, cousins, and brothers-in-law as his deputies. He served three terms as Marshal, but was replaced by Thomas Jefferson because of his strong Federalist beliefs. His grandson, General Irvin McDowell, at one time commanded the Army of the Potomac during the Civil War.

Maine: Henry Dearborn

Henry Dearborn was appointed the U.S. Marshal for the District of Maine on September 24, 1789. He is best known as the first marshal to supervise a federal execution. Prior to being appointed U.S. Marshal, Dearborn fought in the Revolutionary War, where he was involved in major operations, including Benedict Arnold's ill-fated invasion of Canada, and served on Washington's staff at the Battle of Yorktown. Following his time as Marshal, he was elected to Congress as one of Thomas Jefferson's Democratic Republicans in 1793, and held many other governmental posts, including Secretary of War under Jefferson and Minister to Portugal under James Madison. He ordered the construction of the fort on the western shores of Lake Michigan that would later become the city of Chicago.

Maryland: Nathaniel Ramsey

Prior to the Revolutionary War, Nathaniel Ramsey was a lawyer in Cecil County, Maryland. In 1775, he was elected to represent his state in the Continental Congress. Soon after the war broke out he joined the Maryland militia. He

United States, September 25th, 1789

Gentlemen of the Senate,

I nominate

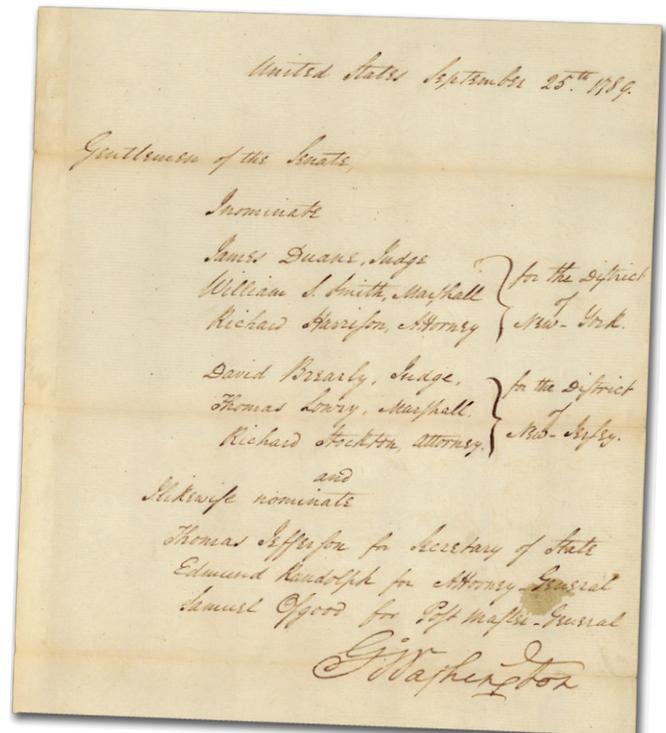
James Duane, Judge	for the District
William S. Smith, Marshall	of
Richard Harrison, Attorney	New York

David Brearly, Judge	for the District
Thomas Lowry, Marshall	of
Richard Stockton, Attorney	New Jersey

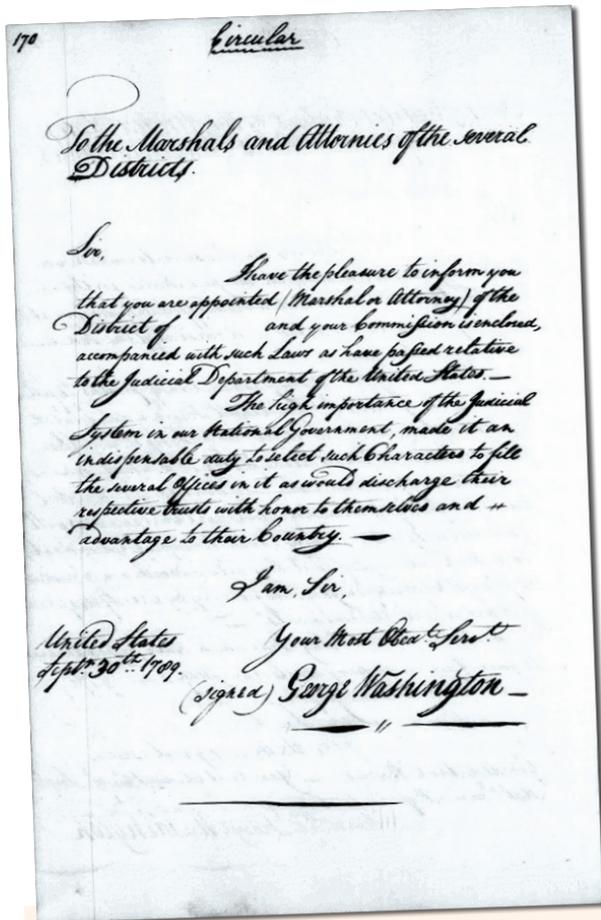
I likewise nominate

Thomas Jefferson for Secretary of State
 Edmund Randolph for Attorney General
 Samuel Osgood for Postmaster-General

G Washington



George Washington's original nominations to the Senate for the positions of Judge, District Attorney, and U.S. Marshal for New York and New Jersey, September 25, 1789. Courtesy of the National Archives and Records Administration.



Circular

To the Marshals and Attornies of the several Districts-

Sir,

I have the pleasure to inform you that you are appointed/ Marshal or Attorney/ of the District of _____ and your Commission is enclosed, accompanied with such Laws as have passed relative to the Judicial Department of the United States.

The high importance of the Judicial System in our National Government, made it an indispensable duty to select such Characters to fill the several offices in it as would discharge their respective trusts with honor to themselves and advantage to their Country.

I am Sir,

United States
Sept. 30th, 1789

Your Most Obedt. Servt.
(signed) George Washington

Circular from George Washington to all Marshals and District Attorneys informing them of their appointments, September 30, 1789. Courtesy of the Library of Congress, Papers of George Washington, 1741-1799; Series 2 Letterbooks, Letterbook 22.

fought at battles such as Monmouth and Long Island, and spent the winter at Valley Forge with George Washington. He also spent a portion of the war held prisoner by the British. In September 1789, Washington appointed Ramsey the first U.S. Marshal for the District of Maryland. He served as Marshal until 1794, when he was appointed as Naval Officer for the Port of Baltimore. Ramsey was married twice—one of his wives was the sister of Charles Willson Peale, the famous American artist.

Massachusetts: Jonathan Jackson

Jonathan Jackson was one of two original marshals who did not serve in the military during the Revolutionary War. Prior to the war he was a prominent importer of British goods into the American Colonies. When independence was declared and war broke out, he turned his trade ships into privateers for use against the British Navy. He was also the principal contractor that supplied Washington's army. He served in the Massachusetts Constitutional Convention in 1779, when he became good friends with John Adams, and represented his state in the Second Continental Congress in 1782. The war left him almost bankrupt. After writing President Washington and requesting a government job, Washington appointed him the first U.S. Marshal of the District of Massachusetts in September 1789, where he served for two years, before moving on to other government positions. He eventually became the President of the Boston Bank, and was one of the founders of the American Academy of Arts and Sciences. His descendants include Oliver Wendell Holmes Sr., the famous author and educator, and his son of the same name, who became a U.S. Supreme Court Justice.

New Hampshire: John Parker

John Parker was one of only two original marshals to have law enforcement experience—Clement Biddle was the other. Parker began his career under the royal governor, but was so well liked he was immediately appointed sheriff of Rockingham County when independence was declared. During the Revolutionary War, Parker briefly served as captain in Biddle's New Hampshire Rangers, but afterward returned to his position of sheriff. On September 24, 1789, Parker was appointed U.S. Marshal for the District of New Hampshire. At age 56, he was the oldest of Washington's appointees. He died in office less than two years later.

New Jersey: Thomas Lowrey

Thomas Lowrey moved with his family to New Jersey from Ireland when he was 10 years old. In 1775 he was elected as a delegate to the First Continental Congress. He served

To the Marshalls of the Several Districts
in the United States.

Sir,

As the Secretary of State has not yet entered upon the duties of his Office; I have the honor, in obedience to the commands of the President of the United States, to transmit the enclosed Act for your information—entitled "An Act providing for the enumeration of the Inhabitants of the United States"—the receipt of which you are requested to acknowledge when it gets to your hands. —

With due consideration,

I have the honor to be,
Your most Obedient Servt.

(signed) Tobias Lear
Secretary to the President
of the United States

United States
March 5th 1790.

Letter from Tobias Lear, Secretary to George Washington, to all U.S. Marshalls informing them they will be conducting the first census in 1790. Courtesy of the Library of Congress, 1741–1799; Series 2 Letterbooks, Letterbook 22.

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Your Most Obedient Servt:
(signed) Tobias Lear
Secretary to the President
of the United States

United States
March 5th, 1790

as a Commissary Officer during the Revolutionary War, but never saw action in any of the battles. His business acumen was put to use keeping the troops supplied, an extremely difficult responsibility. George Washington was a regular visitor at the Lowrey home during the war, so when he needed someone to appoint the first U.S. Marshal of the District of New Jersey, he quickly turned to his old friend. Lowrey served as Marshal through John Adams' presidency, but was replaced by Thomas Jefferson in 1801.

New York: William Smith

The Revolutionary War interrupted William Smith's plans to become a lawyer after graduating from the College of New Jersey (now known as Princeton). He enlisted as a major, and fought in several important battles such as Monmouth, Long Island, and Trenton. He also served as

an aide to General Washington. After the war, he supervised the evacuation of British troops from New York. In 1785 he was appointed John Adams' Secretary while Adams served as the American Minister to Britain. A year later he married Adams' daughter, Abigail Adams. The couple returned to the United States in 1788, and the next year Smith was appointed the first U.S. Marshal for the District of New York. Since New York City was the nation's capital during the first year of the new government, Smith dealt personally with President Washington in the performance of his duties. However, he resigned after only one year as Marshal and became Supervisor of the Revenue, the Surveyor of the Port of New York. Around 1806, he and his eldest son joined the Miranda Expedition, a group formed to plan an illegal invasion of Venezuela. Both were arrested, and Smith

was stripped of all his government credentials, but was later acquitted. In 1812 he was elected to Congress as a member of the Federalist Party.

Pennsylvania: Clement Biddle

Clement Biddle was one of only two of the original marshals with law enforcement experience. (The other was John Parker.) An early patriot, he served as aide-de-camp to Nathaniel Greene during the Revolutionary War. He was with George Washington at Valley Forge, received the sword of the surrendering Hessians after the Battle of Trenton, and handled Washington's business affairs in Philadelphia after the war, when they became close friends. In September 1789, Washington appointed Biddle the first U.S. Marshal for

the District of Pennsylvania. Before the end of his four-year term in 1793, suffering from gout and other ailments, Biddle wrote Washington asking not to be reappointed. In 1794, he was able to ride out with the Pennsylvania militia when it marched on the Whiskey Rebels who had taken his successor, U.S. Marshal David Lenox, prisoner.

South Carolina: Isaac Huger

Isaac Huger grew up on a plantation in South Carolina. He served as a lieutenant colonel in the 1st South Carolina Regiment during the Revolutionary War, eventually working his way up to brigadier general by the war's end. In 1782 he was elected to the South Carolina General Assembly. In September 1789 George Washington appointed him the

Friday, March the 4th 1791

In conformity to the Summonses issued by the President of the United States on the first instant, The Senate met this day at their Chamber, and having given due notice thereof the following communications were made to them by the President of the United States.

United States, March 4th 1791

Gentlemen of the Senate:

The "Act for the admission of the State of Vermont into this Union" having fixed on this as the day of its admission, it was thought that this would also be the first day on which any Officer of the Union might legally perform any act of authority relating to that State. I therefore required your attendance to receive nominations of the several Officers necessary to put the federal government into motion in that State.

For this purpose I nominate

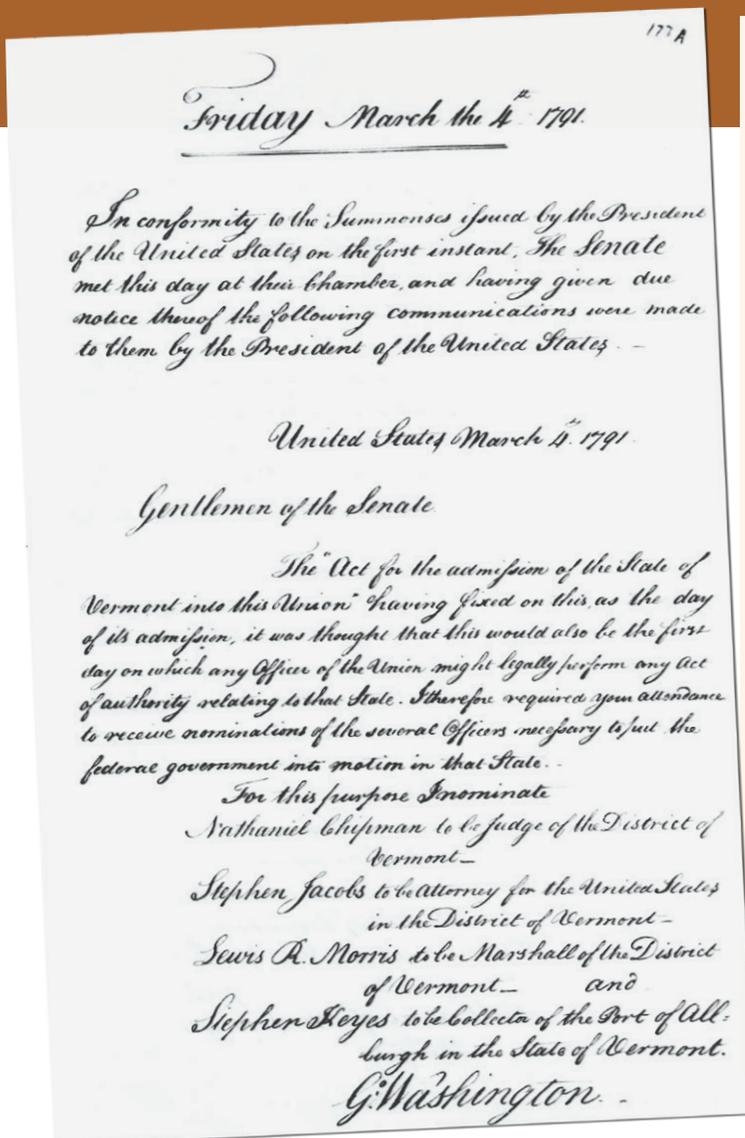
Nathaniel Chipman to be Judge of the District of Vermont.
Stephen Jacobs to be Attorney for the United States in the District of Vermont.

Lewis R. Morris to be Marshall of the District of Vermont.
and

Stephen Keyes to be Collector of the Port of Allburgh, in the State of Vermont.

G Washington

Nominations for federal positions in the new state of Vermont, including Judge, Attorney, Marshal, and Collector of the Port. Courtesy of the Library of Congress- the Writings of George Washington from the original manuscript sources, 1745-1799. John C. Fitzpatrick, Editor.



first U.S. Marshal for the District of South Carolina. He served for almost four years, resigning in 1793 due to poor health and a need to devote more time to his private affairs.

Virginia: Edward Carrington

Edward Carrington was a close, personal friend of George Washington. He served in several important battles of the Revolutionary War, including the final battle at Yorktown. In September 1789, Washington appointed him the first U.S. Marshal for the District of Virginia. He served as marshal for a little over two years, and was then appointed as the Supervisor of Distilled Spirits for the state of Virginia. Washington continued to solicit Carrington's advice after they had both left office, including the commissioning of officers for the army when war almost broke out with France after the election of John Adams.

The Original Census Takers

The first census was conducted in 1790, shortly after George Washington became President, according to Article I, Section 2 of the Constitution. The Constitution specified a census be taken every 10 years, but did not specify who should conduct it. The Census Act of 1790 delegated this responsibility to the U.S. Marshals and their assistants. Located across the country, they were the most reasonable choice. In many areas, marshals were the only representatives of the federal government.

Each marshal divided his district into sections and hired sufficient assistants to cover each section. They were called "assistant marshals" to distinguish them from actual deputy U.S. Marshals. Assistants traveled from house to house, taking information such as the number of inhabitants, males/females, number of slaves, and more. For this work they were

paid a small fee, based on the population of the area they were assigned. Assistants had to provide their own paper and writing utensils to record the information. Once the information was collected, the U.S. Marshal for the district compiled the records to be sent to Congress, for which they were also paid a fee, depending on population. The more rural the population, the higher the fees that were paid, as the assistants had to travel farther and longer to visit all households.

President Washington put Secretary of State Thomas Jefferson in charge of coordinating the census. Washington's personal secretary, Tobias Lear, was in charge of distributing the instructions to the U.S. Marshals. They received their instructions in a circular dated March 5, 1790.

Many people were unhappy with the results of the 1790 census. They thought the results—3,929,214 free people—were exceptionally low, and questioned the marshals' work. However, later census tallies would prove the numbers to be correct.

The marshals continued to be responsible for the census through 1870. It was taken over by the newly created U.S. Census Bureau in 1880.

Leaf inserted in 1st ed. of 1st Census 1790. at p. 51 (Kentucky)

<i>Names of the Counties and Towns within the district aforesaid.</i>	Free white males of 16 years and upwards, including heads of families.	Free white males under 16 years.	Free white females, including heads of families.	All other free persons.	Slaves.	Total.
Fayette County	3241	3878	6738	30	3689	17576
Nelson	2456	2746	4644	34	1219	11099
Woodford	1767	1929	3267	27	2220	9210
Bourbon	1645	2035	3249		908	7837
Mercer	1411	1515	2691	7	1317	6941
Lincoln	1375	1441	2630	8	1094	6548
Jefferson	1008	997	1680	4	876	4565
Madison	1231	1421	2383		737	5772
Mason	431	676	952		208	2267
Lexington, in Fayette County	276	203	290	2	63	834
Washington, in Mason County	163	95	183		21	462
Bearsville, in Nelson County	52	49	85	1	29	216
Louisville, in Jefferson County	49	44	79	1	27	200
Danville, in Mercer County	49	28	51		22	150
<i>The whole amount,</i>	15154	17057	28922	114	12430	73677

SAMUEL M'DOWELL, Jun.
Marshal for the Kentucky District.

Page of the 1790 census from the District of Kentucky, under U.S. Marshal Samuel McDowell Jr. Courtesy of the National Archives and Records Administration.

CHAPTER TWO

EARLY CHALLENGES

The Whiskey Rebellion

By the end of the Revolutionary War, the nation and the states were millions of dollars in debt. At Alexander Hamilton's urging, the federal government absorbed the states' debt, but needed a way to pay it off. As there was no personal income tax at the time, or other sources of income for the government, Hamilton successfully lobbied Congress to pass the Tariff of 1789 which, among other things, placed duties on the import of distilled spirits. This was not enough to cover the debt, so another act was passed in 1790 that raised the duty. Though upset about the tax, Americans avoided paying the tax by distilling their own spirits domestically. In 1791, Hamilton successfully urged Congress to pass a tax on spirits produced in the United States. This tax prompted what came to be known as the Whiskey Rebellion.

It wasn't just the love of whiskey that led to the rebellion. For wheat and grain farmers, it was an economic issue. Opposition to the tax was strongest in the more rural (and poor) areas of the country. "Whiskey rebels," as they came to be called, tarred and feathered tax collectors, supporters of the tax, and those who paid the tax.

It was the duty of U.S. Marshals to serve warrants on those who failed to pay the tax and those who assaulted government officials and their fellow citizens. On May 31, 1794, the federal district court in Pennsylvania issued process against 75 distillers in Western Pennsylvania. Warrants were not issued, but summonses were issued for the defendants to appear in court to plead their case, and explain why they should not be arrested for failure to pay the tax. U.S. Marshal David Lenox set out from Philadelphia soon after with the process to personally deliver it.

Lenox delivered the summonses in several counties with little to no resistance, until he reached Allegheny County. When he reached Allegheny, he requested the services of General John Neville as a guide, who was the inspector of the revenue. After the first few stops, the day turned violent. William Miller, a local farmer, refused the summons presented to him by Lenox. Then, at the sight of 30 to 40 armed men approaching them, Lenox and Neville abruptly left. They were shouted at, cursed, and fired upon, but managed to escape.

The next morning, the armed men approached Neville's home. After a war of words, shots rang out, and a half-hour gun battle ensued. The rebels suffered five casualties in total before retreating. Marshal Lenox was in Pittsburgh, preparing to return to Philadelphia. When he heard about the shootout, he returned to Neville's home. They proceeded to build a small local militia to protect Neville and his household. After two days with no action, all but a dozen returned to their homes. When Lenox and General Neville's son, Presley, went to Pittsburgh to ask for more help from the general of the militia, a group of approximately 500 rebels surrounded Neville's home. When they returned the rebels captured them and held them hostage. The rebels then fired on the dozen defenders of Neville's home, who surrendered, and were allowed to leave. The house was burned to the ground, and the families' remaining possessions looted.

Lenox and Presley Neville were marched several miles away for a council to decide their fate. Many of the rebels stayed drunk, and attempts were made on Lenox's life. But other rebels stepped forward to protect him. The council decided to release the two men, as long as Lenox promised to serve no more process. Lenox gladly agreed, as he had already

Dear Sir. April the 22nd 1793

I take this opportunity to inform you what I have done respecting the Excise business put in my hands I have made the Returns and left them with Mr. James Brecknridge Inspector and all the monies that I could collect to this time I found it to be one of the most difficult and disagreeable tasks I ever undertook in my life I could get but very few that would suffer an office of Inspection to be kept out his own house the Town went so far as to gather in companies in order to stop the Collection I lay under great reflection for it was supposed no other man would have undertaken it in these Counties but myself I believe I got in all the stills that was employed in my division and the amounts I received, the amount of the duties is between fifteen or hundred Dollars there is about three hundred & fifty to collect which shall be done as quick as possible Mr. Brecknridge tells me that he can't allow me but five percent for my services I do declare to you that would not bear my expenses I was nearly charged for every thing I had for my subsistence if I am not allowed no more than five percent this peace of business will _____ me I am satisfied that I have had more trouble than any four collectors in this survey the measurement of the stills in the three Counties was very great peace of drudgery I am sure my expenditures is not less than one hundred and fifty dollars and I was as frugal as possible I should be very glad to receive a few lines from you on the subject I am with respect your _____

Rob. Craig's Collector

April the 22nd, 1793

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Rob. Craig, Collector

Letter from Robert Craig to Edward Carrington, the first U.S. Marshal of the District of Virginia, April 22, 1793. The Library of Virginia.

served all but one of the summonses he had been given. The two men were then escorted out of camp. Less than half a mile away, they were attacked by a small group of drunk rebels. When the men aimed their weapons at Lenox, one of the escorts, a man named Benjamin Parkinson, placed himself between Lenox and the guns. The men then insisted that Lenox return with them to the camp, but the marshal decided to try to escape. He spurred his horse and took off into the surrounding woods. He was not pursued, and Presley Neville also managed to escape. Both men returned to Pittsburgh. Fearing for their lives in Pittsburgh, Lenox and General Neville boarded a barge on the Ohio River and traveled to Virginia, then Philadelphia.

On September 24, 1794, Washington signed a proclamation ordering the militia to suppress the rebellion. The militia was under the order of Governor Henry Lee of Virginia, known

as "Light Horse Harry" during the Revolution. Alexander Hamilton served as second in command, at his own request. U.S. Marshal David Lenox, U.S. Attorney William Rawle, and Judge Richard Peters rode with the militia in order to "arrest, prosecute, and try the rebel leaders for treason." The militia arrived in Pittsburgh in early November 1794. Eighteen rebel leaders were arrested, but all but two were eventually acquitted. Two years later, Marshal Lenox wrote to President Washington to request a pardon for Benjamin Parkinson, who had saved his life. Washington granted his request.

Although the militia successfully, and bloodlessly, ended the insurrection, and all organized resistance ceased, opposition wasn't completely quieted until the tax was repealed by Congress in 1809 under President Thomas Jefferson. The duty of collecting the back taxes that were owed by some distillers was transferred, by Congress, to the

Sir
Vaues. October 3^d 1794

Letter to Governor Lee from A. Lewis concerning volunteers for the Whiskey Rebellion. Courtesy of the Library of Virginia. Additional pages available on digital file.

The other Day when I left the Frontiers nothing worth relating had happened since I wrote you last, I imagine the Attention of the Enemy has chiefly been taken up with General Wayne's Army, & I expect will be the case for this Season out, much opposition is made in many of those back Counties against the Draft ordered to be made supposed for the purpose of quelling the insurgents, indeed I am sorry & ashamed to inform your Excellency that I fear there is so many in favour of them that those drafted cannot be made go - & as the Danger at present on the Frontiers does not appear great I take the Liberty recommending the Volunteer Militia that are under my Command to

for two seasons under pay and think them better led the blood of the country has been such that is a great many orders that I give me on this the pay master company for the me for money, & thirty nine bottles may be made a letter by Mr. to send down

Instructions to him soldiers would want of money get without and uneasy at the coming which of a long time go their Duty agreed if General's Excellency of the by his as well as long as the vouchers for the lands of the pay, & the whole sum his 5 years service &

... necessarily suffers me to send down for it, contain it, is when General Tate brought out only part of the money for that year's service, I could have used this

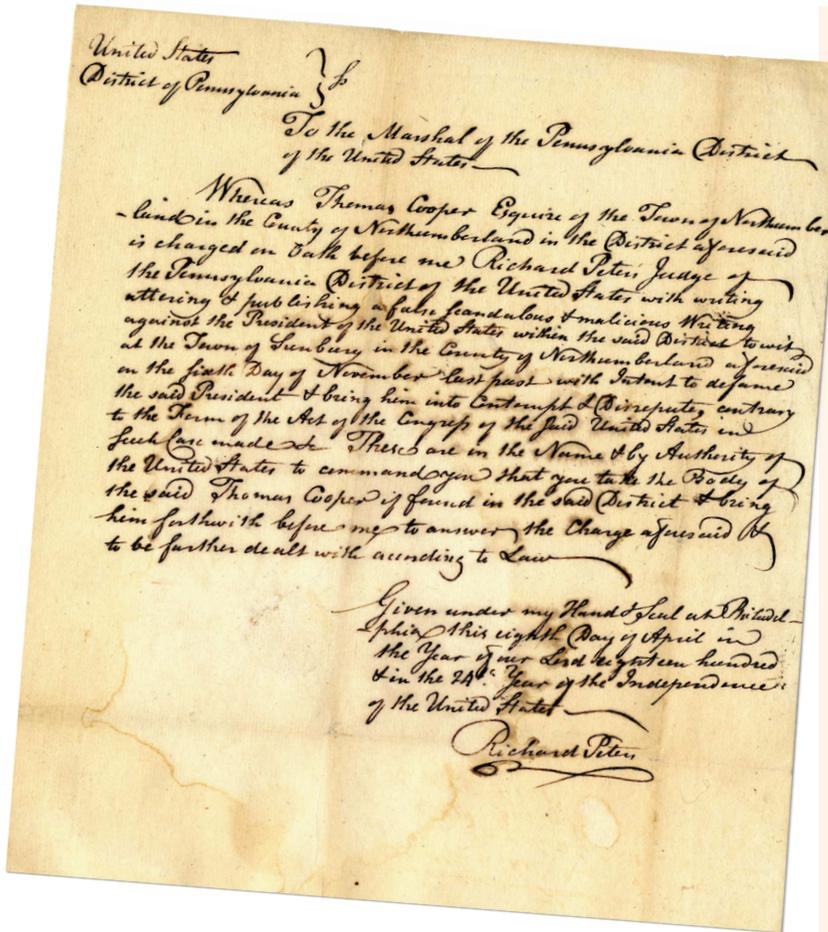
of year which sum I have enclosed an Order to be paid to Mr. James Boyan the keeper of the Treasury is not in a situation to advance the money, I hope presents on the Treasury will be given him which perhaps I may as

with an Execution against my property, which altogether hinders in your request to let me suffer or not the justness of my claim I refer you to General Tate's letter by Mr. that I am
Your Excellency's M^o A^o and
A. Lewis

October 3^d, 1794

Sir

The other day when I left the Frontier nothing worth relating had happened since I wrote you last, I imagine the attention of the Enemy has chiefly been taken up with General Wayne's army, & I expect will be the case for this ___ out, much opposition is made in many of those back counties against the Draft ordered to be made supposed for the purpose of quelling the insurgents, indeed I am sorry and ashamed to inform your Excellency that I fear there is so many in favour of them that those drafted cannot be made go, & as the Danger at present on the Frontiers do not appear great I take the Liberty recommending the volunteer militia that are under my command to...



Warrant for the Arrest of Thomas Cooper. National Archives and Records Administration, Records of the District Courts of the United States, RG 21, ARC #278968.

United States
District of Pennsylvania

To the Marshal of the Pennsylvania District of the
United States

Whereas Thomas Cooper Esquire of the Town of Northumberland in the County of Northumberland in the District aforesaid is charged on Oath before me Richard Peters Judge of the Pennsylvania District of the United States with writing uttering & publishing a false scandalous & malicious Writing against the President of the United States within the said District to wit at the Town of Sunbury in the County of Northumberland aforesaid on the fifth Day of November last past with Intent to defame the said President & bring him into Contempt & Disrepute, contrary to the Term of the Act of the Congress of the said United States in such care made & There are in the Name & by Authority of the United States to command you that you take the Body of the said Thomas Cooper if found in the said District & bring him forthwith before me to answer the Charge aforesaid & to be further dealt with according to Law.

Given under my Hand & Seal at Philadelphia this eighth
Day of April in the Year of our Lord eighteen hundred
& in the 24th Year of the Independence of the United
States.

Richard Peters

U.S. Marshals. But the outcome of the rebellion solidified the power of the fledgling federal government to enforce the law, and proved the government would not allow challenges to its authority.

The Sedition Act of 1798

Signed into law by President John Adams, the Sedition Act restricted speech critical of the federal government. The intent was to weaken the Democratic-Republican Party. As enforcers of federal law, the U.S. Marshals were responsible for serving warrants for the arrest of those violating the Sedition Act.

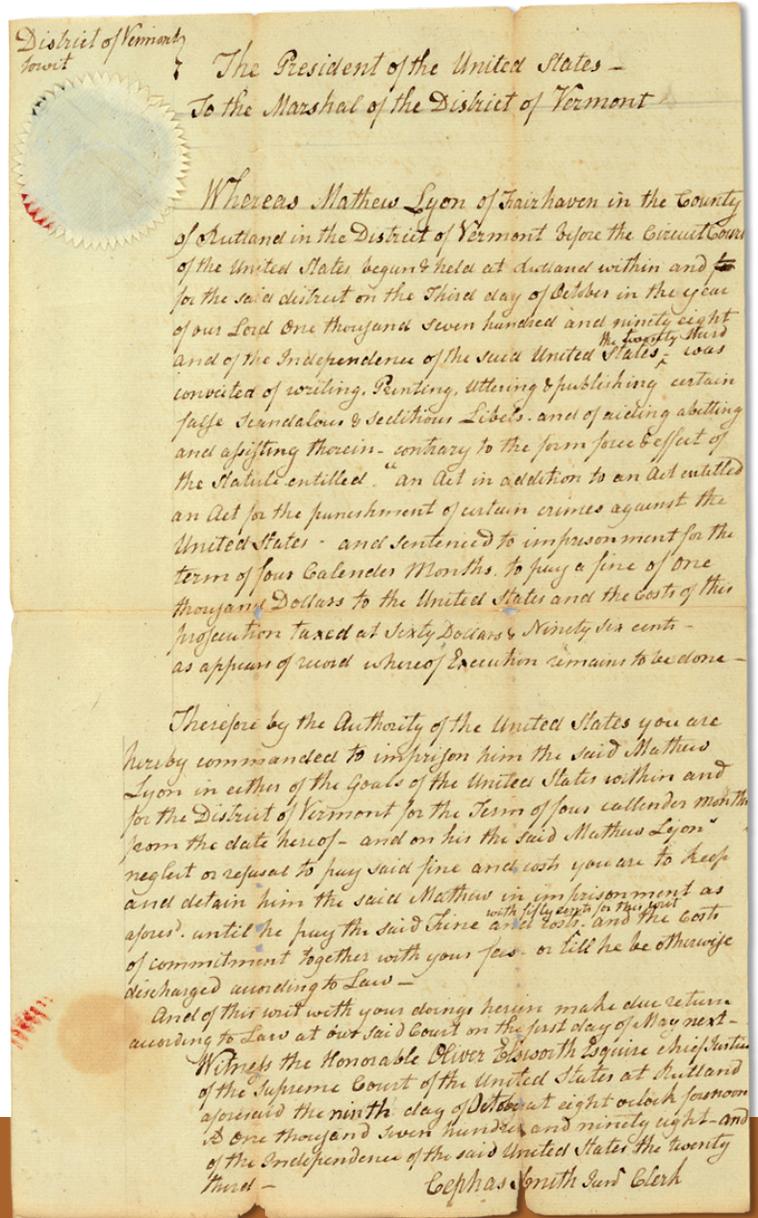
One of the most famous cases involving the Sedition Act was the United States v. Thomas Cooper. Cooper, a native of London, moved to Northumberland, Pennsylvania in 1794 with his family and a close friend. Cooper quickly

became involved in politics. In 1799, he published a series of newspaper articles, in a volume titled *Political Essays*, which advocated for freedom of the press and ridiculed the Sedition Act. His criticism drew the anger of the Executive Branch, and in 1800 he was convicted of libeling President Adams in a 1799 handbill. Cooper was ultimately fined and jailed for six months.

Another famous case involving the Sedition Act was the case of Congressman Matthew Lyon. A native of Ireland, Lyon came to America as an indentured servant before the Revolutionary War. Like Cooper, he quickly became involved in politics and was elected to Congress in 1796—one of the few Republican members from New England. His sharp tongue and brisk manner quickly gained him many enemies in the House of Representatives. He even spit in the face of another Congressman who belittled his Revolutionary



Above: President John Adams. Courtesy of the Library of Congress.



Right: Warrant for Punishment in the Sedition Case of U.S. v. Matthew Lyon. Punishment was four months in jail and a fine of \$1,000, plus \$60.96 in court costs. Courtesy of the National Archives and Records Administration.

War service, which earned him the name “the spitting Lyon.” During the 1798 campaign, Lyon’s attacks on the President and the Federalist Party placed him in violation of the Sedition Act. He was arrested by a deputy marshal, proving that even government officials themselves were not above the Act, and placed in the custody of U.S. Marshal Jabez G. Fitch, where he remained for four months. He conducted his reelection campaign from jail—and won by a landslide.

The Sedition Act contributed to the defeat of the Federalist Party in the next election, and was repealed after Thomas Jefferson became president. Jefferson pardoned all those who had been convicted under the Act, and Congress reimbursed all fines paid.

But the Sedition Act of 1798 would not be America’s only experiment with suppressing free speech. In 1918 President Woodrow Wilson signed another Sedition Act after the outbreak of World War I. This Act made it a crime to speak out against the war or try to keep people from enlisting in the military. The best example of this law in action was the arrest of Clarence Waldron, a minister from Vermont. He was sentenced to 15 years in prison for telling his congregation that Christians should not take part in wars, or spill their own blood for their country. Once again, the government and the American people allowed fear to push them into abandoning their country’s constitutional mandates.

FIFTH CONGRESS OF THE UNITED STATES:

At the Second Session,

Begun and held at the city of Philadelphia, in the state of PENNSYLVANIA, on
Monday, the thirteenth of November, one thousand seven hundred
and ninety-seven.

An ACT concerning aliens.

BE it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That it shall be lawful for the President of the United States at any time during the continuance of this act, to order all such aliens as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable grounds to suspect are concerned in any treasonable or secret machinations against the government thereof, to depart out of the territory of the United States, within such time as shall be expressed in such orders, which order shall be served on such aliens by delivering him a copy thereof, or leaving the same at his usual abode, and returned to the office of the Secretary of State, by the Marshal or other person to whom the same shall be directed. And in case any alien so ordered to depart, shall be found at large within the United States after the time limited in such order for his departure, and not having obtained a licence from the President to reside therein, or having obtained such licence shall not have conformed thereto, every such alien shall on conviction thereof, be imprisoned for a term not exceeding three years and shall never after be admitted to become a citizen of the United States. *And* Provided always, and be it further enacted, That if any alien so ordered to depart shall prove to the satisfaction of the President, by evidence to be taken before such person or persons as the President shall direct, who are for that purpose hereby authorized to administer oaths, that no injury or danger to the United States will arise from suffering such alien to reside therein, the President may grant a licence to such alien to remain within the United States for such time as he shall judge proper, and at such place as he may designate. And the President may also require of such alien to enter into a bond to the United States, in such penal sum as he may direct, with one or more sufficient sureties to the satisfaction of the person authorized by the President to take the same, conditioned for the good behaviour of such alien during his residence in the United States, and not violating his licence, which licence the President may revoke whenever he shall think proper.

Sec. 2. And be it further enacted, That it shall be lawful for the President of the United States, whenever he may deem it necessary for the public safety, to order to be removed out of the territory thereof, any alien who may or shall be in prison in pursuance of this act; or to cause to be arrested and sent out of the United States such of those aliens as shall have been ordered to depart therefrom and shall not have obtained a licence as aforesaid, in all cases where in the opinion of the President the public safety requires a speedy removal. And if any alien so removed or sent out of the United States by the President shall voluntarily return thereto, unless by permission of the President of the United States, such alien on conviction thereof, shall be imprisoned so long as in the opinion of the President, the public safety may require.

Sec. 3. And be it further enacted, That every master or commander of any ship or vessel which shall come into any port of the United States after the first day of July next, shall immediately on his arrival make report in writing to the collector or other chief officer of the customs of such port, of all aliens, if any, on board his vessel, specifying their names, age, the place of nativity, the country from which they shall have come, the nation to which they belong and due allegiance, their occupations and a description of their persons, as far as he shall be informed thereof, and on failure every such master and commander shall forfeit and pay three hundred dollars, for the payment whereof or default of such master or commander, such vessel shall also be holden, and may by such collector or other officer of the customs be detained. And it shall be the duty of such collector or other officer of the customs, forthwith to transmit to the office of the department of State true copies of all such returns.

Sec. 4. And be it further enacted, That the circuit and district courts of the United States, shall respectively have cognizance of all crimes and offences against this act. And all marshals and other officers of the United States are required to execute all precepts and orders of the President of the United States issued in pursuance or by virtue of this act.

Sec. 5. And be it further enacted, That it shall be lawful for any alien who may be ordered to be removed from the United States, by virtue of this Act, to take with him such part of his goods, chattels, or other property, as he may find convenient; and all property left in the United States, by any alien, who may be removed, as aforesaid, shall be, and remain subject to his order and disposal, in the same manner, as if this act had not been passed.

Sec. 6. And be it further enacted, That this act shall continue and be in force for and during the term of two years from the passing thereof.

Jonathan Dayton Speaker of the House of Representatives.

Matthew

Vice President of the United States and President of the Senate.

Approved June 25. 1798

John Adams

President of the United States

Certify that this act did originate in the Senate.

Attest

Samuel A. Otis Secretary

CHAPTER THREE

AN EXPLORATION OF SLAVERY

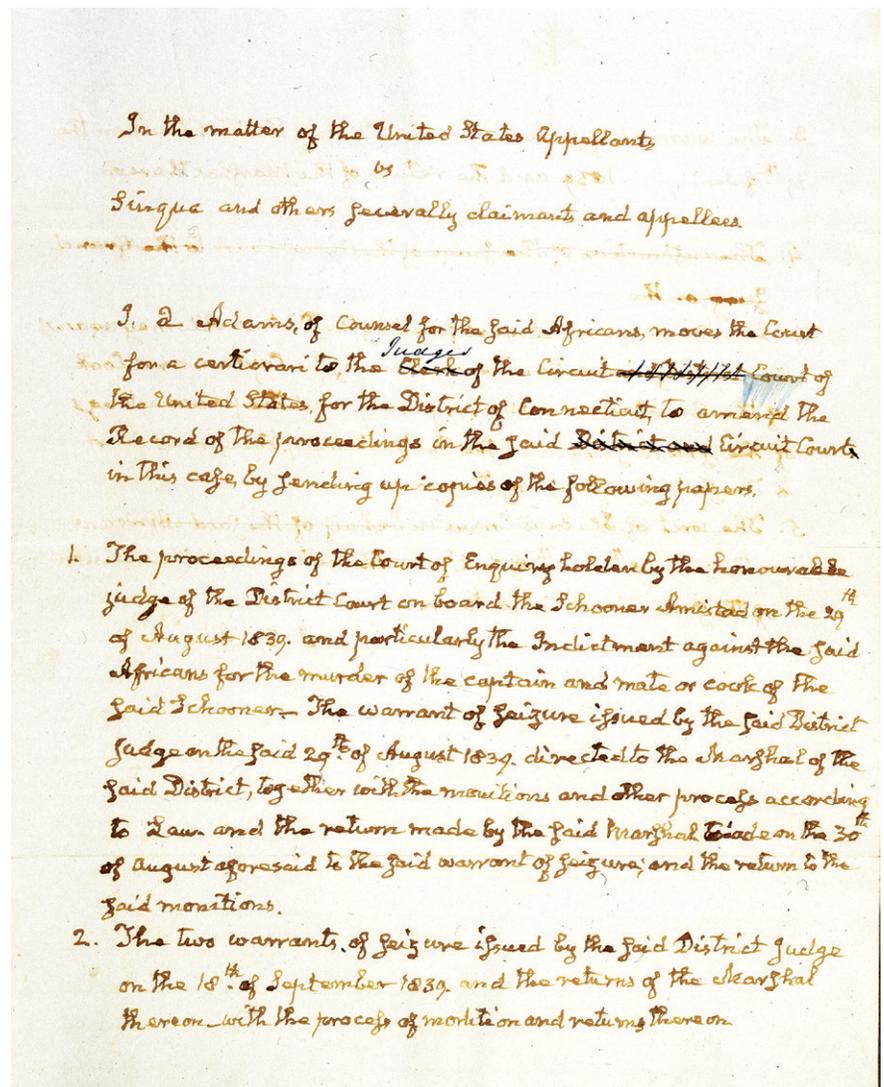
The Amistad

The Amistad case was one of the most famous federal cases of the 19th century, and attracted great public attention at each stage of its movement through the nation's judicial system. The dramatic story of the enslaved Africans who freed themselves from their captors and then sought recognition of their freedom in the federal courts helps to explain the role of the judiciary in the first half of the 19th century. The case also transformed the courts into the forum for a national debate on the legal foundations of slavery.

The Africans from the Amistad testified in court and were represented by prominent lawyers, including former President John Quincy Adams. The role of the Africans as parties in the case drew attention to the personal tragedies of slavery, and attracted new support for the growing anti-slavery movement in the United States.

Enslavement

The Amistad case had its origins in West Africa, far from the jurisdiction of the federal courts. In the spring of 1839, slave traders in the West African port of Lomboko transported more



Page 1 of John Quincy Adams' Request for Papers Relating to the Lower Court Trials of the Amistad Africans (Petition for Certiorari). Courtesy of the National Archives and Records Administration.

than 500 enslaved Africans to Spanish-ruled Cuba. Many of the captives on the slave ship were from the Mende region of West Africa, an area later incorporated into Sierra Leone. Spanish law, enacted in response to pressure from Great Britain, prohibited the transportation of African slaves to Cuba. Spanish officials in Cuba largely ignored that law, however, and a thriving slave market provided labor for sugar planters.

At a slave sale in Havana, Jose Ruiz purchased 49 of the Mende men, and Pedro Montes purchased three girls and a boy, also from Mende country. These planters chartered space on the schooner Amistad to carry the enslaved Africans to plantations along the coast of Cuba. The planters carried passes signed by a Spanish official, attesting to the fact that the Mende were long-time inhabitants of Spanish territory and legally held as slaves. The passes even provided the Africans with Spanish names.

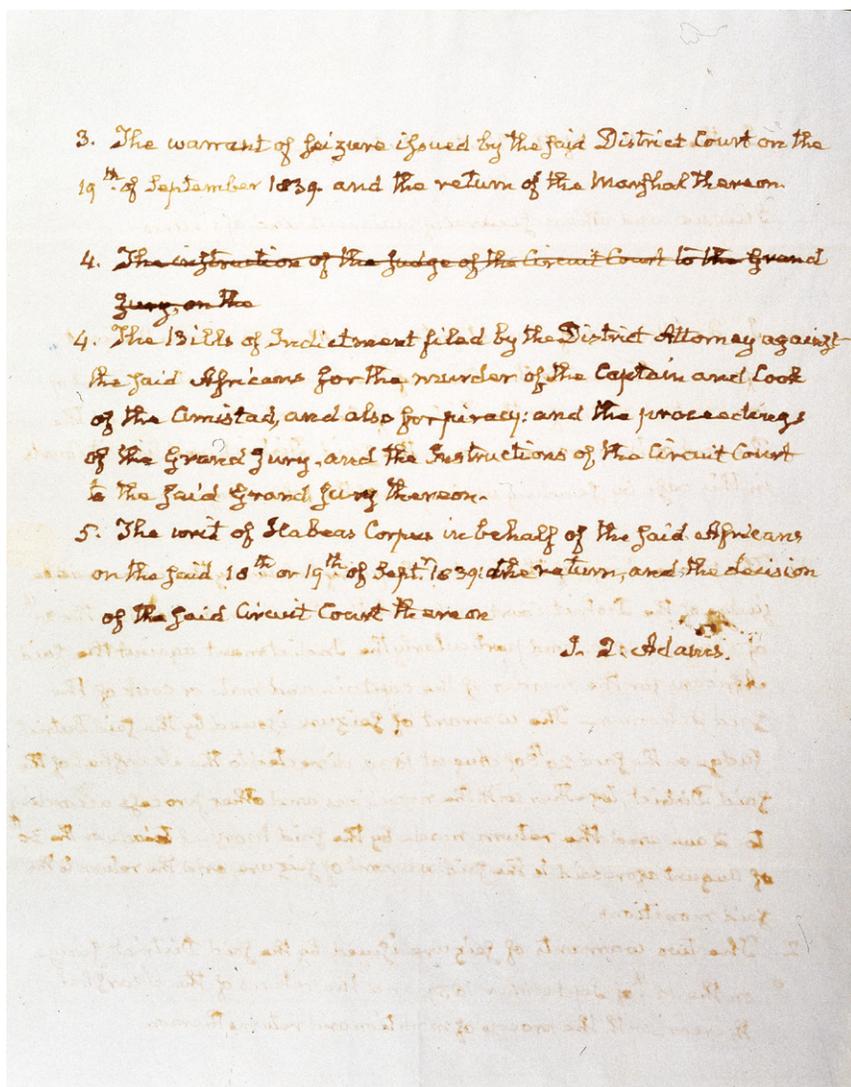
Revolt

Late one night at sea, a group of the Mende men broke out of their irons and armed themselves with sugar cane knives. Led by Sengbe Pieh (known to the Spanish and Americans as Cinque), the Mende killed the Amistad's captain and cook and took command of the ship. They then coerced Ruiz and Montes to sail the ship in the direction of the rising sun and West Africa. At night the planters turned to the north and west, hoping to cross paths with another ship. After two months, the Amistad reached Long Island Sound, desperately short of provisions. Cinque led a party onto the New York shore to gather supplies for their voyage back to Africa. While Cinque and others were ashore, the crew of the Navy Brig Washington spotted the badly damaged Amistad. When the naval officers boarded the Amistad, the Spanish planters told them of the revolt and pleaded for their safety. The commanding officer of the Washington, Lieutenant

Thomas Gedney, ordered his crew to take custody of the Amistad and the 42 surviving Mende, including those who had gone ashore. The Navy ship escorted the Amistad to New London, Connecticut, and Gedney contacted U.S. Marshal Norris Willcox to request a court hearing.

Norris Willcox was appointed U.S. Marshal for the District of Connecticut by President Andrew Jackson in 1831, and took over the office in 1832. In 1839, when the Amistad appeared off the shores of New London, Connecticut, it sparked a chain of events that consumed Willcox for the next three years.

Marshal Willcox notified federal Judge Andrew Judson of the situation with the Amistad, and accompanied him to the ship. After a court of inquiry was held aboard the ship, Willcox took custody of the remaining 43 Africans under a warrant of seizure, because they were assumed to be property, and a warrant of arrest for the Africans responsible for the revolt and death of the ship's captain and cook. The three Mende girls and the boy were held as witnesses for the criminal case.



Page 2 of John Quincy Adams' Request for Papers Relating to the Lower Court Trials of the Amistad Africans (Petition for Certiorari). Courtesy of the National Archives and Records Administration.

Willcox first took the Africans to the jail in New Haven, where he gave them clothing and food, and had the most contact with them during their stay. He was the first to notice the Africans did not respond to the Spanish names listed by the planters, and learned their West African names. Anytime they appeared in court, it was Willcox who escorted them to and from the courtroom. He was frequently present when they were interviewed by officials or had visitors. The Africans remained in Willcox's custody throughout their trials in the Circuit Court, the District Court, and finally the U.S. Supreme Court.

The criminal trial in the U.S. Circuit Court convened on September 17, 1839, to consider the U.S. Attorney's indictment of the Mende on charges of piracy and murder.

It was determined that the federal courts had no jurisdiction over an alleged crime that took place at sea on a foreign-owned vessel. The court dismissed all criminal charges against the Mende.

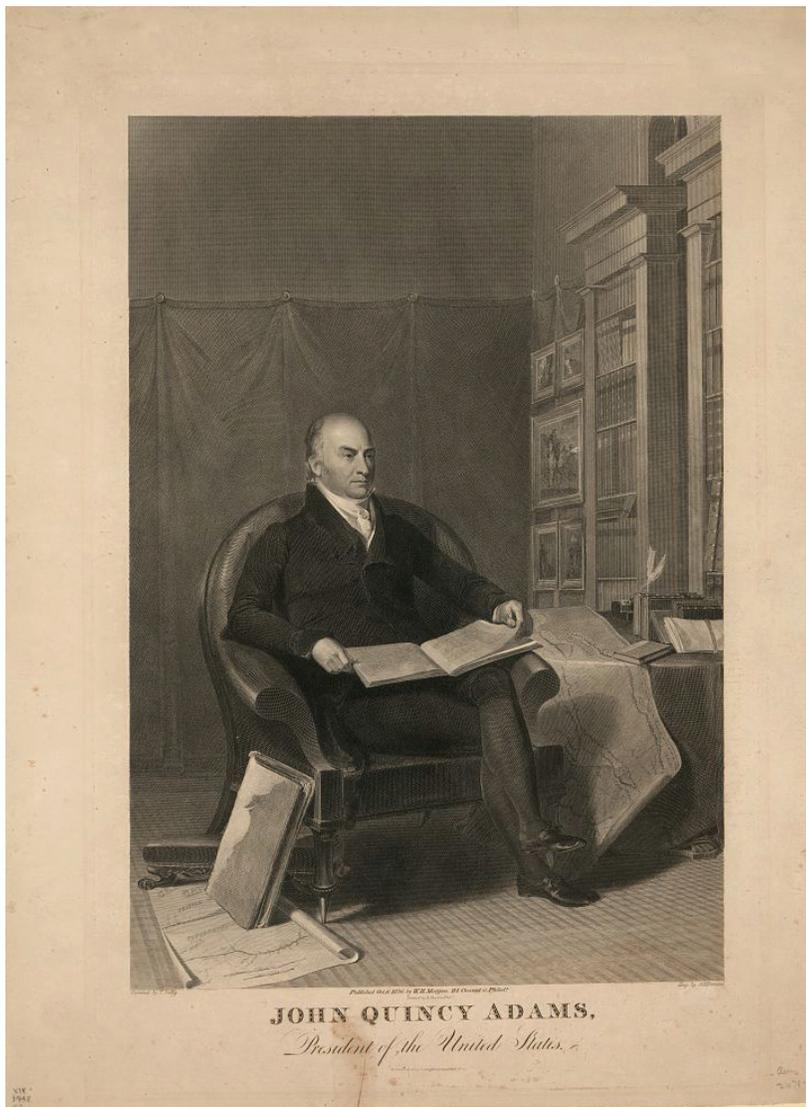
The U.S. District Courts had jurisdiction over admiralty cases—the branch of the law concerning maritime commerce and trade laws. At the November 1839 session of the District Court, the Mende formally entered the case as respondents to the several claims alleging that they were slaves. The plea submitted by their lawyers requested their immediate release. They claimed the federal courts had no jurisdiction over the Mende—free persons who had taken control of the *Amistad* in an effort to return to their families. Based on interviews with Cinque and others, the plea explained that

all of the Mende had been born free persons in Africa and had been kidnapped, illegally transported to Cuba, and enslaved for life. The lawyers also claimed that it had been illegal for Lieutenant Gedney to seize the Africans in New York, a free state.

The District Court trial started on January 7, 1840, in New Haven. The Mende's lawyer argued that the captives could not be property because under Spanish law, any Africans introduced into Spanish Territory after 1820 were free within that territory. Cinque and others testified, through a translator, that they had recently been transported from Africa to Cuba. Cinque vividly described the kidnapping and horrendous voyage across the Atlantic. Others testified that Spanish officials in Havana frequently falsified documents in order to admit enslaved Africans into Cuba.

The judge on the case, Judge Andrew Judson, surprised everyone by ruling that the Mende were not slaves under Spanish law, and that they should be turned over to the President for return to their homes in West Africa under the provision of the federal law prohibiting the African slave trade in the United States. However, the Mende's return home was delayed when the Van Buren administration ordered the U.S. Attorney to appeal Judson's decision to the U.S. Circuit Court. The Circuit Court upheld the District Court decision, which was then appealed to the U.S. Supreme Court.

In the months leading up to the Supreme Court hearing, former President John Quincy Adams joined the lawyers representing the



President John Quincy Adams. Courtesy of the Library of Congress.

UNITED STATES MARSHAL'S SALE.

United States of America, District of Arkansas.

Stovenson, Martin & Co. }
vs.
John Dillard. }

By virtue of a writ of Venditioni Exponas, issued in the above entitled case, by the Clerk of the U. States Circuit Court, for the District aforesaid, on the 26th day of April, 1843, and to me directed, I will expose to sale, at *public auction*, at the Court house door of Crawford County, in said District of Arkansas, on the 14th day of July, 1843, the following described Negro slaves—viz. *Anderson* aged about 37 years; *Mingo* aged about 16 years, *Mulinda* aged about 19 years: Seized in execution as the property of the said John Dillard, to satisfy a judgment rendered in the aforesaid suit by the said United States Circuit Court, on the 1st April 1842.

Sale to take place within the hours proscribed by law, when due attendance will be given by me. Terms—Cash.

THOS. W. NEWTON, *U. S. Marshal.*

By GEO. A. WORTHEN, *D. M.*

June 20, 1843.

Slave auction announcement, Western District of Arkansas, 1843.

Mende. Adams was then serving in the U.S. House of Representatives, where he led an effort forcing the Van Buren administration to give Congress copies of Amistad-related correspondence with the Spanish government. He traveled to New Haven to meet the Mende, and two of the Mende wrote Adams letters encouraging him in his efforts to secure their freedom.

Opening arguments before the Supreme Court began on February 22, 1841, with Chief Justice Roger Taney presiding. Several days later, Justice Philip Pendleton Barbour died. After a recess, the court resumed hearing arguments, and on March 9, the court issued its decision. One Justice, Henry Baldwin, dissented without comment. The Supreme Court upheld the Circuit Court's affirmation of Judson's decision that the Mende on the Amistad clearly were not slaves under Spanish law, and that the federal courts could not

order their delivery to Spanish officials. They were granted unconditional freedom, but left them no provision for a return to their homes in Africa.

Willcox reported to the Africans that the Supreme Court ruled they were not slaves, but all free individuals, and were free to return home. His final responsibility was to release them from custody. In November of that year, the 35 remaining Africans left the United States on a ship for Africa, funded by the Amistad Committee, an abolitionist group, who also raised the funds for their defense.

Willcox served as the Marshal for the District of Connecticut until June 1841, when President John Tyler appointed his replacement. In 1845, he was appointed collector of customs for the district of New Haven by President James K. Polk.

The Fugitive Slave Act

The Fugitive Slave Act was passed in 1850 as part of the Compromise of 1850. The Compromise, introduced by Senator Henry Clay of Kentucky, included five laws that dealt with slavery. The most controversial was the Fugitive Slave Act. This Act ultimately provided more fuel for the anti-slavery movement as runaway slaves and free blacks alike had no legal defense in court against accusations, and it allowed slave hunters to seize alleged slaves with no due process.

U.S. Marshals and their deputies were responsible for serving arrest warrants against alleged fugitives. In several instances they faced riots as they attempted to return, to their owners, those persons found, by the courts, to be fugitive slaves.

Section 5 of the Act states:

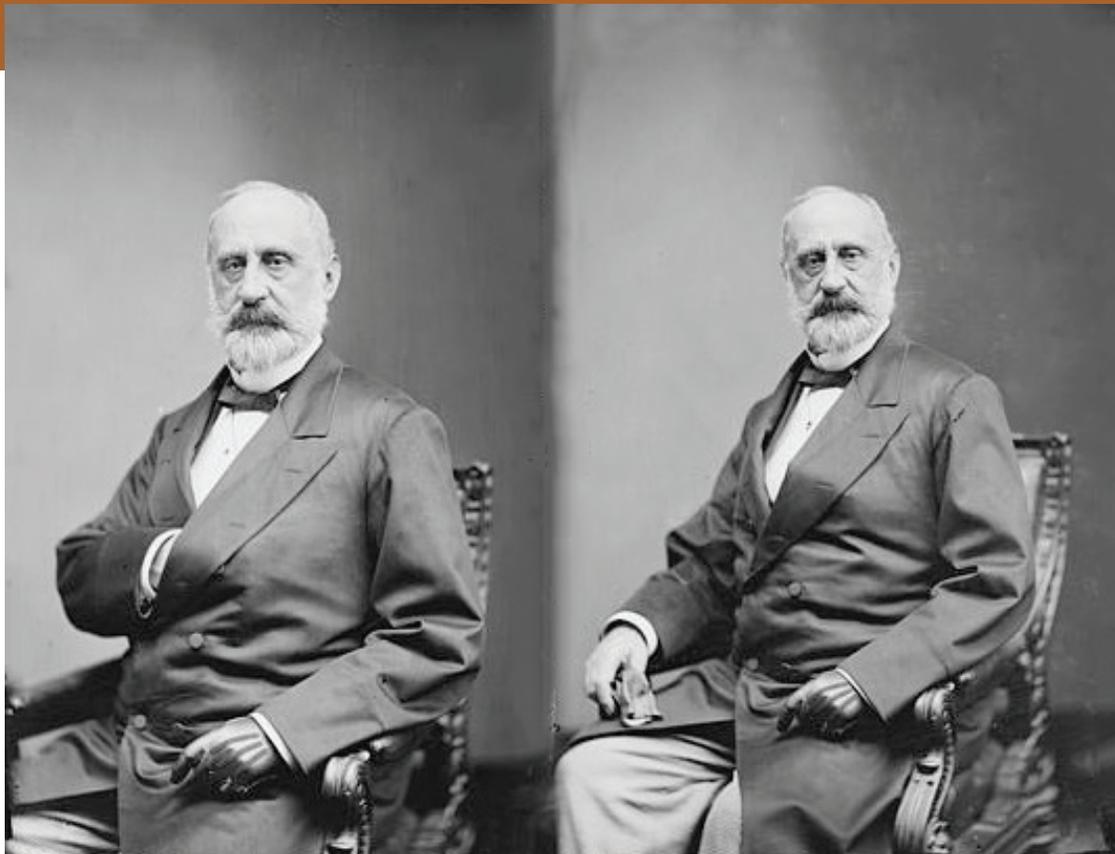
...it shall be the duty of all marshals and deputy marshals to obey and execute warrants and precepts issued under the provision of this act, when to them directed; and should any marshal or deputy marshal refuse to receive such warrant, or other process, when tendered or to use all proper means diligently

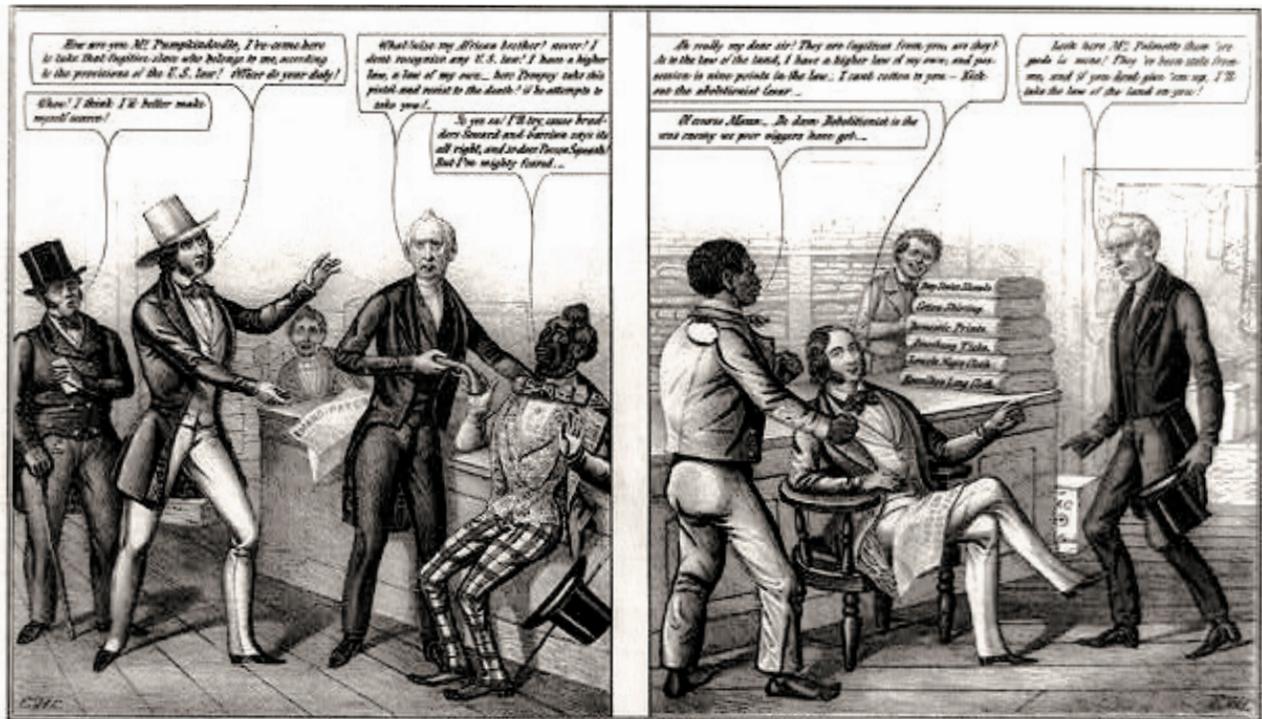
to execute the same, he shall, on conviction thereof, be fined in the sum of one thousand dollars...

Marshals, no matter their personal feelings, were expected to carry out the provisions of the Act. Marshals from Northern states were often despised and ostracized from their communities, while marshals from Southern states were usually celebrated as they returned runaway slaves. Northern marshals faced violence and even bloodshed. But most put on their badges and did their jobs despite their personal opinions.

U.S. Marshal Charles Devens of Massachusetts was a great example of this. In 1851, Marshal Devens risked a riot by Boston abolitionists when he arrested a fugitive slave named Thomas Sims and returned him to his owner in the South. During the Civil War, Devens fought for the Union and was wounded at the battles of Fair Oaks and Chancellorsville. In 1877, President Hayes appointed Devens Attorney General of the United States. During his time in office, Devens helped oversee the dismantling of the Reconstruction of the South. As Attorney General, Devens hired Thomas Sims as a messenger for the Department of Justice.

Charles Devens, as Attorney General. Courtesy of the Library of Congress.





WHAT'S SAUCE FOR THE GOOSE IS SAUCE FOR THE GANDER.

Here you are Mr. Pumpkindoodle, I've come here to take that fugitive slave who belongs to me, according to the provisions of the U.S. law! Officer do your duty!

What! Seize my African brother! never! I don't recognize any U.S. law! I have a higher law, a law of my own. Here Pompey take this pistol and resist to the death! If he attempts to take you!

Ye yes sa! I'll try, cause brudders Seward and Garrison says its all right; and so does Parson Squash! But I'm mighty feared.

Whew! I think I'd better make myself scarce!

Look here Mr. Palmetto them 'ere goods is mine! They've been stolen from me, and if you don't give 'em up, I'll take the law of the land on you!

No really my dear sir! They are fugitives from you, are they? As to the law of the land, I have a higher law of my own, and possession is nine points in the law. I can't cotton to you. Kick the abolitionist Cesar.

Of course Massa. De dam Bobolisionist is the wus enemy we poor niggers have got.

CREATED/PUBLISHED: N.Y. : [s.n.], 1851 Pub. at 152 Nassau St. corner of Spruce N.Y. Signed with initials: E.W.C. (Edward Williams Clay) From the Library of Congress Call Number: PC/US - 1851.C619, no. 41 (B size) [P&P] Reproduction Number: LC-USZ62-89722 (b&w film copy neg.)

SUMMARY: The opposition of Northern abolitionists, churchmen, and political figures to enforcement of the Fugitive Slave Act of 1850 is criticized in this rare pro-Southern cartoon. In two panels artist Edward Williams Clay illustrates the abolitionist's invocation of a "higher law" against the claim of a slave owner, and the application of the same principle against the Northerner in a case of stolen textiles.

THE FUGITIVE SLAVE LAW.

A bill to amend the act entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the persons who have been, or may hereafter be, appointed commissioners, in virtue of any act of Congress, by the circuit courts of the United States, and who, in consequence of such appointment, are authorized to exercise the powers that any justice of the peace or other magistrate of any of the United States may exercise in respect to offenders for any crime or offence against the United States, by arresting, imprisoning, or bailing the same under and by virtue of the thirty-third section of the act of the twenty-fourth of September, seventeen hundred and eighty-nine, entitled "An act to establish the judicial courts of the United States," shall be, and are hereby authorized and required to exercise and discharge all the powers and duties conferred by this act.

SEC. 2. And be it further enacted, That the superior court of each organized territory of the United States shall have the same power to appoint commissioners to take acknowledgments of bail and affidavits, and to take depositions of witnesses in civil causes, which is now possessed by the circuit courts of the United States; and all commissioners who shall hereafter be appointed for such purposes by the superior court of any organized territory of the United States shall possess all the powers and exercise all the duties conferred by law upon the commissioners appointed by the circuit courts of the United States for similar purposes, and shall moreover exercise and discharge all the powers and duties conferred by this act.

SEC. 3. And be it further enacted, That the circuit courts of the United States, and the superior courts of each organized territory of the United States, shall from time to time enlarge the number of commissioners, with a view to afford reasonable facilities to reclaim fugitives from labor, and to the prompt discharge of the duties imposed by this act.

SEC. 4. And be it further enacted, That the commissioners above named shall have concurrent jurisdiction with the judges of the circuit and district courts of the United States, in the respective circuits and districts within the several States, and the judges of the superior courts of the Territories, severally and collectively, in term time and vacation; and shall grant certificates to such claimants, upon satisfactory proof being made, with authority to take and remove such fugitives from service or labor, under the restrictions herein contained, to the State or Territory from which such persons may have escaped or fled.

SEC. 5. And be it further enacted, That it shall be the duty of all marshals and deputy marshals to obey and execute all warrants and precepts issued under the provisions of this act, when to them directed, and should any marshal or deputy marshal refuse to receive such warrant or other process, when tendered, or to use all proper means diligently to execute the same, he shall, on conviction thereof, be fined in the sum of one thousand dollars to the use of such claimant, on the motion of such claimant, by the circuit or district court for the district of such marshal; and after arrest of such fugitive by such marshal or his deputy, or whilst at any time in his custody, under the provisions of this act, should such fugitive escape, whether with or without the assent of such marshal or his deputy, such marshal shall be liable, on his official bond, to be prosecuted, for the benefit of such claimant, for the full value of the service or labor of said fugitive in the State, Territory or district whence he escaped; and the better to enable the said commissioners, when

thus appointed, to execute their duties faithfully and efficiently, in conformity with the requirements of the constitution of the United States and of this act, they are hereby authorized and empowered, within their counties respectively, to appoint in writing under their hands, any one or more suitable persons, from time to time, to execute all such warrants and other process as may be issued by them in the lawful performance of their respective duties; with an authority to such commissioners, or the persons to be appointed by them, to execute process as aforesaid, to summon and call to their aid the bystanders, or posse comitatus of the proper county, when necessary to insure a faithful observance of the clause of the constitution referred to, in conformity with the provisions of this act; and all good citizens are hereby commanded to aid and assist in the prompt and efficient execution of this law, whenever their services may be required, as aforesaid, for that purpose; and said warrants shall run and be executed by said officers anywhere in the State within which they are issued.

SEC. 6. And be it further enacted, That when a person held to service or labor in any State or Territory of the United States has heretofore or shall hereafter escape into another State or Territory of the United States, the person or persons to whom such service or labor may be due, or his, her or their agent or attorney, duly authorized, by power of attorney, in writing, acknowledged and certified under the seal of some legal office or court of the State or Territory in which the same may be executed, may pursue and reclaim such fugitive person, either by procuring a warrant from some one of the courts, judges, or commissioners aforesaid, of the proper circuit, district or county, for the apprehension of such fugitive from service or labor, or by seizing and arresting such fugitive, where the same can be done without process, and by taking or causing such person to be taken, forthwith before such court, judge or commissioner, whose duty it shall be to hear and determine the case of such claimant in a summary manner; and upon satisfactory proof being made, by deposition or affidavit, in writing, to be taken and certified by such court, judge, or commissioner, or by other or satisfactory testimony, duly taken and certified by some court, magistrate, justice of the peace, or other legal officer authorized to administer an oath and take depositions under the laws of the State or Territory from which such person owing service or labor may have escaped, with a certificate of such magistracy or other authority, as aforesaid, with the seal of the proper court or officer thereto attached, which seal shall be sufficient to establish the competency of the proof, and with proof, also by affidavit, of the identity of the person whose service or labor is claimed to be due as aforesaid, that the person so arrested does in fact owe service or labor to the person or persons claiming him or her, in the State or Territory from which such fugitive may have escaped as aforesaid, and that said person escaped, to make out and deliver to such claimant, his or her agent or attorney, a certificate setting forth the substantial facts as to the service or labor due from such fugitive to the claimant, and of his or her escape from the State or Territory in which such service or labor was due to the State or Territory in which he or she was arrested, with authority to such claimant, or his or her agent or attorney, to use such reasonable force and restraint as may be necessary under the circumstances of the case, to take and remove such fugitive person back to the State or Territory from whence he or she may have escaped as aforesaid. In no trial or hearing under this act shall the testimony of such alleged fugitive be admitted in evidence; and the certificates in this and the first section

mentioned shall be conclusive of the right of the person or persons in whose favor granted to remove such fugitive to the State or Territory from which he escaped, and shall prevent all molestation of said person or persons by any process issued by any court, judge, magistrate, or other person whomsoever.

SEC. 7. And be it further enacted, That any person who shall knowingly and willingly obstruct, hinder, or prevent such claimant, his agent or attorney, or any person or persons lawfully assisting him, her, or them, from arresting such a fugitive from service or labor, either with or without process as aforesaid; or shall resist, attempt to rescue, such fugitive from service or labor, or from the custody of such claimant, his or her agent or attorney, or other persons or persons lawfully assisting as aforesaid, when so arrested, pursuant to the authority herein given and declared; or shall aid, abet, or assist such person, so owing service or labor as aforesaid, directly or indirectly, to escape from such claimant, his agent or attorney, or other person or persons legally authorized as aforesaid; or shall harbor or conceal such fugitive, so as to prevent the discovery and arrest of such person, after notice or knowledge of the fact that such person was a fugitive from service or labor as aforesaid, shall, for either of said offences, be subject to a fine not exceeding one thousand dollars, and imprisonment not exceeding six months, by indictment and conviction before the District Court of the United States for the district in which such offence may have been committed, or before the proper court of criminal jurisdiction, if committed within any one of the organized Territories of the United States; and shall moreover forfeit and pay, by way of civil damages to the party injured by such illegal conduct, the sum of one thousand dollars for each fugitive so lost as aforesaid, to be covered by action of debt in any of the District or Territorial Courts aforesaid, within whose jurisdiction the said offence may have been committed.

SEC. 8. And be it further enacted, That the marshals, their deputies, and the clerks of the said district and territorial courts, shall be paid for their services the like fees as may be allowed to them for similar services in other cases; and where such services are rendered exclusively in the arrest, custody, and delivery of the fugitive to the claimant, his or her agent or attorney, or where such supposed fugitive may be discharged out of the custody from the want of sufficient proof as aforesaid, then such fees are to be paid in the whole by such claimant, his agent or attorney; and in all cases where the proceedings are before a commissioner, he shall be entitled to a fee of ten dollars in full for his services in each case, upon the delivery of the said certificate to the claimant, his or her agent or attorney; or a fee of five dollars in cases where proof shall not, in the opinion of such commissioner, warrant such certificate and delivery, inclusive of all services incident to such arrest and examination, to be paid, in either case, by the claimant, his or her agent or attorney. The person or persons authorized to execute the process to be issued by such commissioners for the arrest and detention of fugitives from service or labor as aforesaid, shall also be entitled to a fee of five dollars each for each person he or they may arrest and take before any such commissioner as aforesaid, at the instance and request of such claimant, with such other fees as may be deemed reasonable by such commissioner for such other additional services as may be necessarily performed by him or them; such as attending to the examination, keeping the fugitive in custody, and providing him with food and lodging during his detention, and until the final determination of such commissioner; and in general for perform-

ing such other duties as may be required by such claimant, his or her attorney or agent, or commissioner in the premises; such fees to be made up in conformity with the fees usually charged by the officers of the courts of justice within the proper district or county, as near as may be practicable, and paid by such claimants, their agents or attorneys, whether such supposed fugitive from service or labor be ordered to be delivered to such claimants by the final determination of such commissioners or not.

SEC. 9. And be it further enacted, That upon affidavit made by the claimant of such fugitive, his agent or attorney, after such certificate has been issued, that he has reason to apprehend that such fugitive will be rescued by force from his or their possession before he can be taken beyond the limits of the State in which the arrest is made, it shall be the duty of the officer making the arrest to retain such fugitive in his custody, and to remove him to the State whence he fled, and there to deliver him to said claimant, his agent or attorney. And to this end the officer aforesaid is hereby authorized and required to employ so many persons as he may deem necessary, to overcome such force, and to retain them in his service so long as circumstances may require; the said officer and his assistants, while so employed, to receive the same compensation, and to be allowed the same expenses as are now allowed by law for the transportation of criminals, to be certified by the judge of the district within which the arrest is made, and paid out of the treasury of the United States.

SEC. 10. And be it further enacted, That when any person held to service or labor in any State or Territory, or in the District of Columbia, shall escape therefrom, the party to whom such service or labor shall be due, his, her, or their agent or attorney, may apply to any court of record therein, or judge thereof in vacation, and make such satisfactory proof to such court, or judge, in vacation, of the escape aforesaid, and that the person escaping owed service or labor to such party.—Whereupon the court shall cause a record to be made of the matters so proved, and also a general description of the person so escaping, with such convenient particulars as may be; and a transcript of such record authenticated by the attestation of the clerk, and of the seal of the said court, being produced in any other State, Territory, or District in which the person so escaping may be found, and being exhibited to any judge, commissioner, or other officer, authorized by the law of the United States to cause persons escaping from service or labor to be delivered up, shall be held and taken to be full and conclusive evidence of the fact of escape, and that the service or labor of the person escaping is due to the party in such record mentioned. And upon the production by the said party of other and further evidence, if necessary, either oral or by affidavit, in addition to what is contained in the said record of the identity of the person escaping, he or she shall be delivered up to the claimant. And the said court, commissioner, judge or other person authorized by this act to grant certificates to claimants of fugitives, shall, upon the production of the record and other evidences aforesaid, grant to such claimant a certificate of his right to take any such person identified and proved to be owing service or labor as aforesaid, which certificate shall authorize such claimant to seize or arrest and transport such person to the State or Territory from which he escaped; *Provided*, That nothing herein contained shall be construed as requiring the production of a transcript of such record as evidence as aforesaid; but in its absence, the claim shall be heard and determined upon other satisfactory proofs competent in law.

SYNOPSIS OF THE LAW.

1. It clothes any ruffian who may be commissioned to act in this new and infamous office of *Slave-Catcher*, with magisterial and judicial authority. 2. It commands and requires good citizens to aid in this heartless and brutal business, imposing the work of bloodhounds upon them. 3. It authorizes such kidnappers and rascals as may choose to do so, to arrest or seize persons without "due process of law." 4. It jeopardizes the liberty of every colored person, by requiring merely a "general description," and by casting out the evidence of the person arrested. 5. It seeks to annul the writ of Habeas Corpus, which tends to secure justice and liberty by delivering a person from false imprisonment, or by removing a case from one court to another. 6. It imposes excessive fines. 7. It denies the citizen a Jury Trial, where his liberty, and perhaps his life, is at stake.

OBJECTIONS.—It violates the spirit and letter of the Constitution, in the form and manner of seizures or arrests; in its requirements upon good citizens, in imposing excessive fines, in crushing the Habeas Corpus, and in depriving the person arrested of a trial by a jury of his peers. 2. It contravenes the Law of Nature, which is the foundation of all human laws, and which, being dictated by the Almighty himself, is of course superior in obligation to any other. Therefore this enactment of Congress is both unjust and unreasonable, consequently becomes of no binding force—is null and void.

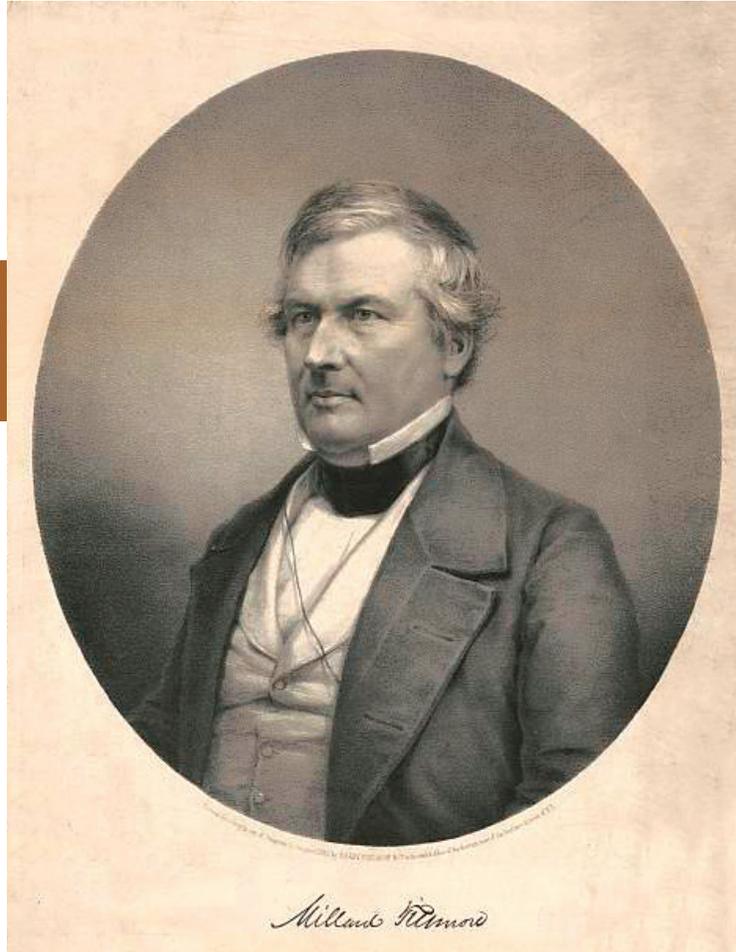
Let it be placed among the abominations!

S. M. AFRICANS, Hartford, Ct.

I. Shame on the costly mockery of piling stones on stones To those who won our liberties, the Hercules and doves, While we look on and see law-shielded ruffians say The men who fair would win their own, the heroes of to-day!

II. Are we pledged to craven silence? O cling it to the wind, From the innocent tear that flows from the human kind— That makes us cringe and tremble, and flounders about at rest, While Pity's burning flood of words upheaves within the breast.

III. Though we break our fathers' promise, we have public duties first, The truth to announce to the creature most abused. Men is more than Constitutions; better not beguile the soul, Than be true to Church and State, while we're deeply false to God!



President Millard Fillmore. President Fillmore signed the Fugitive Slave Act into law. Courtesy of the Library of Congress.

Left: Fugitive Slave Law, 1850. Courtesy of the Library of Congress.

United States of America,
Eastern District of Pennsylvania,

The Judges of the Circuit Court of the United
States, for the Eastern District of Penn-
sylvania, in the Third Circuit,

To the Marshal of the United States, for the
Eastern District of Pennsylvania,

Greetings:

Whereas, it has been legally charged
before us, that Henry, otherwise called Henry
Garnett, being a person held to service or labor
in the State of Maryland, and owing such
service or labor to a certain Thomas Price Jones,
Executor of the last Will and Testament of Benedict
Jones, hath escaped therefrom into the Eastern
District of Pennsylvania:— Now, in pursuance
of the Acts of Congress of the United States, in
this behalf made and provided, and by force
of the authority vested in us by the said acts,
We do, by this warrant, empower and com-
mand you, that you apprehend the said
Henry, otherwise called Henry Garnett, if
he be found within the District aforesaid, and
that you cause him to be brought forthwith
before us.

Given under our hands and the
Seal of the said Circuit Court,
at Philadelphia, this Seventeenth
day of October, A.D. 1850.



Robert Grier, Assoc. Just. Sup. Court, U.S.
J.K. Kane
U.S. Distr. Judge, E. D. Pa.

Warrant for the arrest of Henry Garnett, a runaway slave. National Archives and Records Administration, Records of the U.S. Circuit Court, RG 21, ARC# 279017.

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