Rethinking the 1826 Judicial Decision

Dan Vogel

> *Josiah Stoal, came from Chenango county, New York, with the view of getting Joseph ... on account of having heard that he possessed certain keys, by which he could discern things invisible to the natural eye.*
> **—Lucy Mack Smith**

> *'I see nobody on the road,' said Alice.*
> *'I only wish* I *had such eyes,' the King remarked in a fretful tone. 'To be able to see Nobody! And at that distance too! Why, it's as much as* I *can do to see real people, by this light.'*
> **—Alice and the White King**

Despite general agreement that Joseph Smith was brought before justice Albert Neely in March 1826 under the charge of being a "disorderly person," the legalities of his experience in South Bainbridge, New York, continue to be debated and misunderstood. Although most of the relevant legal records and at least one eyewitness account are available to scholars, what occurred is still not well understood. Differences among interpreters arise from an incomplete or faulty understanding of 19th-century legal practices. This essay, adapted from *Early Mormon Documents*, volume 4 (Salt Lake City: Signature Books, forthcoming), will reconstruct the historical events surrounding Smith's 1826 trial based on the following seven sources:

1. People v. Joseph Smith, Jr., 20 March 1826, Trial Transcript, Albert Neely Docket Book [original presently unavailable]. This record includes transcripts of Neely's examination of Joseph Smith, Jr., defense witnesses Josiah Stowell and Jonathan Thompson, prosecution witnesses Horace and Arad Stowell and a Mr. McMaster, a statement of the court's finding of guilt, and a list of the various fees Neely charged the county. The transcript was torn from justice Neely's docket book and taken to Utah by Emily Pearsall, Neely's niece, who served as a Methodist missionary among the Mormons beginning in 1870. Although the original transcript is unavailable, copies of it have appeared in three independent publications: Charles Marshall, "The Original Prophet. By a Visitor to Salt Lake City," *Fraser's Magazine* 7 (London, England, February 1873): 225-35; Daniel S. Tuttle, "Mormons," in *A Religious Encyclopaedia*, ed. Philip Schaff (New York: Funk and Wagnalls, 1883), 2:1576; and "A Document Discovered," *Utah Christian Advocate* 3 (Salt Lake City, January 1886): 1.

2. Albert Neely, Bill of Costs, 1826, Clerk of the Board of Supervisors, Chenango County Office Building, Norwich, NY. Discovered by Wesley P. Walters, summer 1971. This bill lists Neely's fees for nine court cases during 1826, with Smith's appearing, out of order, as case five. Unlike the trial transcript, this source records the total cost of $2.68 but does not include an itemization for services.

3. Philip DeZeng, Bill of Costs, 1826, Clerk of the Board of Supervisors, Chenango County Office Building, Norwich, NY. Discovered by Wesley P. Walters, Summer 1971. This bill includes arresting Constable DeZeng's itemization of fees for various services performed in Joseph Smith's case as well as seven others.

4. [Abram W. Benton], "Mormonites," *Evangelical Magazine and Gospel Advocate* 2 (Utica, NY, 9 April 1831): 120. Benton, who may have attended the court proceeding, does not recount the testimony given at the trial but states that Smith was arrested as a "disorderly person," primarily for his activities as a "glass looker," and that he was "condemned" by the court.

5. Oliver Cowdery to W. W. Phelps, October 1835, "Letter VIII," *Latter Day Saints' Messenger and Advocate* 2 (October 1835): 201. Cowdery admits Smith was brought before a justice in South Bainbridge by some "officious person," but claimed that he was "honorably acquitted."

6. W[illiam]. D. Purple, "Joseph Smith, the Originator of Mormonism. Historical Reminiscences of the Town of Afton," *Chenango Union* 30 (Norwich, NY, 3 May 1877): 3. An eyewitness and trial note taker, Purple recounted the statement of Joseph Smith, Jr., as well as the testimony of Joseph Smith, Sr., Josiah Stowell, and Jonathan Thompson. According to Purple, Smith was arrested as "a vagrant, without visible means of livelihood," and was ultimately "discharged."

7. Joel K. Noble to Jonathan B. Turner, 8 March 1842, Jonathan Baldwin Turner Papers, Illinois State Historical Library, Springfield, IL. Noble said Joseph Smith was arrested "under the Vagrant act" and "condemned," but that he jumped bail and left town.

Following his discovery of the Neely and DeZeng bills in the basement of the Chenango County jail in Norwich, New York, in the summer of 1971, Wesley P. Walters argued that the court record and bills represented a formal trial by a three-justice Court of Special Sessions, but subsequent investigation has ruled out this possibility. If a Court of Special Sessions had been convened, the dockets of two other justices would also have recorded that fact, but in 1974, the disorganized condition of the early county records prevented Walters from investigating the matter further. Subsequent investigation by H. Michael Marquardt in May 1988 of the bills of justices Zechariah Tarble, Levi Bigelow, and James H. Humphrey shows that a Court of Special Sessions was not held in the Joseph Smith case. The position quickly gaining favor is that Smith appeared before Neely at an "examination" or "preliminary hearing." This seems confirmed by Neely's bill, which records: "To my fees in examination of the above Cause." In 1988, presented with such clear evidence, Walters abandoned his initial position in favor of the view that the Pearsall document represents a preliminary hearing.

Viewing the court transcript as a record of a preliminary hearing resolves some discrepancies that would otherwise remain inexplicable. The authenticity of the court transcript has been questioned on the grounds that "it has Joseph testify first, giving the defense before the prosecution has made its case" as would be expected in a trial record. But Thomas G. Waterman's *Justice's Manual* of 1825 specifically instructed justices regarding pretrial examinations: "After the examination of the accused, all witnesses present are to be examined on oath touching the complaint."

The number and identity of the witnesses has also been disputed. The court record names and summarizes the testimony of five witnesses: Josiah Stowell, Horace Stowell, Arad Stowell, (David?) McMaster, and Jonathan Thompson. William D. Purple, who attended the hearing, recalled in 1877 the testimonies of three witnesses: Josiah Stowell, Jonathan Thompson, and Joseph Smith, Sr. Another reason Francis W. Kirkham questioned the authenticity of the court record was because of the discrepancy between Neely's and Purple's naming of witnesses. But Purple was not attempting to give a full account of Smith's pretrial hearing and his addition of Joseph Smith, Sr., can be easily explained. Indeed, Neely's itemization documents the presence of two additional witnesses: "7 Witnesses 87½ [cents]." By law justices were required to record only testimony "relative to the fact" or "material to prove the offence." One of these unrecorded testimonies may very well have been that of Joseph Smith, Sr., as remembered by Purple. The identity of the seventh witness remains unknown.

The court record shows that Smith was arrested and brought before Justice Neely as a result of a warrant issued by Peter G. Bridgman, Josiah Stowell's nephew, who charged Smith with being a "disorderly person and an Impostor." While "Impostor" is not a criminal offense, as Gordon A. Madsen has noted, it points to a specific section of the New York statute that describes various kinds of offenses under the definition of "disorderly persons." The section of the statute applicable to Bridgman's charge states: "All jugglers [deceivers], and all persons *pretending* to have skill in physiognomy, palmistry, or like crafty science, or *pretending* to tell fortunes, or to discover where lost goods may be found ... shall be deemed and adjudged disorderly persons." This was probably the statute Joseph Knight, Sr., referred to when he said, speaking of Smith's 1830 trial in South Bainbridge, that Smith had been arrested for "pretending to see under ground" and that his prosecutors were motivated by "A little Clause they found in the york Laws against such things." John S. Reed, Smith's legal counsel during his 1830 trials, remembered that Smith had been arrested "for the crime of glass looking and juglin fortune telling and so on which the State of New York was against it and made it a crime and the crime was a fine and imprisonment."

Despite Walters's discovery of the Neely and DeZeng bills, the outcome of Smith's pretrial hearing is a matter of continued debate, much of which has centered on the court record's concluding statement, "And therefore the court find[s] the defendant guilty." Mormon writers Gordon A. Madsen and Paul Hedengren have argued similarly, but for different reasons, that the court's judgment was "a later inclusion" or "an afterthought supplied by whoever subsequently handled the notes." Madsen points to the record's consistent reference to Smith as "prisoner" except for the judgment where he is called "defendant," while Hedengren believes it is inappropriate for pretrial hearings to pronounce judgment. Without the original court record, this theory cannot be verified. However, Neely's use of the term "guilty" does not necessarily imply a judgment had been reached in Smith's case, only that Neely had found sufficient evidence against Smith to proceed with a formal trial. Regarding pretrial hearings, the *Revised Statutes of the State of New York* for 1829, for instance, instructs:

> If it shall appear that an offence has been committed, and that there is probable cause to believe the prisoner to be *guilty* thereof, the magistrate shall bind by recognizance the prosecutor, and all the material witnesses against such prisoner, to appear and testify at the next court having cognizance of the offence, and in which the prisoner may be indicted.

An 1820 Ohio statute is even clearer on this matter:

> Sec. 2. *Be it further enacted*, That if the judges upon examination find the prisoner *guilty* of a bailable offence, they shall recognize him or her ... and in case the prisoner fails to give security, he or she shall be remanded to jail, and in all cases where the prisoner is *found guilty*, it shall be the duty of the judges to recognize the witnesses on the part of the state, to appear at the next court of common pleas ...

Thus Neely's use of the term "guilty" in the record of his preliminary examination of Smith is consistent with early-19th-century terminology. And although the issues are complicated, there were good reasons to support Neely's finding Smith guilty of "disorderly conduct" and binding (or recognizing) him and three material witnesses over to the next Court of Special Sessions.

Madsen argues that the legal facts in the case indicate that Smith was acquitted. Madsen's case, however, rests mainly on the relevancy of New York rulings on fraud, especially the requirement that it must be public rather than private to be criminally indictable. Since Josiah Stowell was the only witness who parted with money, he was the only person who had any legal basis to complain, Madsen argues. But since Stowell had no complaint, Madsen concludes that "Justice Neely had no other choice" than to discharge Smith. But it is doubtful that Neely would have made the same association with fraud that Madsen does. In fact, Neely's record of his examination of Smith and the witnesses gives no indication that he was concerned about money changing hands. If Neely had been considering fraud as an aspect of the "disorderly person" charge, one would expect to find more emphasis in the record regarding the exchange of money, especially in recording Josiah Stowell's testimony. Instead the court record demonstrates that Neely was only interested in testimony proving Smith engaged in stone gazing to locate buried treasure. Thus, Neely's record emphasizes the "pretending" aspect of the "disorderly person" statute, even when recording the statements of witnesses defending Smith's purported seeric powers. Smith's defense was that he was a real seer, not a pretended one, and his witnesses, Josiah Stowell and Jonathan Thompson, gave reasons for their belief that Smith possessed a genuine gift. But New York law made no distinction between fraudulent and real scryers; therefore, the court had every right to treat Smith's defense as a confession of guilt and to conclude there was sufficient cause to proceed with a formal prosecution of Smith on the charge of "disorderly conduct." At that moment, prisoner Smith would have become the defendant.

The court record and associated bills suggest that Neely was planning to bring Smith before a three-justice Court of Special Sessions. The court record lists the "Recognizance" (Advocate transcription) or "Recognisances" (Marshall transcription) of three witnesses, which Walters interpreted as a reference to Neely's putting the material witnesses under recognizances or "bonds" to appear at the forthcoming Court of Special Sessions. However, Madsen argues that "*recognizance* or *recognize* was used interchangeably with *examination* or *examine* in the early 1800s," and that only "the plural *recognizances* referred to types of bonds or undertakings, or sometimes bail." Ignoring Neely's itemization of "7 witnesses" at the end of his record, Madsen's interpretation has led him to the untenable conclusion that only three witnesses testified at the pretrial hearing. Madsen also seems confused by the testimony of five witnesses in Neely's record. Moreover, not only is it unclear if the original reading of "recognizance{s}" in the court record is singular or plural, but Madsen's distinction is not supported in the legal documents of the period for Chenango County. Indeed, I have been unable to find a single example of "recognizance" used as a synonym for "examination" in Chenango County records for the decade of the 1820s. In arguing that "recognizance" and "recognize" (in their singular forms) simply mean "to examine," Madsen misinterprets information taken from Walters's notes, stating: "Indeed, other justice-of-the-peace bills scrutinized by Walters refer to 'recognizing two witnesses 0.50' (meaning a fifty cent fee for examining two witnesses) or 'recognizing three witnesses 0.75.'" Having no firsthand experience with the documents in question, Madsen does not know that justices in South Bainbridge charged the county 6 cents for an "oath & examination of witness" and 25 cents for a "Recognizance to appear at Genl. Sessions." In fact, there was no fee for "examinations" of witnesses per se, only for subpoenas and oaths. Neely's itemization of "7 witnesses" for 87½ cents, then, represents charges for seven subpoenas and seven oaths, which when billed jointly the justices charged 12½ cents for each witness. From these seven witnesses, Neely recognized three at 25 cents each to testify before a Court of Special Sessions—thus Neely's itemization: "Recognisances of witnesses, 75 c[ents]." (Marshall transcription).

Another attestation the Bainbridge court had found probable cause to proceed with a Court of Special Sessions is Neely's itemization of "Recognizance 25 [cents]" followed by "Mittimus 19 [cents]," which Walters interpreted as a reference to Smith's being placed under bond to appear at a three-justice Court of Special Sessions. Madsen, however, argues that "Recognizance 25 [cents]" refers to Neely's "examining" the defendant, rather than binding him over for a future trial. But, because there was no fee for examinations, only for subpoenas and oaths, and because Smith was not under oath, Neely could not charge the county. Neely, therefore, was not charging for his examination of Smith but rather for binding him over for the Court of Special Sessions. Neely's next charge for writing up a "Mittimus," which Madsen fails to discuss, lends even greater strength to this interpretation. According to Webster's 1828 dictionary, mittimus usually referred to "a precept or command in writing, under the hand or hand and seal of a justice of the peace or other proper officer, directed to the keeper of a prison, requiring him to imprison an offender; a warrant of commitment to prison." The usual fee for a pretrial mittimus, or "commitment for want of bail," or "commitment to custody," was 19 cents. State law fixed post-trial "commitment to prison" at 25 cents. Since Neely had already billed the initial "warrant" at 19 cents, the additional 19 cents for a "Mittimus" must represent Neely's ordering Constable Philip DeZeng to take Smith into custody to ensure his appearance at the Court of Special Sessions.

Perhaps the most persuasive evidence that Neely had found cause to proceed with a formal trial in Smith's case is the itemization in Constable DeZeng's bill: "Notifying two Justices." Madsen confesses that he cannot explain DeZeng's entry: "What is the meaning of the DeZeng entry 'Notifying two Justices'? I frankly do not know. Perhaps DeZeng confused this case with the earlier three-justice court of special sessions. Or perhaps

Neely first thought the Joseph Smith case needed to be heard by three justices and later changed his mind." Madsen's first suggestion can be dismissed since there are no misplaced "Notifying two Justices" in DeZeng's bill. Madsen's second suggestion negates his fervent argument for Smith's acquittal and fails to adequately explain why Neeley's requested Court of Special Sessions was never held.

The historical sources suggest an answer. Bainbridge resident Abram W. Benton claimed in 1831 that Smith was "condemned," but "considering his youth, (he then being a minor) and thinking he might reform his conduct, he was designedly allowed to escape." It is unclear if Benton had attended the 1826 proceedings, but in bringing a warrant against Smith on the same charge in July 1830 Benton demonstrated that he was familiar with issues of the first prosecution. In an 1842 statement, Joel K. Noble, the Colesville justice before whom Smith would appear in 1830, also said Smith had been "condemned" in 1826 but that "whisper came to Jo. off off" and so he "took Leg Bail." In other words, someone suggested to Smith that he jump bail and leave town. If so, this would explain why a Court of Special Sessions was called but not held in Smith's case. However, Smith's subsequent return to South Bainbridge, first about November 1826 seeking employment with Stowell and again in January 1827 to be married by Justice Tarble, suggests that there was more involved than Smith's escaping custody. If Smith had escaped custody, it is unlikely that he would have returned to South Bainbridge. I suggest the following scenario:

At the conclusion of the examination, Neely released Smith on his own recognizance to appear at the forthcoming trial. But when he learned that Smith had unlawfully crossed the county line into Colesville, presumably to the home of Joseph Knight, Neely issued a Mittimus to have Smith taken into custody and brought back to South Bainbridge. Constable DeZeng then traveled "10 miles ... with Mittimus to take him." Upon being returned to South Bainbridge, Smith managed to work out an off-the-record agreement with Neely. Smith had good reason to negotiate since it was becoming increasingly clear that his defense had no legal basis and that a formal trial could result in his conviction and imprisonment. Smith's youth (being nine months short of his twenty-first birthday), and Smith's seeming willingness, although unrepentant, to abandon his treasure-seeking career may have inclined Neely toward leniency.

In addition to quitting scrying for treasure and lost objects in South Bainbridge, Smith may have agreed to leave town for a specified length of time. In misdemeanor cases, justices had power "to impose a fine not exceeding twenty-five dollars, or imprisonment in the common gaol of the county not exceeding six months, or both, as the case may require." In misdemeanor cases involving nonresidents of the county, the same statute stipulated that upon payment of the fine and/or release from prison, the "offender shall be immediately ordered or transported out of the said county to his last place of settlement or abode if known; and if any person so ordered or transported shall remain in the said county for forty-eight hours, or return thereto within six callender months after such order or transportation, he shall be again fined as aforesaid, or confined as aforesaid ..." Neely could have insisted that his nonresident defendant leave town for the stipulated time. So when Smith returned to South Bainbridge eight months later, there was no worry of arrest as long as he did not engage in scrying. Unaware of the off-the-record agreement, many of the townspeople probably assumed Smith had escaped custody.

Although the documents leave some things to conjecture, they uncover evidence enough to render Oliver Cowdery's 1835 claim that Smith had been "honorably acquitted" indefensible. Ultimately, however, conclusions about innocence or guilt are not as enlightening to historians as descriptions from reliable witnesses who have recounted Smith's early methods of operation as a treasure seer. As Dale Morgan concluded:

> From the point of view of Mormon history, it is immaterial what the finding of the court was on the technical charge of being 'a disorderly person and an imposter'; what is important is the evidence adduced, and its bearing on the life of Joseph Smith before he announced his claim to be a prophet of God.

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[Bio] Dan Vogel is an accomplished, prolific scholar of Mormonism. His many books include *Indian Origins and the Book of Mormon: Religious Solutions from Columbus to Joseph Smith* (Salt Lake City: Signature Books, 1986), *Religious Seekers and the Advent of Mormonism* (Salt Lake City: Signature Books, 1988), and the critically acclaimed multi-volume series *Early Mormon Documents* (Salt Lake City: Signature Books, 1996-). He is editor of *The Word of God: Essays on Mormon Scripture* (Salt Lake City: Signature Books, 1991), and co-editor with Brent Lee Metcalfe of *American Apocrypha: Essays on the Book of Mormon* (Salt

Lake City: Signature Books, forthcoming). Dan's essays appear in *Dialogue: A Journal of Mormon Thought*, the *Journal of Mormon History*, and the *John Whitmer Historical Association Journal*.

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Lucy Mack Smith, *Biographical Sketches of Joseph Smith the Prophet, and His Progenitors for Many Generations* (Liverpool: Orson Pratt and S. W. Richards, 1853), 91-92.

Lewis Carroll, *The Complete Works of Lewis Carroll* (New York: Barnes & Noble, 1994), 205, from the 1896 edition of *Through the Looking-Glass and What Alice Found There*.

Wesley P. Walters, "Joseph Smith's Bainbridge, N.Y., Court Trials," *Westminster Theological Journal* 36 (Winter 1974): 139-40.

Paul Hedengren, *In Defense of Faith: Assessing Arguments Against Latter-day Saint Belief* (Provo, UT: Bradford and Wilson, 1985), 205-210; Gordon A. Madsen, "Joseph Smith's 1826 Trial: The Legal Setting," *Brigham Young University Studies* 30 (Spring 1990): 91-108.

See Zechariah Tarble Bill of Costs, 1826, Clerk of the Board of Supervisors, Chenango County Office Building, Norwich, New York; Levi Bigelow Bill of Costs, 1826, Clerk of the Board of Supervisors, Chenango County Office Building, Norwich, NY; and James Humphrey Bill of Costs, 1826, Chenango County Historical Society, Norwich, NY.

Paul Hedengren, *In Defense of Faith: Assessing Arguments Against Latter-day Saint Belief* (Provo, UT: Bradford and Wilson, 1985), 205-210.

Albert Neely, Bill of Costs, 1826, Clerk of the Board of Supervisors, Chenango County Office Building, Norwich, NY.

Jerald Tanner, ed., *Salt Lake City Messenger* (July 1988), 9.

Deseret News, 11 May 1946; Francis W. Kirkham, *A New Witness for Christ in America: The Book of Mormon*, 2 vols. (Independence, MO: Zion's Printing and Publishing Co., 1951), 2:431.

Thomas Gladsby Waterman, *The Justice's Manual: or, A Summary of the Powers and Duties of Justices of the Peace in the State of New-York* (Binghamton, NY: Morgan and Cannoll, 1825), 191.

W[illiam]. D. Purple, "Joseph Smith, the Originator of Mormonism. Historical Reminiscences of the Town of Afton," *Chenango Union* 30 (Norwich, NY, 3 May 1877): 3.

Francis W. Kirkham, *A New Witness for Christ in America: The Book of Mormon*, 2 vols. (Independence, MO: Zion's Printing and Publishing Co., 1951), 2:357-58.

A New Conductor Generalis: Being a Summary of the Law Relative to the Duty and Office of Justice of the Peace, Sheriffs, Coroners, Constables, Jurymen, Overseers of the Poor, &c. &c. (Albany, NY, 1819), 141.

Gordon A. Madsen, "Joseph Smith's 1826 Trial: The Legal Setting," *Brigham Young University Studies* 30 (Spring 1990): 94.

Noah Webster's *Compendious Dictionary of the English Language* (Hartford, CT: Hudson & Goodwin, 1806) defines a "juggler" as "one who juggles, a cheat, a deceiver," and "juggling" as "the act of playing tricks,

deceit" (168).

Laws of the State of New-York, Revised and Passed at Thirty-Sixth Session of the Legislature, 2 vols. (Albany, NY: H. C. Southwick and Co., 1813), 1:114, sec. 1, emphasis added. See also *A New Conductor Generalis: Being a Summary of the Law Relative to the Duty and Office of Justice of the Peace, Sheriffs, Coroners, Constables, Jurymen, Overseers of the Poor, &c. &c.* (Albany, NY, 1819), 108; Gordon A. Madsen, "Joseph Smith's 1826 Trial: The Legal Setting," *Brigham Young University Studies* 30 (Spring 1990): 93.

Joseph Knight, Sr., "Manuscript of the History of Joseph Smith" (ca. 1835-1847), p. 8, LDS Church Archives, Salt Lake City, UT.

John S. Reed to Brigham Young, 6 December 1861, p. 1, Brigham Young Collection, LDS Church Archives, Salt Lake City, UT.

Paul Hedengren, *In Defense of Faith: Assessing Arguments Against Latter-day Saint Belief* (Provo, UT: Bradford and Wilson, 1985), 216-17; Gordon A. Madsen, "Joseph Smith's 1826 Trial: The Legal Setting," *Brigham Young University Studies* 30 (Spring 1990): 106.

Gordon A. Madsen, "Joseph Smith's 1826 Trial: The Legal Setting," *Brigham Young University Studies* 30 (Spring 1990): 106.

Paul Hedengren, *In Defense of Faith: Assessing Arguments Against Latter-day Saint Belief* (Provo, UT: Bradford and Wilson, 1985), 216-17.

The Revised Statutes of the State of New-York 3 vols. (Albany, NY: Packard and Van Benthuysen, 1829), 2:709, sec. 21, emphasis added.

Acts of a General Nature, Ordered to be Re-printed, at the First Session of the Eighteenth General Assembly of the State of Ohio (Columbus, OH, 1820), cited in Jerald Tanner, ed., *Salt Lake City Messenger* (July 1988), 10.

An entry in Joseph Smith's journal for 18 December 1843 is also applicable: "After Dinner, Constable Follet returned with Elliot. Trial in the Assembly room for examinatin <before Aaron Johnson>. [Elliot was] found guilty of Kidnapping and bound over for trial to the Circuit Court in the sum of $3,000" (LDS Church Archives). See also Joseph Smith, Jr., *History of the Church of Jesus Christ of Latter-day Saints*, ed. B. H. Roberts, 7 vols., 2nd ed. rev. (Salt Lake City: Deseret Book, 1948), 6:117.

Gordon A. Madsen, "Joseph Smith's 1826 Trial: The Legal Setting," *Brigham Young University Studies* 30 (Spring 1990): 103-106.

Gordon A. Madsen, "Joseph Smith's 1826 Trial: The Legal Setting," *Brigham Young University Studies* 30 (Spring 1990): 105.

Wesley P. Walters, "Joseph Smith's Bainbridge, N.Y., Court Trials," *Westminster Theological Journal* 36 (Winter 1974): 139.

Gordon A. Madsen, "Joseph Smith's 1826 Trial: The Legal Setting," *Brigham Young University Studies* 30 (Spring 1990): 97-98.

Gordon A. Madsen, "Joseph Smith's 1826 Trial: The Legal Setting," *Brigham Young University Studies* 30 (Spring 1990): 100, 103.

Gordon A. Madsen, "Joseph Smith's 1826 Trial: The Legal Setting," *Brigham Young University Studies* 30 (Spring 1990): 98.

E.g., William Banks, 15 April 1828, Chenango County Historical Society, Norwich, NY.

E.g., Levi Bigelow, 14 January 1825, Chenango County Historical Society, Norwich, NY.

Madsen's narrow definition of "recognizances" as bail is even inconsistent with New York's *Revised Statutes* of 1829, which allowed justices of the peace to charge twenty-five cents for each "bond or recognizance" (*The Revised Statutes of the State of New-York*, 3 vols. [Albany, NY: Packard and Van Benthuysen, 1829], 2:749).

Wesley P. Walters, "Joseph Smith's Bainbridge, N.Y., Court Trials," *Westminster Theological Journal* 36 (Winter 1974): 139.

Gordon A. Madsen, "Joseph Smith's 1826 Trial: The Legal Setting," *Brigham Young University Studies* 30 (Spring 1990): 97-98.

Noah Webster, *An American Dictionary of the English Language*, 2 vols. (New York: S. Converse, 1828), s.v. "Mittimus."

Thomas Gladsby Waterman, *The Justice's Manual: or, A Summary of the Powers and Duties of Justices of the Peace in the State of New-York* (Binghamton, NY: Morgan and Cannoll, 1825), 199; *The Revised Statutes of the State of New-York*, 3 vols. (Albany, NY: Packard and Van Benthuysen, 1829), 2:749, sec. 1. See also Wesley P. Walters, "Joseph Smith's Bainbridge, N.Y., Court Trials," *Westminster Theological Journal* 36 (Winter 1974): 140.

The Revised Statutes of the State of New-York, 3 vols. (Albany, NY: Packard and Van Benthuysen, 1829), 2:750, sec. 2. See also Wesley P. Walters, "Joseph Smith's Bainbridge, N.Y., Court Trials," *Westminster Theological Journal* 36 (Winter 1974): 140; Gordon A. Madsen, "Joseph Smith's 1826 Trial: The Legal Setting," *Brigham Young University Studies* 30 (Spring 1990): 100; Paul Hedengren, *In Defense of Faith: Assessing Arguments Against Latter-day Saint Belief* (Provo, UT: Bradford and Wilson, 1985), 207.

See Jerald Tanner, ed., *Salt Lake City Messenger* (July 1988); see also Paul Hedengren, *In Defense of Faith: Assessing Arguments Against Latter-day Saint Belief* (Provo, UT: Bradford and Wilson, 1985), 208-209.

Philip DeZeng, Bill of Costs, 1826, Clerk of the Board of Supervisors, Chenango County Office Building, Norwich, NY; see also Wesley P. Walters, "Joseph Smith's Bainbridge, N.Y., Court Trials," *Westminster Theological Journal* 36 (Winter 1974): 139; Jerald Tanner, ed., *Salt Lake City Messenger* (July 1988), 10.

Gordon A. Madsen, "Joseph Smith's 1826 Trial: The Legal Setting," *Brigham Young University Studies* 30 (Spring 1990): 97.

[Abram W. Benton], "Mormonites," *Evangelical Magazine and Gospel Advocate* 2 (Utica, NY, 9 April 1831): 120.

Joseph Smith, Manuscript History of the Church, Book A-1, p. 48, Joseph Smith Papers, LDS Church Archives, Salt Lake City, UT. Dale Morgan believed Benton's reminiscence (now supported by Noble) "harmonized the discrepant accounts," arguing that "Joseph Smith would appear to have been given the equivalent of a suspended sentence" (John Philip Walker, ed., *Dale Morgan on Early Mormonism: Correspondence and a New History* [Salt Lake City: Signature Books, 1986], 399n21). While Morgan might be correct that Benton's account does seem to harmonize disparate accounts, his interpretation implies that a judgment had been reached in Smith's case. This does not appear to have been the case for two fundamental reasons: (1) Benton's 1830 warrant would have amounted to double jeopardy; and (2) Smith successfully defended himself in 1830 by pleading statute of limitations (see Joel K. Noble to Jonathan B. Turner, 8 March 1842, p. 2, Jonathan Baldwin Turner Papers, Illinois State Historical Library, Springfield, IL). Time limitations apply only to prosecution, not to sentencing. If a judgment had been reached and Smith given a suspended sentence in 1826, a second trial would not only have been illegal but unnecessary.

Joel K. Noble to Jonathan B. Turner, 8 March 1842, p. 1, Jonathan Baldwin Turner Papers, Illinois State Historical Library, Springfield, IL.

Gordon A. Madsen, "Joseph Smith's 1826 Trial: The Legal Setting," *Brigham Young University Studies* 30 (Spring 1990): 107n30. Even though Joseph and Emma's marriage was solemnized on 18 January 1827 by South Bainbridge justice Zechariah Tarble, Abram W. Benton claimed that following the 1826 trail Smith "absented himself from this place, returning only privately, and holding clandestine intercourse with his credulous dupes, for two or three years" ([Abram W. Benton], "Mormonites," *Evangelical Magazine and Gospel Advocate* 2 [Utica, NY, 9 April 1831]: 120). Joel K. Noble similarly said that "Jo. was not seen in our town for of 2 Years or more (except in Dark corners)" (Joel K. Noble to Jonathan B. Turner, 8 March 1842, p. 1, Jonathan Baldwin Turner Papers, Illinois State Historical Library, Springfield, IL.

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