FOREWORD:

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United States v. Hodges: Treason, Jury Trials, and the War of 1812

Author
Jennifer Elisa Smith

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Abstract
In August 1814 a number of British soldiers were arrested as stragglers or deserters in the town of Upper Marlboro, Maryland. Upon learning of the soldiers’ absences the British military took local physician, Dr. William Beanes, and two other residents into custody and threatened to burn Upper Marlboro if the British soldiers were not returned. John Hodges, a local attorney, arranged the soldiers’ return to the British military. For this, Hodges was charged with high treason for “adhering to [the] enemies, giving them aid and comfort.” The resulting jury trial was presided over by Justice Gabriel Duvall, a Supreme Court Justice and Prince Georges County native, and highlights how the crime of treason was viewed in early American culture and the role of the jury as deciders of the facts and the law in early American jurisprudence. Contextually, Hodges’ trial took place against the backdrop of the War of 1812 and was informed by the 1807 treason trial of Aaron Burr.

Disciplines
Law, constitutional history, legal history
In August 1814 as British forces left a burned and ravaged Washington, D.C. a number of British soldiers were arrested as stragglers or deserters in the town of Upper Marlboro in Prince Georges County Maryland. Upon learning of the soldiers’ absences the British military took local physician, Dr. William Beanes, and two other residents into custody and threatened to burn Upper Marlboro if the British soldiers were not returned. John Hodges, a local attorney, arranged the soldiers’ return to the British military. For this, Hodges was charged with high treason for “adhering to [the] enemies, giving them aid and comfort.” The resulting jury trial was presided over by Justice Gabriel Duvall, a Supreme Court Justice and Prince Georges County native, and highlights how the crime of treason was viewed in early American culture and the role of the jury as deciders of the facts and the law in early American jurisprudence. Contextually, Hodges’ trial took place against the backdrop of the War of 1812 and was informed by the 1807 treason trial of Aaron Burr.
This paper examines the historical context of Hodges’ treason trial; describes and analyzes the facts of the alleged crime and resulting trial; and analyzes historical developments of the crime of treason in America as well as changing conceptions of the jury’s role as deciders of the facts and the law. Specifically, Part I examines the historical context of Hodges’ trial by analyzing treason in early America, jury trials in early America, and the impact of the War of 1812.\(^8\) Part II recounts the facts of the alleged crime, including the persons involved and events leading up to the crime.\(^9\) Part III describes and analyzes the trial, including the persons involved, witness statements, attorney arguments, and Justice Duvall’s statement to the jury.\(^10\) Part IV examines the impacts of the case, specifically what the trial demonstrates about changing conceptions of the crime of treason and the evolving role of the jury in American jurisprudence.\(^11\)

**PART I: CONTEXTUALIZING UNITED STATES V. HODGES - TREASON, JURIES, & THE WAR OF 1812**

The 1815 treason trial of John Hodges is best examined within the context of the development of the crime of treason, the role of the jury in American jurisprudence, and the effects of the War of 1812. Early American views of treason were informed by a variety of sources including English laws and the tumultuous Revolutionary period.\(^12\) Additionally, at the time of Hodges’ trial the treason trial of Aaron Burr was still fresh in American minds.\(^13\) The jury was viewed as “an essential part of any free government” but the role of the jury was in flux

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\(^8\) See infra Part I.  
\(^9\) See infra Part II.  
\(^10\) See infra Part III.  
\(^11\) See infra Part IV.  
\(^12\) See generally Willard Hurst, *Treason in the United States*, 58 Harv. L. Rev. 395 (1945); Dennis Hale, *The Jury in America: Triumph and Decline* 59 (2016).  
in the early 1800s.\textsuperscript{14} Further informing the trial of John Hodges was the War of 1812 and the nation’s response to a war they were not prepared for.\textsuperscript{15}

\textit{A. Treason in Early America}\textsuperscript{16}

A number of sources influenced the development of the treason doctrine in early America. These sources included English laws, the effects of the tumultuous revolutionary period, and the nation’s founders balancing a desire to safeguard America while ensuring charges of treason would not be “used as an instrument of political prosecution.”\textsuperscript{17} Further, early treason trials, notably the 1807 treason trial of Aaron Burr, informed how treason was viewed by the nation when John Hodges was tried in 1815.\textsuperscript{18}

The Statute of Edward III, also known as the Treason Act of 1351, was an English statute codifying treasonous offences.\textsuperscript{19} Treason in England was considered a crime “if a Man do levy War against our Lord the King in his Realm, or be adherent to the King’s Enemies . . . giving to them Aid and Comfort, in the Realm, or elsewhere.”\textsuperscript{20} Treason also included planning “the death of the King, Queen, or their eldest son;” “violating the Queen, or the King’s eldest daughter, or his eldest son’s wife;” and “killing the Chancellor, Treasurer, or Judges in execution of their duty.”\textsuperscript{21} The statute gave broad powers to English courts and prosecutors to define treasonous

\textsuperscript{14} HALE, supra note 12, at 59.
\textsuperscript{16} See generally Hurst, supra note 12.
\textsuperscript{17} JEAN EDWARD SMITH, JOHN MARSHALL: DEFINER OF A NATION 370 (1998); HOFFER, supra note 13, at 58, 63–70.
actions. Additionally, the monarch or legislature could add treasonous offenses to the act through an exceptions clause. The result was a treason act that could be used to suppress political adversaries regardless of whether they made overt actions against the crown or simply held treasonous acts in “the imagination of his heart.”

The malicious use of the English treason act to suppress political foes was on the minds of the framers as they debated how to define treason in America. Additionally, the framers recognized that the Revolutionary War was in itself a treasonous act against England. Against this backdrop, the framers formulated the parameters of treason for the new nation. They balanced the desire to safeguard the new nation from insurrection while ensuring charges of treason would not be “used as an instrument of political prosecution.” Although there was general consensus that treason should be limited in scope, how limited was a debate among the Constitution’s framers. For example, James Madison, approved the Constitutional Convention’s “great judgement” of “inserting a constitutional definition” of treason in the Constitution but felt the Committee of Detail’s definition was “too narrow [and] [i]t did not appear to go as far as the Stat. of Edwd. III.” Madison supported giving the Legislature “more latitude.”

The constitutional debates regarding treason underscores the significance the founders placed on ensuring “citizens of the Union [were] secured effectually from even legislative tyranny” and the perception that an “indeterminate” definition of treason was “sufficient to make

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22 HOFFER, supra note 13, at 58–59.
23 Id. at 59.
24 Id. (citing the 1592 English treason trial of Sir John Perrot).
25 See generally Hurst, supra note 12; HOFFER, supra note 13, at 58–75.
26 HOFFER, supra note 13, at 58.
27 SMITH, supra note 17, at 370; HOFFER, supra note 13, at 58, 63–70.
28 Hurst, supra note 12, at 395, 399–00.
29 THE FEDERALIST NO. 43 (James Madison); Defining the Crime of Treason, supra note 20. See also Hurst, supra note 12, at 400.
30 Defining the Crime of Treason, supra note 20. See also Hurst, supra note 12, at 400.
any government degenerate into arbitrary power.\textsuperscript{31} The resulting restrictive definition of treason included in the United States Constitution reads:

Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. The Congress shall have power to declare the punishment of treason, but no attainer of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.\textsuperscript{32}

Further expounding on the restrictive definition of treason, the 1790 Act for the Punishment of Certain Crimes Against the United States, also known as the Crimes Act of 1790, stated:

[I]f any person or persons, owing allegiance to the United States of America, shall levy war against them, or shall adhere to their enemies, giving them aid and comfort within the United States or elsewhere, and shall be thereof convicted, on confession in open court, or on the testimony of two witnesses to the same overt act of the treason whereof he or they shall stand indicted, such person or persons shall be adjudged guilty of treason against the United States, and shall suffer death.\textsuperscript{33}

Defining treason in the Constitution and limiting the application of treason to “only . . . levying war against them, or in adhering to their enemies, giving them aid and comfort” was seen as a way to prevent use of constructive treason in America.\textsuperscript{34} Constructive treason was used in England to expand the scope of treasonous acts to include verbal and written criticism of the government as well as “actions taken to prevent the execution of a law.”\textsuperscript{35} Despite the narrowly worded definition of treason in the Constitution the potential for expanding the doctrine of

\textsuperscript{31} 3 WORKS OF HON. JAMES WILSON 104 (Bird Wilson ed., 1804), https://archive.org/details/workshonourable00wilsgoog.
\textsuperscript{32} U.S. CONST. art. III, § 3.
\textsuperscript{33} An Act for the Punishment of Certain Crimes Against the United States §1, 1 Stat. 112, 112 (1790). Section 2 of the Act added a misprision of treason provision, creating a criminal offense for anyone [H]aving knowledge of the commission of . . . treasons . . ., shall conceal, and not, as soon as may be, disclose and make known the same to [the appropriate authority] such person or persons, on conviction, shall be adjudged guilty of misprision of treason, and shall be imprisoned not exceeding seven years, and fined not exceeding one thousand dollars.
\textsuperscript{34} U.S. CONST. art. III, § 3; SMITH, supra note 17, at 366–67, 366 n.*.
\textsuperscript{35} SMITH, supra note 17, at 366–67; THE AARON BURR TREASON TRIAL, supra note 7.
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36 See infra Part I.A.1; SMITH, supra note 17, at 366–67; THE AARON BURR TREASON TRIAL, supra note 7.
39 SMITH, supra note 17, at 370; Blinka, supra note 38, at 183.
41 Kotowski, supra note 38.
President George Washington responded by issuing a *Proclamation on Violent Opposition to the Excise Tax* and sending the militia into Western Pennsylvania, which dispersed the insurgents and quelled the violence.43 The militia arrested a number of men who were tried for treason.44 Attorney William Rawle argued that resistance to federal laws was treasonous because it was equal to levying war against the nation.45 Lack of evidence and witnesses resulted in only two men, John Mitchell and Paul Weigel, being found guilty of treason.46 Both men were eventually pardoned by President Washington.47

Fries Rebellion was also a response against federal taxes.48 James McHenry, the Secretary of War, wrote to Alexander Hamilton in March 1799 concerning the rebellion, stating:

[A] combination to defeat the execution of the Laws, for the valuation of lands, and Dwelling houses, have existed, in the Counties of Northampton Montgomery, and Bucks in the State of Pennsylvania, and proceeded in a manner subversive of the just authority of the Government, and that certain Persons in the County of Northampton exceeding one hundred in number, have been hardy enough to


46 Kotowski, *supra* note 38.


perpetrate certain acts, which he is advised amount to Treason, being overt acts of levying war against the United States.\textsuperscript{49}

John Fries was arrested and tried for treason for freeing two tax evaders from jail in Bethlehem, Pennsylvania.\textsuperscript{50} Fries was convicted of treason,\textsuperscript{51} a conviction viewed as being “of the highest importance” to maintain “the stability of [the country’s] government.”\textsuperscript{52} Further, Fries’ conviction was seen as being an example to others who might consider rebelling against the government, as demonstrated in a letter from Secretary of State, Timothy Pickering, to John Adams in May 1799, in which Pickering states, “I have heard of but one opinion—That an example or examples of conviction and punishment of such high-handed offenders were essential, to ensure future obedience to the laws, or the exertions of our best citizens to suppress future insurrections.”\textsuperscript{53} Fries was pardoned by President John Adams on May 21, 1800.\textsuperscript{54}

One of the most notable treason trials in American history was the trial of Aaron Burr in 1807.\textsuperscript{55} Burr was charged with treason for “levying war” against the United States and tried in the U.S. Circuit Court of Richmond.\textsuperscript{56} Chief Justice John Marshall presided over the trial and used the trial and his opinion to “clarify the law of treason.”\textsuperscript{57} Specifically, Justice Marshall used his 25,000 word opinion in part to limit an expansive use of treason as an “instrument of political

\textsuperscript{50} Blinka, supra note 38, at 170–71.
\textsuperscript{51} Fries was tried twice for treason. He was tried once and convicted by a jury but was granted a new trial when evidence surfaced that a juror was not impartial. Fries was retried and again found guilty of treason. Justice Samuel Chase presided over Fries’ retrial. Justice Chase’s actions during Fries’ trial were cited by the House of Representatives in 1804 during Justice Chase’s impeachment proceedings. Grubbs, supra note 45.
\textsuperscript{52} TO JOHN ADAMS FROM TIMOTHY PICKERING (MAY 10, 1799) FOUNDERS ONLINE, NATIONAL ARCHIVES (last modified October 5, 2016), http://founders.archives.gov/documents/Adams/99-02-02-3499.
\textsuperscript{53} Id.
\textsuperscript{54} Grubbs, supra note 45.
\textsuperscript{55} United States v Burr, 25 F. Cas. 55 (C.C.D. Va. 1807). See generally SMITH, supra note 17, at 348–74; NEWMYER, supra note 37; HOFFER, supra note 13.
\textsuperscript{56} HOFFER, supra note 13, at 198; SMITH, supra note 17, at 358; THE AARON BURR TREASON TRIAL, supra note 7.
\textsuperscript{57} Blinka, supra note 38, at 183.
prosecution.”

Marshall’s opinion limited the treason doctrine and required “strict legal
evidence, that an overt act of treason has been committed.” Marshall echoed Burr’s attorney
Edmund Randolph’s statement that “if the doctrine of treason be not kept within precise limits,
but left vague and undefined, it gives the triumphant party the means of subjecting and
destroying the other.”

B. Jury Trials in Early America

Juries were viewed as “an essential part of any free government” in early America.

Specifically, the role of the jury was seen as “protecting ordinary individuals against
governmental overreach[].” There was general consensus among “[t]he friends and adversaries
of the plan of the [Constitutional] convention, [who] if they agree[d] in nothing else, concur[red]
at least in the value they set upon the trial by jury.” Despite agreement that the jury was
essential, the role of the jury as deciders of the law and the facts was in flux in the late 1700s and
early 1800s. Chief Justice John Jay captured the fluidity of the jury’s role when he stated in the
1794 Supreme Court case, Georgia v. Brailsford:

It may not be amiss, here, Gentlemen, to remind you of the good old rule, that on
questions of fact, it is the province of the jury, on questions of law, it is the
province of the court to decide. But it must be observed that by the same law,
which recognizes this reasonable distribution of jurisdiction, you have
nevertheless a right to take upon yourselves to judge of both, and to determine the

58 SMITH, supra note 17, at 370. Marshall also used his opinion in Burr’s trial to clarify statements he made in his
opinion in Ex Parte Bollman, which could be interpreted as promoting constructive treason including:

if war be actually levied, that is, if a body of men be actually assembled for the purpose of
effecting by force a treasonable purpose, all those who perform any part, however minute, or
however remote from the scene of action, and who are actually leagued in the general conspiracy,
are to be considered as traitors

Ex Parte Bollman, 8 U.S. 75, 126 (1807).


60 SMITH, supra note 17, at 369–70.

61 HALE, supra note 12, at 59.

62 Blinka, supra note 38, at 136 (citing AKHIL AMAR, THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION 83–84
(Yale Univ. Press 1998)).

63 THE FEDERALIST NO. 83 (Alexander Hamilton).

64 See generally HALE, supra note 12; VALERIE P. HANS & NEIL VIDMAR, JUDGING THE JURY (1986); Blinka, supra
note 38.
law as well as the fact in controversy. On this, and on every other occasion, however, we have no doubt, you will pay the respect, which is due to the opinion of the court: For, as on the one hand, it is presumed, that juries are the best judges of facts; it is, on the other hand, presumable, that the court are the best judges of law. But still both objects are lawfully, within your power of decision.65

The nature of early American trials shaped the role of the jury.66 Early American trials, influenced by British trials, “studiously avoided finely honed distinctions between law and fact.”67 Additionally, serving on a jury “best prepared people to be free” by “giv[ing] to the minds of all citizens a part of the habits of mind of the judge.”68 In this respect, serving on a jury was akin to educating citizens of the new nation on the judiciary and law while promoting the concept of the judge and jury being in a partnership.69 Juries were also expected to draw on their own experiences and knowledge of circumstances and individuals unlike modern juries.70

The jury was viewed as “an obstacle to oppressive government” and as such “unquestionably ha[d] jurisdiction of both fact and law.”71 For example, John Adams recognized the jury was important to safeguarding “fundamental Principles” especially when “judges should give their Opinion to the jury” counter to “fundamental Principles.”72 A “verdict according to

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65 Georgia v. Brailsford, 3 U.S. 1, 7–8 (1794) (emphasis added). The Supreme Court sat as a trial court in Georgia v. Brailsford.
66 See generally HALE, supra note 12; HANS & VIDMAR, supra note 64; Blinka, supra note 38.
67 Blinka, supra note 38.
68 ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 261–62 (Harvey C. Mansfield & Delba Winthrop trans., ed., 2000). De. Tocqueville was a French political theorist who visited the United States in 1831. Though his visit was originally focused on examining United States prisons, his seminal work Democracy in America focused broadly on aspects of social equality and individualism in America. Id. at xvii –xlii; Alexis De Tocqueville, HISTORY.COM (2009), http://www.history.com/topics/alexis-de-tocqueville.
69 See, e.g., TOCQUEVILLE, supra note 68, at 258–64; HALE, supra note 12, at 89–93.
70 Blinka, supra note 38, at 138.
71 THE FEDERALIST NO. 81 (Alexander Hamilton); HALE, supra note 12, at 114.
conscience” was regarded as a right of the jury and expanded on Adams’ understanding of the jury as protectors of “fundamental Principles.”

In the late 1700s and early 1800s, perceptions on the role of the jury were changing in response to criticisms of jury trials. For example, Thomas Jefferson was critical of “a great inconsistency” in jury trials and advocated for elected jurors. Jefferson understood the political nature of trials and wished to prevent a “germ of rottedness [sic]” from infecting jury trials. Specifically, Jefferson worried that jurors were being selected based on their “ignorance” and “pliability to [the] will and designs of power.” Jefferson felt jurors were “competent judges of human character,” and therefore capable of being deciders of the facts, but did not feel jurors were qualified “for the management of affairs requiring intelligence above the common level.”

Chief Justice John Marshall used the Aaron Burr treason trial to both clarify the crime of treason, as discussed in Part I.A.1, and comment on the relationship between judge and jury. Specifically, Marshall asserted the judge’s role as architect of the law by stating “irrelevant testimony may and ought be stopped” and recognized this ability of the judge as a “fundamental principle[] in judicial proceedings.” When Marshall sent the case to the jury he stated “[t]he

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75 Id.
76 Id.
78 Blinka, supra note 38, at 183. See generally HOFFER, supra note 13, at 58, 63–70.
jury have now heard the opinion of the court on the law of the case [and] they will apply that law to the facts.”

C. The War of 1812

On June 18, 1812 the United States Congress declared war on Great Britain; President James Madison signed the declaration of war the same day. Reasons for the war were multiple, including British interference with American trade, impressment of American seamen by the British Royal Navy, and American expansionism. President Madison, writing to Congress on June 1, 1812 concerning British hostility towards America stated: “the conduct of her Government presents a series of acts, hostile to the United States, as an Independent and neutral nation” and “[i]t has become indeed sufficiently certain, that the commerce of the United States is to be sacrificed.”

Support for the war was not politically unanimous and highlighted divisions between the Democratic-Republicans and Federalist political parties. President Madison was a Democratic-Republican and received support for the war from fellow Democratic-Republicans such as James Monroe. Monroe supported President Madison’s view that America should not “continue passive under . . . [the] accumulating wrongs” committed by Britain against America and

81 KILLENBECK, supra note 7, at 192; SMITHSONIAN, supra note 7.
82 SMITH, supra note 17, at 409; SMITHSONIAN, supra note 7; War of 1812, HISTORY.COM (2009) http://www.history.com/topics/war-of-1812.
84 Domestic Supporters and Opponents; THE WAR OF 1812, https://sites.google.com/a/ucconn.edu/bav11001/supporters-and-opponents (last visited Nov. 18, 2016).
85 SMITH, supra note 17, at 370; HOFFER, supra note 13, at 409–10. As Secretary of State before the war, James Monroe was concerned with America’s political relations with France and Britain. JAMES MONROE: LIFE BEFORE THE PRESIDENCY, MILLER CENTER, UNIV. OF VA., http://millercenter.org/president/biography/monroe-life-before-the-presidency (last visited Nov. 20, 2016).
supported a declaration of war.\textsuperscript{86} Monroe was Secretary of State during the war and served as temporary Secretary of War, from December 1812 to February 1813 and from August 1814 to March 1815.\textsuperscript{87}

Response to the declaration of war was not unanimously positive among U.S. citizens. In general, southern and western states supported the war and New England states were critical of the war.\textsuperscript{88} For example, the citizens of Lexington, Kentucky wrote to President Madison in support of the war stating the declaration of war was “necessary” in light “that war has been forced upon the U.S., by Great Britain.”\textsuperscript{89} Whereas citizens from Berkeley, Massachusetts wrote the President criticizing the declaration of war as “fatal to our Commercial Interest, destructive to our happiness as a people, and threatening to our Liberty and Independence.”\textsuperscript{90}

The lack of unanimous support for the war in conjunction with an inefficient, inexperienced, and understaffed War Department effected the United States ability to coordinate an effective military force.\textsuperscript{91} Senior officers were “generally, sunk into either sloth, ignorance, or habits of intemperate drinking” and were ineffective leaders.\textsuperscript{92} Enlisted men were undisciplined


\textsuperscript{87} MILLER CENTER, supra note 85.

\textsuperscript{88} See, e.g., Hickey, supra note 15, at 52–71; Stagg, supra note 15, at 258–59.


\textsuperscript{91} Hickey, supra note 15, at 75–76.

\textsuperscript{92} Id. at 76 (quoting the Memoirs of Winfield Scott).
and lacked experience. Joseph Wheaton wrote to President Madison in 1813 highlighting issues the military faced:

The Militia Called out in the State of Ohio do almost or for the greater part refuse to turn out, Many very Many have deserted which have been drafted—have refused to March, & from what I can learn very little is to be expected from them.

Desertion was common during the War of 1812 for both American and British forces and was punishable by death. Desertion by American troops was particularly prevalent towards the end of the war. For example, of the approximately 200 men executed for desertion during the War of 1812, 132 were executed in 1814. Despite the number of executions, President Madison demonstrated leniency to deserters during the war, specifically pardoning deserters in 1812 and 1814 that became “sensible of their offences, and [were] desirous of returning to their duty.”

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93 Id.
95 First time deserters in the U.S military were usually sentenced to death and pardoned. Repeat deserters were more commonly executed. Hickey, supra note 15, at 76, 222; The Men Are Sick of the Place, Niagara 1812 Legacy Council (Jan. 23, 2013, 11:34 AM), http://discover1812.blogspot.com/2013/01/the-men-are-sick-of-place.html. See Extract from an Original Letter from Thomas G. Ridout (Near Niagara) to His Brother George Ridout, Sept. 16, 1813, Thomas Ridout Family Fonds, Archives of Ontario, http://www.archives.gov.on.ca/en/explore/online/1812/militia.aspx (last visited Nov. 25, 2016) (quoting a British soldier: “Desertion has come to such height that 8 or 10 men go off daily.”).
96 Hickey, supra note 15, at 222. Desertion numbers likely rose in 1814 due to an increase in enlistment bonuses, which spurred soldiers to desert one unit to join another unit to receive two enlistment bonuses. J.C.A. Stagg, Enlisted Men in the United States Army, 1812–1815: A Preliminary Survey, 43 William & Mary Q. 624–25 (1986).
The Chesapeake Bay Region, a significant area of commerce, trade, and shipbuilding in America, was targeted by British forces during the War of 1812. The relocation of the nation’s capital to Washington, D.C. in 1800 also made the region a political and symbolic target and Baltimore’s commercial significance made the area a strategic target. The Maryland House of Delegates recognized the region was a target and wrote to President Madison in January 1814 “to implore the constituted authorities of this nation, that the negotiations [sic] about to be instituted, may be carried on with a just and earnest intention of bringing them to an amicable result; that the evils of this unprofitable and pernicious War may not be protracted” highlighting the “exposed and defenceless [sic] situation in which the State of Maryland has been hitherto left by the General Government, under the impending calamities of War.”

Divides among political parties and citizens stoked concerns that treasonous acts were occurring and were not being suppressed during the war. For example, John Adams voiced his concerns to Thomas Jefferson, referencing early treason trials, in a June 1813 letter, in which he stated:

[E]arly treasonous acts, such occurring during the War of 1812 needed to be suppressed . . . you never felt the Terrorism of Chaises Rebellion in Massachusetts. I believe you never felt the Terrorism of Gallatins Insurrection in Pensilvania [sic]: you certainly never realized [sic] the Terrorism of Fries’s, most outrageous [sic] Riot and Rescue, as I call it, Treason.
The fear that the government was not doing enough to ensure treasonous “opposition . . . [was] hushed” reached across the Atlantic Ocean to Louisa Catherine Johnson Adams in St. Petersburg Russia, who wrote to John Quincy Adams in November 1814:

> The defects of our Constitution are certainly now completely brought to light and a Government which is too feeble to check the treason which is formed in the very heart of the people it affects to rule must sink the very conviction that the Laws cannot reach them gives a boldness, energy and strength to factions which must render them successful . . .

Against the backdrop of war and feelings that “opposition [to the war] must be hushed” John Hodges was tried for high treason for acts occurring in August 1814.\(^\text{104}\)

**PART II: THE CRIME**

*A. Before the Crime*

\(^{103}\) REPORT, supra note 2, at 6; FROM LOUISA CATHERINE JOHNSON ADAMS TO JOHN QUINCY ADAMS, NOV. 6, 1814, FOUNDERS ONLINE, NATIONAL ARCHIVES (last modified Oct. 5, 2016), http://founders.archives.gov/documents/Adams/99-03-02-2657.

\(^{104}\) REPORT, supra note 2, at 6.
On August 16, 1814, as British warships commanded by Vice Admiral Alexander Cochrane joined British forces already in the Chesapeake Bay region, a plan to attack Washington, D.C. was coordinated.\textsuperscript{105} Three days later 5,000 British troops landed at Saint Benedict, Maryland.\textsuperscript{106} American forces initially thought the British were planning to attack Baltimore.\textsuperscript{107} Secretary of State James Monroe led a scouting party to report on the number of British troops and sent word back to Washington that British forces were heading towards the city led by General Robert Ross and Rear Admiral George Cockburn.\textsuperscript{108}

Entering Upper Marlboro, Maryland\textsuperscript{109} on August 22, 1814, British forces faced “little or no skirmishing, and . . . were allowed to remain in the village all night without molestation.”\textsuperscript{110}


\textsuperscript{106} Id.

\textsuperscript{107} MARYLAND WAR OF 1812, supra note 99.

\textsuperscript{108} Gant, supra note 105; MILLER CENTER, supra note 85.

\textsuperscript{109} Upper Marlboro is the current spelling of the town’s name. When established in 1706 the spelling was Upper Marlborough. The name was shortened in the nineteenth or early twentieth century. HISTORIC PRESERVATION, UPPER MARLBORO TOWN ACTION PLAN, http://www.mncppcapps.org/planning/publications/pdfs/220/H-Historic%20Preservation.pdf (last visited Nov. 15, 2016).
In return, residents “were treated right civilly” and subjected to only minor disturbances, such as thefts of chickens and pigs, from British forces.\textsuperscript{111} Civil treatment by British forces was not to be expected. The August 6, 1814 letter from Walter Hellen to John Quincy Adams captures the uncertainty and fears of citizens in the Chesapeake Bay region:

\begin{quote}
The force of the Enemy is now accumulating in every direction; The Chesapeake has since the commencement of the War been constantly blockaded—the present Summer they have been up most of the Rivers and Creeks, & have done an immencity [sic] of mischief, in burning, plundering & destroying private property. they have from Maryland taken & destroyed from four to five thousand Hhd. Tobacco, a Number of Negroes, & burnt a vast number of Houses, amongst which I am sorry to add one of my own—They are now up the Potomack [sic] burning & destroying every thing before them—nor is there any force, or any hopes of a force to arrest their depredation; this place will assuredly fall.\textsuperscript{112}
\end{quote}

While in Upper Marlboro, General Ross used the home of a local physician, Dr. William Beanes, as a headquarters.\textsuperscript{113} Specifically, General Ross used Dr. Beanes’ home to have a “council of war with Admiral Cockburn.”\textsuperscript{114} There is no indication that Dr. Beanes resisted General Ross’ use of his home, potentially out of fear that the destruction faced by Walter Hellen would also befall him.\textsuperscript{115}


\textsuperscript{111} Caleb Clarke Magruder Jr., Dr. William Beanes, the Incidental Cause of the Authorship of the Star-Spangled Banner, 22 RECORDS OF THE COLUMBIA HISTORICAL SOCIETY, WASHINGTON, D.C. 212 (1919). The “greatest act of wanton vandalism” occurred at Trinity Church where “[s]everal leaves and some in other parts of [the Parrish Register] were torn out by some of Ross’ soldiers.” \textit{Id} (citing an account of John Read Magruder, the clerk of the vestry).


\textsuperscript{113} Magruder Jr., \textit{supra} note 111, at 212.

\textsuperscript{114} \textit{Id}.

\textsuperscript{115} \textit{See, e.g.}, Letter from Walter Hellen, \textit{supra} note 112.
Leaving Upper Marlboro, British forces continued their advance towards Washington.\textsuperscript{116} At Bladensburg, Maryland, American forces failed to stop the advance of British troops in what antiwar newspapers called the “Bladensburg Races” because American troops were reportedly dropping their weapons and running away from the battle.\textsuperscript{117} Partial blame for the defeat at Bladensburg went to James Monroe, who instructed a group of American troops to realign and potentially brought them too far away from the combat to be useful.\textsuperscript{118}

On August 24, 1814, British forces marched into Washington, D.C.\textsuperscript{119} President Madison, his cabinet, government officials, and residents fled and public buildings, including the Capitol and the President’s House, were burned.\textsuperscript{120} The burning of Washington was dramatic and symbolic. General Ross, writing to his wife, stated: “[t]hey feel strongly the disgrace of having had their capital taken by a handful of men and blame very generally a government which went to war without the means or abilities to carry it on.”\textsuperscript{121}

\textbf{B. The Crime}

The British left Washington, D.C. ravaged and marched towards Baltimore.\textsuperscript{122} British troops once again went through Upper Marlboro.\textsuperscript{123} Some British troops were arrested for being stragglers or deserters by citizens of Upper Marlboro, including Dr. William Beanes, Dr.

\textsuperscript{117}\textit{Id.} William Pinkney in \textit{United States v. Hodges} appears to reference this when he stated the British “were unawed by the thing which we called an army, for it had fled in every direction.” \textit{REPORT, supra} note 2, at 3 (emphasis in original).
\textsuperscript{119}\textit{SMITH, supra} note 17, at 420; Achenbach, \textit{supra} note 117.
\textsuperscript{120}\textit{SMITH, supra} note 17, at 420; Achenbach, \textit{supra} note 117; \textit{MARYLAND WAR OF 1812, supra} note 99.
\textsuperscript{122}\textit{SMITH, supra} note 17, at 420; Achenbach, \textit{supra} note 117; \textit{MARYLAND WAR OF 1812, supra} note 99.
\textsuperscript{123}\textit{REPORT, supra} note 2, at 9.
William Hill, and Philip Weems. Dr. Beanes or General Robert Bowie asked local attorney, John Hodges, to take the prisoners to the jail in Queen Anne, Maryland, in northern Prince Georges County. British forces learned of the arrests and “gave notice to some of the principal inhabitants [of Upper Marlboro], that if the persons were not returned to the British lines by 12 o’clock the ensuing day, the whole town should be destroyed.” Dr. Beanes, Dr. Hill, and Weems were also taken by the British as barter for the British prisoners. John Hodges was asked to arrange the return of the prisoners to the British military. Likely inspired by the threat of destruction to his town and the taking of three prominent residents, Hodges arranged the return of the prisoners. For his actions, Hodges was charged with treason.

**PART III: THE TRIAL**

John Hodges’ was indicted by a grand jury for high treason. Specifically, Hodges was charged with “adhering to the enemy, giving him aid and comfort.” Though the grand jury indicted Hodges, they “expressed their respects for the motives of the traverser, and prayed for *noli prosequi.*” Hodges was tried for treason in the Circuit Court of the United States for the

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124 REPORT, supra note 2, at 9; Magruder Jr., supra note 111, at 217. Queen Anne, now Hardesty, is a town in Prince George’s County north of Upper Marlboro.
125 REPORT, supra note 2, at 11–12 (quoting General Bowie’s testimony at trial as instructing John Hodges and his brother to take the deserters “further into the interior”); JOHN HODGES (OF THOMAS), supra note 3 (stating Dr. Beanes instructed Hodges to take the deserters to Queen Anne).
126 REPORT, supra note 2, at 5.
127 REPORT, supra note 2, at 5; Magruder Jr., supra note 111, at 217.
128 REPORT, supra note 2, at 5 (1815). The record indicates that John Hodges’ brother assisted him in returning the British prisoners. John Hodges’ brother was not convicted of treason nor was he part of the trial. See id.
129 Id. at 5.
130 Id. at 5–6; Magruder Jr., supra note 111, at 217.
131 REPORT, supra note 2, at 9.
132 Id.
133 Id. at 18. *Noli prosequi* (also spelled *Nolle Prosequi*) is Latin for “will not prosecute.” *Noli prosequi* is “an entry made on the court record when the . . . prosecutor in a criminal prosecution undertakes not to continue the action or prosecution.” *Noli Prosequi*, COLLINS DICTIONARY OF LAW (2006). Current rules on the “[d]isposition of Nolle Prosequi” and “[e]ffect of Nolle Prosequi” in Maryland can be found in Maryland Rules, Rule 4-247. Md. R. 4-247. A search of Maryland cases on Lexis Advance in the date range 1789 through 1850 referencing the term *Nolle Prosequi* resulted in fifteen cases. A search of Maryland cases on Lexis Advance in the date range 1789 through 1850 referencing the term *Noli Prosequi* resulted in one additional case.
Maryland District during the May 1815 term. The case was heard before a jury; Supreme Court Justice Gabriel Duval, sitting as Circuit Justice; and District Judge James Houston.

A. The Trial Report of John Hodges

Before reviewing and analyzing the trial of John Hodges it is important to understand where much of the information on the crime and the trial originate and potential biases present in the record. The report of John Hodges’ treason trial was published in *The American Law Journal*, edited by John Elihu Hall. Hall is listed in the trial report as one of Hodges’ attorneys. The introduction to the trial report, most likely written by Hall, expresses bias against the United States government and the judiciary. For example, the introduction states: “[t]here is every reason to believe Mr. Hodges was persecuted for high treason at the instigation of the government.” The introduction specifically criticizes “[President James] Madison and [Albert] Galatin [sic] and [James] Monroe” as an “ignorant, [] low minded, and cowardly crew, without ability to discern, or energy to execute.” Additionally, the introduction laments that the judiciary is no longer “enlightened” and implies that Justice Gabriel Duvall, “the honourable chief justice who tried the cause,” was influenced by the government to apply the “abominable

134 REPORT, supra note 2, at 1. The Judiciary Act of 1789 established the organization of the federal judiciary. Under the Act, circuit courts were set up as the primary federal trial courts. A Supreme Court justice and a local district judge presided over each circuit. For example, Justice Duvall presided over the United States District Court for the District of Maryland with Judge James Houston at the time of Hodges’ trial. Landmark Judicial Legislation, HISTORY OF THE FEDERAL JUDICIARY, FEDERAL JUDICIAL CENTER, http://www.fjc.gov/history/home.nsf/page/landmark_02.html (last visited Dec. 13, 2016).
136 REPORT, supra note 2; ALBERT HENRY SMYTH, THE PHILADELPHIA MAGAZINES AND THEIR CONTRIBUTORS, 1741-1850, at 139 (1892).
137 REPORT, supra note 2, at 35.
138 See generally id. at 1–8.
139 Id. at 4.
140 Id. at 7. Albert Gallatin was Secretary of the Treasury during the War of 1812. Gallatin helped negotiate the Treaty of Ghent which ended the War of 1812 in 1814. ABOUT: ALBERT GALLATIN, U.S. DEPARTMENT OF THE TREASURY (updated Nov. 11, 2010), https://www.treasury.gov/about/history/Pages/agallatin.aspx.
doctrine of constructive treason” in order to hush opposition to the war.\textsuperscript{141} The biases present in the introduction are not as conspicuous in the trial report text but it is likely the same critical biases permeate the trial report.

In addition to potential biases in the trial report, the report is not a verbatim description of the trial’s proceedings. For example, prior to William Pinkney’s final address to the jury the editor states that Pinkney “proceeded in a strain of eloquence, which the reporter dares not pretend to have followed, \textit{Verba volant.}”\textsuperscript{142} Additionally, the introduction explains that the report was delayed in being published.\textsuperscript{143} The delay in publication may have impacted the accuracy of the report.

\textbf{B. The Trial – Actors, Actions, and an Instantaneous Verdict}

The trial of John Hodges for the crime of treason took place in the Circuit Court of the United States for the Maryland District during the May 1815 term.\textsuperscript{144} The trial was presided over by Justice Gabriel Duvall\textsuperscript{145} and District Judge James Houston.\textsuperscript{146} United States District Attorney Elias Glenn presented the case for the United States.\textsuperscript{147} Hodges was represented by Upton Scott Heath,\textsuperscript{148} Thomas Jenyns,\textsuperscript{149} John Elihu Hall,\textsuperscript{150} and William Pinkney.\textsuperscript{151}

\textbf{1. Witnesses & Witness Testimony}

\textsuperscript{141} \textit{REPORT, supra} note 2, at 4, 6, 7–8.
\textsuperscript{142} \textit{Id.} at 23. \textit{Verba Volant} is Latin for “spoken words fly away” (translation through Google Translate).
\textsuperscript{143} \textit{Id.} at 1.
\textsuperscript{144} \textit{Id.}
\textsuperscript{145} \textit{See} Appendix III.
\textsuperscript{146} \textit{REPORT, supra} note 2, at 27, 28.
\textsuperscript{147} \textit{REPORT, supra} note 2, at 35.
\textsuperscript{150} \textit{REPORT, supra} note 2, at 27, 28; \textit{AMERICAN STATE TRIALS, supra} note 149.
\textsuperscript{151} \textit{REPORT, supra} note 2, at 27, 28; \textit{AMERICAN STATE TRIALS, supra} note 149. \textit{See} Appendix IV.
Witnesses for the prosecution were: William Caton, John Randall, Jr., General Robert Bowie, Gustavus Hay, William Lansdale, Thomas Holden, Solomon Sparrow, Robert Bowie, Benjamin Oden, Jr., Samuel Tyler, and Thomas Sparrow.152 William Caton testified that he was at the jail in Queen Anne when Hodges arrived to take the prisoners.153 Caton testified that he told Hodges “if he surrendered the deserter he was no American – he would stain his hands with human blood” and Hodges told him “he wanted none of his advice.”154 Witness John Randall, Jr. guarded the prisoners in Queen Anne and testified that when Hodges demanded the prisoners he asked General Robert Bowie if the prisoners should be released.155 General Bowie upon learning of the threat to Upper Marlboro responded that “it was hard, but he supposed they must be returned.”156 Witness Thomas Sparrow also testified to General Bowie’s response.157

General Robert Bowie158 was also a witness and testified that he wrote to the governor to inform him that British prisoners were at Queen Anne and commended Hodges for his “promptness and patriotism” in removing the prisoners from Upper Marlboro.159 General Bowie

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152 REPORT, supra note 2, at 10–17; COURT REGISTER ENTRY (1815) (listing witnesses, number of days witnesses were present in court, and mileage traveled.)
153 REPORT, supra note 2, at 10.
154 Id.
155 Id. at 11.
156 Id.
157 Id. at 16.
158 Bowie was governor of Maryland 1803 to 1805 and again in 1811. Bowie supported the War of 1812 and was criticized for his support of the war in the Baltimore press. Bowie recognized the need to fortify defenses in Maryland, as demonstrated in a letter from Bowie to President Madison in May 1812, where Bowie states:

We are decidedly of Opinion that the fortifications at present erected here are inadequate to its Security and defence [sic], and that to accomplish so desirable an object, it will be necessary for your Excellency to appropriate a portion of the public Money allotted to the defence [sic] of the Sea ports.

159 REPORT, supra note 2, at 12.
stated that when he saw the deserter at the jail he said “he must not be delivered up” but could not recall if Hodges heard this statement.\textsuperscript{160} General Bowie was called as a witness for a second time and testified that “Hodges never pressed the delivery of the deserter.”\textsuperscript{161}

Gustavus Hay testified that Hodges asked him “to assist in conducting the prisoners to the British lines” and when they met with the British forces the British asked why they only had four prisoners to return and not six.\textsuperscript{162} Further, Hay testified that Hodges or William Lansdale told the British troops the location of the other two prisoners (possibly deserters).\textsuperscript{163} William Lansdale testified that Hodges told him about the British threat and accompanied him to the prison to free the British prisoners.\textsuperscript{164} Lansdale stated that the threat was made by British Major Evans as instructed by “the general,” likely General Ross.\textsuperscript{165} Further, Lansdale testified that “Hodges said they could not give up the deserter” and mentioned that “[g]reat apprehension was entertained for [Dr. Beanes].”\textsuperscript{166}

Witness Thomas Holden is referred to in the trial report as the deserter and admits to being a deserter from the British military.\textsuperscript{167} Holden testified that Hodges told him, “I am not determined to carry you in” and left him at a house when he brought the prisoners to the British.\textsuperscript{168} Solomon Sparrow testified that he was asked by General Bowie to get men to guard the British prisoners and that he heard the exchange between Caton and Hodges.\textsuperscript{169}

\textsuperscript{160} \textit{Id.} (emphasis in original).
\textsuperscript{161} \textit{Id.} at 16.
\textsuperscript{162} \textit{Id.} at 12–13.
\textsuperscript{163} \textit{Id.} at 13.
\textsuperscript{164} \textit{Id.}
\textsuperscript{165} \textit{REPORT, supra} note 2, at 13.
\textsuperscript{166} \textit{Id.} at 14.
\textsuperscript{167} \textit{Id.}
\textsuperscript{168} \textit{Id.}
\textsuperscript{169} \textit{Id.} at 15.
Robert Bowie, son of General Robert Bowie, testified that he took one of the British prisoners to his house with Benjamin Oden.\textsuperscript{170} Benjamin Oden testified that “two deserters were left in [his] custody” when Hodges returned the other British prisoners.\textsuperscript{171} Additionally, Oden stated that the deserters ran away and when British Major Evans demanded to know where the deserters were “[a] woman pointed out the direction which the men had taken.”\textsuperscript{172} According to the trial report, witness Samuel Tyler\textsuperscript{173} only testified “to the bringing of the prisoners to Queen Anne, the threat, and the alarm, &c.”\textsuperscript{174}

Only two witnesses testified for the defense: Dr. Bradley Beanes and J. Donaldson.\textsuperscript{175} Dr. Bradley Beanes, Dr. William Beanes’ brother, testified that he and his brother captured the deserter Thomas Holden and had him sent to Queen Anne.\textsuperscript{176} When British forces took Dr. William Beanes and threatened Upper Marlboro, Dr. Bradley Beanes asked John Hodges to arrange return of the prisoners being kept in Queen Anne.\textsuperscript{177} He also asked Hodges to get a deserter being kept by Robert Bowie, which Bowie “strenuously contended that they had no right to demand” stating the deserter would be executed if returned.\textsuperscript{178} Dr. Bradley Beanes “told him [Robert Bowie] he need not be uneasy about the deserters – that that thing could be managed” implying the deserters may be permitted to escape.\textsuperscript{179} The second witness for the defense, J.

\begin{footnotesize}
\begin{footnotes}
\item[170] \textit{Id.}
\item[171] \textit{REPORT, supra} note 2, at 16.
\item[172] \textit{Id.}
\item[174] \textit{REPORT, supra} note 2, at 16.
\item[175] \textit{Id.} at 17–18.
\item[176] \textit{Id.} at 17.
\item[177] \textit{Id.}
\item[178] \textit{Id.}
\item[179] \textit{Id.} at 17–18.
\end{footnotes}
\end{footnotesize}
Donaldson, Esq., testified he “never considered him [Holden] a deserter” and he did not think Hodges knew Holden was a deserter.\textsuperscript{180}

2. Deserters, Stragglers, and/or Prisoners

The British soldiers at the heart of Hodges’ allegedly treasonous actions played a significant role in the trial despite not being present at the trial, except for one who was a witness, Thomas Holden.\textsuperscript{181} Witness testimony highlights a distinction between stragglers or prisoners\textsuperscript{182} and deserters.\textsuperscript{183} Further, witness testimony seems to point to John Hodges intending to return prisoners to the British but not deserters.\textsuperscript{184} For example, John Randall testified “Holden, the deserter, should not be taken further than Hall’s Mill” and William Lansdale testified “Hodges said that he did not mean to deliver him [the deserter] up.”\textsuperscript{185}

Witness testimony also recognized deserters may be executed if returned to the British military.\textsuperscript{186} For example, William Caton, testified he told Hodges that “if he surrendered the deserter he was no American – he would stain his hands with human blood,” and Dr. Bradley Beanes testified that Robert Bowie was concerned that “his prisoner . . . if he was a deserter” would be killed if returned to the British.\textsuperscript{187} The Introduction to the trial report only refers to “three or four stragglers” without mention of any deserters.\textsuperscript{188} It is unclear if this is a mistaken

\textsuperscript{180} \textit{REPORT}, supra note 2, at 18.
\textsuperscript{181} \textit{Id.} at 14.
\textsuperscript{182} The term straggler and prisoner are used interchangeably in the trial report. For purposes of clarity this paper will use the term prisoner or prisoners to delineate British soldiers arrested in Upper Marlboro that were not deserters. \textit{Supra} Part III.B.1.
\textsuperscript{183} \textit{See generally} \textit{REPORT}, supra note 2.
\textsuperscript{184} \textit{REPORT}, supra note 2, at 11, 13 (emphasis in original).
\textsuperscript{185} \textit{See supra} Part I.C.
\textsuperscript{187} \textit{REPORT}, supra note 2, at 5.
omission by the author or if the author did not want to highlight Hodges’ possible intent concerning deserters.

3. The Prosecution and the Defense – What is Treason?

The distinction between returning prisoners or deserters calls into question which of Hodges’ actions constituted treason: was it treasonous to return prisoners and deserters; was it treasonous to just return the prisoners and allow deserters to go free; or was it treasonous to return deserters to the British? The prosecutor, Elias Glenn, points to the latter when he states:

In a moral point of view, some excuse might be found for his [Hodges’] conduct; but with regard to the deserter, there was no excuse, moral, legal, or political. Deserters, it is well known, are always put to death; and, in order to save my property, I have no right to immolate the lives of my fellow creatures.189

Further, the prosecution attempted to build a case against Hodges based on witness testimony that Hodges knew he was returning at least one deserter.190 The prosecution’s witness testimony was not strong and created doubt as to whether Hodges knew there were possibly British deserters or if he intended to return deserters to the British.191 For example, General Robert Bowie testified that he stated the deserter “must not be delivered up” but was not sure if “Hodges was present when this one was stated to be a deserter.”192 Thomas Holden, a British deserter, testified that Hodges told him he “was not determined to carry [him] in.”193 Additionally, General Robert Bowie testified a second time specifically to state “Hodges never pressed the delivery of the deserter.”194

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189 Id. at 10.
190 See supra Part III.B.1.
191 See supra Part III.B.1; REPORT, supra note 2, at 10–17.
192 REPORT, supra note 2, at 12.
193 Id. at 14.
194 Id. at 16.
The two witnesses for the defense further strengthened the case that Hodges either did not know there were deserters or that he intended to allow deserters to go free.\textsuperscript{195} For example, Dr. Bradley Beanes informed Robert Bowie that “he need not be uneasy about the [fate of the] deserters” implying that “an opportunity would be given to the deserters to make their escape.”\textsuperscript{196} Additionally, J. Donaldson stated “it was impossible that” Hodges would know Thomas Holden was a deserter.\textsuperscript{197}

Following witness testimony, Elias Glenn “prayed the court to direct the jury that the mere act of delivering up prisoners or deserters is an overt act of high treason.”\textsuperscript{198} Glenn’s use of “or” between the words prisoners and deserters may be a means of compensating for weak witness testimony and attempting to expand the doctrine of treason to include the return of prisoners, even if “[i]n a moral point of view, some excuse might be found for his [Hodges] conduct.”\textsuperscript{199}

Glenn emphasized that proving treason required consideration of “the facts and the intention.”\textsuperscript{200} In Hodges’ case Glenn saw only “two inquiries to be made . . . [d]id [Hodges] deliver the prisoners [and] [d]id [Hodges] intend to do so?”\textsuperscript{201} Answering yes to both proved treason and in Glenn’s opinion Hodges did deliver the prisoners and intended to do so and therefore committed treason.\textsuperscript{202} Glenn did not mention delivering deserters, only prisoners. It is unclear if Glenn intended to group deserters with prisoners, if Glenn meant to make a distinction, or if this is a mistaken omission from the record.

\textsuperscript{195} Id. at 17–18.
\textsuperscript{196} Id. at 17–18.
\textsuperscript{197} Id. at 18.
\textsuperscript{198} REPORT, supra note 2, at 18 (emphasis added).
\textsuperscript{199} Id. at 10.
\textsuperscript{200} Id. at 21.
\textsuperscript{201} Id.
\textsuperscript{202} Id
William Pinkney argued on behalf of Hodges that he “[was] entitled to be sheltered by his motives from the imputation of treason.” 203 Pinkney argued that Hodges’ actions were justified because he was motivated to save his town from “[a] hostile force” and secure release of Dr. Beanes, Dr. Hill, and Weems. 204 According to Glenn, motive was not an excuse. 205 Specifically, Glenn stated that “apprehension of any loss of property, by waste or fire, or even an apprehension of a slight or remote injury to the person, furnish no excuse.” 206

Pinkney’s arguments defending Hodges have been described as “a masterpiece of courage and manly determination in the maintenance of the just rights of the accused.” 207 Specifically, Pinkney argued against “reviving the ferocious and appalling doctrine of constructive treason” and stated forcefully “Gracious God! In the nineteenth century, to talk of constructive treason!” 208 Pinkney argued that the United States must “prove what they allege” in the indictment, that Hodges acted “wickedly, maliciously, and traitorously.” 209 As the introduction to the trial report stated that “[t]here is every reason to believe that Mr. Hodges was persecuted for high treason at the instigation of the government,” Pinkney also alleged that Hodges was tried either to be made an example of or to “bring down VENGEANCE upon him.” 210

4. Justice Duvall’s Opinion & the Jury

203 Id. at 25.
204 REPORT, supra note 2, at 27.
205 Id. at 21.
206 Id.
207 REPORT OF THE EIGHT ANNUAL MEETING OF THE MARYLAND STATE BAR ASSOCIATION HELD AT OCEAN CITY, MARYLAND 81 (1903-1904).
208 REPORT, supra note 2, at 25, 29.
210 REPORT, supra note 2, at 4, 29.
Glenn’s request for the court to instruct the jury on the law, following the conclusion of witness testimony, was met with criticism from Pinkney.\textsuperscript{211} Pinkney criticized Glenn for the timing of his request, stating the court, “after the case is closed . . . may indeed advise” if requested by the jury or if the court thought “it proper to do so without being asked.”\textsuperscript{212} Pinkney stated that “the established order to [the] trial [was] deserted” and in doing so “the court [was] called upon to mix itself in [jury] deliberations.”\textsuperscript{213} Further, Pinkney requested the court “go on in the customary and legal manner” and stated that if the court “g[a]ve the direction [he] would not submit to it” and “tell the jury that it is not law.”\textsuperscript{214}

Justice Duvall recognized that the case had not “gone through in the usual way” but offered his opinion on the law.\textsuperscript{215} Justice Duvall stated:

Hodges is accused of adhering to the enemy, and the overt act laid consists in the delivery of certain prisoners, and I am of opinion that he is guilty. When the act itself amounts to treason it involves the intention, and such was the character of this act. No threat of destruction of property will excuse or justify such an act; nothing but a threat of life, and that likely to be put into execution, will justify. The jury are not bound to conform to this opinion, because they have a right in all criminal cases to decide on the law and the facts.\textsuperscript{216}

Judge Houston followed that “he did not entirely agree with the chief justice in any, except the last remark.”\textsuperscript{217}

Pinkney responded to Justice Duvall’s delivery of his opinion of the law as he said he would and told the jury “[t]he opinion which the chief justice has just delivered is not . . . the law of this land.”\textsuperscript{218} Pinkney asserted that Justice Duvall’s interpretation of the law, that Hodges’ conduct in returning the prisoners “import[ed] the wicked intention charged by the indictment,”

\textsuperscript{211} Id. at 18–19.
\textsuperscript{212} Id. at 19 (emphasis in original).
\textsuperscript{213} Id. at 29.
\textsuperscript{214} Id. at 19.
\textsuperscript{215} Id. at 27.
\textsuperscript{216} REPORT, supra note 2, at 28.
\textsuperscript{217} Id.
\textsuperscript{218} Id. at 19, 28.
was constructive treason. He argued that such a broad interpretation of the doctrine of treason would be dangerous. For example, Pinkney questioned “[i]f the mere naked fact of delivery constitute the crime of treason, why not hang the man who goes under a flag of truce to return or exchange prisoners?” Pinkney also conjectured that Justice Duvall’s construction of the treason doctrine would result in General Robert Bowie being charged with treason and further “half of Prince George’s county would come within its baleful influence.”

Pinkney concluded his address to the jury by calling “upon [the] jury, as you are honorouable [sic] men, as you are just, as you value your liberties, as you prize your constitution, to say – and to say it promptly – that my client is NOT GUILTY.” According to the trial report “[t]he Jury, without hesitating a moment, rendered a verdict of – NOT GUILTY.”

C. Analysis

1. Why Did the Jury Find John Hodges Not Guilty?

In light of Justice Duvall’s “opinion on the law” that Hodges was guilty, why did the jury find Hodges not guilty? A number of reasons are possible, including the jury understood their role as deciders of the facts and the law and determined the law as they felt it should be applied to Hodges; the jury was faced with differing opinions of the law from Justice Duvall and Judge Houston and chose to apply Judge Houston’s interpretation of the law; Justice Duvall manipulated the order of the proceedings to encourage the jury to find Hodges not guilty; or the jury’s verdict is an example of early jury nullification.

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219 Id. at 32.
220 See id. at 23, 24, 31, 33, 34.
221 Id. at 33.
222 REPORT, supra note 2, at 34.
223 Id. at 35 (emphasis in original).
224 Id. (emphasis in original).
225 Id. at 27–28.
As discussed in Part I.B the jury in early America was viewed as “protecting ordinary individuals against government overreach[].” In this context, the jury in Hodges’ trial may have taken on the role John Adams advocated for when he stated the jury must safeguard “fundamental Principles” especially when “judges should give their Opinion to the jury” counter to “fundamental Principles.” In this light, the jury in Hodges’ trial may have found Justice Duvall’s opinion counter to “fundamental Principles” in particular, whether the United States had “prove[n] what they allege” in the indictment, that Hodges acted “wickedly, maliciously, and traitorously.” Further, the jury may have found Hodges not guilty based on a “verdict according to conscience.” Even Justice Duvall recognized the jury was “not bound to conform to [his] opinion, because they have a right . . . to decide on the law and the facts.”

According to the trial report, the court’s opinion on the law was not given after the case had closed, but was given before Pinkney’s final address to the jury. The trial report stated the “[c]ourt proceeded to pronounce an opinion” which is followed by Justice Duvall’s opinion that Hodges was guilty as well as Judge Houston’s opinion that he “did not entirely agree with the chief justice in any, except the last remark.” This potentially indicates that the opinion of the court was divided and the jury’s role was to decide between the differing opinions of Justice Duvall and Judge Houston and applied Judge Houston’s opinion.

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226 Supra Part I.B; Blinka, supra note 38, at 136 (citing AKHIL AMAR, THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION 83–84 (Yale Univ. Press 1998)).
227 John Adams Diary, supra note 72.
229 See supra Part I.B; HALE, supra note 12, at 61 (quoting Comment, The Changing Role of the Jury in the Nineteenth Century, 74 YALE L.J. 170 (1964)).
230 REPORT, supra note 2, at 27–28.
231 Id.
232 Id.
233 Id. at 35.
Justice Duvall may have manipulated the order of the proceedings to encourage the jury to find Hodges not guilty. Justice Duvall knew Pinkney would “not submit to [the court’s opinion]” if the court did not proceed “in the customary and legal manner” and stated that if the court “g[a]ve the direction [he] would not submit to it” and “tell the jury that it is not law.” Justice Duvall may have purposefully stated his opinion outside of “the customary and legal manner” knowing Pinkney would disagree with his opinion and possibly provide a means for Justice Duvall to save face with the government while securing Hodges’ freedom.

The jury’s verdict in Hodges’ trial may be an example of early jury nullification. Jury nullification occurs when a jury “disregard[s] either the evidence presented or the instructions of the judge in order to reach a verdict based on their own consciences.” Though the term, jury nullification, was likely not in common usage until the twentieth century the concept was present in early American jurisprudence. For example, juries in northern states before the Civil War often acquitted abolitionists charged with helping slaves under the Fugitive Slave Laws despite overwhelming evidence of guilt. The jury’s decision to not follow Justice Duvall’s opinion and find Hodges not guilty of treason may be an example of early jury nullification.

2. Why was John Hodges Tried for Treason?

According to the trial report’s introduction “[t]here is every reason to believe Mr. Hodges was persecuted for high treason at the instigation of the government.” If this is correct, why did the government target Hodges, especially after the war had ended? Further, why was
Hodges tried for treason while others who acted in similar treasonous ways were not? Specifically, why were Alexandrians not charged with treason for surrendering naval supplies and other items to the British in August 1814?\(^{241}\) Additionally, why was Dr. William Beanes not charged with treason for “adhering to the enemy, giving him aid and comfort” for allowing British General Ross to stay in his home before the British burned Washington?\(^{242}\)

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In August 1814, the city of Alexandria, Virginia confronted a similar dilemma as John Hodges and the residents of Upper Marlboro confronted that same month. British gun boats threatened to destroy the city if terms of capitulation were not met. The terms of capitulation requested American ships and “all naval and ordinance stores” including “16,000 barrels of flour, 1,000 hogsheads of tobacco, 150 bales of cotton and some $5,000 worth of wine, sugar and other items.” The Common Council of Alexandria agreed to the terms in order to save Alexandria from destruction. Though Alexandrians were criticized for being part “of the disgraceful disasters that . . . overwhelmed” America, no one in Alexandria was charged with treason for “adhering to [the] enemies, giving them aid and comfort.”

As discussed in Part II.A, British General Robert Ross used Upper Marlboro physician, Dr. William Beanes’, home as a headquarters and to have a “council of war with Admiral

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244 HISTORY OF ALEXANDRIA, supra note 243; OCCUPATION OF ALEXANDRIA, supra note 241.
245 HISTORY OF ALEXANDRIA, supra note 243; OCCUPATION OF ALEXANDRIA, supra note 241.
246 HISTORY OF ALEXANDRIA, supra note 243; OCCUPATION OF ALEXANDRIA, supra note 241.
Cockburn.” There is no indication that Dr. Beanes tried to prevent General Ross’ use of his home. There is indication that Dr. Beanes was “disposed to treat [the British] as friends.”

Further, the record indicates General Ross felt Dr. Beanes “deceived and broke[] his faith” with him by taking part in the arrest of British soldiers. Given Dr. Beanes’ conspicuous acceptance of General Ross’ use of his home prior to the burning of Washington, why was Dr. Beanes not charged with treason for “adhering to [the] enemies, giving them aid and comfort”?

John Hodges may have been charged with treason, while others were not, because he was an easier target to make an example of. The same motivation that resulted in Fries’ conviction for treason in 1799, discussed in Part I.A.1, may have motivated the government to charge Hodges with treason. Specifically, convicting Hodges may have been desired to maintain “the stability of [the country’s] government” especially during the War of 1812; which Pinkney alluded to when he stated: “[a]s if the salvation of the state depended upon the conviction of this unfortunate man [Hodges].”

Charging the Common Council of Alexandria with treason was potentially politically and logistically difficult. Charging Dr. Beanes with treason was also potentially politically difficult and may have caused backlash against the government for charging “poor Dr. Beanes” who was

248 Magruder Jr., supra note 111, at 212.
249 See, e.g., id. at 220.
251 Id. at 220 (quoting Chief Justice Taney’s account of Dr. Beanes’ arrest).
252 U.S. CONST. art. III, § 3.
253 Supra Part I.A.1.
254 TO JOHN ADAMS FROM TIMOTHY PICKERING, supra note 52; REPORT, supra note 2, at 29. Pinkney further stated that “the district attorney has gone out of his way to bring down VENGEANCE upon him [Hodges].” It may be that Hodges was specifically targeted. Pinkney’s references to constructive treason may allude to the use of the treason doctrine to target Hodges as a political adversary of the government. More research is needed to expose any connections between Hodges and the government that could prove Hodges was specifically targeted. REPORT, supra note 2, at 29.
taken and “treated with indignity” by the British. Hodges may have been viewed as an easy target for the government to demonstrate it was not “too feeble to check the treason which is formed in the very heart of the people it affects to rule.”

**PART IV: IMPACTS OF THE CASE**

John Hodges’ treason trial ended in May 1815. The War of 1812 had officially ended three months prior on February 17, 1815 with ratification of the Treaty of Ghent. The individuals related to the crime and the case resumed their lives and America continued to grow and develop as a nation. Significant today is what the Hodges’ treason trial demonstrates about how the doctrine of treason has been used since the early 1800s as well as the changing role of the jury as deciders of the facts and the law.

**A. Changing Concepts of Treason in America**

Treason is the only crime defined in the U.S. Constitution. The narrow definition of treason has resulted in few treason cases. Specifically, since the founding of the nation treason charges have been brought less than forty times, most commonly during times of conflict such as the Civil War, World War II, and the War on Terrorism. The government has relied on other

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256 FROM LOUISA CATHERINE JOHNSON ADAMS TO JOHN QUINCY ADAMS, supra note 103.

257 REPORT, supra note 2, at 18; JOHN HODGES (OF THOMAS), supra note 3.

258 Hickey, supra note 15, at 298.

259 See Appendix.

260 See generally Appendix I, II, III, IV.


262 Theodore M. Vestal, Treason, SALEM PRESS ENCYCLOPEDIA (Jan. 2015).

federal laws, such as the Espionage Act of 1917, the Uniform Code of Military Justice, and the 2001 Patriot Act, to prosecute acts that might be considered treasonous.

Few treason cases have made it to the Supreme Court with the first treason case appealed to the Court in 1945. In 1945, the Supreme Court heard an appeal in the World War II treason case Cramer v. United States. Anthony Cramer was convicted of treason by the lower court due to his close relationship with Nazi saboteurs. The Supreme Court found no overt act of treason and reversed Cramer’s conviction. The last treason case heard by the Supreme Court was the 1952 World War II case Kawakita v. United States. The Court affirmed the defendant’s conviction on treason charges in Kawakita.

The rise of terrorism in the twenty-first century has renewed debate on how and if the treason doctrine may be applied to U.S. citizens assisting terrorist organizations such as al-Qaeda and the Islamic State of Iraq and the Levant (ISIL). For example, the government analyzed treason as a potential criminal charge against John Walker Lindh in 2001. Lindh, also known as the American Taliban, was ultimately charged with “engaging in a conspiracy . . . to kill nationals of the United States;” “providing, attempting to provide, and conspiring to provide

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264 18 U.S.C. § 792 et seq.
267 Vestal, supra note 262.
268 Podger, supra note 263.
269 Cramer v. United States, 325 U.S. 1 (1945); Podger, supra note 262; Vestal, supra note 261. See also Scott Bomboy, Treason Charges for Snowden Would Be Rare, Challenging, CONSTITUTION DAILY: BLOG OF THE NATIONAL CONSTITUTION CENTER (June 11, 2013) http://blog.constitutioncenter.org/2013/06/treason-charges-for-snowden-would-be-rare-challenging/.
270 Podger, supra note 263; Vestal, supra note 262. See also Bomboy, supra note 269.
271 Podger, supra note 263.; Vestal, supra note 262. See also Bomboy, supra note 269.
272 Kawakita v. United States, 343 U.S. 717 (1952); Vestal, supra note 262.
275 POSSIBLE CRIMINAL CHARGES, supra note 274.
material support and resources to . . . al-Qaeda and Harakat ul-Mujahideen;” and “engaging in prohibited transactions with the Taliban.”276 Lindh was not charged with treason most likely due to the difficulty of meeting the two witness rule required by the Constitution.277

Treason has been applied most recently in the terrorism case against Adam Yahiya Gadahn.278 The United States charged Gadahn with treason in 2006.279 Gadahn was the first American in over fifty years to be indicted for treason for providing aid and comfort to al-Qaeda.280 He was placed on the FBI’s most wanted list but was likely killed in January 2015 as part of a United States counterterrorism operation before he could be brought to trial.281

B. Changing Concepts of the Role of the Jury in American Jurisprudence

The jury’s role in American jurisprudence has continued to evolve since the time of Hodges’ trial.282 Changes have been spurred by shifting societal and political climates as well as changes in the legal system.283 Specifically, the jury as deciders of the facts and the law has changed dramatically.284 The Supreme Court’s decision in Sparf and Hansen v. United States in 1895 and recent Maryland specific decisions highlight the evolution of American juries.285

1. Sparf and Hansen v. United States286

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277 POSSIBLE CRIMINAL CHARGES, supra note 274.
279 Khatchadourian, supra note 278. See also MOST WANTED TERRORISTS: ADAM YAHIYA GADAHN, supra note 278.
280 Khatchadourian, supra note 278. See also MOST WANTED TERRORISTS: ADAM YAHIYA GADAHN, supra note 278.
282 See generally HALE, supra note 12; HANS & VIDMAR, supra note 64; Blinka, supra note 38.
283 HANS & VIDMAR, supra note 64, at 43–44.
284 See generally HALE, supra note 12; HANS & VIDMAR, supra note 64, at; Blinka, supra note 38.
286 156 U.S. 51 (1895).
The Supreme Court examined the jury’s role as deciders of the law in the case *Sparf and Hansen v. United States*. Justice John Marshall Harlan, writing for the majority, examined English and American legal history and doctrines and found nothing sanctioning the right of juries to judge the law or decide a case contrary to the court’s instructions. Justice Harlan feared giving juries too much latitude to decide the law lead to inconsistency and diminished individual liberties by creating a “government of men” not a “government of laws.” Specifically, Justice Harlan stated “[w]e must hold firmly to the doctrine that in the courts of the United States it is the duty of juries in criminal cases to take the law for the court and apply that law to the facts as they find them to be from evidence.”

In an over one-hundred page dissent, Justice Horace Gray criticized the majority’s opinion and stated that “[t]he judge, by instructing the jury that they were bound to accept the law as given to them by the court, denied their right to decide the law.” Further, Justice Gray harkened back to the concept of a “verdict according to conscience” when he stated “that the jury, upon the general issue of guilty or not guilty in a criminal case, have the right, as well as the power, to decide, according to their own judgment and consciences, all questions, whether of law or of fact, involved in that issue.” Despite the varying opinions of Justice Harlan and Justice Gray, the Court in *Sparf* ultimately “recognized that judges had no recourse if jurors acquitted in the face of overwhelming inculpatory evidence and law” recognizing the potential for jury nullification.

2. Maryland: The Unger Cases

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287 *Id.*
290 *Id.* at 102.
291 *Id.* at 113.
292 *Id.* at 114 (1895). *See supra* Part I.B.
In Maryland, until 1979 the judge could advise the jury that “[i]n the trial of all criminal cases the jury shall be the judge of the law as well as the facts.”\textsuperscript{294} The Court of Appeals in the 1979 case, \textit{Stevenson v. State}, held that a judge in a criminal trial may direct the jury that instructions on the law are advisory only to the “law of the crime” and “the legal effect of the evidence” but relating to all other points of law, such as the State’s burden of proof and a statute’s validity, the judge must instruct the jury that the judge’s instructions are binding.\textsuperscript{295} Specifically, the court stated:

Because of this division of the law-judging function between judge and jury, it is incumbent upon a trial judge to carefully delineate for the jury the following dichotomy: (i) that the jury, under Article 23, is the final arbiter of disputes as to the substantive “law of the crime,” as well as the “legal effect of the evidence,” and that any comments by the judge concerning these matters are advisory only; and (ii) that, by virtue of this same constitutional provision, all other aspects of law (e.g., the burden of proof, the requirement of unanimity, the validity of a statute) are beyond the jury’s pale, and that the judge’s comments on these matters are binding upon that body . . . the jury should be informed that the judge’s charge with regard to any other legal matter is binding and may not be disregarded by it.\textsuperscript{296}

The court in \textit{Stevenson} therefore clarified the limitation on the “jury’s Article 23 law-judging function” and narrowed the scope of the jury’s role as deciders of the law.\textsuperscript{297}

The court in \textit{Stevenson} did not determine whether the decision would have retroactive effect on cases tried before \textit{Stevenson} was decided.\textsuperscript{298} In 2012, the Court of Appeals decided

\textsuperscript{294} MD. CONST., Art. 23. An example of a jury instruction given before \textit{Stevenson} was decided is:

\begin{quote}
You, ladies and gentlemen, are the judges of not only the facts, as you are on every case, but on the law as well. It is your responsibility to determine for yourselves what the law is. Everything I say to you is advisory only. You are free to find the law to be other than what the court says it is. We have given you our best opinion about the matter but the final determination — that is solely in your hands.
\end{quote}

\text{Robert Siegal, From a Life Term to Life on the Outside: When Aging Felons Are Freed, NPR (Feb. 18, 2016, 3:32 PM) http://www.npr.org/2016/02/18/467057603/from-a-life-term-to-life-on-the-outside-when-aging-felons-are-freed.}


\textsuperscript{296} \textit{Id}. at 565.

\textsuperscript{297} \textit{Id}. at 570.

\textsuperscript{298} \textit{Id}; Siegal, \textit{supra} note 294.
Unger v. State and determined the court in Stevenson set forth a new state constitutional standard and that the standard is retroactive.\textsuperscript{299} Specifically, the court stated:

\begin{quote}
[T]he Stevenson and Montgomery\textsuperscript{300} opinions were intended by the Court in those cases to be fully retroactive. Stevenson and Montgomery were clearly intended to be retroactive because neither opinion purported to change the prior interpretation of Article 23. Apart from the Court’s intention in Stevenson and Montgomery, the new interpretation of Article 23 set forth in those opinions was retroactive under our cases. It is a well-established principle of Maryland law that a new interpretation of a constitutional provision or a statute is fully retroactive if that interpretation affects the integrity of the fact-finding process . . . A new interpretation of the jury’s role in a criminal case certainly could have an impact on the fact-finding function . . . Accordingly, Stevenson’s and Montgomery’s interpretation of Article 23 applies retroactively.\textsuperscript{301}
\end{quote}

Based on the decision in Unger approximately 250 incarcerated men and one woman were entitled to new trials.\textsuperscript{302} Some will be retried, others are offered resentencing.\textsuperscript{303} To date, over one-hundred incarcerated individuals effected by the Unger decisions have negotiated resentencing deals.\textsuperscript{304} Under negotiated resentencing prisoners accept guilt, waive future appeals, and are resentenced to time served.\textsuperscript{305}

Stevenson and Unger reflect a changing concept of the role of the jury as deciders of the law in the twentieth and twenty-first centuries. Specifically, these cases highlight issues with giving jurors too much autonomy to determine a “verdict according to conscience” especially in light of societal changes in America since the eighteenth and nineteenth centuries.\textsuperscript{306} For example, many of the prisoners entitled to new trials under

\textsuperscript{299} Unger v. State, 48 A.3d 242 (Md. 2012).
\textsuperscript{301} Unger, 48 A.3d at 261.
\textsuperscript{302} Unger was affirmed in the 2015 case State v. Waine, 122 A.3d 294 (Md. 2015). Siegal, supra note 294; Jason Fagone, Meet the Ungers, HUFFINGTON POST (May 17, 2016) http://highline.huffingtonpost.com/articles/en/meet-the-ungers/.
\textsuperscript{303} Siegal, supra note 294; Fagone, supra note 302.
\textsuperscript{304} Siegal, supra note 294; Fagone, supra note 302.
\textsuperscript{305} Siegal, supra note 294; Fagone, supra note 302.
the Unger decision are African American men.\textsuperscript{307} For many, they were unable to afford good representation and were convicted by juries of white men and women.\textsuperscript{308} Racial biases that may have informed jury decisions in the 1960s and 1970s were not the same civil rights issues when Adams’ wrote about the jury as protectors of “fundamental Principles.”\textsuperscript{309} These Maryland specific cases reflect the need to adapt the jury’s role to changing societal concerns.

CONCLUSION

The 1815 treason trial of John Hodges highlights early views of the treason doctrine and the role of the jury as deciders of the facts and the law. Examining Hodges’ trial in the context of the War of 1812 and the 1807 treason trial of Aaron Burr further highlights the part the treason doctrine and the jury played in maintaining “the stability of [the new country’s] government” and “protecting ordinary individuals against government overreach[].”\textsuperscript{310} Further, Hodges’ trial demonstrates the difficulty in reaching a conviction under the treason doctrine, a difficulty which has led to few cases of treason throughout U.S. history.\textsuperscript{311} Additionally, Hodges’ trial provides a counterpoint to current views of the jury’s role as deciders of facts and narrow role as deciders of the law, demonstrating the continued evolution of the jury in American jurisprudence.\textsuperscript{312}
APPENDIX

I. John Hodges

(December 6, 1763 – May 11, 1825)

John Hodges was born in Maryland on December 6, 1763 to Thomas Ramsey and Jemima Plummer Hodges. In 1799, Hodges married Rebecca Berry and they resided in Upper Marlboro, Maryland in a home named Darnall’s Chance. The couple had six children: Mary Ellen, Caroline, Cornelia, John, Mary, and Benjamin and were members of the Trinity Episcopal Church. Hodges was a lawyer and landowner in Prince George’s County, Maryland. Hodges owned a number of tracts of land throughout Prince George’s County, including Pentland Hills, purchased in 1820. As a landowner in Maryland in the early 1800s, Hodges was a slaveholder. Throughout his life he purchased, sold, and manumitted slaves. Hodges died on May 11, 2016.

315 JOHN HODGES (OF THOMAS), supra note 3.
316 PRINCE GEORGE’S COUNTY HISTORIC SITE SUMMARY SHEET, MARYLAND STATE ARCHIVES, http://msa.maryland.gov/megafile/msa/stagsere/se1/se5/019000/019100/019147/pdf/msa_se5_19147.pdf (last visited Nov. 11, 2016) (Hodges’ son Benjamin built a home and lived on the property beginning in the 1830s); JOHN HODGES (OF THOMAS), supra note 3.
317 JOHN HODGES (OF THOMAS), supra note 3.
318 Id.
319 Id.
1825. He is interred at *Omaha Hill*, the Hodges family cemetery in Prince George’s County, Maryland.


**II. Dr. William Beanes (January 24, 1749 – October 12, 1828)**

Dr. William Beanes was born at Brooke Ridge, in Prince George’s County, Maryland on January 24, 1749. Dr. Beanes likely apprenticed with a local physician since there was no medical school in America at this time. Dr. Beanes was a founding member of the Medical and Chirurgical Faculty of Maryland, a precursor to the Maryland State Medical Board.

In November 1773 Dr. Beanes married Sarah Hawkins Hanson. Sarah Hawkins Hanson was the niece of John Hanson, president of the First Continental Congress. This connection to John Hanson resulted in Dr. Beanes being asked to store Maryland State Records on his property twice.

During the Revolutionary War, Dr. Beanes worked as a surgeon at the General Hospital in Philadelphia. In 1779, he purchased land in Upper Marlboro, Maryland from William Sprigg Bowie and built a home. Beanes, like John Hodges, was a member of the Trinity...

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320 *Id.*
322 *Magruder Jr., supra* note 111, at 209; *Fielding, supra* note 242.
324 *Id.* at 210.
325 *Id.* at 209.
327 *Arnold, supra* note 326.
329 *Id.* at 210.
Episcopal Church in Upper Marlboro. After Dr. Beanes was released by the British in 1814 he returned to Upper Marlboro and lived the remainder of his life at his home on Academy Hill. Dr. Beanes passed away on October 12, 1828.

Dr. William Beanes and the “Star Spangled Banner”

Despite the return of British soldiers to the British military, Dr. Beanes, was not freed with Dr. Hill and Mr. Weems. The British kept Dr. Beanes as the main “culprit” who instigated the arrest of the British soldiers. Francis Scott Key was asked to help negotiate Dr. Beanes’ release. This placed Key in the Baltimore area when Ft. McHenry was bombarded in September 1814 and ultimately inspired Key’s writing The Star Spangled Banner.


III. Justice Gabriel Duvall

330 Id. at 220.
331 Id. at 222.
332 Id.
333 Id. at 217.
334 Magruder Jr., supra note 111, at 219.
335 LETTER FROM FRANCIS SCOTT KEY TO JOHN RANDOLPH OF ROANOKE, supra note 255; Magruder Jr., supra note 111, at 218–19.
336 LETTER FROM FRANCIS SCOTT KEY TO JOHN RANDOLPH OF ROANOKE, supra note 255; Magruder Jr., supra note 111, at 218–19.
Justice Gabriel Duvall was a native of Prince George’s County, Maryland. Duvall studied law and was admitted to the bar in 1778. He served on the Maryland State Council and the Maryland House of Delegates before being elected to the United States House of Representatives. While in the House of Representatives, Duvall associated with James Madison and Albert Gallatin. Duvall’s connection to Gallatin helped him secure the position of comptroller of the Treasury and in 1811 Madison appointed Duvall to the Supreme Court. Duvall served on the Court until 1835 when he resigned due to deafness.

Duvall has been called "The Most Insignificant Justice." This view is based largely on Duvall having only given one opinion in constitutional cases during his time on the Court and that this one opinion was "DuvALL, Justice, dissented." David Currie, in his analysis of Duvall as the “Most Insignificant Justice” states that Duvall’s “Pages Per Year” output for his time on the Court was “eight ten-thousandths of a page per year.” Duvall was also criticized for allowing himself to be dominated by lawyers, such as William Pinkney.

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339 GABRIEL DUVALL (1752-1844), supra note 337; OYEZ, supra note 338.
341 GABRIEL DUVALL (1752-1844), supra note 337; OYEZ, supra note 338.
342 GABRIEL DUVALL (1752-1844), supra note 337.
346 NEWMYER, supra note 37, at 321.
Duvall lived at his home Marietta in Prince George’s County until his death on March 6, 1844.\textsuperscript{347}

Duvall was buried next to his wife, Jane, and his horse.\textsuperscript{348}

Images:


IV. William Pinkney
(March 17, 1764 – February 25, 1822)

William Pinkney was born in Annapolis, Maryland in 1764.\textsuperscript{349} Pinkney was a Democratic-Republican elected in October 1788 to the Maryland House of Delegates\textsuperscript{350} He was

\textsuperscript{347} Gabriel Duvall (1752-1844), supra note 337; OYEZ, supra note 338.
elected to Congress in 1790. Pinkney “had a well-earned reputation as a self-centered individual” and was well known as a strong orator. William Wirt stated “he wielded the club of Hercules adorned with flowers”.

Thomas Jefferson selected Pinkney to assist James Monroe in negotiating with Britain in 1806 which resulted in the Monroe-Pinkney Treaty. The Treaty resulted in Britain agreeing to respect the United States neutral trading rights impacted by the Napoleonic War. The Treaty did not however impact Britain’s impressment of American sailors.

Pinkney felt the War of 1812 was “irreproachably just” and “he entered the military service with great ardor.” Pinkney was a Major in a battalion of riflemen during the War of 1812 and “while in the discharge of his duty, he was severely wounded in Bladensburg.”

Pinkney’s argument in United States v. Hodges have been described as “a masterpiece of courage and manly determination in the maintenance of the rights of the accused.” The argument is further described as:

The dual argument of Mr. Pinkney to the Court and jury forms a part of an episode in judicial history, which has no parallel since Thomas Erskine, at the trial of the Dean of St. Aspah withstood with respect and firmness what he regarded on the part of the court as an encroachment upon the province of the jury and the constitutional and legal rights of the client.

350 Id.
351 Id.
352 Killenbeck, supra note 7, at 105; 2 Gilbert John Clark, Life Sketches of Eminent Lawyers, American, English and Canadian: To Which Is Added Thoughts, Facts, and Facetiae 205 (1895).
353 Clark, supra note 352 (quoting William Wirt).
355 Id. at 14.
356 Id.
357 Id.; Clark, supra note 352.
358 Hickey, supra note 15, at 11.
360 Id.
Pinkney passed away in Washington, D.C. on February 25, 1822. He is buried in the Congressional Cemetery.


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361 *Biographical Directory of the U.S. Congress, supra* note 349.
362 *Id.*