

GEORGE EDMUND BADGER 1795-1866:
A NORTH CAROLINIAN'S LIFE IN POLITICS AND THE LAW

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In 1866, former North Carolina Governor and U.S. Senator William A. Graham stated that for forty years "in North Carolina, at least, [George Edmund Badger's] name was on every tongue. He was ... an eminent man.... [N]o man enjoyed more of the general confidence and favor of the people, as none had possessed in a higher degree their admiration."¹ A fellow member of the North Carolina Secession Convention of 1861 said of Badger, "He may have had his equals, but I do not believe that his superior as a lawyer, an orator, a scholar and a conversationalist lived in this generation. He was the greatest man I ever knew."² The Raleigh News and Observer echoed this sentiment when, in 1891, it declared that, "Taking him all in all, we think the consensus of opinion is that he was the greatest man North Carolina has produced."³

After examining Badger's career, one sees that these statements contain a great deal of truth. On the national plane, Badger was Secretary of the Navy during the Harrison-Tyler Administration, and served almost a decade in the United States Senate. Albert J. Beveridge has written that during the Kansas-Nebraska debates in 1854, Badger was "the ablest Whig then in public life."⁴ Also, for over ten years Badger was a top advocate before the United States Supreme Court, with President Millard Fillmore nominating him in 1853 for a seat upon that august body. Because of politics, though, the nomination failed by one vote; to this day

Badger is still the only sitting U.S. Senator ever to have been rejected by his own body for a seat upon the high court.

Badger's career on the state level is equally impressive. He served his native state as a legislator, Superior Court judge, and member of her Secession Convention. More important, though, were his roles as lawyer and politician. By arguing over 700 cases before the North Carolina Supreme Court, in addition to his work in the Federal and lower state courts, he came to be regarded as the "greatest lawyer in the State's history."⁵ Politically, he was one of the major leaders of the Whig party when it was dominant in North Carolina. Badger also possessed amazing conversational powers, and because of his knowledge of history, government, religion and literature, he was considered the state's great intellect.

Despite his talents and accomplishments, today George E. Badger is a forgotten man. No county or town is named for him, and there are no monuments erected in his honor. While the names of Clay, Calhoun and Webster are still learned by school children, their fellow Senator during the Compromise of 1850 does not even garner a footnote in most texts. Not even in William S. Powell's excellent new North Carolina Through Four Centuries does Badger receive mention.⁶ There has never been a published biography of Badger, and only one graduate student, Lawrence Foushee

London, has found his career interesting enough to merit study.⁷

In 1966, Zebulon Vance biographer Glenn Tucker wrote an article for the North Carolina Historical Review, "For the Want of a Scribe," in which he decried the lack of attention historians have given four antebellum North Carolina politicians: Badger, William A. Graham, Willie P. Mangum and Thomas L. Clingman.⁸ Yet of these four, only Badger has been entirely forgotten. Clingman published a collection of his own letters, speeches and essays, and recently there has been a flurry of activity regarding him.⁹ During the past forty years, the North Carolina Department of Archives and History has published the papers of Graham and Mangum, in seven and five volumes respectively.¹⁰ Unfortunately, Badger's papers have either been destroyed or lost, and his most elegant and stirring speeches were delivered not in legislative halls, but in obscure county courthouses.

Because of the paucity of information written about George E. Badger, this thesis will attempt to briefly describe his entire life. What will receive extensive coverage are areas of Badger's life which have heretofore received little study, for example his legal career within North Carolina. By contrast, Badger's national political career has been admirably documented in London's dissertation, and thus will not be covered in as much depth. Two events occurring during Badger's U.S. Senate career will

be closely examined, though: his reelection in 1848 and its role within North Carolina politics, and Badger's 1853 nomination to the United States Supreme Court.

A life of George E. Badger should interest several types of historians. For Nineteenth Century legal historians, a study of Badger necessarily involves an in-depth look at the North Carolina judicial system of the mid-1800s. Although Chief Justice Thomas Ruffin of the North Carolina Supreme Court is usually credited with being one of the great state court judges in American judicial history, his court is usually given little attention except on slavery matters. Despite being at least equal in judicial talent, the North Carolina court of Ruffin, William Gaston and J.J. Daniel loses the spotlight to Kent and his New York court, Shaw and his Massachusetts court, and Gibson and his Pennsylvania court.¹¹

Also, Badger's nomination to the U.S. Supreme Court and his subsequent rejection is an interesting chapter in that institution's history. During the Nineteenth Century, fully one-third of all nominees for the Court were rejected. Although all nominations to the high court have been catalogued and briefly described by Henry J. Abraham, no one has yet to conduct a full-scale study of any one Nineteenth Century rejection.¹² Badger's rejection is especially interesting because it involved at least three different

factors: the President's politics, the nominee's politics and geography.

Antebellum political historians should also be interested in Badger's career. For fifteen years he was a leader of the national Whig party, and thus came in close contact with statesmen such as Henry Clay, Daniel Webster and John J. Crittenden. In politics, Badger was a moderate who denounced states' rights and desired a strong national government -- in many ways he is the antithesis to the common conception of a Southern politician before the War.

Badger's active political career spanned the life of America's Second Party System, a period which is still the only time North Carolina has witnessed close two-party competition on all levels. Although the dynamics of the Old North State's parties and politics during this time have been impressively chronicled by Marc Kruman, many of her leading politicians have been virtually ignored by historians.¹³

Finally, this thesis should also appeal to anyone interested in North Carolina history. For over forty-five years, Badger was intimately involved in the state's highest political, judicial and social circles. To fully describe Badger's life, one must necessarily mention and discuss such state leaders as Thomas Ruffin, William Gaston, John Stanly, J.J. Daniel, Willie P. Mangum, Archibald Debow Murphey, William A. Graham, Edward Stanly, William Woods Holden,

Thomas L. Clingman and Bishop Levi Silliman Ives. One must also show how Badger and these men helped North Carolina develop as she did, and the lasting impact their contributions have had upon her.

Although there are many reasons for studying George Edmund Badger, the most compelling may be the man himself; he was a complex and fascinating individual. Besides being his state's foremost lawyer and leader of her dominant political party, he was also a man of great learning, not only on law and government, but also history, literature and, especially, religion. In addition, he could charm listeners for hours with his conversation, and his wit was considered immense. Yet he also had great eccentricities; despite being a politician, he cared not for public approbation, and looked down on the arts of the demagogue. His sharp satire stung friend and foe alike, and he could inspire great hatred. Overall, though, many of his contemporaries considered him among the greatest North Carolinians of all time. After intensively studying Badger for two years, this compliment seems merited.

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I. 1795-1813: Ancestry, Early Life and Education

George Edmund Badger was born in New Bern, North Carolina, on April 17, 1795. He was the only son of Thomas Badger (1766-1799) and Lydia Cogdell (1765-1836). His father was the sixth generation of the Badger family to live in America, being descended from Giles Badger who emigrated from England to Massachusetts around 1635. Thomas Badger was a native of Windham, Connecticut, who attended Yale and then removed to North Carolina. He taught school briefly in Lenoir County, and then studied law and commenced practice in New Bern. Badger soon came to be "regarded as a brilliant lawyer and one of the ablest men in the state," and in 1796 he represented New Bern in the state legislature. While attending court at Washington, North Carolina, in 1799, Badger contracted yellow fever and died at the age of thirty-three.¹

On June 6, 1793, Thomas Badger had married Lydia Cogdell of New Bern.² She was the daughter of Colonel Richard Cogdell and Lydia Duncan. Richard Cogdell (1724-1787) was an important merchant and politician in eastern North Carolina. Among the many offices he held were town alderman, justice of the peace, post-master, inspector of commodities for the port of New Bern, sheriff of Craven County, militia colonel, judge of the admiralty court, state legislator, member of the state council of safety and North Carolina state treasurer. Besides Lydia, the Cogdells'

children also included Ann, who married John Wright Stanly, and Susannah, whose second husband was Bela Badger, Thomas' brother.³ [For charts on Badger's ancestry and family, see Tables 1 and 2].

In 1783, Francisco de Miranda, "the 'Precursor' of the Independence Movement in Spanish America," visited New Bern and described the eighteen year old Lydia Cogdell as "one of the best-looking blondes with a florid complexion, that I have seen in America."⁴ She must have also been strong willed. When her husband did not return home as planned from his legal duties, she took a carriage and drove the thirty-five miles to Washington (N.C.). Upon discovering that her husband had taken ill and died, she wrapped his body and returned home with it to New Bern.⁵ Finding herself a thirty-four year old widow with three small children and limited means, she successfully raised each of them to maturity. Besides George, there was Elizabeth Ann (b. 1797), who married Ichabod Wetmore, long-time cashier of the state bank, and Frances Lucretia (1799-1822).⁶

George's earliest education began at home, where he was taught by his mother. According to a narrative she later wrote, her son cared little about learning until the age of seven, when she gave him a copy of Goldsmith's Animated Nature. This delighted him and from then on he manifested a great thirst for knowledge of all sorts.⁷

Shortly thereafter, he entered New Bern Academy where he studied under the Reverend Thomas Pitts Irving (d. 1818). Irving, a 1789 high honors graduate of the College of New Jersey (now Princeton), was rector of Christ [Episcopal] Church in New Bern for seventeen years (1796-1813), as well as principal of the Academy for twenty (1793-1813). Among Irving's earliest pupils was William Joseph Gaston (1778-1844), who followed his teacher's lead in graduating from the College of New Jersey and then became a noted lawyer, Congressman and state Supreme Court Justice. Among Badger's schoolmates were Francis Lister Hawks (1798-1866), famous in later years as both a lawyer and a divine, John Herritage Bryan (1798-1870), lawyer and U.S. Congressman, Richard Dobbs Spaight, Jr., (1796-1850), U.S. Congressman and Governor of North Carolina (1835-36), and, probably, Thomas Pollock Devereux (1793-1869), lawyer and wealthy planter.⁸

At the age of fifteen, Badger and his friend Thomas P. Devereux left New Bern and travelled to New Haven, Connecticut, where they entered Yale College, class of 1813. A classmate was future North Carolinian Elisha Mitchell (1793-1857), later a distinguished professor and explorer, who discovered the highest peak east of the Rockies.⁹

Badger's schooling at Yale was paid for by his uncle, Bela Badger, of Philadelphia.¹⁰ After successfully completing his freshman and sophomore years, Uncle Bela suddenly withdrew George's support and he was forced to

leave school and return home. Bela Badger's motives in withdrawing his patronage are a mystery.¹¹ While he may have been facing business reversals, a more obvious explanation would be that he was disappointed in his nephew's academic record.

It appears that despite showing flashes of academic brilliance, George E. Badger was not a disciplined student. According to what Thomas P. Devereux told Governor Graham fifty-five years later, Northern students regarded Badger "as a frolicsome youth averse to mathematics, and fond of novel-reading who gave no indications of superior endowments." Devereux, though, thought that his friend was "beyond dispute the first boy in his class, composed of seventy individuals, many of them distinguished men.

[He was not] a hard student of the prescribed course. Perhaps I ought to add that he was remiss in his college duties, but he was eager for information to a most wonderful degree, and among his fellow-students he exhibited the same intellectual superiority we have seen him so steadily maintain among men.¹²

Upon returning to New Bern, Badger began the study of law under his maternal first cousin, John Stanly.¹³ Stanly (1774-1833) was an influential politician and one of the leaders of the Federalist party in North Carolina. After attending the College of New Jersey, Stanly studied law with the encouragement of his uncle, Thomas Badger. He became active politically, and served many terms in the North Carolina House of Commons (1798-99, 1812-15, 1817-19, 1821,

1823-27). During two of these terms Stanly served as Speaker, and he also served two terms in the United States House (1801-03, 1809-11).¹⁴

Because of his strong Federalist ideology, Stanly was unable to get elected to the highest offices in the state.¹⁵ Still, he achieved a great reputation as a lawyer, orator and wit. Chief Justice John Marshall wrote to the famed North Carolina lawyer Archibald Debow Murphey:

I have known him ... in private, and it was not possible to be in his company, without noticing and being struck with his general talent, and most especially his vivacity, his wit, and his promptness. He appeared to be eminently endowed with a ready elocution, and almost intuitive perception of the subjects of discussion.¹⁶

After Stanly's death, William Gaston wrote, "He was indeed a great man, distinguished pre-eminently for acuteness of intellect, rapidity of concentration, [and] a bold and splendid eloquence."¹⁷ Yet Stanly is probably best known for his killing former Governor and signer of the U.S. Constitution Richard Dobbs Spaight, Sr., in their famous duel in 1802.¹⁸ Because of this affair, the state legislature enacted severe penalties for those involved in duels. Any participant became ineligible for any office of "trust, honor, or profit," and if one of the contestants died, the survivor and his second became subject to the death penalty.¹⁹ This law only applied to duels fought within the state, though, and thus could be easily circumvented.²⁰

While John Stanly survived his duel with Richard Dobbs Spaight, Sr., two of his brothers were not so lucky. Richard Dancy Stanly was killed in a duel in the West Indies about 1808.²¹ More tragic, though, was the death of Thomas Turner Stanly, in 1813.

Thomas Turner Stanly (1789-1813) was the youngest child of John Wright Stanly and Ann Cogdell. In 1809 he graduated from Princeton and began the study of law under his brother John. George E. Badger, their first cousin, joined this group several years later. In February, 1813, Thomas Stanly attended a dinner party given by William Gaston. At one point during the evening, Stanly wished to attract the attention of a young lady, Lucy Hawkins, seated across from him. To do this, he flipped a small piece of cake at her which accidentally fell into a cup of tea. This caused the tea to splash on Miss Hawkins' dress and/or on the vest of the person seated next to her, Louis Debonair Henry (1788-1846), Thomas Stanly's good friend and Princeton classmate. Miss Hawkins, sister of the then current Governor, William Hawkins, turned to Henry and asked, "Do you stand that?" Somehow out of this ridiculously trivial incident, Henry challenged Stanly to a duel which the latter, on his brother John's advice, accepted.²²

Stanly chose his seventeen year old first cousin, George E. Badger, to be his second, and on February 14, 1813, they travelled across the state line to a spot just

south of Suffolk, Virginia, to do battle.²³ On the first fire Henry lost a finger, while Stanly lost his life, being shot through the heart.²⁴

Thomas Stanly's death caused much grief in his family. Badger's mother wrote that her nephew was "A promising young man much lamented and never to be forgotten," and the local newspaper carried a long obituary.²⁵ As for the victor, he was able to win the hand of Lucy Hawkins. Also, Henry later served as Speaker of the North Carolina House of Commons, and in 1842 he was the unsuccessful Democratic nominee for governor. He was haunted by the duel, though, for during the rest of his life he would never sleep alone in an unlighted room.²⁶

As for Badger, he must have been horrified to see his cousin killed before his own eyes. Despite having a bad temper, Badger never fought a duel, nor, after this, did he ever play a role in one. In 1848 when Congressman Thomas L. Clingman implied that Badger was a liar, Congressman David Outlaw, observing the fray from the sidelines, wrote his wife that "no bloodshed will be the result[,] for Mr. Badger from principle as well as constitutional aversion to such things is a non-combatant."²⁷

In addition to his distaste for duelling, much of George E. Badger's personal and political philosophy must have been formed while growing up in New Bern. New Bern, North Carolina's capitol before the Revolution, was a

bustling port city on the Neuse River, with easy access to the Pamlico Sound and then the Atlantic. With a constant trade not only to the Northern states, but also overseas, her streets had an air more cosmopolitan than provincial. The town possessed a theatre and a "Thespian corps," and her most privileged sons were educated at Princeton and Yale. Because of the state and national leaders the town produced, the Stanlys, William Gaston, Edward Graham, John H. Bryan, Francis L. Hawks, Thomas P. Devereux, the Richard Dobbs Spaight, and others, she became known as a "modern Athens."²⁸

Politically, New Bern was one of the most Federalist towns in the South. In the ten Congressional elections between 1800 and 1820, New Bern sent a Federalist to Washington six times, twice sending John Stanly and twice William Gaston.²⁹ Such men saw the dead Washington as their philosophical leader, not Thomas Jefferson. They were in favor of the Federal Judiciary Act of 1801, rechartering the National Bank, the rights of the propertied classes, and the "godly precepts of Washington." They opposed Jefferson's embargo, the War of 1812, and the "French politics" of Jefferson and the Republicans.³⁰

Federalists in North Carolina suffered a major setback in the elections of 1803, and this caused some, like their leader former Governor William Richardson Davie, to completely give up hope and retire from politics.³¹ The

party rebounded, though, and had considerable strength in certain areas until they were tainted by the actions of their Northern brethren at the Hartford Convention.³² After the War of 1812, while the party across the state suffered a slow death, in New Bern it was alive and well. Federalists represented New Bern's district in the U.S. House from 1813 to 1821, and they annually sent Stanly and/or Gaston to the state legislature, many times unopposed.³³ As late as 1824, John Stanly could proudly state, "For myself, I thank God, I can say I am still a Federalist."³⁴

It is also enlightening to look at race relations in New Bern. The town had one of the largest contingents of free blacks found anywhere in the South. Out of approximately 300 voters in the town, it was said that fifty or more were free Negroes.³⁵ While some were considered idle and "worthless," others ran prosperous businesses. Among their ranks were merchants, barbers, tailors, bricklayers and butchers. John C. Stanly was a free black who owned several plantations and a considerable number of slaves. He was described as a "man of dignified presence, [who] lived in fashionable style, his sons and daughters being well educated.... No citizen of Newbern would hesitate to walk the streets with him."³⁶

Free Negroes could vote in North Carolina until 1835, when a new constitution denied them this right. In New Bern, the fifty free black voters played pivotal roles in

local elections. An observer fifty years later recalled seeing "Messrs. Stanly, Gaston, Hawks, Spaight, E.E. Graham and other candidates paying special civilities to the colored voters."³⁷ At the polls, though, the free blacks usually uniformly voted Federalist. William Gaston and John Stanly each owed several of their victories to the free blacks, and they did not forget them.³⁸

In 1825 a bill was introduced in the North Carolina legislature proposing to close the state's borders to free Negroes. John Stanly spoke against it, and this upset several of his fellow legislators. State Senator Bartlett Yancey wrote to then U.S. Congressman Willie P. Mangum:

The infernal spirit of emancipation, generated by Colonizing & emancipating societies, is greatly felt in this State, and so is the free negro suffrage in many Counties & almost all the towns - If the people of this State are not more awake to their rights and interest on this subject, a few years more will produce an influence here, greatly to be lamented and feared.... In the discussion in the legislature, upon the Bill to prohibit the migration into the State of free negroes, Stanly supported the principle of the proposition of Mr. [Rufus] King, openly in debate, declaring "that negroes had the same God, & the same Redeemer of white has," which though literally true, serves to show the slang employed on the question.³⁹

When the Constitutional Convention of 1835 denied free blacks the right to vote, by a vote of sixty-six to sixty-one, William Gaston strongly objected. In debate he reasoned that "a person of that class, who possessed a freehold, was an honest man, and perhaps a Christian ... should not be politically excommunicated, and have an

additional mark of degradation fixed upon him, solely on account of his color."⁴⁰

As for slavery, many of New Bern's most prominent citizens were also large slaveowners. Badger's lifelong friend, Thomas P. Devereux, for instance, inherited approximately fifteen hundred slaves from his uncle, George Pollock.⁴¹ Yet New Bern's Federalist leaders saw slavery not as a positive good, but as an evil. In 1823 John Stanly called slavery a "curse," while William Gaston went even further.⁴² Gaston, an owner of over 200 slaves himself, in 1832 addressed the students of the University of North Carolina on the subject. He warned them that they would have the long neglected duty "of providing for the mitigation, and (is it too much to hope for in North Carolina?) for the ultimate extirpation of the worst evil that afflicts the southern part of our confederacy.

Full well do you know to what I refer, for on this subject there is, with all of us, a morbid sensitiveness which gives warning even of an approach to it. Disguise the truth as we may, and throw the blame where we will, it is slavery which, more than any other cause, keeps us back in the career of improvement. It stifles industry and represses enterprise - it is fatal to economy and providence, it discourages skill, impairs our strength as a community, and poisons morals at the fountain-head.⁴³

Thus George Badger grew up in an environment quite different from most North Carolinians. New Bern was a commercial town whose livelihood depended on interstate and international trade. Culture was found there, as was racial

moderation. Politically, she rejected the states rights Jeffersonianism of such North Carolina leaders as Nathaniel Macon, and instead embraced the nationalistic Federalism of Stanly and Gaston.

Badger's own family must have also influenced him greatly. All of his father's family was from the North, with his paternal grandparents living well into the 1820s.⁴⁴ Also, his maternal grandmother was originally from Massachusetts.⁴⁵ More important than the geographical distribution of his ancestors, though, was the fact that his first cousin, law teacher and mentor was John Stanly. As is evidenced by Badger's career, it is without doubt that much of John Stanly's philosophy rubbed off onto his young pupil.

II. 1813-1825: Soldier, Legislator, Barrister and Judge

While studying law under his cousin in 1813, George E. Badger received a small taste of the military life. The War of 1812 was unpopular with Federalists everywhere, and this included New Bern. When William Gaston ran for Congress in 1813, he declared in a circular that the war "was forbidden by our Interest" and "from the honour and fair character of the Nation, nothing could be more abhorrent."¹ Badger must have shared some of these sentiments, for in 1849 former U.S. Senator Bedford Brown wrote to John J. Crittenden, "that Mr. Badger was a bitter partisan of the federalists of 1812 who opposed the war with England, a party as violent as those of Boston."²

Yet North Carolina Federalists were different from their Northern brethren in that they could not stomach talk of disunion. When news of the Hartford Convention of 1814 spread southward, John Stanly wrote William Gaston:

The severance of the Union is an evil of such magnitude, that I cannot comprehend any man of standing & influence will meet the responsibility of recommending such a resort - weighty as are the evils & curses of Madison's administration, those of disunion would be so much more awful, that I will not yet believe that the patriots of New England contemplate any such resort.³

Also, it is important to note that once they were threatened with invasion, all North Carolinians, both Republicans and Federalists, rushed to help defend their state. This happened in the summer of 1813 when it was

feared that the British would invade eastern North Carolina. In July, Governor William Hawkins called out the state militia and commanded an expedition to tour and strengthen coastal fortifications. Badger joined this expedition, and served as an aide-de-camp to General Calvin Jones, with the rank of Major. The British did not attack, and within several weeks everything returned to normal.⁴

Many years later Badger could laugh about his two weeks of military service. Around 1856 Congress passed a pension bill giving certain War of 1812 veterans a land warrant and a silver pitcher. With characteristic sarcasm, irony and humor, Badger wrote to his good friend John J. Crittenden inquiring about these items due him.

Not having heard anything respecting my wife's land warrant and fearing therefore that the silver pitcher so justly due to her as the reward of merit is in some danger of not turning up, I send you the official certificate of our comptroller shewing my long and arduous services for the full term of fourteen days during the times which "tried mens' souls." Pray have it transmitted to the Commissioner, with some proper Comments upon the duty of speed in awarding to an old soldier, what if he does not speedily receive it, he may not live to enjoy. Let not the charge of ingratitude rest upon our Country!⁵

A little over a month later, he wrote Crittenden again in much the same vein.

Last night I received the Land Warrant and today I have had all the necessary papers prepared according to the instructions sent. It is inclosed. Also a note of my wife to Mrs. Crittenden explaining her wishes as to the disposition of the bounty which a grateful country has with singular discrimination awarded to my

distinguished merits in the "times that tried men's souls."

Could not an engraving be executed on the pitcher representing a* handsome young man of eighteen mounted on a finelooking mere with a long switch tail and a paunch large enough to suggest the speedy appearance of a colt or two, riding with stern resolution, through a storm, not of bullets but, of rain[,] thunder and lightning to meet his country's foes, and not at all daunted though he knew them to be within one hundred and fifty or two hundred miles of him? And could not an inscription be added, say for instance the name given by our friend Sir Dugald Dalgetty to the horse Montrose presented to him, on the field of battle: "Loyalty's Reward," or some other pretty conceit in the living or the dead languages. However I do not insist on this. It is an idle vanity at best and I am not vain, of my military services at all events.⁶

*that's me

After his "arduous" war effort, Badger resumed the study of law, and in the summer of 1814 he was licensed to practice in the County courts. He was then only nineteen, two years under the required age, but due to his family's straitened financial situation, as well as his own abilities, the age requirement was waived. The next year he was licensed to appear before the Superior Courts.⁷ Around this time a vacancy occurred in the office of state Solicitor for the district around New Bern, and Badger was given this position for the following circuit.⁸

Badger's first major political activity occurred in 1816 when, at the age of twenty-one, he won a seat in the North Carolina House of Commons. He ran for the New Bern seat as a Federalist, and was unopposed.⁹ Upon entering the House, Badger was appointed to the Judiciary, Elections and

Finance Committees.¹⁰ It has been said that despite his young age and political inexperience, he made quite a showing in the Commons.¹¹ Governor Charles Manly distinctly remembered Badger's appearance in Raleigh:

He came here a boy, the youngest man in the Assembly, though of rare promise and attainments, extraordinary colloquial ability and fine debating power, and instantly took a position that no other man had known or thought - like a meteor that had shot down among them, no one knowing from whence it came.¹²

One of the persons whom Badger met and befriended in the Commons was its Speaker, Thomas Ruffin (1787-1870). Ruffin, then only twenty-nine himself, was a native Virginian who had graduated from Princeton in 1805. He then studied law under Archibald Debow Murphey, and was first elected to the Commons in 1813.¹³ Ruffin and Badger formed "a warm friendship which lasted all their lives," with the former "discovering in Mr. Badger a congenial spirit, alike emulous with himself of liberal culture and professional distinction."¹⁴ On December 16, 1816, the legislature elected Ruffin a Judge on the Superior Court, and Badger introduced a resolution that "the thanks of this House are due to the honorable Thomas Ruffin, late Speaker of this House, for the impartiality, intelligence and industry with which he discharged the duties of the chair."¹⁵

Upon ascending the bench, Ruffin asked Badger if he would move to Hillsborough and take up his [Ruffin's] extensive law practice.¹⁶ Badger probably replied

enthusiastically, but mentioned that he must first get his mother's permission. On January 20, 1817, he wrote to Ruffin from New Bern:

I arrived here this morning and am happy in being able to inform you that my mother has no objection to the proposed change in the place of residence. I shall leave this place for Hillsborough on Monday next and unless prevented by accident shall be with you on the Thursday following.

I cannot conclude without assuring you that I feel grateful for the good opinion of me which prompted your offer to put your business under my care, and pledging myself that if the most persevering attention on my part will avail anything you shall never have cause to regret your confidence.¹⁷

Badger was soon at work and proving that Ruffin had little cause for regret. In April, Archibald Debow Murphey wrote his former pupil Ruffin that "Mr. Badger acquitted himself handsomely at Hillsboro', and has given very general Satisfaction to Your Clients." Murphey also noted that he had expected to see Badger when the court convened in Salisbury, but due to the death of Dr. Henry Chambers of Rowan County, a fellow member of the legislature of 1816, Badger had decided not to attend. Murphey added, "Perhaps Caswell will be a better Court for him."¹⁸

These last lines show that Badger's practice took him through a large part of the state. Salisbury, in Rowan County, was then considered in the western section of the state, it being nearly 100 miles from Hillsborough, and 220 miles from New Bern. [See map 1 for the North Carolina Counties in 1800]. In October Murphey again wrote Ruffin,

this time from "Greensborough," and his letter again shows the wide circuit they followed, as well as Murphey's fondness for Badger:

Our friend Badger is with us. He fell in at Salisbury and will go on to Rockingham. I hope he will meet with encouragement in this Part of his Circuit. I have had him at my House, and shall take him there Again as soon as possible.¹⁹

Due to muddy roads and swollen streams, traveling from county to county to attend sessions of the Superior court could be hard and dangerous work.²⁰ Badger himself must have encountered many such obstacles. In 1818 he wrote Ruffin about one of his travails:

We passed Flat River the next morning, though it was quite deep and rising rapidly, but found Napper Reeds Creek unpassable - So determining to follow the precept of my Lord Chesterfield on one occasion at least, we did what must be done with as good a grace as possible and turning up to Doct. Bullock's we made ourselves comfortable there until next morning.²¹

When Badger and his fellow travelers, William Norwood and Frederick Nash, finally arrived at the courthouse, they found that the judge had been detained also by swollen streams. This delay caused the court to be in session one day longer than planned, finally adjourning on a Saturday night. Still, Badger wrote that he had "made a good Court, returned, 150 dollars, better off than I went and only wish it may be ominous of the rest of the Circuit."²²

In this same letter, Badger also noted a change in his plans:

I believe I shall not visit Salisbury this Spring. The cases in Granville Sup. Court relating to Vinkler Jones while having been removed to Franklin, and a good fee having been offered me in two other cases in the latter county, I think it better to go there. 150 dollars are more than I can expect at Rowan.²³

Instead of the pecuniary advantage, though, the main reason Badger chose to attend court at Franklin rather than Rowan was that he would "escape Judge D." Badger wrote Ruffin a long diatribe "visiting my spleen on poor Judge D."²⁴ This is interesting for two reasons. First, it shows Badger's early ideas on those traits necessary in a lawyer or judge, especially elocution, or "the power of speaking so as to be understood." Second, the object of Badger's venom, then Superior Court Judge Joseph John Daniel (1783-1848), would long play a role in Badger's legal career, being a member of the North Carolina Supreme Court for sixteen years (1832-1848).²⁵ Badger had this to say about the judge:

If ever Heaven cursed a man with a most ungraceful utterance of most unintelligible expressions that man is D. Indeed, my dear Sir, what ever may be said of the value and importance of legal learning, I shall ever believe that the power of speaking so as to be understood, is the most important faculty either in a Judge or an Advocate. Of what avail is the clearest Judgment which arrives with the certainty of demonstration at a just conclusion, if the ability to convey that conclusion and the process of reasoning which leads to it, to the minds of the others be wanting? Whatever may be the other qualifications of J. Daniel, he is certainly most conspicuously deficient in this form of utterance. He seems to me always like a full bottle, which in emptying gurgles and sputters, drop by drop, wanting alike the clearness and smoothness of a gentle stream and the dignity and force of the dashing torrent. He never gets at the right end of his subject, and

unfortunately he seems to be entirely unconscious of the difficulty under which he labors. Instead of accommodating himself to the conformation of his mind and voice by stating in as few words as possible what is essential to explain the subject of which he is speaking, he seems always laboring to make a display, begins at a distance from his subject and travels towards it in such an inconvenient gait and by such circuitous routs that he either becomes bewildered and fails to reach it at all, or reaches it at last not only wearied himself but having exhausted the patience of all who are in attendance on him. But this though in my opinion a capital blemish in him is not the only one. I set it up as a principle that a man who thinks clearly, will sometimes speak intelligibly. This he never does and I therefore conclude that he is deficient in that faculty which composes and distinguishes which we call judgment. The want of judgment makes memory, in him[,] a misfortune which in most men it is considered a most happy endowment. He has collected a confused mass of desultory information on a variety of subjects. If he were a man of levity, fancy or versatile powers, he would improve this information to embellish his conversation. If he were a man of Judgment he would make it useful at once to assist his own opinions and to carry his meaning with clearness and force by illustrations of his subject judiciously selected. But as he possesses neither, his conversation drags on with tedious difficulty, and his opinions neither attract attention by their elegance nor command respect by their wisdom. I know not whether I ought to ask your pardon for this free statement of what I conceive to be some of the capital blemishes of one of your Brethren. But when I write to you I must write what I think and what is uppermost.²⁶

It would be most interesting to know if Ruffin agreed with Badger's assessment of Daniel, especially considering that Ruffin and Daniel served together on the Supreme Court for sixteen years. Badger's views probably contained a great deal of truth in them. Without a doubt, Daniel was the least distinguished member of the Supreme Court when he

served with Ruffin and Gaston. Daniel possessed a great memory, but even his admirers admit that he was extraordinarily inarticulate. In an 1888 address to the members and bar of the North Carolina Supreme Court, President Kemp Plummer Battle of the University of North Carolina said of Daniel:

He had a large brain, but lacked ambition. To the business at hand he addressed himself with conscientious industry and rare ability. But he cared nothing for winning reputation by exhaustive discussions of collateral points not before the Court. He wrote not treatises on the general subject. He had a wonderful memory, probably a more extensive and accurate knowledge of history, especially of the law, than any man in the State, but he made no display and left no written record of it.... In private life he was singularly unostentatious and charitable and generous.... He is said not to have had any eloquence as an advocate, but made his way by learning and diligence.²⁷

Battle also relates that Daniel had another characteristic, that of cursing. At times this could lead to interesting situations. Once when Daniel was in church, he discovered that the only money he had was a five dollar gold piece. As the collection plate neared, Daniel asked Thomas Ruffin, who was seated next to him, if he had a quarter. When Ruffin shook his head, Daniel asked if he had a half-dollar. Again Ruffin shook his head, and Daniel then excitedly inquired about a dollar. Ruffin once again answered in the negative. When the collection plate was passed to Daniel, he slammed the gold piece into it, exclaiming, "Damn you, go!"²⁸

Badger's correspondence also includes another interesting passage concerning Daniel. In 1841 Badger wrote to his friend William A. Graham who had just taken his seat in the U.S. Senate. In closing his letter, Badger noted "two facts ... entitled to special notice for their novelty and importance." The first concerned the state Supreme Court receiving the right to appoint a Marshal of the Court. Badger then added:

The second is, that for several days past Judge Daniel has appeared and occupied his seat in Court with his hat on. Whether he has any thought of joining friend Mendenhall's Society of Friends or whether the change in his Judicial Costume has any connection with the defeat of his friend Van Buren I am unable to say.

Leaving you to account for it as you may, the fact cannot be denied.²⁹

Later in 1818, Badger married for the first time, to Rebecca Turner of Warrenton. She was the daughter of former Governor and U.S. Senator James Turner. Badger moved to his bride's hometown but the marriage was not long-lived; Rebecca Turner Badger died childless in 1824. Later in 1824, Badger wrote Ruffin that the time around his wife's death had been "the most trying period of my life."³⁰

Badger's increasing reputation within the state can be seen in an honor bestowed upon him in 1818. In November of that year, he wrote Archibald Debow Murphey suggesting that Dr. John Beckwith be named a trustee of the University of North Carolina. Beckwith (1785-1870) was a noted doctor who performed some of the earliest cataract operations within

the state. He was also married to Badger's first cousin, Margaret Cogdell Stanly. When the board met, though, the members did not select Beckwith, but instead chose Badger. He would serve on the board until 1844.³¹

In December 1818, Thomas Ruffin resigned his seat on the Superior Court, and it is likely that he and Badger worked closely together over the next two years. Robert Mebane wrote Ruffin on February 5, 1820, to request their representation:

A. - made a Verbal Contract with B. - for a lot in Haywood (Chatham City) - In consequence of unfair dealing, A, is not willing to comply with the said Verbal Contract. I am A, - and hereby employ You & George E. Badger Esq. to defend me, if I should be sued, (which I expect,.) Of this you will be pleased to inform M. Badger.³²

During this period, Badger's legal reputation continued to increase. In April of 1820, Badger and Henry A. Seawell represented a defendant accused of murder, in a much publicized trial. After mentioning the Attorney General's speech, the Raleigh Star commented that the defense attorneys replied at length, "and with that ability for which these learned and eloquent gentlemen are so justly distinguished."³³

In 1819, John Stanly began promoting his young cousin and protege for a seat upon the Superior Court. That year a vacancy arose and Stanly campaigned among his fellow legislators to elect Badger. Weldon Nathaniel Edwards, a leader of the Democratic party for over fifty years,

recalled that upon entering the legislature one day, John Stanly told him that he (Edwards) could help "elect a great judge. 'Who is he?' I enquired. 'George E. Badger,' he answered. I voted, however, with my party, as we had the strength to elect, and John R. Donnell was the choice."³⁴

Later that year, when John D. Toomer resigned from the bench, Stanly had another chance. He lobbied hard for his cousin, and Archibald Debow Murphey wrote Ruffin from Raleigh: "Judge Toomer has resigned - Mr. B - is talked of."³⁵ Unfortunately for Badger, one of John Stanly's bitter adversaries in the Commons, Duncan Cameron, decided to put up his own protege, Willie Person Mangum, for the seat. Cameron was one of the wealthiest and most influential men in the state, and, after a weekend of backroom maneuvering, he was able to get his man elected. Mangum (1792-1861) would later serve with Badger in the U.S. Senate.³⁶

The next year Mangum resigned his seat upon the bench, and on December 13, 1820, the legislature chose Badger to replace him. It is interesting to note that this was one of the few years when John Stanly was not in the House of Commons. By being elected when only twenty-five, Badger holds the mark for being the youngest judge in the state's history.³⁷ He was then living in Louisburg, county seat of Franklin County, where he had recently moved from Warrenton. One of the legislators from Franklin, William Moore, was a

friend of Badger's, and he rushed home to tell the good news. Governor Charles Manly was visiting in Louisburg at the time, and later he remembered, "the joy we all had in having a civic procession at night - men, women and children - rejoicing about the news."³⁸

As a Superior Court judge, Badger had to travel to all corners of the state. At this time, North Carolina was divided into six judicial circuits: Wilmington, New Bern, Edenton, Raleigh, Hillsborough and Morganton. Each circuit encompassed ten or eleven counties, and court would usually last a week in each county. There were two circuit-ridings each year, one in spring and one in fall, and the judges would decide amongst themselves which circuit each would attend.³⁹ Some circuits were thought better than others, with the ones "down east" being the worse, because of threats of disease. During one of Thomas Ruffin's stays on the Superior Court bench, Archibald Debow Murphey wrote him and asked, "Where will you go this Fall? If to the low Country, prepare yourself before you set out, by getting rid of all superfluous Bile."⁴⁰

During Badger's four and one-half years upon the bench, the Superior Court's membership did not change. Besides Badger, the judges were Daniel, Frederick Nash, John Paxton, John R. Donnell and William Norwood. Both Daniel and Nash later served on the state Supreme Court, with Nash replacing Thomas Ruffin as Chief Justice in 1852. Donnell and Norwood

were on the Superior bench for sixteen and eighteen years, respectively.⁴¹

Of Badger's performance upon the bench, there is not a great deal of information. Governor Graham has written that, "In this office he rode the circuits four years with admitted ability, candor and impartiality, evading no question and no duty; but he was sometimes thought to err from quickness of temper and too great readiness to assume responsibility.

His courtesy to the profession won him general esteem. The people, though sometimes murmuring at the severity of a sentence or a supposed arbitrary or whimsical order, regarded with equal wonder the promptness and force with which he discussed questions of law with the veterans of the bar, and the intelligent, amusing and instructive conversation with which he habitually entertained his acquaintances and associates.⁴²

Several authors mention a case from Edgecombe County that shows both Badger's impartiality, and also the possibility that people might murmur about his sentences. A free Negro had been accused of stealing and, instead of being tried in a court of law, he was given a severe whipping. The main perpetrators were a very wealthy landowner who had formerly served in both houses of the state legislature, a justice of the peace, the local constable, and several other leading citizens. The County Attorney courageously charged them and brought them before the Superior Court, where Badger lectured them on the Magna Carta and the Bill of Rights. Against great public opinion,

he heavily fined each participant (the former legislator having to pay \$1200), and he came very close to imprisoning several.⁴³ In this case Badger showed both that he was a strong proponent of the rule of law, and that he would uphold the rights of free blacks. It is interesting to wonder if Badger's decision would have been the same had he come from a different background.

While the above case was easily decided from the legal standpoint, others were not. In later years, Badger told Kemp Plummer Battle "that sometimes a law point was so exceedingly doubtful that he could not make up his mind which side was right.

In such perplexity he would secretly take a quarter of a dollar and toss it up. 'Heads for plaintiff, tails for defendant,' and decide by the result. It hurt no one as the defeated party had the right of appeal to the Supreme Court.⁴⁴

Because of the Panic of 1819, the financial situation in the early 1820s was not very good for some of North Carolina's most illustrious citizens. Archibald Debow Murphey suffered acute financial embarrassments, and became so heavily in debt that he had to sell off almost all of his extensive holdings. At one point he was in debt to Thomas Ruffin for \$34,000 and Ruffin had no other choice but to buy up Murphey's property, including his home plantation. Also, in several transactions Ruffin had been surety for his old law teacher, and Murphey's failure caused Ruffin severe economic difficulties.⁴⁵ George Badger had borrowed over

one thousand dollars from Ruffin, and when he heard of Murphey's and Ruffin's troubles in late 1821, he took the proceeds from a recent stock sale and sent a Ruffin a check for \$1000. He wrote that, "With regard to the residue of the sum I owe you I expect I shall be able in a short time to send you a check for that." Badger also added, "I cannot but deeply regret that I have it not in my power to step forward in your necessity and open a purse to you with the same ready kindness with which yours was always open to me." An earlier letter from Ruffin must have sounded a note of despair, for Badger wrote that he hoped neither Ruffin nor his wife were "of the number of those who 'are without hope in the world.'" As for himself, Badger wrote that, "I am in some degree convinced that the only subject of real concern in this life is so to live as to obtain a place in a better and immortal existence."⁴⁶

Compared to the pay of a first-rate lawyer practicing in the state's highest courts, the salary of a Superior Court judge was fairly small. In 1825, therefore, Badger left the bench to go into private practice. Shortly thereafter he wrote his friend Ruffin:

I left the Bench as you well know merely for the purpose of making money of which I am in great need not only for myself but for others whom I am bound to provide for by every tie sacred in morals and dear to affection. To discharge these obligations it is incumbent on me to consider the uncertainty of life and the small period, if I live, which is left me for active exertion to provide for ease and comfort in old age.⁴⁷

Badger wrote his letter of resignation to Governor Hutchins Gordon Burton on June 6, 1825.⁴⁸ Several days later, the Raleigh Register reported:

Yesterday, the Honorable George Badger, presented to the Governor the resignation of his office as one of the Judges of the Superior Court, which was accepted by his Excellency.

We learn that the Judge has resigned, with a view of resuming the practice of the law in the Supreme Court, and the Courts of the neighboring counties, and will for that purpose, establish himself in this city [Raleigh].⁴⁹

That judges resigned because of low pay was a fact upsetting to many people. One year after Badger quit the bench, Frederick Nash also left the bench for much the same reason. In an editorial captioned, "Another Judge resigned!," the editors of the Raleigh Register opined: "We trust that our Legislature will not suffer another session to pass without making the salary of our Judges such as will induce them to remain in office."⁵⁰

To take Badger's place, the legislature chose Ruffin. After his financial difficulties earlier in the decade, Ruffin worked extraordinarily hard to build up his practice. In this he was successful, for it is said that during this period, "his income was greater than that of any lawyer in the history of the State to 1871."⁵¹ Still, his health suffered, and friends were always urging him to either slow down or accept another judicial position. In 1824 Badger had written:

I have several times heard with regret that your health was feeble. I fear in your anxiety to

provide for a numerous and amiable family you are tasking yourself beyond your ability to bear and I wish it were in my power to prevail with you to give yourself some relaxation. It is certain that no pecuniary advantage could compensate your family for the loss of yourself.⁵²

When Ruffin agreed to take Badger's former seat, the latter wrote to Ruffin and told him to tell Mrs. Ruffin, "that if she regrets you going on the Bench the inference will be that she desires to be a widow."⁵³

As for Ruffin replacing Badger, one North Carolina historian has written that, "Never was a vacancy more completely filled. The greatest lawyer in the State's history made way for the greatest judicial intelligence. Badger was a great loss, but Ruffin as great a gain."⁵⁴

As he had in 1816, when Ruffin ascended the bench he offered Badger his extensive law practice. This time, though, Badger only agreed to take Ruffin's cases before the state Supreme Court. Badger wrote his friend: "Your business includes one side of every cause of importance in your Courts - and if I undertake it I shall find myself in the labor of business without its rewards - and for years shall lose the profits of my exertions in three of my best courts."⁵⁵ As will be seen below, even without Ruffin's lower court business, Badger stayed extremely busy at the bar during the next two decades.

Between 1825 and 1846, Badger spent the vast majority of his time practicing law. While he dabbled a little in politics, he served in only one office during this period,

United States Secretary of the Navy, and in that for only six months. It is during this twenty-one year period that Badger earned the reputation for being one of the greatest lawyers in North Carolina's history.

III. 1825-1846: Badger, The Lawyer

After resigning from the Superior Court bench in 1825, Badger moved to Raleigh and began practicing law. Except for his stays in Washington, the state capitol would be his home the rest of his life.¹ Upon first coming to Raleigh, Badger, then a widower, took up lodgings and formed a partnership with his boyhood friend, Francis L. Hawks. After attending Pitt's New Bern Academy, Hawks had graduated with honors from the University of North Carolina, in 1815. He then read law under John Stanly and William Gaston in New Bern, and later at Tapping Reeve's law school in Litchfield, Connecticut. In 1820 Hawks was appointed reporter for the North Carolina Supreme Court, holding this position for six years. He also served a term in the House of Commons.² The partnership ended the next year when Hawks left the law and entered the ministry.

Many years later, Hawks would recall that Badger "was in the habit of visiting until quite late in the evening," and during his absence, Hawks would look up authorities for the cases they would have the next day in court. He would place the books on a table before retiring for the night. When Badger returned, he would "drive a servant they owned jointly to bed, and then would set to work in earnest over his books.

Often breakfast time would find him at the table making up his cases, after a little preparation to which he would go, and from there to the supreme

court room, and as young as he was, direct learned judges in the way of the law.³

Soon after Badger resumed his practice, he was making a great name for himself at the bar. In January of 1826, William Robards wrote Thomas Ruffin:

On yesterday Badger delivered two able arguments - One on the question involved in the cause from Caswell between Stamps and Graves - Whether on a promissory note given by Graves for a debt of John W. Graves it was incumbent on the Plff to prove a legal consideration, it having been contended by Seawell that on every parole contract or contract not reduced to a specialty, the onus was on the Ptff and not the defendant. Mr. Seawell was very sanguine in his opening speech, but ask'd time till today to reply - today a message was received from him that he was sick. I am inclined to say that his indisposition is something like that produced in the Tar River Navigation case[,] this you must consider said in confidence - although the proposition is considered plain, yet the argument of Mr. Seawell created doubts untill removed by the light given to the case by Badger - the other in answer to Wilson in a case from the West. The question involving the decision of the Court in the case of Johnson vs Martin, whether the acquittal of the defendant on a warrant is evidence of the want of probable cause in an action for a malicious prosecution, Wilson contending that the decision was erroneous. I think he (B) has shown more than his usual perspicuity, this is saying a great deal of him.⁴

Several months earlier, a client of Archibald Debow Murphey's had written Murphey, and suggested that additional counsel be obtained, for Badger was on the other side:

Mr. Gaston and Seawell promised Mr. fr. Meinung in case of our wanting them, to act for us willingly too. Let me know dear Sir Your opinion about engaging them to Your assistance. I think we should spare nothing but do our best to get the old decree confirmed, having a strong antagonist in Mr. Badger who is engaged by the other side.⁵

If Badger was seen as a strong antagonist in 1825, this feeling would only increase during the next two decades. Over this period, Badger practiced in three different courts: the state Supreme Court, the state Superior Courts, and the Federal Circuit Court for the District of North Carolina. In order to understand Badger's great reputation as a lawyer, it is instructive to examine his career in each of these courts.

A. The North Carolina Supreme Court

The North Carolina Supreme Court was the highest state court in North Carolina, with its only cases being appeals from the state Superior Courts. It heard a wide variety of cases, civil and criminal, at law and in equity. The court met twice a year, in Raleigh, with sessions beginning on the second Monday in June and the last Monday in December.⁶ During each session, the court would decide anywhere from forty to a hundred cases.

The Court consisted of three judges, elected by the legislature. If the legislature were not in session, the governor could make an appointment with the consent of the Council of State, the appointment being subject to final approval by the legislature. Compared to the compensation of some of the lawyers practicing before the Court, the judges' pay was rather meager, \$2500 per annum.⁷ Still, the judges had the advantage of being able to stay in one place all year.

During the years under discussion, the judges of the Court were: John Louis Taylor (Chief Justice 1818-1829), Leonard Henderson (1818-1833, Chief Justice 1829-1833), John Hall (1818-1832), John De Rosset Toomer (1829), Thomas Ruffin (1829-1852, Chief Justice 1833-1852), Joseph John Daniel (1832-1848), William Gaston (1833-1844), and Frederick Nash (1844-1858).⁸

There were two eleven year periods when the Court's membership did not change: the Taylor Court with Henderson and Hall (1818-1829), and the Ruffin Court with Gaston and Daniel (1833-1844). This latter trio is especially famous, with one commentator stating that, "No state of the Union, perhaps, not even the United States, ever had a superior Bench; few ever had its equal."⁹ Justice Walter A. Montgomery of the North Carolina Supreme Court in 1903 called the Ruffin Court, "a court of which any nation in any age might be proud," while his fellow justice Robert M. Douglas proclaimed that the Ruffin Court, "has no superior here or elsewhere, either in the ability and integrity of judicial conduct or the purity of private life. No finer combination of judicial and individual character has ever existed upon any bench."¹⁰ Carl Swisher has written that Thomas Ruffin "as a state judge ranked in public estimation with Lemuel Shaw of Massachusetts and John G. Gibson of Pennsylvania," while Roscoe Pound has named Ruffin one of

the ten judges who rank first in American judicial history.¹¹

As for those who practiced before the Court, their names are, for the most part, synonymous with those of North Carolina's political leaders during this period. Men such as William Gaston, Henry A. Seawell, Gavin Hogg, William H. Haywood, Jr., William A. Graham, James Iredell, Jr., B.F. Moore, John H. Bryan, and Thomas P. Devereux battled before the Court. Yet, except for William Gaston in the years before he ascended the bench, probably none matched George E. Badger in the number of cases argued, or in the number of those argued that were important.

If one does not include the June 1841 term, when Badger was in Washington, between the June 1825 term and the June 1846 term, the Supreme Court decided 2410 cases. Of these, Badger appeared in 739, or 30.7%. He argued 27% of the legal cases, and a heavy 39.3% of those in equity. During twenty-four terms he argued over 30% of the cases before the Court, and at eleven terms he appeared in over 40%. Badger was exceptionally busy during the first ten years of this period. Between the June 1825 and December 1834 terms, he appeared in 340 of the Court's 877 cases, or 38.8%. [See Table 3 for the numbers, by terms, of the cases argued by Badger].¹²

While in a vast majority of these cases Badger appeared by himself, in some cases he had co-counsels. Those that

argued with Badger were some of the finest lawyers in the state. The following appeared with him before the Supreme Court at least five times:¹³

William H. Haywood, Jr.	56	Hugh Waddell	9
Thomas P. Devereux	27	Romulus M. Saunders	8
William Gaston	25	Moses Mordecai	8
James Iredell, Jr.	19	William Norwood	8
John H. Bryan	16	Patrick H. Winston	7
Henry A. Seawell	15	Robert Strange	7
Gavin Hogg	11	W.C. Stanly	6
Frederick Nash	10	Nathaniel Boyden	6
B.F. Moore	10	George C. Mendenhall	6
		William A. Graham	5

William Henry Haywood, Jr., (1801-1852) appeared before the Court for nearly thirty years and was one of its leading advocates. He was also a leader of the Democratic party, and served in the U.S. Senate from 1843 to 1846.¹⁴ Thomas P. Devereux was Badger's childhood friend and Yale classmate. From 1826 to 1839, he served as reporter for the Supreme Court, during the latter year quitting the practice of law in order to manage the vast estate left by an uncle.¹⁵ During the two decades under discussion, Gaston was only at the bar eight years with Badger, the former being elected to the Court in 1833.

James Iredell, Jr., (1788-1853) was the son and namesake of a Justice of the United States Supreme Court. The younger Iredell was Thomas Ruffin's roommate at Princeton, and later served as Governor, U.S. Senator, and reporter of the state Supreme Court (1840-1852).¹⁶ John H. Bryan was another of Badger's boyhood friends, and he was later a leader of the Whig party and a U.S. Congressman.

Henry A. Seawell (1774-1835) was twice a Superior Court judge, and has been called "one of the strongest criminal lawyers" in North Carolina history. Almost all of Badger's cases with Seawell were on the criminal side.¹⁷

Gavin Hogg (1788-1835) was also a noted criminal attorney, but his career was cut short by illness.¹⁸ Frederick Nash (1781-1858) was a Superior Court judge from 1818 to 1826, and again from 1836 to 1844, and was later a member of the state Supreme Court.¹⁹ Bartholomew Figures Moore (1801-1878) was a highly respected lawyer whose argument in the case State v. Will became very important in the law of slavery.²⁰

It is safe to say that Badger appeared against these lawyers many more times than he appeared with them. Although the numbers for the other lawyers have not been tabulated, it is known that William Gaston faced Badger seventy-four times in the Supreme Court between 1825 and 1833. During this period Gaston's workload was as heavy as Badger's, and of the two combined, at least one of them appeared in over half the Court's cases.²¹

While the number of cases he appeared in is indicative of Badger's abilities as a lawyer, it is also important to note the results of those cases. As far as numbers go, Badger seems to have won more than he lost. For example, of the twenty cases at law Badger argued during the June 1828 term, his clients appear to have won thirteen times, and

lost seven. For June 1829 his record is eight wins, five losses; June 1830, fifteen wins, five losses; June 1831, ten wins, five losses.²²

Yet these numbers cannot tell the whole story. During some cases Badger's arguments were so strong, and his opponent's so weak, that the judges stopped him before he was through.²³ At other times, despite heroic efforts, his clients lost. An example of this is the Kimbrough case, discussed below.

While Badger won some and lost others, his arguments no doubt helped mould the opinions of the judges on the Court. Weldon N. Edwards once recalled:

I have seen him unravel and dissect every part and parcel of the arguments or speeches of his adversaries which seemed to be clear and convincing before, and then re-weave them again in such a beautiful and harmonious manner that he would most invariably convince the spectators and jury, and often confuse the court as to the correctness of his conclusions, when they might be directly opposite of the plain law just read in their hearing. Thus he used to keep, when Ruffin, Gaston and Nash were on the bench of the supreme court, them constantly thinking and often, no doubt, warping their opinions, at the time at least, concerning the law, upon which perhaps they had never had a doubt before.²⁴

To get a better view of Badger's practice before the Court, as well as his own personal opinions on certain key issues, it is necessary to examine some of the cases he argued. At this time North Carolina was an overwhelmingly agrarian state, and it is not surprising that there were many cases such as State v. Jolly & Whitley, which decided

whether an owner of sheep which were killed by a neighbor's dog, could rightfully kill the dog.²⁵ While Badger argued such cases, he also participated in many of much greater importance, on topics ranging from emancipation to eminent domain.

George E. Badger was a Southerner and a slave-owner, and in no way could he be compared to a crusading abolitionist lawyer such as Salmon P. Chase. Yet, undoubtedly, Badger saw slavery as more a necessary evil than a positive good, and he was quite willing to uphold the rights of both slaves and free Negroes.

Shortly after the 1831 insurrection of Nat Turner, North Carolina's newspapers were full of stories about other supposed slave conspiracies. Five justices of the peace petitioned Governor Montford Stokes for a commission of Oyer and Terminer so that they could try several slaves charged with plotting an insurrection. Badger wrote the Governor, and suggested that he give no information to the newspapers about the incident, as they were bound to make gross and exaggerated reports. These in turn would needlessly alarm whites, thus causing more reports of plots and needless cruelty towards slaves. Badger wrote:

Such is the imprudence and inconsideration of editors, that this application will be soon blazoned forth in their papers and magnified into actual rebellion and murder. It is therefore respectfully suggested that no notice whatever ought to be taken of the matter in the public prints, or if possible, elsewhere.²⁶

As for Badger's own personal dealings with his slaves, it is known that he would allow them to purchase their freedom. In 1843 L.B. Hardin wrote to Senator Willie P. Mangum on behalf of a Waller Freeman, "who lately purchased his family from Mr. Badger."²⁷ Badger also befriended at least one free Negro, John Chavis.

Chavis (c. 1763-1838) is a fascinating individual. A Revolutionary War veteran, he attended Washington Academy (now Washington and Lee University), and probably received private tutoring from Dr. John Witherspoon, President of Princeton. For over thirty years, Chavis was a licensed Presbyterian preacher in Virginia and North Carolina, ministering to both white and black. He was best known, though, as a teacher, opening schools for both whites and free Negroes. He taught the children of many prominent white families in North Carolina, including the Mangums. In 1827 he wrote Willie P. Mangum that there was "an intimacy and a friendship subsisting between myself & Judge Badger."²⁸

Badger's attitudes of racial moderation can be seen in the cases he argued before the Supreme Court. In State v. Jesse, he was unafraid to go before the Court and argue procedural and evidential points in hopes of reversing a sentence of death imposed on a slave for the rape of a white woman.²⁹ While Badger was unsuccessful, and Jesse lost his life, a different result occurred in State v. Jim.

Jim, a slave, was indicted for assault with intent to commit a rape upon a white female, a crime which carried the death penalty. At his trial before the Superior Court, the only witness who directly testified as to the attack was Mary Rittenhouse, a woman "whose general moral character was seriously impeached." Rittenhouse's specific testimony was also impeached, there being "a material variance between her evidence on the trial of this indictment, and that given upon a former trial of the prisoner for the same offense." Nevertheless, the judge instructed the jury that while they might reject parts of Rittenhouse's testimony, they could accept whatever parts they believed. This they did, and Jim was convicted.

The case was appealed to the Supreme Court, although Jim had no counsel to represent him. Into this breach stepped Badger, who argued for the slave as amicus curiae. This was the only instance of an amicus curiae argument before the Court between 1825 and 1846. Badger argued that the proper instruction should have been "that if the Jury thought the witness had corruptly sworn false in any particular, they ought to disregard her testimony in toto," the maxim being falsum in uno, falsum in omnibus. Thomas P. Devereux, who was standing in for the Attorney General, agreed with Badger, and the Court reversed the Superior Court and ordered a new trial.³⁰

A case which shows Badger's concern for the rights of free blacks was State v. Oxendine. Charles Oxendine was a free Negro who was convicted of assault and battery and fined fifteen dollars, the amount of the costs of the prosecution. Oxendine was unable to pay this, so under a newly enacted (1831) act of the state legislature, applicable only to free Negroes, he was hired out to local planters and forced to work until he had acquired enough money to pay the fine. Before the Supreme Court, Badger and Robert Strange argued vehemently that the law was unconstitutional. The Court, though, found that the constitutional issue was not presented in this case. William Gaston, whose views probably coincided with Badger's, neatly sidestepped the issue by deciding for Oxendine on other grounds. The statute applied to those "convicted of criminal offenses," and in this case Oxendine had "submitted" himself to the court, a procedure whereby one puts oneself at the court's mercy, thereby implicitly confessing. Because Oxendine did not explicitly confess, nor was he found guilty by a jury, Gaston held that he was not truly "convicted," and thus did not have to be hired out.³¹

Badger was counsel in many important cases involving manumission. At this time in North Carolina, if a slave were to be given his freedom, his owner would have to post a bond guaranteeing that the slave would leave the state

within six months. The one exception to this rule was if the slave had performed "meritorious services." If so, upon a petition granted by the courts, he could stay within the state. Many questions arose when a deed of emancipation specified that a slave was to be freed at a specific time in the future, especially if it were a female slave and she had given birth after the deed had been written, but before she had gained her freedom. This question arose in Mayho v. Sears.

In 1805 in Virginia, John Moring executed a deed of manumission for several of his slaves. Included in this group was Polly, who was to be given her freedom on April 1, 1814. Before this time, Moring removed to North Carolina taking Polly with him, and Polly had given birth to a daughter. Around 1830, this daughter gave birth to a son, William Mayho. After her emancipation on April 1, 1814, Polly, "lived by herself and with her children and acted in every respect as a free woman, and she and her daughter and [William Mayho] were recognized in the neighborhood as free persons of color, and as such were recognized by the said Moring." In 1838, though, Moring claimed Mayho as his slave and sold him to one Edward Sears. Mayho, "by his next friend," sued to regain his freedom, and when the Superior Court ruled against him, he appealed to the Supreme Court.

Before the Supreme Court, Badger argued the case for Mayho, while Sears was represented by four of the best

lawyers in the state, William H. Haywood, Jr., Hugh Waddell, Romulus Saunders, and James Iredell, Jr. The case came down to one point: "whether the plaintiff's mother was upon her birth free, or became so before the birth of the plaintiff." Badger argued several theories, one being that Moring's deed had transformed Polly's condition from that of slavery into one of indentured servitude, but it was to no avail. The Court found that Mayho's mother had been born a slave, and so was Mayho. Thomas Ruffin, for the Court, wrote:

There is a natural inclination in the bosom of every judge to favor the side of freedom, and a strong sympathy with the plaintiff, and the other persons situated as he is, who have been allowed to think themselves free and act for so long a time as if they were; and, if we were permitted to decide this controversy according to our feelings, we should with promptness and pleasure pronounce our judgment for the plaintiff. But the court is to be guided by a different rule, the impartial and unyielding rule of the law.³²

Badger also argued several cases where, because of North Carolina's harsh emancipation law, slaves had not been freed, but had been given in trust to groups that would protect them, usually the Quakers. The most famous of these cases is Trustees of the Quaker Society of Contentnea v. Dickenson.

In Dickenson, the Court had to decide if members of a Quaker congregation could legally act as trustees for the congregation, when the res of the trusts was slaves, and in reality the slaves were being held not for the benefit of the church, but for the benefit of themselves (the slaves).

William Gaston argued for the Quakers, with Badger on the other side.

Gaston's main argument was that the question to be decided should be "is the trust good?," and this was not a question for a court of law, rather it should have been tried in equity. Badger, though, noted that the 1796 law incorporating religious societies gave trustees for the societies the authorization "to purchase, hold and receive, to the use and for the benefit of the Society, and for no other use." Thus, the true question to be answered was legal in nature, "does the estate [of slaves] pass at law?" The answer to this question would depend on whether the taking of the slaves was for the use and benefit of the Society; clearly the slaves were being held for the benefit of themselves, not the Society. Badger noted that other projects which everyone would agree were beneficial, such as foreign missions and establishing free schools, could also not pass under this law.

The Court split two to one, with Chief Justice Taylor and Judge Henderson agreeing with Badger, Hall with Gaston. While both the judges in the majority agreed with the strict legal points raised by Badger, what is interesting about this case is that Taylor probably based his decision more on certain policy arguments, arguments upon which Badger hardly touched. In concluding his opinion, the Chief Justice stated:

Upon the whole, my opinion is, that the Plaintiffs have no legal title, and although the province of this Court is to administer the law as they find it, without any regard to consequences, yet my judgement is in some degree fortified by the belief that a contrary decision would produce most, if not all, of the ill effects which the Legislature sought to avoid by the [stringent emancipation] act of 1777.

If that law could be eluded by transferring slaves to this Society, there is no foreseeing to what extent the mischief might be carried. Numerous collections of slaves, having nothing but the name, and working for their own benefit, in the view and under the continual observation of others who are compelled to labour for their owners, would naturally excite in the latter, discontent with their condition, encourage idleness and disobedience, and lead possibly in the course of human events to the most calamitous of all contests, a bellum servile.³³

Several years later a similar case arose, and this time Badger defended a group of Quaker trustees. In White v. White, Badger and his co-counsel argued that, while the trustees could not in their corporate capacity take the slaves, they did have a capacity to take them individually. The Court ruled that this could not have been the intention of the trustor, for if it was, it would have been a fraud upon the law. Nonetheless, Badger won this case on other grounds.³⁴

While serving in the United States Senate later in his career, Badger became nationally known for his opinions on constitutional law. Upon his death, one out-of-state newspaper wrote, "As a constitutional lawyer we think it no exaggeration to say that Mr. Badger has never been surpassed."³⁵ Although he did not have many constitutional

cases while practicing before the state courts, there were several. The most important, Hoke v. Henderson, became widely known for its holdings concerning judicial review and due process.

In 1806 the North Carolina legislature passed an act creating the office of clerk of the superior court in each county. The Superior Court judges would appoint the clerks, and they (the clerks) were to remain in office during "good behavior." In Lincoln County, Lawson Henderson was appointed to this position in April of 1807.

In 1832, the state legislature passed an act turning the office of superior court clerk into an elective position. The legislation made no mention of the clerks then holding office, but stated that all the seats would be up for election at the next general election.³⁶ Before the next election, Congressman James Graham wrote his brother William A. Graham:

We anticipate much confusion in this quarter next summer from the increased number of Elections created by the last Legislature. I believe all the old clerks will submit to the new law, but Maj. Henderson, I learn, intends to dispute the Power of the Legislature to vacate his office and present the question to the Court.³⁷

At the polls, John D. Hoke won the clerkship for Lincoln County. When the Superior Court next met in Lincoln, Hoke tried to enter into the office, and Henderson refused to leave. Judge William Norwood declared the 1832 law unconstitutional, and allowed Henderson to continue in

office.³⁸ From this Judgment Hoke appealed to the Supreme Court.

When the Court met in December 1833, Henderson was represented by Badger; James Iredell, Jr., and Thomas P. Devereux argued for Hoke. Although the court reporter, who happened to be Devereux, did not include summaries of the lawyers' arguments in this case in his North Carolina Reports, it appears as if the Court, through Thomas Ruffin, must have agreed with the vast majority of points made by Badger.

Ruffin first reviewed the doctrine of judicial review, asking if his court had this power. Without citing any precedents, he strongly answered in the affirmative. Ruffin wrote:

[W]hen the representatives pass an act upon a subject upon which the people have said in the constitution, they shall not legislate at all; or when upon a subject on which they are allowed to legislate, they enact that to be law which the same instrument says shall not be law, then it becomes the province of those who are to expound and enforce the laws, to determine which will, is the law.... [If] it be found that the act is without warrant in the constitution, and is inconsistent with the will of the people as there declared, the court cannot execute the act, but must obey the superior law, given by the people alike to their judicial and their legislative agents.³⁹

The harder, and more controversial, issue in this case was whether the act of 1832 violated the North Carolina Constitution. Citing two sections of the North Carolina Bill of Rights, Ruffin held that it did.

The fourth section of the North Carolina Bill of Rights held, "that the legislative, executive and supreme judicial powers of government ought to be forever separate, and distinct from each other." The tenth section read in part, "no freeman ought to be taken, imprisoned or disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner destroyed, or deprived of his life, liberty or property, but by the law of the land."⁴⁰

Ruffin first noted that the act of 1832, in removing one class of individuals from their positions without a trial, and replacing them with another class, was judicial in its character and effects. This was in violation of section four, since the General Assembly also possessed the government's legislative power.

The more important violation, though, was against section ten. The act of 1832 had attempted to deprive Henderson of his public office without using the law of the land. The major question was, did Henderson have a property interest in his job? Ruffin answered yes. In defining property, the Chief Justice wrote:

It means, in reference to the thing, whatever a person can possess and enjoy by right; and in reference to the person, he who has that right of exclusion of others, is said to have the property. That an office is the subject of property thus explained, is well understood by everyone, as well as distinctly stated in the law books from the earliest times.⁴¹

Thus, the act of 1832 was unconstitutional because it had deprived Henderson, and the other appointed clerks

enjoying life tenures, their property, and the deprivation was not by the law of the land. As for remedies, the "owner" of the office could have "an action for damages for the expulsion, for the fees of offices received, and a remedy by quo warranto to enquire into the right to the usurper, and by mandamus to be himself restored."⁴²

Ruffin came down with his opinion on April 2, 1834, and the Raleigh Register commented on it in its next issue. The paper stated: "The principle is important and of interest, though its effect, we apprehend, will be confined to three or four individuals."⁴³ Because of this importance and interest, the Register published the entire opinion over its next two issues.⁴⁴ This was very rare, for between 1825 and 1846, the Register, beyond doubt North Carolina's finest newspaper, published only three state Supreme Court decisions.⁴⁵

Over the years the Court's decision to find a property right in a public office has met with varied response. It has been pointed out that the Hoke decision "received the high encomium of Kent and other authors on constitutional law." Also, Reverdy Johnson used Hoke as his main authority in his U.S. Supreme Court case, Ex parte Garland, against Congress' test oath designed to exclude those who had served in the Confederacy from later arguing cases before the U.S. Supreme Court.⁴⁶

Yet, North Carolina is the only American jurisdiction ever to have declared a public office to be property. Hoke has never been followed in any other state, and other courts have even described the doctrine as being "without support of reason or authority."⁴⁷ In the Old North State, Hoke was consistently followed for seventy years until it was overruled in an acrimonious 3:2 decision in Mial v. Ellington.⁴⁸

That Badger could convince the North Carolina Supreme Court, a court which contained two of the greatest jurists ever to grace a state bench, to agree to a doctrine that no other American court has ever held, certainly attests to his skill as an advocate.

Another important constitutional case argued by Badger was Raleigh and Gaston Rail Road Company v. Davis.⁴⁹ This involved the government's eminent domain power to take land from private citizens for the use of the fledgling railroad industry. That the outcome of the case would be of great significance in the future economic development of North Carolina was understood by all, with Ruffin mentioning in his opinion that, "some of the points made are novel and of much magnitude, in reference to a class of subjects on which there has been recently and probably will be copious litigation."⁵⁰

The North Carolina General Assembly had incorporated the Raleigh and Gaston Rail Road Company in 1835. In its

charter, the company had the right to enter into and, if need be, acquire all lands necessary for the building of its tracks. If the company and the owner of a piece of land could not agree on a price to be paid, the company was to petition the local county court to appoint five disinterested local land owners to determine the "damages." Upon the company paying this price, the land would become its property.⁵¹

In 1836, the Rail Road attempted to buy a parcel of needed land in Warren County from Richard Davis. When a price could not be agreed upon, the company petitioned the county court to appoint the five assessors. At this time, Davis objected to this mode of proceeding, as a violation of the state Bill of Rights' 12th section securing the right of private property, and the Bill of Rights' 14th section's right to a trial by jury. The court, nevertheless, appointed the five appraisers.

When the appraisers returned their report to the county court, though, the court refused to confirm it, believing the charter provisions unconstitutional. The Rail Road appealed to the Superior Court, which reversed the county court and ordered it to proceed according to the act. From this decision Davis appealed to the Supreme Court. Here, Badger argued for the Rail Road, William H. Haywood, Jr., and John R.J. Daniel for Davis.⁵²

Davis' attorneys argued that when land was to be taken for public use by the government's power of eminent domain, the compensation must precede the taking, and also that the questions of whether the property should be taken and, if so, what compensation should be paid, had to be tried by a jury. Also, they objected to a private corporation being given the power of eminent domain. Badger contested these assertions, and he even argued that, in North Carolina at least, the right to compensation was not "an absolute and legal right."

The Court did not decide this last issue, but in deciding this case, they assumed, arguendo, that there was such a right. Ruffin did spend several pages of his opinion for the Court showing that if there was such a right, it did not derive from the sources states by Davis' attorneys, including the fifth amendment of the United States Constitution -- Ruffin citing Barron v. Baltimore.⁵³

As for the major issues in this case, the Court found that compensation did not have to be previous to, or even contemporaneous with, the taking, for damages could only be correctly estimated once the injuries were fully known. Also, Ruffin declared that the word "trial" in the state Bill of Rights referred to "a dispute and issue of fact, and not to an issue of law, or inquisition of damages."

The most important issue, though, was whether this was a taking for a public use. Ruffin wrote: "It is true that

this is a private corporation; its outlays and emoluments being individual property; but it is constituted to effect a public benefit, by means of a road, and that is publici juris." The Chief Justice then praised the concept of private corporations executing internal improvements in areas which had, in the past, been under the exclusive direction of the government: "An immense and beneficial revolution has been brought about in modern times, by engaging individual enterprise, industry, and economy, in the execution of public works of internal improvement."⁵⁴

That Badger should have represented the railroad company in this case is not surprising; as will be shown below, Badger was a lifetime supporter of internal improvements. Another major case in which Badger had a railroad as his client was Attorney General v. Petersburg & Roanoke Rail Road Company.

In Petersburg & Roanoke Rail Road, the Court agreed with Badger that a corporation could not have its charter revoked just on the whim of the state Attorney General. For the charter of incorporation to be forfeited, the Attorney General had to file an information setting out a good cause of forfeiture, including the time, place and overt acts leading to misfeasance or non-feasance. The document should be based on specific grounds of fact, and not just conjectural inference. Furthermore, the Court held that if the charter imposed a duty towards the State, nonperformance

of this duty could end the contract; however, if the State knew of the nonperformance and either remitted the penalty or continued to deal with the corporation, it could not insist on forfeiture because of this in the future.⁵⁵

Badger was also victorious in a case which upheld the rights of a licensed ferry bridge operator, against a person who, on his own accord, wanted to build a nearby free bridge, Smith v. Harkins.⁵⁶ Chief Justice Ruffin, for the Court, followed the common law doctrine that the owner of the first, authorized, ferry could recover damages. The reason, according to Ruffin paraphrasing Blackstone:

[T]he owner of a ferry is bound to the public to keep it in repair and readiness for the ease of the citizens; and that he cannot do, if his franchise may be invaded or if the income of the ferry may be curtailed by diverting passengers by means of a rival unauthorised establishment of a like kind.⁵⁷

While this common law rule was clear, the real issue in this case was whether the owner of the first bridge was entitled to an injunction stopping the second bridge from being built. Badger argued that he was, and Ruffin, finding an injunction "the only remedy that has any pretensions to be deemed adequate," agreed.⁵⁸

While Badger played a major role in many of the Court's important decisions involving slavery, constitutional law and economic development, his heaviest concentration of cases was in two areas: trust and estates, and land claims. For over twenty years Badger argued in almost all of the

Court's major decisions concerning trust and estate law.⁵⁹ His expertise in this subject was widely recognized, and it is one reason why his percentage of equity cases before the Supreme Court was so great. In 1829, Governor John Owen wrote to Thomas Ruffin and George E. Badger:

Permit me to call your attention to an act passed at the last meeting of the General Assembly of this State, Chapter 38, authorising the Governor to appoint two Commissioners to revise, digest, alter and amend all the statute and common law, concerning heirs, devisees, and creditors of deceased persons estates, as shall be properly connected in the opinion of said commissioners with the law relating to Executors and administrators, which shall be founded on principles of Justice, and suited to the true policy and present situation of the people of this State, etc.

In the performance of that part of my duty growing out of this act, I desire to offer you the commission.

If it is important that this work be done at all, it is of the first importance that it be done well, and by those, in whose professional skill and attainments, the next Legislature will have confidence; and I certainly hazard nothing in saying, there are no gentlemen of the profession in the State, from whose hands such a work would be by them better received, and more freely and fully compensated.⁶⁰

Badger argued many famous land cases before both the state Supreme Court and the Federal Circuit Court, and later in his career this was one of his specialties before the U.S. Supreme Court. A large group of these cases concerned a huge strip of land in northern North Carolina confiscated from the Earl of Granville during the American Revolution.⁶¹ In an unrelated case concerning the sale of land, Badger successfully faced five lawyers, Devereux, Iredell, Richmond

Pearson, Patrick H. Winston, and a Mr. Thompson of South Carolina, and the Court's opinion was an almost unheard of forty-seven pages long.⁶²

While Badger might have specialized in estate and land cases, his practice before the Supreme Court was extraordinarily wide and varied. Important cases on such subjects as bank stock and procedure,⁶³ criminal procedure,⁶⁴ land tax,⁶⁵ mercantile instruments,⁶⁶ debtor/creditor relations,⁶⁷ and bankruptcy,⁶⁸ were argued by him before the Court.

While Badger argued hundreds of cases before the North Carolina Supreme Court, he also had another connection to it, being its reporter for a short period. In 1827 when Francis L. Hawks left the legal profession to enter the ministry, the Court appointed Badger and Thomas P. Devereux co-reporters.⁶⁹ The reporter's job carried with it "a salary of \$500, on condition he should furnish the State, free of charge, eighty copies of the reports, and the counties sixty-two copies."⁷⁰

Badger must have found the work tedious, for he wrote Ruffin, who himself was a former reporter: "The letter you wrote me last summer ... found me engaged in the business of reporting, and consequently (as you well know) in the midst of perplexity and distraction."⁷¹ Badger resigned his position after about a year, and Devereux assumed full responsibilities. An introduction to the twelfth volume of

North Carolina Reports, covering cases between the December 1826 and June 1828 terms of court, reads in part: "many of the cases were stated by his former associate, George E. Badger, Esq. - The first half of this volume may be regarded as the joint production of that gentleman and the subscriber."⁷²

Badger was also mentioned many times for a seat upon the state Supreme Court, and once the Governor nominated him for this position. The first vacancy to occur on the Court resulted from Chief Justice Taylor's death in 1829. Soon after this happened, Archibald Debow Murphey wrote Ruffin and told him that, "Mr. Gaston, Mr. Badger and Yourself are the only Persons at the Bar, qualified for the Appointment."⁷³ Although the Governor appointed John D. Toomer, Ruffin was elected by the legislature to take Taylor's seat.

The next vacancy occurred in December of 1832, when Judge John Hall resigned. There had been rumors earlier in the year that this would happen, and in June, James Graham wrote his brother William that the influential lawyer Gavin Hogg, "informed me that Mr. Badger would probably be a candidate for a seat on the Supreme Court Bench in the event that Judge Hall left it."⁷⁴ In December when the legislature began voting, though, the nominees were Joseph John Daniel, John D. Toomer and Henry Seawell. For several ballots no one was able to garner enough votes to obtain a

majority, and on the seventh ballot Badger was nominated in hopes of breaking the deadlock. He received twenty votes, but on the next ballot his name was withdrawn and the struggle continued among the original three. Finally after twelve ballotings over a week, Joseph J. Daniel received one vote over a majority. The voting was as follows:⁷⁵

<u>Name</u>	<u>Ballot</u>											
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>	<u>11</u>	<u>12</u>
Toomer	68	71	70	74	75	80	72	74	83	91	88	88
Daniel	44	49	56	59	62	66	59	60	72	87	92	95
Seawell	46	52	55	52	47	33	30	31	27	w/d		
Nash	9	2	w/d									
Strange	3	3	w/d									
Badger							20	w/d				
Others	12	6	7	3	6	3	3	8	5	9	8	6

In August of 1833, Chief Justice Leonard Henderson died, thus creating another vacancy. For many years, William Gaston had been urged to consent to being appointed to the Supreme Court, but he had always declined. When Judge Hall resigned, Thomas P. Devereux wrote Gaston to inform him that under no circumstance would Badger oppose Gaston for the seat, but he still refused to have his name placed in nomination.⁷⁶ Finally, upon Henderson's death, Gaston took Badger and other friends' advice and agreed to have his name submitted to the legislature. He was easily elected.⁷⁷

After this, the Court's personnel remained the same for nearly eleven years, until Gaston's own death in January of

1844. At this time the legislature was not in session, so the Governor received the power to make an appointment, with the approval of the Council of State. James Graham wrote his brother William that, "The Death of Judge Gaston makes the complexion of the next legislature a new subject of interest. Badger ought to be the man to succeed him."⁷⁸ Governor John Motley Morehead must have agreed with this sentiment, for in March he selected Badger for the position.

Upon the next meeting of the Council of State, Morehead's nomination of Badger was rejected, by a vote of four to zero. The state's major newspaper, the Raleigh Register was appalled by this result:

To supply the vacancy occasioned by the death of the lamented GASTON, His Excellency, the Governor, sent in to the Council the name of GEORGE E. BADGER - a gentleman who, it cannot be invidious to remark, presented higher claims for the situation, than any other citizen of the State. Will it be believed, that this nomination was unanimously rejected by the Council! Yet such is the fact! GEORGE E. BADGER, whose transcendent legal ability is known to every man, woman and child in the State, and whose fame as a lawyer sheds honor upon its jurisprudence, was rejected by a Loco Foco Council for a station, which they, in their hearts, must believe, he is eminently qualified to adorn.⁷⁹

The reason for Badger's rejection is quite obvious: politics. Since the election of 1840, Badger had been one of the main leaders of the Whig party within the State. Over the previous four years he had been his party's strongest campaigner, and this did little to endear him to the rival Democrats (or "Loco Focos," as the Whigs

derisively called them).⁸⁰ In 1842, a Whig, Morehead, had been elected governor, but the General Assembly had been returned with a Democratic majority. Because the legislature had the power to select the seven members of the Council of State, that year the Democrats had filled it with "seven bitter partisans." Of these seven, four attended the meeting which rejected Badger.⁸¹

That Badger's rejection was due to politics, and politics alone, was quite obvious to the Register, a Whig paper.

There is not a man of them [the Democrats], or indeed of the whole party in North Carolina, who doubts [Badger's] entire fitness for the station, and their vote of rejection was dictated by a littleness of party malignity, of which, in this State, we have had few examples, and considering the Judicial character of the office, was so significantly marked by the unforgiving hate of Loco Focoism towards those who oppose with zeal their party men of party measures.... Upon the whole, therefore, we consider it quite evident that Mr. B was rejected by the Council, because he has taken an active part in the Whig cause.⁸²

Several weeks after Badger's rejection, the Raleigh Register added another dimension to the controversy; even if Badger had been confirmed by the Council, he would not have consented to serve.

Had the office been tendered, it would not have been accepted by Mr. B. It is known here, that soon after the death of the lamented GASTON, Governor MOREHEAD declared his intention not to consult with anyone as to the selection of his successor, but to make such nomination as he deemed right, and put on the Council the responsibility of rejection. Several personal friends had expressed to Mr. B. the opinion that the Governor would send in his name. Having made

up his mind fully to decline the appointment, should it be offered to him, he yet could not, under the circumstance, volunteer this declaration to the Governor without indelicacy; and being about to leave for one of his Courts, on the day previous to the meeting of the Council, he left, as we know, with a friend, a letter to the Governor, to be delivered only in the event that he should be nominated and the nomination confirmed. In that letter, he respectfully, but positively, declined to accept the office.⁸³

Badger's motives in deciding to decline a nomination to the Court are not evident. Perhaps he felt certain that a hostile Council would reject his name, and thus this was just a political ploy. Yet if this was the case, the Whig legislature elected in the summer, of 1844, could have easily voted to give him the position, and almost certainly would have at his asking. A better explanation is that Badger was quite satisfied with the private practice of law, and a seat on the Supreme Court would have caused a sharp reduction in his income. That Badger probably disparaged the small \$2500 salary given the State's highest judicial officers can be inferred from a letter he wrote Ruffin in 1828:

Mr. Potter of Granville has today opened the ball in the house of Commons with a proposition [for the?] honor and relief of the Judges of the Supreme and Superior Courts and of all other officers. To the first class of Judges the bill allots \$1500 pr an.... Should this bill pass you Judges will no longer get fat with high living large salaries and indolent lives as heretofore, but you will get the money you earn and earn the money that you get. If measures such as these shall open the road to popular favor, how can we rationally expect any permanent good or enviable fame for the State.⁸⁴

One other possibility is that Badger was holding out in hopes of attaining another, higher office. This happened two years later when, in 1846, the legislature elected him to the United States Senate, thereby effectively ending his career before the state Supreme Court.

Although it is not certain why Badger decided to decline an appointment to the Court, this episode does give rise to several observations. First, that Badger would be preeminently qualified for this, a judicial position, but was rejected because he was a Whig, shows the strong sense of party feeling then prevalent in North Carolina. Also, Morehead's nomination shows Badger's high reputation within the bar, and this is evidenced even more clearly by Badger's writing a letter of refusal before he was aware of his nomination. Finally, Badger's rejection by the Council foreshadowed an event nine years in the future, when he was nominated for a seat upon the United States Supreme Court but, because of politics, lost confirmation by one vote.

Although Badger never served on the North Carolina Supreme Court, for over twenty years he greatly influenced that Court and the doctrines it pronounced. The high regard the Court held towards Badger can be seen in the statements of two of its Chief Justices, Henderson and Ruffin.

Leonard Henderson was of the opinion that, "To take up a string of cases, run through them, extract the principle contained in each, and discriminate the points in which they

differed from each other, or from the case in hand, I have never seen a man equal to George E. Badger."⁸⁵ Upon Badger's death, Thomas Ruffin told Governor Graham, "that in dialectic skill and argument [Badger] excelled any individual with whom he had ever been acquainted, not even excepting Chief Justice Marshall himself, for that he possessed the faculty of imagination and the capacity for illustration which Judge Marshall had not."⁸⁶

B. The North Carolina Superior Courts

An obituary in 1866 noted that "The Senate of the United States was the principal theatre of Mr. Badger's fame.

It might not have been so, however, if his great forensic efforts had been delivered in large cities instead of obscure County Court Houses in North Carolina. Among hundreds of these, his arguments in a murder case in Granville, a slander case in Wake, and another murder case in Bladen, (removed from Cumberland,) will never be forgotten by those who heard them. But no record of any of these exists...⁸⁷

Although no record was made of Badger's great speeches before the Superior Courts, it is readily apparent that he achieved a great fame for his eloquence and legal ability. One person recalled that Badger's "efforts in important cases thronged the court-house to overflowing with an eager multitude from every sphere of society, were listened to with almost breathless attention, and were received with admiration and delight."⁸⁸ In 1891 noted literary critic

and journalist T.B. Kingsbury remembered Badger coming to his hometown to attend sessions of the Superior Court:

He generally reached Oxford in the afternoon of Sunday when attending the two Superior Courts of the year. Soon after his arrival prominent gentlemen of the village -- lawyers, merchants and others -- would assemble at the hotel to greet him, and to hear him converse. It was a great treat, and to the young a kind of education to hear him discourse.... the head of the Academy always gave holiday on court days when Mr. Badger was to speak, requiring the boys to attend. We remember that he had a great reputation among the lawyers, and at that time, as before and later, the Granville bar was held to be the ablest in the State.⁸⁹

As noted above, North Carolina in the 1820s was divided into six judicial circuits: Wilmington, New Bern, Edenton, Raleigh, Hillsborough and Morganton. The circuits would contain ten or eleven counties and each circuit would be travelled twice a year, a week spent in each county seat. With an increasing number of western counties, a seventh circuit and judgeship was formed in the mid-1830s -- the Morganton circuit being replaced by the Mecklenberg/Salisbury and Mountain circuits.⁹⁰

When Badger first took Ruffin's cases in 1817, he rode what was known as the Hillsborough circuit -- encompassing Orange County and counties to the west. Thus, Badger's circuit took him to counties such as Guilford, Rowan, Rockingham, Randolph and Caswell. After his stint on the bench, he must have again travelled to some of these courts. On October 9, 1825, Archibald Debow Murphey wrote Thomas Ruffin from Salisbury stating that "Nothing has occurred

worthy of much Notice [on the circuit] except the Trial of Warner Taylor.... Badger and myself defended the Overseer. He was cleared very easily. Taylor was guilty of a most foul Murder."⁹¹

Yet as can be seen from Badger's 1825 letter only accepting Ruffin's Supreme Court practice, Badger did not accept Ruffin's other cases because it would have meant losing "the profits ... in three of my best courts."⁹² Thus, while Badger might have argued a few cases in nearby counties on the Hillsborough circuit, such as Orange, the vast majority of his Superior Court work between 1825 and 1846 was done on the Raleigh circuit. This judicial circuit encompassed Wake and counties to the east. Almost all of the Superior Court cases in which we know Badger was involved were from Wake, Granville, Warren, Northampton, Halifax, Nash and Johnston Counties.

The amount of work, and the pay one could receive for this work, varied greatly from county to county. In 1828 Badger wrote Ruffin:

I hope you have had an agreeable circuit. The opening of mine was unfavorable -- pleasure and profit being with me nearly of the same signification when applied to Courts. At Granville \$80 -- at Hillsboro 65. was a bad prospect and although Nash rose to \$233 yet Johnson sunk me again -- think of an ex Judge at a Superior Court four days and receiving \$10. At this you may be sure I was low spirited enough and began to envy the snug ticket of a Judge, but the remaining five courts returned me again to life and animation by bringing me together the additional sum of \$1220.⁹³

Because the vast majority of Badger's correspondence has been lost, and because there was no recordation of opinions by the judges, the only sources of information on Badger's activity before these courts are contemporary newspaper accounts. Most papers, though, seemed only to care about capital cases before the courts. Thus, while Badger undoubtedly argued hundreds, or even thousands, of civil and minor criminal cases, we have no record of these.

One of Badger's most famous cases was State v. Kimbrough. In Wake County in 1829, Elijah W. Kimbrough was indicted for the grisly killing of his step-father, John Davis. Davis had been a very prominent citizen of Wake, and had even served as that county's sheriff. The trial was originally scheduled to be held during the fall circuit in 1829, but because Judge Willie P. Mangum was sick, the Court did not meet in Wake. The case was thus held over until the 1830 spring circuit.⁹⁴

When the Superior Court met in Wake during the first week of April 1830, the Kimbrough case was the main attraction. The Raleigh Register reported that, "Perhaps there never was a case which excited more universal and intense interest than this." Over two hundred persons had to be sworn before a jury was formed, the Register stating, "We have never known such difficulty in empannelling a Jury."⁹⁵

Kimbrough was represented by Badger, Henry Seawell and Thomas P. Devereux, while the prosecutor was the State Attorney General, Romulus M. Saunders. What is fascinating about this is that Saunders happened to be Kimbrough's own half-brother. The trial lasted several days, with the prosecution calling over twenty witnesses. After being out twenty-four hours, the jury returned with a verdict of guilty, and Kimbrough was sentenced to hang.⁹⁶

Despite losing the case, Badger's arguments had impressed all who heard him. The Register reported:

To Mr. Badger, was assigned the duty of replying to the Attorney General. That he did not acquit the prisoner, was owing to no want of lucidness or ingenuity of argument, for all that man could do, he did. We have often been charmed with the magic of his eloquence, but on this occasion he surpassed himself. In his peroration, there were some as bold and felicitous flights of eloquence as we ever heard.⁹⁷

Kimbrough was scheduled to be executed on July 30, and on this day great throngs of people crowded into Raleigh to witness the sight. Badger and Seawell had made motions for a new trial and arrest of judgment before the Superior Court, and when these failed, they appealed to the Supreme Court. Unfortunately for the expectant on-lookers, the Supreme Court took the case, staying the execution. Shortly thereafter it was fully argued in a special session. Seawell and Badger argued many technical points on procedure and evidence, but it was to no avail. The Supreme Court affirmed the death sentence, and on November 5, 1830,

Kimbrough was executed. Although it was probably little solace to them, the Court's opinion mentioned that the defense attorneys had made a "very able argument."⁹⁸

As was the case before the state Supreme Court, Badger was unafraid to defend slaves and free blacks before the Superior Courts, even on charges of rape. One such case occurred in Halifax in 1837. Willis Mills, a "free man of color" was charged with the rape of a Martha Melton. Mills was prosecuted by the state Attorney General, J.R.J. Daniel, while he was defended by Badger and B.F. Moore. Despite the defense counsels' best efforts, Mills was found guilty and sentenced to be hung.⁹⁹

A different result occurred in the trial of Shadrack, a slave. Shadrack, the property of Thomas Alston, Esq., was charged with the rape of a daughter of a Mrs. Terrelle, the victim being a deaf, dumb and idiotic child about thirteen years of age. During the October 1838 session of the Wake Superior Court, Shadrack was tried and convicted, with Attorney General Daniel using as his chief witnesses the wife and daughter of the Defendant. Badger defended Shadrack, and upon the jury's verdict he applied to the Court for a new trial, which was granted.¹⁰⁰ Badger's grounds of objection lay in the testimony of Shadrack's daughter. She was only seven years old, and he felt she could not "weigh properly the responsibility of an oath." Shadrack's new trial occurred in April of 1839, and this

time the Judge agreed with Badger and did not allow the testimony of Shadrack's daughter. Without this evidence, the state's case suffered greatly, for the jury, after a "very short retirement," found the slave not guilty.¹⁰¹

Badger also saved the life of another slave, Nelson, although through different means. During the October 1839 session of the Wake Superior Court, Nelson was tried for the murder of a fellow slave, Gabriel. Nelson was defended by Badger, and, because Attorney General Daniel was absent, the prosecution was led by P.H. Mangum and George W. Haywood. Nelson was found guilty and sentenced to be hung.¹⁰²

Badger must have applied to Governor Edward Bishop Dudley for a pardon, for on January 20, 1840, the Register reported: "Negro Nelson, who was to have been hung this day, for the killing of a fellow-slave, has been pardoned by Gov. Dudley, on condition of his immediate transportation out of the country."¹⁰³

Sometimes Badger was unable to get his client acquitted, but was able to get the charges reduced. During the fall 1830 session of the Wake Superior Court, a Richard Powers was tried for the murder of Jonathan Waynax of Guilford. Powers was defended by Badger, Henry Seawell and William H. Haywood, Jr., and they were able to convince the jury to return a verdict of manslaughter. Powers was branded on the brawn of his left hand with the letter M, and was made to pay court costs.¹⁰⁴ During this same term of

court, Seawell and Badger were able to get a Christopher Woodward acquitted on the charge of slave stealing.¹⁰⁵

Badger's legal ability impressed not only those in his home county of Wake, but also many throughout his circuit. During the October 1834 session of the Warren Superior Court, Badger defended a William Garner on a charge that he murdered his wife. Garner was convicted, but the Warrenton Reporter noted, "We have never heard a more ingenious and eloquent defense than that submitted by Mr. Badger in behalf of the prisoner."¹⁰⁶

The next week in Halifax, Badger and Spier Whitaker defended an Arthur McDaniel who was being tried on charges of manslaughter. After having his witnesses cross-examined by Badger and Whitaker, Attorney General Saunders admitted that it was a case of excusable homicide.¹⁰⁷

Badger's reputation was so great that in at least one case he was hired by the state to assist the Attorney General in a prosecution. This was State v. Barnum, which occurred during the April 1837 session of the Wake Superior Court. Dr. Richard Barnum, a noted Raleigh physician, was on trial for the killing of his wife, Tabitha, by poison. He was defended by James Iredell, Jr., Thomas P. Devereux and George W. Haywood.

The Register devoted a good amount of space to the trial, and noted: "The high standing of the parties concerned, the peculiar heinousness of the alleged charge,

the eminent Counsel employed, the large number of respectable witnesses in attendance -- many of them ladies -- all conspired to give to the case an absorbing character."

Badger and Attorney General Daniel spent two days developing the state's case, including having several doctors and scientists testify about the poison. One of these expert witnesses was Badger's friend and Yale classmate, Professor Elisha Mitchell of the University of North Carolina. It was to no avail, though, for the prosecutors could not prove Mrs. Barnum died of poison, and thus the jury returned with a verdict of not guilty.¹⁰⁸

Badger's most famous murder case might have been State v. Atkins, which occurred in Bladen County (the case being removed from Cumberland County) in 1846. Badger defended Benjamin F. Atkin, who was on trial for the murder of Archibald McDiarmid. Over thirty years later, an observer, most likely Edward Jones Hale, editor of the Fayetteville Observer between 1825 and 1865, recalled:

The prominence of the parties, their relationship to nearly half the people of Cumberland county, (for the clannish Scot always remembers his kin to the 99th cousin) the great number of witnesses and friends and attorneys in attendance, and the terrible gravity of the penalty, all made the occasion one of most intense interest.

The trial lasted two days, and Badger's closing argument took four hours. This closing argument "was admitted on all hands to have secured the acquittal of his

client." After the trial, the observer happened to see the notes Badger used during his argument. He wrote:

These consisted of five lines, one full and the others with one or more words only; and yet, slight as was this apparent preparation, he knew thoroughly every important fact of the testimony and point of argument, though he had seemed generally to be inattentive to what was going on.

The observer also noted:

One witness, the Rev. Colin McIver, declined either to swear or to affirm, and the Clerk of the Court, Gen. C., was utterly at a loss for any other mode of administering the necessary preliminary to giving evidence. Mr. Badger, the only man in the crowded court room, as I suppose, who had any knowledge of another form, rose, and with a solemnity in strong contrast to the slipshod manner so common, and so disgraceful and demoralizing, recited the form of calling upon his Maker and Judge, with uplifted hand, to witness the truth of the testimony which he would give.¹⁰⁹

One final Superior Court case of Badger's which deserves mention is State v. Rives. In 1891, a correspondent to the Raleigh Intelligencer recalled:

In a celebrated case at Northampton court, Judge Pearson presiding, in which the late Francis E. Rives, a man of much power and railroad prominence in Virginia, was sued for damages, for tearing up that part of the old Petersburg railroad which ran through said county; Mr. Badger, in the midst of his great argument in the case; turned to the jury and said: 'The law in this case gentlemen of the jury.' At this immediate juncture, Judge Pearson rapped with his knife on the bench, and quietly, but pointedly said, 'Mr. Badger, the court will instruct the jury upon the law in the case, you need not trouble yourself, sir, further to do so.' He gazed fixedly for a moment at the judge, then defiantly turned, took his seat, and uttered not another word in the case. It produced quite a sensation. It ended, certainly for a long time not only all social intercourse, but brought about undisguised hostility between the two men, and I am not prepared to attest that any reconciliation

had ever been effected. The next legislature thereafter, in consequence of this circumstance, so amended the law, and the practice, that since which time an attorney is permitted to argue to the jury, the law as well as the facts.¹¹⁰

State v. Rives was an important case, and Badger appealed it to the state Supreme Court. There, the Court ruled against Badger's client on the issue of liability, however they found only nominal damages. The Raleigh Register printed the entire opinion in its March 28, 1845, issue.¹¹¹

What is more important than the actual case itself, though, is Badger's spat with Judge Richmond M. Pearson, and the new law enacted by the legislature -- a law drafted by Badger himself. On December 5, 1844, noted lawyer and legislator Hugh Waddell wrote William A. Graham on this subject:

There is now before the Senate a Bill prepared by our friend B-r called 'a Bill concerning Jury Trials,' in which the act of 1796 is at least made plain. Some of our fearful men are scared, but generally the Bar stands up. It forbids the Judge in trial of cases before Juries to do more than recite the evidence & uses the words 'he shall make no comment on the said evidence, either by way of repeating the arguments of the Counsel or otherwise.' It furthermore authorizes Counsel to argue the whole case, as well Law as fact, to the Jury, but with the express authority to the Judge (except in State cases) to lay down authoritatively the Law to the Jury.

When properly understood it is no more than a Declaratory Statute of what the profession has always considered the settled Law of this State.¹¹²

Overall, Badger's career before the state Superior Courts proves that not only was he an excellent lawyer in

appellate cases, but also a masterful advocate before juries. It is without doubt that the general public's perception of Badger as one of the state's greatest lawyers was formed in large part by his work before these trial courts.

C. The United States Circuit Court for
The District of North Carolina

The third court before which George E. Badger practiced between 1825 and 1846 was the United States Circuit Court for the District of North Carolina. This court met twice a year in Raleigh, in May and November, with session length depending upon caseload. Usually two judges sat, the United States Supreme Court Justice whose circuit included North Carolina, and the United States Judge for the District of North Carolina.

During this period, four Supreme Court Justices rode the circuit which included North Carolina: Chief Justice John Marshall (until his death in 1835), Philip Pendleton Barbour (1836-1840), Peter Vivian Daniel (1841-1842) and James M. Wayne (after 1842). With these men sat Henry Potter. Potter (1766-1857) served an amazing fifty-six years as a federal judge; appointed by Jefferson in 1801, he died in office in 1857 during the Buchanan administration.¹¹³

From the mid-1820s until 1839, the United States Attorney for North Carolina was Badger's friend and Yale

classmate, Thomas P. Devereux.¹¹⁴ As for other attorneys practicing before the court, by far the most important were Badger and, before 1833, William Gaston. Badger and Gaston's position before this court can be seen from an article appearing in the May 15, 1829, Raleigh Register: "The United States' Circuit Court for the District of North Carolina, was in session in this city, for a few hours only, on Tuesday last. The shortness of the session was principally owing to the absence of Mr. Gaston and Mr. Badger."¹¹⁵

There were similar circumstances a year later. In November 1830, the Register reported that the Federal court, with Chief Justice Marshall and Judge Potter, had been in session for several days. The paper noted, though, that "little business was transacted, owing to the absence of Messrs. Gaston and Badger, the latter of whom is still suffering from the effects of the distressing accident which recently befel[1] him."¹¹⁶ As for Badger's accident, on October 14, 1830, the Register stated:

Accident! -- We learn with much regret, that George E. Badger, Esq. met with a serious accident on Tuesday last, on his way from this place to Franklin Superior Court. In descending a hill about 8 miles from Louisburg, one of the shafts of his Sulkey broke, when the horse commenced kicking, and before Mr. B. could escape, he received a severe stroke, by which his leg was badly fractured. Our information was derived through a messenger despatched to request the attendance of Dr. Beckwith, of this City.¹¹⁷

During the time when Gaston appeared before the Court, there appears to have been a great rivalry between him and Badger. In November 1828, Badger wrote to Ruffin:

I have been employed for some days past in the Circuit Co: of U.S. where brother Gaston is all in all -- and though I have heard much and seen a little of leaning yet never saw I, or heard I of such complete supporting upon a lawyer as of the Ch.J. [Marshall] upon Gaston. The Ch.J. seems to be but his echo, though he is not aware of it, for his integrity is certainly pure.¹¹⁸

It should be noted, though, that Badger won his fair share of cases against Gaston while appearing before Marshall. Also, this professional jealousy appears not to have affected the friendship between Badger and Gaston -- Badger served as a pallbearer at Gaston's funeral in 1844.¹¹⁹

The Federal court heard both civil and criminal cases. On the criminal side, the indictments were for violations of the Federal criminal law -- counterfeiting, forgeries, violations of postal and custom laws, embezzlement of government funds, and even some piracy. As for the civil side, almost all of these cases required diversity of citizenship. One interesting civil case Badger participated in was Fitzgerald v. Williams.

In 1818, Reuben Fitzgerald of Georgia travelled to North Carolina, where he purchased a Negro woman and her many children. He left these slaves in the care of a friend while he continued on to Virginia. While he was gone, some of the children were taken by another person under claim of a superior title. When Fitzgerald returned, he put the

slave woman and three of her youngest children in the New Bern jail for safekeeping. Fitzgerald and the other person eventually reached a settlement as to the slaves -- Fitzgerald was able to keep the woman and the three youngest children, and as for the other children he would receive cash.¹²⁰

On his way back to Georgia, Fitzgerald passed through Onslow County, N.C. About this same time in Onslow, two slaves belonging to a ward of Colonel Edward J. Williams "disappeared in a very mysterious manner." Williams was led to suspect Fitzgerald had carried off his slaves, so he and another person who knew the missing slaves followed Fitzgerald to Georgia. When Williams reached Fitzgerald's plantation, two of Fitzgerald's young slaves were playing in the yard. One of these had the same name as one of Williams' missing slaves, and he readily answered to it. This was "sufficient to induce a belief on the part of the Colonel and of his witness as to the identity of one of the negroes, but not the other."¹²¹

Williams requested Fitzgerald to give him the slaves, and Fitzgerald refused. Thereafter, Williams returned to Onslow and had instituted against Fitzgerald a criminal prosecution on the charge of "negro stealing." Once Fitzgerald was indicted, the Governor of North Carolina applied to his counterpart in Georgia for the capture of Fitzgerald as a "fugitive from justice." The Georgian

authorities complied with a warrant issued by their Governor, and apprehended Fitzgerald. Fitzgerald, though, was freed by a Georgia state judge on a writ of habeas corpus because of some informality in the proceedings.

After Fitzgerald's release, North Carolina Governor Gabriel Holmes again requested his apprehension and extradition, and there ensued a sharp correspondence between Holmes and Georgia Governor Troup. Finally, Fitzgerald on his own accord agreed to go to Onslow and face trial. When he did, the Onslow Superior Court acquitted him, "without the Jury's leaving the box." While he was in the state, though, Fitzgerald was served a writ for a civil suit Williams had instigated against him in Federal court, through diversity of citizenship, for recovery of the slaves.¹²²

Fitzgerald travelled to Raleigh, where he was again victorious. He then instigated his own suit in Federal court, against Williams for "malicious prosecution." Fitzgerald believed that Williams' only purpose for having the criminal prosecution brought was to get Fitzgerald "in North Carolina, [so as to have personal jurisdiction] to serve a writ on him in [the] civil suit."¹²³ The case was on the Court's docket as early as May 1828, but it was not tried until the Spring 1831 term.¹²⁴

William Gaston represented Fitzgerald, while Williams was defended by Badger and Henry Seawell. The Register

covered the trial and wrote a long article about it because it was of a "so novel and peculiar character." The jury was out for two days, and when it could not come to a decision, Chief Justice John Marshall declared a mistrial.¹²⁵

The case was tried again the following November, and this time the jury agreed as to Williams' liability. They could not agree, though, "as to the amount of damages due to the Plaintiff." Finally, during the May 1832 term of court, the case was "compromised by the Defendant's confessing a judgment for 1500 dollars and costs."¹²⁶

In commenting on this case, the Raleigh Star noted that, "some of the witnesses proved on the former trial that the Defendant had said that when he indicted Fitzgerald, he did not count on convicting him; but he only did it to get him here [North Carolina] and sue him." This paper went on to express the opinion that Williams' actions were "more indiscreet than criminal," and that he should have brought only a civil claim in Georgia. In Williams' defense, it was stated that "there was a remarkable resemblance in different negro slaves," and that Williams had been "informed by [his] witness that the negroes were identical."¹²⁷

Another interesting case was U.S. v. Patton, tried during the Fall 1835 term. At this time, there was a Federal law making it a felony to fabricate any paper for the purpose of obtaining money from the Treasury Department, or to offer such paper with an intent to defraud. Thomas P.

Patton forged an affidavit to help a friend receive a military pension, but he honestly believed this friend was entitled to the pension. Badger argued for Patton that he, Patton, secured no pecuniary advantage out of his forgery and that he did not have the necessary intent to defraud. Thomas Devereux countered by saying that fraudulent intent was not an element to this crime. The Register reported that, "This question was discussed with much ability by the District Attorney for the U. States, and Mr. Badger, for the Defendant." Patton was acquitted on all charges against him except this one count, and Judge Potter, sitting alone because of Marshall's death, laid over to the next term Badger's motion for a new trial.¹²⁸

Also of interest is U.S. v. Fesperman. Fesperman was a mail-carrier who was charged with embezzling money out of his mail-bag. In a trial during the May 1845 term of court, he was prosecuted by U.S. Attorney Duncan MacRae. Badger defended Fesperman, and the Register, after mentioning Badger's name, added, "which is saying enough." Tried before Justice Wayne and Judge Potter, the Register noted the outcome: "Nineteen, out of every twenty persons in the Court House, took it for granted that a conviction was inevitable from the evidence. But Judge Wayne charged the Jury that the evidence was legally insufficient to establish the Prisoner's guilt. Of course, he was acquitted." That same term, Badger was involved in another case, Mans v.

Hadley, " a suit for the infringement of a Patent right." Lewis Henry and Duncan MacRae represented the Plaintiff, while Badger and Charles Manly opposed them. A verdict was rendered for the Defendant.¹²⁹

Badger was also involved in several Admiralty cases. One of these was U.S. v. Sheridan & Crocker, a criminal case for the "casting away" of a schooner, The Aurora, on the high seas -- Sheridan had been the Captain, while Crocker was one of the crew. They were defended by Badger and a W.Q. Marton of New York; Devereux was the prosecutor. The case was tried during the May 1838 term of court before Justice Barbour and Judge Potter. At issue were several questions. The defense attorneys maintained that the evidence did not show the place of the crime, and that the acts were actually done on the coast of Cape Hatteras, not on the "high seas." They also contended that the defendants should have been tried not in North Carolina, but where they had been captured. Finally, there was a question of fact as to whether a "casting away" had actually occurred. The jury could not come to a conclusion, so the judges acquitted both defendants.¹³⁰

Several times Devereux had his friend Badger help him try a case for the United States, and on at least two occasions Badger was acting U.S. Attorney in Devereux's absence.

During the November 1829 term of court, Devereux and Badger prosecuted a David L. Field of Guilford County on the charge of "passing a counterfeit Bank Check, signed by the President and Cashier of the Branch Bank of the United States at Mobile, and drawn upon the Principal Bank at Philadelphia, knowing it to be forged." Field was defended by Henry Seawell and Thomas Ruffin, but he was found guilty and sentenced to three years in prison.¹³¹

In May 1833, Badger helped Devereux prosecute a John Smith on the charge of counterfeiting U.S. Bank notes. Gaston and a J.P. Henderson defended Smith, but he was found guilty and sentenced to seven years in prison.¹³²

During the May 1837 term of court, Badger stood in for Devereux and prosecuted the mate and seamen of a Steam Packet, The William Gibbons, on the charge of plundering passengers after the ship had run aground on the North Carolina coast. The seamen were acquitted, but the Mate, a Mr. Andrews, was found guilty. The prisoners were represented by William H. Haywood, Jr.¹³³

Two years later, during the May 1839 term, Devereux was again absent and Badger prosecuted a seaman, James Boardman, on the charge of mutiny. Boardman was convicted on both indictments against him, and sentenced to two years in prison.¹³⁴ What is interesting about this case is that two months after his conviction, Boardman was given a pardon by President Martin Van Buren. He was released from jail on a

Saturday night, and the Register reported that, "On the same night, he was returned to his old quarters for riotous and disorderly conduct in our streets."¹³⁵

In his 1866 oration upon the death of Badger, William A. Graham remembered two Federal cases Badger argued before Chief Justice John Marshall that encompassed two "of his most admired arguments, and in which he overcame the preconceived opinions of the great Judge, though impressed and supported by the acknowledged abilities, learning and persuasiveness of Gaston."¹³⁶ The first of these was Whitaker v. Freeman.¹³⁷

Jonathan Whitaker was a Congregational clergyman who, with his son, also a preacher, removed from New Bedford, Massachusetts, to North Carolina. Upon hearing of the Whitakers' move, Frederick Freeman, who lived some thirty miles from New Bedford, wrote a friend in Raleigh. In his letter Freeman stated that he knew the "character of these men full well....

I never heard any good of them. I have heard from the best authority, much evil. Not that they were capable of doing much hurt by preaching, they were considered by all as unfit to preach -- as too immoral even to preach socinianism.... Reports of [the elder Whitaker's] stealing wood, & whipping his wife unmercifully, and such like deeds had become so frequent, and his immoralities and infidelity so notorious, that his people (his church and congregation) were ashamed of him and were anxious to get rid of him.¹³⁸

Freeman went on to write that Whitaker's congregation had paid Whitaker \$1200 to leave, and that any testimonials

the two possessed "may be forged." He closed the letter by stating, "I consider them as dangerous men in either occupation [preaching or teaching]. You are at liberty to show the above, as far as you may think proper."¹³⁹

Freeman's friend in Raleigh did show this letter around, and eventually Whitaker heard all about it. Whitaker thereafter filed an action on the case for a libel against Freeman in the United States Circuit Court for the District of North Carolina, the case coming to this court through diversity of citizenship.

The case was originally scheduled to be heard during the May 1826 term, but Whitaker asked for a continuance because the lack of a witness.¹⁴⁰ Thus, the case was tried during the November 1826 term, before Chief Justice Marshall and Judge Potter. Whitaker was represented by William Gaston, while Freeman hired Badger and Henry Seawell -- it appears, though, that Badger was the main defense attorney.¹⁴¹ After listing the attorneys, the Register added: "Having stated this, it is superfluous to add, that the argument on both sides was distinguished for great ability, ingenuity and eloquence."¹⁴²

The trial, which lasted four days, was the only "case of importance or interest disposed of" during the term, and the Register reported that it "excited considerable interest."¹⁴³ During the trial, two legal issues were

discussed at great length. The first concerned Freeman's pleas.

Freeman sought to plead two different defenses -- that the statements contained in the letter were true, and that the Plaintiff could not prove that Freeman wrote the letter. Gaston sought to invoke the ancient Common Law doctrine that a defendant must "confess and avoid the charge." He argued that two contradictory defenses could not be maintained, and that Freeman, by his plea of justification, admitted the publication of the libel and was thus estopped from a denial in another plea. Badger, though, countered by arguing that in most states, including North Carolina, multiple pleas by defendants were allowed.

The second question involved the exact wording of the twenty-five counts of libel Whitaker had instigated against Freeman. When Whitaker, and his lawyer Gaston, drew up the counts, they did not have access to the actual letter -- it only found its way into the proceedings through a subpoena duces tecum issued for the trial. Thus, the quotes used in the counts did not exactly match the words actually written in the letter. Badger argued that the counts had to contain the exact words, while Gaston disagreed.¹⁴⁴

After much discussion, Marshall reserved these points for further consideration, and gave the case to the jury. They returned with a verdict for Whitaker, and damages in the amount of \$1800. Marshall thereafter stated that should

he find the legal questions in favor of the Plaintiff, the judgment would stand; if not, a nonsuit would be entered.¹⁴⁵

Marshall came down with his decision during the May 1827 term. As for the first question, he declared:

In the United States generally, the rigor of the ancient rule, that the defence shall be confined to a single point, has been relaxed still further than in England. In most of the States, and North-Carolina is understood to be among them, the Defendant has a legal right, without asking leave of the Court, to plead as many several matters as may be necessary, or as he may think necessary, for his defense.¹⁴⁶

As a necessary corollary to this rule, "the admissions unavoidably contained in one [plea], cannot be used against him in another." Thus, in this case, it was incumbent upon Whitaker "to prove the libel charged in the declaration."¹⁴⁷

This brought the Chief Justice to the second question: Is a libel proved when the facts are "essentially the same as are stated in the declaration[,] but the charge is made in words which vary materially from those alleged in the declaration?" Marshall answered, "No." He dissected the letter and compared "with critical exactness, the several sentences it contained, with the counts in the declaration" and observed that "in no instance" were they "exactly the same." He found "the verbal variations were such, as at least to make the charges susceptible of a slightly different meaning from the proof," and this variance he found fatal. Thus, Marshall entered a nonsuit in favor of Badger's client Freeman.¹⁴⁸

Badger must have been quite pleased by the result, for he and Devereux published Marshall's opinion in an appendix to their volume of the North Carolina Reports.¹⁴⁹ The case was not over, though, for upon a motion by Gaston, the Chief Justice agreed to allow, upon payment of costs, the nonsuit to be set aside and a new declaration to be filed.¹⁵⁰

This new declaration, with the exact words, was filed, and Whitaker was again placed on the Court's docket. The case was continued for two terms, and finally tried during November 1828.¹⁵¹ The jury again found for the Plaintiff, and this time they awarded him \$2000 in damages. The case was finally at an end, for the Raleigh Star noted that, "A motion was made by the defendant for a new trial, which was overruled by the Court."¹⁵² It is worth noting that this was the term when Badger wrote Ruffin complaining about Gaston being "all-in-all" in court, with the Chief heavily "leaning" on him.¹⁵³

The other case mentioned by Graham, and probably Badger's most famous case before the U.S. Circuit Court, was Lattimer v. Poteet:

one of a series of cases in ejectment, to recover immense bodies of land in the western counties [of North Carolina], claimed by the citizens of Northern States under purchases from speculators who, it was alleged, had made their entries and procured grants before the extinction of the title of the Cherokee Indians, in violation of law; the defendants claiming under grants from the State made after the admitted cession of the Indian title.¹⁵⁴

The Lattimer case itself involved title to nearly 50,000 acres in what was then Haywood County, N.C. The Plaintiffs, from Pennsylvania, claimed title under a grant to one of the speculators, a William Cathcart, in 1796. The Defendants maintained that in 1796 this land was within Indian territory and thus could not have been legally granted to Cathcart. The key issue thus became the exact location of the Indian territory boundary line in 1796.

Although the Federal court began hearing these Ejectment suits as early as the May 1830 term, the Lattimer case, by far the most important, was not tried until the May 1833 term.¹⁵⁵ Before Chief Justice Marshall and Judge Potter, the Plaintiffs were represented by William Gaston, while the State hired Badger to lead the defense, with the assistance of Attorney General Saunders.¹⁵⁶

During the trial, Tuesday was spent examining witnesses, while Wednesday, Thursday and Friday saw the arguments of counsel and the charge of the court.¹⁵⁷ It has been said that the arguments were "the most elaborate on both sides ever made in the State in a jury trial."¹⁵⁸ The thrust of Badger's argument was that the Indian boundary line "recognized as the true line by the United States, the Indians, and North Carolina in various treaties, acts of Congress, and acts of the Assembly from 1797 to the present time ... was under the Constitution of the United States

conclusive, not only as between the parties, but conclusive as to all parties."¹⁵⁹

Those who heard the arguments of both Badger and Gaston were extraordinarily impressed. The Raleigh Register reported that, "It is said, that the trial of this cause has elicited the ablest argument, on both sides, ever heard in the Courts of this State."¹⁶⁰ The Raleigh Star stated:

The series of cases from which this was selected for trial, have been pending some years, and have acquired great notoriety, and excited deep interest throughout the State.

Of the ability manifested by the arguments, it is sufficient to say, that it was entirely equal to the great importance of the cause, and the high reputation of the Counsel.¹⁶¹

Although Gaston certainly impressed those who heard him, it appears that in arguments Badger got the better of him. After the trial, Chief Justice Marshall told North Carolina Governor David Lowry Swain: "At the close of Mr. Gaston's opening argument, I thought he had as good a case as I ever saw put to a jury, but Mr. Badger had not spoken two hours before he satisfied me that no one of his [Gaston's] positions could be maintained."¹⁶²

The case was given to the jury on Friday night, and the next Monday at 1:00 p.m. they returned with a verdict in favor of the Defendants, Badger's clients.¹⁶³ The case was not over, though, for it was shortly thereafter appealed to the United States Supreme Court.

Badger, for the State, contacted and hired Daniel Webster to help him present the case before the Supreme

Court. Webster, who was for thirty years the top advocate before the Supreme bench, must have known Badger somewhat prior to this -- in February 1833, Webster recorded that he had received \$200 "from Mr. Avery of NC through Mr. Badger."¹⁶⁴ It is without a doubt, though, that working on the Lattimer case was the first opportunity Webster and Badger had for really getting to know each other.

Webster wrote Badger on August 12, 1833, to inform him that he (Webster) was pleased to be retained by North Carolina in the case.¹⁶⁵ In December of that year, Badger inquired of Webster as to what his fee would be, and the next May Badger sent Webster the requested \$1000.¹⁶⁶ Badger wrote Webster at least twice more discussing the case, and in December of 1837 he sent Webster a packet of materials in regards to it.¹⁶⁷

The case was finally put on the Court's docket for the January 1839 term. On January 14, 1839, Badger left Raleigh and travelled to Washington to appear with Webster before the Court. The day before, William A. Graham wrote his wife:

Mr. Badger will leave here tomorrow for the City of Washington to appear in the Supreme Court of the United States, on behalf of our State in a suit for large bodies of land in our Western Counties. We are of course all anxious that he shall succeed in the cause, and make a display which shall be creditable to the State.¹⁶⁸

In Washington, Badger stayed at the boarding house of Mrs. Arguelles, another resident being Henry Clay. Staying

"several weeks," Badger was able to get to know Clay, and, most likely, other national leaders.¹⁶⁹ During this period, he was admitted to practice before the Supreme Court.¹⁷⁰ He did not get to appear with Webster before the Court, though, for he was unexpectedly called home before the case was called. In 1891, Pulaski Cowper recalled:

On [Badger's] first appearance in the United States Supreme Court, he was associated with Mr. Webster. Being called away, unexpectedly, he left his brief with Mr. Webster to be filed with the Court. When the case was called, Mr. Webster arose and said: 'May it please your Honor, I shall have nothing more to say, or to do, than to present to this court, the brief of my associate counsel, the Hon. George E. Badger, of North Carolina.'¹⁷¹

The Court came down with the Lattimer case in March of 1840. By a seven to two decision, the Justices affirmed the U.S. Circuit Court for the District of North Carolina, thus giving victory to Badger's clients. Justice John McLean for the Court agreed with the principles Badger had successfully argued before Marshall seven years previously, that the treaty line long recognized by the Federal Government, North Carolina and the Cherokee Indians was conclusive and thus the ejectment suit could not be maintained.¹⁷² McLean held:

it is a sound principle & national law, and applies to the treaty-making power of this government, whether exercised with a foreign nation or an Indian tribe, that all questions of disputed boundaries may be settled by the parties to the treaty. And to the exercise of these high functions by the government, within its constitutional powers, neither the rights of a state nor those of an individual can be interposed.¹⁷³

Soon after the opinion came down, the Register printed it in its entirety. The paper commented that the case was "more commonly known and spoken of, as the great Land case from North Carolina." It then wrote: "The State was greatly interested in the result of this Suit, and the decision, being favorable, will prove highly acceptable to its citizens, particularly, to that portion of them, more immediately concerned."¹⁷⁴

In this same issue, the Register also noted Badger's efforts in this case:

We cannot permit the occasion to pass, without paying a merited tribute to George E. Badger, Esq. to whose legal acumen, and indefatigable zeal, we have no doubt, the State is altogether indebted for its success in obtaining a favorable decision. We hope, if he has not already, that he will receive from the State, a fee, commensurate with the importance of the cause, and the value of the services rendered.¹⁷⁵

One final comment should be made about Badger, Webster and the Lattimer case. Either during Badger's stay in Washington in 1839, or during his six months in Washington in 1841, when he was Secretary of the Navy, Badger asked Webster to give him a letter of introduction to Supreme Court Justice Joseph Story. Webster complied, and his letter read:

Dear Sir: -- I present you my friend, Hon. Geo. E. Badger, of North Carolina, -- your equal, and the superior of

Yours very respectfully,
D. Webster¹⁷⁶

D. Skills and Reputation as a Lawyer

In describing Badger's legal career, William A. Graham stated:

If it be true ... that 'the bar is not a place to acquire or preserve a false or a fraudulent reputation for talents,' it was eminently so in his case. He had an intrepid and self-reliant mind, which, disdaining artifice, timidity or caution, struck out into the open field of controversy with the daring of conscious power, and shunned no adversary not clad in the panoply of truth; was as ready to challenge the authority of Mansfield or Denman, Roslyn or Eldon, if found deflecting from the paths of principle or precedent, as that of meaner names.¹⁷⁷

Graham also stated other reasons for Badger's greatness:

Whether in analysis or synthetical reasoning, in dealing with facts before juries or the most intricate questions of law before courts, [Badger's] faculties [for rigorous logic] were equally conspicuous, and attended, when occasion called for their use, with powers of humor, sarcasm, and ridicule hardly inferior to those of ratiocination. Added to all this, there was a lucidness of arrangement, an exact grammatical accuracy in every sentence, a forcible and graceful style which, independent of a clear and distinct enunciation, a melodious voice and engaging manner, imparted even to his extemporaneous arguments the charms of polished composition.¹⁷⁸

Even Badger's political enemies, and there were quite a few, had to admit his legal prowess. In 1853, Horace Greeley, who detested Badger for some reason, wrote:

He is a lawyer of surpassing abilities.... Mr. Badger's qualifications for the place to which he is nominated [the United States Supreme Court], are a tough, hard, wiry mental organization, great clearness and distinctness of perception, method, exactness, and strong grasp of mind, with a good knowledge of the law. He is eminently clear and logical in statement and argument, and, admitting

his premises, you are very likely to find yourself forced to go with him to his conclusion.¹⁷⁹

Part of Badger's courtroom reputation was a direct result of his powers of oratory. As Badger had written Ruffin in 1818, he believed "that the power of speaking so as to be understood, is the most important faculty either in a Judge or an Advocate."¹⁸⁰ Badger possessed this faculty to a great degree. One observer to his legal career wrote:

He was a forensic orator of the very first class, and would have been so considered at any bar in the world. He was powerful in argument, convincing in reasoning, and exceedingly fortunate in illustration. Disdaining small matters he seized on the strong points and pressed them with brevity, but with irresistible power.... His diction was chaste, lucid, forcible, and elegant, and so simple as to be readily understood by the most ignorant of his hearers.¹⁸¹

Pulaski Cowper remembered that Badger "spoke calmly, somewhat slowly, and deliberately, never becoming excited or specially impassioned, his language always fine, and his sentences well couched, and well rounded."¹⁸² Similarly, Kemp Plummer Battle recalled that Badger adopted a "conversational plan of calm reasoning," rather than the norm of "shout[ing] into the ears of the jury, with frantic gesticulations."¹⁸³ In presenting his case this way, Badger resembled Archibald Debow Murphy, rather than Thomas Ruffin.

It has been said that Murphy was "as soft as the lute, and would steal on the jury, and tap his snuff box and offer a pinch."¹⁸⁴ By contrast, Ruffin's "manner at the bar towards opposing litigants and opposing witnesses was rough

and often offensive, hardly ever courteous and not always respectful and frequently abusive." Because of Ruffin's manners in the courtroom, public meetings were once held in Orange County to protest his "'Bullyragging' parties and witnesses in Court."¹⁸⁵ In argument, Ruffin "was a vehement speaker, and would sometimes knock the floor instead of the table with his knuckles."¹⁸⁶

As can be seen from the statements of Graham, Greeley and others, not only was Badger a great orator, but he was also a superb logician. One contemporary wrote: "That his talent was transcendant and his genius pre-eminent could not well be denied. As a clear, close, acute logical and eloquent reasoner he perhaps was incomparable, and stood alone in this state."¹⁸⁷ B.F. Moore called Badger, "the most accomplished legal logician I ever heard."¹⁸⁸

In the courtroom, Badger was unafraid of either his adversaries or the judge. As can be seen from his actions in the Rives case before Judge Richmond Pearson, Badger would not be intimidated by a judge, and he would go to great lengths if he thought his position was correct in an important matter. Almost everyone who has written on Badger has commented upon his great sense of ethics. He disapproved of dishonesty in any form, and in at least one case he filed a malpractice action against one of the leading members of the bench and bar. In 1834, Badger filed a Bill of Complaint for a Patty Taylor against Henry

Seawell, who was then on the Superior Court bench. This bill alleged that while Seawell was a practicing attorney, he had defrauded Taylor out of \$1000 and had been grossly negligent in regards to her legal matters.¹⁸⁹

Besides his oratory and logic, Badger was also gifted in other legal skills. North Carolina Attorney General William Eaton, Jr., recalled that Badger "was a master of the science of special pleading, he was a first-rate draughts-man, he was a lawyer of sound and extensive learning, and had clear, accurate and comprehensive views upon the subject of jurisprudence generally, and especially as to its great fundamental principles."¹⁹⁰ As for Badger's prowess in legal drafting, U.S. Senator Andrew Pickens "Butler, of South Carolina, once twitted some of the members of his own [Democratic] party [in the U.S. Senate], with having to seek Badger's aid to enable them to draw properly their bills."¹⁹¹

Badger was also involved in the legal community in other ways besides the mere practicing of law. On several different occasions during his career, Badger served as a local trial justice for Raleigh and Wake County. He was serving in this capacity in 1837 when a new county courthouse was dedicated. Badger was asked to deliver a speech upon the occasion, and afterward, the Raleigh Star commented:

The speech was very appropriate to the occasion, replete with patriotic exhortations to the

citizens of North Carolina to perpetuate by a strict obedience to the laws and an inflexible observance of justice, the wise institutions and the enviable character of their State. We are certain there was no one present who did not receive pleasure and instruction from this admirable speech, which we hope to be able hereafter to lay before our readers.¹⁹²

Badger also lent his skills to his native state by teaching law to some of her most able sons. Among those who studied under his instruction were Willie P. Mangum, Jr., Peter Mallett Hale and Sion Hart Rogers.¹⁹³ Badger took a special interest in promising young attorneys; Kemp Plummer Battle recalled that Badger would often visit his law office.¹⁹⁴ In general, Badger "was always popular with the intelligent youth of both sexes."¹⁹⁵

Among his fellow members of the bar, Badger's reputation appears to have been preeminent. B.F. Moore opined that, "For his very distinguished reputation at the bar, it is enough to say of him or any other man, that he was an Ajax among such members of the bar as Seawell, Hogg, Nash and Gaston."¹⁹⁶ It is also worth noting that even before his entry into national politics or practice before the U.S. Supreme Court, Badger's reputation outside of the Old North State was also great.

In 1843, Richard Peters, having been denied reappointment as U.S. Supreme Court Reporter, decided, upon the suggestion of Joseph Story, to edit a book containing the "Laws of the United States." He needed Congress' patronage, though, and to help with this he desired to

obtain "the approbation of distinguished gentlemen." Thus, Peters wrote to North Carolina Congressman William H. Washington and asked him to obtain the opinions of Gaston, Ruffin and Badger.¹⁹⁷

When Badger was appointed Secretary of the Navy in 1841, a letter appeared in the Washington National Intelligencer describing Badger and his life to that point. The author noted that, "Mr. Badger is justly regarded as one of the ablest lawyers in the United States.... If I had a cause in any court in the United States, I would as soon employ George E. Badger as any lawyer in America."¹⁹⁸ At this same time, Henry Clay described Badger as "the most eminent Lawyer in No. Carolina."¹⁹⁹

IV. 1825-1839: Other Endeavors

Between 1825 and 1839, George E. Badger spent the vast majority of his time and effort in building and maintaining his extensive legal practice. Unlike in later years, politics and public service did not occupy him to any great extent. He, though, did dabble a bit in politics during the first few years of this period, and throughout this time he was interested in advancing education and internal improvements.

Shortly after his resignation from the bench, Badger was twice mentioned as a possible candidate for public office. In late 1825, North Carolina Attorney General William Drew resigned after nearly ten years in the post. Drew had become "partially deranged," and it was said that he was "incompetent to the discharge of any part of his duties." Charles L. Hinton wrote then Congressman Willie P. Mangum on January 1, 1826, and described Drew's condition and resignation; Hinton stated that James F. Taylor, Daniel L. Barringer and George E. Spruill were the announced candidates for the position. He also wrote: "tomorrow it is expected [Samuel] Hillman & Badger will be added to the list."¹ They were not added, though, for in the legislature only the original three were nominated, with Taylor winning on the third ballot.²

Later that same year, Mangum resigned his seat in the United States House in order to take a position on the

Superior Court. On September 7, Mangum's older brother Priestly wrote his sibling concerning possible candidates for the Congressional seat: "Badger, Seawell, [Josiah] Crudup, [James] Mebane & Doc. [James S.] Smith have been spoken of as candidates. I doubt not but that Badger would be very glad to be elected, if he could be without opposition -- which I think is the only way in which he could be elected."³ Badger did not throw his hat into the ring; Mebane faced James L. Barringer, who had lost to Mangum in 1823 by nearly eight hundred votes. This time, though, Barringer was victorious, by a mere twenty-one votes.⁴ What is interesting about Priestly Mangum's statement is that it shows Badger's reluctance to campaign before the general populace, and also his relative unpopularity, at the time, with the electorate.

Badger's only major political activity during this period occurred in the 1828 Presidential campaign. Despite his early Federalist leanings, Badger strongly supported Andrew Jackson over John Quincy Adams. This is not all that surprising, though, considering many former Federalists had supported the General in 1824 as the only viable alternative to the old Republicans' favorite, William Crawford, while over the next four years others had become disenchanted with the Adams administration. Badger's then father-in-law, Colonel William Polk, a past Federalist, was leader of the Jackson forces in North Carolina during the election, and

other Federalist supporters of Old Hickory included John Stanly and Willie P. Mangum.

On December 24, 1827, the central Jackson committee of North Carolina met. Badger was present, and he was appointed chairman of a committee to draft resolutions endorsing a Jackson/Calhoun ticket.⁵ Badger's committee drafted these resolutions, and he also wrote two major campaign tracts. The first, Address of the Central Jackson Committee to the Freemen of North Carolina, vigorously supported Jackson and attacked the supposed "deal" in 1824 between Adams and Henry Clay. The Case of the Six Militia Men Fairly Stated attempted to defend Jackson's conduct in this notorious incident.⁶

These tracts were distributed throughout the Old North State, and they gave Badger a good amount of fame. In 1841, one person recalled that "Mr. Badger, was an active and ardent supporter of General Jackson for the Presidency; he was, indeed, the leader of the Jackson party of North Carolina, and wrote the address containing their political creed prior to the elevation of Gen. Jackson to the Presidency."⁷ A year before, in 1840, the Raleigh Register "recollect[ed] the time, when [Badger] was justly looked up to as the Magnus Apollo" of the Jackson party.⁸

After Jackson's election, his supporters in North Carolina nominated Badger for the post of U.S. Attorney General.⁹ William Polk even went as far as traveling to

Washington to consult with Congressman Samuel P. Carson about Badger's chances.¹⁰ Many North Carolinians believed Badger would receive some position in the new administration. Archibald Debow Murphey wrote Thomas Ruffin:

Mr. Badger will, I expect, get an Appointment from Genl. Jackson. I have learned from various sources that the Genl. intends to bring into notice Some of our Citizens. And from his Friendship for Col. Polk and the Talents of Mr. Badger, I have calculated upon his selecting Mr. Badger for the office of Attorney-General, or for a foreign mission."¹¹

Despite these expectations, no appointment was forthcoming. The only North Carolinian Jackson appointed to his cabinet was U.S. Senator John Branch, who was chosen to be Secretary of the Navy. Badger's career might have been vastly different, and his fame much greater, had Jackson chosen him Attorney General. William A. Graham opined:

Had [Badger] been called to the office of Attorney-General of the United States by General Jackson at the period of first election (of which Mr. Badger had been an ardent and efficient advocate), as many of his friends entertained expectation, and had continued from that time his practice in the Supreme Court of the United States, it is hazarding but little to say that his fame would have equalled that of any advocate in the history of American jurisprudence.¹²

After Jackson's snub, Badger retired from active politics for twelve years. In 1831, though, he was nominated for a seat in the North Carolina House of Commons. On July 7, 1831, the Register reported: "We are authorized to announce Geo. E. Badger and Thomas P. Devereux, Esquires,

as candidates to represent this county in the House of Commons of the next General Assembly."¹³ A month later at the polls, Badger finished third in a four-man race -- with the top two candidates receiving seats. The vote was as follows:¹⁴

William H. Haywood, Jr.	1358
Nathaniel G. Rand	999
George E. Badger	651
Thomas P. Devereux	164

After the election, the Register had an explicatory paragraph concerning the canvass:

It is due to Messrs. Badger and Devereux to state, that having been nominated as candidates at a public meeting of their fellow-citizens, they consented to serve if chosen, but took no steps towards the advancement of their election in any way. It is proper also to state, that Mr. Haywood only announced himself as a candidate about a fortnight previous to the election, and abstained from treating.¹⁵

After this, Badger's name was not mentioned in local, state or national politics until 1840. Although he probably agreed with the tenets of the Whig party from at least 1835, that year he was not mentioned giving a toast at a large dinner honoring Willie P. Mangum, running as a delegate to the North Carolina Constitutional Convention, or attending a meeting to nominate Hugh White for President.¹⁶ As late as 1839 he was not a delegate to the Whig state convention.¹⁷

At least one person has criticized Badger for staying away from the rough and tumble of politics during these years. In 1891 there was a spate of newspaper articles and

editorials reminiscing about Badger and proclaiming his greatness. One discordant note was sounded in an article in the Raleigh Express by one who had been the ward of Governor James Iredell, Jr. Among this person's criticisms of Badger:

For the larger part of his early life he kept aloof from the people never held office in the State and openly avowed his utter skepticism of the theory our Republican Government, never attended the sessions of the Legislature, tho' he lived in Raleigh where the General Assembly met annually, and once, when a boy, we heard him say at Guion's hotel in Raleigh, that he had not been to the capitol where the Legislature met in three years, until that morning, when he got to the door of the House of Commons and heard that Bedford Brown had just been elected U.S. Senator [1829, reelected 1834] and he turned away from the Capitol and never expected to go there again.¹⁸

That Badger disdained the activity of the North Carolina General Assembly at this time is probably true. Having to sit through the 1828 session because of his position as Supreme Court Reporter, he wrote to Ruffin that this activity, "kept me engaged in worse than empty nothings..."¹⁹ At this time the majority of legislators were extremely conservative; following the lead of their U.S. Senator Nathaniel Macon, they believed in strict construction, limited government and defense of slavery. The majority scorned such ideas as internal improvements, support for the state's banks and an increased suffrage. Because of North Carolina's lack of progress, the state became known nationally as the "Rip Van Winkle state."²⁰ Badger, though, was one of a group of younger North

Carolínians "who wished to stimulate the economic and cultural growth of their state," and thus supported ideas such as internal improvements and a greatly increased emphasis on education.²¹

Badger not only disagreed with the legislature's politics, he also found fault in their learning and the way they deliberated. In a speech before the two literary societies of the University of North Carolina in 1833, he declared:

We are not as literary a people as we should be. We have more smatterers, and fewer adepts, than other nations; and as a necessary consequence of the want of thorough instruction, we are inflated with self consequence at what we deem our vast attainments. How often, my young friends, and how painfully is this manifested in the productions of our public men! What pompous bombast -- What unmeaning declamations -- What artificial subtleties -- What gross invective -- What coarse allusions -- What disgusting self confidence, deform the oratory (as it is called) of Congress! Of all the weeks which are yearly devoted in that body to the delivery of speeches, how few the hours which are not wasted!²²

That Badger was not a firm believer in republicanism was a charge often repeated by his political enemies. Upon his appointment as Secretary of the Navy, the Lynchburg (Va.) Republican stated, "we have heard him publicly denounced in his own State, (perhaps justly) as a monarchist out and out!!"²³ Badger undoubtedly desired a strong central government, and he had no patience for extreme states-righters. Yet absolutely nothing can be found to

suggest that he wished return to a monarchy or abolition of the legislative branch.

One of Badger's main concerns was the improvement of education. As noted above, he served as a Trustee of the University of North Carolina from 1818 to 1844. In this post, he did many things to benefit the institution. One of the most important was the introduction of a resolution to establish a chair of modern languages; this resolution passed and in 1826 U.N.C. hired her first professor of modern languages.²⁴ Badger also wrote a major tract concerning the university and claimants to western lands she had been granted by the state legislature.²⁵

In 1833, Badger was asked to address the two major literary societies, the Philanthropic and Dialectic Societies, of the university. Every year the students of the societies sponsored a major address by an eminent citizen, and in the previous year, 1832, they had heard William Gaston and his denunciations of slavery. Badger accepted the invitation, although he desired that his speech not be advertised. He wrote William A. Graham:

A short time since I accidentally observed in an old Newspaper late in May or June last, a very fulsome advertisement announcing to the publick that Mr. Gaston was to deliver the then usual evening annual address at Chapel Hill. As I very sincerely detest and abhor all such stuff which must be offensive to every man of the least pretensions to taste, and should be deeply mortified to see any such announcement of myself in the publick prints, I must beg the favour of you (and a favour it will indeed be) in such way as you may think most proper and delicate, so to

manage as to prevent any notice whatever (no matter what may be its shape or character) of my appointment to deliver the next address.²⁶

Unlike Gaston's address, which touched upon politics and slavery, Badger focused on two topics: education and religion. He began his speech by decrying the lack of learning and eloquence then pervading the land. After denouncing the wasted hours of useless speeches in Congress, he also attacked "the same frothy, loud, inelegant, and unintelligible vociferations" heard in courts of law. Badger then added, ironically:

[Y]et, scarce a public meeting is held (and where are they not held?) from an assembly at Faneuil Hall, to a separate election or a barbacue, which is not, according to the printed reports of those who heard and act in them, enlightened and electrified by eloquence surpassing that of Tully or Demosthenes! In short, deficient as we are, all our people are prodigies -- learning is to be found in every hamlet, literature in every country store, and oratory in every debating room. In the mean time, there is nothing in the public taste and intelligence, to rebuke and put to shame, this empty swelling, this 'sound and fury signifying nothing.'

Badger held that it was up to the educated classes to improve this sorry state of affairs, "and by them it can only be accomplished by the study of classical antiquity, and the best specimens of modern literature." Attending the University of North Carolina should not be the climax of the learning process, but only the beginning. Although many of life's rewards could be obtained without learning, Badger told the students that "knowledge is of itself desirable, & should be pursued even for its own sake -- for the dignity

and happiness which it brings to its possessor." Thus, he charged his listeners: "resolve, now, that you will be learned, accomplished, literary -- that you will not be content while you still have something useful to acquire."

To give an example of one who continued his learning after his formal education ceased, Badger turned to William Gaston:

He, amidst all the occupations of private, professional and public life, has ever remembered the pursuits of his alma mater; has kept bright by constant exercise, all the mental armoury which early education had bestowed, and, instead of suffering his classical knowledge to decay, has been always enlarging his acquirements: and he now reaps the reward of his early labors and consistent efforts in a real efficiency, and acknowledged superiority -- of which, any of us, might well be proud.

Badger warned his listeners that they were growing up in "a peculiar era," with the press "just beginning fully to develope its mighty influence on our nation." Although this might help educate the masses, Badger saw harm in a strident political press: "In the party conflicts of the day, a spirit of falsehood, of defamation, of indecent scurrility, and shameful corruption, has gone forth upon the editorial corps." No matter what, he urged the students to always promote the rule of law:

you will realize, that peace, domestic tranquility, and regular tribunals to administer laws, are objects of great value, however underrated they may be, -- that it is quite possible not to be prosperous and happy, though blessed with ceaseless agitation; that mobs may err in opinion and in practice; and those who most

loudly urge internal dissension, are often men to whom any change will be desirable.²⁷

As for religion, Badger held that this subject was "the most important" to the students. He urged upon their "consideration, the claims of the Christian Revelation. Unless grounded upon this, every system for the government of life must not only be incomplete but radically defective."²⁸

Overall, Badger's address was a polished and masterly production, although it did not receive the same attention as Gaston's. Copies of the speech were printed in Richmond, and upon receiving their's, the Register reproduced the entire address over its next two issues. An accompanying editorial stated:

Mr. Badger's Address. -- We need scarcely commend to the reader's attention, this masterly production, worthy of the powerful mind from which it emanated, and stamped with the vigor of its faculties. We have rarely met in the same space, with more good sense, cultivated taste or classic eloquence. The sentences are instinct with thought, and it is evident the author speaks, because he has something to say. His manner has neither that wearisome diffuseness which extemporaneous disclaimers are apt to carry into their written compositions, nor the elaborate gaudiness of the closet Rhetorician. It is highly creditable to the character of the State, that our distinguished men, instead of wasting the strength of their intellectual faculties upon the struggles of Party, are employed in adding something to our stock of valuable knowledge, in raising the tone of thought and feeling in Society, and in laying the foundations of a literature worthy of our Institutions.²⁹

Because of Badger's services to U.N.C. and his intellectual attainments, in 1834 the school awarded him the

honorary degree of LL.D.³⁰ This was not Badger's only academic honor, though. Upon the petition of several of his classmates, in 1825 Yale listed Badger's name among those who had graduated with a B.A. degree in her class of 1813.³¹ At this time, the school also awarded him the honorary M.A. degree.³² While serving as a U.S. Senator, in 1848, Yale bestowed upon Badger their LL.D. degree.³³

Badger was not only interested in improving the mental condition of his native state, but also the physical. When North Carolina's capitol building was destroyed by fire in 1833, Badger was one of thirty-eight commissioners appointed by the legislature to supervise its rebuilding. Among the other commissions were Devereux, Ruffin, Gaston, Seawell, Daniel, Saunders, Iredell, William H. Haywood, Jr., Chief Justice Henderson, Governor Swain, future Governor Charles Manly, Register editor Weston Gales, and Congressman Daniel L. Barringer.³⁴

What really interested Badger, though, was the building of new internal improvements. In 1833, Badger was a delegate from Wake to a statewide internal improvement convention. 118 delegates attended, and the Register called it, "the most talented, respectable and dignified body ever convened in North Carolina for any purpose."³⁵ Badger was one of twenty delegates appointed to publish an address to excite the state's citizens on the subject of internal improvements.³⁶

Another internal improvement convention met the following year, and Badger was named to its Central Committee.³⁷ A third convention was called in 1838, and Badger once again was appointed as a delegate from Wake.³⁸ The newspaper accounts of this convention, though, do not show Badger taking his seat.³⁹ In 1836, Badger addressed a public meeting held to adopt measures to ensure that a railroad would be built from Raleigh to the Roanoke River.⁴⁰

One other activity in which Badger was involved was banking. In 1829 the stockholders of the State Bank elected him a Director. Badger's brother-in-law, Ichabod Wetmore, was cashier of the bank in Fayetteville, and Badger's father-in-law, William Polk, was the long-time Chairman of the Board of Directors.⁴¹

During this period, Badger also lent his name to one commercial enterprise. In the mid-to-late 1830s, the Register carried a long-running advertisement for "Beckwith's Anti-Dyspeptic Pills." The ad stated that the pills' "efficacy is strongly attested by Certificates from the following gentlemen," and then named such prominent men as Badger, Devereux, editor Weston Gales of the Register, Judge Potter, Governor Iredell, North Carolina Episcopal Bishop Levi S. Ives, and Rector of Christ [Episcopal] Church, Raleigh, George W. Freeman. The Beckwith who manufactured the pills was undoubtedly Dr. John Beckwith,

noted Raleigh physician and husband of Badger's first cousin.⁴²

Despite Badger's extracurricular activities, it must be said that from 1825 to 1839 he was primarily known as a lawyer. This would change with his emergence as a political leader in 1840.

V. Badger, The Man

During the twenty-five years following George Edmund Badger's death in 1866, a number of persons wrote obituaries, articles or editorials reminiscing about him. While most praised Badger's talents and accomplishments, they also noted his faults. Using these and other sources, one can begin to develop an accurate portrait of how Badger appeared to his contemporaries.

Physically, George E. Badger was not an extraordinarily imposing figure. He stood approximately five feet, eight inches in height. As for weight, it was said he, "at his best, weigh[ed] about 170 pounds," although he was "inclined to be stout." One person described Badger as "short, and somewhat stumpy."¹ This same observer noted that Badger "had a visible limp in his walk, one of his legs being perceptibly bowed more than the other, probably broken, and not skillfully set, and the forefinger of his right hand seemed slightly defective, being contracted in the first joint."² Judge David Schenck also mentioned Badger's "slightly bowed" legs and his "crooked forefinger." In addition, Schenck wrote that Badger's "fingers and hands were ungainly, and a habit he had of cracking his finger joints made his knuckles very large."³ Badger's bowed leg was probably the result of the aforementioned serious carriage accident which befell him in 1831.

What people noticed about Badger, though, was his head; especially his massive forehead and animated eyes. One person recalled that "upon [Badger's] shoulders sat a head, that the greatest king that ever ruled might crave, and at which a Bacon, or a Cecil, might gaze with admiration, and study."⁴ Another remembered that Badger's "massive forehead and sparkling eye and a countenance that seemed to have a supernatural illumination, attracted the gaze and scrutiny of every one who saw him and subdued every feeling but that of astonishment and wonder."⁵

At least two portraits of Badger are extant. They show him to be bald on top of his head, with medium length brown hair on the sides. In later years he sported a close-cropped gray beard.⁶ His clothes appear neat and rather elegant. During the winters of his old age, "he always wore a long, full, blue cloth cloak, reaching to his heels, and cut in the old style and fastened at the neck with a brass clasp."⁷

It is also said that Badger possessed one habit which was not all that uncommon, tobacco chewing: "He was an inveterate tobacco chewer, and was constantly picking little fragments of it from his mouth, and spitting the juice without much regards at times to its direction or destination."⁸

As noted above, Badger's first wife, Rebecca Turner, died childless after six years of marriage in 1824. On

November 9, 1826, he remarried, to Mary Brown Polk (28 May 1808 - 1 March 1835).⁹ The second Mrs. Badger was the daughter of William Polk (1758-1834) and Sarah Hawkins. William Polk had been a Colonel in the Revolution, and for the last fifty years of his life was one of the leading men of the state. He was a wealthy banker, a land speculator, and a highly successful political operative, being first a Federalist, and later a Jacksonian. Mary Polk Badger was a sister of Episcopal Bishop and Confederate Lieutenant General Leonidas Polk (who was married to Thomas P. Devereux's sister), niece of North Carolina Governor William Hawkins, niece of Lucy Hawkins, for whose hand Badger's cousin Thomas T. Stanly and Louis Henry duelled in 1813, and second cousin of President James K. Polk.¹⁰

By his second wife, Badger fathered two children. Katherine Mallon Badger (b. 9 August 1827) married William H. Haigh, a lawyer of Fayetteville.¹¹ Sarah Polk Badger (25 May 1833 - 19 December 1903) married Montford McGehee. McGehee served as North Carolina Commissioner of Agriculture from 1880 to 1886; he was also "a classical scholar who ... lost three fortunes trying to farm."¹²

After Mary Polk Badger died in 1835, Badger married Delia Haywood Williams (b. 6 August 1807) on April 16, 1836. She was the daughter of noted Raleigh banker and U.S. Commissioner of Loans Sherwood Haywood (1762-1829) and Eleanor Hawkins, and the widow of General William Williams.

Delia Badger was a niece of John Haywood, state treasurer for forty years, a cousin of William H. Haywood, Jr., Mrs. Edward Bishop Dudley and Mrs. Charles Manly, and, through the Hawkinses, a cousin of the second Mrs. Badger.¹³ The third Mrs. Badger has been described as "a lady of rare loveliness," and in 1847 North Carolina Congressman David Outlaw wrote his wife that Mrs. Badger "is still a very fine looking woman."¹⁴ The next year, Outlaw again discussed the Badgers with his wife:

I am satisfied there is no good feeling between Rayner and Badger, and Mangum says, there is as little between B and any of the Polk family. Of course I do not know why this is so, I have heard that they thought his haste to supply the place of the second Mrs. Badger, was rather indecent, and wanting in respect to her memory, and scandal about Raleigh at the time further said that the present Mrs. Badger, was rather indecent in her haste in giving birth to twins after the marriage.¹⁵

The charge that Delia Williams was pregnant when she married Badger is probably true, for they were wed on April 16, 1836, and later that same year a daughter, Mary, was born (if twins were born, one must have died in infancy). As for Badger's "indecent haste" in remarrying, he waited thirteen and a half months.

Badger fathered seven children by his third wife. The eldest daughter, Mary R. Badger (1836-1884), married Peter Mallett Hale (1829-1887). Hale, the son of long-time Fayetteville Observer editor Edward J. Hale, graduated from the University of North Carolina and studied law under his

future father-in-law. In later years he edited the Fayetteville Observer, the Raleigh Observer, the Raleigh News and the Raleigh Register, as well as authoring several books and serving as the state's printer.¹⁶

Badger's eldest son was Dr. George E. Badger (1838-1883). He served as a surgeon in the Confederate Army and later practiced medicine in Tallahassee, Florida.¹⁷ Next was Richard Cogdell Badger (8 August 1839 - 22 April 1882) who married Bettie Austin. Richard Badger graduated from U.N.C. in 1859, after which he studied law under Supreme Court Chief Justice Richmond Pearson at Pearson's Richmond Hill law school. During the War Between the States, he served as a Major under General Junius Daniel, and shortly thereafter was Assistant Secretary to the Constitutional Convention of 1865-1866. After the war he became a Republican and was very active politically. He was co-counsel for Governor William Woods Holden during his impeachment trial, member of the state House (1872-73), U.S. District Attorney (1873-80), and a delegate to the state's 1875 Constitutional Convention. It has been said that Richard Badger "inherited many of those intellectual qualities for which his father, Judge Badger, was so distinguished."¹⁸

George and Delia Badger's fourth child was Annie H. Badger (1841-1898), who married first Dr. W.S. Bryan, and later Paul F. Faison. Next came Thomas Badger (1843-after

1909); he served as a Second Lieutenant during the War, and was later Mayor of Raleigh (1891-95). Sherwood Haywood Badger (b. 1844) was the Badgers' sixth child. "Wood" Badger was a courier in the Confederate Army, and later an officer of the Richmond & Danville and Southern Railroads, and died unmarried. George and Delia's youngest child was Edward Stanly Badger (1846-1878), who served as a Second Lieutenant for the Confederacy and died unmarried.¹⁹

Many persons saw George E. Badger as possessing one of, if not the state's greatest intellect(s).²⁰ In 1847 when noted North Carolina author, educator, minister, lawyer and legislator Calvin Henderson Wiley had his first novel, Alamance, published, the New York publisher, William G. Noble, sent out the following notice:

Mr. Wiley is well known in North Carolina as a writer. A series of political essays written by him just after quitting college were generally attributed to the Pen of Sen George E. Badger, the most gifted man in the State and as such were answered by the then Treasurer of the State, who addressed his answers to Mr. B and alledged that every body knew that he, and he only, could be the author.²¹

According to Edward J. Hale, Badger's intellectual greatness came from his "almost unbounded scope of reading and [a] wonderful memory to retain and at all times to utilize the knowledge thus acquired."²² Two other contemporaries agreed with this assessment. After observing him during North Carolina's Secession Convention of 1861-1862, David Schenck wrote:

[Badger's] mind was thoroughly cultivated; he had read everything in our language and very much in Latin and Greek, and was familiar with all incidents of history. His memory was unfailing and his powers of recollection without a limit. All that he had read and observed were as servants at his hand ready to illustrate his argument, to adorn his language or to magnify his eloquence. Arts, sciences, poetry, rhetoric, classics followed in his train of thought and shed their radiance on every idea he advanced.²³

Likewise, William A. Graham, who saw Badger move within the highest circles of both North Carolina and Washington, observed about Badger in the U.S. Senate:

on all subjects pertaining to general policy, or to the history, jurisprudence, or Constitution of the country, he commanded a deference yielded to scarcely any other individual, after the withdrawal of Mr. Webster; and as a speaker and writer of English, according to the testimony of Judge Butler, of South Carolina, he had no peer in the Senate, save Webster.²⁴

Those observations appear to have some merit. Badger's letters and speeches are abundantly sprinkled with allusions to the Bible, the classics, English literature such as Milton and Shakespeare and various historical events. Graham also mentions that, "as a critic, whether under the inspiration of a 'good or bad natured muse,' [Badger] had few peers among the judges of 'English undefiled.'"²⁵ Congressman Richard Spaight Donnell told an acquaintance that "when in Congress with Mr. Badger, he [Badger] met a number of foreign ministers, one evening, at his lodgings.

The conversation turning finally upon different English authors, Milton's great poem, or as he termed it 'the greatest poem of any time,' came under discussion. When he said Mr. Badger beat himself. Page after page he would quote, and then

criticise and explain it in such an interesting and original way, that all present were bewildered and delighted -- the ministers, after making him repeat what he had only the moment before finished. His mind seemed illumined and his voice that evening was like a silver bell ringing out its sweetest notes on the purest air. [They] were all charmed for hours.²⁶

There was one subject of which Badger was totally ignorant -- finances. Badger's distaste for numbers was legendary. Governor Graham recalled that Badger "was as averse to the details of revenue and finance as Charles James Fox, and could probably have united with that statesman in the declaration that he had never read a treatise on political economy."²⁷ Another contemporary observed: "Mr. Badger's contempt for mathematics, finances, taxes and kindred subjects was proverbial. He couldn't bear to restrain his thoughts and fancies with such exact and rigid sciences."²⁸

Writing was another thing not suited to Badger's tastes. Governor Charles Manly recalled that, "The labor of writing was very great to him -- the mere corporal business was very irksome to him -- and when it was urged upon him to do anything for the cause he would say, 'I will do anything towards making a speech, but I cannot write.'" Badger, though, was the author of several very important political tracts, but it is said that the way they got into print was by having him dictate a campaign speech to an amanuensis. In the Senate, Lewis Cass supposedly remarked that "it was totally unnecessary for Judge Badger's speeches to be

overhauled before they went to the printer -- so pure and faultless fell his eloquent language upon the ears of the Senate;" apparently many of his writings were but that, unrevised speeches.²⁹

One subject in which Badger was exceptionally well versed was religion. Although his mother was a Methodist, Badger during his adult life was a member of the Protestant Episcopal Church. From 1825 until his death, he was a communicant of Christ Church, Raleigh, and for many years served on its vestry. On at least three occasions, 1826, 1828 and 1833, he represented Christ Church at the statewide Diocesan Convention. During the latter convention, he and seven other laymen, along with four clergymen and the Bishop, were appointed a committee to organize an "Episcopal School of North Carolina" in Raleigh; among the other laymen appointed were Ruffin, Devereux and Duncan Cameron.³⁰

It has been said that "only a professional theologian [could] do justice" to Badger's knowledge of theology.³¹ On at least one occasion, this knowledge helped him win a case before the state Supreme Court. In State v. Williams, the Defendant was indicted for profanation of the Sabbath by having his slaves build fences and do other work on Sundays. By statute, in North Carolina laboring on the Sabbath was illegal and one could be fined by a Justice of the Peace, however, it was not an indictable offense. The trial court, though, indicted Williams and found him guilty.

On appeal, Badger defended Williams, and the case centered around one question, whether the "Christian religion is a part of the common law." In his opinion for the Court, Chief Justice Ruffin held that Williams' conduct was "very reprehensible" and had been a "breach of God's law," but he agreed with Badger that the common law did not include "God's law."³²

During Badger's argument in this case, "a venerable citizen of the State, of great intelligence, entered the court-room to speak a word to the reporter." The citizen expected to immediately leave, but stayed until the close of Badger's argument, being "fascinated with the manner of the speaker, the splendor his diction, the copiousness of his theological and legal learning, the force and clearness of his arguments and the precision with which they were stated." Upon leaving, the old gentleman was heard to observe, "what folly ever to have made him a judge, he ought to have been a bishop."³³

Badger's great knowledge of matters religious came to the public's attention mainly through two interesting episodes. The first involved the Reverend George Washington Freeman, Rector of Christ Church, Raleigh. During the late 1830s, Freeman, who was from Puritan New England stock, denounced "dancing, whist games, the theater, circuses and parties. He also preached against the fashions of the day, including satin, lace, ribbons, and feathers."³⁴ Badger saw

no harm in these activities or fashions and he wrote a pamphlet attacking his minister's positions. Kemp Plummer Battle recalled that, "Mr. Badger answered [Freeman's] scriptural arguments with such cogency of reasoning as to surprise the public and excel the preacher in his own field. Finding that his opponent had convinced his congregation, Mr. Freeman resigned his charge [on June 18, 1840]."³⁵ Freeman was later appointed Missionary Bishop to Arkansas, the Indian Territory and the Republic of Texas.³⁶

What is even more interesting are the events involving Badger and Levi Silliman Ives, Episcopal Bishop of the Diocese of North Carolina. Installed in 1832 as North Carolina's second Episcopal Bishop, for many years Ives was both popular and very successful. A High Churchman, in the 1840s Ives became interested in some of the doctrines then being advanced by those involved with the Oxford movement (also known as the Tractarian or Puseyite movement) in England. These doctrines held that some of the practices, rituals and theological ideas of Catholicism rejected by the Church of England during the Reformation, should be reintroduced into Anglicanism. Some also wished a reunion with the Roman Catholic church.

A major controversy erupted over an Episcopal mission station and school, Valle Crucis, in mountainous Watauga County, N.C. In 1847, Ives allowed a group of New York "seminary graduates of thoroughgoing Tractarian persuasions"

to found a monastic order at Valle Crusis, "the first monastic community in Anglicanism since the Reformation." It soon became public knowledge that the new monks were using certain Catholic rituals and practices. At the same time, Ives was preaching that the Catholic practice of auricular confession was permissible, perhaps even desirable, in the Episcopal church.³⁷

These events gave rise to a great outcry among both clergymen and laymen within the North Carolina church. During the 1849 Diocesan Convention, the Committee on the State of the Church reported:

While the Committee finds much cause of thankfulness to God for these manifestations of the Church's increase, they deplore the existence among its members of great agitation and alarm, arising from the impression that doctrines have been preached not in accordance with the Liturgy and Articles of this Church, and that ceremonies and practices have been introduced, either unauthorized by the customs of this Church or in plain violation of its rubrics.³⁸

In response, Ives, who was quite sick and not in attendance, wrote a letter stating that, "no efforts shall be wanting on [my] part ... to hinder the inculcation of any doctrine or the introduction of any practice -- come from whatever quarter it may -- not in strict accordance with the Liturgy of our Church." As for auricular confession, Ives wrote that the Book of Common Prayer, "does not authorize any clergyman of this Church to teach or enforce such confession as necessary to salvation; and that the only confession that it authorizes is the voluntary confession of

the penitent in accordance with the exhortation in the office for the Holy Communion."³⁹

On August 8, 1849, while at Valle Crusis, Ives issued an eighty page pastoral letter to the members of his Diocese. In it he stated that his response to the 1849 Convention, mentioned above, had been written while very sick, and thus he had not been "writing or even thinking intensely." As to the Convention's questioning of his teaching, he wrote:

No convention, constituted as our conventions are, has a right to determine what is or should be the faith, or practice under the faith, of a diocese.... Whatever man, therefore, or body of men, take upon the power of dictation, or control, or, under any form, the chief direction, in regard to the doctrine, discipline and worship of this diocese, or any part of this diocese, are guilty of arrogating powers committed solely to my hands, assuming a trust for which I alone am made responsible, and resisting the authority of Christ and the functions of the Holy Ghost with which I only am invested.⁴⁰

In his letter, Ives approved of such doctrines and practices as auricular confession, private absolution, prayers for the dead, invocations to saints and the "real presence" in the Eucharist (later denying that this meant transubstantiation).⁴¹

The reaction was fast and furious, with "a shower of pamphlets" coming in reply to Ives. One, Auricular Confession, was written by the Reverend Francis L. Hawks, Badger's boyhood friend and law partner and, in later years, an influential Episcopal clergyman. Other noted divines,

from states such as New York and Connecticut, also wrote attacks on the views of Ives.⁴² The most important pamphlet, though, An Examination of the Doctrines Declared and Powers Claimed by the Right Reverend Bishop Ives, was written by a layman, George Edmund Badger.

Badger's pamphlet was actually a small book, being over one hundred pages long. Using scripture and the views of noted theologians, he carefully constructed an argument answering both Ives' proclaimed powers and the Roman Catholic doctrines Ives and other Tractarians had advocated. He prefaced his remarks by writing:

If the Protestant Episcopal Church be, as its enemies have often said, but a disguised form of Romanism; if our Bishop be alone responsible for the doctrine, discipline, and worship of his diocese, and therefore should have sole authority over what he is alone responsible for; if he have, as a consequence of this authority and responsibility, a right to require from his diocese implicit submission amongst us ceremonies and practices not only unknown here, not only unknown throughout the Church in the United States, but 'wholly unauthorized by the customs of the church as established by the English reformation'; if the clergy and laity, assembled in diocesan convention, have nothing to do with the doctrines thus taught and the practices thus introduced -- can institute no inquiry, and can express no opinion respecting them; if he may set forth at one time teachings different from and opposed to the teachings set forth by him at another, and the members of the church must follow all his fluctuations of doctrine even as the obedient vane follows the shiftings of the wind; if, in one word, our Bishop be within his diocese a spiritual lord and master over God's heritage, and have papal supremacy over us, then it is high time that our actual state and condition should be known; and, if these things be not so, then it is high time that the church at large should be disabused, and we vindicated from the suspicion of

admitting such exorbitant claims, and bowing down in such degrading submission.⁴³

As for the monastery at Valle Crusis and the practices used therein, Badger wrote:

[Ives] has instituted at Valle Crusis a monastic order, a society within the church, composed of persons bound to him by a vow of celibacy, poverty, and obedience, the form of which the Bishop does not give us in his Pastoral, though he sets out the objects of the society and the duties of the order. He has given to the members as their peculiar dress, 'a black cassock, extending from the throat to the ankles,' answering to that worn by members of the Romish Order of Jesus. He allows to be placed on the altar a pyx, in which are reserved the remaining consecrated elements after a communion, a practice used in the Romish Church, but disallowed and forbidden by ours. Again: there is used at Valle Crusis, with the approbation of the Bishop, a little manual of devotion, in which, the Bishop says, were some 'expressions' which, upon being objected to, were by him promptly altered. Now these 'expressions' were prayers to the Virgin Mary and the Saints; and these prayers the Bishop does not deem wrong in principle, for, in a letter to one of his presbyters, he says: 'I feel bound, however, to say, that while I allow no prayers to the Virgin Mary and Saints, it is not because they are wrong in themselves, but because they are liable to abuse.'⁴⁴

Professional reactions to Badger's pamphlet were extremely positive. The Philadelphia Episcopal Recorder stated:

'We ought to give more credit to one private Layman than to the whole Council and to the Pope, if he bring better authority and more reason.' -- Panormitanus, quoted with approbation by Jewell.

We hail with gladness the triumphant reply to the Pastoral letter of Bishop Ives, although we deeply regret the existence of the anti-protestant opinions and practices which it exposes to view. We see it announced in different quarters that the Hon. Mr. Badger is the author of this reply. -- Judging from its argumentative style, its close reasoning, and logical deductions, we are disposed to think the announcement correct. Although Mr.

Badger is a laic, he has not been an indifferent observer of the great religious questions and controversies of the day. The Bishop of North Carolina published some time ago, his own opinion of the distinguished theological attainments of Mr. Badger. They are described of the highest order.⁴⁵

Likewise, the New York Protestant Churchman opined:

The pamphlet ... is understood to be from the pen of the Hon. Mr. Badger, a senator of the United States, and one of the most distinguished and influential laymen of North Carolina. Its readers, therefore, have reason to expect 'an examination' of the position and doctrines held by Bishop Ives, marked by the sound theological views and masterly ability of the writer, and conducted with perfect fairness and Christian temper. They have, in this pamphlet, a thorough exposure of what is but a disguised form of Romanism, and a merited rebuke of claims unsupported by the teachings or practice of our church; and they must thank God for raising up such defenders of the Truth, when his flock is assailed by faithless shepherds, and destructive heresies.⁴⁶

After publication of his pamphlet, Badger did not play an active role in the controversy surrounding Ives. Amid the swarm of controversy, the Bishop began to rethink many of the Tractarian views he had lately adopted. During the 1850 Diocesan Convention, he stated that he did not believe in auricular confession "in the Romish sense," the doctrine of transubstantiation, or that the elements of the Eucharist should be "reserved, carried about, lifted up or worshipped." Also, he held that prayers to saints or the Virgin Mary were "clearly derogatory to Christ and opposed to God's Word." Finally, he authorized a committee of clergymen and laymen to investigate the circumstances surrounding the whole controversy.

After holding extensive interviews with Ives, this committee reported its findings to the 1851 Diocesan Convention. The report stated that "it had been at one time a very favorite idea [of Bishop Ives] to bring about a union of the Roman, the Greek, the Anglican, and the American Churches; and that, in his zeal for Catholic union, he had overlooked the difficulties in the way, which he was not satisfied were insuperable." Ives' "ability to perceive the difficulties in the way had been diminished by a high state of nervous excitement arising either from bodily disease or a constitutional infirmity." Furthermore, this desire for a Catholic reunion had "insensibly led [Ives] into the adoption of opinions on matters of doctrine, and to a public teaching of them, of the impropriety of which he was now fully satisfied; the doctrines including "Invocation of Saints," and auricular confession and absolution. Finally, Ives told the committee that he had never believed in transubstantiation, and that Valle Crusis had been returned to its former position of being only a mission station. Underneath the official copy of the committee's report, Ives wrote, "The above is correct."⁴⁷

Things appeared to be settled during most of 1851 and 1852. During September of the latter year, the Bishop requested, and was granted, leave for six months to travel in Europe because of ill health. On December 25, 1852, while in Rome, Ives "made a public abjuration of the

Protestant religion," and embraced that of Roman Catholicism.⁴⁸ In writing his resignation to the Diocese of North Carolina, he stated:

Some of you, at least, are aware that, for years, doubts of the validity of my office as Bishop have at times harassed my mind and greatly enfeebled my action. At other times, it is true, circumstances have arisen to overrule these doubts and to bring to my mind temporary relief. But it has been only temporary, for, in spite of my resolutions to abandon the reading and use of Catholic books, in spite of earnest prayers and entreaties that God would protect my mind against the disturbing influence of Catholic truth, and in spite of public and private professions and declarations, which, in times of suspended doubt, I sincerely made to shield myself from suspicion and win back the confidence of my Diocese, which had been well nigh lost; in spite of all this and of many other considerations, which would rise up before me as the necessary consequence of suffering my mind to be carried forward in the direction in which my doubts pointed, these doubts would again return with increased and almost overwhelming vigor -- goading me at times to the very borders of derangement.⁴⁹

Ives' defection was one of the most sensational events to occur in the Episcopal church during the middle decades of the Nineteenth Century.⁵⁰ It is worth noting, though, that except for Mrs. Ives and a travelling companion, no other North Carolina Episcopalians followed their Bishop into Roman Catholicism.⁵¹ At least one author has credited Badger and his pamphlet for the Church's retention of its parishioners.⁵²

In January of 1853, Horace Greeley wrote of Badger: "he is an amateur theologian, a sort of lay preacher of Episcopacy, and on one occasion fairly walloped the clerical

robes off the Bishop of his Diocese."⁵³ Three months later, Badger wrote a good friend, U.S. Senator James A. Pearce of Maryland, concerning his pamphlet and Ives' subsequent actions:

If you have never read my pamphlet, I wish you would take an hour for its perusal; first because you will find it, unprejudiced, to be a very thorough logical argument and secondly because you will see how well I then understood Dr. Ives' Romish position to be in fact what his recent apostacy has made it in form.⁵⁴

Although Badger was ready to defend his church from the "Romish" doctrines advanced by Ives, he does not appear to have been prejudiced against Roman Catholics themselves. During the mid-1850s he refused to join the nativist Know-Nothing party, and thus, for several years, found himself a man without a political party.⁵⁵ Also, Badger was a good friend to one devout Roman Catholic, William Gaston. In 1833, when Gaston was being considered for a seat upon the state Supreme Court, North Carolina's Constitution contained Article 32, which prohibited anyone from holding state office who did not believe in "the Truth of the Protestant Religion." During the November term of the U.S. Circuit Court in Raleigh, Badger and Thomas P. Devereux approached Chief Justice Marshall in hopes of obtaining a statement on the religious question that would be beneficial to Gaston. Marshall gave them what they wanted, stating that if were a member of the state's General Assembly he would certainly vote for Gaston, and as far as the religious qualification

posed by Article 32, it "was a matter addressed solely to the mind of the candidate himself and which could in its nature be determined by no other person."⁵⁶

There was one religious group, the Quakers, of whose doctrines Badger did not think highly. During the 1848 Presidential election, Badger wrote John J. Crittenden: "I consider the vote of this state certain for Taylor -- though owing to a silly notion of that most unintelligible of mortals, the Quakers, not to vote for a Warrior or slaveholder, I fear his majority will not be as large as it ought to be."⁵⁷ Overall, though, Badger appears to have been very tolerant towards the religious beliefs of others.

In addition to respecting others' opinions, Badger was also extremely honest and truthful in all his endeavors. One contemporary recalled that "Judge Badger was thoroughly conscientious, and strictly honest, you may say scrupulously honest. No man was further removed from temptation, nor would any one sooner reject, or resent, the slightest approach to any questionable design."⁵⁸ While for some these could be empty words, no evidence has been found to suggest that Badger ever acted dishonestly in any way. After knowing Badger intimately for over thirty-five years, Chief Justice Ruffin wrote that he understood his friend's "caprices and eccentricities. But they have never led him to a breach of good faith or made him less than a true man."⁵⁹

Badger was especially known for his conversation. At times deadly serious, he could also be extraordinarily witty, recounting amusing anecdotes and perpetrating puns. No matter what type of conversation he engaged in, his audience was usually enthralled in it. One obituary mentioned the "ease, grace, eloquence and force of [Badger's] conversation ... [his] ever ready and ever brilliant wit, and that fine flow of talk."⁶⁰ Another observed that "no pen could do justice to the brilliant conversational powers & the gifted and cultivated gentleman who has just left a social throne vacant in our midst."⁶¹ Attorney General Eaton recalled:

Whether he thought proper to remark upon subjects of jurisprudence, politics, or theology, or comment on one of Shakespeare's plays, or Scott's romances, or to give a sketch of some of the most interesting of the debates during the period of his service in the Senate, or to tell anecdotes as to amusing scenes at the great drama of the bar, or whatever theme might be presented for the exhibition of his unrivaled colloquial powers, he always, by his genius and taste, invested the subject with a fascinating interest, and was listened to with respect and admiration. I am of the opinion that his conversation, in strong sense, readiness and beauty of expression, brilliant wit and amusing anecdotes, resembled in a high degree that of the celebrated Dr. Johnson as recorded by Boswell.⁶²

To those in his own social circle, Badger could be extraordinarily friendly and hospitable. Judge David Schenck remembered that, "with his friends Mr. Badger was genial, familiar, jocular and at times indulged in frivolity. He had an inexhaustible fund of anecdotes and

related them inimitably."⁶³ A keen observer of Raleigh life in the mid- to late-1800s wrote:

Judge Badger, though a very great man, was as genial and familiar on the streets as an old farmer, and would chat pleasantly with any person whom he might meet, whether preacher, doctor, lawyer, merchant or mechanic, and he invariably left sunshine in his wake. He was fond of telling anecdotes, and no one could tell one better than he.⁶⁴

Because of his extensive law practice, Badger was able to amass a good sized fortune -- the 1860 census listed his wealth as \$15,000 real estate, \$150,000 personal estate.⁶⁵ He owned a large house in Raleigh, and there extensively entertained.⁶⁶ A guest in his house recalled that, "when in health he entertained freely and handsomely, in which he was admirably assisted by Mrs. Badger, whose cordial and graceful manners heightened the charm which was thrown over the visitor."⁶⁷

Badger was a born humorist, and loved nothing better than telling a funny story -- whether on himself or someone else. One amusing anecdote which shows this, and also demonstrates Badger's quick thinking, was remembered by Bishop Joseph Blount Chesire:

It is told of Judge Badger that going from Raleigh to attend a court in Nash County he stopped for the night at Mrs. Vick's modest country home, where travelers were entertained 'for a consideration.' Before retiring for the night he asked his landlady the hour at which she served breakfast. 'Well, Judge,' replied Mrs. Vick, 'I am not one of them that wants to get up so early.'

'You are quite right, my dear Madam, You are a very sensible woman,' remarked the Judge.

'Yes,' said Mrs. Vick, 'I don't believe in breaking my neck to get such a soon start. Just so I get breakfast over and everything cleaned up and the day's work started by sun-up, I think that is soon enough.'

'Madam,' said the Judge, 'I never eat breakfast. I will take an early dinner with you.'⁶⁸

During a great Whig meeting in Raleigh in 1844, upon the visit of Henry Clay, a large cake was sent by the Whigs of Fayetteville to celebrate the occasion. During Badger's speech to the crowd, he exhibited the cake and said: "The cake is not large enough to give you all a slice, but when I eat it I will think of you all."⁶⁹

Another of Badger's humorous anecdotes also involved food:

He used to tell about eating Daniel Webster's turkey, while as Senator he was living in Washington. Mr. Webster bought a turkey at the market, but the delivery wagon carried it to Mr. Badger's residence instead of to Mr. Webster's, and of course it was cooked, as Mrs. Badger supposed it was ordered by Mr. Badger. The consequence was, Mr. Webster had no turkey for dinner that day, while Mr. Badger did, though he knew not how it happened. But, a day or two after, Mr. Webster was telling some Senators how a turkey that he had purchased in the market failed to come to his table, but doubtless went to the table of some other Senator, and remarked that if, through mistake, somebody's turkey had been sent to his house he would have sent it back to the market, and had the mistake corrected. Addressing Mr. Badger, he asked: 'How would you have done, Judge?' Mr. Badger replied: 'If a turkey ever lights on my table, I'll be sure to eat him, as I did yours.'⁷⁰

Despite having a first-rate intellect, great conversational skills and a terrific sense of humor, many have found fault with George E. Badger. One historian has

said that Badger was "of a rather lazy disposition."⁷¹ Yet, anyone who served in the state legislature, in a Constitutional convention, as a local trial judge, on the Superior Court for five years, as Secretary of the Navy, and in the United States Senate for over eight years, in addition to arguing over 700 cases before the North Carolina Supreme Court and hundreds more before the state Superior Courts, the Federal Circuit Court and the U.S. Supreme Court must not have been too lazy.

Undoubtedly Badger's reputation as a late sleeper, and the anecdotes he told regarding this habit, have contributed greatly to this label being given to him. As for Badger's late sleeping, a fellow resident of Raleigh recalled:

Mr. Badger was by no means an early riser. He generally came down [the] street between ten and eleven in the morning, having just finished his breakfast. His habit of late sleeping was well known, and it was no uncommon thing for some one to remark, in a jocular way, as he would pass along: 'Judge, you are out rather early this morning.'⁷²

Most of the evidence concerning Badger's aversion to early rising comes from the period after his retirement from the U.S. Senate in 1855. In 1857, he wrote John J. Crittenden about an engagement in Salisbury: "I go in the morning train an hour before day (horrible dictu et visu)..."⁷³ Two years later, when a stockholder and director of the Bank of North Carolina, he wrote his law partner J.M. Carlisle about a 9 a.m. bank meeting: "This I do protest against and shall not attend any meeting at such

an unreasonable and unchristian hour."⁷⁴ During North Carolina's Secession Convention, it has been noted that "he would often be tardy at the meeting of the morning session."⁷⁵

Mention has already been made of Badger's anecdote concerning the landlady who did not want to get up "too early." Badger also told another anecdote on himself concerning his late rising. This one concerned Duncan Cameron, President of the state bank and "a remarkably early riser." Badger would "describe with great zest the horror of Judge Cameron ... on finding, when he called on [Badger] one day on his way to the bank, that he had not been to breakfast at half-past nine o'clock." Cameron read Badger "such a lecture on the injury he was doing himself by keeping late hours, that when he left, Mr. Badger declared he would visit with dire displeasure any person, be it wife, child, or servant, who ever again called him to breakfast in the presence of Judge Cameron."

Badger did not change his habits, and soon thereafter Cameron again came visiting before Badger had eaten his breakfast.

Mindful of his order, the servant forebore to inform [Badger] when [breakfast] was ready, and one by one the members of the family slipped out of the library into the dinning-room, leaving him all alone with his guest, who, all unconscious that his host had not broken his fast that day, sat placidly talking for an hour or two, and finally rose to go, saying as did so, 'Remembering your late hours, I did not call as I went down to the bank, and now I declare I have sat with you

until it is nearly my dinner time.' None but those who have heard him tell it can fully realize the humorous way in which Mr. Badger used to relate this story. He would describe his sensations when he would catch a faint rattle of knives and forks, tell how he sat wondering what there was for breakfast that morning, and how spiteful he felt toward Mrs. Badger when, fresh from her cup of coffee and hot roll, she came smiling into the room, and, so he declared, took a malicious pleasure in charming the judge into lengthening his visit.⁷⁶

A second criticism of Badger was that he loved to debate just for debate's sake. Horace Greeley wrote of Badger: "He is a trained polemic, and plunges into a controversy with as good a will as a Newfoundland dog springs into water.... Indeed, nothing suits his tastes better than to wield the club of argumentation for the mere satisfaction and delight of knocking the brains out of an antagonist."⁷⁷ Kemp Plummer Battle, who, unlike Greeley, greatly admired Badger, also noticed this characteristic of Badger's personality and its possible ill effect:

George Edmund Badger was certainly one of the ablest men North Carolina has produced. In fact he was almost too clever. His mind was so strong, his powers of debate so superior, and his sense of humor so keen, that he would sometimes argue on the wrong side in order to tease his adversary. This was a real hindrance to his reputation and sometimes caused offense. When he was stirred to earnestness on a subject in which he was interested, he was well-nigh irresistible.⁷⁸

Battle gives an example of this characteristic, involving Badger and Romulus M. Saunders:

Judge Badger and [Saunders] at breakfast one day had an argument on a point of law and Badger in the opinion of the company got the best of him. At dinner Saunders magnanimously said to him, 'I

have been thinking over our discussion at breakfast and honesty compels me to confess that I was wrong.' 'Well,' replied Badger, 'I've been thinking over it too and have come to the conclusion that I was wrong.' So at it again they went and the hearers agreed that Saunders was again discomfited.⁷⁹

Badger was also accused of a lack of earnestness, displaying frivolity at inappropriate times. One observer has accused him of being "an unbalanced man, utterly wanting in taste and a knowledge of the fitness of things, and without earnestness or serious convictions upon the gravest subjects or occasions."⁸⁰ This criticism appears to be a bit harsh, for when his state or country was in a time of peril, for example during the debates surrounding the Compromise of 1850 or during the secession crisis, no one displayed more diligence in seeking solutions. Still, Badger's levity upset some people.

One example concerned Griffith John McRee, author of Life and Correspondence of James Iredell, still the definitive biography of the U.S. Supreme Court Justice. When passing through Washington in 1847, McRee saw Badger and gave him a copy of the first volume of his work on Iredell; McRee later wrote Governor David L. Swain: "I thought that however he might rate my ability, the original essays of such a man as Iredell would arrest his attention." Badger's attention must not have been arrested, for McRee wrote that upon their next meeting Badger returned the book, "which he had barely glanced at, with a flippant remark

about its weightiness."⁸¹ Swain answered McRee, and "assured [him] that Badger was notorious for his inappropriate outbursts of levity."⁸²

Another example occurred in the North Carolina Secession Convention. David Schenck recalled:

[Badger] had the most exuberant spirits of any person I ever knew. I never saw him depressed or dejected or wearing a sad face. If misfortunes befell our arms, he either cited its parallel in history for our comfort, or exhorted his friends to bear it cheerfully, as inevitable, or related some humorous anecdote to divert the thoughts of those around him. He never sighed nor moaned, and even when Roanoke Island fell, his speech in secret session was so interwoven with humor that he incurred the censure of many of the delegates.⁸³

A fourth criticism concerned Badger's temper. It has been said that, "He who incurred [Badger's] enmity, or disapproval, was sure to partake of it for a season; and when the infliction came from the hand clothed with a power, forestalling rebuke, or retaliation, he became embittered to the extent that effaced the willingness to overlook, or the consent to extend pardon, without apology."⁸⁴ Badger's actions towards Judge Pearson in the Rives case shows how bad this temper could be. Yet, because he was basically good-humored, it was a relatively rare occurrence for Badger to become angry -- Schenck "never saw Mr. Badger angry but once."⁸⁵

Another fault was that Badger "was too fond of satire and ridicule to be popular," especially among his political

opponents. Schenck recalled that Badger "was extremely impressible with everything ludicrous. He indulged his humor mercilessly and unsparingly at the expense of his opponents, and never allowed his own pleasure to be disturbed by the writhings of his victim."⁸⁶ He goes on to add that Badger "often indulged in remarks that were neither pleasant nor charitable, and occasionally he said painful things that wounded the feelings of others."⁸⁷ One of Badger's favorite targets was Romulus Saunders.

Romulus Mitchell Saunders (1791-1867) was the leader at the Calhoun wing of the North Carolina Democratic party. It has been said that Saunders "probably held more offices than any man in the history of [North Carolina]." The reason for this is that "there was never a more assiduous office-seeker. His letters are full of his desire for this office or that, for even when he was in office, he would devote much thought and anxiety to finding something better to try for."⁸⁸ Saunders was a member of the state House (1815, 17, 19), member of the U.S. House (1821-27), state Attorney General (1828-31), Superior Court Judge (1835-40), unsuccessful Democratic nominee for Governor (1840), member of the U.S. House (1841-45), unsuccessful candidate for the U.S. Senate (1842), minister to Spain (1846-49), member of the state House (1850-52), unsuccessful candidate for the U.S. Senate (1852), and Superior Court Judge (1852-65).⁸⁹ Saunders was also known for "his very careless and

inaccurate use of words" -- despite being well educated, he "murdered" the king's English.⁹⁰ Once in Raleigh during a dedication speech for a bronze statue of Washington, he said: "The name and fame of Washington will survive when that there statute shall crumble into dust."⁹¹

When someone asked Badger in 1853 who would replace Bishop Ives, he answered, "I do not know, but Judge Saunders will undoubtedly be a candidate for the place."⁹² Seaton Gales, editor of the Register, included a paragraph in his paper mentioning Saunders' supposed candidacy for the position. Some people actually took the announcement seriously, although others knew better. The Salisbury Carolina Watchman wrote: "The Raleigh Register is the author of a short paragraph in which the name of Judge Saunders is used in connection with the Bishoprick of the Diocese of North Carolina, now vacant; and which is copied in the Fayetteville Carolinian, and called 'rich.'"⁹³

Badger was always a stickler for correct diction and vocabulary, so it is not surprising that he also found humor in Saunders' speech. When President Polk appointed Saunders Minister Plenipotentiary to Spain, Badger mentioned in a public speech in Raleigh:

We all know the reasons for this appointment. It must be for his knowledge of the Spanish language. He knows nothing of Latin, or Greek, German, Russian, Italian, French, or Dutch and everyone recognizes his profound ignorance of English. All men must have some language and therefore the honorable gentleman must be versed in Spanish.⁹⁴

Badger's greatest character flaw might have been his arrogance. For a politician, though, it was a strange type of arrogance; he appeared reserved and aristocratic, and never lowered his own high plane of thought or discourse in order to reach the common man. Governor Graham noted "an imputed hauteur and exclusiveness," while the Democratic Raleigh paper, The North Carolina Standard, made mention of Badger's "peculiar personal pride."⁹⁵ Historian William J. Peele found Badger, "too reserved, austere at times, and perhaps sensitive, ever to win the affections of men in the same proportion that his great talents commanded their respect and admiration."⁹⁶ A Badger admirer, David Schenck, wrote:

he was austere among strangers and mere acquaintances, and was indifferent to the presence of anyone except his friends and social equals. He had more pride than ambition, and never relaxed his personal dignity to accomplish any selfish end. He lived in a serene and elevated atmosphere, and no one whom he thought unworthy was allowed to encroach on his seclusion. He had a contempt for flattery and the debasing arts of the demagogue, and was a pure and honest man in his own convictions.⁹⁷

Likewise, Horace Greeley, who detested Badger, found the same character trait:

Some degree of accommodation of mind or manner to popular ideas or tastes, is usually necessary to enable a man to reach political position in this country. But Badger has neither. He is reserved, aristocratic, and exclusive, exhibiting an offensive prominence of the idea of caste, which is often ludicrously visible in the decayed, shabby gentility of old Virginia gentlemen. He was born for a slave-driver, and could never be more agreeably occupied than in wielding the lash

over a lazy negro on a cotton plantation, or hazing after a fugitive. On the whole, we don't know and cannot imagine a more genuine and spotless example of the breed Hunker.⁹⁸

One other person who disliked Badger wrote:

He cultivated varied learning for the purpose of ostentation, and his vanity, we would think was excessive, but for his haughtiness and austerity which seemed inconsistent with the love of the approbation of men, which is but another name for vanity. He was sometimes inaccessible, repulsive and offensive to his best friends, at other times he was the most familiar and clownish of buffoons.⁹⁹

This aristocratic pride is also evidenced by Badger's 1833 letter to William A. Graham requesting that no public notice be given for Badger's impending speech before the two literary societies of the University of North Carolina. Further, between 1816 and 1861, Badger did not seek to be elected to any popularly elected public office, and he did not directly solicit for those positions that he did receive. Yet, it is rather ironic that he would allow his name to be used in connection with Dr. Beckwith's Anti-Dyspeptic Pills.

The opposition's political press liked to chide Badger about his vanity. In 1860 the Wilmington Journal reported on a speech made by Badger in that city:

There was, all the time, a pervading consciousness on the part of Mr. Badger, that he, Mr. Badger, was personally present. He never seemed to forget himself -- he was always conscious of George E. Badger.... Our supply of capital 'I's' is pretty full, but we are happy to be relieved of the necessity of reporting Mr. Badger verbatim, for we would have run out, sure.¹⁰⁰

Because of his great learning coupled with his vanity, in later years it is said that Badger did not like to admit that he did not know the answer to a question. In 1861, George V. Strong was appointed Confederate States Attorney for the District of North Carolina. One of Strong's first pieces of business was to file libels for the Confederate States of America against three captured vessels.

Being totally uninformed of the procedure in Admiralty, Strong was much embarrassed and decided to consult George E. Badger, 'who by reason of his long and large experience at the bar, extensive learning and great ability, was supposed to know everything.' Accordingly, he took the train to Raleigh, and frankly laid the problem before his friend. Badger suggested a stroll, which was prolonged all afternoon. At intervals Strong endeavored to reopen the topic of how to proceed against a prize vessel, but always Badger's conversational powers of avoidance were equal to the occasion. Finally, reaching his home, he invited his visitor to come in for tea. The latter, declining with thanks, frantically reminded Badger of the purpose of his call.

'Yes, yes, Strong, I came near forgetting what you wished; but, to tell the truth, I do not know how you will go about libelling a vessel. I have a book on Admiralty, which I have never read, and will be glad to give you.'¹⁰¹

Despite his myriad faults, all who have ever written on George E. Badger have listed him among his state's greatest sons. One would be hard pressed to find another North Carolinian possessing such intellectual, conversational and comedic powers.

VI. 1840-1846: Birth of a Politician

In 1840, George E. Badger reentered active party politics after an absence of twelve years. As shown above, in 1828 Badger was a leader of the Jackson forces within North Carolina. After this, he took no part in Democratic politics, although exactly when he broke ranks with the party is not known. In 1841 Henry Clay stated that Badger ceased to be a Jacksonian "upon or shortly after the formation of [Jackson's] first cabinet; that he has been a warm & decided opponent ever since of the Admon of Jackson & V. Buren."¹ On the other hand, Lawrence F. London has written that Badger "left the Democratic Party about the time that President Jackson made it definitely known that he was unalterably opposed to the recharter of the Bank of the United States."²

That Badger was more suited for a home in the Whig Party is unquestionable. His views on such issues as banking, internal improvements, corporations, education and centralized government fit comfortably with mainstream Whig thought. Also, Badger's Federalist past and his own personal temperament seemed antithetical to the cause of Jacksonian Democracy. It was during the historic and colorful Presidential election of 1840 that Badger first publicly advocated the claims of the Whig Party.

A. Election of 1840

Badger's debut in Whig politics occurred during a party meeting in Raleigh on February 17, 1840, called to respond to the nominations of William Henry Harrison and John Tyler for President and Vice President, and John Motley Morehead for Governor. Several days later the Register commented on the meeting and reported that "George E. Badger, Esq. rose and advocated [passage of resolutions supporting Harrison, Tyler and Morehead] in a Speech of uncommon force and eloquence." In his talk, Badger compared the views of Harrison and Democrat Martin Van Buren on slavery issues, and convinced his listeners that Harrison would better protect the South's interests. He then traced Harrison's life "in a manner which elicited the most enthusiastic cheering." Further, when Badger spoke of Harrison sacrificing wealth for public office, his "remarks were peculiarly happy, and made a deep impression on his auditors.

The concluding passages of his Speech, in which he spoke of the value of the Union, of the imminent danger to which the country was exposed, of his own motives in interesting himself in the party politics of the day, were of the highest order of eloquence.³

The speech for which Badger became nationally known, though, was given on March 3, 1840, during a meeting of 600 Whigs in Granville County. Badger was in Granville to attend its Spring Session of the Superior Court, and county Whig leaders planned this occasion to hold a grand rally.

At this time, it was common for political parties in rural counties to hold major functions during their Superior Court week, for Court week attracted many persons from outlying areas, as well as many prominent lawyers/politicians.

On March 13, the Register reported that the Granville Whig meeting "is spoken of as being of the most enthusiastic character." The paper then stated:

We learn that George E. Badger, Esq. addressed the Whigs with more than his usual power and effect -- high praise enough for any man. It is, to us, one of the most cheering 'signs of the times,' to see men like Mr. Badger who, in all former political contests, have stood aloof from the scene of action, now buckling on their armor, and enlisting -- no we do not like that word -- volunteering for the War. Particularly, it is encouraging, when not even the most reckless partizan can attribute his zeal to any desire of personal aggrandizement, or to any other motive, than pure, unadulterated love of country.⁴

A week later, the Register published a letter from the Chairman of the Granville Whig meeting. It read, in part:

George E. Badger, Esq., being loudly called for by the meeting, addressed it at length and with great ability. As his Speech on this occasion will be published, it is unnecessary to attempt an account of it. We only entreat that every freeman, who wishes that the institutions of his country may be transmitted unimpaired to posterity, should peruse it, with a desire to weigh impartially the truths contained therein. It carried conviction to the most stubborn.⁵

As mentioned by the Granville Chairman, Badger's speech was published. On April 17, the Register noted that the state Whig Central Committee intended to print a "very large edition" of the speech, and it asked people to send their orders to Weston R. Gales, Secretary of the Central

Committee, and editor of the Register. On this same day, Gales also began printing Badger's speech in his paper. Gales termed the speech "great ... for so may it emphatically be styled,

whether reference is had to its innate excellence, or to the powerful influence which it is destined to exert on the public mind. It is precisely the desideratum of which the Whigs of North Carolina stand in need, and may be safely referred to as the textbook of the party.⁶

The Register finished printing Badger's address on April 24, and in this edition Gales asked all other Whig papers in the state to republish it. "If this Speech is extensively circulated, we honestly believe it will have greater effect in opening the eyes of the politically blind, than Addresses from the Central Committee, or any other quarter."⁷

In his address, as published, Badger first denounced the economic experimentation of the Jackson and Van Buren administrations. "Eleven years ago, the present Administration assumed the management of public affairs. The general condition of the country was then sound -- the currency and exchanges, trade and business, were in a satisfactory state; and in all the pursuits of life, industry and prudence commanded the reward to which they are entitled." While in 1829 the nation was "happy and flourishing," Badger declared that the situation had "materially changed for the worse." The reason for this was the Democrat's "course of experiments ... commenced upon the

Banking, and Credit system -- upon the property and the industry of the country." Thus, in 1840, "After ten years of patience and suffering -- constant fluctuations in the prices of labor and of produce -- are we nearer to the golden age of prosperity? By no means. The price of our staples is now depreciated beyond all experience, since the war of 1812." Badger was especially critical of Van Buren's Sub-Treasury "scheme." He saw only two classes that would gain by the deflation that he predicted from such a plan: office-holders, since their salaries would remain constant, and "those who are well off in the world -- owe little or nothing -- have large debts due them, or large sums of money to invest, and are besides, willing to speculate on the public distress."

Badger described the life and public services of William Henry Harrison, and then refuted many of the charges that had been levelled upon the General. The first was that Harrison was "so much in favor of a Protective Tariff, that he would insist upon its continuance, [even if], under its operation 'the grass were found to grow in the streets of Norfolk and Charleston.'" Badger labelled this charge a "gross and wanton calumny upon Gen. Harrison," and proceeded to show that the General had been quoted out of context. In reality, Harrison had declared that were grass to grow in the streets of those Southern cities because of a protective tariff, he instantly would "'give his voice for its

modification or entire repeal.'" Badger held that if one were to use the same type of misquotation in other matters, one could "convict the inspired writer of the Psalms of Atheism, for, by striking out from the first verse of the 53rd Psalm those words, 'the fool hath said in his heart,' we shall have this proposition left, 'there is no God,' as one belonging to David, instead of the fool whom he rebukes." Badger stated that although Harrison "looked upon a Protective Tariff [as] indispensable to the advancement of the North-western States," the General had declared that a tariff "should not be continued, if its effects were injurious to the Southern States, for ... 'no honest man can enjoy a prosperity founded upon the sufferings of a friend and brother.'"

Badger next discussed Harrison's views on a national bank. In words that would later lead to controversy, the North Carolinian declared:

Next it is said that Gen. Harrison favours a Bank of the United States. The charge is false. His opinions, on the contrary, are against a Bank. He has declared it an institution, which, as President, he would not recommend, but he has declared also, that if the experiment should be fairly tried, whether the financial operations of the Government can be carried on without the aid of a National Bank, and it should be 'clearly ascertained that the public interest would materially suffer without one,' and if there were 'unequivocal manifestations of public opinion in its favour, he would sanction a bill for chartering a Bank with proper modifications and restrictions.'⁸

Another criticism Badger refuted was that Harrison was an abolitionist. He noted that, "It is said that [Harrison] has declared himself in favour of applying the surplus Revenue of the Government to purchase up, and colonize our slaves." As for this charge, Badger stated that it was only half-true. What the General had said was that "he would be willing, with the sanction of the slave-holding States -- (mark! with our consent, and not without) -- to appropriate money for the purpose and removal of the Slaves. Is this Abolition? Surely not." According to Badger, what the South did not want was Congress attempting any type of abolition or colonization without the South's approval. Were the South to agree to such a solution, it would a different matter. Showing his liberal sentiments on slavery, Badger opined: "Now every man can see at once, that he does us no wrong, who says, when you come to the opinion that slavery is injurious to you, and therefore ask my aid to get rid of it, I am willing to help you."

A further charge against Harrison was that he once voted "for a law, authorising the sale of poor men for their debts." Badger called this a "most vile and abominable imputation," and refuted it by showing that the law Harrison actually voted for, while in the Senate of Ohio, was one for the hiring out of convicts, not for the sale of the poor.

Badger next responded to Democratic sneers about

Harrison being the "Log Cabin and Hard Cider Candidate."

Among his statements:

That [Harrison] is poor, when his possessions are compared with the princely fortune of Mr. Van Buren, I shall not deny; but, if so, it is because he was too honest to become rich.... That General Harrison lives in a Log Cabin, is not strictly correct. He lives in a good, plain house, such as a substantial farmer ought to occupy.... It is not so large, nor so handsome, nor so splendidly furnished as the White House, or as Mr. Van Buren's private dwelling.... That Harrison drinks Cider -- even hard Cider -- I am not disposed to dispute -- that he is the poor man's friend I do not doubt....

Yes, Harrison drinks Cider -- he drinks hard Cider. This is a matter of taste -- some like it hard, and some sweet, and some sour, in a state between the two. When I was a boy, I liked to drink it through a straw, when newly pressed. These are matters about which every one must consult his own fancy.

Badger closed his address with an attack on President Van Buren. In contrast to the hero of Tippecanoe, Badger asserted that the "most dangerous exploit [Van Buren] ever performed for the nation was his voyage across the Atlantic in a public ship -- [and] his greatest exercise of self-denial, was mixing in the highest circles of the English Court."

The Whigs' major charge against the President, though, concerned his aristocratic lifestyle in the White House, and Badger was not immune from making such accusations. He said that Van Buren's "personal habits are opposed to the plainness which our forefathers associated with the dignified state of a Republican Chief Magistrate -- splendor and luxury make the President's House the copy of a Royal

Palace, and the entries and the exits, and the entire arrangements of his household, are said to be regulated according to the example of a European Court." In addition, Van Buren had requested a \$1200 salary for his head Gardener; Badger was appalled: "\$1200 a year for a Gardener! while the Comptroller of North Carolina receives but \$1000, and the Secretary of State but \$800, besides his fees."⁹

Attached to Badger's printed speech was an appendix he prepared for this purpose. It contained evidence culled from letters, speeches, newspaper articles and government reports to prove certain statements made in the address. Attaching such shows Badger's regard for truthful and fair campaigning, as well as his legal background.

Badger's published Granville speech met with much success throughout North Carolina, with Whig editors giving it high praise. The Greensborough Patriot held that, "It is only necessary for us to say that, at such a time as this, for such a man as Judge Badger to take the field with such language on his tongue, is sufficient guarantee that his eloquent sentiments will be extensively read and deeply pondered."¹⁰

The Oxford Southern Citizen opined:

Even man in North Carolina ought to read [Badger's address]. It contains none of those captivating strains of pleasing eloquence for which the author is known to be peculiarly qualified. It is no fanciful address to the passions. But a sober, thoughtful, argumentative statement of facts and

conclusions addressed to the sound judgment, the conscience and the patriotism of every man.¹¹

Similarly, the editor of the Washington (N.C.) Whig wrote:

Mr. Badger's Speech is one of the ablest and most lucid addresses on the greatest political questions of the day, that has appeared before the public. It should be in the hands of every man who is governed by principle, and who has the good of the country at heart. Let him attentively read this Speech, and weigh well the incontrovertible facts presented in it.¹²

Finally, the Rutherfordton Western Star declared:

It is, indeed, a finished and masterly production. The arguments with which it abounds, are to our mind clear, convincing, and undeniable....

It is indeed, gratifying to see such a man as Judge Badger trampling upon the chances of political preferment and coming up, heart and soul to the rescue of the country. It is an omen of better times -- to our feeble judgement, it indicates the dawn of our political redemption. No man in this broad country, teeming as it does with great men, is better qualified to advance in point of public sentiment -- to receive upon the broad shield, the lightnings of Executive indignation, or to direct the going forth of the appalling thunders of the public wrath. Cheer him on, then, gallant Whigs, and animate and sustain him throughout every stage of this fearful and decisive conflict.¹³

The Granville address not only received notice in North Carolina, but in other states as well. It has been said that, "Throughout the country, it was generally considered one of the great addresses of the campaign."¹⁴ It is worth noting that while Badger was typical in discussing the personalities in the campaign, "aristocratic" Van Burn versus "Log Cabin and Hard Cider" Harrison, for this campaign at least, he was also atypical in delving into

policy issues. One final point is that the printed speech was most likely not word-for-word the address delivered in Granville. In 1866, Governor Charles Manly told the Bar of Raleigh in a memorial service for Badger:

I remember being in his office on that occasion seeing him walking across the floor making a speech, when Henry W. Miller was the amanuensis, sitting at the table writing down in short, as he could, when it was afterwards revised. That paper was published by a committee and circulated over this State, and re-published and re-printed over the United States, and was, confessedly, the strongest partisan paper for the life, character and history of William Henry Harrison.¹⁵

Badger was also involved in many other campaign activities during this year. In late March or early April a Whig meeting was held in Raleigh and Badger played a conspicuous part. The Register reported:

The resolutions [in favor of Harrison-Tyler] having been read, and the question being on their adoption, Mr. Badger rose, by request and addressed the meeting for nearly two hours, at one moment convulsing his auditory with laughter, and at the next, as he portrayed the enormities of the Administration, kindling their breasts with patriotic zeal against those, whose sole aim seems to be, to bow down the energies and cripple the resources of the country. He was frequently compelled to suspend his remarks by the rapturous plaudits of the meeting which continued for some time after he resumed his seat.

Messrs. Manly and Miller, being loudly called for, at the close of Mr. Badger's speech, each made a few brief remarks. The former paid a glowing compliment to Mr. Badger's zeal and eloquence, in a peculiarly happy manner.¹⁶

After quoting the above, the Salisbury Carolina Watchman opined:

We are rejoiced to learn that the immense powers of Mr. Badger are so actually employed in ridding the country of the curse of misgovernment. He never advocated a cause when more was at stake, nor did he ever have a better opportunity of entitling himself to the gratitude of posterity.¹⁷

On April 7, during Franklin County Superior Court week, Badger made another major address at a Whig meeting. The Register noted that "Mr. W[illiam] H. Battle and Mr. Badger addressed the meeting with great effort," while the meeting's Chairman reported that Badger, "with his usual flow of effective eloquence, enchained the attention of all political parties, to an address of some two hours long."¹⁸

On May 9, in Raleigh, a public dinner was given for Gen. Beverly Daniel, former U.S. Marshall. Daniel, who was appointed by Jefferson, had just been fired by President Van Buren. During the dinner:

[Badger was] loudly called on for a Speech and Toast, and several persons exclaimed -- 'it is expected of you.' He playfully remarked that, in these times of embarrassment and difficulty, the man who could perform half of what is expected of him, was thought to do pretty well. He would yield half of what was asked, and give them a Toast.

Badger's toast was as follows: "Our guest, Gen. Daniel -- As an Officer, good enough for Jefferson, good enough for Madison, good enough for Monroe, good enough for Adams, good enough for Jackson -- It is no wonder that Van Buren thinks that he is too good for him." At this same dinner, someone gave a toast honoring Badger: "George E. Badger: North-Carolina is proud of the legal attainments, talents, and

virtues of such a son -- May his efforts in behalf of the cause of Reform be gratefully received."¹⁹

It appears as if the Democratic press was discomfited by Badger playing such an active role in the campaign, especially that party's leading paper, the Raleigh North Carolina Standard. In March, 1840, Gales in his Register wrote:

The Editor of the "Standard" desires to be thankful, that as Mr. Badger has stepped into the arena of Politics, that he was arrayed himself on the side of the Whigs. The Whigs are equally gratified that they have such an Ajax, and, so far, there is no cause for remark. The "Standard" goes on to say, that there is no affinity between Mr. B. and the Loco Focos. This is so true, that we wonder at the "Standard" stumbling on it. We cannot, however, help asking the question, how long it has been, since the Jackson dynasty have repudiated association with Mr. Badger. We recollect the time, when he was justly looked up to as the Magnus Apollo of that party. And we have no doubt, that his present zeal in the cause of the people is greatly increased by the reflection, that he contributed, in some degree, by his support of Gen. Jackson to entail upon the country the evils with which it is now afflicted.²⁰

During the campaign of 1840, Badger used his pen as well as his tongue in furthering the Whig cause. In July, the Register printed a letter from Benjamin Harrison, of Berkley, Charles City County, Virginia, nephew of William Henry Harrison, to Badger refuting charges that his uncle favored abolition -- Badger had written the nephew in hopes of obtaining such a reply.²¹ During this same month, the Register also printed a letter to it from Badger, James Iredell, Jr., Charles Manly and William H. Battle denying

the "actively circulated" rumor that they had paraded the streets one night "with about three hundred negro fellows, hallowing hurra! for Tippecanoe, and visiting Mr. W.H. Haywood's private residence, and calling out for the shirt-tail orator, &c."²²

In September, Badger wrote to Daniel Webster and invited him to address a Whig celebration in Raleigh; Badger stressed to Webster the importance of including the South in the national Whig campaign.²³ Also in September, Willie P. Mangum was written to by Badger:

There is to be a political meeting in Johnston County on next Tuesday being their Court week, and I am desired by the 565 Whigs of that County earnestly to desire your presence on that occasion. There are many men there on the fence who will in all probability get down on one side if the case of the County shall be well put before them. Let me urge you not to disappoint these reasonable wishes in their behalf. If you will go and deliver to them the 'glorious' speech you made at Oxford or anything like it, my word for it old Johnston is safe in November.²⁴

Badger was also a key participant in the state Whig Convention held in Raleigh on October 5. There, he gave a major address lasting "for nearly an hour, on the great political topics of the day, and [he] concluded [it] by offering for adoption of the Convention, [a] Declaration of Rights." This Declaration touched upon such matters as the Democrat's unwise economic policy, Van Buren's corrupt use of patronage and the President's recommendation for a standing army. It was "carried in the affirmative by a

deafening shout." The speech itself has been described as the "sensation" of the Convention.²⁵

The Register called the Declaration of Rights, "one of the ablest papers to which the present state of the country has given birth," and requested that it "be circulated by thousands throughout the State."²⁶ It was circulated throughout North Carolina, and even found its way into neighboring states. A Virginia paper, the Danville Reporter, said the Declaration was:

the ablest political document which has been elicited by the present exciting contest for supremacy, between the two great parties of the country. It is from the pen of Judge Badger, of Raleigh, and must, we think, add to a fame before conspicuous among the distinguished for talents and acquirements.²⁷

Badger's efforts paid off, for in November the Harrison-Tyler ticket rolled up a hefty 13,141 majority in the Old North State. Also, the previous August, Morehead was elected Governor and the Whigs gained majorities of six in the state Senate, and thirty in the state House. Of course one of the major persons the Whigs had to thank for this triumph was George E. Badger. Lawrence F. London's statement that, "From contemporary evidence [Badger] seems to have contributed more than any other single person to the great Whig victory in North Carolina," appears well founded.²⁸

One way the Whigs honored Badger was by considering him for a seat in the United States Senate in 1840. That year,

the Whigs had the good fortune of having both Senate seats to fill, one for six years and the other for two. In 1838, the Whig-controlled General Assembly passed "resolutions" for North Carolina's two Democratic U.S. Senators, Bedford Brown and Robert Strange, urging them to oppose Van Buren's Sub-treasury plan, among other things. The Democrats believed in the right of a state legislature to instruct their U.S. Senators on measures, but since Whigs did not hold this view, the resolutions were not entitled "instructions."²⁹ Many Whigs, though, expected Brown and Strange to resign, and they began discussing suitable replacements. On December 31, 1838, Whig leader Kenneth Rayner wrote to Willie P. Mangum:

I shall, tonight, propose to postpone, till the last of the week, our making any nomination for Senator, should a vacancy occur. I think on that matter, there will be a great want of unanimity among us. I fear some harsh feeling will be excited. -- There are many gentlemen spoken of by their respective friends, -- yourself, L. Williams, Mr. Gaston, Mr. Graham, Gov. Swain, Mr. Badger, & Jos. S. Jones, -- and Wm. B. Shepherd. -- Gaston's and Graham's claims will be strongly pressed.³⁰

Rayner's letter is especially interesting because it is the only evidence connecting Badger with the Whig Party before the election of 1840. Brown and Strange did not resign, but instead "declared that they would submit the question to the people at the next election of members of the General Assembly." Thus, on June 6, 1840, they wrote their resignations and awaited the state election. If the

Democrats had won control of the legislature that summer, Brown and Strange would have been reelected. As it was, though, the Whigs won large majorities in both houses.³¹

Before the November 1840 session of the General Assembly, there was much discussion as to who the Whigs should send to the Senate. It has been said that at least eleven candidates were seriously considered: William Gaston, Badger, Congressman Lewis Williams, John H. Bryan, David F. Caldwell, William A. Graham, Willie P. Mangum, William B. Shepard, and former Governors John Owen, Edward Bishop Dudley and David L. Swain.³²

Of those mentioned, Mangum was clearly the frontrunner for one of the seats. He had served in the Senate from 1831 to 1836, resigning because of a dispute with the Democratic-controlled state legislature; many Whigs felt their triumph would not be complete until Mangum was returned to the Senate.³³ Gaston most likely could have had the other seat had he wished, but he politely rebuffed all inquiries.³⁴ Likewise, it is said that David L. Swain also asked that he not be considered, although the evidence does not bear this out.³⁵

Throughout the late summer and autumn, there was much conjecture about who would eventually be asked to serve. In August, James W. Osborne wrote William A. Graham from Charlotte that, "In this region there is some speculation as to the choice of Senators. Mangum, with several prominent

Whigs, I regret to learn, is not acceptable. Gaston, Badger, & yourself are among the persons towards whom conjecture points."³⁶ A month later, state Treasurer C.L. Hinton wrote Mangum:

So far as I can learn there is a general disposition to return you to the Senate -- Gaston, Owen & Badger are mostly spoken of. Gaston if he will accept I think is the favourite, Badger is stronger than I had supposed but I am unable to decide as to the relative strength of him & Owen --³⁷

By October, it became fairly certain that Mangum would receive one seat, but who would take the other was still not clear. Charles P. Greene told Mangum on the eighth of this month: "I was delighted to hear but one unanimous voice that you 'are to be U.S. Senator' the other has not been determined upon I think Judge Badger is desirous of the station."³⁸

Badger did desire the position, and he had many supporters, too. Another candidate, William B. Shepard, stated to Ebenezer Pettigrew that Badger was making "great exertions to be chosen & I suppose will endeavor through his relative [Edward] Stanly to procure the votes of the members from this [eastern North Carolina Congressional] district."³⁹ N.W. Woodfin wrote to David L. Swain requesting the former Governor to throw his hat into the ring, because Woodfin felt the election of Badger would be unpopular in North Carolina, and thus dangerous to the Whig party.⁴⁰ The Democratic Standard must have thought Badger

stood some chance of election, for it editorialized that "his general political character is that of rank Federalism, yet being rather shifty, the Republicans may entertain some hope, in case of his election to the Senate, to find him on their side before his term expires."⁴¹

When the legislature convened in mid-November, it took at least three caucuses for the Whigs to decide who to nominate. On November 15, after the first caucus, Paul C. Cameron wrote Thomas Ruffin:

Mr. Mangum is the first choice of all: as it is said, the victory will not be complete, until he is restored to his seat. He will be elected to the long term, and for the remainder of Mr. Browns term. Judge Gaston has but to say that he would go into the service and no one would stand in his way. At the Whig caucus a number of gentlemen had friends willing to pledge for them. Mr. Williams, Mr. Bryan, Mr. Shepherd, Mr. Graham, Gov. Owen, and Gov. Swain. But if I am not much mistaken Mr. Mangum and Judge Gaston out of the way Mr. Graham is in advance of all others, and I am satisfied in my mind that Mr. Mangum and Graham will be sent to the Senate.⁴²

Another caucus was scheduled for Wednesday night, November 18. Earlier that day, William A. Graham wrote his brother-in-law James W. Bryan:

It seems now to be conceded that Mangum will be elected to Brown's seat, and the long term. There will be some difficulty in relation to the other. L. Williams is here, and came prepared to make war on Mangum, but perceiving the current of public sentiment, he is said to be changing his tone and going for the other seat. He can do nothing for himself, but has a fraction of the party who may be mischievous. Badger is in a bad humour and says he thinks we have a bootless triumph. He has anxious friends but can't get a majority of the party. I believe he will be satisfied, however,

as it is designed to recommend him by Legislative Convention for the office of Atto. Genl.

Swain has a considerable anxiety, and may get a considerable number of votes. Gov. Owen brings but one vote from his Congressional district, and (although the choice of the people of Raleigh) cannot succeed except after many trials. W.B. Shepard, I think, can do nothing. It is said that Williams, on finding that his own prospects are not the brightest, is for Aug. Shepperd. I have not moved myself on the subject, though some of my friends are busy in making inquiries, and say that if Badger & Swain are disposed of, I shall be certainly chosen. There is to be a grand Caucus tonight to make arrangements, and probably to determine the election.... Indeed every body is so agog, about the election of Senators that there are few developments about anything else.... I neglected [to] say that Judge Gaston has been written to by [Thomas L.] Clingman, asking his consent to run [Gaston] for the Senate, and the reply was expected last night. But I have not heard what it is.... He will be strong if brought forward, but cannot get some members of the party at all.⁴³

Three days later, Graham again wrote Bryan:

There was a party meeting on Wednesday evening at which there was no little wrangling in relation to the election of Senators. Williams or (as he is here called) "Panther Creek," was represented there by the members from his district headed by [Nathaniel] Boyden & [John Gray] Bynum. They refused to be governed by the wishes of a majority for some time. But after another resolution that the party would support no one who was not a friend of a Bank of U.S. and the distribution of the public lands, they finally assented, and Monday night was appointed for the filling of the appointments.⁴⁴

These lines suggest some sort of ideological division within the party. Traditionally, historians have divided the Whigs into two camps, the Republican Whigs and the Federal Whigs. Supposedly the Republican Whigs were in favor of strict construction and states' rights, with many

of them having been Jacksonians before parting ways with the President over nullification and the withdrawing of deposits from the national bank. On the other hand, Federal Whigs supposedly favored activism by the national government and decried those of both parties who sought to aggravate issues concerning slavery; many so called Federal Whigs had been National Republicans, and Federalists before that.⁴⁵ Thus, it has been said that in regards to the two Senate seats in 1840, the Republican Whigs supported Mangum, Shepard, Owen and Dudley, while the Federal Whigs favored Gaston, Badger, Williams, Caldwell and Graham.⁴⁶

While there was always a spectrum of ideological opinion in the Whig Party, as there would be in any party, the traditional interpretation vastly overestimates the differences present. Certainly in 1840 some Whigs, such as Lewis Williams, wished that support for a national bank be made a litmus test for those seeking the Senate seats, while others disagreed. Yet, after 1840, the Republican/Federal distinction becomes essentially meaningless for North Carolina Whigs; few if any Whigs from the Old North State supported President John Tyler, and during the 1840s almost all adopted mainstream Whig views on economic policy.

After mentioning the recalcitrance of Boyden and Bynum, Graham continued reciting the events of the November 18 caucus:

Mangum was then nominated for the long term & called out on the questions already mentioned, he

avowing his consent to both. Shepard was then nominated by Speed for the short term -- 2 years. My name was then added, and Boyden mentioned Williams, Badger, Gaston, & Swain as probable Candidates. Dr. [Frederick Jones] Hill proposed Gov. Owen. And Dr. [Isaac] Hellen nominated you. Shepard & myself were called on for our opinions as Mangum had been, & he gave his full approval of a Bank, tho' at the last Session he proposed three and made a speech which is said to have condemned the idea of one.... Mr. [Ebenezer] Pettigrew is here doing something for him, and attempts are also making on the members from your [eastern North Carolina] district in his behalf. The contest for the short term will be between him and myself.

As for predicting the outcome, Graham stated:

[My] friends believe I shall receive the nomination of the party by a large majority. Mangum will be elected, I think, to the long term without difficulty, though I hear today that the war will be renewed upon him at the next meeting, and it may be attempted to be shewn that he has given written pledges against a Bank. Much acerbity may be produced but his election cannot be prevented.

Graham then wrote: "I find my nomination acceptable in many quarters that I had formerly doubted. But for the hope which has by some been entertained untill now of electing Gaston or Badger, I believe I would receive the nomination for the six years." Why a preference by some for Gaston or Badger would relegate Graham to the two-year term and give Mangum the six-year seat is not explained.

Graham closed his letter to Bryan with a reference to a problem which would plague the party to a much greater extent later in the decade, sectionalism. Both Mangum and Graham were from the Piedmont county of Orange, and the

latter anticipated some trouble from Whigs of the eastern Coastal Plain:

I have had no conversation with the members from the New Bern riding. Attempts I know, are made to carry them for Mr. S. and their Eastern feelings are strongly appealed to. Without them, I believe the party nomination can be had, though I presume that some of them, at least, will be with us. I have perceived much jealousy among portions of the Whigs, and fear that the Session will not pass over without some defection from the ranks.⁴⁷

As far as the Whig Senate nominations are concerned, the Whig caucus on Monday, November 23, proved Graham correct; Mangum received the nomination for the six-year term, Graham the two-year term. The next day, the General Assembly elected them to these positions by a strict party vote: Mangum defeated Bedford Brown, 98-57, while Graham bested Robert Strange, 98-64.⁴⁸ One day after this, the Democratic Standard declared: "The question now arises: What will become of The Hon. Geo. E. Badger? He, we suppose, is to be turned over to Gen. Harrison."⁴⁹

B. Secretary of the Navy

After less than a week in Washington in his new post, on December 16, 1840, Graham wrote to William Gaston:

Speculation is busy here respecting the formation of the new Cabinet.... Our delegation propose in the most delicate manner possible, to bring to [Harrison's] notice the fact that, in the past history of the Government but few of the citizens of N.C. have been called to any of its higher offices and respectfully to suggest that some appointment of distinction is befitting, if not due to, the State. If he shall be disposed to gratify us and will take our councils in making a

selection, we shall unanimously recommend your name, should he tender either the office of Secretary of State or the mission to England or to France.... Should he offer to the State the office of Attorney General, Mr. Badger would be designated -- our consultations, as yet, have extended no further.⁵⁰

Graham was certainly correct in the fact that North Carolinians in the past had received few important governmental positions. Up to this time, through thirteen Presidential administrations, only one resident of the Old North State had served in the Cabinet -- John Branch was Jackson's Secretary of the Navy from 1829 to 1831. As for Gaston as a possible Secretary of State, Harrison chose Daniel Webster for the position, and it is doubtful whether Gaston would have agreed to serve had he been selected.

One North Carolinian who was anxious to receive a Cabinet seat was former Governor John Owen.⁵¹ The North Carolina Congressional delegation decided to nominate Owen for Secretary of the Navy, should Gaston and Badger not receive the posts requested for them. Mangum appraised Owen of this, and he wrote back:

If Genl. Harrison shall deem the State of North Carolina entitled to any consideration in the formation of his Cabinet, and be disposed, with the advice of her Senators and Whig Representatives in Congress to manifest it in my person, I should be justly chargeable with a want of candor to deny the gratification it would afford me - and I hereby place myself at the entire disposal of my friends at Washington.⁵²

After another letter from Mangum, Owen responded:

You will perceive in my last that I place myself entirely at your disposal, nor am I now inclined

to change the discretion given you in that; for after a confidential communication of the contents of your letter to some of my discreet friends in Wilmington, they sanction the course I have pursued, and urge the propriety of my accepting a seat in Genl. Harrison's cabinet, if one may be offered me. As to the qualifications which you enumerate for the Navy Department, I can say with confidence that I have no fears of a want of 'industry,' and as to 'courteousness,' I will say with Patrick Henry that I have taken but few lessons in the school of Chesterfield, but that the best bow I can make, and as many as may be required shall not be withholden upon all proper occasions.⁵³

The one North Carolina Whig Congressman who did not join in recommending Owen for the Navy Department was Badger's kinsman, Edward Stanly. Rumors in Washington pegged Stanly himself for that position, and a correspondent of the Harrisburg Daily Telegraph advocated his claims. Stanly was then only thirty-one, and there were objections raised about his age; the correspondent noted, though, that if Stanly was a young man, "he is nevertheless a discreet one, and has proved himself a useful one; and youth is a fault unlike many others, which mends every day."⁵⁴

As for the delegation's recommendation of Badger for Attorney General, Whigs back in North Carolina heartily approved. "Cives" wrote the Salisbury Carolina Watchman that, "If an Attorney Gen'l is wanted, we offer the name of Gen'l [sic] E. Badger, alike renowned [sic] for talent, integrity and sound knowledge."⁵⁵ A letter from "N. Carolina Forever" to the same paper stated: "We humbly hope the time has arrived, when such men as Judge [Duncan]

Cameron, and George E. Badger, will secure, at the hands of their country, a just reward."⁵⁶

Harrison, though, picked Kentuckian John J. Crittenden to be his Attorney General. When the President-elect reached Washington on February 9, his cabinet was complete but for the Navy position. This "he promised to whomever the delegations from the South Atlantic states could agree upon, [and a] series of stormy caucuses followed."⁵⁷ On February 12 Harrison finally completed his Cabinet, appointing Badger as Secretary of the Navy. The following day, Graham wrote his brother-in-law:

We have had a pretty severe struggle with our Southern neighbors for the appointment in that quarter. Our delegation first nominated Gov. Owen for the Navy department (excepting Stanly). But he was assailed by members from other States as an inferior man; and the President elect signified his intention to form the ablest Cabinet he could procure, and intimated through his advisers that he would prefer Badger. We therefore joined in a recommendation of him. Meanwhile Va., S.C., & Georgia united & pressed [William C.] Preston for the appointment. So highly however is the devotion of N.C. to true Whig principles valued, that we succeeded against them all.⁵⁸

A letter from Henry Clay to John M. Clayton of Delaware, written on the 12th, tells much the same story:

Genl. Harrison informed the Southern members of Congress, that, if they could agree upon any man from the South as Secy. of the Navy, his name would be favorably considered. They had various meetings and made several attempts to agree upon a man, but they could not unite. The N. Carolina delegation went for Mr. Badger, others for Mr. Preston &c. In this state of things I had an interview with him last night, and urged your appointment as Secy. of the Navy. He expressed himself, as he had before done, in the strongest

terms of your abilities, services and merits; but did not give me much hope of my desire being realized. And since I commenced this letter I learn that Mr. Badger of N. Carolina is designated for the Navy Dept.⁵⁹

Mangum also mentioned the appointment, in a letter to his wife: "Mr. Badger goes into the Cabinet at the head of the Navy Department, if he will accept.... In truth, I might have gone into the Cabinet, if I would have accepted it. -- But I wd. not think of it an instant."⁶⁰ As Mangum's letter implies, there existed some doubt as to whether Badger would accept the position. Graham in his letter to Bryan also mentioned this:

I hope Badger may accept, but I doubt it. The appointment will not add anything to our strength at home, but it will give the State some character abroad if he shall devote himself to the duties of the department as he should do. It is regarded here as the department promising most reputation to a man of real talent & industry, among them all except the Treasury. If Badger shall decline we will hardly present any other name.

Graham's letter to Bryan also contains several other nuggets of interesting information about Badger's choice:

You see that Stanly was mentioned for the Navy in the papers, and it gave us a little embarrassment, but the course the thing has taken will set matters right again. I hope our friends in the State will at once give in their approbation. If they knew the struggle which has been made against it, I verily believe, mainly from an habitual indifference (to use no harsher phrase) towards N.C. on the part of her immediate neighbors I doubt not but that they would with one accord say Amen.

You will please not mention the fact of Owens presentment, as he is a gentleman entirely, and has been grossly depreciated by our adversaries. If Badger accepts had you not better continue in

the practise [of law] in the State. The Supreme Court will be an open field.⁶¹

For over a week, much doubt existed as to whether Badger would accept. On the 15th, Graham wrote his wife: "Whether Badger will accept I do not know. There was no serious expectation of the appointment of Mr. Stanly, though the Madam had set her heart upon it."⁶² Four days later, Graham told Chief Justice Ruffin:

You have heard no doubt of the appointment of our friend Mr. Badger as Secretary of the Navy.... The appointment is highly honorably to B., emanating entirely from the estimate which the President elect has formed of his abilities and his desire to surround himself with wise Counsellors. We have not yet heard whether he will accept.⁶³

On the 21st, Daniel Moreau Barringer wrote to Graham from Charlotte on this subject:

We learn that Mr. Badger is offered the place of Secretary of the Navy. The Register, (unadvisedly I suppose) intimates that he will not accept. Write to him to accept it, by all means. At this peculiar juncture, there should be a gentleman of distinguished ability at the head of that Department. The reasons must be obvious to you, And although he may not at once be familiar with its details, you know that he will do honour to any station. Besides, I think his appointment will be of service to our party, & will reflect honour on the State.⁶⁴

Undoubtedly, a letter Badger sent Graham on February 16 did nothing to clear the water. Badger began his letter by discussing his surprise at the appointment, and the pressures being brought upon him to accept.

By a letter which reached me from Mr. Stanly the day before your arrival I first learned that such a thing as my nomination to a department was

thought of. The tidings took me completely by surprise, for I had not the remotest possible notice of such a thing. Had I anticipated it I should have taken care by a timely letter to you or Mr. Stanly to have prevented such an event. It has placed me in a position of great embarrassment. I am urged by letters from friends in Congress to accept -- the claims on me of the State -- regard for feeling friends -- the duty of aiding in carrying out a true reform -- the glory of reconstructing our gallant Navy -- all these and other reasons are placed before me, & I am urged by the further thought that if I refuse now N.C. will not have any place in the Cabinet. I have consulted some friends here amongst others Mr. Gaston; he says 'if you can possibly bear the pecuniary sacrifice & domestic discomfort, I do not see how you can refuse to accept.' Now as to personal sacrifices, great as they would be & deeply felt by me, I would not hesitate on that score, if I thought I could discharge the duties of the station with credit to myself and with advantage to the Country. I hold it the duty of those who can, to aid the President elect in his sincere and honorable purposes for the good of the Nation. I do in truth look on this as the great crisis of our affairs & believe if the government be not now restored, its restoration can only be hoped by a future revolution.

He, though, adds that he would be afraid of failure in such a position.

But then, my dear Sir, how can I hope to fill the duties of the office? I have never been in public life. I have no capacities peculiarly appropriate to it & little of any kind. I could, indeed, honestly and well I trust, advise the President for the good of the Country but how to superintend a department. I love and honor the Navy & have since I knew the meaning of the word. I could willingly lay myself out to advance its honor, but something is requisite to accomplish this better than honest motives & ill assured exertions. I should consider myself happy to add any glory to my native State but I could scarce bear the mortification of having disappointed her expectations and cast a blot on her fair fame.

I honor the President and wish the most brilliant success to his admn. but for that very reason I feel (besides others) reluctant, greatly

reluctant, to place myself in a position under him in which I might disappoint his expectations and sully the course of his admn.

A good deal of Badger's reluctance came from the fact that he had never been associated with the Navy and knew little about its operations. This was in contrast to the position for which his state's delegation had originally nominated him:

As to the Atty. Genl-ship, I should have felt rather more at home, should have hoped the diligence would have enabled me to succeed. But it would have been an outrage upon the Whig party & upon the nation had Mr. Crittenden been left out & I placed in that office.

Badger also expressed disappointment that his cousin had not gotten the Navy appointment instead.

In my opinion Mr. Stanly's nomination would have been a very good one, and would have been recd. by the Whigs of the old North with glad welcome. The notion about age you know I do not regard a matter of attention. He who has passed thirty is fit for most things for which he is likely to be.

But that is, I suppose, out of the question.

Finally, Badger requested Graham to write and advise him as to whether he should accept or not.

Will you let me hear from you? Give me some help on the subject. Let me know what I shall have to do & what I ought to know. Speak to me with perfect frankness and say that I ought not to accept, that there is hazard, danger of failure, etc. say what you think without any reserve whatever and believe me I shall value the favour of such frankness.⁶⁵

While Badger was mulling over whether to accept, the party press on both sides were furiously debating his nomination. Throughout the campaign of 1840, Democrats

tried to tag the labels "Federalist," "aristocrat and the like, on Whigs to show that they were not of the "common people." Thus, it is not surprising that the Democratic press also found those to be suitable labels for Harrison's cabinet nominees the following year. After the cabinet was announced, the Washington correspondent for the Salisbury Western Carolinian wrote:

It is on the whole a tolerably strong Cabinet; yet it is worth noting, that nearly all the members belonged to the old Federal party. -- Judge Badger, a flagrant Federalist and aristocrat, was recommended by the North Carolina delegation of Whigs -- without being consulted, as is generally supposed. It is hoped by some of the Whig party that he will decline -- and that the old North State will be satisfied with the honor of having been offered a seat in the Cabinet. Much difficulty was found in pitching on a Secretary of the Navy. John Owen was talked of!! So indeed was the Hon. Mr. Stanly talked of for this place, but he was not thought of.⁶⁶

Likewise, the Democrats' leading paper, the Washington Globe called Badger "an ultra Federalist of the old Adams school," in one article, and in another stated: "Of Mr. Badger we never heard till his appointment, and now only learn that he is an ultra Federalist of the deepest dye -- insomuch that his Federalism has always stood as a bar between him and political distinction in North Carolina."⁶⁷ A Virginia paper, the Lynchburg Republican, even went so far as to say, "As for Geo. E. Badger, Secretary of the Navy, we have heard him publicly denounced in his own State, (perhaps justly) as a monarchist out and out!!"⁶⁸

While Democrats were accusing Badger of aristocratic Federalist tendencies, some Whigs were wondering if he could be trusted because of his Jacksonian past. John M. Clayton, for whom Henry Clay had tried to get several cabinet positions, was one of these, and Clay did his best to assuage Clayton's fears:

Now I must correct some misconceptions of fact under which you labor, in respect to Mr. Badger. I understand that he has been a member of no Legislative body since the year 1818; that altho' a Jackson man, he ceased to be so upon or shortly after the formation of his first Cabinet; that he has been a warm & decided opponent ever since of the Admon of Jackson & V. Buren; and that he is the most eminent Lawyer in No. Carolina. I believe his designation to have been the result of perhaps an imp[r]udent rule adopted by Genl Harrison, in respect to the geographical distribution of the members of his Cabinet.⁶⁹

Clayton must not have been appeased by these statements, for a week later Clay had to write him again on this same subject:

I believe the information to be entirely correct, which I communicated to you as to Mr. Badger. It was derived from an authentic source. I knew him personally better than I did his history, as he boarded here several weeks with me two winters ago. Still as he has had but little experience, in the political career, his success is a matter of experiment and of course uncertainty. I believe you are right as to the motives of some who desired his appointment, but they will be deceived, or I shall be greatly so.⁷⁰

If John M. Clayton was suspicious, and jealous, of Badger, most Whigs, especially in North Carolina, were enthusiastic over the appointment. The Raleigh Star declared:

The appointment of our distinguished townsman, the Hon. George E. Badger, to the Navy Department, as announced in another part of this paper, will doubtless meet the cordial approbation of a large majority of the people of this State, as will the whole Cabinet the hearty sanction of the people of the United States. Never was th[ere] an abler or more patriotic Cabinet formed in this or any other country. Whether Judge Badger will accept the appointment, is, however a matter of doubt. It would certainly be a great sacrifice of his private interests, to do so; and the station would be no elevation to him. But the crisis demands sacrifice, and every true patriot should be ready to lay his best offerings on his country's altar. The services of her purest and ablest sons are required in her councils; and we hope he will not withhold the aid of his powerful mind, sterling integrity and patriotic zeal, from the important post to which he has been assigned by the illustrious individual who has been called to preside over our destinies.⁷¹

To counter the Democrats' charge against Badger that he was an aristocrat and a Federalist, several Whig papers printed biographical sketches of Badger highlighting such things as his humble beginnings and his military service. William A. Graham appears to have been one of the main instigators of the Badger defense movement; he wrote James W. Bryan:

It may be proper for the New Bern paper to give a short sketch of Badger's history and character, as a native of the place, not omitting his military service under Genl Calvin Jones during the War. For although he fought no battles, his readiness at that time to embark in the Country's service may disarm his political adversaries in their charges of Federalism, aristocracy, etc.⁷²

Graham, a historian of some note, was undoubtedly also the author of a long biographical sketch of Badger, signed "A Republican of North Carolina," which appeared in the

February 15th edition of the Washington National Intelligencer, and was copied by many lesser papers. While accurate in every detail, the author takes pains to show Badger's past "poverty." Thus: "His father died poor when he was a small boy. He possessed fine talents, and his friends aided him in acquiring an education." Likewise: "He was, at an early age, elected a Member of the Legislature of North Carolina, but his limited circumstances compelled him at once to abandon politics, because he was poor, and had a widowed mother and two sisters to support." Again: "A sense of duty to himself, his mother and sisters, required that he should not remain on the bench at a small salary when his splendid talents and extensive acquirements would command the most lucrative practice."

Badger's past Federalism was also deftly handled. His ideological views were not discussed at all, nor his Federalist heritage; it is mentioned, though, that he was "the leader of the Jackson party of North Carolina [in 1828], and wrote the address containing their political creed prior to the elevation of Gen. Jackson to the Presidency." Also, Badger's service under General Calvin Jones during the War of 1812 receives prominent notice.⁷³

Although Badger wrote Graham on February 16 expressing grave doubts about the position and asking for the Senator's advice, the next day he sent a letter to Daniel Webster accepting the cabinet seat.⁷⁴ The news reached Washington

around the 20th or 21st, and many people expressed relief. The Washington National Intelligencer, the Whig Party's flagship newspaper, was then edited by Joseph Gales, Jr., and William Winston Seaton, brother and brother-in-law to Weston Raleigh Gales, editor of the Raleigh Register. In an editorial on February 22, it stated:

This information [of Badger's acceptance] is the more welcome to those who know him, because some apprehension was entertained of his declining the appointment in consequence of his professional engagements. All considerations of personal convenience and interest have, however, yielded to the sense of duty which impel[1]s him to take the place in the Cabinet to which he has been called by the distinguished citizen who he has so essentially aided in placing in the Presidential Chair.⁷⁵

On February 26, Badger "contrary to the expectation of his friends," left Raleigh for Washington.⁷⁶ Eight days later, on March 6, he, Daniel Webster (State), Thomas Ewing (Treasury), John Bell (War), John J. Crittenden (Attorney General) and Francis Granger (Postmaster General), were all confirmed by the Senate.⁷⁷ William A. Graham described these men as constituting "the ablest Cabinet which has been formed since the days of Mr. Monroe."⁷⁸ Considering the careers of Webster, Crittenden, Bell, Badger and the others, this statement appears to contain a great deal of truth.

After confirmation, Badger began a detailed study of the Navy Department and its needs. On March 19, his duties were interrupted for a month as he rushed home because of the birth of a daughter, Anne.⁷⁹ During his absence, a

major change occurred when William Henry Harrison died after a month in office, and John Tyler assumed the Presidency. Upon returning to Washington, Badger saw no cause for alarm; on April 28 he wrote Graham:

I am decidedly of opinion that as far as depends on the new President the cause of the Country is safe. He behaves with much dignity and courtesy, is intelligent and appears to realize what the Country expects from his administration & to be resolved not to disappoint their expectations. Everything here increases my hope of a favorable issue of the administration so far as the good interests of the Country are concerned.⁸⁰

A few days earlier he had written much the same to former Governor Swain: "My decided opinion is so far as depends on Mr. Tyler the country is safe. He is intelligent, dignified -- courteous."⁸¹

When he returned to Washington, Badger began to work in earnest on a report to the President concerning his department. Before his death, Harrison had called for a special session of Congress to convene on May 31, and when it did Tyler submitted to it the reports of his Cabinet. Badger's report concentrated on two subjects "worthy of present consideration." First, he proposed the establishment of a home squadron: "While squadrons are maintained in various parts of the world for the preservation of our commerce, our own shores have been left without any adequate protection." Badger stated that besides giving protection for the east coast, a home squadron would also be useful for training purposes, and

would necessarily cause "a thorough acquaintance [to] be gained with our own seacoast, extensive and hitherto but imperfectly known."

Second, the Secretary urged that provisions be made to secure adequate ordinance and ordinance stores: "A sufficient supply of suitable arms and munitions of war is indispensable to the successful operation of the bravest office and men; and it cannot, from the nature of the case, be provided upon a sudden emergency." Thus, Badger attached a report from the Board of Navy Commissions outlining what was required. He also made note of the fact that the Navy Pension Fund was exhausted and required "the immediate action of Congress."

Badger closed his report by stating: "The opinion seems to have become general, as well in the service as in the nation at large, that a thorough reorganization of the navy is demanded by considerations connected with the defence and honor of the country; and in this opinion I heartily concur." He was aware, though, that "any plan for this purpose should be the result of the most careful deliberation." He, thus, would seek expert opinion, make a careful study, and, only then, draw up such a plan. "I entertain the hope of being able, before the next regular meeting of Congress, to submit for your consideration a comprehensive and well digested system of reform in the branch of the public service committed to my charge."⁸²

Badger's report must have been favorably received by Congress, for they enacted all of his recommendations. In late July a bill creating a home squadron passed both houses and was signed into law, the measure passing the House by a vote of 184 to 3. The bill provided that \$789,310 would be appropriated annually for the maintenance of two frigates, two sloops, two armed steamers and two small vessels. Badger's home squadron eventually became what is known as the Atlantic fleet.

As for the Secretary's recommendation for increasing ordinance and ordinance stores, Congress allocated \$600,000 for this purpose. The legislators also saw to it that the needs of the Navy Pension Fund were met.⁸³

Badger was interested in modern naval inventions, especially those that would increase speed or navigational abilities. He must have also been concerned about the appearance of his sailors, for he "put in force a regulation forbidding the wearing of whiskers by naval officers, save side whiskers, which should not extend lower than the lobe of the ear." Because of this regulation, the acceptable side whiskers became known as "Badgers."⁸⁴

Before Badger's report became public, expectations among North Carolina Whigs were great. Frederick Nash wrote Graham:

We are looking forward with anxiety for Badger's report, nothing doubting but it will sustain his high reputation & honour the Old North State. The time, so long desired, has come, when North-

Carolina can point to her public servants & proudly say -- such are the men we delight to honour.⁸⁵

Undoubtedly, North Carolinians, at least those who were Whigs, received great satisfaction from Badger's report and the action Congress took pursuant to it. In June, Graham wrote James W. Bryan that, "Sec. Badger is quite devoted to his Department, and I think, give general satisfaction."⁸⁶ The Badgers apparently also found their way into Washington society. On July 4, Graham wrote his wife that the previous evening he and his brother, Congressman James Graham, "went and took Tea at Mr. Badger's sans ceremonie.... Mrs. Badger is quite admired in society here."⁸⁷

While Badger's stint as head of the Navy was extraordinarily successful, it was also very short. He and the other Cabinet members became caught up in a power struggle between Henry Clay and John Tyler for control of the Presidency and the Whig Party. The issue over which this battle was fought was a proposed national bank.

President Harrison had called for a special session of Congress to meet on May 31 to act on "sundry ... matters, principally growing out the condition of the revenue and finances of the country." Tyler had assumed the Presidency before this session convened, but he also believed that some financial adjusting was in order; Tyler desired the creation of a "fiscal agent" that could disburse and collect the

public revenue, and would supply a uniform currency to the nation.⁸⁸

Congress began the study of matters economic, and in early June they repealed the Democrat's Sub-Treasury Act. They also requested Secretary of the Treasury Ewing to submit ideas on creating a new national bank or fiscal agent. Ewing's suggestions were referred to the Senate's select Committee on Finance, and they proposed a bill containing many of his ideas, including a national bank.⁸⁹

For over a month, the idea of a new national bank was debated furiously in Congress. While Henry Clay and most Whigs championed the cause, Democrats found it anathema. When Whigs argued that the voters of 1840, as well as President Harrison, had overwhelmingly favored a bank, Democrats were quick to bring up Badger's assertion at Granville that the General did not desire one. This led to the following interesting exchange on the Senate floor on July 7 between James Buchanan, John C. Calhoun and William A. Graham:

[Mr. Buchanan.] It is [the Senate select Committee on Finance's] 'deliberate conviction' that a vast majority of the people of the United States anxiously desire the establishment of a National Bank. Whence is this 'deliberate conviction' derived? From what source does it proceed? I am entirely at a loss even to conjecture. Was the question of a National Bank discussed anywhere before the people by the great Whig party previous to the last Presidential election? Was the establishment of such a Bank then made a turning-point of Whig policy anywhere?

No, sir; no; the Whigs everywhere shrunk from the question. They concealed their opinions of the subject -- nay, more -- in some States of the Union they professed, that hostility to a Bank of the United States was one of the cardinal principles of their party. The Whig convention of Virginia, in their address to the people, expressly declare that General Harrison was opposed to a National Bank; that he was against it on constitutional grounds: and unless I am greatly misinformed, a distinguished gentleman of North Carolina, [Mr. Badger,] now a member of the Cabinet, in an address before the Whig convention of that State, indignantly pronounced the assertion that General Harrison was in favor of such a Bank, to be a falsehood. This speech was, I understand, printed and circulated all over North Carolina. I have not seen it myself; but have received my information from an undoubted source.

Mr. Graham said the speech was not made before the Whig convention, but at a public meeting in that State.

Mr. Buchanan. Then the gentleman admits that the speech was made. Where it was made is of little consequence.

Mr. Calhoun. I have the speech of Mr. Badger in my hand, and shall read the following extract from it:

'Next it is said that General Harrison favors a Bank of the United States. The charge is false. His opinions, on the contrary, are against a Bank.'

Mr. Graham. The speech was not made before the Whig State Convention on the 5th of October, 1840.

Mr. Calhoun. It will show for itself. It appears to have been made on the 3d of March, 1840.

Mr. Graham. At a meeting of the citizens at Granville.

Mr. Calhoun assented to this, and said that a hundred thousand copies of the speech had been printed and circulated.

Mr. Buchanan continued. The misunderstanding relates not to what Mr. Badger said, but merely as to when and where he said it. The important fact is established beyond all doubt, that this distinguished gentleman, who was selected by the late President as a member of the Cabinet, on account of his eminent talents, and his avowed political principles, did come out, at a great

convention in March last, and, in the strongest terms, did pronounce the charge to be false that Harrison favored a Bank of the United States. This is all I desire to know; and whether one hundred thousand or one thousand copies of this address were circulated, is a matter of small importance. We then have the solemn declaration of a man of high character, at the head of the Whig party in North Carolina, branding as a falsehood the charge that the late President even favored a National Bank. And yet it is gravely asserted that the people at the late election have determined in favor of such a Bank!⁹⁰

While the bank bill was being debated, rumors began to circulate that President Tyler would use this issue to grasp control of his party from the dominant Henry Clay, or possibly break with the Whigs altogether. Tyler had always been wary of a national bank, holding that certain types would be unconstitutional. On the other hand, rechartering a national bank had been Clay's pet project since the mid-1830s. As for the rumors, on June 13 Graham wrote James W. Bryan:

Suspensions are entertained that President Tyler designs to run for the succession and that he may break with the Whigs on this question, hoping to carry off a fraction of the party and unite with the Locos. I give it [to] you however as mere gossip which may do him great injustice.⁹¹

The other North Carolina Senator, Willie P. Mangum, found more substance in the rumors, for several weeks later he wrote Duncan Cameron:

the Whig party is in a most wo[e]ful plight, and there is ground for apprehension that the Session will prove abortive -- the consequences of disgrace, disaster & final discomfiture are palpable & appalling. -- These great & fatal results, if they come, will have come, from a weak & vacillating President surrounded & stimulated by

a cabal, contemptible in numbers, not strong in talent, but vaulting in ambition. -- The principal difficulties are in regard to the Bank....

Much effort has been made upon him, in the form of coaxing, cajolery, intimidation, & the plying of his ambition, in connexion with a second term -- until the poor man, without a feeling of bad faith or treachery to the party, (for I am very sure, he is utterly unconscious of any such) is rocking, reeling & staggering in rapid transition from one point to another, until he may, if the process be continued, lose all consciousness of his personal & political identity....

I will add ... that I believe the President is probably, about the most miserable man in the Republic, and one would feel a sentiment of compassion for him, were it not displaced by another sentiment.... If now he shall throw himself in the fact of this great & gallant party, after an accession by a contingency, dash all the hopes of a seven years unexampled perseverance & struggle, & bind this great & victorious party in the net work of Virginia abstractions & lay it at his feet the contempt & scorn of the world, that he will be regarded by his contemporaries & by posterity as having successfully perpetrated the most stupendous fraud that in modern times, had been played upon any great people or great party. -- He has cause, in this View, to be miserable --92

While Congressional Whigs wondered about Tyler's allegiance to their party and its main tenants, Tyler's advisors feared that the Cabinet would be disloyal to the President. Abel P. Upshur opined to Nathaniel Beverly Tucker in July: "[Tyler] has not a sincere friend in [the Cabinet]. Webster will adhere to him till he kills Clay, and no longer. Ewing, Bell, Crittenden, and Granger, will sacrifice him to Clay." As for the Secretary of the Navy, Upshur continued, "Badger is too generous to betray [Tyler],

but Badger is a Federalist, and will not aid him in shaking off National Republican centralism."⁹³

After much struggle, on July 28, the Senate, by a vote of 26 to 23, approved a bill chartering a national bank. The House passed the same bill on August 6, by 128 to 98, and it was sent to Tyler for his signature. As many Whigs had feared, ten days later Tyler vetoed the bill.

Because they did not have the votes to override Tyler's veto, Whig leaders decided to consult with Tyler and attempt to draft a bill acceptable to both sides. According to an explicatory letter Badger wrote to the National Intelligencer upon his resignation, on August 18 Tyler called a Cabinet meeting where "the subject of an Exchange Bank or institution, was brought forward by the President himself and was fully considered." At this time, it was "distinctly stated and understood that such an institution met the approbation of the President, and was deemed by him free of constitutional objections." Tyler even went as far as asking the members of his Cabinet to "aid in bringing about" the passage of a bill creating an Exchange Bank. Secretaries "Webster and Ewing were specially requested by the President" to meet with Senator Berrien and Representative Sergeant to draft such a bill.⁹⁴

Although he was not present, Senator Graham heard much the same regarding this cabinet meeting.

I learn that before the Bill was introduced, (he being waited on by some members of Congress who

were sent to consult him) [Tyler] called a Cabinet Council where it was discussed some time, and he yielded his assent to it in the very words in which it was introduced and passed. And then drew the title of the Bill in his own handwriting.⁹⁵

Webster, Ewing, Berrien and Sergeant drew up the new bill, and it was introduced in the House. Because of the President's request for assistance in getting it passed, Badger used his influence: "I saw such friends in Congress as I deemed it proper to approach, and urged upon them the passage of a bill to establish such an institution, assuring them that I did not doubt it would receive the approbation of the President."⁹⁶

As a result of the efforts of the Congressional Whig leadership and the Cabinet, the House passed the new bill on August 23 (123 to 94), and the Senate on September 3 (27 to 22). Rumors began to spread, though, that, despite embodying everything the President had requested, Tyler would veto the measure. On Sunday, September 5, Mangum wrote his wife that Congress had passed "A New Bank [bill] which will be vetoed -- Tyler is mad, weak & a traitor I fear -- If the veto comes, as we think it will, it may keep us much longer.... The Cabinet will probably break up. -- Crittenden & Badger will certainly resign."⁹⁷ That same day, Graham also mentioned this subject to his wife:

The President ... has now before him the new Bank Bill which it is believed he will reject as he did the former one. If so, he will necessarily separate from his friends....

I attended last evening a party at Mr. Badger's, and on Thursday evening preceding, one

at Mr. Bell's. The Cabinet seem disposed to make merry, as if they were in no trouble. But I very much apprehend a dissolution. The President was not out last night, but was at Mr. Bell's. He is evidently laboring under great anxiety, and if he could divest himself of the small squad, who have had charge of him during the Session, I have no doubt he would gladly sign the present Bill.... [H]e is destined to have an irregular & hobbling administration, from which I apprehend the country will experience but little benefit.⁹⁸

As late as September 9, Badger was performing his duties as Secretary of the Navy as if the end of his tenure were not in sight. That day, he wrote Mangum concerning the newly formed home squadron and the need to place marines on the ships. In his note, there is no mention of the bank bill.⁹⁹

It was on the 9th, however, that Tyler finally vetoed the second bank bill. A satisfactory reason why Tyler did this has never been given. In the President's veto message to Congress, he used the same constitutional objections as he had in his first bank veto message; yet, Tyler approved of the second bill's constitutionality in his Cabinet meeting August 18. A more likely reason is that he wanted to effect a break with Henry Clay.

One possible catalyst for Tyler's change of heart was the publication of Botts' Coffee House Letter. John Minor Botts, a Whig Congressman from Virginia and an adherent of Henry Clay, wrote a letter soon after Tyler's first bank veto addressed to Coffee House, Richmond. In this letter, Botts severely criticized the President and declared: "Head

Captain Tyler, or die." This so infuriated the President, that both Thomas Ewing and Daniel Webster later declared that he would have signed the second bank bill but for this letter.¹⁰⁰

On the night of September 9, Badger "invited all the cabinet to a special supper, and all of them assembled at his house on Lafayette Square." After dining, all except Webster met and discussed what course to follow. It was decided that Crittenden, Ewing, Bell and Badger would resign on September 11, as they did; Granger also resigned, but Webster stayed in his post -- partly because he was negotiating an important treaty with England, and partly because he hated Henry Clay and wished to destroy Clay's hold on the Whig party.

At some point during the evening, Clay also made an appearance at Badger's home. Because of this fact, at least one person, John Tyler, Jr. (the President's son), imagined "a regular plotted conspiracy between Clay and the rest, save Webster." The younger Tyler postulated that Clay's true motive was to force the President to resign; because Congress was scheduled to adjourn on Saturday, the 11th, if the Secretaries resigned on that day Tyler would not be able to appoint a new Cabinet, and thus, supposedly, the government would cease to function. Somehow this "plot" did not work, and Tyler, Jr., held that the supposed

conspirators were "literally astounded at the failure of their plot, and went mad over their disappointment."¹⁰¹

There is no evidence that any such plot existed between Clay and the Cabinet. Yet, why the Kentuckian was present at Badger's house that night is an interesting question. Clay himself admitted being there, but added that he "was not present at any interview between the four Secretaries, and did not at Mr. Badger's exchange a word with either of the gentlemen on the subject." Thomas Ewing seconded these statements by declaring that when he met with the Cabinet at Badger's "to consult upon what course to take after the second veto, he was not aware Mr. Clay was dining there, nor did he exchange a word with him on the subject of his resignation."¹⁰²

Two days after the mass resignation, William A. Graham from Washington wrote his brother-in-law:

You can well conceive of the excitement which prevails. The President has lost the respect of almost every body, and if revelations are made of the facts attending the passage of the last Bank Bill, he will stand convicted not only of imbecility & folly but of treachery also.... The Cabinet have ... not left him for mere disagreement on a measure, but for trifling and treachery towards them.... They were not consulted about the last veto and never saw it until published. Indeed, for some time past no persons have here been more ignorant of the designs of the Executive. Poor silly man! he seems to have surrendered himself to the keeping of a small clique, and I should not be surprized if he lost his understanding altogether long before the end of his term....

There is great regret in the social circles here at the dissolution of the Cabinet. The Secretaries and their ladies have added a charm to

society in Washington which it had not derived from the officials for many years before.¹⁰³

Graham also informed his wife of the resignations, and added:

We are destined to have a stormy & troublesome time during the whole reign of Mr. Tyler who is a weak indecisive man, having no mind of his own, but is driven about according to the suggestions of others....

Great indignation and disgust at the course of the President is felt throughout the country. And it is probable that publications will be made by some of his Cabinet to shew his indecision if not perfidy. Nothing else is talked or thought of here.¹⁰⁴

As predicted by Graham, Badger did make known the President's actions, in a letter to the National Intelligencer dated September 18. After detailing the Cabinet meeting of August 18, where Tyler had assented to the second bank bill and asked for his Cabinet's assistance in getting it passed, Badger stated that at no time since had the President informed him of a change of opinion. This was in violation of "a plain duty on his part to have made known to the gentlemen concerned this change of sentiment [and] to have offered them an apology for the unpleasant situation in which they were placed by his agency." While a mere difference of opinion between the President and his Cabinet was understandable, and would not call for any resignations, this was something completely different. Badger called the situation:

one it is believed without a parallel in the history of our Cabinets; presenting, to say

nothing more, a measure embraced and then repudiated -- efforts prompted and then disowned -- services rendered and then treated with scorn or neglect. Such a case required, in my judgement, upon considerations, private and public, that the official relations subsisting between the President and myself should be immediately dissolved.¹⁰⁵

That Badger should be upset at Tyler's vacillations is not surprising. Several months earlier, Mangum had stated that the Secretary was a man "whose whole life had been marked with emphatic impatience, not to say, irritability in regard to a feeble, temporizing or vacillating policy."¹⁰⁶ Yet, there was something more at play here. In the eyes of Badger, who was a man of integrity, Tyler was guilty of worse -- disrespect and dishonesty towards his Cabinet.

The immediate Whig response to the resignations was, on the whole, quite positive. The New York Tribune declared: "The gratitude of the Republican party will accompany the late members of the cabinet in their retirement. They have performed their duty to the country worthily and well, and, however much we may regret their secession, the motive which led to it command our unqualified respect."¹⁰⁷ Several papers made specific reference to Badger's tenure at the Navy Department, and expressed regret at his resignation. The Philadelphia Inquirer stated:

We have been called upon by a number of officers of the Navy, and requested to give it as the opinion of the entire Navy, as far as it has been ascertained, that never was a Department characterized by more efficacy, vigor, and ability than during the brief but brilliant administration of the Hon. Geo. E. Badger. His retirement is a

source of the deepest regret to the service. He not only enjoyed the confidence of the officers in an eminent degree, but he had already assisted to give a new impulse to that important arm of national defence.¹⁰⁸

Likewise, the Philadelphia Chronicle opined:

At no previous period since the foundation of our Government -- during the whole term of no preceding administration, has so much been done to revive the enervated hopes and energies of the Navy, and make it what it should in truth be - the right arm of our national protection -- as has been accomplished under the late Secretary, during the brief period of about six months, that he presided over its destinies. From a comparative weak and disorganised corps, sunken much in public estimation and confidence, and in a measure barren of prospect and emulation to the officers -- for all which the country are indebted to the neglect of former administrations, it is raised high in public estimation and confidence, infused with a new life and spirit, and, if the present policy is carried out, will cause it steadily to rise upon the scale of elevation, until it is a chief source of pride, and boast at home, and honor abroad.

Mr. Badger brought into the discharge of his official duties an expansive and comprehensive mind -- a liberal policy -- and an ardent attachment to the best interests of the country. His energies were devoted to the Department in which he was placed -- the true and substantial interests of the Navy, and their intimate connexion with those of the country. His plans were original, well matured, and commensurate with the wants of the service -- his estimates liberal, avoiding unnecessary expenditure -- and his recommendations, both to Congress and the Executive, evinced a determination to make the Navy of some real utility to the country.¹⁰⁹

It should be noted, though, that some papers affiliated with Tyler or the Democrats were not as sanguine concerning Badger's performance. The Charleston Mercury, the organ of John C. Calhoun, declared: "Mr. Badger will be missed by nobody, and may as well keep a hole in NORTH CAROLINA as in

Washington, where it was impossible to unearth him, however urgent the business of those coming to his department."¹¹⁰

This short quip elicited several sharp responses in the Raleigh Register. The editor, Weston R. Gales, wrote:

The coarseness of the foregoing is so disgusting, that it carries with it a sure antidote for the venom with which it abounds. The whole Union will place a Veto upon the ungenerous assertion of the "Mercury" -- a paper, by the way, that never lets an opportunity pass for calumniating the distinguished men of North-Carolina.¹¹¹

Also, a letter from "A North Carolinian" took issue with the Mercury:

The public know [the editor of the Mercury] to be a mere Catspaw of the veriest political demagogue and agitator that ever disgraced a nation, John C. Calhoun!... The services of Mr. Badger, during his short administration of the Navy Department, are too highly appreciated by the Nation to be detracted from by political scribblers. Never, in the same length of time, since the formation of the government, has more been done to elevate the character and hopes of our gallant Navy.... What an insult to that pink of political consistency, the Right Hon. John C. Calhoun, that a member of the Whig Party should dare refuse to unearth himself to be questioned by one of his moonstruck pimps!...

There has been an evident disposition on the part of this Editor to sneer at, and depreciate the character of North Carolina.... [W]e have but one species of hole in North Carolina which he is worth "to keep," viz: that in which are deposed for safe keeping all who bear false witness against their neighbors, and filch their neighbor's goods, of which his character, his good name, is considered the most valuable portion.¹¹²

Without a doubt, one of the main reasons why the Mercury ran its snide remark concerning Badger was because the North Carolinian was a bitter enemy of John C. Calhoun

and his theory of nullification. Earlier in 1841 Badger wrote Graham concerning certain debates in the Senate:

I should have been astonished at the ground taken by Mr. Preston knowing as I do his high mental quality, but that I have had occasion to remark the perplexing effect upon the understanding of the Nullification theory. Once adopted it confuses the intellectual operations, and a man can only reestablish a just exercise of the thinking powers by a thorough and total renunciation of that grand political heresy....

I wish Preston could wake up in regard to Mr. Calhoun's great and dangerous Nullification humbug, use the eyes of his mind, and shake off forever his sluggish submission to that darkening and bumbling error. Until he does he will scarce do his own powers justice on any subject.¹¹³

In North Carolina, the vast majority of Whigs applauded Badger for his resignation. A public meeting was held in Raleigh on September 25, where Badger's National Intelligencer letter was read and resolutions adopted commending the late Secretary's actions. One resolution read:

We cordially approve of the principles and reasons set forth by him in his address to the public in regard to his withdrawal from the Cabinet of the President of the United States; and as a token of the estimation in which we hold him personally, and as evidence of our approbation of his public course, we will tender him a public dinner.¹¹⁴

A public dinner was given Badger, in Raleigh on November 6. Many speeches and toasts were made, and the occasion also included music. A toast given Badger stated: "Our distinguished and respected guest -- All who knew him, were well assured that office could have no charms for him when honor was at stake." In reply, Badger gave an hour-

long speech. In it, he described all the facts leading to his resignation, and declared:

It was the want of sincerity and ingeniousness -- of directness and candor -- it was the disregard of courtesy and respect -- it was the manifestation of a vacillating and unsteady mind -- it was the want of that manliness which assumes and avows its own errors, and scorns by concealment or evasion to visit them on others, that compelled the President's confidential advisors to abandon their position.¹¹⁵

While Badger's stay in Washington was short, he and his wife were able to form many lasting friendships. Attorney General John J. Crittenden became one of Badger's closest friends, and the two corresponded frequently over the next twenty years. A letter from Badger to Crittenden dated March 4, 1842, attests to their friendship, and also shows the former's wit and hospitality:

My dear Sir,

I learn from the papers that you are in Washington -- What on earth are you lurking about the City for? Do you expect any favors from the White House, or are you endeavoring to get [Attorney General Hugh Swinton] Legare to appoint you his Clerk -- and are you prepared to become a Tyler man in Politics or do you in poetry prefer Ahasuerus to the Paradise lost or the poet laureate to Milton? This latter question you ought to be prepared [to] answer before you indulge any hopes of advancement -- Pray give an account of yourself --

Do you ever visit President Square? If yea -- do you ever think of a late SecY of the Navy? -- Do you remember a certain Carpet which will owe its preservation from moths for a half century to come to your diligent sprinkling thereon of what our boys used to call Ambere? (Do you remember a certain lady of a certain Secretary of a certain Navy who exhibited the greatest singularity of taste in the world, in saying that certain Attorney General was a goodlooking man?)

I know you have been longing to write to me, but have been withheld by the fear of shewing presumption in an ex: Atto. Genl. addressing an ex SecY and I write as a proof of my benevolence and an instance of my condescension, to put you at ease and enable you to overcome your modesty --

Where & how did you leave M^{rs} Crittenden?

What is to hinder you from taking the Cars and paying me a visit? I can give you a good bed -- a good dinner -- good wine and a hearty welcome --

These various interrogatories I wish to be considered addressed to Ewing -- who I suppose is endeavoring to get something of an appointment from [Secretary of the Treasury Walter] Forward -- His complimentary letter of resignation -- if he presses his claims -- will no doubt entitle him to a clerkship -- particularly if he had read Ahasuerus and committed half as much of it as he recited to me from Dante's Inferno --

Wishing you success in all your efforts to obtain executive favor and advancement I am very truly your friend & serv^t

Geo. E. Badger¹¹⁶

One disadvantage to Badger's stint in the Cabinet was that it hurt him financially. In March, 1842, he wrote Crittenden:

I am now preparing for my Circuit in order, if possible, to retrieve my losses -- I thought when I left Washington that my direct deficit in consequence of my political campaign, exclusive of loss of business in my profession, would be covered by \$4000 -- but it is not so -- I am now, as I have not been for a good while, in the pleasant situation of owing debts which I cannot presently pay and must enlarge the number of Courts in my Circuit to meet the present state of things.¹¹⁷

Badger worked fairly hard in the practice of the law over the next few months; during the June 1842 term of the North Carolina Supreme Court he argued 34.5% of its cases, a percentage he had only reached in one of the previous eight terms and one he would never again match. Yet, Badger's overall caseload between 1842 and 1846 was not as heavy as

in previous years, for he stayed extraordinarily busy in North Carolina Whig politics.

C. Whig Leader

Because of his efforts in the election of 1840 and his service in the Cabinet, when Badger returned home from Washington he naturally assumed a large leadership role within the state Whig party. For the first time in his career, he became involved not only in national, but also state political struggles. Thus, it is necessary to take a quick overview of the highly interesting political spectrum within North Carolina during the 1840s.

The major political event in North Carolina during the first half of the Nineteenth Century was her constitutional convention of 1835. For many years the aristocratic eastern section of the state had controlled the Piedmont and western areas. Under the constitution of 1776, each county elected one person to the state Senate, and two to the House of Commons. Because the east had many small counties, she was able to control the legislature despite not having a white population equal to that of the other two sections. Constitutional amendments passed in 1835 changed the basis of representation -- Senate districts were now to be determined by the amount of taxes paid, the Commons upon population. This system still favored the east, for she was the wealthiest section and also the population count was to

be based on the "federal" system (slaves counted as 3/5 of a person). Still, the disparities were greatly reduced -- the east lost ten senators and thirty-five commoners. The other major change accomplished in 1835 was the direct election of the governor.¹¹⁸

The next quarter of a century "witnessed the state's only extended experience of close two-party competition along national patterns."¹¹⁹ For the first fifteen years, the newly formed Whig party held a small, but solid, majority in the state. The Whigs won all seven gubernatorial elections between 1836 and 1848, they controlled both houses of the state legislature in 1838, 1840, 1844, and 1846, and they carried their state for the Whig presidential candidate in 1840, 1844, and 1848. Much of the Whig party's strength can be directly attributable to the constitutional revisions of 1835, because the party received its heaviest support from the Piedmont and mountain areas. After 1850, the roles reversed and the Democrats held a small, yet stable, lead.¹²⁰

For over thirty years, North Carolina Democrats followed the conservative views of their leader Nathaniel Macon. Although Macon died in 1837, the party as a whole still clung to his ideas of strict construction, limited government, and defense of slavery well into the 1840s. Democrats scorned such Whig ideas as support for internal improvements, support for the state's banks, and relief for

ailing railroads.¹²¹ One leading authority has termed the party between 1835 and 1843, "unprogressive and reactionary."¹²²

The Democracy was divided into two ideological camps. One was more moderate and nationalist, while the other "found the party unduly lax in its devotion to strict construction and slavery."¹²³ The moderate nationalists were led by Bedford Brown, a close friend of Martin Van Buren and one of North Carolina's U.S. Senators from 1829 to 1840.¹²⁴ The radicals followed the views of John C. Calhoun, and in North Carolina they were led by men such as the ambitious Romulus M. Saunders.

In 1842, Brown and Saunders clashed over a seat in the United States Senate. Brown had been defeated for reelection in 1840 by a hostile Whig legislature, and was anxious to return to his former position. His election looked favorable in that for once the Democrats held a healthy majority in both houses of the state legislature. The Calhounites, though, decided to make a stand, and proposed Saunders for the seat. This caused a sharp division within the Democratic caucus, and finally forced it to retire without having made a choice. The fight carried over into the legislature itself, where both Brown and Saunders were nominated, as well as the Whig incumbent, William A. Graham. A heated battle ensued over eight ballots, with no one coming close to a majority. Finally

before the ninth ballot, the Democrats caucused again and united behind William H. Haywood, Jr., who was then easily elected.¹²⁵

The choice of Haywood could hardly be considered a compromise, though, for "ideologically, [he] was indistinguishable from Brown."¹²⁶ Throughout his political career, Haywood disregarded extreme partisan views, and often acted "independently of party standards. In fact, the Whig congressional delegation from North Carolina seemed to get more general satisfaction out of the election than did the Democratic delegation."¹²⁷

A major reason why the Democratic party was in a constant minority during this time was that it lacked an effective state press. In 1840, there were seventeen Whig papers, and only eight Democratic. In 1844, the Whigs had twenty, the Democrats seven. Four years later, the Whigs still held a substantial majority, twenty-one to ten.¹²⁸ If this was not bad enough, what papers the Democrats did have were extraordinarily ineffectual. The major Democratic paper in the state was the North Carolina Standard, published in Raleigh. The Standard had been established in 1834 by Philo White, who soon thereafter sold the paper to Thomas Loring. Loring was a "lukewarm partisan," who in 1836 and again in 1838 actually favored the Whig candidate for Governor. In 1843 after favoring a position the Whigs held on an issue involving the state bank, a Democratic

legislator "read" Loring out of the party.¹²⁹ It is rather ironic, then, that the saviour of the Democratic party came in the form of a newspaper editor, William Woods Holden.

Holden was born out of wedlock near Hillsborough, N.C., in 1818. Because his family was poor, he became a printer's apprentice for a local newspaper at the age of nine or ten. When eighteen, Holden left Hillsborough for nearby Raleigh where he began employment with a weekly Whig paper, the Star. While working for the Star, he read law at night, and in 1841 quit newspaper work and hung out his shingle. For the next two years he practiced law in Raleigh and dabbled in Whig politics.

The event which changed North Carolina politics occurred in 1843 when Holden was approached about buying and editing the Standard. After securing a loan, Holden did just that -- taking on both the paper and its Democratic ideology. For the next thirty years William Woods Holden was one of the most powerful and controversial men in the state.

Holden turned the Standard into the Democrats' most effective organ in North Carolina. Unlike the timid Loring, he was not afraid of assaulting the entrenched Whig press, in fact, he relished it. The Standard gave the Democrats the unity and the voice of which they had long been in need. Just as important, Holden was not afraid of abandoning old conservative Democratic principles in an attempt to reach a

wider audience for his party. Thus, under Holden, the Standard, and the Democratic party, became increasingly progressive in its attitude towards internal improvements and the rights of the common people. Along side this moderation, Holden carried the Democracy into the reactionary Calhoun camp on issues involving slavery.¹³⁰

By 1847 the Standard had come to endorse John C. Calhoun's view that Congress had no right to abolish slavery in the territories; the Wilmot Proviso was not only bad law, but also unconstitutional. On September 1 of that year, a correspondent of the paper declared that before submitting to the "flagrant injustice" of the Proviso, the South would "encounter the dread alternative of disunion, and if forced on it, civil war." Two weeks later, a Holden editorial proclaimed the Proviso "treacherous" and "dangerous" and stated that if adopted, "the Union will be destroyed as sure as God lives in Heaven!"¹³¹ At this time, North Carolina's Democratic Congressmen were "unanimous in denying that Congress had any right to exclude slavery from the territories."¹³²

Because of the changes in the Democratic party, by 1848 they were threatening the Whigs for supremacy within the state, and this was finally achieved in 1850. There is no doubt that a lot of the credit must go to Holden. He recognized this himself in 1883 when he wrote, "But for [Governor] David S. Reid and myself, there would have been

no triumphant Democratic party in North Carolina."¹³³

Edward J. Hale, editor of the powerful Whig Fayetteville Observer agreed in 1864:

A few years ago he had become unquestionably the most influential man in the State. His central position, and the skill which he managed his Press, combined with an unwearied assiduity in intrigue, enabled him to mold public opinion so far as to reduce the Whig party to a minority and to elevate the Democratic Party to a majority.¹³⁴

As for the members of the moderate, nationalistic wing of the Democratic party, they did not fare all that well. Bedford Brown became "hurt and disillusioned," and left both politics and North Carolina -- settling in Missouri.¹³⁵ William H. Haywood, Jr., remained in the U.S. Senate until 1846 when he resigned rather than support the Walker Tariff. This move effectively ended his political career, and an indignant Holden wrote that "the sooner he comes out openly for the Whigs the better."¹³⁶ The former Standard editor Loring actually did join the Whig party. Shortly thereafter, he wrote Martin Van Buren that "the wishes of the Democratic party have been defeated by a club who have the dismemberment of the Union in view ... with Calhoun at its head...."¹³⁷

In the 1840s, when the Democrats were in the minority, Holden had to go on the offensive, attacking the opposition. Because of his position within the Whig Party, Badger naturally came under harsh criticism from the Standard. In only the second issue under his editorship, Holden began a

series of sketches, "Mysteries of Coondom Unveiled," that greatly ridiculed Whig leaders; Badger was easily recognizable as "Whiskerando."¹³⁸ The next year, during the election of 1844, the Standard sarcastically asked: "Is Mr. Badger, the leader of the Clay party in North Carolina, to be held up as the advocate and defender of the poor?" To this the Register responded:

Whether or not Mr. Badger is the leader of the Clay party, in this State, is a matter, we presume, about which different opinions are entertained. With regard to his being held up as the 'advocate and defender of the poor,' we challenge the 'Standard' to name any member of his party in the State, who does as many acts of kindness to the poor as Mr. Badger. He is one of the few amongst us, who 'do good by stealth, and blush to find it fame.'¹³⁹

Throughout the 1840s, the Whigs held a small but solid majority in North Carolina. With progressive views on economic development, the party appealed to the growing middle and western sections of the state. The party was also blessed with strong leadership and an influential press. The Raleigh Register, under the direction of the Gales family since 1799, proved to be a highly effective party organ, and other papers, such as the Fayetteville Observer, lent strong voices. Overall, during this time the Whig party was a confident, well-oiled machine.

Badger's first major participation in a political event after his return from Washington was during the Whig state convention in April of 1842. There, he was chairman of the nominating committee and gave the convention's keynote

address. While freely admitting that he was prejudiced against Henry Clay in 1828 because of the supposed deal between Clay and Adams, Badger in his speech stated that the Whigs had to nominate the Kentuckian for the Presidency for 1844.¹⁴⁰ Clay was nominated by the convention for the Presidency, the convention being one of the first in the nation to do so.¹⁴¹ During Badger's speech, C.L. Hinton wrote to Senator Mangum:

Badger now has the floor and I have no doubt from the rapturous applause I hear from above is doing ample justice to himself and the Whig cause.

You know the very high estimation in which I have ever held Mr. Clay I have supposed no man living admired him more, but I now discover that it would be doing injustice to the entire convention to say he stood higher with me than with each member of the body -- the very mention of his name appears to brighten the countenance of every member and inspire him with fresh and increased zeal--¹⁴²

Although not a member of the legislature, Badger took a leading role in the election of a U.S. Senator in 1842. As mentioned above, on March 4, 1843, William A. Graham's two-year term expired and the Democrats, holding a twenty-six vote majority on joint ballot, had it within their power to choose a successor. The Democrats, though, were severely divided between Bedford Brown and Romulus Saunders; thanks to Badger and other Whig leaders, the Whigs acted in unison. After several ballotings, on December 8 Badger invited all Whig legislators to his house for a "Whig Levee." Also, on the 17th during a Whig caucus, Badger "made a long & able speech." Despite not having the votes to reelect Graham,

the Whigs were able to confuse the situation, and by threatening to support the insurgent Saunders, they forced the Democrats to compromise and choose Haywood -- a choice that ultimately proved more favorable to the Whigs than the Democrats.¹⁴³

During 1843-1844, Badger was active in both the North Carolina Gubernatorial election and the Presidential election. In 1843, Badger began touting his cousin, Edward Stanly, for the Governor's chair. He wrote Stanly informing him that he would receive the nomination, and that he "must buckle on his armour" for the general election. Stanly told this to James W. Bryan, who wrote his brother, John Heritage Bryan, that "great exertions" would be made on behalf of Stanly, but that many Whigs disliked him. James W. Bryan thought his brother-in-law, William A. Graham, would be a more acceptable candidate, and that Stanly had been given "bad counsel" by Badger.¹⁴⁴

Edward Stanly (1810-1872) was the son of Badger's mentor, John Stanly -- thus the younger Stanly was Badger's first cousin, once removed. He was born in New Bern, and educated at the University of North Carolina and Norwich University (Vermont), graduating from the latter institution in 1829. Stanly studied law and in 1835 was elected a state solicitor by the legislature. Two years later he was elected to Congress, and served from 1837 to 1843. Gerrymandered out of his seat in 1843, Stanly served as

Speaker of the North Carolina House (1844-1846), state Attorney General (1846-1848), in the state House (1848-1849) and again in the U.S. House (1849-1853). In 1853 he moved to California.¹⁴⁵

In Congress, Stanly followed his heritage by compiling a very nationalist record.¹⁴⁶ Another part of his heritage was violence, and Stanly did not forsake this either. As already mentioned, his father killed Richard Dobbs Spaight in a duel in 1802, and two uncles had been killed in other "affairs of honor." While in Washington, Stanly developed a reputation as a hothead, and came very close to dueling on several occasions, including twice with Henry Wise of Virginia.¹⁴⁷ Like his cousin, political foes also accused him of having "aristocratic tendencies." When running for reelection in 1843, the Tarboro' Press called Stanly the "most haughty and confirmed aristocrat in North Carolina," and the "dear friend and 'cousin'" of Badger, who was described as the "very pink and personification of Federal aristocracy."¹⁴⁸ Overall, John Quincy Adams described Stanly in 1841 as having "excellant principles, and a lofty spirit, with a quick perception, an irritable temper, and a sarcastic turn of mind, sparing neither friend nor foe."¹⁴⁹

Because of Badger's efforts on behalf of his cousin, Graham, Governor John M. Morehead and state Whig Party Chairman Richard Hines asked Thomas P. Devereux to talk to

Badger and convince his friend that Stanly would not be a wise choice. On October 10, 1843, Devereux wrote Graham:

I performed the promise I made you, Morehead & Hines last Friday, & had a very full conversation with Mr. B, in which I stated to him my firm conviction that it would not do to nominate Mr. Stanly; in this I was warmly seconded by [George Edmund Badger] Singletary, who spoke as well for the interest of that gentleman, as for the good of the great cause. Mr. B. seemed to think that Mr. S. had been badly treated, as the various paragraphs in the papers were not upon the authority of the editors alone. He however expressed his wish that the cause should triumph rather than the man, or any one man, & his entire willingness to go into convention with an eye single to that purpose, and to sacrifice every personal prediliction to the desired result.

Devereux declared to Graham that he saw only one candidate acceptable to the Whig Party as a whole, Graham himself: "I see as plainly as if written with a sun beam that you are the only person who will be acceptable to the whole Whig party, against whom no one will object....

I know it is a grievous sacrifice, but I take the liberty of saying to you with more force than I did to Badger in the year 1841 when appointed Secretary, 'I do not see how, you can avoid making it. I think it a deep misfortune, but your public professions require it.'¹⁵⁰

Four weeks later, Devereux again wrote Graham concerning the Gubernatorial nomination. He predicted that if Stanly were to receive the nomination, he would "be beaten I verily believe.

Your opinion is well founded as to the probable success of an indifferent Whig candidate, but there are a vast body of staid men who will not vote for him [Stanly] -- many men of probity intelligence and virtue in all its phases who will not vote for a professed duelist -- a noisy

quarrelsome bragadocio who is easily bucked out by one more noisy and more quarrelsome.

My notion is that we must nominate you & leave the responsibility on you.¹⁵¹

These opinions were seconded by Richard Hines, who wrote Mangum on October 18 and informed him that Graham would be by far the best candidate. As for Stanly:

All admit Mr. Stanly has many and strong claims upon the Whig party, but it is urged against him that he is too young, rash and indiscreet, and not a successful electioneer, as is proved by the falling off of his vote in his old district at the last election, having beat Arrington only about fifty votes in the Counties composing his old district.

That the Quakers with many moderate Whigs would not vote for him on account of his violence, and his nomination would bring out every Loco vote in the State, and cause one of the most bitter contests ever witnessed at any election. It is also believed by many that he would loose [sic] many votes in the Western part of the State on account of the old Federal politicks of his father, his own partiality for J.Q. Adams and his father's uniform opposition to the West and the many personal enemies he made whilst in the Legislature.¹⁵²

While most figured the contest would come down to Graham, Stanly, and maybe Charles Manly, there was some mention of nominating Badger himself. The Raleigh Whig Clarion suggested Badger for Governor, and the Whigs of Cherokee County gave him their endorsement. Also, a day before the nominating convention met, Holden's Standard reported that the nomination would go to either Graham, Badger or W.W. Cherry.¹⁵³

At the convention, held in Raleigh on December 7, 1843, the Whigs coalesced around Graham and he was given their

nomination unanimously. As for Badger, he and former Governor Edward Bishop Dudley were chosen to represent the Old North State as delegates to the national Whig Convention in Baltimore in 1844. Commenting on this, the Register opined that, "It is needless to say, they are ardent and uncompromising friends of Mr. Clay, and the Whigs of the State have the surest guarantees that they will be faithfully and ably represented in the selection of a Candidate for the Vice-Presidency."¹⁵⁴

Badger also gave a speech during the convention, and the Register remarked:

Mr. Badger addressed the Convention (principally, in reply to some humorous remarks, from Mr. Manly) in one of the most polished specimens of repartee it has ever been our fortune to listen to -- proving that like the tutelar [illeg.], he only wants a fulcrum to move the world, or at least, the world of mind. -- He concluded by showing the great necessity of early, active and thorough organization of the Whig party, and the brilliant prospect of ultimate and triumphant success.¹⁵⁵

In August 1844, Graham achieved a respectable, though unspectacular, 3153 vote margin over his Democratic opponent, Michael Hoke. After this balloting, all eyes shifted to the battle for the White House between Henry Clay and James K. Polk.

As shown above, North Carolina's Whig Convention in April of 1842 nominated Clay for the Presidency. By the end of that year it was certain that Clay would receive the national Whig nomination, so some of the focus shifted on to who would be nominated for the Vice Presidency. On October

5, 1842, Charles P. Green wrote Graham that Senator Mangum should be selected for the second spot on the ticket. Green also thought that Badger could help get the ball rolling: "Badger has great influence with the Raleigh papers, & he is very friendly to Mangum. They could give him a start, and a start is all [that he needs]."¹⁵⁶ While Mangum might have been able to secure the Whig Vice Presidential nomination, he chose not to pursue it.

During 1843, Badger was busy organizing "Clay Clubs" throughout the state.¹⁵⁷ The campaign really got started, though, when Clay visited Raleigh in April 1844. The night before the Kentuckian's arrival, a large rally was held in Raleigh and Badger addressed the crowd. When Clay arrived in the Capitol, he was met by Badger and Governor Morehead; the Register reported that, "On alighting from the Cars, Mr. Badger addressed Mr. Clay most felicitously in a very few remarks, to which he responded with equal brevity."¹⁵⁸

Clay's visit to Raleigh is famous, for from there he sent the National Intelligencer, by way of John J. Crittenden, a letter opposing the annexation of Texas. Clay's "Raleigh Letter," which the National Intelligencer published on April 27, read in part:

I consider the annexation of Texas, at this time, without the assent of Mexico, as a measure compromising the national character; involving us certainly in war with Mexico, probably with other foreign powers; dangerous to the integrity of the Union; inexpedient in the present financial condition of the country; and not called for by any general expression of public opinion.¹⁵⁹

In an accompanying letter to Crittenden, written from Raleigh on April 17, Clay stated: "I transmit herewith a letter, intended to be published in the Intelligencer, on the Texas question. In my opinion, it is my duty to present it to the public, and in that Badger, the governor [Morehead], and Stanley [sic] concur."¹⁶⁰

While historians have credited Clay's stand on Texas' annexation, and his later softening of it, as one of the major reasons for his defeat in 1844, it should be noted that for many years the consistent Whig position was that the acquisition of new territory was unwise. In this, Badger fully concurred. In a letter to the Whigs of Guilford County during the election of 1844, Badger went as far as holding that he was against Texas' annexation because it would cause an expansion of slavery. Holden in his Standard quickly replied that this was the "first step toward the promulgation of abolition principles in North Carolina."¹⁶¹

During the Presidential campaign, Badger appears to have been an instigator of the rumor that James K. Polk's grandfather, Ezekiel Polk, had been a Tory during the American Revolution; Ezekiel Polk was an uncle to Badger's second father-in-law, Colonel William Polk. In June 1844, Senator William H. Haywood, Jr., wrote to James K. Polk:

I do not know the fact but I hear Mr. Badger saying that Col. W. Polk in his life time said your Grand father was not a Whig of '76 -- This is of course confidential and it is mentioned only as

my excuse for the request [for information regarding Ezekiel Polk's war service]. -- Another thing of no great moment which I do not propose to use in public I wish you to tell me -- Mr. Badger says when Col. W. Polk was on a visit to Columbia [Tennessee] you neglected to call on him as to show him civility and assigned your reason that "Col P was a Federalist and you feared it might injure your political standing to be familiar or intimate with your relatives --" Is this true? What did occur from which such a story could emanate: I think it is used to set the sons of Col. P against you -- Lucius -- Geo: & Andrew are all here --

If you have had any correspondence with Col W. Polk in his life time that would assist me in counter-acting those Hell driven against you Send me Copies.¹⁶²

Polk did send Haywood some information regarding Ezekiel Polk's supposed Revolutionary War activities, and the North Carolina Senator wrote a pamphlet refuting the Tory charge.¹⁶³ In late September, though, the Whig Central Committee published an article reasserting that the elder Polk had received British protection.¹⁶⁴ Haywood again wrote Polk:

I snatch a moments time to send you the enclosed -- Written I have no doubt by Geo E. Badger -- The same who wrote the address of 1828 charging Clay with a corrupt bargain & coalition with J.Q.A. Your kinsman by one marriage -- mine by another -- It makes it prudent to circulate the vindication more extensively -- We have had the vindication inscribed in the Standard & hope our friends elsewhere have circulated it.¹⁶⁵

Overall, though, Badger appears not to have exerted as much effort in 1844 as he had four years earlier. In July, state party Chairman Hines stated to Senator Mangum that, "Our friends here are all willing to do and doing all in their power except Mr. Badger who seams [sic] to take a very

deep interest in the canvass but as far as I am informed has as yet contributed in no way to its success." Hines then asked, "Do you think it would be desirable for him to be active in the campaign except with his pen?"¹⁶⁶

It should be noted, though, that before August most attention was placed on the state elections. Throughout his career Badger was always more interested in national, rather than state, issues; also, in 1844 he might have been smarting over his cousin Stanly not receiving the Gubernatorial nomination. When the focus shifted to the Presidential election, Badger appears to have become much more involved.

As already mentioned, in September Badger was the probable author of the article concerning Ezekiel Polk. Also that month, Badger wrote newly elected Governor Graham concerning a great Whig rally planned for the Alamance battlefield: "I shall certainly go to the Alamance meeting unless prevented by some event which will make it physically or morally impossible."¹⁶⁷ In the last few weeks before the election Badger also attended other Clay rallies; the Edenton Sentinel commented on a speech made in their town:

The Hon. George E. Badger was then introduced upon the Speaker's Stand. The heart that feels, and the head that dictates, are both too feeble to sketch a graphic portrature of the sensation produced, by the eloquent speech of this gentleman. As a popular orator, he stands unrivalled -- without a superior. Bold and intrepid in position -- energetic and distinct in enunciation -- emphatic and felicitous in gesticulation -- in eloquence thrilling, fervid,

and impassioned: he stands a mental pyramid in the solitude of time. His remarks, as they fell from his lips, appositely and without hesitancy, abounding in 'thoughts that breathe and words that burn,' were ripe for the press without emendation or revisal -- carrying conviction 'in confirmation strong as proof of Holy Writ' to every doubtful mind:

'Wealth and rank and beauty hung,
Upon the music of his tongue.'¹⁶⁸

In November, Clay received a majority of 3390 votes in the Old North State, but Polk won the national election. Had Clay been elected, Badger would have definitely been a major candidate for a Cabinet position. As it was, he continued with his successful law practice in Raleigh.

In December 1845, Badger was appointed a delegate to the state Whig convention to be held in Raleigh January 12-13, 1846.¹⁶⁹ At the convention, where Graham was renominated for Governor, Badger was reappointed a member of the Whig Central Committee, and he gave the keynote address. This speech was probably one of Badger's better efforts; Weston Gales in the Register reported:

Mr. Badger was now called up, and rose amidst deafening cheers. The House was thronged -- expectation was on tiptoe, and was not disappointed -- Those who are familiar with Mr. Badger's easy, flowing declamation, the felicitous thoughts that rise at his bidding, the power of dashing off gems of polished wit at his pleasure, and his pure Addisonian English, to appreciate this masterly Speech, need only be told, that this, in the estimation of many, compared with his former efforts, excelled them all.¹⁷⁰

Edward J. Hale in his Fayetteville Observer said much the same thing:

Mr. Badger was next called on, and delivered such a speech as he only, of all men we ever heard, can deliver. His unsurpassed powers of irony and ridicule -- his clear and cogent reasoning, about which no darkness or obscurity lingers; -- his statesman like views of public policy and personal patriotism, -- his withering scorn of impeachment of the integrity and patriotism of the Whig party; -- his beautiful, thrice beautiful tribute to the memory of his noble friend [W.W.] Cherry; -- successively amused, instructed, animated, aroused, and affected the deepest recesses of the heart. -- We have heard Mr. Badger indulge in pleasantries, and again we have heard him argue. But we never before knew him to combine in one speech every species of oratory, and to show himself equally great in all.¹⁷¹

In his speech, Badger attacked much of what was uttered the week before at the state Democratic Convention. Romulus Saunders had been a key participant there, and Badger's remarks about the Democrat, delivered "in a most polished style of irony, ... drew forth peal after peal of laughter." He then discussed the Oregon territory. After noting that the Democracy believed the United States entitled to the Oregon territory up to the 54th parallel, or even the 79th, Badger read an Anglophobic excerpt from a paper signed by the North Carolina Democratic Central Committee in October 1844 which stated that England "has" Oregon. As recorded by Hale, he then stated:

Sir, (said Mr. B. in his own inimitable style of irony) there is no telling how much mischief that document may have done! Who knows but that it may have found its way over to London, and there be read by the Queen and the British Cabinet. That Lord Aberdeen, struck with such an admission from such a distinguished body as the "Democratic Central Committee of North Carolina" may have sent it to the British Minister at

Washington, and that he at once was induced to reject Mr. Polk's offer of the 49th degree!

This statement drew forth much laughter and also Louis D. Henry. Henry, who killed Badger's first cousin in their Valentine's Day duel in 1813, was then Chairman of the Democratic Central Committee -- why he was at the Whig convention is unknown. At Badger's remark, Henry rushed forth and attempted to interrupt the speech. "He persisted in his attempt to arrest the deliberations of the Convention, until he was subdued by cries of order and hissing." About this incident, Gales opined, "We say to Mr. Henry, that whether or not he regrets the act, his friends do; whether or not he is ashamed of it, his friends are to a man, whatever they may choose to say to his face."

After this incident, Badger continued his address without interruption. He "closed his most brilliant speech by an exceedingly beautiful eulogium on his deceased friend," W.W. Cherry.¹⁷² Henry's attempt to interrupt Badger was an interesting and unusual occurrence, and it shows both the strong sense of party feeling then prevalent, and the effect Badger's oratory could have. Soon after this, circumstances would change drastically for both men; by the end of 1846, Henry would be in his grave, while Badger would find himself in the United States Senate.

VII. 1846-1849: First Term, United States Senate

In 1846 George E. Badger was given a just reward for his great efforts on behalf of the Whig Party when the North Carolina General Assembly placed him in the United States Senate. Badger would serve the next nine years in that body, and there earn a solid reputation for his statesmanship.

On July 25, 1846, Democratic Senator William H. Haywood, Jr., resigned his seat in protest of his party's proposed Walker tariff.¹ Haywood's term expired on March 3, 1849, thus the new state legislature, scheduled to convene in November, would have the chance to fill the seat for two years. The legislature would also have the other Senate seat to fill, for the full six years, for Willie P. Mangum's term expired on March 3, 1847. In the August 1846 elections, William A. Graham comfortably won a second term as Governor, and the Whigs gained majorities in both state houses -- holding a 92-77 margin on joint ballot.² Thus, as they had in 1840, the Whigs in the North Carolina General Assembly of 1846-1847 had it within their power to elect both U.S. Senators, one for a two-year term and the other for six.

In late August, the Raleigh Star published a letter stating that Mangum would probably decline reelection, and that Badger and James W. Osborne of Charlotte should be elected to the Senate. The Register commented on this letter, stating that any attempt by the press to bring the

names of possible candidates to the public's attention would be "premature and injudicious." Instead, Gales wished that when the Whigs met in caucus to determine their nominees, they should be "unbiased by any previous action of the Press."

One of the reasons why Gales wished the press to keep silent was sectionalism. The last three U.S. Senators had resided in Orange County or neighboring Wake, as did two out of three Supreme Court judges and Governor Graham. Thus, it was only natural that both the eastern and western sections of the state desired greater representation in such high offices. Along with Badger and Osborne, Gales mentioned that he had "also heard the names of Governor Morehead [of western Guilford County] and [Edward] Stanly [of eastern Washington County] mentioned in connexion" with the Senate seats. He then added: "We do not blame our Western friends, for desiring to see Mr. Morehead or Mr. Osborne in the Senate: or our Eastern brethren for wishing to place such a man as Edward Stanly there." While "the appointment of any ... of the gentlemen named "would be satisfactory to Gales and the Register, for harmony's sake he desired the press to keep quiet and let the Whig legislative caucus, which would include representatives from all sections, choose as they wished.³

In the next issue of the Register, Gales mentioned that in his list of candidates he had inadvertently left out

former Congressman Kenneth Rayner of eastern Bertie County, and that Rayner, too, would make a fine Senator.⁴ Gales' personal opinions, though, are best expressed in a letter he wrote Mangum in September:

I think it due to our long friendship, to say to you, that in all Communications I have received, and in all the conversations, I have heard, not one individual has expressed himself in terms towards you, other than those of decided favor, in connection with the Senatorial appointments. Perhaps, this information is unnecessary, but I know, if you do not, that some person or persons for reasons of their own, have very studiously kept before the public, the idea, that you contemplated declining a re-election. Fearing, that if nominations were allowed to be made in the newspapers, predicated upon such intention on your part, pledges might be given, and difficulties thus thrown in the way of the party, of carrying out its true feelings and wishes, I have steadily resisted, as I shall do, all nominations through the Press. Of course, when two individuals are nominated, (as Badger & Osborne were in the "Star") it presents the idea either of pretermittting your claims, or that you have declined a re-election.

While Gales wanted Mangum reelected, as for the other seat: "I trust that either Mr. Badger or Gov. Morehead may be associated with you, and I think it will be the latter, if he will permit his name to be used. Entre nous, I have no idea that Badger would accept." Gales also quoted Mangum a portion of a letter the editor had received from western Whig leader Burgess S. Gaither:

If Mangum does not positively decline, he should be re-elected by all means, by a unanimous vote, and the Haywood vacancy filled by Mr. Badger or Gov. Morehead. Badger is my first choice, Morehead next. I wish it could be known that Badger would accept, as it would put a stop to the electioneering for the small-fry of the party.⁵

Mangum also received a letter on the subject from former Congressman Thomas L. Clingman of western Asheville, a self-declared candidate for one of the seats. Clingman wrote that although Mangum had expressed himself differently the previous fall, he (Clingman) now took it for granted that Mangum would allow himself to be reelected. He then added that, "As to the second vacancy (Mr. Haywoods) there will be diversity of opinion. Some of my friends are desirous of presenting my name for that appointment and I feel at liberty to mention the matter to you because you alluded to it heretofore &c." Before he would consent to being a candidate, though, Clingman had to "know two or three things."

First, Clingman asked Mangum who his competitors would be for the second seat, adding:

If Badger is anxious to go to the Senate (though I presume from former things and from a letter lately received from him by me that he would not desire such a thing) then I should not like for any of my friends to bring my name in opposition to him eminent as he stands both in and out of the State.

Also, Clingman wished to know if he could garner many votes from the eastern and Piedmont sections of the state: "Though I might be sustained by all the members from this part of the state, yet the number is comparatively small and I do not besides wish to be presented merely as a sectional candidate." Finally, he also desired to know Governor Graham's feelings towards him. In characteristic arrogance,

Clingman stated: "I believe ... I was able both in [Graham's] first and second canvass to render him more service than any one Whig in the state."⁶

Despite the mentioning of Morehead, Stanly, Osborne and Rayner, and the actions of Clingman, during the Whig legislative caucus in November the battle for Haywood's seat came down to Badger and William B. Shepard of eastern Camden County.⁷ Although Badger was not present in Raleigh at the time, and had intimated to no one that he desired or would accept the position, the caucus chose him to be their nominee. As expected, Mangum was nominated for the six-year term.

In the legislature, both were elected on a strict party vote: on November 20, Badger defeated Asa Biggs, 87-73, and the following day Mangum was victorious over James McKay, 89-70.⁸

Because he was a cousin to Stanly and had been born and raised in eastern New Bern, Whigs called Badger the "harmony candidate." Holden, though, seeing a chance to sow disaffection among the opposition party, maintained in his Standard that a "Central Clique" of Whigs around Raleigh had once again duped their eastern and western brethren. Also, the Democratic editor predicted that in two years Badger's seat might go to another central Whig, "For what Federalist dare deny that Orange is the State, or that the Central

Clique have the power to produce 'harmony' by sending their own men to the Senate?'⁹

On the whole, Whigs reacted enthusiastically to news of Badger's election. Gales in the Register wrote:

Honor, say we, to the firmness and independence of the great Whig party of North Carolina! In elevating such men, they have honored both themselves and the State. George E. Badger and Willie P. Mangum! What State in the Union will be represented with greater ability than North Carolina? -- And what son of the Old North, who reads of their glowing eloquence in the Senate Chamber, will not proudly say -- 'I, too, am a North Carolinian.'...

It is a coincidence worthy of remark, that in both instances where office has been conferred upon Mr. Badger, it has been done not only without his solicitation, but under circumstances which rendered it very doubtful, whether he would yield to the wishes of the appointing power. When selected by Gen. Harrison, as a member of his Cabinet, he accepted most reluctantly, we know, the trust conferred upon him; and, now, while absent from the City, without ever intimating to any human being, that he would accept the appointment, the high, the responsible, the primal [?] position of U.S. Senator has been tendered to him. It is our belief, that he will accept -- that he cannot decline an office, bestowed under circumstances so honorable to his character, so gratifying to his feelings. He cannot, he will not, subject himself to the imputation of insensibility to kindness, or of indifference to the public welfare.

We are almost afraid to trust our feelings of attachment to the man, to speak of him in this connection; but we will say this -- that, in the distinguished body, of which he is soon, we trust, to become a member, not one will be found his superior, in all those qualities of both head and heart, which constitute true greatness, and this opinion will be endorsed by the whole country, before his term expires.¹⁰

Edward J. Hale, Editor of the influential Fayetteville Observer, was also highly pleased by the selection of

Badger. Shortly after the caucus nominations, he wrote Gales: "I rejoice most sincerely at the honor our Whig friends in the Legislature have done themselves & the State, by nominating Judge Badger."¹¹ Later in his paper, he declared that despite differences of opinion in the caucus, "when the name of George E. Badger was presented, all difficulties vanished, and a united front was presented....

[H]is election is most honorable to him, and not less honorable to those who looked above all personal preferences, all local considerations, in the leading desire to send to the Senate the great intellect of the State, in the person of one whose private virtues fit him to illustrate her character, as his talents qualify him to represent her sovereignty.¹²

Other state Whig editors also expressed satisfaction. The Hillsboro' Recorder stated that, "The superior ability of Mr. Badger, his suavity of manners, and his zealous advocacy of Whig principles, will enable him at once to take a high stand in the Senate. We do not know that a more judicious selection could have been made."¹³ The Washington North State Whig, whose editor had favored the election of an easterner, opined:

Laying aside our personal and sectional favoritisms, there is no man without our borders whom we would more gladly have seen in the National Senate Chamber than George E. Badger. Learned and eloquent, second to no man in the Union -- sagacious and experienced -- well versed in our national History and usages -- in short, a profound scholar and polished gentleman -- of undoubted probity, and Whig to the core, he is just the man to be rallied on; and whenever occasion requires that his voice shall be heard, we know that it will be in support of the Laws, and for the good of the country, manfully

resisting any encroachments or usurpations upon the sacred charter of our liberties and the constitution, whether attempted by Congress or by the Executive of the United States. Well may we now boast of our delegation in the U.S. Senate, and defy any other State to present two more profound Statesmen, experienced Legislators, or purer Patriots than Willie P. Mangum and George E. Badger.¹⁴

Out of state Whig newspapers also rejoiced in Badger's election. The Norfolk Herald predicted that Badger "will add strength and efficiency to the Whig side of that House, by his dignity of character and high order of talents.... North Carolina is now as ably represented in the Senate as the proudest of her sister States."¹⁵ Likewise, the Richmond Republican declared:

The election of this gentleman to the U.S. Senate, is hailed with universal joy by the Whigs of the nation. Mr. Badger, as a lawyer and a statesman, has long ago acquired an elevated fame. During his brief term in office as Secretary of the Navy under the Harrison Administration, he proved himself an able Cabinet office[r], and an honest and independent public man. His accession to the Senate will be a valuable addition even to the number of eminent Whig statesmen who now adorn its councils, and sustain the principles in which the prosperity of our country is involved.¹⁶

Badger agreed to serve in the Senate without much hesitancy, and in early December he left Raleigh for Washington. Because he was replacing someone who had resigned, rather than being elected to a new term, Badger was able to enter the Senate immediately; on December 14, Badger took the oath of office after having his credentials presented by Mangum.¹⁷

For the next six years Badger's fellow Senator from the Old North State would be Willie P. Mangum. Beginning his third term in the Senate, at this time Mangum was one of the most powerful politicians in the country. During the Tyler Administration he was one of the Whig leaders in the fight against the President, offering the resolution reading Tyler out of the party. The Senate Whigs rewarded Mangum by electing him president pro tempore of the Senate from 1842 to 1845. He was thus next in succession for the Presidency for three years, and, considering President Tyler's narrow escape on the U.S.S. Princeton in 1844, Mangum came extraordinarily close to becoming President. Every four years between 1836 and 1852 he was mentioned as a possible Whig Vice Presidential candidate, and it is said that he was offered, but declined, the spot in 1840, 1844 and 1852. In 1837, Mangum received South Carolina's eleven electoral votes for President.¹⁸

It is interesting to note that historians over the years have reached different conclusions as to how Mangum should be viewed. While some have characterized him as "little more than a gross opportunist," North Carolina historian J.G. deRoulhac Hamilton noted that he was "a most astute political leader, and his personal charm and magnetism gave him great strength. In North Carolina he was best known for his power as a campaign speaker."¹⁹ Another historian has argued that Mangum "would likely have been

outstanding as a president in the low years between Jackson and Lincoln.... Probably not since Jefferson had the Senate enjoyed a more gifted presiding officer, and rarely if ever has it since."²⁰

If historians disagree, so did contemporaries. Ohio's Caleb Atwater opined that Mangum was "the best presiding officer I ever saw in any legislative assembly."²¹ North Carolina Whig Congressman David Outlaw, though, was less sanguine about his friend and colleague. Soon after Outlaw first went to Washington to serve in the House in 1848, he wrote his wife that Mangum "bores me, by making speeches at me, instead of conversing, which is alike a breach of good manners and good taste." Shortly thereafter, Outlaw observed that Mangum did not go home, but spent the entire year in Washington; the Representative thought this a grave insult both to the Senator's constituents, and his family. Outlaw "could not feel the same respect for him as [formerly], especially if his absence from home was the result of dissipation and debachery."²²

As this last phrase suggests, during Mangum's last term in the Senate he became increasingly lazy and unstable, primarily because of his fondness for alcohol.²³ The extraordinarily moral Outlaw wrote his wife in 1849:

Now the old man talks like a book upon all matters of propriety and so far as his precepts go they would be rather beneficial than otherwise. As to his example ... there are essential differences in our characters. I do not pretend to say that I am free from ambition, but he has a fondness for gay

life, for crowded cities and their throngs which I have not, and never shall have. Thus though it may seem a little egotistical I think I entimate [sic] more highly private honor and character than Judge Mangum ever did.²⁴

A sketch of the Senate in 1853 in the New York Mirror described Mangum as "now almost broken down with high living. He has been a long time in Congress and is a brilliant debater; but has always been wanting in industry and research." By contrast, it was said Badger, "makes a very respectable figure."²⁵

A most interesting anecdote concerning Mangum's personal life in Washington was told to Outlaw by the Senator himself:

Mangum was telling an anecdote to night, as to what occurred to him, which shows the extent to which office seeking is carried. When Spencer's nomination [to the Supreme Court] was before the Senate it was pretty well known that he would be rejected unless some of the Whig Senators would vote for him. There was a young man, whom I did not learn [?], who had a pretty sister, who wanted a clerkship in the Department over which Spencer at that time presided and he could get it provided he could secure a vote in the Senate. M was sent for, introduced into this girl's bed room, she dressed in dishabille, and told if he would vote to confirm the nomination she could deny him nothing.²⁶

While Mangum's star was in a sharp decline in the late 1840s, Badger was making a name for himself. The U.S. Senate at this time contained some of the greatest statesmen in American history, and probably was the world's greatest deliberative body; Badger, though, did not shrink from the challenge. William A. Graham, who besides being Governor

was also Secretary of the Navy and the Whig Vice Presidential candidate (1852) during Badger's Senate years, recalled:

In the Senate, when Clay, Webster, and Calhoun still remained there, not to name others of scarcely inferior repute, [Badger] was among the foremost, upholding the rights of his own State and section with manliness and ability, but with candor, moderation, and true wisdom, which sought to harmonize conflicting elements and avert the calamities of civil strife.²⁷

At his death, one obituary noted that during his years in the Senate, Badger "came to be universally regarded in Washington as the most profound logician in that then great body, where such men as Clay, Webster, Calhoun, Pearce, Clayton, Mangum, Bell, Corwin, Douglas, Reverdy Johnson, Davis, Seward, Cass, Berrien, Buchanan and Benton, sat by his side."²⁸ The Tallahassee Floridian also stated that Badger's "close and logical reasoning led him always to just results. Hence it was that his opinions on constitutional and international law, sustained as they were by the resources of his great intellect, possessed such weight with his brother Senators."²⁹

Yet, Samuel A. Ashe was probably right when he wrote that although Badger was equal to his brethren in "intellectual power, varied learning [and] legal acumen," he was "regarded by his associates at Washington as excelling ... in conversation, and that rare gift differentiated him from the other giants of his time."³⁰ It was Badger's "custom to linger in the morning when he entered the senate

chamber, on the outer circle, and have a word or joke with nearly every member before he took his seat, and that he would not retain long, as he was less frequently in his own than in any other member's chair." As he would in a court of law, Badger appeared indifferent to the proceedings going on around him, yet, "He would catch and retain quite every word, either trivial or important, uttered in debate, and held himself ready always to reply to any opinion given or question raised on the floor and coming in conflict with his own views."³¹

In the Senate, Badger was especially known for his scathing wit. Once, Senator John P. Hale was giving a speech while dressed in a black suit and a white vest. Badger was seated just behind Hale, and the New Englander paused, turned around and observed, "I guess I have said enough." To this, Badger immediately responded, "I know you have." This caused "great merriment" in the Senate, and when the laughter died down, Badger strode forward and declared, "Hale, it was not the speech you were trying to show off, but that white vest." Daniel Webster was in the Senate chamber at the time, and remarked to a neighbor, "That Badger is the greatest trifler I ever knew. We are all afraid of him," meaning that he could make a great deal out of a trifling occurrence.³² According to the Congressional Globe, Badger's speeches in the Senate were many times interrupted with laughter, and there are such

comments as, "Mr. Badger pursued the subject much further in the same strain, amid much laughter and merriment."³³

Turning to the specifics of Badger's first term, shortly after entering the Senate he was appointed to the committee on military affairs and a committee to study French spoliation claims. The former was quite an impressive committee assignment for a freshman Senator, especially considering that the United States was then fighting the War with Mexico.³⁴ The majority of Badger's major speeches during his first term involved issues concerning this war.

Badger's first major speech occurred on January 15, 1847, while the Senate was considering a bill to appoint a lieutenant general to command the forces then fighting Mexico. The bill was a pet project of the administration, and many observers figured Polk would appoint Senator Thomas Hart Benton, just for political purposes. Soon after the bill's introduction, Badger wrote Governor Graham:

We have just had a message from the Pres't recommending the appointment of a Gen'l in Chief during the war with Mexico. That is, to appoint Mr. Benton (as is understood) Lieut Gen'l to supersede Scott, Taylor, etc., & make him President of the U.S.

I don't like the looks of things here -- and will endeavor to make myself understood in a few days.³⁵

The next day, Badger gave an exhaustive speech on the subject. Among his many points, he stated that nothing would be gained from such an appointment, that except for

Washington no American had ever held such a title, and were a lesser military officer or, as he thought would happen, "a civilian, a politician" to receive the post, there could be harmful consequences.³⁶ When Badger finished his speech, Mangum moved that the bill be tabled, and the Senate agreed, 28 to 21.³⁷

North Carolinians were highly pleased with their junior Senator's initial showing. Congressmen James Graham wrote the Governor, his brother, that "Badger made a good speech on the Liet Gen'l & has well sustained his reputation."³⁸ Several days later, C.L. Hinton wrote Mangum from Raleigh: "Our citizens are very much pleased with Badgers speech, they speak of it as an able effort."³⁹ An obituary in 1866 also mentioned the speech:

In the history of Congress for the last fifty years there is not probably another instance in which, in high party times, a Presidential recommendation of great importance has been decided upon a single speech. Yet when Mr. Badger closed his calm and unimpassioned argument against the bill, no one ventured to advocate it, and there was nothing further needed to be said against it. The vote was taken and the bill rejected.⁴⁰

Out of state newspapers praised the speech in high terms. The Baltimore Patriot mentioned that, "The Speech of Mr. Badger in the Senate, yesterday, so ably discusses the question of creating an office, that we have incorporated into the proceedings of the Senate, the full report of the speech made in the National Intelligencer."⁴¹ Likewise, the Washington correspondent of the New York Express reported:

"The Senate Chamber was crowded today to hear a brilliant speech from Mr. Badger of North Carolina. It is spoken of in the highest terms of praise as an able and masterly speech ... [and] I hear [it] commented upon on all sides, as one of uncommon beauty, eloquence, interest and power."⁴²

Like almost every Whig, Badger was opposed to the War with Mexico. On February 16 when the Senate was debating the "Three Million Bill," a bill to appropriate three million dollars "for the purpose of bringing the existing war with Mexico to a conclusion," Badger gave a speech in which he bitterly criticized the Polk Administration and its handling of the war. Badger asserted that the war did not begin because of the actions of Mexico, but rather, the actions of James K. Polk. Although under the Constitution Congress alone had the power to declare war, state the purpose of the war and determine when this purpose was met, Polk had forced the Congress to declare war. That they did declare war was,

not because we did not understand the wrong which had been committed upon us by the exercise of usurped power on the part of the President, but we felt the wrong the deeper because, in consequence of its commission, we were placed in a position in which duty to our country obliged us to support the war.

Badger declared that the war "was now plainly and clearly a war of conquest, although the President in his message informed them that the war was not commenced for the purpose of conquest; that it was not intended to be a war of

conquest." He also criticized the President for attempting to,

control the freedom of discussion and freedom of action in the Halls of Congress; freedom of discussion and freedom of action in the Legislatures of the States of this Union; and still further to reach forward a proposal for arresting all freedom of speech, all discussion among the people of this country upon subjects relating to this war.⁴³

During his first session in the Senate Badger also played an important role in altering a bill to increase the size of the army in Mexico, and on the last day he procedurally blocked a Democratic measure to modify the Sub-Treasury. In addition, he let it be known to his fellow Senators that he disliked discussing questions of finance, for he usually did not speak "upon subjects that he did not understand," and like George Colman, a poet, "he never boasted much of his knowledge of arithmetic."⁴⁴

After the session ended, the Philadelphia North American declared:

We hailed the election of Mr. Badger to the highest Council of the nation with pride and pleasure, and predicted for him a distinguished career: his course since that time has more than justified the expectations of the country, and proved him worthy [of] a high place among that noble band of statesmen and patriots -- the Whig Senators of the South. Fearless, prompt, and powerful, he rises above every emergency.⁴⁵

While Whigs were glad to have Badger in the Senate, Democrats were not. During a visit to Raleigh in the spring of 1847, President Polk noted in his diary:

During the whole of the last session of Congress [Badger] did not call on me. He is a bitter partisan, and is no doubt sensible that during the presidential canvass of 1844 he did me gross injustice. Among other things he took a leading part in propagating the basely false story concerning the Revolutionary services of my Grandfather, Ezekiel Polk. His own consciousness that he had wronged me probably prevented him from calling on me last winter or on my present visit to N. Carolina.⁴⁶

Badger returned to the nation's capitol when the first session of the 30th Congress convened in December of 1847. This session would witness the conclusion of the Mexican War, and the beginning of a massive dispute concerning slavery in the territory the country had gained by the war.

Badger's first major speech during this session occurred on January 18, 1848, while the Senate was discussing the "Ten Regiment Bill," a measure to raise additional soldiers for the war. Badger prefaced his remarks by declaring: "First then, I will lay it down and endeavor to demonstrate, that, the war in which we are now engaged with Mexico was the immediate result of the unlawful and unconstitutional act of the President of the United States." He then went into a detailed study of the war's beginnings, and stated that when Polk ordered General Taylor to take possession of the left bank of the Rio Grande, this was "a clear and undoubted act of war." Of course only Congress had the right, under the Constitution, to declare war. Badger also attempted to show, by documentary proof,

that Polk's present motive was to conquer at least New Mexico and Upper and Lower California.

As for the "Ten Regiment Bill," Badger stated that the raising of such troops would allow the army to "make a permanent conquest of the whole of Mexico," something to which he was resolutely opposed. North Carolinians, according to their Senator, did not desire to acquire new territory by force, or to jeopardize their country's peace and "weaken the bond of our Union, by any considerable acquisition of Mexican territory, however, freely surrendered and amply paid for." Badger, though, did mention that he would approve the acquisition of a port on the Pacific and the necessary territory between it and Oregon.⁴⁷

Whig papers highly praised Badger's effort. The Philadelphia North American opined:

The Senate and the country owe Mr. Badger much for his speech of this day.... It was a combination of searching legal investigation, combined with statesman-like comprehension, such as has seldom been witnessed in that Chamber, notwithstanding the great array of talent and learning of which it has been and is still composed.⁴⁸

Badger's speech was printed in pamphlet form, and enjoyed a wide circulation. A month later at the North Carolina Whig state convention, Whigs of the Old North State endorsed Badger's address:

Resolved, That the position taken by our Senators in Congress, the Hon. Willie P. Mangum and the Hon. George E. Badger, in reference to the further prosecution of the Mexican War, meets our entire

approbation; and that we fully endorse the sentiments expressed by the latter in his late able and unanswerable speech, in the Senate, on that subject.⁴⁹

One person who was less sanguine about Badger and his speech was North Carolina Whig Congressman David Outlaw. Although he agreed with everything his Senator had stated in the address, Outlaw found problems with Badger's role as a statesman. Just hours after Badger's speech, Outlaw wrote:

[Badger's] parliamentary efforts do no[t] equal his forensic ones. There is a something of manner and matter [,] I can[not] tell exactly what, wanting, and method which no matter what may be [the] man's abilities, he cannot occupy the highest rank as a Statesman. Perhaps it may be, that his mind was formed and moulded on a very different theatre, and it is now almost too late to recast it.⁵⁰

Outlaw was correct to a good extent. Despite being extraordinarily intelligent, Badger never could master the give-and-take necessary to become a superior politician. His legal training had not taught him how to compromise and find solutions agreeable to those with different points of view; Badger was a first-rate competitor, but a poor conciliator. These sentiments were echoed by two of Badger's arch-enemies, W.W. Holden and Horace Greeley, in very harsh terms in 1853. Holden declared:

Mr. Badger has succeeded well, remarkably well, as a lawyer, but as a politician he is decidedly common-place. His stump efforts are invariably only elegant rehashes of party slang; and his political speeches in the Senate are alike weak and superficial. He is a good lawyer, just as that man or the other is a good carpenter; but as a politician, we repeat, he occupies a very inferior position.⁵¹

Greeley in his Tribune wrote:

As a statesman he is of no account, and as a politician detestable. He lacks breadth and comprehensiveness of view, and a catholic, round-about sense essential to a man of affairs. His mind ran in the rut of the law so long before he came into public life that he always gets out gearing whenever he is wanted for a pull out of the beaten tract. His nature is gnarled and stubbed, and refuses to bend to new forms. It lacks flexibility and plasticity to a degree that unfits him for genial association either in public or private life. In all statesman-like qualities he is the anti-podes of Mr. Mangum, his colleague, who is generally as right and as wise as Mr. Badger is wrong and perverse. It is indeed a wonder how he ever found his way into political life at all. He ought never to have been translated into the sphere of politics. He has not a single agreeable or winning qualification as a public man. Wrong-headed, crabbed, intolerant, dogmatical, inveterate in his prejudices, dictatorial and unmannerly in his deportment, we have often wondered how he ever got into his present position.⁵²

Although the "Ten Regiment Bill" was eventually passed by the Senate, its effects were not great because on March 10 the Senate also approved the treaty of Guadalupe Hidalgo, thereby ending the Mexican War. While the Senate was debating the treaty in Executive Session, Badger moved to amend it by deleting provisions for the acquisition of California and New Mexico. Although the Senate's Executive Sessions were closed to the public and the debates therein were not recorded, later in his Senate career Badger mentioned that he had made this motion because he would have "rather consent[ed] to wage that war for ten years than to end it by the acquisition of any territory which was to

produce an internal disquiet and contest through the whole extent of our country." The motion was defeated, 35 to 15, and Badger was one of fourteen Senators to vote against the treaty.⁵³

With the war at an end, Congress had to turn its attention to legislating for the newly won territories. Badger had earlier predicted that the acquisition of such territory might cause a controversy that would "shake the Union from its center and alienate one portion of our people from another."⁵⁴ In this he was correct, for the next two years would witness a great sectional struggle over whether slavery would be allowed in any of the territory.

Of the measures proposed concerning the new territory, the most divisive was the Wilmot Proviso, which would have banned slavery from all the area. Many Southern Whigs, including Willie P. Mangum, felt that under the Constitution Congress did not have the right to prohibit slavery in the territories. The Wilmot Proviso not only implied "an offensive disparagement" to the South, but was also unconstitutional.⁵⁵ Badger, on the other hand, believed such a measure was Constitutional although he found the Proviso "odious ... a measure powerful for evil and impotent for good."⁵⁶

Because Article IV of the Constitution expressly gave Congress the "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property

belonging to the United States," Badger believed that Congress could either sanction or forbid slavery in the territories as it saw fit.⁵⁷ Also, the Senator held that the territories "derived all their legislative authority from Congress," and that they "had no power to legislate independent of Congress."⁵⁸ Yet once a territory became a State, the situation changed: "Slavery, as it exists under the Constitution of the United States, is a State institution. It exists in the States which allow it, as a State institution, under their laws. It does not exist as an institution of the United States."⁵⁹

During 1848, the most important piece of proposed legislation concerning slavery in the territories was the Clayton Compromise bill; this bill would have organized territorial governments in Oregon, New Mexico and California, and would have left questions regarding slavery in the latter two to the Federal courts. It has been said that "Mangum believed that the Supreme Court would take the view that slavery legally existed in New Mexico and California; that the bill was offered in a true spirit of compromise; and that its passage would put an end to the agitation over slavery."⁶⁰ Badger, though, held a different view.

Being a constitutional scholar, Badger examined the issues carefully and came to the conclusion that the Supreme Court would hold that slavery did not exist in the

territories acquired from Mexico. He saw that slavery owed "its existence to positive law, to municipal law; that, independently of law authorizing it, it does not exist anywhere." Because Mexican law forbade slavery, he held that for slavery to be introduced into New Mexico and California, it depended "upon the will of Congress. If nothing be done by Congress it remains excluded, and their power over the subject is complete and perfect." Thus, Badger saw that the Clayton Compromise was just as injurious to the South as the Wilmot Proviso.⁶¹

The Clayton Compromise bill passed the Senate, but was rejected by the House, thus forcing future sessions of Congress to deal with this divisive issue. The fact that Mangum had voted for the bill and Badger against it gave Holden and North Carolina Democrats great glee, and the Standard asked the Register which of the two Senators had voted correctly. Not wishing to offend either, the Register replied:

We believe they both were right in their votes, acting as they did under different impressions. Mr. M. believed it to be a fair and honorable compromise of this distracting question, and as settling the matter; while Mr. B. believed that its passage would be merely to postpone the question, not to settle it, or give any peace to the country -- that it was, no doubt, framed with patriotic motives, but then it settled not principle, but merely postponed the decision of the question.⁶²

Holden also tried to make fodder out of Badger's view that the Wilmot Proviso was Constitutional. During the

state elections in the summer of 1848, the Standard warned its readership: "If you vote for a candidate for the Legislature who is pledged to support Mr. Badger's reelection to the Senate you vote to endorse the constitutionality of the Wilmot Proviso."⁶³

When the first session of the 30th Congress finally closed in August, 1848, Badger returned home and began active campaigning for the Whig Presidential ticket of Zachary Taylor and Millard Fillmore. The "Rough and Ready Club" of Fredericksburg, Virginia, had asked Badger to deliver a speech while passing through their town, but he declined with thanks, mentioning that he had been away from home for eight months and wished to return as quickly as possible. Badger also stated that he always acted "upon a rule which Mr. Benton has called, confining oneself to one's Baliwick, and have never addressed a public meeting out of my own State."⁶⁴

Once he returned to North Carolina, though, Badger was extraordinarily active on Taylor's behalf. He addressed the Raleigh "Rough and Ready Club" in late August, and during the next two months also spoke in Duplin, Richmond, Montgomery, Rowan, Davidson, Guilford, Randolph and Stanly Counties.⁶⁵ In October, Badger wrote John J. Crittenden:

I am off for a three weeks tour to attend mass meetings through a large portion of the state -- I hope to help the good cause -- I shall not be at home again until about the 5 of next month -- I have since returning have given myself up to the

Taylor Cause -- & left my circuit now in progress
to take care of itself --66

Badger was back in Washington in December for the short second session of the 30th Congress. During this session, little business of importance was deliberated upon, but the sectional crisis over slavery in the territories did become more intense. On January 13, 1849, Badger wrote his friend Crittenden and declared: "I feel an anxious solicitude upon this subject, for in my judgment, an error now, will not be repaired in half a century."

One of the things which scared Badger most was a caucus of Southern Congressman in January 1849 instigated by John C. Calhoun in hopes of unifying Southern action on the issue. Badger thought this "a most unwise & dangerous proceeding -- out of which no good can come, but much evil may -- It is one of Mr. Calhoun's projects -- of whom I believe it to be true that on any thing concerning niggery, he is absolutely deranged." Only one North Carolinian, Democratic Representative Abraham W. Venable, attended the Southern caucus, and Badger noted, "For myself I have had nothing to do with it & mean to have nothing to do with it." The Senator then added:

I am a friend of the Union -- I have sworn to support the constitution & will never concur in any movement which may however remotely endanger its continuance -- certainly not for the privilege of carrying slaves to California or keeping up private gaols by slave dealers in this district -- Would to Heaven there were a little true moderation in our Councils -- and that southern gentlemen were less like a half blind horse,

starting at every bush and even the shadow of a bush.⁶⁷

While Badger's voice of moderation was sorely needed in the next sessions of Congress, it almost came to pass that the North Carolina legislature did not reelect him to the Senate in December of 1848. The story of Badger's reelection, and the events surrounding it, is a highly interesting and important chapter in North Carolina political history.

VIII. Badger's 1848 Reelection, And Its Role Within North Carolina Politics

During the life of America's second party system, there were many interesting United States Senate elections conducted within the North Carolina General Assembly. The one that had the greatest impact on the political landscape of the Old North State, and raised the most animosity between the parties involved, though, was probably the election held in December 1848 for Badger's seat. To fully understand what was at issue, it is necessary to examine several earlier political events.

Although regional unrest had been brewing within the North Carolina Whig Party for many years, it did not come to a boil until the 1848 gubernatorial election. North Carolina was geographically divided into three sections: the eastern Coastal Plain, the central Piedmont, and the western mountains [see map 2]. During the preceding twelve years, the party had become adept at alternating its candidates among the three sections: Edward Bishop Dudley (Governor, 1836-1841) was from eastern Wilmington, John Motley Morehead (1841-1845) from western Greensboro, and William Alexander Graham (1845-1849) from central Hillsborough. In 1848, it was the east's turn to have a candidate.¹

By late 1847, former Congressman Kenneth Rayner of eastern Hertford County appeared to be the frontrunner. In December, though, he declared that he was not a candidate,

and this left the race wide open.² On January 11, 1848, Governor William A. Graham wrote to easterner James W.

Bryan:

Since Mr. Raynor's declination (and I believe before) there is no settled public opinion in favor of any Candidate. It seems to be generally understood that some one from that region will have the choice very much in their powers, if they can agree. In the circle here, [Halifax County's] Col. [Andrew] Joyner has been, perhaps, the most conspicuously presented in conversation. But the newspapers, you see, present new names every day.³

By the time the Whig convention met on February 22, the favorite appeared to be Badger's cousin Edward Stanly, from eastern Washington County.⁴ On the day of the convention, though, Stanly was not very optimistic. He bet a friend "a glass of lemonade that Col. Joyner would be nominated because his friends would be numerous in Raleigh and because Mr. Rayner would not be there to advocate my 'claims.'"⁵ In fact, Rayner was present at the convention, and instead of advocating Stanly, he did the opposite. "Rayner opposed Stanly's nomination because he did not like him personally and feared his selection would prejudice his own political claims."⁶

Because Rayner blocked Stanly's nomination, the nominating committee compromised and chose Charles Manly of Chatham County. Although Manly was acceptable to a majority of Whigs, easterners who did not know the whole story became incensed that their section had been passed over. Because the sitting Governor, both U.S. Senators, and two out of

three state Supreme Court Justices were from Wake County or neighboring Orange, easterners began writing darkly about a conspiracy by the "central influence" or "Raleigh influence" to rob their section of a candidate -- Manly's Chatham County bordered both Wake and Orange.⁷ The North State Whig, a paper from eastern Washington County, stated that Manly's nomination had been the result of "a nefarious plot of the political jugglers."⁸ Even with this dissension, though, Manly would have had an easy selection had not William W. Holden held a surprise.

The Democrats met in Raleigh on April 12, and nominated former Congressman David Settle Reid of Rockingham County. The convention was well attended and attracted interest throughout the state due to two prominent guest speakers, Sam Houston and Stephen A. Douglas. After the convention, Manly and Reid followed custom by scheduling a series of joint debates throughout the state.

The first debate was at New Bern on May 10, and here Reid unleashed a bombshell that shook the whole political establishment. Under the Constitution of 1776, voters for the state Senate were required to own at least fifty acres of land. For over seventy years this suffrage requirement had never been seriously debated, although in practice it meant that 41% of all landholders, and 55% of landowners in the west, could not vote for the Senate.⁹ In New Bern, Reid, under the tutelage of Holden, came out forcefully for

eliminating this requirement. Manly and the Whigs were flabbergasted, and he waited until the next debate to respond.

The next day in Beaufort, Manly denounced the idea of "free suffrage." The Whig press quickly agreed, the Register calling the proposal "a species of miserable political clap-trap, at variance with common sense and common justice, and tinctured with all the elements of party quackery."¹⁰ Thomas Loring's Wilmington Commercial even went so far as to say that free suffrage would lead to "the desecration of the Bible and the abolition of matrimony."¹¹

Although most Whigs lined up behind their candidate's stand, there was some dissatisfaction in the west. Two western Whig papers, the Charlotte Journal and the Asheville Messenger came out in favor of free suffrage.¹² On election day, Manly was elected, but by only 854 votes. This was in great contrast to William A. Graham's 7859 vote margin two years before.¹³ The Whig percentage in the west declined from 71.4% to 64.7%.¹⁴

The Democrats had achieved a great moral victory, while the Whigs felt as if they had suffered a defeat. The Raleigh Register was now being edited by twenty-year-old Seaton Gales, his father having died earlier that year. Under the younger Gales the paper "began to deteriorate badly," and this can be seen in his despondent editorial after the Whigs' "defeat":

The result of the Election in this State, for Governor and Members of the Legislature, gives cause for bitter and serious reflection. That it is humiliating and mortifying is beyond all question, a melancholy fact; and when the causes and effects which have brought it about are examined into, it is doubly so. We are vanquished, virtually if not really!¹⁵

If nearly losing the Governor's office was not bad enough, the sectional splits and personal rivalries within the Whig party also portended trouble for the upcoming U.S. Senate election in the legislature. Holden's Standard clearly forecast this: "Trouble is brewing in the Whig-wam. Look out, about the 1st of December, 1848, for warm work in the Legislature between the Rayner and Stanly branches of the 'great Whig party' -- provided the Whigs should carry a majority of that body."¹⁶

In February of 1848, David Outlaw wrote his wife that "Mr. Badger is exceedingly pleased with the situation which he has in the Senate, and is very anxious to be reelected."¹⁷ While Badger was popular with the majority of his party in state, as 1848 wore on, his chances of reelection appeared to diminish.

The junior Senator had become increasingly unpopular with some in the North Carolina Whig Party because of "his extreme federal notions," such as the Constitutionality of the Wilmot Proviso.¹⁸ This unpopularity increased in the summer of 1848 when he voted against the Clayton Compromise, and throughout the fall, Holden continuously attacked Badger's "unsoundness" on slavery.¹⁹ With the Senate

election approaching in early December, the Register responded to Holden:

With the hope of effecting that most darling object of its soul, viz: the defeat of Mr. Badger to the United States' Senatorship, the Editor of the "Standard" resorts again to his favorite, though false charge, that the people of North Carolina are unsafe in trusting Mr. B upon the Wilmot Proviso! ... while he deals in dark innuendoes, and oft-refuted vagaries, we dismiss the author and that part of the subject, with the simple observation, that croaking birds are always foreboding evil....

It is not proper that we should express any preference for any individual. Our Representatives in the Legislature will arrange that matter among themselves. But at the same time, we have never doubted for a moment that the rights, interests, and happiness of the people of North Carolina would be as trusted in the hands of the Hon. George E. Badger, as in those of any man within her borders!²⁰

A bigger source of discontent was Badger's leadership abilities. During the Whig state convention in February, he had tried to engineer the nomination of Stanly for Governor and an endorsement of Zachary Taylor for President. On this latter attempt, and Badger's support for Taylor, Outlaw wrote, "Badger is influenced by a purely selfish motive, he thinks it doubtful whether the Whigs can carry the Legislature, unless Gen. T. is nominated, and if they do not carry the Legislature, why of course he goes out of the Senate." Outlaw then added, "I wish most heartely [sic] Graham was in his place, in the first place because I like him better, in the second place because I think he is a safer, sounder, and more reliable man in difficulties."²¹

In the August legislative elections, the parties deadlocked in both houses. The Commons had 60 Whigs and 60 Democrats, the Senate 25 apiece. By the time of the U.S. Senate election in December, one Democratic House member had resigned, thus giving the Whigs an 85 to 84 majority on joint ballot.²² Still, many Whigs thought Badger could not be reelected. On November 26, William H. Washington wrote to James W. Bryan:

Clingman and Barringer have both put in against Badger for Senator. Stanly, Rayner, Graham, Morehead and William B. Shepard are also in the field -- I do not think Badger can be re-elected as these Whigs have determined to vote against him on account of the vote he gave on the [Clayton] Compromise Bill -- It is exceedingly doubtful at present who can be elected, but I think Shepard stands the best chance of any of the aspirants.²³

Badger himself wrote John J. Crittenden in October and said, "My re-election is very doubtful -- the chances are against it."²⁴

Another reason Badger's hopes looked dim was increasing regional unrest. Of the six U.S. Senators between 1829 and 1854, all were from the Piedmont, residing in the neighboring counties of Caswell, Orange, Wake, and nearby Cumberland. In fact, not until 1854 did the parties select a Senator who lived over 100 miles from Raleigh.²⁵ Signs of a regional revolt had been brewing in 1846, and they became increasingly strong as the 1848 election approached.²⁶

The Whigs did not please the east with their choice of Manly for Governor, nor did it help that the west was in

support of free suffrage. Another event which greatly increased sectional unrest was the choice of a new state Supreme Court Justice.

In early 1848 Justice Joseph John Daniel died, thus offering Governor Graham an opportunity to make an interim appointment until the legislature next met. Graham narrowed his choice to two judges on the Superior Court: Richmond M. Pearson of western Yadkin County, and William H. Battle of central Orange County. Western Whigs wrote the Governor and requested Pearson's appointment. James T. Morehead noted that Pearson was "further removed from that concentration of Judicial offices, which has given rise to so much dissatis[faction]."²⁷ Joseph Allison told the Governor:

All your friends in the West are the friends of Pearson, & are particularly in favour of his appointment as a man the best qualified & who would be independent of that Raleigh Clique, to which people are getting strongly opposed, for using power because they have it, and are particularly opposed to Pearson for daring to think for himself.²⁸

Despite these requests, Graham appointed his friend Battle. An eastern Whig bitterly complained that "all three of the Judges of the Supreme Court are residents of one County as though the Hawfields is the only place where are to be found men of sufficient talents for high office."²⁹ The legislature, though, had the final say as to who would receive the position permanently.

Upon convening in December, the General Assembly after a long struggle rejected Graham's appointment, and instead

chose Pearson. When Battle tried to regain his Superior Court seat, several Whigs supported the Democratic candidate, John W. Ellis, who was thus elected.³⁰ Upon this series of events, one Whig legislator wrote that "the words Raleigh influence, and Orangemen, are becoming quite unpopular." Another stated that "many Whigs are now execrating this so called central influence." He added that a good many thought Badger was "at the head of this central influence" and that this perception "is very injuriously operating against Mr. Badger."³¹

When Badger came up for reelection later that month, there were many things working against him. His party only held a one seat majority in the legislature, many Whigs were upset with his recent political stands, and others of his party saw him behind a "Raleigh clique" that had cheated both the eastern and western sections of the state. Despite all this, Badger probably would have had a fairly easy election had it not been for the political aspirations of another Whig, Congressman Thomas Lanier Clingman.

Thomas L. Clingman is arguably the most interesting politician in North Carolina history. Born in the foothills of Surry County, N.C., in 1812, he graduated first in his class from the University of North Carolina in 1832. He then read law under William A. Graham, and returned to Surry to practice. He joined the newly formed Whig party and in 1835 was elected to the House of Commons. The next year he lost a

bid for reelection, and soon thereafter removed to the mountain city of Asheville.

In 1840 Clingman won election to the state Senate, and the next year he attempted to unseat four-term Congressman James Graham, the elder brother of Clingman's law teacher. Because the western region of the state was highly Whig, it was not unusual in the 1840s to have one Whig running against another in this district. Graham easily won reelection, although Clingman did achieve a respectable 38% of the vote.

Two years later, Clingman again tried to unseat Graham. This time, using a combination of Democratic and "ultra Whig" support, the youthful challenger was successful -- winning by 907 votes. Once in Congress, Thomas L. Clingman quickly made a name for himself.³²

Upon entering the House, Clingman was an ardent backer of Henry Clay and his programs, and opposed such measures as the annexation of Texas. He became famous, though, in January 1844 when he was the only Southern Congressman to vote in favor of repealing the "gag rule." Clingman held this position because he thought the rule infringed on the Constitutional right of petition and also because it stirred up the sectional animosity of the North; Holden was quick to label him a tool of the "Northern Federal party" and asked, "when will Mr. Clingman pause in his mad career?"³³

Clingman did not pause, but continued to support repeal of gag rule and lambaste Democrats who opposed him, especially the backers of John C. Calhoun. In one speech Clingman described Southern Democrats as "false watchmen of the South -- traitor sentinels!", and this raised the ire of many Calhounites. Alabaman William Lowndes Yancey became involved in a war of words with the North Carolinian, and this led Clingman to challenge Yancey to a duel. The two met in Beltsville, Maryland, on January 13, 1845; shots were exchanged, but neither was injured.³⁴

Clingman's actions in Congress did injure him in his race for reelection in 1845. Clingman won the nomination of the district convention, and, because the Democrats did not make a nomination, it looked as if he would be unopposed.³⁵ A month before the election, though, James Graham entered the race against his old nemesis. Graham's "old Whig friends" had told him that they "never did vote for Clingman; and since his voting with the North against the South they never would." They urged his entrance "because there was a deep and abiding dissatisfaction among the people with regard to Clingman's course." Graham campaigned on Clingman's opposition to both Texas annexation and the gag rule. Graham was successful with these issues, and defeated Clingman by 326 votes.³⁶ Holden in his Standard stated that Graham's victory was "an important triumph for

the friends of the South and the Union" and a defeat for "the aider and abettor of the Abolitionists."³⁷

A year after this defeat, Clingman was angling to get one of the two U.S. Senate seats up for election. Despite writing Willie P. Mangum and declaring that he would not oppose the eminent Badger, "Clingman, a declared candidate, was in Raleigh superintending his canvass" when the Whig caucus met and agreed on Badger in late 1846.³⁸

In 1847 Clingman ran to regain his House seat. James Graham looked forward to facing his three-time opponent, but several other Whigs also expressed interest in running, as did a Democrat, and Graham withdrew from the race, fearing that a split Whig vote might elect the Democrat. In the end, only one Whig, John G. Bynum, faced Clingman. Clingman emphasized his record of championing the interests of the west, rather than his nationalistic efforts in Congress, and won 57% of the vote.³⁹

By the time Clingman reentered Congress, his views on the slavery issue had markedly changed. Despite the fact that his district's population was only 12% slave, he had been defeated in 1845 because of the "unsoundness" of his views on the subject. By 1847, he was becoming increasingly "sound," although he still attacked John C. Calhoun and the Democratic party.

In a speech before the House on December 22, 1847, Clingman denounced the South Carolinian. He said that

"being ambitious of popularity and influence, [Calhoun] sought to restore himself to the confidence of the South in the first place, and seized upon the slave question as the means to effect that end.... [He] obviously looked to the creation of a political party based on the slavery question."⁴⁰

Clingman, though, equally attacked the Northerners then in Congress for proposing the Wilmot Proviso. Veiled threats even hinted at disunion should the dreaded Proviso, or worse, be enacted:

Though the slave States are not equal to the free in population and wealth, yet the strength they have is amply sufficient for purposes of defense, either as against the north or against foreign nations.... I am for maintaining our present Constitution ... but when a great organic change is made in that Constitution -- a change which is to degrade those who sent me to represent them here -- then, sir, at whatever cost of feeling or at personal hazard, I will stand by the white race, the freemen of the South.⁴¹

It should be mentioned, though, that at this time Clingman had not totally adopted the views of a strict states righter. At least one historian has interpreted Clingman's statement that "Congress has no authority to object to the admission of any state because she tolerates slavery," as meaning he found the Wilmot Proviso unconstitutional.⁴² Yet in this same speech, he said: "If, then, Congress possesses general legislative powers over the territories, as I contend, it is idle to deny that slavery may either be permitted or forbidden to exist there....

Congress has then over the territory just such powers as its legislature would have after it became a State."⁴³

In early 1848 it became obvious that Clingman was breaking with the Badger supporters in the Whig party. One reason had to do with the Whig nomination for Governor that year. David Outlaw, watching the fray from the sidelines, explained the situation to his wife:

Some misunderstanding has taken place between Mr. Badger and Mr. Clingman which will I expect affect to some extent their relations. Mr. Clingman says, that shortly after he came here, or rather soon after the commencement of the session, Mr. Badger remarked that Mr. Stanly ought to accept the nomination as candidate for Governor, because his term of service would expire at the termination of Mr. Mangum's senatorial term, and he would then be ready to take his place. Well this disposing of offices so far ahead, was not particularly agreeable to Clingman who has asperations himself, nor to Mr. Raynor, to whom Clingman mentioned it, as he also is looking in the same direction. This conversation was reported in Raleigh and is supposed whether justly or not I do not know, to have had some influence in defeating Stanly's nomination. Some person has written to Badger on the subject, and he denies he used such language. Clingman affirms that he did, and has written to Raynor reaffirming it, and authorizing him to give him (Cl) as his author. Of course no bloodshed will be the result for Mr. Badger from principle as well as constitutional aversion to such things is a non-combatant.⁴⁴

Later that year, Clingman again showed his jealousy towards the cousins, Badger and Stanly. In writing Mangum during the Presidential election, Clingman warned:

In the event of Taylors election, it will be Badgers object to provide for himself and Stanley [sic] and they too will if one gets into the cabinet and the other gets a foreign mission, absorb about all that North Carolina can hope to receive for her share of the offices abroad. It

is obviously proper therefore for all those who do not intend that the Whig party of the State shall be the mere property of one family to show a proper feeling of independence [sic] as we shall soon be in a minority in the State.⁴⁵

Clingman also showed a growing dissatisfaction with the Whig party over its stand on free suffrage. In the same letter to Mangum, the Representative noted that he had just influenced an Asheville paper to come out in support of what had originally been Reid and Holden's proposal. He predicted that "the west will generally unite in favour of such a change" and he thought it "the best thing for our party.... Should the clique at Raleigh throw themselves in opposition to the movement it will damage them."⁴⁶

Thus, at the time of Badger's reelection effort before the legislature in December of 1848, it was natural for Clingman to oppose him. Clingman personally disliked the Senator, and his supposed control of the party. As the major representative of western interests, Clingman could justify his action by pointing to the concentration of office holders around the Raleigh area. Also, as will be shown below, Clingman throughout his career had an extraordinarily strong ambition to become a U.S. Senator. Before examining the actual events of the election, it is important to note several other aspects of Clingman's personality.

Foster A. Sondley, an historian who was a contemporary of Clingman, described him as a man of the "most arrogant

and aggressive character, greatest self confidence, unlimited assurance, prodigious conceit, stupendous aspiration, immense claims, more than common ability, no considerable attainments of culture, great boastfulness, and much curiosity." The great-great grandson of a Cherokee chieftain, Clingman was tall, had erect posture, and dressed fastidiously. Early in his Congressional career, he fell in love with the only daughter of the wealthy Washington banker, William W. Corcoran. When she chose the Louisianian George Eustis, Jr., instead, Clingman was heartbroken and never married.

During the Civil War, Clingman was a Confederate General. In April of 1865 when Joseph E. Johnston was preparing to surrender to William T. Sherman, Clingman approached his commander with pleas not to give up. "Let us make this a Thermopylae!" Clingman begged Johnston. Johnston responded, "I'm not in the Thermopylae business." After the War, Clingman spent most of his time measuring peaks along the Blue Ridge Mountains -- the second highest peak east of the Mississippi is named for him (Clingman's Dome). He was also very interested in meteors, water spouts, and measuring the height of the atmosphere. He died penniless in 1897, his money having been spent to publish a book of his own speeches and to publicize his theory that "tobacco was a cure for all human diseases."⁴⁷

As for the Senate election, in November Clingman twice went to Raleigh to ascertain his chances of election. While there, he stated "that the middle portion of the State had gormandized every office and would continue to do so as long as the East & West would submit to it." When asked "if [he] was willing to break down the whig party by being a candidate ... he said that the distruction [sic] of the cormorant propensities of the middle part of the State was of much more importance than the preservation of any party."⁴⁸ Unfortunately for Clingman, he observed that a majority of Whigs, even those from the west, were in support of Badger. He returned to Congress, leaving fellow Asheville attorney Bayles M. Edney in Raleigh to look after his interests.⁴⁹

Clingman's observations were correct, for soon thereafter Badger "easily won the endorsement of the Whig legislative caucus."⁵⁰ Badger still had to win election in the legislature, and considering the Whigs' majority of only one seat (85-84), it would require virtual unanimity of the Whigs to elect their nominee.

On December 6, David Outlaw wrote his wife from Washington about Clingman's position:

I saw Clingman yesterday. He had received a dispatch from Raleigh yesterday requesting him to go on. His ambition will overreach itself. He spoke of taking if he went a box of pistols with him. I advised him not to go at all, and if he did to leave his pistols behind.⁵¹

Clingman did not go to Raleigh then, but waited in Washington for further developments.

On December 12, Outlaw wrote that he had not heard anything from Raleigh, but was beginning to doubt "whether Mr. Badger can be elected.

Clingman says there are two Whigs who will not vote for him under any circumstances. This may be so, and if so, he cannot be reelected without some democratic votes which I apprehend he cannot get. Probably they would prefer any other Whig to him, simply because he is the nominee and candidate of the great majority of the Whig party. Clingman currently has strong hopes himself -- though I should think his chance is desperate [sic] unless he can carry some democrats and next to Badger he is probably as obnoxious to that party as any other person except Mr. Badger. But there is no telling ...⁵²

On the day Outlaw was writing, the legislature voted for the first time. Out of 168 votes, Badger received 82, three under a majority. Of the Whig legislators, all but three voted for the Senator. The dissidents were two Whigs from the west, Henry T. Farmer of Henderson County and Thomas Atkins of Buncombe County, and one from the east, William B. Shepard of Pasquotank County. Shepard was opposed to Badger because of his views on the Wilmot Proviso, while Farmer and Atkins were supporters of Clingman. Clingman received the support of four Democrats, the other 80 votes being widely scattered.⁵³

The legislature tried again on December 16 to elect a Senator. On the second ballot, Badger again needed 85 votes to reach a majority, but he only received 82. Clingman's

total rose to fourteen, and the other votes were divided among many candidates. Again, the three dissidents did not support Badger. Later that day, another vote was taken. On the third ballot, the number voting dropped to 165, thus only 83 were needed to win. Badger, though, again received 82. On this ballot, many Democrats began supporting Clingman, in an attempt at splintering the Whig party, and the Representative's total increased to 48.

Later that day, Edney sent a telegram to Clingman in Washington telling him to return to Raleigh immediately; Edney wrote, "I think, we have the game in our own hands."⁵⁴ The next day Outlaw wrote that Clingman had left Washington for Raleigh "by the boat last night." Hearing about what was transpiring in the state capitol, Outlaw was appalled:

The attitude assumed by the three or four Whigs who refuse to vote seems to be an extraordinary one. A very large majority of the party, indeed nearly all them nominate a candidate. Now the question is, which is to govern, these two or three refractory men, or the immense majority of the party. Who will be willing to belong to any party, where such as those contended for prevail. Wherever there is nearly a tie all that is necessary [sic] to secure the election of a man, is for him to get two or three men, who swear they will vote for no one else, that the others must come over to them.⁵⁵

The Raleigh Register was equally disturbed about the events in the legislature. In an editorial on December 20, Seaton Gales wrote:

We deeply regret that want of unanimity among the Whig members which has resulted in the prevention of the election of a Senator.... We care not who a majority of the Whigs of the Legislature had

settled upon as their candidate for this office, we should have felt equally mortified at a like result.⁵⁶

In deciding whether to support him, on December 18, a group of Democratic leaders sent a letter to Clingman requesting his opinions on four major issues: a national bank, the Independent Treasury, the tariff, and Congress' power over slavery in the territories.⁵⁷ Clingman answered them the same day. It has been said that his letter "constituted a masterpiece of ambiguity and evasion." This is true in regards to the economic issues. Clingman said that there was no "disposition to create" a bank at that moment, that the Walker tariff needed "some alterations," although he did not say what, and without mentioning any specifics, he said the treasury idea needed a few modifications. As for the slavery issue, Clingman was crystal clear -- he now believed the Wilmot Proviso unconstitutional. He stated that the Proviso was "as gross a violation of the Constitution as the Government could possibly commit." If passed, it "would justify the Southern States in resisting its execution by all means in their power."⁵⁸

On December 20, the legislature again attempted to elect a Senator. Before the fourth ballot, Edward Stanly arose and said that although he was "much attached" to his cousin, he was not willing to say that Rome's "wide walks encompassed but one man." He then nominated former Governor

David L. Swain, a westerner from Buncombe County who was then serving as President of the University of North Carolina.⁵⁹

The legislature then proceeded to the fourth ballot. Because of a shift to Swain, Badger's total dipped to 75. Clingman continued to gain ground, reaching 55, and Swain picked up nine. Swain was for some reason dropped, and a fifth vote was taken. On this fifth vote, four Democrats and one Whig did not vote, meaning a total of 83 would win. Clingman's total again increased, to 67, but this did not make any difference. Badger received the 82 votes he had gotten on the first three ballots, plus the vote of Farmer. Thus, Badger secured another six years in the Senate by the narrowest of margins.⁶⁰

The next month, the Senator wrote to his friend John J. Crittenden, and explained how the result had come about:

My friends in the North Carolina legislature pursued exactly the course you thought should have been adopted, resolved rather to allow the election of a democrat than yield to the dictation of three out of eighty-six -- The result was brought about by accident -- two democrats were absent from sickness -- one who had just been elected a judge asked to be excused from voting -- and another stood aside desiring my election but not daring to vote for me -- while one whig had paired off with one of the democrats who by reason of illness could not attend. These five votes taken out left on joint ballot 165 votes & 83 a majority -- the whigs having 85 and the Locos 80 -- One of Clingman's men came over to me & thus gave me the requisite majority & none to spare.⁶¹

The voting by ballot was as follows:⁶²

Nominees:	Ballot				
	1	2	3	4	5
	Dec. 12	Dec. 12	Dec. 16	Dec. 20	Dec. 20
G.E. Badger	82	82	82	75	83
T.L. Clingman	6	14	48	55	67
W.F. Leake	8	9	13	9	4
W.N. Edwards	13	6	7	7	4
J.I. McKay	18	10	3	4	1
J.B. Shepard	18	17	0	0	0
W.B. Shepard	0	17	2	1	0
Others	23	14	10	14	6
Total	<u>168</u>	<u>169</u>	<u>165</u>	<u>165</u>	<u>165</u>
Necess. for maj.	85	85	83	83	83

As soon as the election was over, many Democrats began debating about the propriety of voting for Clingman. Holden defended the action as a lesser of two evils, especially since Clingman announced his view that the Wilmot Proviso was unconstitutional. The Fayetteville North Carolinian, though, was skeptical: "looking at Mr. Clingman's course, heretofore, on the slavery question, we are inclined to consider his opinion or pledges volunteered at this juncture, as the promptings of his ambition (which is inordinate) rather than those of his candid judgment."⁶³ Future Democratic U.S. Senator Asa Biggs wrote to President Polk and said, "I regret that our friends (although they could not have elected a Democrat) should have cast their votes for Mr. Clingman whom I consider as objectionable if not more so than Mr. Badger."⁶⁴ This dissention is extraordinarily mild, though, compared to that within the Whig party.

On December 27, the Raleigh Register in an editorial did not chastise Clingman for opposing Badger. Instead, it

found it a "source of gratification" that the Democrats should have supported Clingman, "an able and thorough Whig." The Register did say that "it would have been a burning shame to the Whigs of North Carolina had they flinched in the support of the able, eloquent and high-souled Badger -- a man of extraordinary genius, and of spotless purity of character."⁶⁵

In that same issue, there appeared a letter "To The People" from Henry T. Farmer attempting to explain his votes during the Senatorial election. Farmer wrote that his actions were based on regionalism; he thought it "right that the Western Members should insist on a Western man" for the Senate because there had never been one. Farmer then tried to exculpate Clingman by stating that "notwithstanding the unfriendly personal relations" between Clingman and Badger, had Clingman been a member of the legislature, he would have felt "bound by party obligations" to vote for Badger. Also, Farmer wrote that Clingman had expressed a wish that "he should not ... be put in nomination as a candidate, unless it was ascertained, after balloting, that Mr. Badger could not be elected."⁶⁶ Of course these statements were not true. That Clingman would have voted for Badger is ludicrous considering how he made visits to Raleigh to ascertain his chances, kept a friend in the state capitol to monitor events, and was ready to head south with his pistols even before the voting had begun. It was Clingman himself

who said that the destruction of the Raleigh clique was "of much more importance than the preservation of any party."

It is thus with a great deal of skepticism that one must judge Farmer's last statements that on the final day of balloting Clingman "expressed a wish that we should no longer make use of his name" and that "in compliance with the wish of Mr. Clingman as then expressed to me earnestly, I determined to change my vote and thereby elected Mr. Badger." Some historians have accepted this, and thus have credited Badger's reelection to Clingman. Yet why would Clingman tell Farmer to give up and support Badger on the last ballot? Clingman despised Badger and had been angling for months to steal his seat. The Representative from Asheville had just been negotiating with the Democrats, and on the fourth ballot his total has risen to 55, while Badger's had fallen to 75. On the fifth ballot, Clingman would pick up twelve more votes and come ever closer to building a coalition to put him over the top. Thus, why would Clingman suddenly decide to fold his tent and have Badger reelected?

Even if Clingman had played the good Whig to get Badger reelected, whatever goodwill he might have achieved was soon lost. On January 6, 1849, Clingman published a tract attempting to explain his actions in regard to the Senate election. In Address of T.L. Clingman on the Recent Senatorial Election: To the First Congressional District of

North Carolina, Clingman reprinted his December 18 correspondence with the Democrats, and then stated that he had become a candidate so that the rights of the west could be upheld "against all the power and influence [of] the central clique."⁶⁷ He then launched into an extensive examination of how the west had been mistreated, and declared that a number of western legislators had "preferred me to any one else." Clingman then assaulted the western members (all but two) who had voted for Badger instead:

You stand alone, fellow-citizens, separated from the rest of the State; but your very isolation, though it deprives you of the power to act as others, renders you secure from attack. You have only to determine on it, and you triumph. As things were this winter, had four or five of your members determined to act together in support of your right, they would have succeeded without doubt; for as soon as these people perceive that you are determined no longer to be their slaves, they will for the sake of obtaining your co-operation, admit you as equal partners. If for the future you intend to act, then select your men with care. Take such men as will regard themselves as your representatives, rather than the servants of central managers -- men, in short, who will dare to tell them that if they want white slaves, they must look for them elsewhere than in the Western Reserve. Should the persons thus selected by you, when they get to Raleigh, be cajoled or intimidated into an abandonment of your rights, then beat them with many stripes, and set ear-marks upon them, so that they may be incapable of deceiving again.⁶⁸

The reaction was swift and hostile. The Raleigh Register called Clingman's "vindictive assault upon the Whig party in this part of the state ... [a] studious effort to fan the flame of sectional jealousy. His heated imagination conjures up a systematic tyranny and oppression, which he

alleges the West to have endured at the hands of the 'Central influence.'" Gales then called Clingman's allegations "the climeras of his imagination, excited by the disappointment of ambitious hopes."⁶⁹ Western North Carolina's most influential Whig paper, the Salisbury Carolina Watchman said of Clingman's tract:

it does not satisfy us, nor does it seem to meet with the least favor by any one in this section that we have heard speak of it yet. All condemn Mr. Clingman in the strongest terms. Here, he was never thought of for that high and important post to which he has, for the second time, been an aspirant; but on the contrary, Mr. Badger was the universal favorite. His gigantic mind, and his attachment to the interests of the whole Union, recommended him as the proper person for Senator.

Mr. Clingman's letter to a committee of Locofoco members of the Legislature, has lowered him in no small degree in the estimation of all true Whigs about here, and is regarded as a good stride towards Locofocoism. It would have been far better for Mr. Clingman if this address had never been written, as it evidently betrays a spirit of disappointed ambition in every line, without any of the high qualifications which should always be possessed by the aspirant for a seat in the United States Senate.⁷⁰

If newspaper editors were upset, so were the western Whig legislators who had voted for Badger. Future Governor Tod R. Caldwell wrote the Register that in canvassing during the election for the legislature, he had "invariably proclaimed ... that, if elected ... [he would] most undoubtedly and unhesitatingly vote for Mr. Badger." Caldwell noted that not one Whig had told him they preferred a different candidate, nor did he hear anyone, "Whig or Democrat, say that Mr. Clingman deserved that office, or

ought to be elevated to it: still I have no doubt it was pretty generally believed that he would not decline it, if it were tendered to him." Caldwell noted that since Clingman did not receive a single vote in the Whig caucus, and that only two Whigs had voted for him in the legislature, anyone could see that he was not the west's choice. He ended his letter by saying, "I regret that [Clingman's] course, with regard to 'the recent Senatorial election,' will prevent me from ever again taking the same interest in his behalf that I have heretofore taken."⁷¹

The next edition of the Register contained a letter from another western Whig legislator, J.Y. Hicks of Macon County. Hicks, like Caldwell, said that during his election campaign he vowed to support Badger and not one man complained. He wrote that if Clingman thought the people of Macon desired "his elevation to the Senate, that thought has originated solely in his brain, or rather, has grown out of his own desire and wish." Hicks asked: "Does Mr. C. consider himself the West? Is he the embodiment and personification of Western interests, Western feelings and Western rights? If he thinks so, I take this occasion to inform him of his mistake." Hicks maintained that Badger was vastly superior to Clingman, and the only reason the latter complained was "his desire to be Senator. Yes, there lies the whole difficulty." He ended by saying, "I have heretofore been instrumental in 'frocking' Mr. Clingman. I

will endeavor at the next election to aid in 'unfrocking' him."⁷²

Two months later at the end of the legislative session, western Whig legislators were still upset with Clingman. E.P. Miller of Caldwell County returned home and wrote the Register:

[T]here are men among my constituency that I would prefer to represent me in Congress, to the Hon. T.L. Clingman. If Mr. C. had discharged his duty to his constituents, as I did mine, and had not left Washington City to return to Raleigh for the purpose of electioneering for a seat in the U.S. Senate, perhaps I might have been spared the unpleasant task of arraigning him, in setting myself and my constituents right.

Mr. C. being my representative, I hold that I have a right to investigate his conduct, and therefore, I ask 'who attended to your duty in Washington and what pay you received per diem, whilst you were absent from that place, attending to my business in Raleigh, and posting me and my constituents in the public newspapers?'⁷³

Clingman's actions concerning this Senate election signal a major step in his political metamorphosis from a nationalist Whig of the mid 1840s into an extreme Southern rights Democrat of the mid 1850s.

In November of 1849, Clingman wrote a letter for publication in which he adopted John C. Calhoun's common-property notions concerning slavery in the territories. He held that in legislating for the territories, Congress had to act "for the benefit of all the States as well as their citizens." If the government adopted a policy of excluding slavery in the territories, it would be a "revolution in the action of the government -- a revolution which could not

occur without a total violation of the spirit and essence of the Constitution."⁷⁴

Six weeks later, David Outlaw was writing about the possibility of Clingman, and Senator Mangum, switching parties:

I should not be much surprised if M. and C. turn a somerset [sic] and join the democracy. The first is conscious he has lost his influence with his own party, and much as I like him personally notwithstanding all his faults, his course as a politician has been somewhat erratic. The other has an insane wish to be in the Senate, and thinks there is little hope of reaching that position by Whig votes. These are my own speculations, time will shew to what extent they are correct.⁷⁵

Outlaw found Clingman to be "an enigma. I am very much inclined to believe he is crazy -- not exactly crazy either, but some of the mental balance wheels, necessary to regulate properly the machine, either absent, or out of order."⁷⁶

Outlaw would have even more reason to wonder about Clingman during the deliberations surrounding the Compromise of 1850. In the House, Clingman found a home among the radical Southern extremists. In one speech he exclaimed:

[If] gross injustice is done, insurrections incited, and the citizens of part of the States politically enslaved, then the Union ought not to stand, as an instrument of wrong and oppression....

Gentlemen may call this treason -- high treason -- the highest treason ever known.... Sooner than submit to what you propose, I would rather see the South, like Poland, under the iron heel of the Conqueror... Rather let the future traveller, as he passes over a blackened and desert waste, at least exclaim, 'Here lived and died a noble a race as the sun ever shone upon.' ... In conclusion, I have to say, do us justice

and we continue to stand with you; attempt to trample on us, and we separate.⁷⁷

In voting on the compromise measures, Clingman was indistinguishable from North Carolina's Democratic Representatives, all of whom were quite anti-Compromise.

Clingman's pilgrimage eventually landed him in the folds of the Democratic Party in 1854, and four years later he finally achieved the coveted Senate seat.

Three historians have recently tried to explain Clingman's political transformation. Thomas Jeffrey has argued that Clingman's great desire for a Senate seat led him to become radical and move into the ranks of the Democracy.⁷⁸ John Inscoe has written that Clingman began his change not during the 1848 Senate election, but a year before, when he was attempting to regain his seat in the House. Thus, Inscoe states that despite the fact that Clingman's Congressional District had very few slaves resident, his desire to keep his House seat caused him to rethink his views.⁷⁹ Finally, Marc Kruman has said that Clingman changed because of republican ideology -- Clingman and the west believed they were battling a "central clique," and thus it was natural to add the national sectional struggle, North against South, to this mind set.⁸⁰

In truth, all three probably played a role in Clingman's switch. It is obvious that he changed his views between 1845 and 1847 in order to regain his House seat; yet, Clingman's views in 1848 were different from those of

the year before, and the same can be said for 1850. Also, besides becoming more radical on slavery issues over the years, Clingman in addition lost a great deal of the partisan bitterness he had earlier harbored towards the Democrats. Thus, the first-term Congressman who fought a duel over his denunciations of John C. Calhoun and the Democratic Party in 1845, could hope for a union of his party and the enemy only five years later. Clingman did not lose his partisan edge, though, for after 1848 he saw both the "central clique" and the North as his arch-enemies. While a combination of factors influenced Clingman's ideological veer, the 1848 Senate election and the recriminations that followed played a large role -- as is plainly evident from contemporary sources, Clingman did have an unnatural desire for a U.S. Senate seat.

What is more important than Clingman's actual motives in making his switch is the result this action had on the North Carolina Whig party. As noted above, while the Whigs held a small but stable majority in the Old North State throughout the 1840s, they became the minority party of the 1850s. During this latter decade, the Democrats won every Gubernatorial election and also controlled every legislature. Of course a good deal of credit for this has to go to William Woods Holden, who gave the Democrats their first effective party organ as well as the brilliant free suffrage issue. Also, as both Michael Holt, for the whole

nation, and Marc Kruman, for North Carolina, have effectively demonstrated, party labels in the early 1850s became less significant as issues over which the parties traditionally fought became settled.⁸¹ Yet, while these and other factors certainly played a role in the Whigs' decline, one should not discount the actions of Thomas L. Clingman.

Traditionally, historians have credited Clingman with helping destroy the Whigs' hold on North Carolina.⁸² Marc Kruman, though, in a 1987 article in the North Carolina Historical Review, "Thomas L. Clingman and the Whig Party: A Reconsideration," has held otherwise. Kruman has found that other historians "overstate [Clingman's] role in the decline of North Carolina Whiggery," and that Clingman's "efforts to impart his popularity to his followers failed miserably."⁸³ The historian declares that, "Although Clingman was extremely popular, he did not destroy the Whig party in the extreme west. It would be more apt to say ... that the congressman had 'Clingmanized' his district."⁸⁴

For evidence, Kruman points to several specific events: in 1852 a group of legislative candidates sponsored by Clingman, who ran as "Southern Rights Whigs," were "soundly trounced" by the regular Whig candidates; in 1854 Whig gubernatorial candidate Alfred Dockery, whom Clingman opposed, obtained 61.9% of the western vote; when Clingman was elected to the Senate in 1858 he was succeeded in the House not by a Democrat, but by Zebulon B. Vance, an

American Party member; and the "Democrats obtained a majority in [the west] in only one antebellum gubernatorial election, 1858, when they faced no organized opposition."⁸⁵ In conclusion, Kruman writes: "Clingman was a remarkable politician, but one with equally unremarkable political coattails. Only after the state and national Whig parties collapsed in 1854 and 1855 did Whiggery decline in the mountains."⁸⁶

The facts do not support Kruman's conclusion. Although the Democracy never became the majority party in the west, the huge majorities rolled up by the Whigs in the 1840s, majorities necessary for that party to capture the Old North State, were significantly reduced -- and this was a trend that began not in 1854, but in 1848.

During the early and mid 1840s, Whig Gubernatorial candidates usually garnered around 70% of the western vote: John Morehead received 72.0% in 1840 and 73.4% in 1842, while William A. Graham obtained 67.5% in 1844 and 71.4% in 1846.⁸⁷ Also during this period, the Whig Party was so strong in the west that many Congressional elections were fought not between a Whig and a Democrat, but between two or more Whigs -- witness the three campaigns (1841, 1843, 1845) between Clingman and James Graham. Yet starting in 1848, Whig strength in the west began to precipitously decline, more so than in any other region of the state. The following table clearly demonstrates this trend:⁸⁸

<u>Average Whig Percentage of the Vote for Governor By Region</u>			
<u>Years</u>	<u>Coastal Plain</u> <u>(east)</u>	<u>Piedmont</u> <u>(central)</u>	<u>Mountain</u> <u>(west)</u>
1840-1846	44.7	57.4	71.1
1848-1852	40.4	52.4	62.0
1854-1860	38.6	50.4	51.0

As can be seen, the Whig Party declined in all regions of the state, and historians have correctly mentioned a combination of factors for this decline: free suffrage, an effective Democratic press, loss of traditional issues, and, after 1854, the death of the national Whig Party. Yet for some reason the Whigs suffered their heaviest losses in the west.

Between 1848 and 1852, a time when Clingman was steadily moving away from mainstream Whig thought, that party's share of the gubernatorial vote in the west was 62.0%, a drop of 9.1% from the 1840-1846 average. By contrast, the Whig decline was only 3.7% in the east, and 5.0% in the Piedmont. Undoubtedly Clingman's actions had a lot to do with this additional decline in the west -- even if one were to try and lay the entire blame for the Whigs' greater western decline on the free suffrage and mistreatment of the west/"central clique" issues, one would have to admit that Clingman was at the forefront of those issues.

Between 1854 and 1860, a period during which Clingman was a staunch Democrat, the anti-Democratic gubernatorial

vote in the west fell an additional 11.0%, to 51.0%; in the Coastal Plain the decline was only 1.8%, in the Piedmont, 2.0%. Kruman has tried to show Clingman's ineffectiveness during this time by mentioning that the 1854 Whig gubernatorial candidate, Alfred Dockery, received 61.9% of the western Whig vote; however, this was almost ten percentage points below what a Whig would have received a decade earlier -- had Dockery received the same western support as Morehead or Graham, he would have been elected Governor. Likewise, Kruman calls Clingman's coattails nonexistent because the Democratic candidate could not hold on to Clingman's seat in 1858. This, though, ignores the fact that the Democrat, William W. Avery, was expected to win by some, and achieved a very respectable showing -- things that would have been impossible a decade earlier. One could conceivably argue that the reason the western anti-Democratic vote dropped so during the 1854-1860 period was because western Whigs, for some reason, did not flock into the American party. Yet this in no way explains the 1860 gubernatorial election, when almost every element of the old Whig Party rejoined and made a spirited effort to unseat the Democracy. If one compares the Whig vote in 1860 to the average Whig vote over previous four gubernatorial elections they had contested (1848, 1850, 1852, 1854), one finds that only in the west did the Whigs lose strength:⁸⁹

Whig Percentage of the Vote for Governor By Region

Year	Coastal Plain (east)	Piedmont (central)	Mountain (west)
1848	42.3	54.0	64.7
1850	39.7	52.4	62.5
1852	39.2	50.9	58.9
1854	40.6	52.8	61.9
Average	40.5	52.5	62.0
1860	40.7	53.1	50.3
Difference	+0.2	+0.6	-11.7

Had Whig candidate John Pool received the same western support as Morehead (1840, 1842), Graham (1844, 1846), Manly (1848, 1850), John Kerr (1852) or Dockery (1854), he would have become Governor.

Marc Kruman is right when he states that Clingman did not turn the mountains into a solidly Democratic region, for even in 1860 the Whigs carried this area. Yet this misses the point. What Clingman was able to accomplish was to make the Democratic Party highly competitive in an area which had previously rolled up huge numbers for the Whigs and given that party the cushion they needed to carry the state. Without this cushion, the Democrats could count on their heavy majorities in the east to offset any Whig surplus in the Piedmont or west.

Overall, Thomas L. Clingman and his political transformation between 1845 and 1855 played a large role in helping the Democrats become the majority party in the Old North State. Also, if one were to pinpoint one event during this period which influenced Clingman the most, it would

have to be the Senate election of 1848. Although George E. Badger won this election, quite possibly his party was an ultimate loser because of it.

IX. 1849-1855: Second Term, United States Senate

George E. Badger's second term in the U.S. Senate coincided with many important national political events, such as the deliberations surrounding the Compromise of 1850 and the Kansas-Nebraska Act of 1854. Badger played major roles in the Senate's most important debates during this period, and by his term's end he was looked upon as a national political leader. Yet while Badger was advancing in prestige and influence, his Whig Party was suffering a sharp decline and death. It was thus that Badger at the height of his Senate career could not win reelection in 1854.

Badger's second term began amid much dissension within the ranks of the North Carolina Whig Party. During the first months of 1849, a sharp disagreement formed between Badger and Mangum over who should receive the important foreign mission which President-elect Taylor had promised the Old North State. Three candidates appeared in the running, Stanly, Hugh Waddell and Daniel Moreau Barringer, and naturally Badger favored his cousin; the junior Senator wrote his friend John J. Crittenden in January 1849, "Dont forget our friend Stanly."¹

Mangum, though, was a strong supporter of Waddell, and in late February the Senator wrote Graham:

As to the Mission to Spain, I am, in every sort of form, committed to Mr. Waddell against all Commers, & yet he will have much difficulty. --

Yesterday, I talked, the first time on the subject With Mr. Badger -- He goes for Stanly & Waddell both. -- Stanly for Madrid -- . & Waddell for Mexico. & will push in a peremptory manner -- He cannot get both & possibly, not to say probably, will fail for both. -- Besides Barringer has been pushing for two or three Months for the Mission to Spain, & has made the strongest appeals to me & C[lingman]. -- He has active friends among the originals [i.e. those who had first supported Taylor for the Presidency, and thus had a great amount of influence with the General].

With the kindest feelings toward Mr. Barringer, I have told him, it is impossible for me, with any regard to my engagements, to go for any one before Waddell. -- After him, if two missions can be had for No. Ca. I shall with pleasure, say all for him that I think he deserves. -- But at the Same time, shall feel bound to speak in like manner for other aspirants. -- Mr. Badger does not entertain with favor Mr. B's aspirations.²

In March, Graham also received a letter from James W. Osborne, who desired appointment as director of the Charlotte mint. After mentioning that Mangum "did not take much interest in the matter" but did give his endorsement, Osborne stated:

Mr. Badger does nothing. Indeed his deportment towards North Carolinians in [Washington] was so supercilious -- and any efforts to serve them rendered so ungraciously -- as to make it my duty to abstain from any application to him. I think indeed if it were not that considerations of a public nature might render it unwise, that it would be only just that his conduct should be exposed in the newspapers.

Osborne went on to discuss the foreign mission:

It is clear that the "original Taylor men" are endeavouring to usurp [Taylor's] confidence and divide out the spoils among themselves. It is this circumstance which places the appointment of our friend Mr. Waddel [sic] as Minister abroad in a hazardous position. It must however be admitted that the vehemence with which the name of Mr.

Stanly is pressed by Mr. Badger is another difficulty, which from what I have learned Mr. W. did not have reason to expect. At present the chances of Mr. Barringer are decidedly in the ascendant. He has enlisted in his behalf a number of influential friends in other States, whose exertions in his behalf are very active. In the mean time the two Senators do not agree on any one name.

The delegation in the lower house are equally divided, and the result is to place him decidedly in the vantage ground. It is altogether uncertain however whether the foreign minister of the highest grade will be given to the State at all. Events have shewn that in the disposal of important offices the State is not likely to secure much consideration. When all circumstances are considered it is not a matter of much surprize [sic]. The temper of one Senator -- and the habits of the other -- are equally hostile to such a result.³

In late May, Taylor decided that he could appoint neither Stanly nor Waddell, and therefore a compromise was agreed upon and William A. Graham was tendered a foreign mission. Mangum wrote Graham:

After the most strenuous efforts, that I have ever made in my life, I am beaten; & our friend Waddell will fail. -- He cannot be appointed abroad.... Mr. Waddell cannot be carried with three interests, of supposed, nearly equal influence -- & the administration will take a new name -- & that will be William A. Graham of No Carolina, to whom will be offered the mission to Spain or to Russia, at his election. -- I regret this sincerely & profoundly; & yet, it is the result of a diversity of inclination between the Senators.... The Senators are understood to have made a point of this matter. & the admn. are unwilling to make a point with either....

Our friend Barringer is 'no where,' as the gentlemen of the Turf say. The real contest [was] between Waddell and Stanley [sic].⁴

Graham declined the offer, and on June 18, 1849, Taylor nominated Barringer to be Minister to Spain. Barringer's

confirmation, though, did not take place until September 1850, because of "the influence of one of the disgruntled North Carolina senators" -- most likely Badger.⁵

As this incident suggests, North Carolina's two Senators did not work well together. In December, 1849, David Outlaw told his wife that, "There is between the members of our delegation, the worst possible state of feeling. Mangum and Badger dislike and are jealous of each other. Clingman and Stanly are, or suppose they are rivals, and will do all they can to thwart each other."⁶

Another influential Whig who disliked Badger was state Senator William B. Shepard. Shepard, a radical Southern extremist, was one of the three Whigs who voted against Badger in his 1848 reelection effort; unlike Henderson and Farmer, though, Shepard was not a Clingman supporter -- he voted against the Senator because he personally disliked him and because he distrusted Badger's views on slavery in the territories.

While the state General Assembly was meeting in January, 1849, Shepard introduced resolutions including a statement denying the Constitutionality of the Wilmot Proviso. In addition, the resolutions stated that they should be sent to Washington to have the state's Congressmen present them before their houses.

Edward Stanly, who was then a member of the House of Commons, opposed the resolutions, holding that they were

only proposed to embarrass "a distinguished gentleman in the Whig Party [Badger]." Stanly felt that Shepard, whom he labelled "Mr. Senatorial," was motivated not by a desire to rebuke extremism in the North, but rather by a personal hatred of Badger. According to Stanly, Shepard's real purpose was to force Badger to resign and then, with Democratic aid, take his place in the Senate. An angry exchange of letters in the Register followed, with Shepard declaring that Badger was a "Southern man with North principles," while Stanly accused Shepard of having a "Senate-mania" and compared him to a mad dog.⁷

Because of Stanly's opposition, Shepard's resolutions did not pass the legislature in their original form; yet even if they had, Badger never would have resigned. Badger strongly believed in the Whig notion that a state legislature had no right to "instruct" its U.S. Senators on what positions to take or how to vote. In 1848 he told the Senate that even if his constituents disagreed with his views on the impropriety of gaining additional territory, he would still vote as he believed, sacrificing their wishes for "their highest honor and their best interests."⁸

While small factions of North Carolina Whigs disliked their junior Senator, his reputation in the national Whig Party at this time was quite good. In early 1849, the National Whig described Badger as:

Of a cheerful temperament and captivating manners as a public speaker, a correct and vigorous

thinker, a sound judge of what the law is and ought to be, a diligent public servant, thoroughly learned in all that constitutes a statesman, possessing fine administrative abilities, an elegant and terse writer, eminently practical in his views and public acts, more useful than brilliant in his oratory, of incorruptible integrity, a steady pursuer of the right and intolerant of injustice, happy at repartee, though not sarcastic, fond of wit and a eminent wit himself.⁹

Turning now to specific events in Congress, by far the most important issue debated during the first session of the 31st Congress was slavery in the territories. On January 21, 1850, President Zachary Taylor submitted to Congress his plan whereby territorial governments would not be set up and Congress would not legislate for the territories, instead, Congress would wait, and do nothing until the territories petitioned for statehood. This proposal created much dissension among Southerners, for California had already petitioned for statehood with a constitution banning slavery, and New Mexico would probably do the same. Also, by not creating territorial governments, many, including Badger, felt that Mexican law forbidding slavery would be in effect in the newly won territories until the time of statehood, thus all of this area would be effectively closed off to settlement from the South.

Eight days after Taylor submitted his plan, Henry Clay offered a compromise which consisted of eight resolutions. These dealt with not only slavery in the territories, but also other points of contention concerning the "peculiar

institution." Clay proposed that 1) California be admitted as a state; 2) territorial governments be formed for New Mexico and Deseret [Utah] without any restriction as to slavery; 3) the boundary dispute between Texas and New Mexico be settled; 4) the Federal government assume Texas' public debt incurred before annexation; 5) slavery not be abolished in the District of Columbia without compensation and the consent of both Maryland and the District; 6) the slave trade in the District of Columbia be prohibited; 7) a more effective fugitive slave code be enacted; and 8) Congress was without power to obstruct the slave trade between states.

For weeks on end, Congress debated Taylor's, Clay's and other proposals. On March 4, John C. Calhoun's last major speech was delivered in the Senate, one that extolled the views of the Southern extremists and even threatened disunion. Three days later Daniel Webster also gave his last major Senate speech, the famous "Seventh of March Speech," in which he seconded Clay's proposals for compromise.¹⁰ In 1852, an observer recalled that this speech, and Webster's later efforts for compromise, would not have occurred were it not for the actions of Badger, Mangum and Georgia Senator Dawson:

The leading Southern Whigs, such as Mangum, Badger, and Dawson, rallied upon Mr. Webster, seized upon him, stuck to him, and brought him up finally to the mark. His speech of the seventh of March gave a new impulse to the compromise movement, and the whole country felt that the

danger was substantially passed. But it is notorious that, in the proceedings upon the committee of Thirteen, Mr. Webster wavered again, voting this way and that way, and was only held to his place by the unceasing vigilance of Messrs. Mangum and Badger.¹¹

On March 18 and 19, Badger himself made a long speech in favor of Clay's proposals. He began by closely examining the institution of slavery, holding that although one could consider it an evil, it was not a sin. To prove this, he demonstrated his knowledge of the Bible by quoting from passages in Leviticus and the New Testament. This was probably done to refute William Seward's earlier statements that slavery expansion should be opposed because of a "higher law" than the Constitution, i.e. God's law. Later in his speech Badger would again attack Seward, declaring that were judges to base their opinions not on the law of the land, but on their own personal view of God's law, this would destroy "the foundations of all law and justice."

As for slavery in the territories, Badger stated that his "own view with regard to the proper manner in arranging this difficulty is, and has all along been that we should adopt and carry to the Pacific ocean the Missouri compromise line." Since this was politically impossible, the Senator favored the next best option for settling section strife, Clay's compromise.

Badger in this speech again asserted his view that Congress had entire power and jurisdiction over the territories, and thus the Wilmot Proviso was Constitutional;

he added, though, that "the application of the proviso to these Territories will be considered as a wanton violation of the feelings of the South, an insulting exercise of power which would be deeply resented by the people of the slave states." Were Congress to pass Wilmot's proposal, Badger could envision "a dissolution, a final separation" of the states of the Union. Although he thought "that no State has a right to secede from this Union," he also felt that once states attempted to so do, the Union as presently known would be at an end:

If ever the unhappy hour should arrive when American blood is shed in a contest between the States, some desiring to secede, and others endeavoring to compel them by force of arms to remain in the Union -- whenever that hour comes, our connexion is immediately broken to all beneficial purposes for the happiness or prosperity of the country.

Badger added, though, that he personally did not think passage of the Wilmot Proviso would be grounds for secession, and he hoped North Carolinians would agree.

In closing his speech, the Senator declared that were the Wilmot Proviso dropped and a new fugitive slave code adopted, he would be willing to compromise on other matters, including the admission of California as a free state and the abolition of the slave trade in the District of Columbia.¹²

Badger's speech was praised by pro-compromise papers in both sections of the country. The New York Herald's Washington correspondent reported that, "Mr. Badger,

distinguished for his legal acquirements, and his calm and dispassionate judgement, has been entertaining us for the last two days on the slavery question.... His whole speech was marked with clearness of argument, sound sense, and good discretion."¹³ Likewise, the Selma Reporter stated: "This distinguished Senator from the North State, has delivered one of the best speeches of the session upon the slavery question."¹⁴

As for Badger's colleague Mangum, before the session began there were hints that he would join with the Southern extremists.¹⁵ Once Congress convened and the struggle commenced, though, he moderated and became a strong proponent of Clay's measures. On April 19, Mangum was appointed to the Senate's "Committee of Thirteen" to consider what measures Congress should adopt concerning the slavery problem. This committee reported back on May 8 that it favored enacting in one form or another almost all of Clay's proposals; it was recommended that Clay's first four proposals be lumped into one "Omnibus Bill," while a stronger fugitive slave law and abolition of the District's slave trade be treated separately.

Despite the unanimity of North Carolina's Senators, her Whig Representatives were in sharp disagreement. As mentioned above, Clingman was a strong opponent of the compromise, and voted as if a Southern Democrat. Edward Stanly, on the other hand, favored President Taylor's plan

over Clay's. Stanly was one of only three Southerners to support the President in his quest to admit California separately, and to many the fact that Badger and Stanly were in disagreement was surprising; Congressman Augustine Sheppard declared that it "created no little surprise amongst those who know their usual coincidence of opinion."¹⁶

In March, Stanly gave a speech in the House strongly supporting Taylor's plan. The outcry among Southerners of both parties was great, with Outlaw describing the address as "an unfortunate and foolish one ... it would have been supposed almost, that he was a Northern and not a Southern representative."¹⁷ Around this time, William A. Graham was in fear that both Stanly and his cousin Badger "are in danger of injuring us, by not being zealous enough, for the right of slavery, or at least by appearing too tolerant of the Abolition feeling of the North."¹⁸ As for the other North Carolina Whigs in Congress, Outlaw, Shepperd, Joseph P. Caldwell and Edmund Deberry all strongly supported Clay's proposals. After Taylor's death in July, Stanly also fell in line; Shepperd wrote that Badger and Stanly "differed on the "Compromise measures during the lifetime of Genr'l Taylor, but came together on Mr. Fillmore's succession."¹⁹

On August 2, Badger made another major speech, one in which he made several interesting observations. The first was that he found it "a calamity" that new states had to be

admitted to the Union: "I think the value of a place in this Union is in inverse ratio to the number of states that compose it, ... and, if my own wishes could prevail, there should never be another State added to it from this day forth to the end of time."

He also exhibited his strong nationalist tendencies when he declared that the Constitution had bound the states into "a national Government" and not just a mere confederacy of states:

I do not consider it as a question of dissolving a 'confederacy,' as this Union is so often emphatically called upon this floor; I do not look upon this Union as a confederacy, a league. From the day that the Constitution of the United States was adopted, it became a union of government -- The Constitution is a constitution of Government, and not a Confederacy in proper and just sense of that term.²⁰

Those of the states' rights school were horrified by Badger's statements. The Washington Southern Press opined:

We have never listened to any man on any occasion, with such surprise and mortification -- He laid down the doctrine of abject submission to the Federal Government in the most absolute and unconditional terms.... He insisted that no circumstances, no event, no aggression, would justify, excuse, or even palliate, the adoption of any measure having the slightest tendency to dissolve the Union. Such sentiments as these, although uttered in the Senate, and by day-light, would better become the kitchen of a Russian noble, and would be no honor to that.²¹

Clay's measures, while in their Omnibus plus two form were killed in Congress. The specific parts, though, were finally approved piecemeal, with different combinations voting for each proposal; the measures as a whole are today

commonly known as "The Compromise of 1850." In voting on the specific proposals, Badger voted for establishment of the Utah territory, final adjustments of the Texas boundary and Texas debt questions, a stricter fugitive slave code, and establishment of the New Mexico territory. He voted against abolition of the slave trade in the District of Columbia, and he did not vote on the admission of California.

The reason why Badger voted against suppressing the District's slave trade was that the Senate would not add an amendment to the bill protecting the rights of slaveholders residing temporarily in the District. It has been said that the reason he did not vote on admitting California was that he regarded it as illegitimate for a state to be admitted into the Union without passing through the territorial stage.²² It is more likely that he did not vote because he did not wish to see additional states added to the Union, admitting California as a free state was very unpopular in the South, and voting against the bill might have harmed the chances of compromise.

Overall, Badger's actions in the Senate show him to be very pro-compromise; yet, by not voting on California and opposing the abolition of the District's slave trade, he appeased many Southerners. Also, other actions show Badger to be concerned with the rights of his constituents. During debates over a new, tougher fugitive slave law, an amendment

was introduced that would have paid slave owners out of the Federal treasury, the value of their lost slaves were they to prove to a Federal District Court that they were "unable to secure the return of a fugitive slave, by means provided in the bill." Badger made an able speech on behalf of the amendment, but was defeated, 27 to 10. His "advocacy of this amendment made him many friends in the South," and the Baltimore Patriot reported: "Mr. Badger made a most powerful and lucid speech in its defense. A more able and convincing argument has seldom been delivered in the Senate Chamber. By it, Mr. Badger has won new laurels as a profound and logical debator."²³

The vast majority of North Carolina Whigs were pleased with Badger's actions in regards to the Compromise of 1850. Nearly two years later, the Whigs of the Old North State's Seventh Congressional District meeting in convention passed a resolution stating, "That George E. Badger, by his unequivocal course, his integrity, and disinterested patriotism, as Senator, particularly in relation to the 'Compromise Measures,' and the dangerous policy of Intervention, has strengthened the ties that bind him to his constituency, and he eminently merits their thanks and confidence."²⁴

North Carolina Democrats, though, took a different view. Their three Congressmen had opposed almost all the Compromise, and when the Democratically-controlled state

legislature convened in November, 1850, resolutions were proposed attacking Badger and Mangum's stands. Mangum wrote his wife:

There is a great deal of Manoeuvring, & no little excitement in Raleigh & a strong disposition on the part of many to go to extreme lengths. -- From what I can learn the democracy in the Legislature (which is in the ascendant) will do anything to make political Capital. --

Their first purpose was to make a push at both Badger & me. -- I hear they have misgivings, as to an assault upon me, but are resolved to push at Mr. Badger, & pass the most insulting resolutions -- as for instance -- 'That he misrepresents the State, & that he neither deserves or possesses the Confidence of the people of North Carolina.'

In this same letter, Mangum mentioned that he, that day, "had a long conversation with [Badger and Clingman] -- separately of course -- as they do not speak to each other."²⁵ Badger was a bitter partisan, and it is not surprising that he made enemies of the Democrats and of a few, such as Clingman and Sheperd, in his own party. Yet, as the deliberations surrounding the Compromise of 1850 show, Badger always had his country's best interests at heart. Had other statesmen, of both sections, during the next decade shown such moderation, the tragic war of the 1860s might have been avoided.

Compared to the previous session, the second session of the 31st Congress was extraordinarily uneventful. Badger gave one interesting speech, though, in which he revealed his thoughts on corporations. While arguing for the renewal of a charter for a District of Columbia insurance company,

Badger stated that he found corporations to be highly beneficial institutions, and that he was opposed to hampering their effectiveness by providing too much governmental regulation. Unfortunately many denounced corporations, calling them "monsters" unable to further human welfare; Badger regretted this: "corporate bodies have fallen into the unhappy condition which is expressed by our common saying 'giving a dog a bad name and then killing him.'"26

By the first session of the 32nd Congress, 1851-1852, Badger was becoming more "orthodox," for a Southerner, on issues involving slavery. Undoubtedly this was primarily because of the violent abolitionism of increasing numbers in the North. While Badger never joined the radical extremists of his section, his views over the last few years of his term increasingly coincided with those of the majority of his constituents.²⁷

During this session, Badger made a long speech in reply to an amendment introduced by Charles Sumner for the repeal of the fugitive slave code. Sumner had declared that the 1850 law was unconstitutional, and Badger refuted this in several ways. While quoting from an opinion by Supreme Court Justice Joseph Story, Sumner interrupted Badger to ask what authority Story's opinion held. Badger sharply replied: "I deem the authority of Justice Story of ten thousand times more value than that of the senator from

Massachusetts, who will please to have the decency not to interrupt me, because I know that those interruptions are made for no fair purpose."

In speaking of Sumner and his abolitionist friends' ultimate goal, Badger declared: "Modern abolitionism is a wanton and mischievous interference with the property of others." As for the results that would accompany abolition, the North Carolinian stated:

To talk about the abolition of slavery in the South, with three million of slaves among us who would have in such case to live in a degraded state of freedom, is to talk of what no sane man believes to be possible, and what no sane man believes to be desirable, if it were possible; because the whole of society would be upturned, and what is felt to be an evil in the free States, would be to us utter ruin and destruction.²⁸

The Senate rejected Sumner's amendment, 47 to 4, with only Free Soilers Hale, Chase, Wade and Sumner voting in favor of it.²⁹ North Carolinians were quite pleased by the strong stance Badger took in opposition; in April of 1852, Edward J. Hale mentioned to Graham that Badger "has added greatly to his fame at home this session."³⁰

The major political event in 1852 was that year's Presidential election. President Fillmore and General Winfield Scott were the main aspirants for the Whig nomination, and Badger, like the vast majority of North Carolina Whigs, was "an ardent Fillmore man."³¹ He, Outlaw and Alfred Dockery were even requested to go to New York City and attend "a public demonstration" on behalf of

Fillmore's candidacy.³² Mangum, on the other hand, favored Scott, and they were described as being "good jolly boon companions."³³ North Carolinians were horrified by this stand, afraid that Scott was the mere puppet of anti-slavery New York Senator William Seward, and that the General did not support the Compromise of 1850; they were even more stunned when Mangum took the floor of the Senate and openly announced that he favored Scott over Fillmore.³⁴ Edward J. Hale wrote Graham, "We are rather inclined to suppose, in these parts, that Mangum was not very sober when he commenced his speech, & that he was very drunk when he finished it."³⁵

Scott received the Whig nomination, but North Carolinians were somewhat appeased when their own William A. Graham, who was then serving as Secretary of the Navy, received the number two slot. In September, Badger wrote the Register that, "in all frankness, ... probably, no man in the United States was more disappointed, not to say dissatisfied, than I when that gentleman [Fillmore] was passed over." Nevertheless, Badger added that he was "a decided and very earnest supporter of the Whig national nominations for the Presidency and Vice Presidency."³⁶

Although Badger endorsed Scott, he did not actively campaign for him. Lawrence F. London has mentioned that this "may indicate his lack of enthusiasm for Scott."³⁷ This was not the case, for Badger was suffering from a

physical malady. On September 21, 1852, he wrote his good friend Graham:

After my return home, I discovered myself to have hernia on my right side, and, after trying all the trusses in this place, I have been unable to find one which began to fit me, or could be worn without suffering at once, and injury. I have thus unexpectedly found myself utterly disqualified for field service -- even to the extent of addressing the Club here; as I am in danger at all times of strangulated hernia, upon any exertion, and especially that of standing & making a speech. I shall, deo volente, leave here in the morning train for Philadelphia, in order to get at the fountain head, an instrument which may give me security without inconvenience.

I have sent a letter to the President of the Club, which you will see in the Register -- intended to prevent any misapplication to bad purposes, of my being at home & yet absent even from the Scott & G. Club here. Of the letter I have only to say that a business engagement left me under the necessity of throwing it off in great haste. I had not time to make it short, or to correct other defects quite as serious as its length. Well, I hope it may do some good.

I could wish our friends to understand in some way that I am not voluntarily idle, and, still less, indifferent in this Contest; and yet the peculiar nature of my infirmity forbids its being publicly declared.³⁸

During the 32nd Congress' second session, one of the most interesting, and disappointing, events of Badger's public life occurred -- his nomination, and rejection, for a seat upon the United States Supreme Court. This will be extensively examined in a following chapter. The session also witnessed an interesting debate over a proposed transcontinental railroad. Badger of course favored the proposition, and during a speech, requested that the bill be passed quickly for the good of the country. Such a road

would have more efficacious effect on the problems dividing the nation than "all the filibustering speeches that have been made, or can be made from now until the end of the century." Badger then quoted one of his political heroes, Alexander Hamilton, whom he called "one of the greatest men who has ever adorned the history of this country," that "real firmness is good for everything, and that bluster is good for nothing."³⁹

When Badger returned to Washington in December of 1853 for the first session of the 33rd Congress, many of the Senate's greatest members were gone. By this time, Clay, Calhoun and Webster were in their graves, while Thomas Hart Benton had been defeated in his reelection attempt. In this vacuum, Badger assumed a large leadership role, and it was during this session that Beveridge later described Badger as "the ablest" man of his party.

Badger was also without a fellow Senator from North Carolina. Mangum's term expired in March of 1853, and because of his drinking and early support of Scott, no one considered his reelection. The Democrats controlled the legislature by two votes, however as happened in 1842, Romulus M. Saunders came out in opposition to the caucus nominee, James C. Dobbin. This prevented Dobbin from receiving a majority, although on twelve of the first thirteen ballots he received a plurality. The Whigs wasted their votes on a number of candidates, although on the

eleventh ballot they coalesced around Kenneth Rayner and came within one vote of electing him. Dobbin was dropped on the fourteenth ballot and many Democrats rallied around Clingman -- this would be the third of six consecutive senate elections in which Clingman was a candidate. Finally, after the fifteenth ballot, it became obvious that no one could be elected, and the legislature resigned itself to having only one Senator for the next two years.⁴⁰

This session of Congress witnessed the unfortunate reopening of the slavery in the territories issue, when Stephen A. Douglas introduced his proposal for establishing territorial governments in Kansas and Nebraska. Douglas' bill provided for the repeal of the Missouri Compromise line, leaving "the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States."⁴¹

By this time, Badger was becoming increasingly annoyed by abolitionist and free soil sentiment in the North. Also, the Whig Party was in desperate trouble and Southern Whigs saw this as an issue on which they could outflank their Democratic opponents, and thus revive their party. Badger would be up for reelection in November, 1854, so naturally he wanted members of his party to run well in the August state elections. Thus, Badger, along with most Southern Whigs, and Democrats of both sections, strongly supported Douglas' bill.⁴²

On February 16, 1854, Badger delivered a major speech on the subject. In it, he reminded the Senate that during the deliberations in 1850, most Southerners had supported extending the Missouri Compromise line to the Pacific. Because of Northern opposition, though, territorial governments had been organized in "utter disregard of the Missouri Compromise;" Badger found it absurd "for gentlemen to call upon us to maintain a compromise which has been repudiated and disavowed by themselves."

Also in language reminiscent to that used by Southern extremists in 1849-1850, Badger asked, "why in the name of God should anyone prevent" a Southern gentleman from taking "the nurse that takes charge of his little baby, or the old woman that nursed him in childhood, and whom he called 'mammy,'" with him, when he settled in a new territory in hopes of finding a better life?⁴³

Badger's speech was undoubtedly one of his most pro-Southern. William Woods Holden could not find fault with it, and the Charleston Mercury, the paper which had violently attacked Badger upon his resignation as Secretary of the Navy, reported that he had made a "very clear and striking argument.... Mr. Badger is one of the most learned lawyers, and one of the most agreeable and instructive speakers, in the Senate, and it is one of our sins of omission ever to pass over a speech of his on any subject."⁴⁴

Several months later, Badger told Graham that this speech "was made chiefly with a view to aid our friends at home in the pending contest, to open the eyes of our people to the monstrous wrong which is being perpetrated upon them. I have sent about 3 thousand copies in the State."⁴⁵ In the August elections, the Whigs did not do poorly, however, Democrat Thomas Bragg squeaked past Alfred Dockery in the Gubernatorial election, and in the legislature, the Democrats gained a twenty-two vote majority on joint ballot, 91 to 69.

The passage of the Kansas-Nebraska Act signalled the death of America's Second Party system, for it clearly cut all remaining threads of union between the Northern and Southern wings of the Whig Party. In later years, Badger clearly recognized that he had made a mistake; while campaigning in 1860 for John Bell, the only Southern Whig Senator to vote against Kansas-Nebraska, Badger stated:

Fellow citizens I intend to do justice to John Bell although I do it at my own expense. John Bell with a statesmanlike Sagacity and foresight which I did not possess voted against the Kansas-Nebraska Bill, I voted for it. John Bell did right and I gave the worst vote I ever gave in my life.⁴⁶

Turning to Badger's reelection effort, in July Whig Congressman John Kerr wrote James W. Bryan: "We must return Badger to the Senate. He is doing the state great honor here, and has acquired a national reputation such as no other man from our state ever has won here in Congress."⁴⁷

As mentioned above, in August the Democrats gained a twenty-two vote majority in the General Assembly. Some still held out hopes for Badger, because of his support for the Kansas-Nebraska Act; the Register went so far as to predict a fusion of the two parties in North Carolina, because both Democrats and Southern Whigs so detested the Northern Whig party.⁴⁸

Most, though, could not foresee such an occurrence, and thus figured that the Democrats would use their majority to fill both U.S. Senate seats. Shortly after the state legislative elections, William A. Graham was told by his nephew:

No doubt there will be a great scramble for the seats in the Senate. I had hoped to see you and Mr. Badger here, but I presume it will be a long time before the State will be represented as it has been. What a fall there will be, when Davy Reid, & [William S.] Ashe or [James C.] Dobbin present themselves as the Senatorial representatives of North Carolina.⁴⁹

In caucus, the Democrats nominated former Governor David S. Reid for the remaining four years of Mangum's old seat, and former Congressman Asa Biggs for Badger's seat. On November 24, 1854, Reid defeated Daniel Moreau Barringer, 92 to 65, and the next day Biggs was victorious over Badger, 91 to 69.⁵⁰

Whigs in the Old North State, and throughout the nation, were chagrined to find the undistinguished Biggs replacing Badger. William A. Graham wrote his wife that "all [Whigs] seem humiliated at the low standard of

qualification of the nominees for their position." The Whigs were able to have "some consolation," though, because, "Clingman has been here from the middle of last week, pressing his claims on the gratitude of the democrats, in the most indecent manner, and is of course in the deepest mortification."⁵¹

As for Whig newspapers, the Raleigh Register opined: "If the Democratic party could do no better, if they have selected their best talent, their best patriotism, the fittest representatives of their political faith, why they could have done no more, and we shall have to shut our eyes and take the dose."⁵² Likewise, the Salisbury Carolina Watchman asked, "Is the peerless Badger -- the master mind of that intellectual assembly [--] to be supplanted by such a weak thing as a Biggs or a Reid [?]"⁵³

Out of state Whig papers expressed similar feelings. The Philadelphia News declared: "Truly may it be said that the old North State has fallen from her high estate, when such lofty interlects [sic] as Mangum and Badger are set aside to make place for pigmies like Biggs and Reid."⁵⁴ Also, the Petersburg Intelligencer reported:

Asa [Biggs] is to succeed Badger -- worse and worse -- (mine Got, vat a beeples!) It is to be hoped, for his own credits sake, when Asa gets to Washington, he will scrupulously avoid Mr. B's chair -- to take his seat in that, would be a practical illustration of turning the sublime into the ridiculous.⁵⁵

Badger returned to Washington in December of 1854 for his last session of Congress, one in which nothing transpired of note. On his last day in office, March 3, 1855, the following resolution was introduced by Democrat Stephen Adams of Mississippi while the Senate was meeting in executive session:

Resolved, Unanimously, that an expression of the high appreciation of Senators and the Senate is tendered to the Honorable George E. Badger on this the eve of his departure from among us, for his uniform courtesy, ability, liberality, and valuable services during his long and distinguished career in this body, and that we deeply regret the severance of the official and personal ties which have hitherto existed among us.⁵⁶

This resolution passed unanimously, and to this day it is unique in the annals of the United States Senate. Shortly after its passage, the Washington Star stated that, "Such a legislation is without precedent on their journal, and speaks volumes for the esteem in which that gentleman is held by his late fellow Senators, and for their deep respect for his character, and their admiration for his remarkable talents and attainments."⁵⁷ Badger's career in the Senate was impressive, and it is a shame that he was forced to retire when his moderate counsels were needed most by his nation.

X. The Politics of Rejection: Badger's 1853
Nomination to the United States Supreme Court

During the Nineteenth Century, Presidents of the United States nominated seventy-one men for the Supreme Court. Of these seventy-one, only forty-six actually served. While a few nominees were confirmed by the Senate but declined to serve, and several others voluntarily withdrew their names before Senate action, the vast majority of the twenty-five nonserving nominees were "rejected" by the Senate. This rejection took one of three forms, the Senate rejected some nominations outright, it postponed others until a new administration had come to power, and, for a few, it took no action at all.¹

Professor Henry J. Abraham of the University of Virginia has delineated seven "prominent reasons" why Supreme Court nominees have not been confirmed. They are: 1) opposition to the nominating President; 2) the nominee's political actions and views; 3) opposition to the incumbent Court; 4) Senatorial courtesy; 5) the nominee's "political unreliability"; 6) lack of qualification or ability of the nominee; and 7) strong opposition from special interest groups.² A fascinating case study of where several of these factors came together to defeat a nomination is Millard Fillmore's 1853 nomination of George E. Badger to be an Associate Justice. Despite being eminently qualified for the position and, more importantly, a sitting United States

Senator, the Senate "postponed" Badger's nomination by one vote. To this day, it is still the only example of the Senate rejecting one of its own for a seat upon the high bench.

On July 19, 1852, United States Supreme Court Associate Justice John McKinley died after fifteen mediocre years upon the high bench. In all those years, McKinley had only written eighteen opinions for the Court, plus two dissenting and two concurring ones. It has been said that "not one of the[se] decisions, including the dissenting opinions ... involved a major constitutional question."³ Taney Court scholar Carl Swisher has written that McKinley "made no significant contribution to legal thinking in any form. When he died in 1852 he had not made any notable imprint on the work of his profession. He was probably the least outstanding of the members of the Taney Court."⁴

At the time, it was a tradition that each circuit be represented on the Court, and that each new member come from the same circuit as his predecessor. When South Carolinian William Johnson died in 1834, many in the Old North State thought William Gaston would be a suitable replacement. The Raleigh Register, though, informed them that they were mistaken:

Several of our contemporaries in this State, have named Judge Gaston as a proper person to fill the vacant seat on the Bench of the Supreme Court of the United States. -- his fitness in every respect no one can question, but the fact seems to be lost sight of, that he does not reside within

the Judicial District which the vacancy comprehends, and is therefore ineligible.⁵

McKinley was living in Alabama when he was appointed, and at the time of his death he performed circuit duties in the Fifth Circuit, consisting of Alabama and Louisiana. Thus, it was expected that the seat would go to a lawyer from one of those two states. Kentucky also had a limited claim on the position. Because he had business interests with a hemp bagging and rope firm in Louisville, Justice McKinley had taken up residence there after joining the Court. Congress recognized this fact and in 1849 gave McKinley authorization to hold Circuit Court in Kentucky in the absence of the judge of the Eighth Circuit, the Circuit in which Kentucky officially belonged.⁶

At the time of McKinley's death, President Fillmore was a lame duck. Because the Whig Convention of 1852 had bypassed him in favor of General Winfield Scott, Fillmore was standing on the sidelines watching Scott slug it out with Democratic nominee Franklin Pierce. Congress at that time was overwhelmingly Democratic, with the Senate consisting of thirty-six Democrats, twenty-three Whigs, and three members of the Free Soil Party.

Shortly after McKinley's death, Fillmore began receiving suggestions as to a replacement. On July 28, former Whig Congressman Garrett Davis of Kentucky wrote Fillmore recommending Judge Thomas Alexander Marshall of the Kentucky Court of Appeals. At that time, Marshall had

served on the Court for seventeen years, as well as in Congress for four. He was a maternal nephew (and on his father's side a first cousin, once removed -- his parents having been first cousins) of Chief Justice John Marshall, and Davis compared him favorably to his kinsman.⁷

Also receiving serious backing was Humphrey Marshall, Thomas A. Marshall's nephew (and John Marshall's greatnephew), a Whig Congressman from Kentucky. "Humphrey Marshall, backed by a considerable force, is besieging the President for the vacant United States Judgeship," read the New York Tribune on July 22.⁸ Fillmore decided not to nominate Marshall as he was technically out of the circuit, and instead appointed him Minister to China.⁹

Another serious contender was Thomas Allen Clark, a New Orleans attorney. Both N.B. Blount, District Attorney of New York, and John Moore, Whig Congressman from Louisiana, wrote to Fillmore recommending Clark.¹⁰ Former Alabama Congressman Henry W. Hilliard wrote to Fillmore also, and he asked for the seat for himself.

In replying to your letter some days since, I ventured to express my wish to have my name considered in connection with the vacant place upon the Supreme Court Bench. I have long looked to that station as my family and friends well know, as one of the most desirable, to which an honorable and just ambition could aspire. It is however probable, that you may think a Diplomatic appointment more appropriate to my political relations, and while I should very much prefer a post of permanent dignity, it is not my desire to embarrass you in making a selection for the Bench. My course of study has I trust qualified me for its duties -- but I must confide the selection to

your judgements -- looking to all the circumstances which surround the place.¹¹

After nearly a month of consideration, Fillmore decided on August 14 to nominate William C. Macou, a lawyer of New Orleans. Two days later, the President changed his mind, and instead, sent Edward A. Bradford's name to the Senate.¹² Bradford, also an attorney from New Orleans, has been described as "a scholarly New Englander, with a splendid mind."¹³

A week after the nomination, it appeared that it was headed for trouble. The New York Tribune reported that "[t]here appears to be a difficulty about the confirmation of Mr. Bradford as Judge of the Supreme Court. The California Senators insist that some provision must first be made for including that State within some Supreme Judicial Circuit which has never yet been done."¹⁴ Five days later, the paper said that "[the] rejection by the Senate of Edward A. Bradford's nomination to the Supreme Bench is next to certain," and on August 31 the Senate adjourned without acting on the nomination.¹⁵

All authorities agree that the reason Bradford's nomination was not acted upon was that the Senate received the nomination only two weeks before its planned time to adjourn, and that the large Democratic majority, looking forward to a Pierce victory, was in no mood to fill the seat with a Whig.¹⁶ The Tribune's Washington correspondent commented:

Edw. A. Bradford of New Orleans, was 'laid over.' It is now doubtful if he ever sits on the Supreme bench. It is said the President made the appointment at the urgent solicitation of the members of the New-Orleans bar, and that he was highly recommended by some of the declining candidates in Louisiana. Mr. Bradford is a Northern man of very fair abilities as attorney, but his appointment is not looked upon as judicious by the Senate generally.¹⁷

During the last three months of 1852, many names were discussed for the Supreme Court vacancy, including several prominent nonresidents of the Fifth Circuit.¹⁸ When Scott went down to defeat in November, the Whigs realized that they would not get another chance at a Supreme Court seat for at least four years. Also, Fillmore probably did not want to appear to be another John Tyler, who had five lame duck Supreme Court nominations rejected by a hostile Senate. Thus, the search was on for a nominee suitable both to the Whig Party and the Democratic Senate.

In November 1852, sixty-five year old Thomas Ruffin retired from the North Carolina Supreme Court after twenty-three years of service, nineteen as Chief Justice. B.F. Moore, an eminent Whig lawyer from Raleigh and friend of Ruffin, had a conversation with Senator Badger soon thereafter, and Badger "proposed, very warmly, that means should be taken to induce the President to nominate [Ruffin] to fill the vacancy of McKimley."¹⁹ Moore wrote to Ruffin telling him this, and then began working on memorials to send to Fillmore in support of Ruffin.²⁰ Ruffin's "background was that of a Jeffersonian Republican [although]

he was much more judge than partisan."²¹ With the Democrats in control of the Senate, his nomination would be one that Fillmore could make with a chance of success.

Ruffin's name was also being circulated in regards to a cabinet position in Pierce's upcoming administration. On November 30, 1852, Ruffin wrote to former Democratic Congressman Asa Biggs and said that while he was not seeking a place in the cabinet, he would accept a seat on the Supreme Court. Biggs responded to Ruffin:

My attention ... was not called to the fact that there was a vacancy on the Bench of the Supreme Court of the United States until I received your letter. It will afford me great pleasure to co-operate with others in inducing the President to nominate you to that vacancy. I presume that Mr. Fillmore will certainly make a nomination before he retires and the suggestion of Mr. Badger, Mr. Moore and others of his party will no doubt have great influence with him. My recommendation or others of our party as Democrats will probably not have much weight but our recommendation as lawyers attending the Supreme Court may be useful.... If you have occasion to write Mr. Moore on the subject please say to him that I desire to co-operate with him in the matter if I can be of any service.²²

Moore wrote William A. Graham on December 13, 1852, and attempted to enlist his aid in this project:

The friends of Judge Ruffin have availed themselves of the opportunity which now offers, of placing him on the federal bench, to recommend him to the President for nomination; to this end a memorial or petition signed by the members of both branches of the General Assembly, as also one signed by members of the bar, will be forwarded in a few days to the care of Mr. Badger, to be presented to the President.

I know that it would be very agreeable to Judge Ruffin to have the compliment, and to his brethren of the bar, the influence, of your name

in this application. I am aware of some objections which might be made to the nomination. First, Judge Ruffin is not a Whig, but with you and myself & no less with such a man as Millard Fillmore, if he knew the Judge as we do, that would be no objection.

The acquisition of Thomas Ruffin to the federal bench would be a great one indeed; and would reflect no less on the moderation of the President's partisan feelings, than on the sagacity of his judgment.

We know that for such a station, the enquiry ought never to be made to which side the politics of a man may lean.

Second, the nomination may be deemed with more propriety to come from the South or So. West. But, the origin of such locations was doubtless owing to the accommodation of the judge, and the certain holding of Courts by having the Judge convenient to the scene of his labors; but since the wonderful facility of travelling, that circumstance can have no weight.

And, as to the distribution of Governmental patronage locally, it may be remembered that Wayne may easily take the Southwestern Courts, and Ruffin those of the middle portion.

However, I have not scrupled myself, under the circumstances, to sign my name to the general petition of the bar, and our friends would feel gratified at a private letter from you to the President. I hope it may consist with your sense of propriety, as I know it will with your will and pleasure....

The memorials will be forwarded in a few days, and I suggest that your letter may not long linger.²³

Three days after this letter, Moore wrote to Ruffin, telling him that both he and Badger had prepared memorials in support, and that they were being sent to the President. Badger's memorial was signed by the members of the state legislature, while Moore's had been circulated around to other members of the bar. Moore then added:

I understand that [Romulus] Saunders regards the attempt as improper, because of your residence out of the judicial circuit. Inter pares, I would

hold the objection good, myself, for it is founded on expediency only; but, certainly, I would not forego by virtue of that reason, the chance of placing on the Supreme Court Bench of the United States, a man preeminently qualified to discharge its onerous and vastly responsible labors. It is obvious to all, and the source of the deepest regret to every intelligent and patriotic lover and admirer of our republican institutions, that the public sacrifice has been immense, in too great a deference to local and partisan partialities. No man grew up, and no lawyer in the Union, ever entered on the field of his professional labors with a higher sense than myself, of the purity and ability needful in determining those questions which, though, seemingly, individual in their character, constitute, in fact, the basis of all that is valuable in society, whether of property, or morals of government: What I want -- what the republic demands, is a judge -- all other is but leather or prunella. It is sufficient for me therefore, to excuse myself from adhering strictly to a rule of usual expediency, that the man, whom I may recommend, is possessed of qualifications, so rarely to be met with, as lift him out of the rule.²⁴

When North Carolina Supreme Court Judge Frederick Nash read that Ruffin desired an appointment to the Federal bench, he was greatly pleased. He wrote his old colleague:

I expect to see you on your way to Mississippi soon, to teach the natives to pay their debts -- to New Orleans to punish Filibustering -- and anywhere out there, to prove we have a national Government. But if I were in your place, I should much prefer being chief Justice of the United States. Judge Taney I learn is very infirm and it is tho't will not long be where he is. I admit it is not the thing to be waiting for dead mens shoes -- we some times slip our own too soon.²⁵

Although the memorials for Ruffin were taken to Washington, they were never presented to President Fillmore. Two different stories materialized as to why they were not. Edward Stanly claimed that, at Badger's request, he had

asked an "intimate friend of the President's" if Fillmore would consider Ruffin. When told that the President "could not," Stanly went personally to see Fillmore, who informed him that "if he went out of the Judicial District at all he must nominate [Attorney General John J.] Crittenden first, and then Mr. Badger if Mr. C. declined -- he would nominate no others being out of the district." Because of this explicit declaration, the memorials were not presented.²⁶

The other explanation was offered by Graham, who told Ruffin's son-in-law, Joseph B.G. Roulhac, that he had written President Fillmore a letter about the Supreme Court vacancy, and in it had suggested Ruffin for the position, should it be determined that the Senate would not approve a Whig. Fillmore replied to Graham that under the present circumstances, he could not nominate a Democrat for the vacancy. Thus, the memorials were not filed when it became apparent that Fillmore would not consider Ruffin.²⁷ It should be noted, though, that Graham's letter is not in the papers of Millard Fillmore.

Of these two explanation, Ruffin was greatly inclined to believe Graham's. He wrote his son-in-law:

Now to one here in No. Ca., it must seem singular, that the representation, on which the President was requested, and expected, if at all, to make an appointment to office, should not be submitted to him before requesting his decision on the application! And, further, that his ex-parte informal adverse decision should be assigned as a sufficient reason for never letting him see 'the memorials'! And yet more singular, that Mr. Badger, on whose motion, instance, and preparation

the memorials were signed, and whose opinions as to the qualifications and fitness of the proposed person must be supposed would have carried the highest influence with the Executive, should never have laid the documents before the President, nor had any direct communication with him, but merely requested Mr. Stanly to get another friend to inquire whether the President would appoint me -- of whom he had no direct knowledge. I think you must concur in opinion with me, that is too singular to be true of Mr. Badger, and that Mr. Stanly must be under some mistake. I doubt not, that the true state of the case is that given by Mr. Graham: namely, that the President intended not to go out of 'his party', and that he hoped to carry thro' his nomination of Mr. Badger from his personal influence in the Senate, added to his eminent qualifications. And I cannot but believe, that Mr. Badger did give the President his own opinion and wishes in respect to myself, and also faithfully communicated that of the Legislature and Bar of the State. If he did not, he is not the man I have ever taken him to be. I know his caprices and eccentricities. But they have never led him to a breach of good faith or made him less than a true man.²⁸

Although Ruffin wrote as if Stanly's and Graham's descriptions of President Fillmore's intentions were mutually exclusive, they do not have to be seen that way. It could have been that the President resolutely decided not to cave in to Senate pressure and appoint a Democrat. Once he decided only to nominate Whigs, he looked for those both qualified for the position and acceptable to the Senate, and in his opinion the only two residing outside of the circuit meeting this criteria were Crittenden and Badger. This appears to have the conclusion reached by B.F. Moore:

I have no doubt, that the president deems himself aggrieved by the course of the Senate, whose motive of action seems to have been to keep open judicial office, for the mere purpose of rewarding political and partisan services. This,

the president had determined to oppose, and, deeming any concession to such course of action, unpatriotic and weak, he has refused to fill the office on such terms. Hence, as I suppose, he has assumed the position, indicated by Mr. Stanlys letter.²⁹

Whatever the truth of the matter, Ruffin, accepting Graham's explanation, believed that he was not considered solely because of his party affiliation, and this upset him greatly.

I have been blaming the Senate for rejecting or attempting to reject the President's nomination to the Judiciary on Party grounds. It is not a fit ground for refusing a proper man; one who would make a Judge. But I am sorry to find, that the President also wishes to constitute a Partisan Court and refuses to listen to representations in favour of persons not of 'his party.' Now, a nomination made on that principle and for that reason may reasonably be rejected. A party nomination may be justly met by a party opposition; and the Senate, it seems, understood the President better than I did.³⁰

A letter which might throw some light on the subject was one written by Stanly to John J. Crittenden:

It is highly desirable for several reasons that it should be known very soon, whether the President can be induced to act in relation to the nomination for Supreme Court Judge, as you & I wish. It will enable us to serve our friend B[adger] efficiently, if we know the President's intention. If he has difficulties, which you cannot overcome -- we ought not to use Mr. B.s name further.³¹

Obviously, Stanly's chief loyalty lay with his cousin, and not Thomas Ruffin. Yet, does this prove that Stanly's story about personally seeing Fillmore on Ruffin's behalf was untrue? This letter could have been written after Stanly and his intermediary (Crittenden?) had seen the

President and learned of his intentions only to appoint Crittenden or Badger if he were to appoint outside the circuit. The tone of the letter, though, suggests that Stanly and Crittenden may have planted the idea of appointing Badger in Fillmore's mind. Because of his friendship for Ruffin as well as his great integrity, it is unlikely that Badger purposefully sabotaged Ruffin's chances -- but one can not be as certain about Stanly.

What is clear by all accounts is that Fillmore's first choice for the seat was Crittenden. At least one newspaper held that the feeling was reciprocal; the Tribune stated: "It is supposed that Crittenden would like the vacant Judgeship of the Supreme Court, but Democrats will not allow it to be filled by the present Administration."³² Fillmore offered Crittenden the position, but for some reason the Kentuckian declined it.³³ Perhaps he was remembering what it was like twenty-four years earlier when, in 1829, he was John Quincy Adams' lame duck nominee to the Court. Crittenden's hopes then had been dashed by a twenty-three to seventeen vote to "postpone" the nomination until March 4, 1829, Andrew Jackson's inauguration.³⁴ Crittenden would be seriously considered for the Court as late as 1861, at the age of seventy-four, but he would never get the opportunity to serve.³⁵

With Crittenden declining, Fillmore turned to Badger. Badger, being one of the nation's ablest lawyers, was

certainly qualified for the post. In addition, although Badger resided outside the judicial circuit, Fillmore must have figured on a good chance of confirmation because of the Senate's high regard for one of their own. Indeed, this is what so upset some Democratic papers -- they saw Fillmore as "using" the Senate and its good will to get a man on the Court.³⁶ Badger, too, felt that he had a good chance of confirmation. According to Governor Graham, Badger's friends polled the Senate and found forty-two probable "yeas," and thus Badger consented to be nominated.³⁷

The nomination was made on January 3, 1853, and it was read in the Senate a week later.³⁸ Early reaction was mixed. The New York Tribune's Washington correspondent "Qui Vive" wrote on January 4 that "it is believed by some that [Badger] will be confirmed, but I see no reason for thinking so."³⁹ The next day, the Tribune's other Washington source, "Eye," held that "the appointment of Mr. Badger as Judge of the Supreme Court is certain to be confirmed by the Senate."⁴⁰ The New York Times' correspondent wrote, "Some think he will be confirmed. More think not."⁴¹

Democratic papers were not pleased with the choice, obviously hoping to save the seat for Pierce to fill. One termed the nomination an "astonishment," and the next week described it as "inexpressibly distasteful to us ... indelicate and obnoxious."⁴² At first, some of the Whig Press was also not very enthusiastic. Horace Greeley called

Badger "a lawyer of surpassing abilities, and in the main ... an upright man." He then went on to lambast Badger and his personality for an entire column, describing him as "wrong-headed, crabbed, intolerant, dogmatical, inveterate in his prejudices, dictatorial," etc. Greeley ended his column by saying, "Yet notwithstanding all this we don't think Mr. Badger would make a bad Judge."⁴³ The Richmond Whig wrote that, "while we should have preferred a different man, Judge Hopkins, of Mobile, no one questions the fitness of Mr. Badger for the distinguished post."⁴⁴

On January 14, the Senate in Executive Session first considered the nomination. They were about to vote when the death of Senator Upham was announced, and the Senate immediately adjourned. According to the New York Times the next day, "This is rather unfortunate for Mr. Badger; his case stood well to-day, and may not be as well on Monday.... The impression gains ground that the nomination will not receive final action until after the 4th of March."⁴⁵ A month later, after Badger's nomination had been permanently "postponed," the Times recalled the events of January 14, and held that Badger was not on the Supreme Court only because of an untimely speech:

A word of counsel here to gentlemen who are in season and out of season with prosy speeches, where notes alone are necessary. It will be remembered that on the day Senator Upham died, the Senate went into Executive Session on Mr. Badger's nomination. His friends, understanding the party animosity which designed his defeat, had laid their plans well; and, if a vote had been taken on

that day, Mr. Badger would now have dignified by his presence, the Supreme Bench. Every Whig Senator, and some independent Democrats, know this perfectly well: and they know just as well, that no speech-making was necessary in the case. The votes only -- the naked Yeas and Nays -- were required.

In this condition of affairs Mr. Underwood of Kentucky felt himself called upon to inflict on the Senate an untimely speech in support of the nomination, and that speech defeated Mr. Badger. Before Mr. Underwood had concluded, the death of Mr. Upham was announced, and ere the Senate went into Executive session again, the opposition Senators, having learned the strength of the nomination, put their drill-sergeants at work, set the political thumb-screws in operation, and were enabled to postpone the vote until they could effect their purpose of defeat.⁴⁶

Over the next four weeks, the Senate discussed the nomination in Executive Session at least five times, although no final action was taken until February 11.⁴⁷ Because the Senate's doors were closed during Executive Session, the country was largely in the dark about what was transpiring. The editor of the Wilmington Journal was in Washington at the time, and wrote his paper that, "Mr. Badger's confirmation is in statu[s] quo, with many doubts hanging over it.... one thing is certain though -- the Senators have so far contrived to keep their secrets upon the subject, and everything is surmise."⁴⁸ The major papers kept close tabs on how the Senators were leaning, and when possible, they would inform their readers which Senators were pairing off, should one leave town, and which ones were speaking for and against the nomination in Executive Session.⁴⁹

Many people hypothesized about the probable outcome. The New York Times on January 18 said that "if all absent Democrats are present, [Badger] will be rejected," and then three days later wrote that, "if a direct vote is obtained, he will certainly be confirmed."⁵⁰ The New York Express saw a rejection coming, but the Washington correspondent of the Baltimore Sun opined that "the vote will be a very close one, but I rather incline to the opinion that the nomination will be confirmed."⁵¹

As for expectations in North Carolina, on January 20, the Salisbury Carolina Watchman reported:

Mr. Badger's nomination for the Supreme Court, it is said, has been laid on the table, by a vote of 22 to 1, by the Democratic caucus of Senators. The objection to his nomination is alleged to be, that he does not reside in the circuit from which the Judge should be taken.⁵²

Likewise, on the 29th, William A. Graham wrote his wife that, "The confirmation of Mr. Badger is quite doubtful."⁵³ Some, though, felt Badger's confirmation was a foregone conclusion, and thus began discussing possible replacements for his Senate seat. The Charlotte Whig stated:

Col. [John H.] Wheeler as we are informed is telling his confidential friends -- and he seems to have a great many of them -- that the Governor [Reid] has given him the appointment of a seat in the United States Senate to take the place of Mr. Badger, whose confirmation to a seat on the Supreme Court Bench has been voted by the Senate.⁵⁴

Many people thought that the Democrats, afraid of an outright vote, were stalling, postponing the discussion from

session to session, so that no action could be taken until Pierce had taken office. The Vicksburg Whig held this opinion:

[It] is perfectly evident that [Badger's] nomination will not be confirmed. We do not think the nomination will be positively and directly rejected, because there are many Democratic Senators who have too much respect for themselves, and the intelligence of the people, to vote for the rejection of so distinguished and upright a jurist as Mr. Badger, but we believe it will be defeated by moving postponements, until the new administration comes into power.⁵⁵

The New York Tribune also saw this tactic, although they were more optimistic as to the eventual outcome:

Every passing hour strengthens the probability that Mr. Badger's nomination will be confirmed, the esprit du corps prevailing in the Senate being likely to prove stronger than the combined efforts of the Whigs and the Democrats of Alabama and Louisiana. If his friends could by any means stop debate on the subject, he would soon be confirmed. But the Senate rules afford no opportunity to enforce the will of a majority so long as the minority choose to talk. As the latter are now aware that they will be defeated on a direct vote, they are playing to prevent the putting of the question until Franklin Pierce may have an opportunity to withdraw the nomination.⁵⁶

On January 24, three days after a "long and stormy" session in which there had been "great confusion" on the subject, the Senate debated the nomination for three hours and then took a test vote -- in the form of a vote on whether to adjourn for the day. The forces against Badger prevailed, twenty-six to twenty-five, with eleven Senators absent or not voting.⁵⁷ On Monday, February 7, the Senate again went into Executive Session to consider the

nomination. Senator Downs of Louisiana wished to speak against the nomination, but being unprepared, he requested an adjournment. A postponement was granted until Friday, February 11, "with the understanding that the matter shall then be settled." After reporting this occurrence of events, "Eye," the Tribune's correspondent in Washington, added, "Mr. Badger's confirmation is certain."⁵⁸

It is important to note that the papers not only contemplated on what was going to happen within the Senate Chamber, they also debated amongst themselves the issues on which the confirmation hung. A major issue was Badger's nonresidency within the Fifth Circuit. On January 14, the New York Times reported that a member of Congress had received certain dispatches from "reliable parties in Mobile" who were upset about Badger's nomination. The dispatches stated that the "Bar of Mobile without distinction of party" was preparing remonstrances to be sent to the Senate against the nomination of Badger, because the nominee lived outside the judicial circuit. Fillmore's nomination was called "disparaging to the Bar and Bench of the Circuit," and the President was denounced for supposedly falsifying "the principle on which he excluded Mr. Crittenden, Hopkins, and Marshall."⁵⁹

The Mobile Advertiser, a Whig paper, responded by saying that the total opposition of the bar of Mobile against Badger reported in the dispatches was "news to us,

as we doubt not it is to the great mass of our readers." The Advertiser went on to say that the only opponents to Badger in their city were a group of secessionists, whom they described as "a little coterie in the neighborhood of St. Francis and Royal Streets." According to the Washington Republic, a Whig paper which copied the Advertiser's article, the "Secessionists of Mobile" were only interested in defeating Badger for political reasons -- "to repay him for the zeal and success of his efforts against the disunion movement."⁶⁰

A Democratic paper in Washington, the Union, became incensed at the Republic's attempt at "making an effort to control the result" of the confirmation battle. During the next three days, the Union contained long editorials against the Badger nomination, copiously quoting from other papers. On January 28, it said that the Advertiser "is alone in its opinion," and proceeded to discuss Badger's non-residency. It said that while a Judge not being a resident of his circuit was "not ... unprecedented, it is certainly a most unusual occurrence," and that the choice of Badger was a great "imputation on the character of the resident bar." Yet the Union's "chief objection" was not Badger's residency, but his politics.⁶¹

The Whig papers answered the residency question in two ways. First, they stressed that the qualifications of a nominee should be the only thing that mattered -- certainly

no one could disparage Badger on his legal ability. The Richmond Whig stated:

[T]his whole pretension of substituting locality for qualification is the poorest clap-trap, and springs from the paltriest motives. There is no sense, no wisdom, no justice to it -- and it is the poor fetch of the ignorant demagogue and greedy office-seeker. The man best qualified is the fittest man for public station.⁶²

Second, the Whigs responded that circuit boundaries were set by the members of Congress, and could be changed at their discretion. A Justice originally assigned to one circuit might have to change at any time. To back this up, they used the example of Justice Peter Vivian Daniel. When first appointed, Daniel, a Virginian, covered North Carolina and Virginia. After just a year on the Court, Congress rearranged the circuits, and Daniel had to begin riding circuit in Mississippi and Arkansas.⁶³

Although misstating several facts, the Petersburg Intelligencer used this defense in an editorial:

The last intelligence from Washington indicates that the Senate will reject the nomination of the Hon. George E. Badger to a seat on the bench of the Supreme Court, on the ground that he is not a resident of the circuit comprising the States of Alabama, Mississippi, Louisiana, Texas and Arkansas, over which he would be required to preside. It is rather late in the day for a democratic Senate to urge this as an objection, for Peter V. Daniel, of the State, was placed on the extreme Southern Circuit; in fact we believe that Alabama and Mississippi were portions of Judge Daniel's circuit at the time of his appointment.⁶⁴

The most forceful opponent of Badger solely on grounds

of residence was probably the New Orleans Delta. It declared:

The nomination and probable confirmation of Mr. Badger to the vacant seat on the United States Supreme Court bench, for a circuit which includes Louisiana and Alabama, are transactions which call for the loud and emphatic reprobation of the whole country. The nomination of an individual to a judgeship, whose jurisdiction is situated more than a thousand miles from his residence -- of whose local law he is profoundly ignorant -- over the hundreds of equally as competent persons resident within the district, is an act which causes every man to startle, and inquire if this is really a republican country, where the people rule -- if the southwestern States are really sovereignties, possessing sufficient population and intelligence to supply proper officials to conduct their affairs -- or whether, by some act of criminality or folly, we have outlawed ourselves from the Union, and become mere provinces, to be furnished, as old Rome supplied her distant colonies, with public officials sent from the vicinity of our imperial capital.⁶⁵

A prominent New Orleans attorney, Thomas I. Durant, opposed Badger because of both his residence and his politics. Durant wrote Jefferson Davis:

The news lately received from Washington excites the liveliest apprehension in my mind that the nomination of Mr Badger of North Carolina to the vacancy on the Supreme Bench for this Circuit will be confirmed by the Senate. I can only look upon such an event as a sort of political calamity. When I was District Attorney Judge McKinley told me from the Bench that he did not know Louisiana law and did not want to know it, yet this was the law it was his official duty to administer: the uncourteous expression showed the condition of his mind, it was filled with contempt for our local system. I fear that Mr. Badger would bear the same will, though no doubt he would never be so uncivil as to Communicate it in the same way. I heard Mr. Badgers views of our system of government expressed at the session of 1849-50 and they were of the extreme consolidation school;

such views are eminently dangerous on the supreme Bench.⁶⁶

The vast majority of the papers that opposed Badger did so on political grounds. Holden in his Standard said that while "Mr. Badger would no doubt make a good Supreme Court judge ... his views of the federal constitution, and of the powers of the federal government, are erroneous to the last degree."⁶⁷ Another North Carolina paper described Badger as "so able a lawyer, yet so dangerous a consolidationist."⁶⁸

The Petersburg Democrat made no secret of where its objections lay:

Mr. Badger's confirmation as Supreme Court judge still hangs in nubibus. That the Senate ought to confirm his appointment is simply preposterous and out of the question. We opposed it on the hop, and are surprised to see our brethren of the press playing the part of laggards. Why place it either on the ground of his living out of the district to which he is appointed? Good enough ground, to be sure, but not that great consideration on which he should be rejected. Mr. Badger is a green-gilled federalist. His ideas of State rights are those entertained by Hamilton, Story, and Kent; his antecedents are all of this poisonous cast of composition; his views of the constitution make the States as counties, and the central head a grand central, power-dispensing machine. It is proposed to elevate a man of this ilk to the bench of the Supreme Court, before which constantly are pending questions involving the delicate relations between the States and their trustee. Such being a plain statement of Mr. Badger's opinions and of the importance of having State rights men on the bench, it is a source of astonishment to our mind that a democratic Senate does not speedily make arrangements to do without him.⁶⁹

Echoing views that North Carolina Democrats had about

Badger in the late 1840s, the Mississippian held that he was worse than a northern abolitionist:

We concur in the opinion of the Mobile Register, that the political principles of the judge should not be overlooked. It is no time to appoint men whose principles lead them to strengthen the powers of the federal government at the expense of the reserved rights of the States. On the question of slavery Mr. Badger is worse than a northern abolitionist, because, though a southern senator, he held that the Wilmot proviso was a constitutional measure.⁷⁰

Finally, the Washington Union drew up political battle lines on this issue, in order to save the constitution from a "deadly enemy."

[T]he chief objection to the appointment of Mr. Badger to the Supreme Bench is an objection on principle -- an objection which should suffice to determine the action of every democrat, at least. As a politician, Mr. Badger is distinguished for his extreme federal notions, which lead him always so to interpret the constitution as to derogate from the rights of the States and to augment the powers of the general government. Timothy Pickering himself was not a more thorough and incorrigible federalist than Mr. George E. Badger. Now, is it possible that any strict-construction State-rights republican democrat can consent that a consolidationist should be intrusted with the power of determining the construction of the constitution of this government?

Would any democrat assist in making a person of Mr. Badger's political principles President for four years? Then why make him a judge of the Supreme Court for life, and thus arm him with the power to carry into effect his centralizing, federal doctrines? Can any man of genuine devotion to the State-rights principles of the democratic party consent to see the bitter antagonist of his political faith interpreting the constitution in accordance with the creed which Mr. Badger professes? In other words, shall we submit the constitution to the mercy of one whom we regard as its deadly enemy? Should any amiable disposition to ratify the appointment of the Executive, or any apprehension of the imputation

of factiousness, persuade a democrat to desert his principles, or rather to surrender them to the enemy?⁷¹

Although not broadcast loudly by the Democratic press, another major reason the Democrats opposed Badger's nomination was that they wanted to save the seat for Franklin Pierce to fill. At least one Democratic paper came out and openly stated this as the reason for its opposition. The Mississippian discussed Bradford's rejection and said that it hoped the Senate would do the same to Badger, because, "the position is one of great importance, and the people expect it to be filled by Mr. Pierce."⁷²

After reviewing all of the reasons given for opposing Badger, many Whigs came to the same conclusion: there was but one real reason at play, politics -- the Democrats wanted one of their own to fill the seat. The Vicksburg Whig commented:

The want of validity in the reasons assigned by Senators and politicians about Washington, for refusing to confirm the nomination of Mr. Badger, makes it but too apparent that the real and only ground of objection to him, is the fact that he has been an able, true, and influential Whig.⁷³

In much the same vein, the Baltimore Sun thought that the only real reason the Badger nomination was being contested by the Democrats was that Millard Fillmore was a lame duck. The Sun wrote that, "there is no personal objection to Mr. Badger, except that he belongs to the opposite party, and his nomination was sent in only seven or

eight weeks previous to the coming in of a new administration."⁷⁴

The reason why the Democrats did not come right out and say that the seat should be saved for Pierce, is that the Whigs would have brought up Peter Daniel's nomination in 1841. Only a week before William Henry Harrison's inauguration, Justice Philip P. Barbour died. President Martin Van Buren, always an opportunist, nominated Daniel the next day, and made sure that his political operatives pushed the nomination through the Senate. Final approval came on the last night of the session, with most Whigs having absented themselves from the Senate chamber in hopes of preventing a quorum.⁷⁵ Twelve years later, the Richmond Whig still remembered:

As to the objections urged by the Locofocos ... that his nomination is made by a President about to retire from office -- may they not be upset by reference to the practice of the Locofocos themselves?... Did not a vacancy happen on the Supreme Bench just at the close of Van Buren's Administration, and did he not on the last day, or rather night of the session, make a nomination, and was that nomination pushed through even after midnight by a bare quorum, by the expiring party? When the Whigs shall ever be guilty of such indecency, we will join in denouncing them.⁷⁶

On Friday, February 11, 1853, George Badger's fate as a candidate for the Supreme Court was finally decided. The Senate met in Executive Session, and Benjamin Fitzpatrick, Democrat of Alabama, moved that the nomination be postponed until March 4, 1853. The motion passed, by a vote of twenty-six to twenty-five.⁷⁷

Badger received the vote of every Whig voting (20), plus the votes of Democrats Thomas Jefferson Rusk of Texas and Isaac Walker of Wisconsin, and Free Soilers Chase, Hale and Sumner; all twenty-six votes in opposition were cast by Democrats. Not voting were Whigs Dixon (Kentucky), Pearce (Maryland) and, of course, Badger, and Democrats Clemens (Alabama), Sebastian (Arkansas), Borland (Arkansas), Douglas (Illinois), Shields (Illinois), Atchison (Missouri) and Brodhead (Pennsylvania). One seat, from New Jersey, was vacant. [For voting, see Table 4].

Although the action was officially listed as a "postponement," everyone at the time knew that the Senate had, in fact, rejected the Badger nomination.⁷⁸ The next day, Badger wrote Fillmore a gracious letter thanking him for the nomination, and on February 24, the President sent William Macou's name to the Senate.⁷⁹

Five days after the rejection, the New York Times wrote an angry editorial denouncing the Senate's action. The paper believed that the rejection was based solely on political grounds.

The rejection by the United States Senate of Mr. Badger's nomination for Judge of the Supreme Court, is one of those purely party operations which the country will not sustain. There was no possible objection to the Senator from North Carolina, except that he is a Whig. No man dared utter a word against his private character; no breadth of suspicion has tarnished his fame as a jurist; and there are none to be found to dispute that he would have carried to the position to which the President desired his elevation, distinguished abilities, great caution, brilliant

intellect, profound attainments, and the most scrupulous regard for the blind goddess whose decrees it would have become his duty to dispense. But the deed is done. All considerations of justice and the public good have been sacrificed to partizan zeal; and the country will hold to their responsibility the Senators who have so abused the trust confided to them.⁸⁰

Over the last 135 years, all scholars of the staffing process have agreed that Badger's rejection was due to partisan politics. From Charles Warren to Carl Swisher to Henry Abraham, the story line has read: Badger was defeated because he was a strong Whig nominated by a lame duck President in the face of a hostile Senate.⁸¹ Yet on the same day that the Times wrote the above editorial, North Carolina Democratic Congressman Abraham W. Venable was writing from Washington that, "Mr. Badgers nomination failed because he did not live in the District and for that cause alone. The bitter opposition to his appointment by the Senators from Louisiana and Alabama and Mississippi caused the defeat."⁸² So the question remains, why was George Badger not confirmed by the U.S. Senate?

First, it should be realized that there probably is not one reason for Badger's defeat. Twenty-six Senators voted against him, while ten chose not to vote at all. Since he lost by one vote, if any one of these thirty-six men had voted for Badger his nomination would not have been "postponed." Almost assuredly, these thirty-six men did not act as they did for exactly the same reason(s). As pointed out by the New York Times, it is probable that Badger would

have been confirmed on January 14, had Senator Underwood not decided to give his unnecessary stim-winder. Also, Senator Robert F. Stockman's resignation could be seen as a reason for Badger's defeat -- Stockton was a Democratic Senator from New Jersey who had decided to vote in favor of Badger; he resigned his seat, though, several days before the final vote.⁸³

As for the major reasons, it appears probable that Badger's nonresidency did play a role in several Senators' votes. This is especially true for two Southern Democrats, Jeremiah Clemens of Alabama and William Sebastian of Arkansas. It was reported on January 20 that both Clemens and Sebastian would support Badger, with Clemens doing so "against an extraordinary outside pressure."⁸⁴ Also, both men had "paired off" with two other Senators in support of Badger for parts of January.⁸⁵ Yet on February 11, both men had not paired off, and both were absent from the Senate.

The Fayetteville Observer commented on this:

[Clemens and Sebastian] who are said to have been favorable to the nomination were absent. We suppose, however, that they were absent because they would not vote against Mr. Badger, and yet were unwilling to vote for him, in the face of the hostility of their section of the country, where the feeling was very strong against the appointment of a Judge residing out of the Circuit.⁸⁶

Badger's residence might have also affected the actions of another Senator, Lewis Cass. The Washington correspondent of the New York Times reported on January 24,

that, "Mr. Cass will not vote against Mr. Badger, although he will not vote for him, on the ground that Badger is a non-resident of the Judicial District."⁸⁷ Despite this acknowledgement, Cass voted for postponement on February 11.

Thus, Badger possibly lost three or more votes because of his nonresidence in the Fifth Circuit. Yet it should be pointed out that mere residence in the judicial circuit did not mean automatic confirmation for a nominee. Both Bradford and Macou were from the Fifth Circuit, yet Fillmore could not even get the Senate to consider their nominations.

Another possible reason for Badger's rejection is that some Senators voted against him on ideological grounds. The Democratic papers of the day were not calling Badger merely a Whig, but a "green-gilled federalist" and the like. Yet, one can not tell how much attention the Senate actually paid to these Badger-bashings. There have been writers, though, who have attributed Badger's rejection to his specific views on slavery.⁸⁸

Overall, the vast majority who have studied Badger's rejection have attributed it to politics -- the Democrats did not want to give a seat to the Whigs with Franklin Pierce about to enter the White House. One glance at the vote helps to explain why this view has such support. The Whigs were 20-0 in favor of Badger, the Democrats, 2-26 against.

Historically, lame duck presidents have had a tough time getting their nominations confirmed [See tables 5 and 6]. Of the twenty-two Supreme Court nominations made by Presidents in their last year in office, only ten have been confirmed -- and of these ten, only eight have actually served. When the next President is a member of the other party, the success rate is seven out of eighteen. Even more telling is when the Senate is in the other party's control; then, lame duck presidents have been successful only 25% of the time, three out of twelve nominations. When both the Senate and the incoming Presidency are controlled by the opposition, as was the case in Badger's nomination, lame ducks have succeeded only twice in ten attempts. Of the twenty-three rejections, postponements or no actions by the Senate, ten have come against lame duck nominations.

Badger was undoubtedly disappointed by the Senate's action, although Kemp Plummer Battle mentioned that he "never complained" about it.⁸⁹ Without a doubt, a position on the Supreme Court would have suited Badger's talents perfectly, and he would have added much to that body. As it was, Fillmore's nomination of William Macou was not acted on by the Senate, and thus Pierce received the chance to fill the seat. He nominated Alabamian John A. Campbell, who was easily confirmed.

It is interesting to note how this episode changed Badger's views on circuit-riding. In 1848, a bill came

before the Senate to exempt the Supreme Court Justices from their circuit duties for a year, so that the backlog of cases pending before the Supreme Court could be reduced. Badger opposed such a measure, because its natural consequence would be the "ultimate separation of judges from their circuit duties."⁹⁰ By contrast, during his last session in the Senate, Badger supported the idea of relieving the members of the Court from their circuit duties.⁹¹

As mentioned above, Badger is the only sitting U.S. Senator ever to have been rejected by his own body for a seat upon the high court. One wonders how many Senators felt ashamed of their actions. Even more so than today, the Senate in Badger's time had a "club" atmosphere about it, and Badger, being a member of its inner-circle, formed many close personal friendships. It is probable that the unique, unanimous resolution expressing regret upon Badger's retirement was seen by some to be a gesture of apology -- especially since it was introduced by Stephen Adams, a Mississippi Democrat who had voted for postponement.

Finally, it is fascinating to ponder how different the country's history might have been, had Badger been confirmed. Four years after his rejection, the Supreme Court handed down one of its most infamous decisions, Dred Scott v. Sandford. By a six to two vote, with Justice John A. Campbell in the majority, the Court declared that Scott

was still a slave. In his plurality opinion, the one which most people took to be the majority's view, and thus caused the most controversy, Chief Justice Roger Taney held:

1) blacks, whether slave or free, were not citizens, and thus did not possess any Constitutional rights, and, 2) the Missouri Compromise was unconstitutional, because Congress did not possess the power to regulate slavery in the territories -- this latter point was agreed upon by a majority of the Justices, including Campbell.⁹²

Obviously, Badger, if he had been on the Court, would have disagreed with both holdings. As his career before the North Carolina state courts amply demonstrates, Badger felt that blacks, especially free blacks, were entitled to many of the same Constitutional privileges as whites. Also, as can be seen from his speeches in the U.S. Senate, he fervently believed that Congress could, Constitutionally, do as it wished in regard to establishing or forbidding slavery in the territories. Thus, had Badger been on the Court, it seems fairly certain that he would have joined the dissenters, Curtis and McLean, and made the vote five to three. Also, it's conceivable that through his moderation and rigorous logic, Badger could have changed one or more of the votes of his would-be brethren. Unfortunately, no one will ever know what affect a Mr. Justice Badger would have had.

XI. 1855-1866: U.S. Supreme Court Practice And Last Years

Ten days after Badger left the United States Senate, the Raleigh Register announced that he had formed a partnership with J.M. Carlisle of Washington, for the purpose of practicing law before the United States Supreme Court and the Court of Claims.¹ Several weeks later, Badger wrote his good friend Senator James A. Pearce of Maryland:

Having thrown away eight years of my life in the Senate, I wish now to make some provision for my children, by attending the Supreme Court and the Court of Claims -- If you can throw anything in the way of a young professional brother, I pray you not to forget him. At all events I hope to get enough to defray expenses and enable us to have a frolic together occassionally.²

For many years, James Mandeville Carlisle was one of the nation's leading attorneys. He has been described as, "A remarkably sound and versatile lawyer, of quick perception, with an intuitive grasp of vital points, ... at his best in international cases involving complicated issues, where his mastery of detail, wonderful memory, and dialectical skill had full sway."³ Obviously, he and Badger had much in common.

Badger's career before the Supreme Court did not begin in 1855, though, for over the previous seven years he had been one of the Court's leading advocates. Although he had helped Webster prepare for the Lattimer case in 1839, and had planned to argue it with him, Badger's first appearance before the Court was in United States v. Daniel et al., in 1848.⁴ This case came from North Carolina, and involved the

potential liability of the executors of the late U.S. Marshal Beverly Daniel, for acts done by those under Daniel's supervision. Daniel, it will be recalled, was forced out of office by President Van Buren in 1840, and Badger had attended a dinner in his honor where he gave a toast.

Badger did not become heavily involved in the Court's docket, though, until the following year, 1849; in late 1848, John J. Crittenden was elected Governor of Kentucky, and when he left Washington, he gave Badger his Supreme Court cases. In January of 1849, Badger wrote Crittenden:

I came here a week before the commencement of the Session, on purpose to look a little in advance into your business [before the Supreme Court] -- I have given it my best attention and rely upon it, whatever else may be forgotten or overlooked, your business, if life and health fail not, shall command my close attention and the exertion of my best ability -- The case of Lowrie [sic] & Erwin and that of Taylor & Patton's have, as you will see from the Intelligencer have been already argued -- In the former what ever was necessary in addition to Mr. Brent's full & able opening argument, to secure success, I flatter myself was done in my reply -- As to the latter case, I think I hazard nothing in saying that I yesterday used up Underwood & Emery & left not a doubt behind of our right to a reversal -- In order, at once, to allay your fears and check your vain self confidence, I will add that besides other complimentary notices of my efforts which have reached me, I hear that one of the Judges said that your clients had made an advantageous exchange of Counsel! Now Sir what think you of that? It is enough to turn the head of a plain North Carolina lawyer and would turn mine, but for a modesty in me which no praise can inflate into vanity.⁵

Between 1848 and 1860, Badger would argue at least forty-four cases before the Supreme Court. [For a list of those cases, along with Badger's co-counsels and opposing counsels in each, see Table 7]. In addition to Carlisle, some of the finest lawyers in America argued with or against Badger: John J. Crittenden, Reverdy Johnson, William Beach Lawrence, Richard Smith Coxe, Ransom Hooker Gillet, Thomas Ewing, Caleb Cushing, and Judah P. Benjamin, to name a few. Badger held his own with these men, and appears to have won more than he lost.

As for subject matter, the majority of his cases involved disputes over land titles, civil procedure, banking or debtor/creditor relations. Badger also argued several admiralty cases, and he was involved in a case concerning what would happen to the Methodist Episcopal Church's book fund after that denomination split into separate Northern and Southern organizations.⁶

Badger's reputation among the members of the national bar appears high. Thomas Hart Benton publicly praised Badger by saying that he was "not excelled in his knowledge of the common law by any man in the Union."⁷ When Rufus Choate had an important admiralty case before the Court, but could not attend, he asked Robert C. Winthrop, Speaker of the U.S. House, whom he should hire as his replacement. Winthrop suggested Badger, and Choate replied, "what does Badger know about maritime law? He never had a case in his

life?" To this, Winthrop responded, "Never you mind, you employ him, and then hear him before the court. You will think that maritime law is his specialty -- that he has been practicing in maritime courts all his life."⁸ Finally, in what may be the highest compliment to an American lawyer possible, upon being asked whom he considered to be the ablest lawyer practicing before the United States Supreme Court, Justice John McLean answered, "George E. Badger."⁹

Turning now to other events in Badger's later years, he followed national politics with a keen interest. Three weeks after leaving the Senate, he wrote his friend Pearce, "I am not sorry to be done with public life -- 'sour grapes' you may say -- well, say on." Yet, in this letter he expressed sorrow at the death of his party: "I believe what you say of the Whig Party. I share in your regret at its dissolution." Also, he stated his hope that the Know Nothings might prove beneficial:

I hope more, for the future, from the K.N.s than you do. Notwithstanding some [illeg.] free soil exhibiting, I believe their influence will prove Salutary and Conservative. My hopes are greatly strengthened by the decided hostility manifested towards them by Greeley, Weed ... on one hand and by the Union, Enquirer ... on the other.¹⁰

While he privately wished the Know Nothing/American Party success, he never publicly joined their ranks. When asked to address an American meeting in Raleigh in 1855, he instead sent a letter; and, in 1856, he neither attended the American state convention, nor publicly campaigned for any

of their candidates.¹¹ He was upset, though, that many former Whigs voted Democratic in the August state elections: "Our election here day before yesterday has resulted in a most disastrous defeat to us and an amazing triumph to democracy -- Our old line Whigs behaved like apes -- have turned democrats have ruined the state -- Heaven help us!"¹²

As for the Presidential election of 1856, there was some mention of getting Badger to be the American Vice Presidential candidate, and this greatly aggrieved staunch American Kenneth Rayner, who wanted the spot himself:

Well, I picked up the Raleigh Register that came last Friday -- and then I saw that the District convention of the American party in the 8th (Clingman's) District, held to appoint a Delegate to the Phila. nominating convention on the 22nd Feby. had nominated Fillmore for President & the Hon. Geo. E. Badger for Vice President, and had instructed their Delegate to vote accordingly. Now, Crudup, just look at this thing. The new-workers in that convention could not ignore the fact, that my name had been mentioned in connexion with both the Presidency and Vice-Presidency -- and that Badger's has not been.... You know there is no man in the State who has performed more labor in organizing and sustaining the party than I have. What has Mr. Badger done? He is not a member of the order -- he has neither spoken for it nor written for it. He has never publicly committed himself in favor of its principles. Last summer, when I was exposing myself under that hot weather, working like any dray-horse for the party, Mr. B was sitting quietly at home enjoying himself at his ease.... [I]t is no presumption in me to say that as to Mr. Badger his claims on the American party can not be compared with mine. There are many men in the country to whom I am willing to defer, and under whose banner I am willing to fight, but Geo. E. Badger is not one of them.¹³

In November, Badger supported Fillmore for the Presidency, although not because the New Yorker ran under the American banner. Several months earlier, Badger wrote his friend Pearce, who had decided to vote for Buchanan:

Now you very well know that I do not agree with you in the [illeg.] presidential contest. We are both Whigs. Neither of us is, has been or ever will be, I am confident, a member of the "American Party." I held it to be my duty as a man, a citizen & a whig to support Mr. Fillmore. I shall, if I live, vote for him, if no other man in North Carolina shall do so.¹⁴

Badger must have been overjoyed when his Whig Party was resurrected in 1859-1860. During the gubernatorial election in the latter year, Whigs took the political offensive, and discovered a highly popular issue on which to run: ad valorem taxation -- a proposal to tax all property, including slaves, equally, according to its true value.¹⁵ Badger wrote Crittenden in May of 1860:

Every thing is going on here beautifully -- Equal taxation is overruling everything and everybody opposed to it and we have a cheering prospect of electing a Whig Governor, though Ellis was elected two years ago by a majority of 16,000 -- But it is of the very highest importance to carry the legislature also -- we have three judges and a Senator to elect.¹⁶

The Whigs did do very well, although they were not victorious. Gubernatorial candidate John Pool received 47.2% of the vote, while the Democrat's majority on joint ballot in the legislature was reduced from fifty-eight, in 1858, to just sixteen.¹⁷ Had the Whigs captured the General Assembly, there is little doubt that many of them would have

wanted to restore Badger to his seat in the Senate -- especially considering that that seat was then held by Clingman.

In the Presidential election of 1860, Badger was an ardent supporter of Constitutional Union Party candidate John Bell, Badger's former fellow Cabinet officer and Senator. The North Carolinian stumped the state for his friend, and was an elector at large on the Bell and Everett ticket.¹⁸

After his retirement, the Senate appointed Badger to the Board of Regents of the Smithsonian Institution -- considering his intellectual curiosity, this probably pleased him greatly.¹⁹ Also, while in Raleigh, he served as a local trial justice.²⁰

In 1858, upon the death of Chief Justice Frederick Nash, Badger was mentioned one last time for a seat upon the North Carolina Supreme Court. With the governor not making a nomination, and no one actively campaigning for the position, a number of distinguished attorneys had their names nominated in the legislature -- Ruffin, Badger, Graham, Moore, Saunders, Eaton, etc. Upon voting, Ruffin received a majority, with 81 votes, while Badger came in second, with 22.²¹ The former Chief Justice agreed to return to the bench, although he resigned the next year.

Most of Badger's time in retirement was spent enjoying, and looking after, his large family. In 1856, he mentioned

to Crittenden, "I have now for some time been acting the part of a Patriarch, with my nine children, besides grandchildren -- daughters husbands, stepson and wife all assembled under our roof."²² Badger's letters during this period are filled with worries, amusing comments and general observations about his children -- in 1855, Badger's nine children ranged in age from nine to twenty-eight.²³

Badger's last public service was as a delegate to North Carolina's Secession/Constitutional Convention of 1861-1862. Upon Lincoln's election in November of 1860, and South Carolina's Ordinance of Secession the following month, there grew considerable secession sentiment in the Old North State. In January, 1861, the legislature passed a bill calling for a statewide election on February 28 to determine if a convention, to consider secession, should be held.

The voters were also to decide at this election who their delegates would be, were the convention approved. Badger, who was, of course, a strong Unionist, ran as a delegate from Wake. He was joined on the Unionist ticket by Quentin Busbee and, of all people, William Woods Holden. Holden had been denied the Democratic nominations for Governor and U.S. Senator in 1858, and since that time had severely moderated his stances.²⁴ In February, the call for a convention lost by only 667 votes, 47,338 to 46,671, although one historian has determined that of the would-be delegates chosen, 81 out of 120 were Unionists.²⁵ In Wake,

the call for a convention passed, 1406 to 1246, but the three Unionists received hefty majorities:²⁶

Badger (U)	1952	Wilder (S)	758
Holden (U)	1937	Rand (S)	758
Busbee (U)	1926	Lewis (S)	745

Until Lincoln's call for troops in April, after the firing on Fort Sumter, Badger fervently believed that secession (of North Carolina), and civil war, could be avoided. On March 8, he wrote James W. Bryan expressing the belief that a "let alone" policy could save the Union. Badger wanted Congress to pass two laws: a resolution recognizing the independence of the seceded states, and "a joint resolution offering the plan of the peace conference or something equivalent to the states as amendments of the constitution." If this were done, he predicted, "we shall have peace & quiet -- and in three years the 'confederation' will bust up and all its members (but S.C.) will be asking for readmission."²⁷

Lincoln's call for troops shattered such plans, and turned Badger, along with almost every other Unionist, into a proponent of disunion.²⁸ Shortly thereafter, the General Assembly, called into special session by the Governor, called for a convention to meet on May 20, with the delegates to be elected on May 13. In Wake, the former Unionists chose Badger, Holden and Kemp Plummer Battle to be their candidates, Busbee being ill. The original secessionists picked three influential and moderate men for

their ticket: former Governors Charles Manly and Thomas Bragg, and George W. Mordecai.²⁹ Despite a much closer election, the results were the same:³⁰

Badger	1193	Mordecai	1110
Battle	1192	Manly	1097
Holden	1115	Bragg	1091

According to Kemp Plummer Battle, Badger was quite pleased by his first place showings in both 1861 elections considering how the "aristocratic tendencies" label had been used against him for so many years.³¹ Once in the Convention, Badger took a leading place among such statesmen as Ruffin, Graham, Rayner, Reid, Venable, Biggs, Brown, Edwards, William S. Ashe, Burton Craige and R.S. Donnell.³² Most of the traits characteristic of Badger in the U.S. Senate were found of him in the Secession Convention, too.³³

Badger had never believed in the right of secession, although he did think it possible for a state to leave the Union through the natural right of revolution. Thus, when the Convention met on May 20, he introduced "An Ordinance Declaring the Separation of North Carolina from the United States of America," a proposal "based upon the right of revolution, carefully avoiding any reference to the theory of secession."³⁴ It read in part:

Therefore this Convention, now here assembled in the name and with the sovereign power of the people of North Carolina, doth for the reasons aforesaid and others, and in order to preserve the undoubted rights and liberties of the said people, hereby declare all connection of government between this State and the United States of America dissolved and abrogated, and this State to

be a free, sovereign and independent State....
 And appealing to the Supreme Governor of the World
 for the justness of our cause, and beseeching Him
 for His gracious help and blessing, we will, to
 the uttermost of our power and to the last
 extremity, maintain, defend and uphold this
 declaration.³⁵

Badger's ordinance did not please the radical secessionists, who held a majority, and was thus defeated, 72 to 40.³⁶ In its place, Burton Craige proposed a simple ordinance of secession, which was adopted. The next day, all one hundred and twenty delegates signed this ordinance, thus taking North Carolina out of the Union.³⁷

Once the Old North State seceded, Badger supported her war efforts completely. As mentioned above, all five of his sons served in the Confederate States Army.

Badger's support for the Confederacy led to an interesting episode in 1862. After leaving the U.S. House in 1853, Edward Stanly had removed to California to seek his fortune. There, he became a Republican, and when North Carolina left the Union, he refused to return to his native state and aid her efforts.³⁸ He did return, though, in 1862, when Abraham Lincoln appointed him military Governor of North Carolina -- the Union army occupying a large portion of her eastern seaboard. Stanly wished to somehow return North Carolina to the Union, and he was told by John S. Ely of New York that Badger would be the best person to "foster Union sentiment" in the state. During May, 1862, Stanly tried to open lines of communication with his cousin,

but to no avail.³⁹ In a letter to Ely, though actually meant for Stanly, Badger declared:

There is no union feeling in North Carolina, as you suppose and is probably supposed by the generality of northern men. There was in the State a very strong union feeling, a strong love for the Union as established by our forefathers, but as soon as Mr. Lincoln's proclamation of April, 1861, appeared, offering us the alternative of joining that armed invasion of our southern sister states for their subjugation, or resisting the authorities of the United States, our position was taken without a moment's hesitation. A convention was promptly called, and instantly, without a dissenting voice, that convention resolved to take our side with the already seceded states, and share their fate for good or evil. From that moment, however we may have differed in other things, there has not been and there is not any difference; hence our people with one heart sprang to arms.

We look with horror at the thought of being again united in any political connection with the North. We would rather [by] far that our State should be a colony of England, or France, or Sardinia. The North may be able (though we do not believe it) to conquer us, and even to keep us conquered, and if it should be the wise and good purpose of the Almighty that this should happen, we shall endeavor to suffer with patience whatever ills may befall us; but a voluntary return to any union with the North we cannot, will not accept on any terms. A revival of any union sentiments is an impossibility.⁴⁰

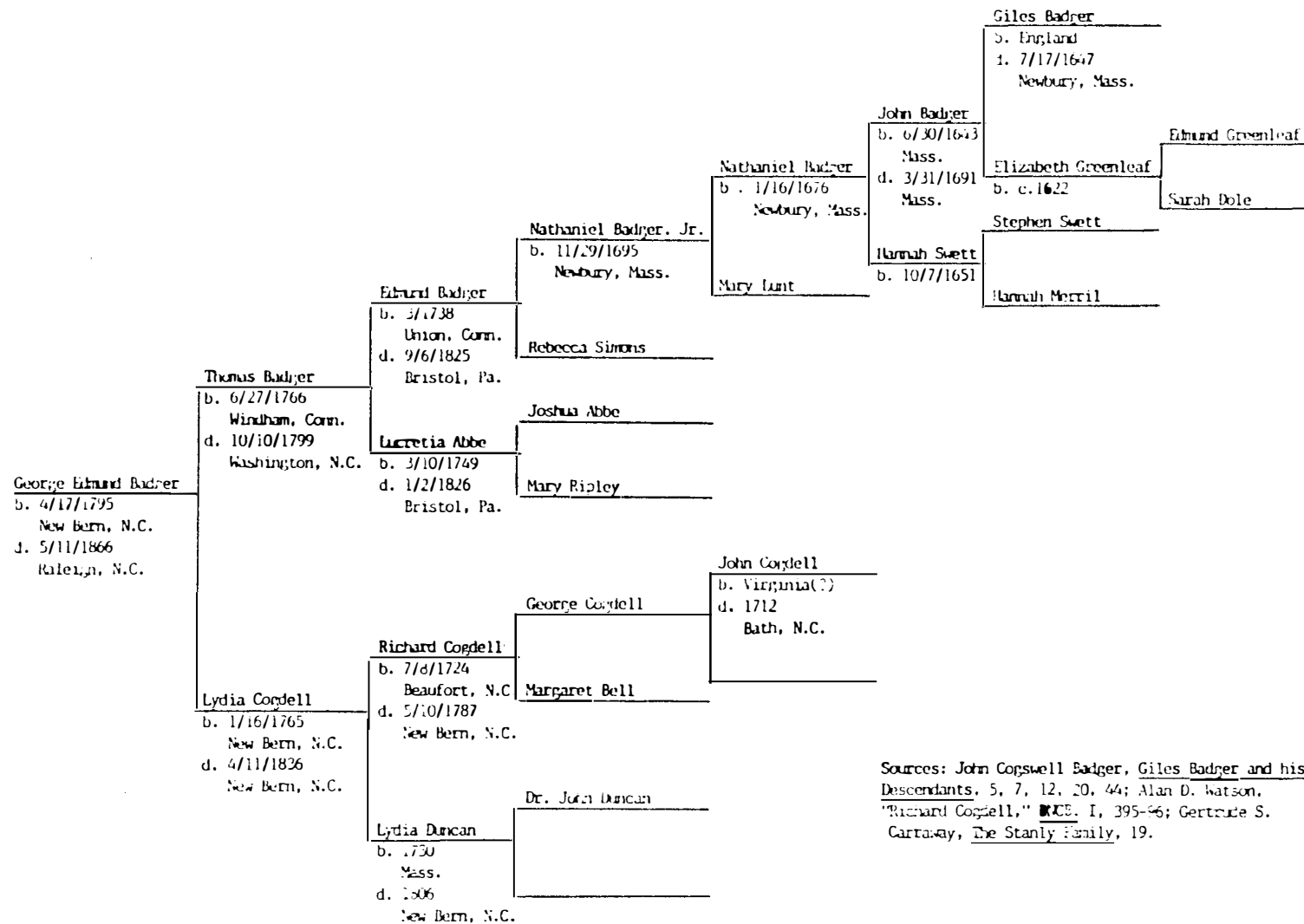
As for Stanly personally, Badger told Ely:

Say this to him. If he wishes the honorable name of Stanly to become a by-word and a reproach, and to be spoken with scorn and hatred by North Carolinians henceforth and forever, let him prosecute his present mission. If he does not wish this -- let him return whence he came, and leave us to fight out this contest as best we may, without his interference.⁴¹

This would be Badger's last major foray into public affairs, for on January 5, 1863, while out on a morning

stroll, he suffered a paralytic stroke. This severely limited his ability to speak, although he retained his mental powers, continued to read and was able to walk with assistance. In May of 1866, he suffered another stroke, and died on the eleventh of that month, at the age of seventy-one.⁴²

He was buried in Oakwood Cemetery in Raleigh, and during his funeral, "Hundreds of persons, of all conditions, sexes and colors, finding it impossible to gain admission to the church ... assembled in the graveyard previous to the arrival of the corpse and to its approach testified their respect for the deceased by uncovering."⁴³ Clearly these mourners recognized that North Carolina had lost one of her greatest sons.



Sources: John Cogswell Badger, Giles Badger and his Descendants, 5, 7, 12, 20, 44; Alan D. Watson, "Richard Cogdell," NCES, I, 395-96; Gertrude S. Cartaway, The Stanly Family, 19.

Table 1: The Ancestry of George E. Badger

Table 2: Some Selected Members of the Cogdell/Stanly/Badger Family

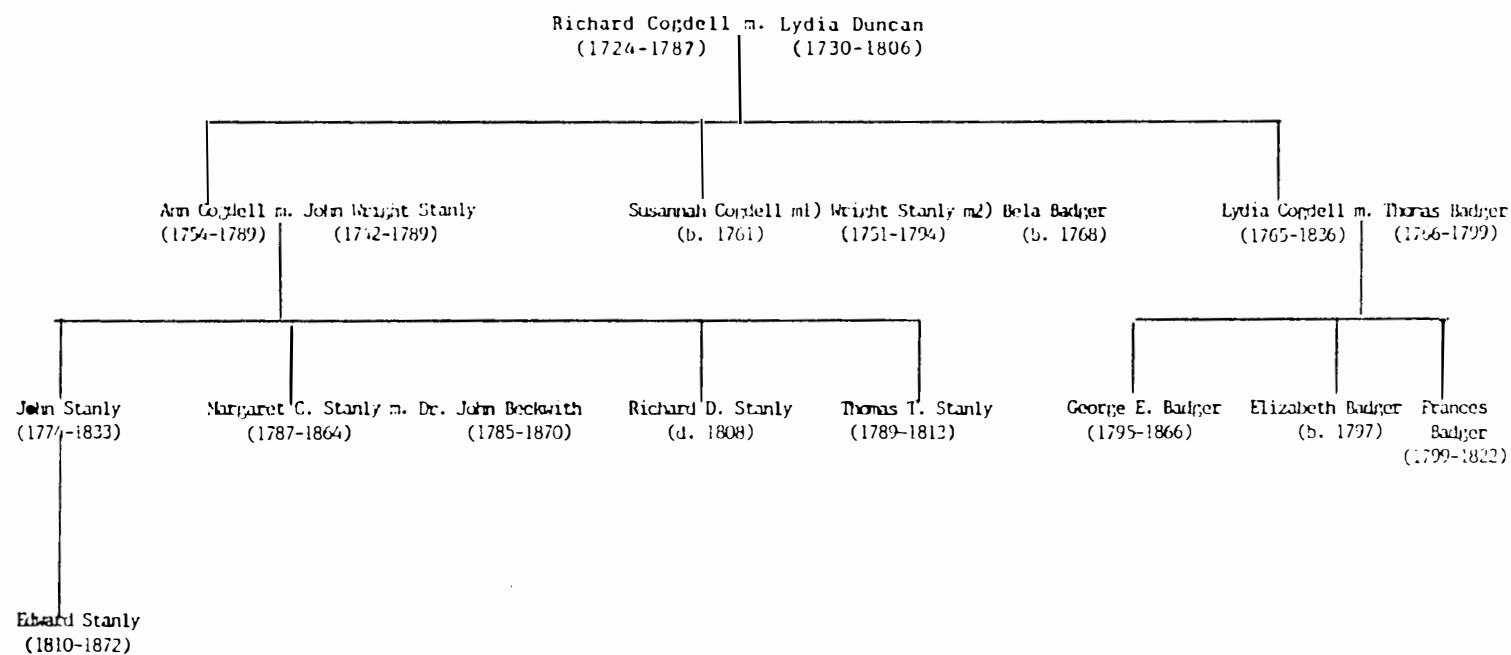


Table 3: Cases Argued by George E. Badger before
the North Carolina Supreme Court, 1825-1846

<u>TERM</u>	<u>LAW</u>	<u>EQUITY</u>	<u>TOTAL</u>	<u>%</u>
	<u>Badger's/Total</u>	<u>Badger's/Total</u>	<u>Badger's/Total</u>	
June 1825	8/36	1/ 2	9/38	23.7
Dec. 1825	7/29	1/ 6	8/35	22.9
June 1826	6/14	4/11	10/25	40.0
Dec. 1826	9/29	6/ 8	15/37	40.5
June 1827	7/28	5/ 9	12/37	32.4
Dec. 1827	9/31	5/ 9	14/40	35.0
June 1828	22/48	5/13	27/61	44.3
Dec. 1828	11/18	4/ 5	15/23	65.2
June 1829	13/34	11/15	24/49	49.0
Dec. 1829	1/12	0/ 4	1/16	06.3
June 1830	21/44	11/20	32/64	50.0
Dec. 1830	3/29	5/15	8/44	18.2
June 1831	16/39	10/21	26/60	43.3
Dec. 1831	11/41	6/13	17/54	31.5
June 1832	4/10	---	4/10	40.0
Dec. 1832	22/60	11/23	33/83	39.8
Dec. 1833	33/78	12/25	45/103	43.7
June 1834	16/45	4/11	20/56	35.7
Dec. 1834	13/32	7/10	20/42	47.6
June 1835	4/23	8/14	12/37	32.4
Dec. 1835	9/34	7/13	16/47	34.0
June 1836	9/25	7/19	16/44	36.4
Dec. 1836	9/36	6/17	15/53	28.3
June 1837	15/53	9/16	24/69	34.8
Dec. 1837	4/32	4/14	8/46	17.4
June 1838	8/36	6/24	14/60	23.3
Dec. 1838	7/42	1/15	8/57	14.0
June 1839	13/41	17/24	30/65	46.2
Dec. 1839	14/49	8/19	22/68	32.4
June 1840	12/47	8/22	20/69	29.0
Dec. 1840	6/38	12/30	18/68	26.5
Dec. 1841	9/43	4/17	13/60	21.7
June 1842	22/56	7/28	29/84	34.5
Dec. 1842	12/57	7/27	19/84	22.6
June 1843	9/66	4/39	13/105	12.4
Dec. 1843	7/51	6/25	13/76	17.1
June 1844	17/63	10/22	27/85	31.8
Dec. 1844	7/64	9/25	16/89	18.0
June 1845	12/77	7/25	19/102	18.6
Dec. 1845	14/58	19/41	33/99	33.3
June 1846	7/47	7/19	14/66	21.2
<u>TOTAL</u>	<u>458/1695</u>	<u>281/715</u>	<u>739/2410</u>	<u>30.7</u>
PERCENTAGE	27.0%	39.3%	30.7%	

Table 4: The United States Senate's Vote on Postponing
Badger's Nomination to the U.S. Supreme Court, 1853.

For Postponement (against Badger)			Against Postponement (for Badger)		
Name	State	Party	Name	State	Party
Adams, Stephen	Miss.	Dem.	Bell, John	Tenn.	Whig
Bayard, James	Del.	Dem.	Brooke, Walker	Miss.	Whig
Bradbury, James	Me.	Dem.	Chase, Salmon	Ohio	F.S.
Bright, Jesse	Ind.	Dem.	Clarke, John	R.I.	Whig
Butler, Andrew	S.C.	Dem.	Cooper, James	Pa.	Whig
Cass, Lewis	Mich.	Dem.	Davis, John	Mass.	Whig
Charlton, Robt.	Ga.	Dem.	Dawson, William	Ga.	Whig
DeSaussure, Wm.	S.C.	Dem.	Fish, Hamilton	N.Y.	Whig
Dodge, Augustus	Iowa	Dem.	Foot, Solomon	Vt.	Whig
Downs, Solomon	La.	Dem.	Geyer, Henry	Mo.	Whig
Felch, Alpheus	Mich.	Dem.	Hale, J.P.	N.H.	F.S.
Fitzpatrick, Benj.	Ala.	Dem.	Jones, James	Tenn.	Whig
Gwin, William	Calf.	Dem.	Mangum, Willie P.	N.C.	Whig
Hamlin, Hannibal	Me.	Dem.	Miller, Jacob	N.J.	Whig
Houston, Samuel	Tx.	Dem.	Morton, Jackson	Fla.	Whig
Hunter, R.M.T.	Va.	Dem.	Phelps, Samuel	Vt.	Whig
James, Charles	R.I.	Dem.	Pratt, Thomas	Md.	Whig
Jones, George	Iowa	Dem.	Rusk, Th. Jeff.	Tx.	Dem.
Mallory, Stephen	Fla.	Dem.	Seward, William	N.Y.	Whig
Mason, Jms. Murray	Va.	Dem.	Smith, Truman	Conn.	Whig
Norris, Moses	N.H.	Dem.	Spruance, Presley	Del.	Whig
Pettit, John	Ind.	Dem.	Sumner, Charles	Mass.	F.S.
Soulé, Pierre	La.	Dem.	Underwood, Jos.	Ky.	Whig
Toucey, Isaac	Conn.	Dem.	Wade, Benjamin	Ohio	Whig
Weller, John	Calf.	Dem.	Walker, Isaac	Wis.	Dem.
Dodge, Henry	Wis.	Dem.			

Absent or Not Voting

Name	State	Party
Badger, George	N.C.	Whig
Clemens, Jeremiah	Ala.	Dem.
Sebastian, Wm.	Ark.	Dem.
Borland, Solon	Ark.	Dem.
Douglas, Stephen	Ill.	Dem.
Shields, James	Ill.	Dem.
Dixon, Archibald	Ky.	Whig
Pearce, James	Md.	Whig
Atchison, David R.	Mo.	Dem.
Brodhead, Richard	Pa.	Dem.
one vacancy	N.J.	

Voting Totals

26	Against Badger (for postponement)
25	For Badger (against postponement)
7	Democrats Not Voting
3	Whigs Not Voting
1	Vacancy
62	Total Senate Seats
<hr/>	
23	Whigs -- 20 For GEB 0 Ag. GEB 3 n.v.
35	Dems. -- 2 For GEB 26 Ag. GEB 7 n.v.
3	F.S. -- 3 For GEB 0 Ag. GEB 0 n.v.
1	vac. -- 1 n.v.
62	seats -- 25 For GEB 26 Ag. GEB 11 n.v.

Table 5: Lame Duck Appointments to the U.S. Supreme Court
[Appointments Within the Last Year of a President's Term]

President	Nominee	Date	Outcome	Date	Senate Composition		
Adams, J.	Jay	18 Dec 1800	C, D	19 Dec 1800	F 19	DR 13	
Adams, J.	Marshall, J.	20 Jan 1801	C	27 Jan 1801	F 19	DR 13	
Adams, J.Q.	Crittenden	17 Dec 1828	P	12 Feb 1829	D 28	NR 20	
Jackson	Catron	3 Mar 1837	C	8 Mar 1837	D 27	W 25	
Jackson	Smith	3 Mar 1837	C, D	8 Mar 1837	D 27	W 25	
Van Buren	Daniel	26 Feb 1841	C	2 Mar 1841	D 28	W 22	
Tyler	Walworth	13 Mar 1844	P, W	15 Jun 1844	W 28	D 25	0 1
Tyler	King	5 Jun 1844	P	15 Jun 1844	W 28	D 25	0 1
Tyler	King	4 Dec 1844	P, W	23 Jan 1845	W 28	D 25	0 1
Tyler	Nelson	4 Feb 1845	C	14 Feb 1845	W 28	D 25	0 1
Tyler	Read	7 Feb 1845	N.A.		W 28	D 25	0 1
Fillmore	Bradford	16 Aug 1852	N.A.		D 36	W 23	FS 3
Fillmore	Badger	10 Jan 1853	P	11 Feb 1853	D 35	W 23	FS 3
Fillmore	Micou	24 Feb 1853	N.A.		D 35	W 23	FS 3
Buchanan	Black	5 Feb 1861	R	21 Feb 1861	D 36	R 26	A 4
Hayes	Woods	15 Dec 1880	C	21 Dec 1880	D 42	R 33	0 1
Hayes	Mathews	26 Jan 1881	N.A.		D 42	R 33	0 1
Cleveland	Fuller	30 Apr 1888	C	20 Jul 1888	R 39	D 37	
Harrison, B.	Shiras	19 Jul 1892	C	26 Jul 1892	R 47	D 39	0 2
Harrison, B.	Jackson	2 Feb 1893	C	18 Feb 1893	R 47	D 39	0 2
Johnson, L.	Fortas	26 Jun 1968	W	4 Oct 1968	D 64	R 36	
Johnson, L.	Thornberry	26 Jun 1968	W	4 Oct 1968	D 64	R 36	

Success Rate:

Overall	10/22
When next President is of a different party	7/18
Nominations after different party President elected	4/11
When President is of a different party than that controlling Senate	3/12
When both Senate and next President of the different party	2/10

Key:

<u>Outcome</u>	<u>Parties in Senate</u>
C = Confirmed	F = Federalist
P = Postponed	DR = Democratic-Republican
R = Rejected	D = Democratic
D = Declined	NR = National Republican
W = Withdrawn	W = Whig
N.A. = Not Acted Upon	FS = Free Soil
	A = American
	R = Republican
	O = Other

Table 6: Nominations to the U.S. Supreme Court:
Rejections/Postponements/Withdrawals/No Actions

President	Nominee	Date	Outcome	Date	Vote	Senate Composition
Washington	Patterson	27 Feb 1793	W	28 Feb 1793		F 16 DR 13
Washington	Rutledge	1 Jul 1795	R	15 Dec 1795	10:14	F 19 DR 13
Madison	Wolcott	4 Feb 1811	R	13 Feb 1811	9:24	DR 28 F 6
Adams, J.Q.	Crittenden	17 Dec 1828	P	12 Feb 1829	17:23	D 28 NR 20
Jackson	Taney	15 Jan 1835	P	3 Mar 1835	21:24	D 20 NR 20 0 8
Tyler	Spencer	8 Jan 1844	R	31 Jan 1844	21:26	W 28 D 25 0 1
Tyler	Walworth	13 Mar 1844	P	15 Jun 1844	20:27	W 28 D 25 0 1
Tyler	King	5 Jun 1844	P	15 Jun 1844	18:29	W 28 D 25 0 1
Tyler	King	4 Dec 1844	P	23 Jan & 7 Feb 1845	W 28	D 25 0 1
Tyler	Read	7 Feb 1845	N.A.		W 28	D 25 0 1
Polk	Woodward	23 Dec 1845	R	22 Jan 1846	20:29	D 31 W 25
Fillmore	Bradford	16 Aug 1852	N.A.			D 36 W 23 FS 3
Fillmore	Badger	10 Jan 1853	P	11 Feb 1853	25:26	D 35 W 23 FS 3
Fillmore	Micou	24 Feb 1853	N.A.			D 35 W 23 FS 3
Buchanan	Black	5 Feb 1861	R	21 Feb 1861	25:26	D 36 R 26 A 4
Johnson, A.	Stanbery	16 Apr 1866	N.A.			R 42 D 10
Grant	Hoar	14 Dec 1869	R	3 Feb 1870	24:33	R 56 D 11
Grant	Williams	1 Dec 1873	W	8 Jan 1874		R 49 D 19 0 5
Grant	Cushing	9 Jan 1874	W	13 Jan 1874		R 49 D 19 0 5
Hayes	Mathews	26 Jan 1881	N.A.			D 42 R 33 0 1
Cleveland	Hornblower	19 Sep 1893	R	15 Jan 1894	24:30	D 44 R 38 0 3
Cleveland	Peckham	22 Jan 1894	R	16 Feb 1894	32:41	D 44 R 38 0 3
Hoover	Parker	21 Mar 1930	R	7 May 1930	39:41	R 56 D 39 0 1
Johnson, L.	Fortas	26 Jun 1968	W	4 Oct 1968		D 64 R 36
Johnson, L.	Thornberry	26 Jun 1986	W	4 Oct 1968		D 64 R 36
Nixon	Haynsworth	25 Sep 1969	R	21 Nov 1969	45:55	D R
Nixon	Carswell	19 Jan 1970	R	7 Apr 1970	45:51	D R
Reagan	Bork	1987	R	1987	42:58	D 55 R 45
Reagan	Ginsberg	1987	W	1987		D 55 R 45

12 Rejections

6 Postponements

6 Withdrawals

5 No Actions

29 Total

Key:Outcomes

W = Withdrawn

R = Rejected

P = Postponed

N.A. = No Action

Senate Parties

F = Federalist

DR = Democratic-Republican

NR = National Republican

D = Democrat

W = Whig

FS = Free Soil

R = Republican

A = American

O = Other

Table 7: U.S. Supreme Court Cases Argued By Badger

1. United States v. Daniel et al., 47 U.S. 11 (1848)
cc. None oc. Clifford (Att. Gen.)
2. Patton et al. v. Taylor et al., 48 U.S. 132 (1849)
cc. A.H. Lawrence, oc. Loughborough, Underwood,
C.S. Morehead Ewing
3. Erwin v. Lowry, 48 U.S. 172 (1849)
cc. Brent oc. Bradley, Jones
4. Massingill et al. v. Downs, 48 U.S. 760 (1849)
cc. Lawrence oc. Sargent, Bell
5. Menard's Heirs v. Massey, 49 U.S. 293 (1850)
cc. Lawrence oc. Ewing
6. Prentice et al. v. Zane's Administrator, 49 U.S. 470
(1850)
cc. Bibb oc. Ewing
7. Lytle et al. v. Arkansas et al., 50 U.S. 314 (1850)
cc. Lawrence oc. Sebastian
8. Gaines et al. v. Nicholson et al., 50 U.S. 356 (1850)
cc. Bibb oc. Ewing
9. Townsend v. Jemison, 50 U.S. 407 (1850)
cc. Lawrence oc. Key
10. Gilmer v. Poindexter, 51 U.S. 257 (1850)
cc. oc. Coxe, Crittenden (Att. Gen.)
11. Montault et al. v. The United States, 53 U.S. 47 (1851)
cc. Lawrence oc. Crittenden (Att. Gen.)
12. Dundas et al. v. Hitchcock, 53 U.S. 256 (1851)
cc. Hopkins oc. Bradley, Campbell
13. Coffee v. The Planters Bank of Tennessee, 54 U.S. 183
(1851)
cc. None oc. Coxe
14. Walsh et al. v. Rogers et al., 54 U.S. 283 (1851)
cc. None oc. Fendall, Chilton
15. Downey v. Hicks, 55 U.S. 240 (1852)
cc. William A. Graham oc. Walker, Volney E. Howard

16. Stainback et al. v. Rae et al., 55 U.S. 532 (1852)
cc. Lawrence oc. Goodrich
17. Eyre et al. v. Potter et al., 56 U.S. 42 (1853)
cc. None oc. Bryan, Graham
18. Wylie v. Coxe, 56 U.S. 415 (1853)
cc. None oc. Wylie
19. Yerger v. Jones et al., 57 U.S. 30 (1853)
cc. None oc. Reverdy Johnson, Reverdy
Johnson, Jr.
20. Chapman v. Smith et al., 57 U.S. 114 (1853)
cc. None oc. Prior
21. Smith et al. v. Swormstedt et al., 57 U.S. 288 (1853)
cc. Ewing oc. Stanberry
22. Pulliam v. Osborne, 58 U.S. 471 (1854)
cc. None oc. None
23. Florida v. Georgia, 58 U.S. 478 (1854)
cc. Berrien oc. Westcott, Johnson, Cushing
(Att. Gen.)
24. Hunter's Executor v. Minor, 59 U.S. 286 (1855).
cc. Lawrence oc. Davis, Bradley
25. Ledoux et al. v. Black et al., 59 U.S. 473 (1855)
cc. Carlisle oc. Benjamin
26. Watson v. Tarpley, 59 U.S. 517 (1855)
cc. None oc. None
27. Pease v. Peck, 59 U.S. 595 (1855)
cc. Carlisle oc. Lawrence, Emmons, Grey
28. Ex Parte Secombe, 60 U.S. 9 (1856)
cc. None oc. None
29. Withers v. Buckley et al., 61 U.S. 84 (1857)
cc. Carlisle oc. Benjamin, Yerger
30. Secombe v. Steele, 61 U.S. 94 (1857)
cc. Carlisle oc. Cushing, Gillet
31. United States v. Fossat, 61 U.S. 413 (1857)
cc. Bayard, Carlisle, Stanton oc. Gillet, Reverdy Johnson,
Rockwell, Black (Att. Gen.)

32. Warner v. Norton et al., 61 U.S. 448 (1857)
cc. Carlisle oc. Bradley
33. Moreland v. Page, 61 U.S. 522 (1857)
cc. Carlisle oc. Bradley
34. McCargo v. Chapman, 61 U.S. 555 (1857)
cc. Carlisle oc. Bradley
35. Leggett et al. v. Humphreys, 62 U.S. 66 (1858)
cc. Carlisle oc. Bradley, Johnson
36. Walker v. Smith, 62 U.S. 579 (1858)
cc. Carlisle oc. Chilton, Davidge
37. Jeter v. Hewitt et al., 63 U.S. 352 (1859)
cc. Carlisle oc. Benjamin
38. Thompson et al. v. Lessee of Carroll et al., 63 U.S. 422
(1859)
cc. Carlisle oc. Brent, Tyler, Marbury, Redin
39. Dermott v. Jones, 64 U.S. 220 (1859)
cc. Bradley, Carlisle oc. Brent, Poe
40. Bell v. Corporation of Vicksburg, 64 U.S. 443 (1859)
cc. Carlisle oc. Benjamin
41. Richardson v. City of Boston, 65 U.S. 188 (1860)
cc. Carlisle oc. Cushing, Chandler
42. Fackler v. Ford et al., 65 U.S. 322 (1860)
cc. Carlisle oc. Ewing, Coombs
43. Washington, Alexandria, & Georgetown S.P. Co. v. Sickles, et al., 65 U.S. 333 (1860)
cc. Carlisle oc. Bradley, Stone
44. Berthold et al. v. Goldsmith, 65 U.S. 536 (1860)
cc. Carlisle oc. Blair

Key: cc. = co-counsel

 oc. = opposing counsel

Note: all names appear as they do in the reports of the cases.

Map 1: North Carolina Counties in 1800 with Selected Towns

- ① = New Bern ④ = Louisburg ⑦ = Salisbury
 ② = Hillsborough ⑤ = Raleigh
 ③ = Warrenton ⑥ = Greensboro

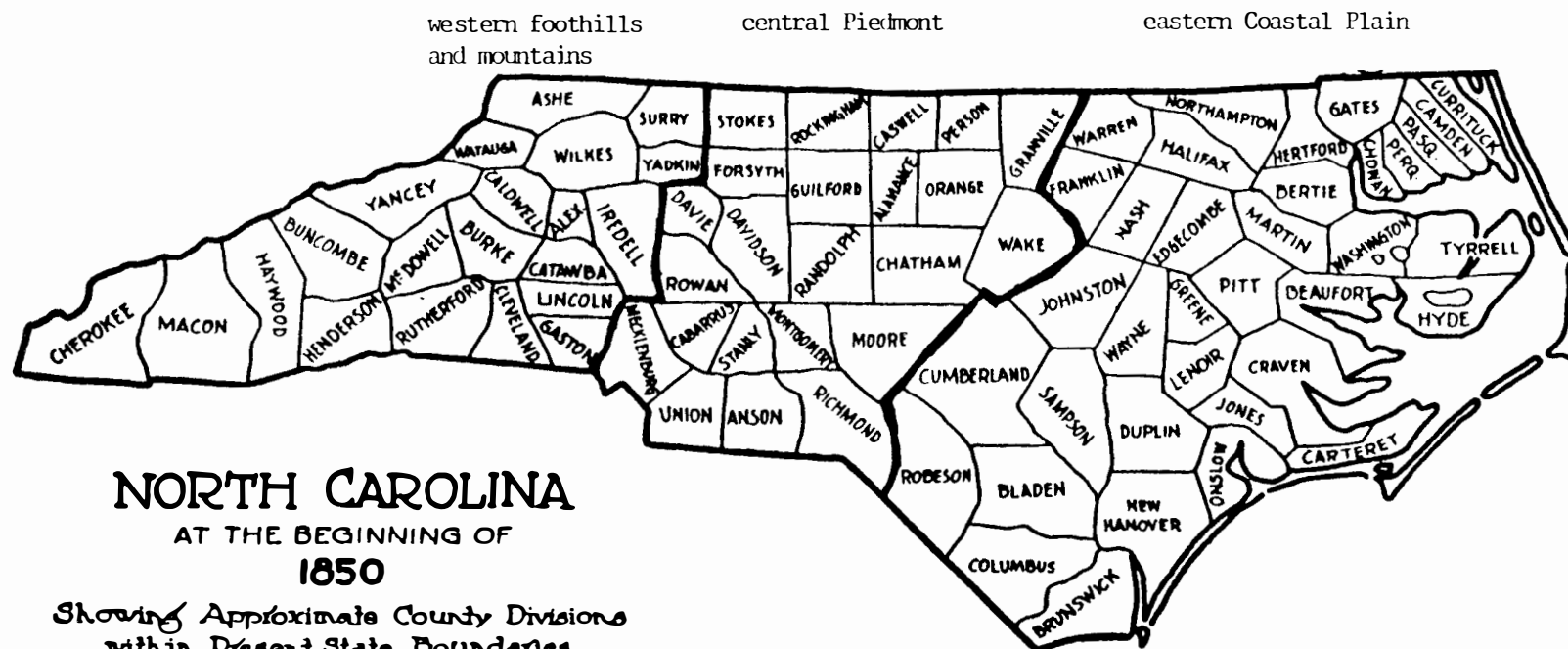


NORTH CAROLINA AT THE BEGINNING OF 1800

Showing Approximate County Divisions
 within Present State Boundaries.

Map by
 L. Polk Denmark

Source of base map: David Leroy Corbitt, The Formation of the North Carolina Counties: 1663-1943 (Raleigh: State Dept. of Archives and History, 1950), 289.



Map 2: North Carolina Counties in 1850 with Approximate Sectional Boundaries

Source of base map: David Leroy Corbitt, The Formation of the North Carolina Counties: 1663-1943 (Raleigh: State Dept. of Archives and History, 1950), 291.

Notes

Introduction

1. William A. Graham, "George E. Badger," Lives of Distinguished North Carolinians, ed. William J. Peele (Raleigh: North Carolina Publishing Society, 1898), 181-82 (hereinafter cited as Graham, "Badger"). Graham's sketch of Badger was taken from his address on the subject delivered in Raleigh on July 19, 1866, at the request of the Wake County bar.
2. David Schenck, Personal Sketches of Distinguished Delegates of the State Convention 1861-2, North Carolina (Greensboro, 1885), 8 (emphasis in original) (hereinafter cited as Schenck, Personal Sketches of Distinguished Delegates).
3. Raleigh News and Observer, April 12, 1891.
4. Albert J. Beveridge, Abraham Lincoln: 1809-1858 (Boston and New York: Houghton Mifflin Co., 1928), II, 180.
5. John Wheeler Moore, History of North Carolina; from the earliest discoveries to the present time (Raleigh: Alfred Williams & Co., 1880), II, 8, see also I, 476, and II, 38, 315 (hereinafter cited as Moore, History of North Carolina).
6. William S. Powell, North Carolina Through Four Centuries (Chapel Hill: Univ. of North Carolina Press, 1989) (hereinafter cited as Powell, North Carolina Through Four Centuries).

7. Lawrence Foushee London, "The Public Career of George Edmund Badger" (Unpublished doctoral dissertation, University of North Carolina, 1936) (hereinafter cited as London, "Badger").
8. Glenn Tucker, "For the Want of a Scribe" XLIII North Carolina Historical Review (1966), 174-85 (hereinafter cited as Tucker, "Scribe") (North Carolina Historical Review hereinafter cited as NCHR).
9. Thomas L. Clingman, Selections from Speeches and Writings of Hon. Thomas L. Clingman of North Carolina with Additions and Explanatory Notes (Raleigh: John Nichols, 1877) (hereinafter cited as Clingman, Speeches and Writings); Marc W. Kruman, "Thomas L. Clingman and the Whig Party: A Reconsideration" LXIV NCHR (1987), 1-18 (hereinafter cited as Kruman, "Clingman"); Thomas E. Jeffrey, "'Thunder from the Mountains': Thomas Lanier Clingman and the End of Whig Supremacy in North Carolina" LVI NCHR (1979), 366-95 (hereinafter cited as Jeffrey, "Thunder"); John C. Inscoe, "Thomas Clingman, Mountain Whiggery, and the Southern Cause" XXXIII Civil War History (1987), 42-62 (hereinafter cited as Inscoe, "Clingman") and Mountain Masters, Slavery and the Sectional Crisis in Western North Carolina (Knoxville: Univ. of Tennessee Press, 1989).
10. The Papers of William Alexander Graham, eds. J.G. deRoulhac Hamilton and Max R. Williams (Raleigh: State Department of Archives and History, 1957-) (hereinafter

cited as Graham Papers); The Papers of Willie Person Mangum, ed. Henry Thomas Shanks (Raleigh: State Department of Archives and History, 1950-1956) (hereinafter cited as Mangum Papers).

11. Lawrence M. Friedman in his A History of American Law (New York: Simon & Schuster, 1985), 135, mentions Ruffin along with Kent, Shaw, Gibson and several others as "strong-minded American judges [who] influenced their courts and the law." This is Friedman's only mention of Ruffin, though he mentions Gibson nine times, Shaw twelve, and Kent twenty-three. G. Edward White in his The American Judicial Tradition: Profiles of Leading American Judges (New York: Oxford Univ. Press, 1976), 3, states that he could have used Ruffin to personify points of view similar to those held by his subjects Kent, Joseph Story and Roger B. Taney, but he chose not to for two reasons: "historical interest," and a "relative paucity" of information on Ruffin's "personal life." How White came to the conclusion that Ruffin would hold less interest to the historian is not mentioned. Also, although there is no published biography on Ruffin, anyone who had ever examined the four-volume Papers of Thomas Ruffin would know that there does exist a great deal of information on Ruffin's personal life. A good article concerning slavery and the Ruffin court is Julius Yanuck, "Thomas Ruffin and North Carolina Slave Law." XII Journal of Southern History (1955), 456-75.

12. Henry J. Abraham, Justices & Presidents (New York: Oxford Univ. Press, 1985) (hereinafter cited as Abraham, Justices & Presidents).
13. Marc W. Kruman, Parties and Politics in North Carolina: 1836-1865 (Baton Rouge: Louisiana State Univ. Press, 1983) (hereinafter cited as Kruman, Parties and Politics).

Chapter I

1. John Cogswell Badger, Giles Badger and his Descendants (Manchester, N.H.: John B. Clarke Co., 1909), 5, 7, 12, 20, 44 (hereinafter cited as Badger, Giles Badger); Samuel A. Ashe, "George Edmund Badger," Biographical History of North Carolina, eds. Samuel A. Ashe and Stephen B. Weeks (Greensboro: Charles L. Van Noppen, 1908), VII, 35 (hereinafter cited as Ashe, "Badger"); Graham, "Badger," 182-83; Moore, History of North Carolina, I, 421.
2. Badger, Giles Badger, 44.
3. Alan D. Watson, "Richard Cogdell," Dictionary of North Carolina Biography, I, 395-96 (Dictionary of North Carolina Biography hereinafter cited as DNCB); North Carolina Government: 1585-1979, ed. John L. Cheney, Jr., issued by Thad Eure (Raleigh: N.C. Department of the Secretary of State, 1981), 51, 153-55, 181, 203, 205, 359 (hereinafter cited as North Carolina Government).
4. The New Democracy in America: Travels of Francisco de Miranda in the United States, 1783-84, ed. John S. Ezell

(Norman: University of Oklahoma Press, 1963), 10; J. Fred Rippey, "A View of the Carolinas in 1783," VI NCHR (1929), 365.

5. Gertrude S. Carraway, The Stanly (Stanley) Family and the historic John Wright Stanly House (High Point, N.C.: Tryon Palace Commission, 1969), 20 (hereinafter cited as Carraway, Stanly Family).

6. Badger, Giles Badger, 44.

7. Graham, "Badger," 183.

8. Gertrude S. Carraway, Crown of Life: History of Christ Church New Bern, N.C.: 1715-1940 (New Bern: Owen G. Dunn, 1940), 112-18; William S. Powell, "Thomas Pitts Irving," DNCB, III, 255; Charles H. Bowman, Jr., "William Joseph Gaston," DNCB, II, 283-85 (hereinafter cited as Bowman, "Gaston"); Gertrude S. Carraway, "Francis Lister Hawks," DNCB, III, 76-77; (hereinafter cited as Carraway, "Hawks"); Daniel M. McFarland, "John Hermitage Bryan," DNCB, I, 255-56; Beth G. Crabtree, North Carolina Governors: 1585-1968 (Raleigh: State Dept. of Archives and History, 1968), 80-81 (hereinafter cited as Crabtree, North Carolina Governors); and W. Conrad Gass, "Thomas P. Devereux," DNCB, II, 60-61 (hereinafter cited as Gass, "Devereux").

9. Graham, "Badger," 183; Gass, "Devereux," II, 60.

10. Governor Charles Manly's address to the Bar of Raleigh, N.C., to honor George E. Badger, May 1866, in Scrapbook of newspaper stories on George E. Badger, 1866-91, 5, found in

the North Carolina Collection, University of North Carolina (hereinafter cited as Scrapbook).

11. Graham, "Badger," 183-84.

12. Ibid., 184.

13. Ibid., 185; Ashe, "Badger," 36.

14. Carraway, Stanly Family, 23-28; Norman D. Brown, Edward Stanly: Whiggery's Tarheel "Conqueror" (University, Ala.: University of Alabama Press, 1974), 6-28 (hereinafter cited as Brown, Stanly).

15. Brown, Stanly, 15-16.

16. John Marshall to Archibald Debow Murphey, October 6, 1827, The Papers of Archibald D. Murphey, ed. William Henry Hoyt (Raleigh: E.M. Uzzell & Co., 1914), I, 365 (hereinafter cited as Murphey Papers).

17. William Gaston to Stephen F. Miller, February 25, 1834, quoted in Brown, Stanly, 27.

18. For information on the Stanly/Spaight duel, see Brown, Stanly, 8-10; and Carraway, Stanly Family, 24-25.

19. Crabtree, North Carolina Governors, 53-54.

20. Brown, Stanly, 10.

21. Ibid., 14-15.

22. Ibid., 14; Carraway, Stanly Family, 21; Gertrude S. Carraway, "Louis Debonair Henry," DNCB, III, 114; and Stephen F. Miller, "Recollections of Newbern Fifty Years Ago," I, Our Living and Our Dead (1875), 454 (hereinafter cited as Miller, "Recollections").

23. Carraway, "Louis D. Henry," DNCB, III, 114.
24. Ibid., III, 114; Brown, Stanly, 14.
25. Brown, Stanly, 14; New Bern Carolina Federal Republican, February 20, 1813.
26. Carraway, "Louis D. Henry," DNCB, III, 114.
27. David Outlaw to Emily Outlaw, March 3, 1848, Outlaw Papers, Southern Historical Collection, University of North Carolina (hereinafter cited as Outlaw Papers, SHC).
28. Brown, Stanly, 20-21.
29. See Kenneth C. Martis, The Historical Atlas of Political Parties in the United States Congress: 1789-1989 (New York: Macmillan, 1989). New Bern's Congressional District (the 10th from 1801-03, then the 4th from 1803-21) was quite clearly the most Federalist of any district below the Virginia line. Its neighbor, North Carolina's 7th District, elected a Federalist candidate, John Culpepper, to six terms, but "Philosophically, [he] was more nearly an Old Jeffersonian than a Federalist." Sarah McCalloh Lemmon, "John Culpepper," DNCB, I, 472-73. The same could not be said about John Stanly or William Gaston.
30. On Federalism during this period in New Bern, especially the thoughts of Stanly and Gaston, see Brown, Stanly, 8-29.
31. Brown, Stanly, 10-11; Walter Clark, "William R. Davie," Lives of Distinguished North Carolinians, ed. Peele, 77; Blackwell P. Robinson, "William Richardson Davie," DNCB, II, 28-29.

32. Brown, Stanly, 11-16.
33. Ibid., 16-17; Bowman, "Gaston," II, 283-85.
34. Quoted in Brown, Stanly, 27.
35. Brown, Stanly, 16.
36. Miller, "Recollections," 460-61. The standard source on free blacks in North Carolina is John Hope Franklin, The Free Negro In North Carolina: 1790-1860 (Chapel Hill: University of North Carolina Press, 1943) (hereinafter cited as Franklin, Free Negro). John C. Stanly and other New Bern free Negroes are mentioned prominently in this work. New Bern in 1860 contained 689 free blacks, by far the largest number in any North Carolina town, and 12.7% of the entire population. In New Bern's Craven County, in 1860, there were 179 free Negro property owners, possessing over \$51,000 in realty and personalty. In Craven in 1830, twelve free blacks owned a total of 77 slaves. Ibid., 18, 230, 233, 235.
37. Ibid., 460-61.
38. Brown, Stanly, 16, 25-26.
39. Bartlett Yancey to Willie P. Mangum, January 25, 1826, Mangum Papers, I, 240.
40. Proceedings and Debates of the Convention of North Carolina, Called to Amend the Constitution of the State. Which Assembled at Raleigh, June 4, 1835 (Raleigh: Joseph Gales and Son, 1836), 79-81, quoted in Brown, Stanly, 26.
41. Gass, "Devereux," 61.

42. Brown, Stanly, 19.
43. Bowman, "Gaston," II, 284-85; Gaston's speech in Lives of Distinguished North Carolinians, ed. Peele, at 176-77.
44. Edmund Badger died in 1825 at the age of eighty-seven, and his wife Lucretia Abbe died the following year. Badger, Giles Badger, 20.
45. Alan D. Watson, "Richard Cogdell," DNCB, I, 396.

Chapter II

1. Quoted in Brown, Stanly, 13.
2. Bedford Brown to John J. Crittenden, January 13, 1849, Crittenden Papers, Library of Congress. Typewritten copies of all the letters in the Crittenden Papers to or from North Carolinians can be found in the North Carolina State Department of Archives and History in Raleigh (hereinafter cited as Crittenden Papers, LC).
3. John Stanly to William Gaston, November 11, 1814, Gaston Papers, Southern Historical Collection, University of North Carolina, quoted in Brown, Stanly, 15.
4. Graham, "Badger," 185-86, Crabtree, North Carolina Governors, 65-66.
5. George E. Badger to John J. Crittenden, June 25, 1856, Crittenden Papers, LC.
6. George E. Badger to John J. Crittenden, August 9, 1856, Crittenden Papers, LC.
7. Graham, "Badger," 185.

8. Ibid., 186.
9. New Bern Carolina Federal Republican, August 10, 1816.
10. London, "Badger," 7.
11. See, for example, Graham, "Badger," 186-87.
12. Charles Manly's address to the Bar of Raleigh upon the death of George E. Badger, from one of the Raleigh newspapers, May 1866, Scrapbook, 5.
13. For several biographical sketches to Ruffin, see The Papers of Thomas Ruffin, ed. J.G. DeRoulhac Hamilton (Raleigh: North Carolina Historical Commission, 1918), I, 19-43 (hereinafter cited as Ruffin Papers).
14. Ruffin Papers, I, 189, ftnt. 2; Graham, "Badger," 187.
15. Journal of the House of Commons, 1816, 34, quoted in London, "Badger," 9.
16. Graham, "Badger," 187; Ashe, "Badger," VII, 36.
17. George E. Badger to Thomas Ruffin, January 20, 1817, Ruffin Papers, I, 189.
18. Archibald Debow Murphey to Thomas Ruffin, April 11, 1817, Murphey Papers, I, 94.
19. Archibald Debow Murphey to Thomas Ruffin, October 20, 1817, Murphey Papers, I, 98.
20. See, e.g., Fannie Memory Farmer, "Legal Practice and Ethics in North Carolina: 1820-1860," XXX NCHR (1953), 329-53 (hereinafter cited as Farmer, "Legal Practice in North Carolina").

21. George E. Badger to Thomas Ruffin, March 10, 1818,
Ruffin Papers, I, 202.
22. Ibid., I, 202.
23. Ibid., I, 203.
24. Ibid., I, 203, 204.
25. Joseph K.L. Reckford, "Joseph John Daniel," DNCB, II, 8-9.
Considering the overall quality of the Dictionary of North Carolina Biography, Reckford's sketch is surprisingly poor.
26. George E. Badger to Thomas Ruffin, March 10, 1818,
Ruffin Papers, I, 203-204.
27. Kemp P. Battle, An Address on the History of the Supreme Court (Raleigh: Edwards & Broughton, 1889), 58-59
(hereinafter cited as Battle, Supreme Court).
28. Ibid., 59, Kemp Plummer Battle, Memories of an Old-Time Tar Heel (Chapel Hill: University of North Carolina Press, 1945), 99 (hereinafter cited as Battle, Old-Time Tar Heel).
29. George E. Badger to William A. Graham, January 29, 1841,
Graham Papers, II, 147.
30. Lawrence F. London, "George Edmund Badger," DNCB, I, 80
(hereinafter cited as London, "Badger," DNCB); Graham, "Badger," 187; Crabtree, North Carolina Governors, 59-60;
George E. Badger to Thomas Ruffin, August 6, 1824, Ruffin Papers, I, 309.
31. George E. Badger to Archibald Debow Murphey, November 1818, Murphey Papers, I, 119-20; Gertrude S. Carraway and

James S. Brawley, "John Beckwith," DNCB, I, 126; London, "Badger," DNCB, I, 79.

32. Robert Mebane to Thomas Ruffin, February 5, 1820, quoted in Farmer, "Legal Practice in North Carolina," 330-31.

33. Raleigh Star, April 28, 1820, quoted in Farmer, "Legal Practice in North Carolina," 340.

34. Raleigh Sentinel, September , 1871, in Scrapbook, 18. Edwards did not mention a specific date, but John R. Donnell was elected to the Superior Court on November 23, 1819.

Gertrude S. Carraway, "John Robert Donnell," DNCB, II, 92; North Carolina Government, 361. There is one minor problem with Edwards' story, in that in 1819 he was a member of the U.S. House, not the North Carolina General Assembly. Still, he could have been in Raleigh at the time and heard Stanly make his recommendation. Edwards (1788-1873) served in the North Carolina House (1814-1815), the U.S. House (1816-1827), the N.C. Senate (1833-1845, 1850-1852), the state Constitutional Convention of 1835, and was Speaker of the North Carolina Secession Convention (1861-1862). Daniel M. McFarland, "Weldon Nathaniel Edwards," DNCB, II, 141.

35. Archibald Debow Murphey to Thomas Ruffin, December 18, 1819, Ruffin Papers, I, 232.

36. Battle, Old-Time Tar Heel, 104; Raleigh Intelligencer, April , 1891, in Scrapbook, 22; for information on the very interesting Duncan Cameron (1777-1853), see Charles Richard Sanders, "Duncan Cameron," DNCB, I, 311. Mangum was

- elected on December 22, 1819. North Carolina Government, 361.
37. London, "Badger," DNCB, I, 79; Raleigh Intelligencer, April , 1891, in Scrapbook, 22; North Carolina Government, 361.
38. Manly's address before the Raleigh Bar, May 1866, in Scrapbook, 5.
39. See, e.g., the Raleigh Register, January 28, 1825, for a report on the judges choosing their circuits for the next year.
40. Archibald Debow Murphey to Thomas Ruffin, July 24, 1825, Murphey Papers, I, 310-11.
41. North Carolina Government, 360-61.
42. Graham, "Badger," 187.
43. Graham, "Badger," 187-88; Battle, Old-Time Tar Heel, 105; North Carolina Presbyterian, May 1866, in Scrapbook, 14.
44. Battle, Old Time Tar Heel, 104-05.
45. Herbert Snipes Turner, The Dreamer: Archibald Debow Murphey (Verona, Va: McClure Printing Co., 1971), 125-43.
46. George E. Badger to Thomas Ruffin, December 24, 1821, Ruffin Papers, I, 259.
47. George E. Badger to Thomas Ruffin, July 16, 1825, Ruffin Papers, I, 328.
48. George E. Badger to Hutchins Gordon Burton, June 6,

1825, Burton Letter Book, 1824-1827, 16, mentioned in North Carolina Government, 369.

49. Raleigh Register, June 10, 1825.

50. Raleigh Register, July 21, 1826.

51. Francis Nash, "Chief Justice Thomas Ruffin," Charlotte Observer, March 19, 1905, in Ruffin Papers, I, 39.

52. George E. Badger to Thomas Ruffin, August 6, 1824, Ruffin Papers, I, 309.

53. George E. Badger to Thomas Ruffin, July 16, 1825, Ruffin Papers, I, 329.

54. Moore, History of North Carolina, II, 8.

55. George E. Badger to Thomas Ruffin, July 16, 1825, Ruffin Papers, I, 328.

Chapter III

1. London, "Badger," DNCB, I, 79.

2. Carraway, "Hawks," III, 76-77.

3. Raleigh Sentinel, September , 1871, in Scrapbook, 20.

4. William Robards to Thomas Ruffin, January 12, 1826, Ruffin Papers, I, 339.

5. The Reverend Theodore Shulz to Archibald Debow Murphey, November 10, 1825, Murphey Papers, I, 320.

6. Battle, Supreme Court, 45.

7. Ibid., 44.

8. Ibid., 72.

9. Ibid., 57.

10. Mial v. Ellington, 134 N.C. 131, 168 (Montgomery, J., dissenting), 134 N.C. at 178 (Douglas, J., dissenting).
11. Carl B. Swisher, The Taney Period: 1836-64, Vol. V of the Oliver Wendell Holmes Devise History of the Supreme Court of the United States (New York: Macmillan Pub. Co., 1974), 241 (hereinafter cited as Swisher, Taney Period); Roscoe Pound, The Formative Era of American Law (Boston: Little, Brown & Co., 1938), 3, 4, 30.
12. Numbers taken from analyzing the North Carolina Reports from 1825 to 1846: 3 Hawks' Law & Equity (10 N.C.) through 6 Iredell's Law (28 N.C.), and 1 Iredell's Equity (36 N.C.) through 4 Iredell's Equity (39 N.C.).
13. Names and numbers taken from the same North Carolina Reports as are listed in note 12.
14. Beth Crabtree, "William Henry Haywood, Jr.," DNCB, III, 89-90.
15. Gass, "Devereux," II, 61.
16. Beth Crabtree, "James Iredell, Jr.," DNCB, III, 255.
17. Battle, Supreme Court, 38; Mangum Papers, I, 10, ftnt. 46.
18. Elizabeth Dortch Dix Keyes, "Gavin Hogg," DNCB, III, 159-60.
19. Mangum Papers, I, 297, ftnt. 149.
20. See Edward Graham Haywood, "Bartholomew Figures Moore," Lives of Distinguished North Carolinians, ed. Peele, 378-88, and Moore's argument in State v. Will in same, 389-412.

21. Numbers taken from the North Carolina Reports listed in note 12.
22. The numbers do not add up to the actual numbers of cases argued because some cases can not be viewed strictly as either won or loss.
23. See, e.g., Tucker v. Peacock, 2 Devereux's Law (13 N.C.) 303 (1830).
24. Raleigh Sentinel, September , 1871, in Scrapbook, 21.
25. 4 Devereux and Battle's Law (20 N.C.) 110 (1838).
26. George E. Badger to Montford Stokes, October 14, 1831, quoted in Clement Eaton, Freedom of Thought in the Old South (New York: Peter Smith, 1951), 95; see also selected issues of the Raleigh Register for September and October, 1831.
27. L.B. Hardin to Willie P. Mangum, March 4, 1843, Mangum Papers, III, 435-36.
28. John Chavis to Willie P. Mangum, November 16, 1827, Mangum Papers, I, 315; Barbara M. Parramore, "John Chavis," DNCB, I, 358-59; Franklin, Free Negro, 106-07, 170-74, 177.
29. 3 Devereux and Battle's Law (20 N.C.) 98 (1838). For a good overview of the Ruffin Court's judicial views on slavery, see Julius Yanuck, "Thomas Ruffin and the North Carolina Slave Law," XXI Journal of Southern History (1955), 456-75.
30. 1 Devereux's Law (12 N.C.) 508-13 (1828).
31. 2 Devereux and Battle's Law (19 N.C.) 435 (1837).
32. 3 Iredell's Law (25 N.C.) 224-32 (1842).

33. 1 Devereux's Law (12 N.C.) 189-208 (1827).
34. 1 Devereux and Battle's Law (18 N.C.) 260-71 (1833).
For additional information on manumission, the rights of free blacks, etc., see Franklin, Free Negro, passim.
35. Vicksburg Herald, 1866, in Scrapbook, 14.
36. Hoke v. Henderson, 4 Devereux's Law (15 N.C.) 1-11.
37. James Graham to William A. Graham, February 7, 1833, Graham Papers, I, 251-52.
38. Rutherford Spectator, November 1833, quoted in Raleigh Register, November 19, 1833.
39. 4 Devereux's Law at 7-8.
40. Quoted at 4 Devereux's Law at 12.
41. 4 Devereux's Law at 17.
42. 4 Devereux's Law at 19; there must have been some bad blood between the Hoke and Henderson families, for on September 4, 1837, the Raleigh Register reported that in Lincolnton, seat of Lincoln County, a Marcus Hoke had been killed by a Logan Henderson. The paper first reported that Hoke had had both of his arms cut off and had had his breast "laid open" by a Bowie knife, but the next issue (September 11) retracted these statements.
43. Raleigh Register, April 8, 1834.
44. Raleigh Register, April 15 and 22, 1834.
45. Badger was also counsel in one of the other opinions printed, State v. Rives, printed in the Raleigh Register, March 28, 1845.

46. William A. Graham, "Thomas Ruffin," Ruffin Papers, I, 29; Ex parte Garland, 4 Wallace 333.
47. Mial v. Ellington, 134 N.C. 131, 136-162; Alexander v. McKenzie, 2 S.C. at 81.
48. 134 N.C. 131.
49. 2 Devereux and Battle's Law (19 N.C.) 451 (1837).
50. 2 Devereux and Battle's Law at 455.
51. 2 Devereux and Battle's Law at 451-54.
52. 2 Devereux and Battle's Law at 454-55.
53. 2 Devereux and Battle's Law at 458-61.
54. 2 Devereux and Battle's Law at 461-70.
55. 6 Iredell's Law (28 N.C.) 456 (1846)
56. 3 Iredell's Equity (38 N.C.) 613 (1845).
57. 3 Iredell's Equity at 619.
58. 3 Iredell's Equity at 619.
59. See, e.g., Cox v. Hogg, 2 Devereux's Equity (17 N.C.) 121 (1831); Allison's Executors v. Allison, 4 Hawks' Reports (11 N.C.) 141 (1825); Peyton v. Smith, 2 Devereux and Battle's Equity (22 N.C.) 325 (1839); and Redmond v. Collins, 4 Devereux's Law (15 N.C.) 430 (1834).
60. John Owen to Thomas Ruffin and George E. Badger, May 22, 1829, Ruffin Papers, I, 498-99.
61. See, e.g., Taylor v. Shufford, 4 Hawks' Reports (11 N.C.) 116 (1825), and Benzein v. Lenoir, 1 Devereux's Equity (16 N.C.) 225 (1828).

62. Falls v. Carpenter, 1 Devereux and Battle's Equity (21 N.C.) 237 (1835).
63. Doak v. Bank of the State, 6 Iredell's Law (28 N.C.) 309 (1846); State Bank v. Locke & Trotter, 4 Devereux's Law (15 N.C.) 529 (1834); State Bank v. Hunter, 1 Devereux's Law (12 N.C.) 100 (1826).
64. State v. Martin, 2 Iredell's Law (24 N.C.) 101 (1841); State v. Benton, 2 Devereux and Battle's Law (19 N.C.) 196 (1836); State v. Johnson, 1 Iredell's Law (23 N.C.) 354 (1840); State v. Kimbrough, 2 Devereux's Law (13 N.C.) 303 (1830).
65. Avery v. Rose, 4 Devereux's Law (15 N.C.) 549 (1834).
66. Cotton v. Evans, 1 Devereux and Battle's Equity (21 N.C.) 284 (1835).
67. 2 Devereux's Equity (17 N.C.) 195 (1832).
68. Moore v. Collins, 3 Devereux's Law (14 N.C.) 126 (1831).
69. Gass, "Devereux," I, 61; Raleigh Register, February 2, 1827.
70. Battle, Supreme Court, 47.
71. George E. Badger to Thomas Ruffin, February 16, 1828, Ruffin Papers, I, 432.
72. 1 Devereux's Law (12 N.C.) iii.
73. Archibald Debow Murphey to Thomas Ruffin, February 3, 1829, Ruffin Papers, I, 468.
74. James Graham to William A. Graham, June 18, 1832, Graham Papers, I, 239.

75. Raleigh Register, December 21, 1832, January 4, 1833.
76. Thomas P. Devereux to William Gaston, December 19, 1832, quoted in J. Herman Schauinger, William Gaston: Carolinian (Milwaukee: The Bruce Pub. Co., 1949), 157 (hereinafter cited as Schauinger, Gaston).
77. Schauinger, Gaston, 162.
78. James Graham to William A. Graham, January 30, 1844, Graham Papers, II, 469.
79. Raleigh Register, March 22, 1844.
80. London, "Badger," 27-79.
81. Raleigh Register, April 5, 1844. The seven members of the Council were Thomas N. Cameron, Henry W. Connor, Henry Fitts, Gabriel Holmes, Alexander Mebane, David Watson and James D. Watt. North Carolina Government, 177. Only Connor, a Congressman for twenty years, had a distinguished political career.
82. Raleigh Register, April 5, 1844.
83. Ibid., April 5, 1844.
84. George E. Badger to Thomas Ruffin, November 18, 1828, Ruffin Papers, I, 455.
85. Graham, "Badger," 191.
86. Graham, "Badger," 191-192.
87. North Carolina Presbyterian, 1866, in Scrapbook, 15.
88. William Eaton, Jr., "Hon. George E. Badger," The Land We Love, September 1866, 336 (hereinafter cited as Eaton, "Badger").

89. Wilmington Messenger, 1891, in Scrapbook, 29. For information on Kingsbury, see W. Conrad Gass, "Theodore Bryant Kingsbury," DNCB, III, 368-69.
90. See, e.g., the Raleigh Register for January 31, 1837, and January 28, 1839, for listings of the circuits and their judges for the coming year.
91. Archibald Debow Murphey to Thomas Ruffin, October 9, 1825, Murphey Papers, I, 317.
92. George E. Badger to Thomas Ruffin, July 16, 1825, Ruffin Papers, I, 328.
93. George E. Badger to Thomas Ruffin, November 18, 1828, Ruffin Papers, I, 455.
94. See various issues of the Raleigh Register for 1829.
95. Raleigh Register, April 8, 1830.
96. Ibid., April 8, 1830.
97. Ibid., April 8, 1830.
98. State v. Kimbrough, 2 Devereux's Law (13 N.C.) 431 (1830); Raleigh Register, August 5, November 4, and November 11, 1830.
99. Halifax Advocate, May 1837, quoted in the Raleigh Register, May 9, 1837.
100. Raleigh Register, October 8, 1838.
101. Ibid., April 6, 1839.
102. Ibid., October 5, 1839.
103. Ibid., January 10, 1840.
104. Ibid., October 7 and October 14, 1830.

105. Ibid., October 14, 1830.

106. Warrenton Reporter, October 23, 1834, quoted in the Raleigh Register, November 4, 1834.

107. Halifax Advocate, October 29, 1834, quoted in the Raleigh Register, November 4, 1834.

108. Raleigh Register, April 11, 1837.

109. Raleigh Observer, February 1877, in Scrapbook, 17-18.

The article is entitled "Correspondence of The Observer" and the byline reads "New York, Feb. 12th, 1877." There are many reasons for thinking that the author was Edward J.

Hale, who knew Badger well and was a long-time editor of the Fayetteville Observer, a staunch Whig paper which, at times, had the state's greatest circulation. After the Civil War, Hale removed to New York to form a publishing business, and this was where he resided in 1877. His son was then editing the Raleigh Observer. That he would have covered the Atkins case is only natural, considering that Fayetteville is in Cumberland County, and Bladen is nearby. Also, in the article the author fondly remembers the Whig party, and recalls working with his friends Badger and Weston R. Gales, editor of the Raleigh Register, in revising for publication resolutions adopted at a state Whig convention. For information on Hale, see D.A. Yanchisin, "Edward Jones Hale," DNCB, III, 3-4. The North Carolina Presbyterian obituary for Badger, in Scrapbook, 14-17, also alludes to the Atkins case as one of Badger's greatest.

110. Raleigh Intelligencer, April 1891, in Scrapbook, 23-24. It is worth noting though, that Badger's son Richard Cogdell Badger studied law under Pearson during 1859-60.
111. State v. Rives, 5 Iredell's Law (27 N.C.) 297 (1844); Raleigh Register, March 28, 1845.
112. Hugh Waddell to William A. Graham, December 5, 1844, in Graham Papers, II, 530, Richmond Pearson was a judge on the Superior Court (1837-1848) and the state Supreme Court (1849-1868, Chief Justice 1859-1868).
113. For information on Potter, see Willis G. Briggs, Henry Potter: 1766-1857 (Raleigh: Edwards & Broughton Co., 1953).
114. Gass, "Devereux," II, 60-61. On August 3, 1839, the Raleigh Register reported that Devereux had resigned his position the previous June. Around this time he also resigned his position as Reporter of the North Carolina Supreme Court, going to manage the huge estate just left by an uncle.
115. Raleigh Register, May 15, 1829.
116. Ibid., November 18, 1830.
117. Ibid., October 14, 1830.
118. George E. Badger to Thomas Ruffin, November 8, 1828, in Ruffin Papers, I, 455-56.
119. Raleigh Register, January 30, 1844, quoted in Farmer, "Legal Practice in North Carolina," 348.
120. Raleigh Register, May 19, 1831; Raleigh Star, May 18, 1832.

121. Raleigh Register, May 19, 1831.
122. Ibid., May 19, 1831.
123. Raleigh Star, May 18, 1832.
124. See the Raleigh Star, May 15, 1828, for a notice of the case's continuance.
125. Raleigh Register, May 19, 1831.
126. Raleigh Star, May 18, 1832.
127. Ibid., May 18, 1832.
128. Raleigh Register, November 17, 1835.
129. Ibid., May 30, 1845.
130. Ibid., May 21, 1838.
131. Ibid., November 19, 1829.
132. Raleigh Star, May 24, 1833.
133. Raleigh Register, May 16, 1837; Raleigh Star, May 17, 1837.
134. Raleigh Register, May 18, 1839.
135. Ibid., July 27, 1839.
136. Graham, "Badger," 190.
137. Ibid., 190. Chief Justice Marshall's opinion in the Whitaker case was included by Devereux and Badger in an appendix to their volume of the North Carolina Reports, 1 Devereux's Law (12 N.C.) 271 (C.C.D.N.C. 1827).
138. 1 Devereux's Law (12 N.C.) at 273.
139. 1 Devereux's Law (12 N.C.) at 273.
140. Raleigh Register, May 19, 1826.

141. The Raleigh Register of November 24, 1826, lists Seawell as one of the attorneys for the Defendant, but the report of the case lists only Badger. 1 Devereux's Law (12 N.C.) at 274.
142. Raleigh Register, November 24, 1826.
143. Ibid., November 24 and November 17, 1826.
144. 1 Devereux's Law (12 N.C.) at 273-75.
145. Raleigh Register, November 24, 1826.
146. 1 Devereux's Law (12 N.C.) at 279.
147. 1 Devereux's Law (12 N.C.) at 280.
148. 1 Devereux's Law (12 N.C.) at 280-89; Raleigh Register, May 18, 1827.
149. 1 Devereux's Law (12 N.C.), 271-89.
150. 1 Devereux's Law (12 N.C.) at 289.
151. For notices of the continuances, see the Raleigh Register, November 16, 1827, and the Raleigh Star, May 15, 1828.
152. Raleigh Star, November 20, 1828.
153. George E. Badger to Thomas Ruffin, November 18, 1828, Ruffin Papers, I, 455-56.
154. Graham, "Badger," 190.
155. See, for example, the Raleigh Register of May 13, 1830, for notice of a continuance.
156. Raleigh Register, May 21, 1833; Raleigh Star, May 24, 1833; Graham, "Badger," 190-91.
157. Raleigh Star, May 24, 1833.

158. Graham, "Badger," 191.
159. Raleigh Star, May 24, 1833.
160. Raleigh Register, May 21, 1833.
161. Raleigh Star, May 24, 1833.
162. Quoted in Graham, "Badger," 191.
163. Raleigh Register, May 21, 1833; Raleigh Star, May 24, 1833.
164. The Papers of Daniel Webster, ed. Charles M. Wiltse, et al. (Hanover, N.H.: University Press of New England, 1974-1989), Legal Papers, Volume 2, 147 (hereinafter cited as Webster Papers). For information on Webster's long and distinguished legal career, see Maurice G. Baxter, Daniel Webster & The Supreme Court (Univ. of Massachusetts Press, 1966).
165. Daniel Webster to George E. Badger, August 12, 1833, noted in Webster Papers, Correspondence, Volume 3, 465.
166. George E. Badger to Daniel Webster, December 7, 1833 and May 14, 1834, Webster to Badger, May 24, 1834, all noted in Webster Papers, Correspondence, Volume 3, 470, 489, 490.
167. George E. Badger to Daniel Webster, January 17, 1835, January 21, 1837, and December 29, 1837, all noted in Webster Papers, Correspondence, Volume 4, 415, 456, 476.
168. William A. Graham to Susan Washington Graham, January 13, 1839, Graham Papers, II, 37-38.
169. Henry Clay to John M. Clayton, March 3, 1841, The Papers of Henry Clay, ed. Robert Seager, II, et al

- (Lexington: University of Kentucky Press, 1959-), IX, 509-10 (hereinafter cited as Clay Papers).
170. 38 U.S. (13 Peters) xi (1839).
171. Raleigh Intelligencer, April 1891, in Scrapbook, 25.
172. Lattimer et al. v. Poteet, 39 U.S. (14 Peters) 4 (1840).
173. 39 U.S. (14 Peters) at 14.
174. Raleigh Register, March 20, 1840.
175. Ibid., March 20, 1840.
176. New York Watchman, date unknown, in Scrapbook, 17; Raleigh Intelligencer, April 1891, in Scrapbook, 25; and Wilmington Messenger, April 1891, in Scrapbook: History and Biography of North Carolina: 1823-1894, compiled by Stephen B. Weeks, VII, 186, found in the North Carolina Collection, University of North Carolina (hereinafter cited as Weeks' Scrapbook).
177. Graham, "Badger," 188-89.
178. Ibid., 189.
179. New York Tribune, January 8, 1853.
180. George E. Badger to Thomas Ruffin, March 10, 1818, Ruffin Papers, I, 203.
181. Eaton, "Badger," 336.
182. Raleigh Intelligencer, April 1891, in Scrapbook, 25.
183. Battle, Old-Time Tar Heel, 143.
184. Edwin G. Reade, Address before the Convention of the legal profession of N.C. on The Legal Profession of North

Carolina -- what it is and what it ought to be (1884), 11 (hereinafter cited as Reade, Address), quoted in Murphey Papers, II, 427.

185. Jesse Turner to Archibald Murphey Aiken, 1891, Murphey Papers, II, 427.

186. Reade, Address, 11, quoted in Murphey Papers, II, 427.

187. Raleigh Sentinel, September 1871, in Scrapbook, 21.

188. Moore's oration was at a meeting of the Raleigh Bar, May 12, 1866, to memorialize Badger upon his death. From a contemporary newspaper, in Scrapbook, 3.

189. "Patty Taylor's Bill of Complaint," in Mangum Papers, II, 90-96.

190. Eaton, "Badger," 337. On Eaton, see Claiborne T. Smith, Jr., "William Eaton, Jr.," DNCB, II, 131-32.

191. Raleigh Sentinel, September 1871, in Scrapbook, 19.

192. Raleigh Star, May 17, 1837.

193. Fannie Memory Farmer, "Legal Education in North Carolina" XXVIII NCHR (1951), 277.

194. Battle, Old-Time Tar Heel, 103; Graham, "Badger," 192.

195. "Social Reminiscences of the Hon. George E. Badger," The Land We Love, August 1866, 285 (hereinafter cited as "Social Reminiscences").

196. Quoted in Scrapbook, 3

197. Richard Peters to William H. Washington, November 26, 1843, Ruffin Papers, II, 217-18.

198. Washington National Intelligencer, February 15, 1841, quoted in Salisbury Carolina Watchman, February 27, 1841.
199. Henry Clay to John M. Clayton, February 23, 1841, Clay Papers, IX, 505.

Chapter IV

1. Charles L. Hinton to Willie P. Mangum, January 1, 1826, Mangum Papers, I, 219.
2. Raleigh Register, January 6, 1826.
3. Priestly H. Mangum to Willie P. Mangum, September 7, 1826, Mangum Papers, I, 300.
4. Daniel M. McFarland, "Daniel Laurens Barringer," DNCB, I, 99.
5. Raleigh Star, January 3, 1828; London, "Badger," 13.
6. London, "Badger," 14-17.
7. Letter from "A Republican of North Carolina" to the Washington National Intelligencer, February 15, 1841, quoted in the Salisbury Carolina Watchman, February 27, 1841.
8. Raleigh Register, March 20, 1840.
9. Washington National Intelligencer, February 15, 1841, quoted in the Salisbury Carolina Watchman, February 27, 1841.
10. William S. Hoffman, Andrew Jackson and North Carolina Politics, Vol. 40 of The James Sprunt Studies in History and

- Political Science (Chapel Hill: Univ. of North Carolina Press, 1958), 38 (hereinafter cited as Hoffman, Jackson).
11. Archibald Debow Murphey to Thomas Ruffin, February 3, 1829, Ruffin Papers, I, 468.
 12. Graham, "Badger," 192.
 13. Raleigh Register, July 7, 1831.
 14. Ibid., August 18, 1831.
 15. Ibid., August 18, 1831.
 16. Ibid., April 21, May 26 and December 29, 1835, for lists of persons who did do those things.
 17. Ibid., November 16, 1839, for a list of delegates to the convention.
 18. Raleigh Express (?), April 28, 1891 (?), in Weeks' Scrapbook, 188.
 19. George E. Badger to Thomas Ruffin, February 16, 1828, Ruffin Papers, I, 432.
 20. See, e.g., Powell, North Carolina Through Four Centuries, 245-52.
 21. London, "Badger," 26.
 22. George E. Badger's address to the Philanthropic and Dialectic Societies of the University of North Carolina, 1833, quoted in the Raleigh Register, October 8, 1833.
 23. Lynchburg Republican, February , 1841, quoted in the Salisbury Western Carolinian, February 26, 1841.
 24. London, "Badger," DNCB, I, 79.

25. George E. Badger, A View of the Question in Controversy between the University of N. Carolina and the Claimants of her Western Lands (Raleigh, 1826).
26. George E. Badger to William A. Graham, March 9, 1833, Graham Papers, I, 252-53.
27. Raleigh Register, October 8, 1833.
28. Ibid., October 15, 1833.
29. Ibid., October 8, 1833.
30. London, "Badger," DNCB, 79.
31. Franklin B. Dexter, Yale Biographies and Annals, VI, 521, noted in Badger, "London," 3.
32. Raleigh Register, October 7, 1825.
33. Ibid., August 26, 1848.
34. Ibid., June 18, 1833.
35. Ibid., July 9, 1833.
36. Ibid., July 16, 1833. The address appeared in the Register on July 30, 1833.
37. Ibid., February 11, 1834.
38. Ibid., November 26, 1838.
39. Ibid., December 31, 1838.
40. Ibid., January 5, 1836.
41. Ibid., December 10, 1829.
42. See, e.g., the Raleigh Register of January 26, 1836.

Chapter V

1. Raleigh Intelligencer, April 1891, in Scrapbook, 23.

2. Ibid., at 23.
3. Schenck, Personal Sketches of Distinguished Delegates, 5, 7.
4. Raleigh Intelligencer, April 1891, in Scrapbook, 23.
5. Schenck, Personal Sketches of Distinguished Delegates, 5. See also Eaton, "Badger," 336.
6. One portrait of Badger in middle age is reproduced in Peele, Lives of Distinguished North Carolinians, facing 181. The other portrait, of Badger when he was older, is owned by the Dialectic Society of U.N.C., and is reproduced in North Carolina Portrait Index, 1700-1860 (Chapel Hill: Univ. of North Carolina Press, 1963). This book also contains portraits of Badger's mother, his daughter Sarah Polk Badger McGehee, Ruffin, Gaston, Daniel, Mangum, Iredell, and Hogg, among others.
7. Schenck, Personal Sketches of Distinguished Delegates, 8.
8. Ibid., 7.
9. Mrs. Frank M. Angellotti, The Polks of North Carolina and Tennessee (Columbia, Tenn.: James K. Polk Memorial Assoc., 1984), 16 (hereinafter cited as Angellotti, Polks).
10. Ibid., 16; Graham, "Badger," 205; Ashe, "Badger," VII, 41; Hoffman, Jackson, 3, 38; Notable Southern Families, ed. Zella Armstrong (Chattanooga, 1918), 173-79; Armistead Jones Maupin, "Philemon Hawkins, III," DNCB, III, 74-75.
11. Angellotti, Polks, 16; London, "Badger," 6; Badger, Giles Badger, 44; Ernest Haywood, Presentation of the

- Portrait of Hon. George Edmund Badger for the Wake Co. Superior Court Room, November 20, 1933 (Raleigh, 1933), 7 (hereinafter cited as Haywood, Presentation).
12. Angellotti, Polks, 16; London, "Badger," 6; Badger, Giles Badger, 44; Haywood, Presentation, 7; Josephus Daniels, Tar Heel Editor (Chapel Hill: Univ. of North Carolina Press, 1939), 296. See also ibid., 318.
13. Graham, "Badger," 205; Ashe, "Badger," VII, 41; Thornton W. Mitchell, "Sherwood Haywood," DNCB, III, 88-89.
14. Ashe, "Badger," 41; David Outlaw to Emily B. Outlaw, December 6, 1847, Outlaw Papers, SHC.
15. David Outlaw to Emily B. Outlaw, March 3, 1848, Outlaw Papers, SHC.
16. London, "Badger," 6; Badger, Giles Badger, 44; Haywood, Presentation, 7; Charles H. MCarver, Jr., "Peter Mallett Hale," DNCB, III, 5.
17. London, "Badger," 6; Badger, Giles Badger, 44; Haywood, Presentation, 3-4, 7.
18. London, "Badger," 6; Badger, Giles Badger, 44; Haywood, Presentation, 3-4, 7; North Carolina Government, 455, 832, 874; Raleigh News and Observer, April 23, 1882, in Scrapbook, 31.
19. London, "Badger," 6; Badger, Giles Badger, 44; Haywood, Presentation, 3-4, 7.
20. See, e.g. Wilmington Messenger, 1891, in Weeks' Scrapbook, 187 (North Carolina's "greatest genius");

Fayetteville Observer, December 1, 1846, quoted in London, "Badger," 86 ("the great intellect of the State"); Pulaski Cowper in Raleigh Intelligencer, April , 1891, in Scrapbook, 25 ("Intellectually, I believe him to be the greatest man the State has yet produced") and Rev. Dr. Needham B. Cobb, in the Wilmington Messenger, , 1891, in Scrapbook, 30 ("Mr. Badger was, we think, the finest intellect of all our public men -- possibly the noblest mind ever borne in the State").

21. "Unpublished Letters of Calvin Henderson Wiley," ed. Mary Calhoun Wiley, XXIX NCHR (1952), 93.

22. Raleigh Observer, February 1877, in Scrapbook 17.

23. Schenck, Personal Sketches of Distinguished Delegates, 5-6.

24. Graham, "Badger," 198.

25. Ibid., 186.

26. Raleigh Sentinel, September 1871, in Scrapbook, 20-21.

On Donnell, see Gertrude S. Carraway, "Richard Spaight Donnell," DNCB, II, 93. He served in the U.S. House from 1847 to 1849, and was the son of Judge John Robert Donnell, who had beaten out Badger for a seat on the Superior Court in 1819.

27. Graham, "Badger," 198.

28. Schenck, Personal Sketches of Distinguished Delegates,

7. For similar statements, see Raleigh Sentinel, September

1871, in Scrapbook, 19, and Battle, Old Time Tar Heel, 103-04.

29. Manly's address to the Raleigh Bar upon Badger's death, in Scrapbook, 5; unidentified newspaper clipping, May 1866, in Scrapbook, 9. For Badger's distaste of writing, see also Raleigh Observer, February 1877, in Scrapbook, 17, Raleigh Sentinel, September 1871, in Scrapbook, 20, and Graham, "Badger," 203.

30. London, "Badger," DNCB, I, 79; Marshall DeLancy Haywood, Lives of the Bishops of North Carolina (Raleigh: Alfred Williams & Co., 1910), 59, 103 (hereinafter cited as Haywood, Bishops); Raleigh Register, June 18 and June 25, 1833. On Badger's mother being a Methodist, see "Social Reminiscences," 284. Badger's brother-in-law, Leonidas Polk (1806-1864), who attended the 1828 Diocesan Convention with Badger, later became the Episcopal Missionary Bishop of the Southwest, and Bishop of Louisiana, while Badger's nephew, George Badger Wetmore (1821-1888), served as rector of Christ [Episcopal] Church, Cleveland, and St. Andrew's, Woodleaf, N.C. from 1857 to 1887.

31. Graham, "Badger," 103.

32. State v. Williams, 4 Iredell's Law (26 N.C.) 400 (1844).

33. Graham, "Badger," 189.

34. Molly Manning, "George Washington Freeman," DNCB, II, 238.

35. Ibid., 238; Battle, Old-Time Tar Heel, 103.

36. Raleigh Register, November 1, 1844.
37. Michael T. Malone, "Levi Silliman Ives," DNCB, III, 257 (hereinafter cited as Malone, "Ives"); Haywood, Bishops, 91-112.
38. Quoted in Haywood, Bishops, 115.
39. Quoted in ibid., 116.
40. Quoted in ibid., 116.
41. Ibid., 117.
42. Ibid., 118.
43. Quoted in ibid., 118-19.
44. Quoted in ibid., 112.
45. Quoted in the Raleigh Register, December 12, 1849.
46. Quoted in ibid., December 12, 1849.
47. Haywood, Bishops, 123-25.
48. Ibid., 126-27; Malone, "Ives," 257; Washington Union, January 28, 1853.
49. Levi Silliman Ives to the Diocese of North Carolina, December 22, 1852, quoted in Haywood, Bishops, 127. See also, Levi Silliman Ives, The Trials of a Mind in its Progress to Catholicism (Boston: Patrick Donahoe, 1854).
50. Sydney E. Ahlstrom, A Religious History of the American People (New Haven: Yale Univ. Press, 1972), 628.
51. Haywood, Bishops, 131-32. The travelling companion, Mrs. Ella Eaton Dickens, half-sister to Attorney General William Eaton, Jr., soon thereafter renounced Roman

Catholicism and became a Baptist! She later returned to the Episcopal Church, and died a member.

52. Graham, "Badger," 203.

53. New York Tribune, January 8, 1853.

54. George E. Badger to James A. Pearce, April 26, 1853, quoted in London, "Badger," 23.

55. See, e.g., George E. Badger to James A. Pearce, September 17, 1856, in George E. Badger Papers, North Carolina Department of Archives and History, Raleigh (hereinafter cited as Badger Papers, NCDAH).

56. Thomas P. Devereux to William Gaston, November 14, 1833, and George E. Badger to William Gaston, November 14, 1833, Gaston papers, SHC, quoted in Leonard Baker, John Marshall: A Life in Law (New York: Macmillan, 1974), 753.

57. George E. Badger to John J. Crittenden, October 12, 1848, Crittenden Papers, LC.

58. Raleigh Intelligencer, April 1891, in Scrapbook, 24. See also Graham, "Badger," 192, 204, and Eaton, "Badger," 335.

59. Thomas Ruffin to Joseph B.G. Roulhac, February 7, 1853, Ruffin Papers, II, 387.

60. Eaton, "Badger," 337.

61. "Social Reminiscences," 282.

62. Eaton, "Badger," 337. On Badger's great conversational powers, see also "Social Reminiscences," 283, Schenck, Personal Sketches of Distinguished Delegates, 6-7, North

Carolina Presbyterian, 1866, in Scrapbook 16, Raleigh News and Observer, April 12, 1891, Wilmington Messenger, April 1891, in Scrapbook, 29, Wilmington Messenger, April 1891, in Weeks' Scrapbook, 187, Ashe, "Badger," 37, and Graham, "Badger," 182, 186, and 203.

63. Schenck, Personal Sketches of Distinguished Delegates, 6.

64. R.H. Whitaker, Whitaker's Reminiscences (Raleigh: Edwards & Broughton, 1905), 45 (hereinafter cited as Whitaker's Reminiscences).

65. Eighth United States Census, North Carolina, Wake County, Raleigh Township, 325.

66. For mention of Badger's "generous and elegant hospitality" and the like, see, among other sources, North Carolina Presbyterian, 1866, in Scrapbook 16, Eaton, "Badger," 337, and Wilmington Messenger, April 1891, in Weeks' Scrapbook, 187.

67. "Social Reminiscences," 285.

68. Joseph Blount Chesire, Nonnulla: Memories, Stories, Traditions, More or Less Authentic (Chapel Hill: Univ. of North Carolina Press, 1930), 41 (hereinafter cited as Chesire, Nonnulla). This same story was also recounted in "Social Reminiscences," 284 and Whitaker's Reminiscences, 46.

69. Whitaker's Reminiscences, 44.

70. Ibid., 45-46.

71. London, "Badger," 133, 275.

72. Whitaker's Reminiscences, 46.
73. George E. Badger to John J. Crittenden, December 7, 1857, Crittenden Papers, LC.
74. George E. Badger to J.M. Carlisle, November 2, 1859, Badger Papers, NCDAH.
75. Schenck, Personal Sketches of Distinguished Delegates, 7.
76. "Social Reminiscences," 284.
77. New York Tribune, January 8, 1853.
78. Battle, Old-Time Tar Heel, 103.
79. Ibid., 107.
80. Raleigh Express (?), April 28, 1891 (?) in Weeks' Scrapbook, 188.
81. Griffith John McRee to David L. Swain, March 12, 1857, David L. Swain papers, SHC, quoted in Clyde Wilson, "Griffith John McRee: An Unromantic Historian of the Old South," XLVII NCHR (1970), 8.
82. Ibid., 8, paraphrasing David L. Swain to Griffith John McRee, April 4, 1847, Griffith John McRee Papers, SHC.
83. Schenck, Personal Sketches of Distinguished Delegates, 6.
84. Raleigh Intelligencer, April 1891, in Scrapbook, 23.
85. Schenck, Personal Sketches of Distinguished Delegates, 7.
86. Ibid., 5.
87. Ibid., 6.
88. J.G. DeRoulhac Hamilton, Party Politics in North Carolina: 1835-1860, Vol. 15 of The James Sprunt Historical

Publications (Durham: The Seeman Printer, 1916), 59-60

(hereinafter cited as Hamilton, Party Politics).

89. Biographical Directory of the United States Congress: 1774-1989, eds. Bruce A. Ragsdale and Kathryn Allamong Jacob (United States Government Printing Office, 1989), 1769 (hereinafter cited as BDUSC).

90. Chesire, Nonnulla, 116-17; Battle, Old-Time Tar Heel, 106.

91. Battle, Old-Time Tar Heel, 106; Chesire, Nonnulla, 116.

92. Hamilton, Party Politics, 60.

93. Battle, Old-Time Tar Heel, 106; Salisbury Carolina Watchman, February 3, 1853.

94. Battle, Old-Time Tar Heel, 106; Salisbury Carolina Watchman, February 3, 1853.

95. Graham, "Badger," 182; Raleigh North Carolina Standard, January 1853, quoted in the Washington Union, February 1, 1853.

96. Peele, Lives of Distinguished North Carolinians, 208.

97. Schenck, Personal Sketches of Distinguished Delegates, 5.

98. New York Tribune, January 8, 1853.

99. Raleigh Express (?), April 28, 1891 (?), in Weeks' Scrapbook, 188. See Raleigh Intelligencer, April 1891, in Scrapbook, 23, for another source stating that Badger was subject to great mood shifts.

100. Wilmington Journal, June 1860, quoted in the Raleigh North Carolina Standard, June 20, 1860, quoted in London, "Badger," 254.

101. William Morrison Robinson, Jr., "Admiralty in 1861: The Confederate States District Court for the Division of Pamlico of the District of North Carolina," XVII NCHR (1940), 132.

Chapter VI

1. Henry Clay to John M. Clayton, February 23, 1841, Clay Papers, IX, 505.

2. London, "Badger," 27. J.G. DeRoulhac Hamilton has written that Badger broke with Jackson "by 1832 and in 1836 he was a Whig leader." Party Politics, 67.

3. Raleigh Register, February 21, 1840.

4. Ibid., March 13, 1840.

5. Ibid., March 20, 1840.

6. Ibid., April 17, 1840.

7. Ibid., April 24, 1840.

8. Quoted in ibid., April 17, 1840.

9. Quoted in ibid., April 24, 1840.

10. Greensborough Patriot, quoted in the Raleigh Register, May 8, 1840.

11. Oxford Southern Citizen, quoted in the Raleigh Register, May 8, 1840.

12. Washington (N.C.) Whig, quoted in the Raleigh Register, May 8, 1840.
13. Rutherfordton Western Star, quoted in the Raleigh Register, May 15, 1840.
14. London, "Badger," 29.
15. Quoted in Scrapbook, 6. Hamilton, though, thought that Manly meant not the Granville speech, but Badger's speech at the Whig Convention in October. Party Politics, 66.
16. Raleigh Register, quoted in the Salisbury Carolina Watchman, April 10, 1840.
17. Salisbury Carolina Watchman, April 10, 1840.
18. Raleigh Register, April 17, 1840.
19. Ibid., May 15, 1840.
20. Ibid., March 20, 1840.
21. Benjamin Harrison to George E. Badger, June 9, 1840, quoted in the Raleigh Register, July 3, 1840.
22. Quoted in the Raleigh Register, July 24, 1840.
23. George E. Badger to Daniel Webster, September 5, 1840, mentioned in Webster Papers, Correspondence Volume 5, 341-42.
24. George E. Badger to Willie P. Mangum, September 24, 1840, Mangum Papers, III, 60-61.
25. Raleigh Register, October 9, 1840; Hillsborough Recorder, October 15, 1840, noted in London, "Badger," 35; and Hamilton, Party Politics, 66.
26. Raleigh Register, October 9, 1840.

27. Danville Reporter, quoted in the Raleigh Register, October 30, 1840, quoted in London, "Badger," 36.
28. London, "Badger," 36.
29. Clarence Clifford Norton, The Democratic Party in Antebellum North Carolina: 1835-1861, Vol. 21 of The James Sprunt Historical Studies (Chapel Hill: Univ. of North Carolina Press, 1930), 77-79 (hereinafter cited as Norton, Democratic Party).
30. Kenneth Rayner to Willie P. Mangum, December 31, 1838, Mangum Papers, II, 537.
31. Norton, Democratic Party, 78-79.
32. London, "Badger," 37, citing the Raleigh North Carolina Standard, November 25, 1840; Hamilton, Party Politics, 70; and Brian G. Walton, "Elections to the United States Senate in North Carolina, 1835-1861" LIII NCHR (1976), 177 (hereinafter cited as Walton, "Elections").
33. Walton, "Elections," 176; Brown, Stanly, 68.
34. Walton, "Elections," 177; Graham Papers, II, 120, ftnt. 62.
35. Walton, "Elections," 177.
36. James W. Osborne to William A. Graham, August 26, 1840, Graham Papers, II, 111.
37. C.L. Hinton to Willie P. Mangum, September 22, 1840, Mangum Papers, III, 58.
38. Charles P. Green to Willie P. Mangum, October 8, 1840, Mangum Papers, III, 65.

39. William B. Shepard to Ebenezer Pettigrew, September 28, 1840, Pettigrew papers, NCDAH, quoted in Brown, Stanly, 68.
40. N.W. Woodfin to David L. Swain, November 8, 1840, mentioned in Schauinger, Gaston, 220.
41. Raleigh North Carolina Standard, September 30, 1840, quoted in London, "Badger," 27-28.
42. Paul C. Cameron to Thomas Ruffin, November 15, 1840, Ruffin Papers, II, 188-89.
43. William A. Graham to James W. Bryan, November 18, 1840, Graham Papers, II, 118-20.
44. William A. Graham to James W. Bryan, November 21, 1840, Graham Papers, II, 121.
45. See, for example, Walton, "Elections," 172.
46. London, "Badger," 37.
47. William A. Graham to James W. Bryan, November 21, 1840, Graham Papers, II, 121-22.
48. Walton, "Elections," 170.
49. Raleigh North Carolina Standard, November 25, 1840, quoted in London, "Badger," 38.
50. William A. Graham to William Gaston, December 16, 1840, Graham Papers, II, 131.
51. For a brief sketch on Owen, see Crabtree, North Carolina Governors, 76-77.
52. John Owen to Willie P. Mangum, December 27, 1840, in Mangum Papers, III, 86.

53. John Owen to Willie P. Mangum, January 11, 1841, Mangum Papers, III, 91-92.
54. Harrisburg Daily Telegraph, quoted in the Raleigh Register, January 29, 1841, quoted in Brown, Stanly, 69.
55. Salisbury Carolina Watchman, February 13, 1841.
56. Ibid., February 20, 1841.
57. Brown, Stanly, 69.
58. William A. Graham to James W. Bryan, February 13, 1841, Graham Papers, II, 161.
59. Henry Clay to John M. Clayton, February 12, 1841, Clay Papers, IX, 499.
60. Willie P. Mangum to Charity A. Mangum, February 13, 1841, Mangum Papers, III, 113.
61. William A. Graham to James W. Bryan, February 13, 1841, Graham Papers, II, 161-62.
62. William A. Graham to Susan Washington Graham, February 15, 1841, in ibid., II, 163.
63. William A. Graham to Thomas Ruffin, February 19, 1841, Ruffin Papers, II, 193.
64. Daniel Moreau Barringer to William A. Graham, February 21, 1841, Graham Papers, II, 167.
65. George E. Badger to William A. Graham, February 16, 1841, Graham Papers, 164-66.
66. Salisbury Western Carolinian, February 26, 1841, letter from a correspondent dated February 13, 1841, from Washington, D.C.

67. Washington Globe, quoted in the Salisbury Western Carolinian, February 26, 1841.
68. Lynchburg Republican, quoted in the Salisbury Western Carolinian, February 26, 1841.
69. Henry Clay to John M. Clayton, February 23, 1841, Clay Papers, IX, 505.
70. Henry Clay to John M. Clayton, March 3, 1841, in ibid., IX, 509-10.
71. Raleigh Star, quoted in the Salisbury Carolina Watchman, February 27, 1841.
72. William A. Graham to James W. Bryan, February 13, 1841, Graham Papers, II, 162.
73. Washington National Intelligencer, February 15, 1841, quoted in the Salisbury Carolina Watchman, February 27, 1841.
74. George E. Badger to Daniel Webster, February 17, 1841, noted in Webster Papers, Correspondence, Volume 5, 354.
75. Washington National Intelligencer, February 22, 1841, quoted in London, "Badger," 41.
76. Salisbury Carolina Watchman, March 6, 1841.
77. Lawrence Foushee London, "George Edmund Badger, Member of the Harrison-Tyler Cabinet, 1841" XXXVII South Atlantic Quarterly (1938), 313 (hereinafter cited as London, "Badger, Member of Cabinet").
78. William A. Graham to James W. Bryan, February 13, 1841, Graham Papers, II, 161.

79. London, "Badger, Member of Cabinet," 314.
80. George E. Badger to William A. Graham, April 28, 1841, Graham Papers, II, 189.
81. George E. Badger to David L. Swain, April 25, 1841, Swain Papers, NCDALH, quoted in London, "Badger," 59.
82. Congressional Globe, 27 Cong., 1 Sess., Appendix, 8-9.
83. London, "Badger, Member of Cabinet," 315-16.
84. Ibid., 316; Washington Post, February 24, 1891, in Weeks' Scrapbook, 189.
85. Frederick Nash to William A. Graham, June 8, 1841, Graham Papers, II, 195.
86. William A. Graham to James W. Bryan, June 13, 1841, Graham Papers, II, 199.
87. William A. Graham to Susan Washington Graham, July 4, 1841, Graham Papers, 207-08.
88. London, "Badger, Member of Cabinet," 317.
89. Ibid., 318.
90. Congressional Globe, 27 Cong., 1 Sess., Appendix, 161-62.
91. William A. Graham to Willie P. Mangum, June 13, 1841, Graham Papers, II, 198.
92. Willie P. Mangum to Duncan Cameron, June 26, 1841, Mangum Papers, III, 181-88.
93. Abel P. Upshur to Nathaniel Beverly Tucker, July 28, 1841, quoted in Lyon G. Tyler, The Letters and Times of the

Tylers (Richmond: Whillet & Shepperson, 1885), II, 115

(hereinafter cited as Tyler, Tylers).

94. Washington National Intelligencer, quoted in the Raleigh Register, September 24, 1841. Badger's letter was dated, "Washington, Sept. 18, 1841."

95. William A. Graham to James W. Bryan, September 13, 1841, Graham Papers, II, 241.

96. Washington National Intelligencer, quoted in the Raleigh Register, September 24, 1841.

97. Willie P. Mangum to Charity A. Mangum, September 5, 1841, Mangum Papers, III, 230-31.

98. William A. Graham to Susan Washington Graham, September 5, 1841, Graham Papers, II, 238-39.

99. George E. Badger to Willie P. Mangum, September 9, 1841, Mangum Papers, III, 232-33.

100. London, "Badger, Member of Cabinet," 321-22. See also George E. Badger to John J. Crittenden, March 2, 1842, Crittenden Papers, LC, backing up Ewing's claim.

101. John Tyler, Jr., to Lyon G. Tyler, January 29, 1883, quoted in Tyler, Tylers, 121-22.

102. Washington National Intelligencer, September 18 and September 27, 1841, quoted in London, "Badger, Member of Cabinet," 322.

103. William A. Graham to James W. Bryan, September 13, 1841, Graham Papers, II, 241.

104. William A. Graham to Susan Washington Graham, September 12, 1841, Graham Papers, II, 240.
105. Washington National Intelligencer, quoted in the Raleigh Register, September 24, 1841.
106. Willie P. Mangum to Duncan Cameron, June 26, 1841, Mangum Papers, III, 184.
107. New York Tribune, quoted in London, "Badger, Member of Cabinet," 325.
108. Philadelphia Inquirer, quoted in the Raleigh Register, September 24, 1841.
109. Philadelphia Chronicle, quoted in the Raleigh Register, September 24, 1841.
110. Charleston Mercury, quoted in the Raleigh Register, September 24, 1841.
111. Raleigh Register, September 24, 1841.
112. Ibid., September 24, 1841.
113. George E. Badger to William A. Graham, January 19, 1841, Graham Papers, II, 146-47.
114. Hillsborough Recorder, September 30, 1841, quoted in London, "Badger, Member of Cabinet," 326.
115. Quoted in ibid., 327.
116. George E. Badger to John J. Crittenden, February 4, 1842, Crittenden Papers, LC.
117. George E. Badger to John J. Crittenden, March 2, 1842, Crittenden Papers, LC.

118. Kruman, Parties and Politics, 12-14; Edgar E. Folk and Bynum Shaw, W.W. Holden: A Political Biography (Winston-Salem: John F. Blair, 1982), 19-20 (hereinafter cited as Folk and Shaw, Holden).
119. Walton, "Elections," 168.
120. Kruman, Parties and Politics, 27; Folk and Shaw, Holden, 20-22; Jeffrey, "Thunder," 366.
121. Kruman, Parties and Politics, 55-63; Walton, "Elections," 171; Folk and Shaw, Holden, 20; Norton, Democratic Party, 43-68.
122. Norton, Democratic Party, 43.
123. Walton, "Elections," 172.
124. On Brown, see Wesley H. Wallace, "Bedford Brown: State Rights Unionist" XXXII NCHR (1955) (hereinafter cited as Wallace, "Brown"); and H.G. Jones, "Bedford Brown," DNCB, I, 240-241.
125. Walton, "Elections," 178-80.
126. Ibid., 180.
127. Norton, Democratic Party, 81, 110.
128. Ibid., 12
129. Kruman, Parties and Politics, 42; Folk and Shaw, Holden, 22-23; Norton, Democratic Party, 14-17.
130. Folk and Shaw, Holden, 30-78; Edgar Estes Folk, "W.W. Holden and the North Carolina Standard, 1843-1848: A Study in Political Journalism" XIX NCHR (1942), 22-47. For other works on Holden, see, Horace W. Raper, William W. Holden:

North Carolina's Political Enigma (Chapel Hill: Univ. of North Carolina Press, 1985) (hereinafter cited as Raper, Holden); and William G. Harris, William Woods Holden: Firebrand of North Carolina Politics (Baton Rouge: Louisiana State Univ. Press, 1987) (hereinafter cited as Harris, Holden). On the Democrats' increasing willingness to accept internal improvements, see Kruman, Parties and Politics, 63-85.

131. Raleigh North Carolina Standard, September 1 and September 15, 1847, quoted in Joseph Carlyle Sitterson, The Secession Movement in North Carolina (Chapel Hill: Univ. of North Carolina Press, 1939, 39 (hereinafter cited as Sitterson, Secession Movement)).

132. Sitterson, Secession Movement, 41. See also Kruman, Parties and Politics, 114.

133. Raleigh News and Observer, August 31, 1883, quoted in Folk and Shaw, Holden, 56.

134. Fayetteville Observer, August 8, 1864, quoted in Folk and Shaw, Holden, 56.

135. Wallace, "Brown," 488.

136. Raleigh North Carolina Standard, August 12, 1846. See Norton, Democratic Party, 120-23.

137. Thomas Loring to Martin Van Buren, June 29, 1844, quoted in Norton, Democratic Party, 17.

138. Folk and Shaw, Holden, 32.

139. Raleigh Register, April 26, 1844.

140. London, "Badger," 67-71, citing the Raleigh Register, April 9, 1842, and the Raleigh Star, Spril 27, 1842.
141. Mangum Papers, III, 314, ftnt. 95, citing the Hillsborough Recorder, April 28 and May 5, 1842.
142. C.L. Hinton to Willie P. Mangum, April 5, 1842, Mangum Papers, III, 314-15.
143. George C. Mendenhall to William A. Graham, November 28, December 4, 7, 8, 10, 11, 13, 14, 16 and 18, 1842, Graham Papers, 383-87, 389-97, 400-02, and 406-07; Walton, "Elections," 178-80.
144. James W. Bryan to John H. Bryan, September 25, 1843, quoted in Brown, Stanly, 94-95.
145. Brown, Stanly, 1-170.
146. Ibid., 37-93.
147. Ibid., 1-3, 83-86.
148. Tarboro' Press, July 15, 1843, quoted in Brown, Stanly, 90.
149. The Memoirs of John Quincy Adams, Comprising Portions of His Diary from 1795-1848, ed. Charles Francis Adams (Philadelphia: J.B. Lippincott, 1874-1877), XI, 19.
150. Thomas P. Devereux to William A. Graham, October 10, 1843, Graham Papers, II, 443-44.
151. Thomas P. Devereux to William A. Graham, November 6, 1843, Graham Papers, II, 452.
152. Richard Hines to Willie P. Mangum, October 18, 1843, Graham Papers, II, 447-48.

153. London, "Badger," 73, noting the Raleigh Whig Clarion, October 25 and November 1, 1843 and the Raleigh North Carolina Standard, December 6, 1843.
154. Raleigh Register, December 12, 1843.
155. Ibid., December 12, 1843.
156. Charles P. Green to William A. Graham, October 5, 1842, Graham Papers, II, 382.
157. Raleigh Register, September 5, 1843, noted in London, "Badger," 74.
158. Raleigh Register, April 19, 1844; Brown, Stanly, 96.
159. Quoted in Brown, Stanly, 97.
160. Henry Clay to John J. Crittenden, April 17, 1844, quoted in The Life of John J. Crittenden, ed. Ann Mary Butler Crittenden Coleman (Philadelphia: J.B. Lippincott, 1871), I, 219.
161. Raleigh North Carolina Standard, October 30, 1844, quoted in Norton, Democratic Party, 110, and London, "Badger," 78.
162. William H. Haywood, Jr., to James K. Polk, June 28, 1844, quoted in "Unpublished Letters From North Carolinians to Polk," ed. Elizabeth Gregory McPherson, XVI NCHR (1939), 337-38 (hereinafter cited as "Letters to Polk").
163. See, William H. Haywood, Jr., to James K. Polk, August 23 and September 11, 1844, in ibid., 343-45.
164. See the Raleigh Register, September 27, 1844, for a copy of this article.

165. William H. Haywood, Jr., to James K. Polk, September 26, 1844, in "Letters to Polk," 347.
166. Richard Hines to Willie P. Mangum, July 4, 1844, Mangum Papers, IV, 151.
167. George E. Badger to William A. Graham, September 21, 1844, Graham Papers, II, 523.
168. Edenton Sentinel, quoted in the Raleigh Register, November 8, 1844.
169. Raleigh Register, January 2, 1846.
170. Ibid., January 16, 1846.
171. Fayetteville Observer, quoted in ibid., January 30, 1846.
172. Raleigh Register, January 16, 1846; Fayetteville Observer, quoted in ibid., January 30, 1846.

Chapter VII

1. Raleigh Register, August 7, 1846; Walton, "Elections," 181.
2. See Kruman, Parties and Politics, 61, for the composition of North Carolina legislatures during the 1840s.
3. Raleigh Register, August 28, 1846.
4. Ibid., September 4, 1846.
5. Weston R. Gales to Willie P. Mangum, September 22, 1846, Mangum Papers, IV, 496-97.
6. Thomas L. Clingman to Willie P. Mangum, August 25, 1846, Mangum Papers, IV, 477-78.

7. Hamilton, Party Politics, 110.
8. Walton, "Elections," 170.
9. Raleigh North Carolina Standard, November 25, 1846, quoted in Brown, Stanly, 105.
10. Raleigh Register, November 27, 1846.
11. Edward J. Hale to Weston R. Gales, November 20, 1846, Graham Papers, III, 158.
12. Fayetteville Observer, quoted in the Raleigh Register, December 4, 1846.
13. Hillsboro' Recorder, quoted in the Raleigh Register, December 4, 1846.
14. Washington (N.C.) North State Whig, quoted in the Raleigh Register, December 4, 1846.
15. Norfolk Herald, quoted in the Raleigh Register, January 1, 1847.
16. Richmond Republican, quoted in the Raleigh Register, December 4, 1846.
17. Congressional Globe, 29 Cong., 2 Sess., .
18. Mangum Papers, I, xv-xliii; J.G. deRoulhac Hamilton, "Willie Person Mangum," Dictionary of American Biography, ed. Dumas Malone et al (New York: Charles Scribners' Sons, 1933), XII, 232-33 (Dictionary of American Biography hereinafter cited as DAB); Walton, "Elections," 172-77, 181; Tucker, "Scribe," 177-78.
19. Walton, "Elections," 174; Hamilton, "Mangum," DAB, XII, 233.

20. Tucker, "Scribe," 177-78.
21. Quoted in ibid., 178.
22. David Outlaw to Emily B. Outlaw, February 13, 1848 and December 9, 1849, Outlaw Papers, SHC.
23. Walton, "Elections," 186.
24. David Outlaw to Emily B. Outlaw, December 16, 1849, Outlaw Papers, SHC.
25. New York Mirror, quoted in the Salisbury Carolina Watchman, January 20, 1853.
26. David Outlaw to Emily B. Outlaw, December 16, 1847, Outlaw Papers, SHC.
27. Graham, "Badger," 206.
28. North Carolina Presbyterian, 1866, in Scrapbook, 15.
29. Tallahassee Floridian, 1866, quoted in Scrapbook, 13.
30. Raleigh News and Observer, April 12, 1891.
31. Raleigh Sentinel, September , 1871, in Scrapbook, 19.
32. Ibid., in Scrapbook 19-20. This same story was repeated in the Wilmington Messenger, May 14, 1891, quoted in London, "Badger," 135 and Scrapbook, 27.
33. New York Tribune, February 14, 1853.
34. Lawrence Foushee London, "George Edmund Badger in the United States Senate, 1846-1849" XV NCHR (1938), 4 (hereinafter cited as "Badger in Senate, 1846-1849").

35. George E. Badger to William A. Graham, January 14, 1847, Graham Papers, III, 173.
36. Congressional Globe, 29 Cong., 2 Sess., 184-86.
37. Ibid., 187.
38. James Graham to William A. Graham, January 17, 1847, Graham Papers, III, 174.
39. C.L. Hinton to Willie P. Mangum, January 22, 1847, Mangum Papers, V, 17.
40. North Carolina Presbyterian, 1866, in Scrapbook, 15.
41. Baltimore Patriot, quoted in the Fayetteville Observer, January 19, 1847, quoted in London, "Badger in Senate, 1846-1849," 6.
42. New York Express, quoted in the Fayetteville Observer, January 26, 1847, quoted in London, "Badger in Senate, 1846-1849," 7.
43. Congressional Globe, 29 Cong., 2 Sess., 428-31; London, "Badger in Senate, 1846-1849," 9-10.
44. London, "Badger in Senate, 1846-1849," 7-9, 11.
45. Philadelphia North American, quoted in the Raleigh Register, March 30, 1847, quoted in ibid., 11.
46. Quoted in London, "Badger in Senate, 1846-1849," 10.
47. Quoted in ibid., 12-14.
48. Philadelphia North American, quoted in the Fayetteville Observer, February 1, 1848, quoted in ibid., 14.
49. Raleigh Register, February 26, 1848.

50. David Outlaw to Emily B. Outlaw, January 18, 1848, Outlaw Papers, SHC.
51. Raleigh North Carolina Standard, quoted in the Washington Union, February 1, 1853.
52. New York Tribune, January 8, 1853.
53. Congressional Globe, 31 Cong., 1 Sess., 373; London, "Badger in Senate, 1846-1849," 15.
54. Congressional Globe, 30 Cong., 1 Sess., Appendix, 120.
55. Sitterson, Secession Movement, 41; Herbert Dale Pegg, The Whig Party in North Carolina (Chapel Hill: Colonial Press, 1968), 138 (hereinafter cited as Pegg, Whig Party).
56. Congressional Globe, 30 Cong., 1 Sess., Appendix 1175; Pegg, Whig Party, 138.
57. United States Constitution, Article IV, Section 3; London, "Badger in Senate, 1846-1849," 16-20.
58. Congressional Globe, 30 Cong., 1 Sess., 811.
59. Quoted in London, "Badger in Senate, 1846-1849," 18.
60. Pegg, Whig Party, 139.
61. Congressional Globe, 30 Cong., 1 Sess., 1002-07; Pegg, Whig Party, 138-39; London, "Badger in Senate, 1846-1849," 17-20.
62. Raleigh Register, August 5, 1848.
63. Raleigh North Carolina Standard, July 26, 1848, quoted in London, "Badger," 121.
64. George E. Badger to R.B. Semple, August 10, 1848, Badger Papers, Duke University, quoted in London, "Badger," 122-23.

65. London, "Badger," 123-24, noting the Raleigh Register, August 30 and November 8, 1848.

66. George E. Badger to John J. Crittenden, October 12, 1848, Crittenden Papers, LC.

67. George E. Badger to John J. Crittenden, January 13, 1849, Crittenden Papers, LC.

Chapter VIII

1. Kruman, Parties and Politics, 32, 145.

2. Ibid., 32, 145.

3. William A. Graham to James W. Bryan, January 11, 1848, Graham Papers, III, 212.

4. Kruman, Parties and Politics, 145.

5. Edward Stanly to Thomas Sparrow, April 10, 1855, quoted in Brown, Stanly, 110.

6. Brown, Stanly, 108.

7. Kruman, Parties and Politics, 145-46.

8. Washington North State Whig, March 1, 1848, quoted in Brown, Stanly, 107-08.

9. Kruman, Parties and Politics, 146; Paul Apperson Reid, Gubernatorial Campaigns and Administrations of David S. Reid, 1848-1854 (Cullowhee, N.C., 1953), 6-8 (hereinafter cited as Reid, Reid).

10. Raleigh Register, May 20, 1848.

11. Wilmington Commercial, quoted in the Raleigh North Carolina Standard, July 12, 1848, quoted in Reid, Reid, 11.

12. Reid, Reid, 12.
13. The best source for the 1848 general election is Reid, Reid, 3-16. See also Norton, Democratic Party, 153-57; Brown, Stanly, 111-12; Kruman, Parties and Politics, 86-90, 146; and Folk and Shaw, Holden, 47-55.
14. Jeffrey, "Thunder," 369.
15. Raleigh Register, August 12, 1848. For information on the Raleigh Register and the Gales family, see Robert N. Elliott, Jr., The Raleigh Register, 1799-1863 (Chapel Hill: Univ. of North Carolina, 1955); Kruman, Parties and Politics, 42; Folk and Shaw, Holden, 54; and DNCEB, II, 265-70.
16. Raleigh North Carolina Standard, May 17, 1848, quoted in Brown, Stanly, 110-11.
17. David Outlaw to Emily B. Outlaw, February 10, 1848, Outlaw Papers, SHC.
18. Walton, "Elections," 182.
19. Ibid., 182.
20. Raleigh Register, December 6, 1848.
21. David Outlaw to Emily B. Outlaw, February 22, 1848, Outlaw Papers, SHC.
22. Walton, "Elections," 182.
23. William H. Washington to James W. Bryan, November 26, 1848, quoted in Lawrence F. London, "George Edmund Badger and the Compromise of 1850," XV NCHR (1938), 100 (hereinafter cited as London, "Badger and Compromise").

24. George E. Badger to John J. Crittenden, October 12, 1848, Crittenden Papers, LC.
25. Jeffrey, "Thunder," 382.
26. Walton, "Elections," 182.
27. James T. Morehead to William A. Graham, April 1, 1848, quoted in Kruman, "Clingman," 10-11.
28. Joseph Allison to William A. Graham, March 5, 1848, Graham Papers, III, 215.
29. William Valentine, written in his diary on May 26, 1848, quoted in Kruman, Parties and Politics, 147.
30. Kruman, Parties and Politics, 147.
31. J. Laurence Badger to D.M. Barringer, December 16, 1848, and J.M. Long to D.M. Barringer, December 15, 1848, both quoted in Kruman, "Clingman," 11.
32. For information on Clingman's early career, see Jeffrey, "Thunder," 371-73; Kruman, "Clingman," 2-4; Inscoe, "Clingman," 44; and H. Thomas Kearney, Jr., "Thomas Lanier Clingman," DNCB, I, 387-88 (hereinafter cited as Kearney, "Clingman").
33. Clarence N. Gilbert, "The Public Career of Thomas L. Clingman" (unpublished Master's thesis, Univ. of North Carolina, 1946), 32-33 (hereinafter cited as Gilbert, "Clingman"); Kruman, "Clingman," 5-6; Inscoe, "Clingman," 45-46; Raleigh North Carolina Standard, January 17 and February 14, 1844, quoted in Jeffrey, "Thunder," 375.

34. Clingman, Speeches, 174, 193-94; Inscoc, "Clingman," 46; Jeffrey, "Thunder," 375.
35. Jeffrey, "Thunder," 375.
36. James Graham to William A. Graham, August 19, 1845, Graham Papers, III, 63-65.
37. Raleigh North Carolina Standard, August 20, 1845, quoted in Jeffrey, "Thunder," 375.
38. Raleigh Register, December 1, 1846, quoted in London, "Badger," 84; Hamilton, Party Politics, 110.
39. James Graham to William A. Graham, May 10, 1847, Graham Papers, III, 193-94; Jeffrey, "Thunder," 375-76; Inscoc, "Clingman," 47-48.
40. Quoted in Clingman, Speeches, 217.
41. Quoted in ibid., 223-25.
42. Inscoc, "Clingman," quoting ibid., 225.
43. Congressional Globe, 29 Cong., 2 Sess., 66.
44. David Outlaw to Emily B. Outlaw, March 3, 1848, Outlaw Papers, SHC.
45. Thomas L. Clingman to Willie P. Mangum, September 1, 1848, Mangum Papers, V, 110.
46. Thomas L. Clingman to Willie P. Mangum, September 1, 1848, Mangum Papers, V, 109-10.
47. Tucker, "Scribe," 179-82; Kearney, "Clingman," I, 388.
48. B.F. Moore to D.M. Barringer, December 15, 1848, quoted in Kruman, "Clingman," 11-12.
49. Jeffrey, "Thunder," 378.

50. Walton, "Elections," 183.
51. David Outlaw to Emily B. Outlaw, December 6, 1848, Outlaw Papers, SHC.
52. David Outlaw to Emily B. Outlaw, December 12, 1848, Outlaw Papers, SHC.
53. Kruman, "Clingman," 12; Walton, "Elections," 184.
54. Bayles M. Edney to Thomas L. Clingman, December 16, 1848, quoted in Jeffrey, "Thunder," 378.
55. David Outlaw to Emily B. Outlaw, December 6, 1848, Outlaw Papers, SHC.
56. Raleigh Register, December 20, 1848.
57. Calvin Graves, et al, to Thomas L. Clingman, December 18, 1848, paraphrased in Jeffrey, "Thunder," 378.
58. Thomas L. Clingman to Calvin Graves, et al, December 18, 1848, quoted in Jeffrey, "Thunder," 378-79.
59. Brown, Stanly, 115.
60. Walton, "Elections," 184.
61. George E. Badger to John J. Crittenden, January 13, 1849, Crittenden Papers, LC.
62. Chart, with slight modifications, from Walton, "Elections," 184.
63. Raleigh North Carolina Standard, December 27, 1848, and Fayetteville North Carolinian, January 6, 1849, quoted in Jeffrey, "Thunder," 380.
64. Asa Biggs to James K. Polk, December 27, 1848 in "Letters to Polk," 259-60.

65. Raleigh Register, December 27, 1848.
66. Henry T. Farmer to the public, December 21, 1848, printed in the Raleigh Register, December 27, 1848.
67. Thomas L. Clingman, Address of T.L. Clingman on the Recent Senatorial Election: To the First Congressional District of North Carolina (Washington: J. and G.S. Gideon, 1849) (hereinafter cited as Clingman, Address on Senatorial Election), quoted in Kruman, "Clingman," 14.
68. Clingman, Address on Senatorial Election, 14-15, quoted in Tod R. Caldwell to Seaton Gales, January 22, 1849, printed in the Raleigh Register, January 24, 1849.
69. Raleigh Register, January 24, 1849.
70. Salisbury Carolina Watchman, February 8, 1849.
71. Tod R. Caldwell to Seaton Gales, January 22, 1849, printed in the Raleigh Register, January 24, 1849.
72. J.Y. Hicks to the Raleigh Register, January 25, 1849, printed in same, January 31, 1849.
73. E.P. Miller to the Raleigh Register, March 23, 1849, printed in same, April 4, 1849.
74. Thomas L. Clingman to Henry S. Foote, November 13, 1849, quoted in Clingman, Speeches, 231-33.
75. David Outlaw to Emily B. Outlaw, January 10 (?), 1850, Outlaw Papers, SHC.
76. David Outlaw to Emily B. Outlaw, December 17, 1849, Outlaw Papers, SHC.
77. Congressional Globe, 31 Cong., 1 Sess., 200.

78. Jeffrey, "Thunder," passim. One source Jeffrey does not cite, but should, is Clingman's righthand man Bayles M. Edney's letter to John A. Fagg stating that Clingman thought that if Badger and Graham remained Whig leaders, he had no future in the party. Raleigh Register, November 3, 1852.

79. Inscoe, "Clingman," passim.

80. Kruman, "Clingman," passim.

81. Michael F. Holt, The Political Crisis of the 1850s (New York: John Wiley & Sons, 1978), passim (hereinafter cited as Holt, Political Crisis); Kruman, Parties and Politics, passim.

82. See, e.g., Jeffrey, "Thunder."

83. Kruman, "Clingman," 2.

84. Ibid., 17.

85. Ibid., 2, 17.

86. Ibid., 17.

87. For sectional percentages of the vote in North Carolina gubernatorial election from 1840 to 1860, see Jeffrey, "Thunder," 369.

88. This table is a modified version of one found in Jeffrey, "Thunder," 369. Note that the "Whig" percentage between 1854 and 1860 includes the percentage for the American candidate in 1856 and the Distribution candidate in 1858.

89. Numbers from ibid., 369.

Chapter IX

1. George E. Badger to John J. Crittenden, January 13, 1849, Crittenden Papers, LC; Brown Stanly, 120.
2. Willie P. Mangum to William A. Graham, March 1, 1849, Mangum Papers, V, 136.
3. James W. Osborne to William A. Graham, March 20, 1849, Graham Papers, III, 283-84.
4. Willie P. Mangum to William A. Graham, Mary 25, 1849, Mangum Papers, V, 149-50; see also, Robert T. Paine to William A. Graham, June 1 and June 6, 1849, Graham Papers, III, 287-89.
5. Brown, Stanly, 121; Carolyn A. Wallace, "Daniel Moreau Barringer," DNCB, I, 99.
6. David Outlaw to Emily B. Outlaw, December 9, 1849, Outlaw Papers, SHC.
7. Brown, Stanly, 117-19; see also London, "Badger," 130-31 about a dispute Shepard had with Fayetteville Observer editor Edward J. Hale over Shepard's dislike of Badger.
8. Quoted in London, "Badger in Senate, 1846-1849," 14.
9. National Whig, quoted in the Fayetteville Observer, February 27, 1849, quoted in London, "Badger in Senate, 1846-1849," 21-22.
10. By far the best account of the proceedings concerning the Compromise of 1850 is Holman Hamilton, Prologue to Conflict (Lexington: Univ. of Kentucky Press, 1964).

11. New York Herald, April 13, 1852, quoted in Brown, Stanly, 134.
12. Quoted and paraphrased in London, "Badger and Compromise," 105-09.
13. New York Herald, quoted in the Raleigh Register, March 30, 1850, quoted in ibid., 109.
14. Selma Reporter, quoted in the Raleigh Register, April 27, 1850, quoted in London, "Badger and Compromise," 109.
15. See, e.g., Clingman, Speeches, 231-33 and John S. Williams to Millard Fillmore, November 17, 1849, Millard Fillmore Papers, ed. Lester W. Smith (Buffalo: Buffalo and Eire Co. Historical Society, 1975) (hereinafter cited as Fillmore Papers, BECHS).
16. Augustine H. Shepperd to William A. Graham, April 26, 1852, Graham Papers, IV, 295.
17. David Outlaw to Emily B. Outlaw, March 8, 1850, Outlaw Papers, SHC.
18. William A. Graham to James Graham, March 24, 1850, Graham Papers, III, 319.
19. Augustine H. Shepperd to William A. Graham, April 26, 1852, Graham Papers, IV, 295.
20. Quoted in London, "Badger and Compromise," 111-13.
21. Washington Southern Press, quoted in the Raleigh Register, August 10, 1850, quoted in ibid., 113.
22. London, "Badger and Compromise," 114. On Badger's voting, see ibid., 113-16.

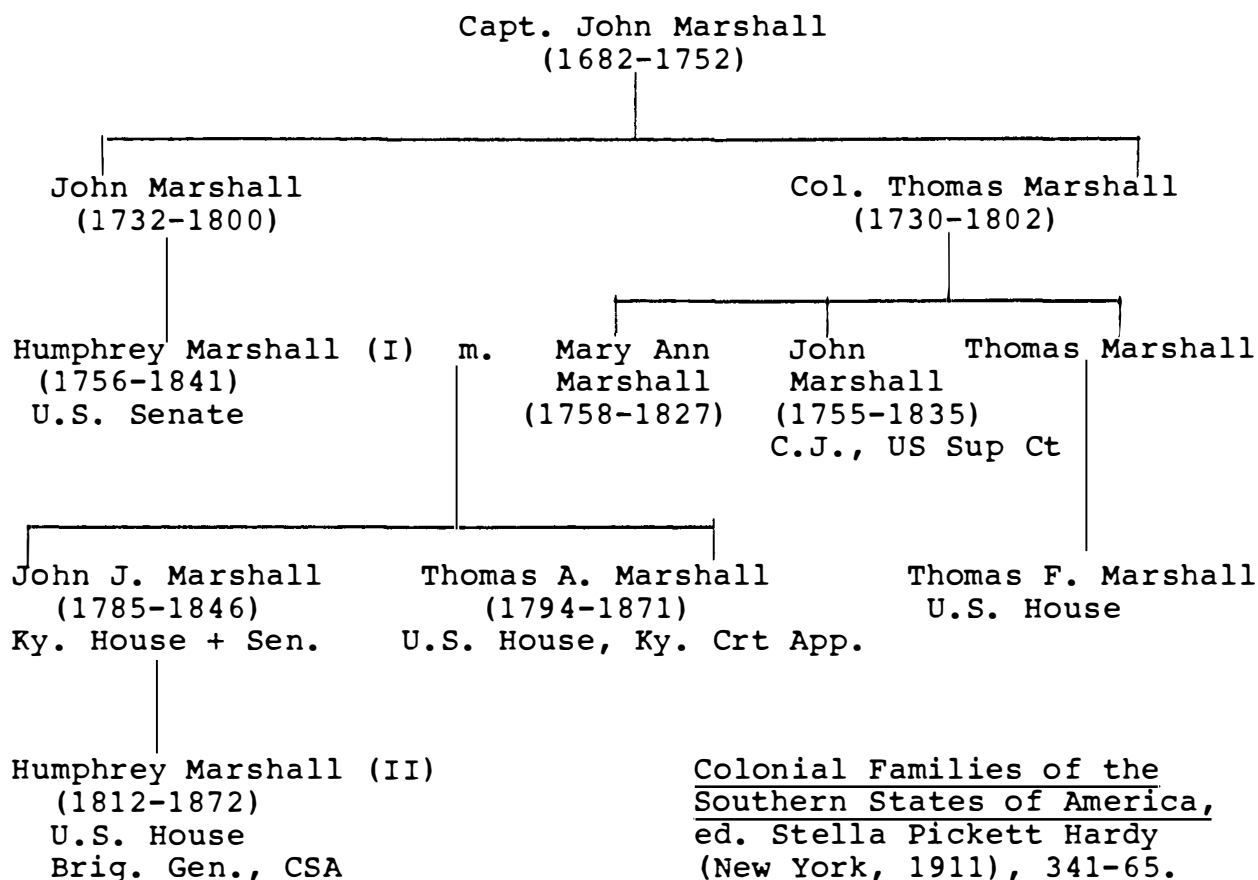
23. Ibid., 114-15; Baltimore Patriot, quoted in the Raleigh Register, August 31, 1850, quoted in ibid., 115.
24. Raleigh Register, May 19, 1852, quoted in London, "Badger and Compromise," 117.
25. Willie P. Mangum to Charity A. Mangum, November 30, 1850, Mangum Papers, V, 193.
26. Congressional Globe, 31 Cong., 2 Sess. 58-61.
27. For a similar analysis, see Lawrence Foushee London, "George Edmund Badger, His Last Years in the United States Senate, 1851-1855," XV NCHR (1938), 234 (hereinafter cited as London, "Badger in Senate, 1851-1855").
28. Congressional Globe, 32 Cong., 1 Sess., 1113-17.
29. Ibid., 1125.
30. Edward J. Hale to William A. Graham, April 21, 1852, Graham Papers, IV, 293.
31. Ibid., 292.
32. Nicholas Carroll to William A. Graham, April 29, 1852, Graham Papers, IV, 298.
33. Augustine H. Shepperd to William A. Graham, April 26, 1852, Graham Papers, IV, 295.
34. Mangum's speech is in Mangum Papers, 725-45. On various North Carolinians being shocked at Mangum's speech and other actions, see Graham Papers, IV, 290-304. See also, James R. Morrill, "The Presidential Election of 1852: Death Knell of the Whig Party of North Carolina" XLIV NCHR (1967), 342-59.

35. Edward J. Hale to William A. Graham, April 21, 1852, Graham Papers, IV, 292.
36. Raleigh Register, September 25, 1852, quoted in London, "Badger in Senate, 1851-1855," 235.
37. London, "Badger," 190.
38. George E. Badger to William A. Graham, September 21, 1852, Graham Papers, IV, 405.
39. Congressional Globe, 32 Cong., 2 Sess., 424.
40. Walton, "Elections," 185-87.
41. Congressional Globe, 33 Cong., 1 Sess., 420-21.
42. On the political motivations of those involved with the Kansas-Nebraska Act, see Holt, Political Crisis, 144-52.
43. Congressional Globe, 33 Cong., 1 Sess., 145-49; London, "Badger in Senate, 1851-1855," 243-47.
44. Raleigh North Carolina Standard, February 22, 1854, noted in London, "Badger in Senate, 1851-1855," 246; Charleston Mercury, quoted in the Raleigh Register, February 25, 1854, quoted in London, "Badger," 215.
45. George E. Badger to William A. Graham, June 7, 1854, Graham Papers, IV, 516.
46. Raleigh Register, October 17, 1860, quoted in London, "Badger in Senate, 1851-1855," 247.
47. John Kerr to James W. Bryan, July 22, 1854. Bryan Papers, SHC, quoted in London, "Badger," 207.
48. Hamilton, Party Politics, 170-71.

49. William W. Morrison to William A. Graham, August 11, 1854, Graham Papers, IV, 528.
50. Walton, "Elections," 170.
51. William A. Graham to Susan Washington Graham, November 25, 1854, Graham Papers, IV, 539.
52. Raleigh Register, November 29, 1854, quoted in London, "Badger in Senate, 1851-1855," 249.
53. Salisbury Carolina Watchman, November 30, 1854.
54. Philadelphia News, quoted in the Raleigh Register, December 6, 1854, quoted in London, "Badger in Senate, 1851-1855," 249.
55. Petersburg Intelligencer, quoted in the Salisbury Carolina Watchman, December 7, 1854.
56. Journal of the Executive Proceedings of the Senate of the United States of America (Washington: Government Printing Office, 1887), IX, 444 (hereinafter cited as J.E.P.S.).
57. Washington Star, quoted in the Raleigh Register, March 21, 1855, quoted in London, "Badger in Senate, 1851-1855)," 250.

Chapter X

1. For a list of all Supreme Court nominations and their outcomes, see Albert P. Blaustein and Roy M. Mersky, The First One Hundred Justices (Hamden, Conn.: Archon Books, 1978), 122-25 (hereinafter cited as Blaustein and Mersky, One Hundred Justices).
2. Abraham, Justices & Presidents, 39.
3. Herbert U. Feibelman, "John McKinley of Alabama," XXII Alabama Lawyer (1961), 22, quoted in Swisher, Taney Period, 67.
4. Swisher, Taney Period, 67. See also Frank Otto Gatell, "John McKinley," in The Justices of the United States Supreme Court 1789-1969: Their Lives and Major Opinions, eds. Leon Friedman and Fred L. Israel (New York: Chelsea House Publishers in association with R.R. Bowsher Co, 1968), I, 767-77, for a similar assessment.
5. Raleigh Register, September 9, 1834.
6. Swisher, Taney Period, 67, 240.
7. Garrett Davis to Millard Fillmore, July 28, 1852, Fillmore Papers, BECHS. Marshall also had a connection with another famous American -- his wife's uncle was Henry Clay. Thomas A. Marshall should not be confused with another nephew of John Marshall who was also a Whig Congressman from Kentucky -- Thomas Francis Marshall. The following chart should help in determining relationships in the Marshall family:



8. New York Tribune, July 22, 1852.

9. Swisher, Taney Period, 241; New York Tribune, July 27, 1852.

10. N.B. Blount to Millard Fillmore, August 13, 1852, and John Moore to Millard Fillmore, August 14, 1852, Fillmore Papers, BECHS.

11. Henry W. Hilliard to Millard Fillmore, August 3, 1852, Fillmore Papers, BECHS.

12. Register of Nominations made by the President to the Senate, Fillmore Papers, BECHS. Fillmore's register shows Macou's name for "Assoc Justice, Sup Ct" on August 14, 1852, however, to the side of this it is written, "This was not

sent in. -- M.P.F." Millard Powers Fillmore was the President's son and served as his father's clerk. Why Macou's name was not sent in is unknown.

13. Pierce Butler, "Judah Philip Benjamin," in Great American Lawyers, VI, 257, 275, quoted in Swisher, Taney Period, 240.

14. New York Tribune, August 23, 1852.

15. Ibid., August 28, 1852 (from Washington, August 27), and September 1, 1852 (from Washington, August 31).

16. Swisher, Taney Period, 240-41; Abraham, Justices & Presidents, 110-11.

17. New York Tribune, September 2, 1852 (from Washington, August 31).

18. Swisher, Taney Period, 241.

19. B.F. Moore to Thomas Ruffin, November 26, 1852, Ruffin Papers, II, 357.

20. Ibid., 357; B.F. Moore to Thomas Ruffin, December 16, 1852, Ruffin Papers, II, 362-63.

21. Swisher, Taney Period, 241.

22. Asa Biggs to Thomas Ruffin, December 11, 1852, Ruffin Papers, II, 360-61. See also Biggs to Ruffin, December 17, 1852, Ruffin Papers, II, 365-66.

23. Bartholomew F. Moore to William A. Graham, December 13, 1852, Graham Papers, IV, 439-40.

24. B.F. Moore to Thomas Ruffin, December 16, 1852, Ruffin Papers, II, 362-63.

25. Frederick Nash to Thomas Ruffin, December 27, 1852, Ruffin Papers, II, 370-71.
26. Edward Stanly to David Outlaw, January 26, 1853, Ruffin Papes, II, 384.
27. Joseph B.G. Roulhac to Thomas Ruffin, February 2, 1853, Ruffin Papers, II, 385.
28. Thomas Ruffin to Joseph B.G. Roulhac, February 7, 1853, Ruffin Papers, II, 387.
29. B.F. Moore to Thomas Ruffin, January 31, 1853, Ruffin Papers, II, 383.
30. Thomas Ruffin to Joseph B.G. Roulhac, February 7, 1853, Ruffin Papers, II, 386.
31. Edward Stanly to John J. Crittenden, no date, Crittenden Papers, LC.
32. New York Tribune, December 30, 1852 (from Washington, December 29).
33. New York Express, quoted in the Raleigh Register, January 26, 1853.
34. Abraham, Justices & Presidents, 93.
35. Swisher, Taney Period, 811-12.
36. See, e.g., the Washington Union, January 28, 1853.
37. Joseph B.G. Roulhac to Thomas Ruffin, February 2, 1853, Ruffin Papers, II, 385.
38. Register of Nominations made by the President to the Senate, Fillmore Papers, BECHS; J.E.P.S., IX, 13.

29. New York Tribune, January 5, 1853 (from Washington, January 4).
40. Ibid., January 6, 1853 (from Washington, January 5).
41. New York Times, January 5, 1853 (from Washington, January 4).
42. Washington Union, January 28 and February 4, 1853.
43. New York Tribune, January 8, 1853.
44. Richmond Whig, January 28, 1853.
45. New York Times, January 15, 1853 (from Washington, January 14).
46. Ibid., February 16, 1853.
47. J.E.P.S., IX, 18, 19, 20, 26 and 28.
48. Wilmington Journal, quoted in the Raleigh Register, January 26, 1853.
49. See, e.g. the New York Tribune, January 21, 24, 31, and February 1, 4, and 8, 1853; and the New York Times, January 17, 21, 25, and February 1, 1853.
50. New York Times, January 18 (from Washington, January 17), and January 21, 1853 (from Washington, January 20.)
51. New York Express and the Baltimore Sun, January 18, 1853, both quoted in the Raleigh Register, January 26, 1853.
52. Salisbury Carolina Watchman, January 20, 1853.
53. William A. Graham to Susan Washington Graham, January 29, 1853, Graham Papers, IV, 489.
54. Charlotte Whig, quoted in the Salisbury Carolina Watchman, February 24, 1853.

55. Vicksburg Whig, February 10, 1853.
56. New York Tribune, January 29, 1853 (from Washington, January 27).
57. Ibid., January 22, 1853 (from Washington, January 21); New York Times, January 25, 1853 (from Washington, January 24); and J.E.P.S., IX, 20.
58. New York Tribune, February 8, 1853 (from Washington, February 7).
59. New York Times, January 14, 1853 (from Washington, January 13).
60. Mobile Advertiser, January 21, 1853, quoted in the Washington Republic, January 27, 1853, quoted in the Raleigh Register, February 2, 1853.
61. Washington Union, January 28, February 1 and 4, 1853.
62. Richmond Whig, January 28, 1853.
63. Vicksburg Whig, February 10, 1853; Richmond Whig, January 28, 1853. For the story behind the switch of Justice Daniel's circuit, see Swisher, Taney Period, 69, 248-60.
64. Petersburg Intelligencer, quoted in the Salisbury Carolina Watchman, January 20, 1853.
65. New Orleans Delta, quoted in the Washington Union, February 4, 1853.
66. Thomas I. Durant to Jefferson Davis, January 22, 1853, Jefferson Davis, Constitutionalist: His Letters, Papers and

- Speeches, ed. Dunbar Rowland (Jackson, Miss: Mississippi Dept. of Archives and History, 1923), II, 184.
67. Raleigh North Carolina Standard, quoted in the Washington Union, February 1, 1853.
68. Wilmington Journal, quoted in the Washington Union, February 4, 1853.
69. Petersburg Democrat, quoted in the Washington Union, February 1, 1853.
70. Mississippian, quoted in the Washington Union, February 1, 1853.
71. Washington Union, January 28, 1853.
72. Mississippian, quoted in the Washington Union, February 1, 1853.
73. Vicksburg Whig, February 10, 1853.
74. Baltimore Sun, January 18, 1853, quoted in the Raleigh Register, January 26, 1853.
75. Swisher, Taney Period, 68; Abraham, Justices & Presidents, 103-04.
76. Richmond Whig, January 28, 1853.
77. J.E.P.S., IX, 26-28.
78. New York Times and New York Tribune, both February 12, 1853.
79. George E. Badger to Millard Fillmore, February 12, 1853, Fillmore Papers, BECHS; Blaustein and Mersky, One Hundred Justices, 153.
80. New York Times, February 16, 1853.

81. Charles Warren, The Supreme Court in United States History (Boston: Little, Brown, 1926), II, 242-45; Swisher, Taney Period, 241; Abraham, Justices & Presidents, 111. See also, Battle, Old-Time Tar Heel, 105; and Graham, "Badger," 188, among many other sources, holding the same.
82. Abram W. Venable to Joseph B.G. Roulhac, February 15, 1853, Ruffin Papers, II, 389.
83. New York Times, January 21, 1853; New York Tribune, February 11, 1853.
84. New York Times, January 21, 1853 (from Washington, January 20).
85. New York Tribune, January 24, 1853, and the New York Times, January 15, 1853.
86. Fayetteville Observer, quoted in the Raleigh Register, February 23, 1853.
87. New York Times, January 25, 1853 (from Washington, January 24).
88. See, e.g., Henry G. Connor, John Archibald Campbell (Boston: Houghton Mifflin, 1920), 16.
89. Battle, Old-Time Tar Heel, 105.
90. Congressional Globe, 30 Cong., 1 Sess., 596.
91. Ibid., 33 Cong., 2 Sess., 604-05.
92. By far the best treatment of the Dred Scott case is Don E. Fehrenbacher, The Dred Scott Case: Its Significance in American Law and Politics (New York: Oxford Univ. Press, 1978).

Chapter XI

1. Raleigh Register, March 14, 1855, quoted in London, "Badger," 240.
2. George E. Badger to J.A. Pearce, March 29, 1855, Badger Papers, NCDAH.
3. H.W. Howard Knott, "James Mandeville Carlisle, "DAB, III, 494.
4. 47 U.S. 11 (1848)
5. George E. Badger to John J. Crittenden, January 13, 1849, Crittenden Papers, LC.
6. Smith et al v. Swormstedt et al., 57 U.S. 288 (1853).
7. Battle, Old-Time Tar Heel, 141.
8. From unidentified newspaper article, in Scrapbook, 17.
9. New York Tribune, January 8, 1853; Vicksburg Whig, February 10, 1853.
10. George E. Badger to J.A. Pearce, March 29, 1855, Badger Papers, NCDAH.
11. London, "Badger," 241-45.
12. George E. Badger to John J. Crittenden, August 9, 1856, Crittenden Papers, LC.
13. Kenneth Rayner to Edward Crudup, February 20, 1856, Mangum Papers, V, 319.
14. George E. Badger to J.A. Pearce, September 17, 1856, Badger Papers, NCDAH.

15. On the 1860 state elections, see Kruman, Parties and Politics, 189-96.
16. George E. Badger to John J. Crittenden, May 6, 1860, Crittenden Papers, LC.
17. Kruman, Parties and Politics, 196-96.
18. London, "Badger," 254-55.
19. Graham, "Badger," 198-99. See also William B. Heiskell to John J. Crittenden, February 18, 1863, Crittenden Papers, LC.
20. Ashe, "Badger," 41. See also Raleigh Intelligencer, April , 1891, in Scrapbook, 24-25, for an amusing story about this service.
21. Ruffin Papers, II, 618-19.
22. George E. Badger to John J. Crittenden, June 25, 1856, Crittenden Papers, LC.
23. See, e.g., George E. Badger to J.A. Pearce, March 29, 1855, and to J.M. Carlisle, March 20, 1858, both in Badger Papers, NCDAH.
24. Kruman, Parties and Politics, 200-10; Graham, "Badger," 200; Folk and Shaw, Holden, 79-134, Battle, Old-Time Tar Heel, 168-69.
25. Kruman, Parties and Politics, 210, 273-78.
26. Raleigh Register, March 6, 1861.
27. George E. Badger to James W. Bryan, March 8, 1861, quoted in Kruman, Parties and Politics, 215.

28. Graham, "Badger," 200-01; Kruman, Parties and Politics, 219.
29. Battle, Old-Time Tar Heel, 169-70.
30. Raleigh Register, May 22, 1861.
31. Battle, Old-Time Tar Heel, 169.
32. For biographical sketches of all the delegates, see John Gilchrist McCormick, Personnel of the Convention of 1861, Vol. 1 of the James Sprunt Historical Monographs (Chapel Hill: The University Press, 1900), 12-91 (hereinafter cited as McCormick, Convention of 1861).
33. See Schenck, Personal Sketches of Distinguished Delegates, 5-8, 14-15.
34. Ibid., 7-8; London, "Badger," DNCB, I, 80.
35. Quoted in Ashe, "Badger," 42.
36. McCormick, Convention of 1861, 8.
37. Ibid., 8.
38. See Brown, Stanly, 171-200, for Stanly's life between 1853 and 1861.
39. Ibid., 201-17.
40. Ashe, "Badger," 43.
41. Raleigh North Carolina Standard, July 23, 1862, quoted in Brown, Stanly, 217.
42. Graham, "Badger," 205-06.
43. Obituary appearing in Scrapbook, 4.