

STATE OF NEW YORK

VS.

JOSEPH SMITH

In 1945 Fawn M. Brodie first published her book *No Man Knows My History*. In Appendix A of that work she included what she claimed was a “Record of the trial of Joseph Smith for disorderly conduct, Bainbridge, New York, March 20, 1826” (1971 edition, page 491). This document, which Mrs. Brodie reprinted from a book originally published in 1883, seemed to link Joseph Smith, the founder of the Mormon Church, to the occult. It, in fact, portrayed the Mormon prophet as a man who deceived the public by looking in a stone placed in his hat to find buried treasures. The leaders of the church were incensed by the publication of this document and denounced it as a forgery. The Mormon Apostle John A. Widtsoe bluntly stated:

... Joseph Smith is made to confess to all his errors, including treasure hunting, peepstone practices, etc., etc. In fact, it is such a complete self-confession as to throw immediate doubt upon the genuineness of the document. Joseph Smith was not a fool. . . . There is no existing proof that such a trial was ever held. (*Joseph Smith—Seeker After Truth*, 1951, page 78)

The Mormon Church’s *Deseret News* called it a “spurious” record:

But the alleged find is no discovery at all, for the purported record has been included in other books . . . after all her puffing and promise the author produces no court record at all, though persistently calling it such. . . . This alleged record is obviously spurious . . . It is patently a fabrication of unknown authorship and never in the court records at all. (*Deseret News*, Church Section, May 11, 1946, as cited in *A New Witness For Christ in America*, enlarged edition, pages 430-431)

Fawn Brodie was excommunicated because of her book on Joseph Smith, and through the years Mormon writers have continued to attack her and the court record which she reproduced in her book. As we will later show, one supporter of Joseph Smith even went so far as to forge a document in an attempt to discredit the claim that Joseph Smith was tried in 1826.



A photograph of the bottom portion of a recently-discovered document written by Justice Levi Bigelow in 1826. This document throws important light on the Joseph Smith case.

In 1971 Wesley P. Walters made a remarkable discovery which verifies the claim that Joseph Smith was a “glass looker” and that he was arrested and brought before a Justice of the Peace for that practice. Since that time, Pastor Walters has contributed a great deal to our knowledge of Joseph Smith’s encounter with the law. Walters has shared with us many of the insights and material which he has gleaned from his study of the laws of the State of New York. His research, in fact, has made this article possible. Pastor Walters will undoubtedly prepare the definitive work on many of the things which we briefly touch on in this issue of the *Messenger*. Just recently H. Michael Marquardt found some original documents which throw important new light on this matter. He has been kind enough to allow us to be the first to publish on this subject. In addition, some Mormon scholars have also added some important observations that have helped us to get a more complete picture of what occurred in 1826.

At this point we are printing the court record in its entirety from its earliest known source, *Fraser’s Magazine*, February, 1873, vol. vii, pages 229-230. Since it will be helpful in understanding the material which will follow, we

recommend that even those who have read it before take the time to go over it again.

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State of New York v. Joseph Smith.

Warrant issued upon written complaint upon oath of Peter G. Bridgeman, who informed that one Joseph Smith of Bainbridge was a disorderly person and an impostor.

Prisoner brought before Court March 20, 1826. Prisoner examined: says that he came from the town of Palmyra, and had been at the house of Josiah Stowel in Bainbridge most of time since; had small part of time been employed in looking for mines, but the major part had been employed by said Stowel on his farm, and going to school. That he had a certain stone which he had occasionally looked at to determine where hidden treasures in the bowels of the earth were; that he professed to tell in this manner where gold mines were a distance under ground, and had looked for Mr. Stowel several times, and had informed him where he could find these treasures, and Mr. Stowel had been engaged in digging for them. That at Palmyra he pretended to tell by looking at this stone where coined money was buried in Pennsylvania, and while at Palmyra had frequently ascertained in that way where lost property was of various kinds; that he had occasionally been in the habit of looking through this stone to find lost property for three years, but of late had pretty much given it up on account of its injuring his health, especially his eyes, making them sore; that he did not solicit business of this kind, and had always rather declined having anything to do with this business.

Josiah Stowel sworn: says that prisoner had been at his house something like five months; had been employed by him to work on farm part of time; that he pretended to have skill of telling where hidden treasures in the earth were by means of looking through a certain stone; that prisoner had looked for him sometimes; once to tell him about money buried in Bend Mountain in Pennsylvania, once for gold on Monument Hill, and once for a salt spring; and that he positively knew that the prisoner could tell, and did 'possess the art of seeing those valuable treasures through the medium of said stone; that he found the [word illegible] at Bend and Monument Hill as prisoner represented it; that prisoner had looked through said stone for Deacon Attleton for a mine, did not exactly find it, but got a p— [word unfinished] of ore which resembled gold, he thinks; that prisoner had told by means of this stone where a Mr. Bacon had buried money; that he and prisoner had been in search of it; that prisoner had said it was in a certain root of a stump five feet from surface of the earth, and with it would be found a tail feather; that said Stowel and prisoner thereupon commenced digging, found a tail feather, but money was gone; that he supposed the money moved down. That prisoner did offer his services; that he never deceived him; that prisoner looked through stone and described Josiah Stowel's house and outhouses, while at Palmyra at Simpson Stowel's, correctly; that he had told about a painted tree, with a man's head painted upon it, by means of said stone. That he had been in company with

prisoner digging for gold, and had the most implicit faith in prisoner's skill.

Arad Stowel sworn: says that he went to see whether prisoner could convince him that he possessed the skill he professed to have, upon which prisoner laid a book upon a white cloth, and proposed looking through another stone which was white and transparent, hold the stone to the candle, turn his head to book, and read. The deception appeared so palpable that witness went off disgusted.

McMaster sworn: says he went with Arad Stowel, and likewise came away disgusted. Prisoner pretended to him that he could discover objects at a distance by holding this white stone to the sun or candle; that prisoner rather declined looking into a hat at his dark coloured stone, as he said that it hurt his eyes.

Jonathan Thompson says that prisoner was requested to look for chest of money; did look, and pretended to know there it was; and that prisoner, Thompson, and Yeomans went in search of it; that Smith arrived at spot first; was at night; that Smith looked in hat while there, and when very dark, told how the chest was situated. After digging several feet, struck upon something sounding like a board or plank. Prisoner would not look again, pretending that he was alarmed on account of the circumstances relating to the trunk being buried, [which] came all fresh to his mind. That the last time he looked he discovered distinctly the two Indians who buried the trunk, that a quarrel ensued between them, and that one of said Indians was killed by the other, and thrown into the hole beside the trunk, to guard it, as he supposed. Thompson says that he believes in the prisoner's professed skill; that the board which he struck his spade upon was probably the chest, but on account of an enchantment the trunk kept settling away from under them when digging, that notwithstanding they continued constantly removing the dirt, yet the trunk kept about the same distance from them. Says prisoner said that it appeared to him that salt might be found at Bainbridge, and that he is certain that prisoner can divine things by means of said stone. That as evidence of the fact prisoner looked into his hat to tell him about some money witness lost sixteen years ago, and that he described the man that witness supposed had taken it, and the disposition of the money:

And therefore the Court find the Defendant guilty. Costs: Warrant, 19c. Complaint upon oath, 25 1/2c. Seven witnesses, 87 1/2c. Recognisances, 25c. Mittimus, 19c. Recognisances of witnesses, 75c. Subpoena, 18c. - \$2.68.

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The Mormon writer Francis W. Kirkham just could not allow himself to believe that the 1826 court record was authentic. He, in fact, felt that if the transcript were authentic it would disprove Mormonism:

A careful study of all facts regarding this alleged confession of Joseph Smith in a court of law that he had used a seer stone to find hidden treasure for purposes of fraud, must come to the conclusion that **no such record was ever made**, and therefore, is not in existence. . . . had he [Joseph Smith] made this confession in a court of law as early as 1826, or four years before the Book of Mormon

was printed, and this confession was in a court record, it would have been **impossible** for him to have organized the restored Church. (*A New Witness For Christ In America*, vol. 1, pages 385-387)

If a court record could be identified, and if it contained a confession by Joseph Smith which revealed him to be a poor, ignorant, deluded, and superstitious person—unable himself to write a book of any consequence, and whose church could not endure because it attracted only similar persons of low mentality—if such a court record confession could be identified and proved, then it follows that **his believers must deny his claimed divine guidance** which led them to follow him. . . . How could he be a prophet of God, the leader of the Restored Church to these tens of thousands, if he had been the superstitious fraud which “the pages from a book” declared he confessed to be? (*Ibid.*, pp. 486-487)

The noted Mormon apologist Hugh Nibley published a book in which this statement appeared: “. . . if this court record is authentic it is **the most damning evidence in existence against Joseph Smith**” (*The Myth Makers*, 1961, page 142). On the same page we read that such a court record would be “the most **devastating blow to Smith** ever delivered.” Because he could see the serious implications of the matter, Dr. Nibley tried in every way possible to destroy the idea that the court record was an authentic document.

As we indicated earlier, in 1971 Wesley P. Walters made an astounding discovery which destroyed many of the arguments Mormon writers had used to discredit the 1826 court record. While searching through some old records stored in the basement of the county jail in Norwich, New York, Wesley Walters and Fred Poffarl discovered two documents from Bainbridge which confirmed the authenticity of the printed court record. The most important was Justice Albert Neely’s bill to the county for his fees in several legal matters he was involved with in 1826. The fifth item from the top mentioned the case of “Joseph Smith The Glass looker.” Below is a photograph of this portion of the document.

The fact that Justice Neely said Joseph Smith was a “Glass looker” fits very well with the published version of the legal proceedings. Hugh Nibley and other Mormon apologists became strangely silent after these documents were discovered.

ANOTHER FORGER

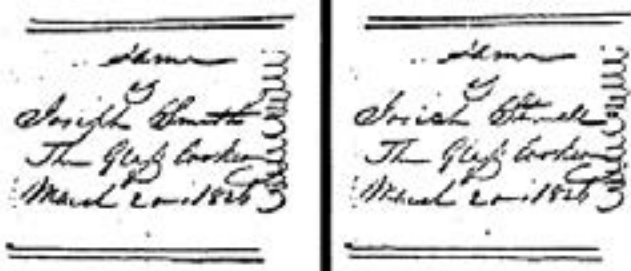
While most Mormon scholars accepted the evidence which Wesley Walters discovered, an overzealous supporter of Joseph Smith decided to resort to forgery in an attempt to discredit the documents. In 1986 Ronald Vern Jackson, a Mormon researcher who wrote the book *The Seer, Joseph Smith*, appeared on the Mormon Church’s television station, KSL-TV with the startling claim that Justice Neely’s bill had been altered. He claimed that the name “Josiah Stowell” originally appeared on the document, but that these words had been changed to “Joseph Smith.” Although Mr. Jackson did not directly state it, the implications were clear—Walters had found a genuine bill referring to Josiah Stowell and that he had deliberately altered it to discredit the prophet Joseph Smith! Jackson professes to believe that Mark Hofmann was not alone in creating forgeries. In an introduction to his publication of the *Mark Hofmann Interviews*, Jackson wrote that he had “very incriminating evidence that others were involved!” He also declared that “It was a conspiracy to rewrite L.D.S church history and Mark Hofmann was but a pawn that was sacrificed to save the King. There are those who would love to disgrace the L.D.S. church by proving it’s history to be a sham. And Mark Hofmann was the tool through which they were going to do it.” He also stated that “Mark Hofmann was just the tip of the iceberg, . . .” In an advertisement for his publications, we find the following: “So incriminating is his [Jackson’s] evidence, information and documentation in this case, not only of Hofmann, and his Associates, but of the ‘Wider’ Co-conspiratorial Ring, that several attempts have been made on his life!” We understand that Mr. Jackson has hinted that the King of Mormon document forgery is a minister who lives in the Midwest. Since Wesley P. Walters pastors a church in Illinois and is deeply involved in research on Mormon history, it seems reasonable to believe that Jackson is hinting that he is the “King.” In any case, Wesley P. Walters made these observations about Ronald Jackson’s charges:

Recently, Ron Jackson, a pro-Mormon historian from Bountiful, Utah, appeared on KSL-TV in Salt Lake City and claimed that the 1826 justice of the peace bill had been altered. He claimed that when this writer was lecturing in Salt Lake City in 1976, a friend had inadvertently picked up some of this writer’s notes and kept them. Accompanying the notes, he claimed, was a reproduction of the trial bill as it originally read. Jackson said that instead of reading the people “vs. Joseph Smith the glass looker,” it originally read, “vs. Josiah Stowell the glass looker.”

The reproduction bearing the name Josiah Stowell and purportedly obtained from this writer’s notes shows signs of forgery. Someone has obliterated parts of “Joseph” and in a sloppy hand tried to change this to read “Josiah.” He has left the “S” of “Smith” but obliterated the remainder and placed the name “Stowell” into that space. The final “ell” in

Stowell appears to have been taken from the name Darnell, which appears further down in the same manuscript, and inserted as the final letters of Stowell. Moreover, the letter “a” in Josiah and the “o” in Stowell do not match the way these letters are formed in the rest of the document, and the crossing of the “t” is quite different. (*Personal Freedom Outreach Newsletter*, April-June 1986, p. 2)

Below is a comparison of a portion of the Neely bill as it was originally photocopied by Wesley P. Walters (to the left) and the way it was altered to read in the Jackson copy (to the right). The reader will notice that the Jackson copy appears to be a very crude forgery.



It appears that Ronald Jackson would like us to believe the following: that the Neely bill originally read “Josiah Stowell.” Wesley Walters made a photocopy of it and then altered it to read “Joseph Smith.” After we had printed thousands of copies reading Joseph Smith, Walters came to Salt Lake City to speak. For some strange reason he brought the photocopy of the bill reading “Josiah Stowell” with him and left it where Mr. Jackson’s friend could easily get hold of it. The bill subsequently fell into Jackson’s hands and he realized that it read “Josiah Stowell” instead of “Joseph Smith.” This certainly is a very strange story.

According to Pastor Walters, Ronald Jackson’s friend claimed that he did attend the lecture and picked up some of the literature that was setting on a table for distribution to the public, but he did not support the claim that the photocopy he gave to Mr. Jackson read “Josiah Stowell.” Actually, what really happened was that this man picked up some of our printed material which we had placed on a table for those attending Walter’s lecture held at Eisenhower Junior High on April 5, 1976. Ronald Jackson’s claim raises some important questions: 1. Why would Wesley P. Walters alter the original document and yet preserve a photocopy that would discredit his most important find? 2. Why would he bring this photocopy to Salt Lake City almost five years after the discovery and leave it on a table so that it would fall into the hands of an adversary? 3. What explanation can be given for Jackson waiting almost a decade before publishing this matter to the world?

Not too long after Ronald Jackson presented his claims on the Mormon television station, we discovered irrefutable proof that his copy of Justice Neely’s bill was a forgery created from our own *printed copy* which was distributed at the lecture. We were, in fact, able to find two identifying marks on the page which appear on a great deal of material we printed in the 1970s. At that time we often printed from metal plates which were prepared by a rather unique process

which we will not attempt to describe here. Due to scratches in the glass that the original copies were pressed against, two unusual marks appeared on the negatives and were consequently transferred to the metal plates. These annoying marks, of course, appeared on the pages which we printed from the plates. Since we knew they were not part of the original copy, we usually tried to erase them on the original metal plates before printing. In many cases this was difficult to do because the marks were too close to the printed text. Often we would erase only part of the marks and occasionally we would leave the marks rather than run the risk of destroying the text which was close to them. In our three-volume work, *The Case Against Mormonism*, the reader will find hundreds of examples showing where the marks or portions of them are found on the printed pages. They usually appear about 3 1/2 inches from the left side of the page and about 3 inches from the bottom. (The location could vary somewhat in documents we printed because of the reduction and other factors, but they usually appeared in this location.) Below the reader will find an enlarged portion of page 121 of *The Case Against Mormonism*, vol. 2, which plainly shows the intrusive marks.

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Mohammed, as he cl

As fate would have it, these very marks appeared on copies of Justice Neely’s bill which we printed for free distribution to the public. They are also found on the photograph which appears on page 13 of our pamphlet *Joseph Smith’s 1826 Trial*. Unfortunately for Ronald Jackson’s claim, these identical marks are found in the very copy he put forth to discredit Wesley Walters’ work! These marks do not appear on a certified copy of Neely’s bill provided by Edwin M. Crumb from “the Office of the Clerk of the Board of Supervisors, Chenango County, Norwich, New York.” This clearly shows that the forger used a copy which had already been printed on our printing press. We believe that the forger probably used white correction fluid to blot out the upper and lower portions of the letter *p* in the word Joseph so that it could be changed into an *a*.

If Ronald Jackson really believes that his idea is correct, he should have a forensic document examiner look at the original bill to see if it has been altered. The type of alteration which his theory proposes is very difficult to make without leaving some evidence. The examiners who worked on the Mark Hofmann case seem to have found alterations Hofmann made in ancient documents easier to detect than those in which he penned the entire document. We, therefore, challenge Mr. Jackson to call in one of the experts who solved the Hofmann case to make an examination of Justice Neely’s bill. If he will do so, we will be willing to pay half the costs involved. In addition, the photocopy of the bill which he has set forth to prove that Josiah Stowell rather than Joseph Smith was arrested should be examined by that expert.

We are convinced that such an examination would show that Jackson’s copy is the bogus document. Besides the evidence which we have presented above, Jackson’s copy of the Neely bill does not show the edge of the top of the bill. This is identical to the printed copies we made in the 1970s. The certified copy clearly shows all four edges. Furthermore, there are certain spots which appear in Jackson’s copy which are in exactly the same places on the printed copies we made.

FORGERY DEMONSTRATED

Below is a photographic demonstration that the Jackson document is a forgery.

- 1 — The two fingers point to the marks made by our plate making equipment.
- 2 — The same marks as they appear in our printed reproduction of the last case on the Neely bill.
- 3 — These identical marks as they appear in the Jackson document.
- 4 — A photograph from a certified copy of the Neely bill provided by Chenango County. Notice that there are no marks on this copy!



These spots were undoubtedly made by dust or something else that was on the glass or lense of our camera. They do not appear in the certified copy. The evidence which we have found with regard to Jackson’s copy is the exact type of evidence which forensic experts used to show that Mark Hofmann’s “Oath of a Freeman” was not authentic.

In addition to the forensic evidence that could be mounted against the Jackson document, there is a great deal of historical evidence that demonstrates that it was made by an incompetent forger. The fact that it was Joseph Smith, not Josiah Stowell, who was brought before the Justice of the Peace was verified by Oliver Cowdery, one of the Three Witnesses to the Book of Mormon, in 1835. Although Cowdery mistakenly said that Smith was acquitted, he revealed the following:

Soon after this visit to Cumorah, a gentleman from the south part of the State, (Chenango County,) employed our brother . . . This gentleman, whose name is Stowel, resided in the town of Bainbridge, . . . our brother [Joseph Smith] was required to spend a few months with some others in excavating the earth, in pursuit of this treasure. . . .

On the private character of our brother I need add nothing further, at present, previous to his obtaining the records of the Nephites, only that while in that country, some very officious person complained of him as a **disorderly person**, and brought him before the authorities of the county; but there being no cause of action he was honorably acquitted. (*Messenger and Advocate*, vol. 2, pp. 200-201)

To claim that Josiah Stowell instead of Joseph Smith was charged with being a “glass looker” flies in the face of everything we know about these two men. Although Stowell was very superstitious, there is nothing to show that he himself was a glass looker. Even the Mormon historian B. H. Roberts conceded that Stowell sought out Joseph Smith because he believed that Smith had a gift to divine where treasure was hidden:

Near Bainbridge was an extensive cave, . . . a local legend had it that it was an old mine formerly worked by Spaniards; and that they had concealed within it much of the treasure they had discovered, . . .

Mr. Stool believed this legend and had employed men to explore the cave for treasure. Having heard of **Joseph Smith’s gift of seership**, he came to the Smith residence to employ him in this undertaking. Joseph hired out to Mr. Stool and went with him . . . where for something like a month they vainly sought to find the “hidden treasure.” (*A Comprehensive History of The Church of Jesus Christ of Latter-day Saints*, vol. 1, page 82)

Joseph Smith’s own mother wrote that “a man, by the name of Josiah Stool, came from Chenango county, New York, with the view of getting Joseph to assist him in digging for a silver mine. He came for Joseph on account of having heard that **he possessed certain keys, by which he could**

discern things invisible to the natural eye” (*Biographical Sketches of Joseph Smith The Prophet . . .*, by Lucy Smith, 1853, pages 91-92).

As early as 1831, A. W. Benton wrote concerning Joseph Smith’s encounter with the law in Bainbridge:

For several years preceding the appearance of his book [the Book of Mormon], he was about the country in the character of a *glass-looker*: pretending, by means of a certain stone, or glass, which he put in a hat, to be able to discover lost goods, hidden treasures, mines of gold and silver. &c. . . . In this town, a wealthy farmer, named Josiah Stowell, together with others, spent large sums of money in digging for hidden money, which this Smith pretended he could see, and told them where to dig; but they never found their treasure. At length the public, becoming wearied with the base imposition which he was palming upon the credulity of the ignorant, for the purpose of sponging his living from their earnings, had him arrested as a disorderly person, tried and condemned before a court of Justice. (*Evangelical Magazine and Gospel Advocate*, April 9, 1831, page 120)

Mr. Benton’s statement that it was Joseph Smith who was tried was later verified by Dr. W. D. Purple who attended the legal proceedings (see our work *Joseph Smith & Money Digging*, pages 23-29). The Jackson document is not only out of harmony with all of these sources, but it also goes against the court record itself which shows that Josiah Stowell was a witness who gave testimony favorable to Joseph Smith. Moreover, it contradicts the bill of Constable Philip De Zeng which Wesley Walters discovered. De Zeng wrote in his bill that he wanted \$1.25 for “Serving Warrant on **Joseph Smith** . . .” He also wrote concerning his “Attendance with Prisoner two days & 1 nigh[t] . . .”

While no real historian could ever be fooled by the forgery which Ronald Jackson is promoting, those who desire to discredit all Mormon critics with any bizarre theory put forth might be taken in by this type of foolishness. Robert Brown, who seems to have a personal mission to destroy the credibility of those who oppose Mormonism, seems to have believed Jackson’s claim. Speaking on KFYI Radio in Phoenix, Arizona, on January 13, 1986, Mr. Brown stated:

I think that you will find in the next few days that the original document that was discovered in a basement of a court house . . . **has been altered**, and the original document said that **Josiah Stowell**, who was Joseph Smith’s employer, was the one that was arrested for peepstone gazing and that it was not Joseph Smith.

Fortunately, there are a large number of Mormon scholars who are not so bias in their views. Dean Jessee, who is considered one of the Mormon Church’s top scholars on the writings of Joseph Smith, openly condemned the Jackson document as a forgery. Speaking at the Brigham Young University Symposium on “Church History and Recent Forgeries,” held August 6, 1987, he commented: “In one instance an advocate actually perpetrated a crude forgery of

his own, changing Joseph Smith’s name to Josiah Stowell on a document that charged Joseph with glass looking in 1826.”

NEW DISCOVERIES

At the time he did his research in the basement of the jail in Norwich, New York, Wesley P. Walters found the documents in a “disorganized state” and some of them “were so water-stained the entire page was illegible.” Besides the bills which mentioned Joseph Smith, Pastor Walters also discovered other bills and documents which helped to substantiate his major finds. For instance, he found Justice Zechariah Tarble’s bill for 1826. This bill provides some important historical evidence concerning Justice Neely’s bill because Tarble mentioned that he served with Justice Neely and Justice Humphrey in a Court of Special Sessions to try three men who are named in the Neely bill.

Wesley Walters found that there were “four justices of the peace” in Bainbridge, but he was unable to find bills for the other two. He noted, however, that “If the 1826 bills of Justices Bigelow and Humphrey should turn up, there would likewise be cases on those which were tried jointly with Neely as is evident from the constables’ notifying them. . . . when the County Historian has completed the organization of all the bills they may yet show up” (*Joseph Smith’s Bainbridge, N.Y., Court Trials*, page 150). Wesley Walters encouraged H. Michael Marquardt to do further research with regard to Joseph Smith’s encounter with the law. In May 1988, Mr. Marquardt went back to Norwich, New York, and found the missing bills in the Office of History which is located in the Chenango County Historical Society. These 1826 bills provide strong support for the authenticity of the Neely bill. Justice Humphrey, for instance, wrote that he helped try the three men we mentioned above. The bills of Neely, Humphrey and Tarble, therefore, all confirm that they met in a Court of Special Sessions to try these men.

Michael Marquardt also found the 1826 bill for Justice Levi Bigelow. This bill likewise provides important evidence which helps to substantiate Albert Neely’s bill. Neely listed his fees for the trials of Josiah Evans, Robert Darnell and Ira Church. Justice Bigelow also mentioned being in a Court of Special Sessions to try these very men. Moreover, although Neely seems to have accidentally omitted the date for Josiah Evans trial, both documents agree that Robert Darnell was tried on October 3, 1826, and that Ira Church’s trial occurred on November 9, 1826.

Besides locating the bills of Justices Bigelow and Humphrey, Mr. Marquardt also found Justice Zechariah Tarble’s Docket Book for civil cases from June 17, 1822 to March 7, 1826. It appears to have two lines and a signature by Albert Neely that can be compared with the handwriting in the 1826 bill which mentions Joseph Smith’s case. The reader may remember that Zechariah Tarble was the Justice of the Peace who married Joseph Smith (see *History of the Church*, vol. 1, page 17).

TRANSCRIPT VERIFIED

Research by Wesley P. Walters and Michael Marquardt's new discoveries combine to establish beyond any doubt that the transcript of Joseph Smith's legal difficulties, which was first published in 1873, is authentic.

The original pages of this transcript were still in existence in January, 1886, when the *Utah Christian Advocate* published the following:

The document we print below is interesting to those, who desire historical light on the origin of Mormonism. We received the Manuscript from Bishop Tuttle; and the following, from the good bishop's pen, explains how he came into possession of the Manuscript:— "The Ms. was given me by Miss Emily Pearsall who, some years since, was a woman keeper in our mission and lived in my family, and died here. Her **father or uncle was a Justice of the Peace** in Bainbridge Chenango Co., New York, in Jo. Smith's time, and before him was tried. Miss Pearsall tore the leaves out of the record found in her father's house and brought them to me."

While Bishop Tuttle could not remember whether it was Emily Pearsall's father or uncle who was Justice of the Peace in Bainbridge, Stanley S. Ivins solved this problem many years ago when he found that Albert Neely was Miss Pearsall's uncle (see *History And Genealogy of the Pearsall Family in England & America*, pp. 1143, 1144 and 1151).

The transcript was published three times by different individuals after it arrived in Salt Lake City. As we have already shown, it appeared first in *Fraser's Magazine* in 1873. It was printed by Bishop Tuttle in the 1883 *New Schaff-Herzog Encyclopedia* and finally appeared in the *Utah Christian Advocate* in 1886. Michael Marquardt's study of the text of the three different printings leads him to the conclusion that they were all printed from the original pages rather than one borrowing from another. In this regard it is interesting to note that the testimony of Horace Stowell, which was very brief, appears to have been accidentally omitted when the document was first published in 1873. The 1883 version could not have been copied from the 1873 printed version because it includes Horace Stowell's testimony. The 1886 version also has Horace Stowell's testimony, but there seems to be evidence that it was also taken directly from the original pages furnished by Justice Neely's niece, Emily Pearsall. If the 1886 printing were borrowing from the 1883 printing, it would not have the court costs at the end of the document because they were not included in the 1883 publication by Bishop Tuttle. The differences, therefore, seem to provide strong circumstantial evidence that three different individuals saw the original pages and copied from them. At any rate, while the existence of the original pages of the transcript was known from 1873 to 1886, there seems to be no evidence that any Mormon apologist tried to question their authenticity at that time.

The fact that Wesley P. Walters' discovery of the 1826 bill of Justice Neely confirms the accuracy of the transcript can hardly be disputed by anyone who takes a close look at the evidence. We have already shown that the statement

on the Neely bill that Joseph Smith was a "Glass looker" fits very well with the contents of the transcript which has been published. Moreover, Neely's bill provides some very specific evidence. It states that the trial took place on "March 20, 1826," and this is precisely the date found in the published account of the trial: "Prisoner brought before Court March 20, 1826" (*Fraser's Magazine*, Feb. 1873, page 229). In Albert Neely's bill the fee for this case is listed as "2.68," and this is the exact figure found in the printed record: "Costs: . . . \$2.68." In light of this evidence, it seems impossible to continue to deny the authenticity of the court record.

In *Joseph Smith's Bainbridge, N.Y. Court Trials*, reprinted by Utah Lighthouse Ministry, pages 137-138, Wesley Walters shows that the court costs listed by Neely at the end of the printed transcript agree very well with costs found on other bills submitted by justices during that time period. We have recently compared the costs found in Neely's docket book with *The Justice's Manual; or, a Summary of the Powers and Duties of Justices of the Peace in the State of New-York*, by Thomas G. Waterman, 1825, page 199. Mr. Waterman wrote: "The fees of a Justice for his services in apprehending, binding, committing, &c. for crimes and misdemeanors, are—for every oath, 12 1/2 cents; warrant, 19; recognizance, 25; mittimus, 19; which are audited and allowed by the board of supervisors as county charges." These charges are in complete agreement with the items found in the pages from Neely's docket book. In the version we have reprinted from *Fraser's Magazine*, we read that "Seven witnesses" were sworn for a total of "87 1/2c." If 87 1/2c is divided by 7, we get exactly 12 1/2¢. This, of course, agrees with the statement in the *Justice's Manual* that the Justice is to receive "for every oath, 12 1/2 cents." The same manual gives the amount for a warrant as "19[¢]." The Neely document agrees: "Warrant, 19¢." The recognizance is listed in the manual at "25[¢]," and the transcript agrees that Recognisances are billed at "25c." The justices are instructed to charge "19[¢]" for a mittimus, and *Fraser's Magazine* likewise lists: "Mittimus, 19c." From this it is very clear that the published transcript is not something that can be easily dismissed. In our publication, *Joseph Smith's 1826 Trial*, printed in 1971, we quoted the following from a letter which Wesley P. Walters wrote to us after studying the transcript's relationship to other documents: "To my mind there is enough agreement here to make the possibility of the document being a forgery out of the realm of possibility. . . . from every angle the whole matter has the ring of genuineness about it" (pages 4-5).

AN EXAMINATION?

Michael Marquardt's discovery of the bills of Justices Humphrey and Bigelow has thrown some new light on Joseph Smith's encounter with the law in 1826 and provides additional evidence that the transcript is in reality a report of proceedings before a Justice of the Peace.

During the past few years a question has begun to surface concerning the exact nature of what took place when Joseph Smith appeared before Justice Albert Neely on March 20,

1826. From material printed between 1813 and 1829, we conclude that there were two things that could have taken place on that day:

One, Joseph Smith could have appeared before Justice Neely for what was known as “an examination” (see *A New Conductor Generalis: Being a Summary of the Law Relative to the Duty and Office of Justices of the Peace, Sheriffs, Coroners, Constables, Jurymen, Overseers of the Poor, &c, &c, Albany, New York, 1819, pp. 141-143*). This seems to be like the “preliminary hearing” we have today where the accused is bound over for trial at a later date. A good example of this might be the Mark Hofmann case. After investigating the evidence, Judge Paul M. Grant ruled that there was “probable cause to believe that all the crimes have been committed and there is probable cause to believe that the defendant committed each of the crimes as alleged.” Although Mr. Hofmann could have been sent to jail until the trial, it was decided that he could go free on bail. Before the trial began, Hofmann decided to plead guilty and was sent to prison. It was from recordings of this “preliminary hearing” that we derived much of the evidence presented in our book *Tracking the White Salamander*.

Two, Joseph Smith could have been tried before a Court of Special Sessions (see *Revised Statutes of the State of New York, 1829, Part 4, pp. 711-714*). This would have occurred after the “examination.” In a Court of Special Sessions the justice who conducts the original examination is supposed to request “any two justices of the peace of the same county, and to require them to associate with him to try the persons so charged” (*Ibid.*, page 711). This, of course, means that the case would be tried by three justices. If the case was not heard in the Court of Special Sessions, then it would come up in the next Court of General Sessions. Since Wesley P. Walters found that this court only met in February, June and October, it is obvious that the date of March 20, 1826, would not fit for a trial in the Court of General Sessions.

Wesley P. Walters originally believed that Joseph Smith was tried by three justices in a Court of Special Sessions. He did acknowledge, however, that there was a problem with this theory:

In the Sidney (N.Y.) *Tri-Town News*, August 25, 1971, page 6, the writer regarded the “Mittimus 19”¢ as the post-trial order to commit Smith to jail, with Smith allowed to escape on the way to jail. . . . However, the 19¢ charge attached to the mittimus marks it as the pre-trial “commitment for want of bail”. . . and not the post-trial “warrant of commitment, on conviction, twenty-five cents”. . .

This understanding also opens the unlikely reconstruction that Neely records only the pre-trial examination where the defendant’s and witnesses’ statements are taken . . . (*Joseph Smith’s Bainbridge, N.Y., Court Trial*, page 140, footnote 36)

In 1985 the Mormon writer Paul Hedengren argued that Joseph Smith’s appearance before Justice Neely was indeed an “examination”: “. . . it is clear that the fees assigned by Neely for the case of Joseph Smith are for examination, which would occur prior to any trial before the Court of

Special Sessions” (*In Defense of Faith*, by Paul Hedengren, Provo, Utah, 1985, page 207).

The question concerning the exact nature of the Neely docket record was finally answered when Michael Marquardt discovered the bills of Justices Bigelow and Humphrey. We already knew from Wesley Walters research in 1971 that Justice Tarble’s bill did not contain any mention of his helping Neely try the Joseph Smith case in a Court of Special Sessions. Since there were only four justices, this case would have to appear on the bills of both Bigelow and Humphrey if the idea of a Court of Special Sessions had any merit. Because it appears on neither document, it is now obvious that the court record is for “an examination” before Justice Albert Neely.

DESTROYS OBJECTIONS

Our new understanding of the 1826 court record seems to completely set aside a number of objections Mormon apologists have raised in the past. For instance, the Mormon writer Francis W. Kirkham had this criticism of the Neely record: “This alleged record is **obviously spurious** because it has **Joseph testify first**, giving the defense before the prosecution has made its case.” Although Mr. Kirkham may have had a point if the Neely record is viewed as a regular trial, his objection seems to melt away when we look at the printed transcript as “an examination.” The *Revised Statutes of the State of New York*, published in 1829, seems to indicate that in an examination the “complainant and the witnesses produced in support of the prosecution” are questioned first. After this, “the prisoner” is examined and then “his witnesses” (Part 4, page 708). The 1825 *Justice’s Manual*, by Thomas G. Waterman, however, differs with regard to the order in which those examined should appear. It plainly states that in an examination the accused is questioned *before* the witnesses:

After the examination of the accused, all witnesses present are to be examined on oath touching the complaint . . . (page 191)

At the present time we do not know whether the order given in the *Revised Statutes* was used prior to 1829. Albert Neely, of course, could not have seen this book since it was printed three years after he tried Joseph Smith. It is very possible, however, that he had the *Justice’s Manual*, which was printed the year before Joseph Smith’s encounter with the law. The Preface to the *Justice’s Manual* indicated that it was “designed mainly for the use of Justices of the Peace, . . .” In any case, it would appear that Justice Neely used the same order which was printed in that book.

In 1985 the Mormon writer Paul Hedengren acknowledged that under the theory that Neely was conducting an examination, the printed transcript passes muster “. . . in the 1873 account, the first testimony is reported to come from Joseph Smith. This has been a point of criticism from some who have denied the authenticity of the account, for it does not seem appropriate that in a normal trial, the defendant should be the first to testify or to testify at all. This

objection, however, **is circumvented if the 1873 account is taken to be testimony of the examination** before Judge Neely rather than before the Court of Special Sessions. For the examination before the justice, it is quite appropriate for the defendant to explain his side of the issue first” (*In Defense of Faith*, page 210).

On page 233 of the same book, Paul Hedengren added a very interesting observation concerning the swearing of witnesses:

... what is clear and even explicit is that the legal proceedings upon which the account is based are the examination of Joseph Smith, not a trial before the Court of Special Sessions. The legal bill of the justice is explicitly “to my fees in examination of the above cause.” The amount is precisely what is totaled in the 1873 account and the account itself records that Joseph Smith was examined whereas other witnesses were sworn, which is precisely what we know occurs only in the examination.

Before Michael Marquardt went to New York and found the bills of Justices Humphrey and Bigelow, Wesley P. Walters had convincingly demonstrated to us that we were dealing with “an examination.” In *A New Conductor Generalis*, 1819, page 142, we learn that in an “examination” the accused is not put under oath but that the witnesses are: “The examination of the prisoner should **not be upon oath**. . . . others, whom the justice may call before him to testify. . . . **must be upon oath**.” When we scrutinized the 1826 trial record in light of the “examination” theory, we were very impressed with what we found. Instead of saying that Joseph Smith was “sworn,” the transcript printed in 1873 reads:

Prisoner **examined**: says . . .

Although Justice Neely’s docket record neglects to mention whether Jonathan Thompson was “examined” or “sworn,” in every other case his record makes it clear that the witnesses were “sworn”:

Josiah Stowel **sworn**: says . . .

Horace Stowel **sworn**. Says . . . (See both the 1883 and the 1886 printings.)

Arad Stowel **sworn**: says . . .

McMaster **sworn**: says . . .

The Mormon apologist Francis W. Kirkham, who was one of the first to seriously deal with Joseph Smith’s 1826 encounter with the law, contended:

This alleged record of the court does not conform to the requirements of the law . . . It gives a long confession by the defendant, Joseph Smith, which the law does not require. It gives the testimony of five witnesses, whereas, the testimony of any witness is not recorded in a justice of the peace court. . . . The record does not conform with the procedure of a trial. A reasonable conclusion is that the alleged record was written by a person totally unfamiliar with court procedure. (*A New Witness For Christ In America*, vol. 1, pp. 384-385)

As we have already shown, in an “examination” the statement of the accused was taken, and contrary to Kirkham’s claim that the testimony was “not recorded,” there is evidence that relevant material given by both the defendant and the witnesses was to be written down. *A New Conductor Generalis*, 1819, page 141, quotes the following from a New York law:

“Every justice of the peace, before whom any person shall be brought for any treason or felony, or for *suspicion thereof*, before he commit such person to gaol [i.e., jail], shall take the *examination* of such prisoner, and the *information* of those who bring him, relative to the fact, and the same, or so much thereof as shall be material to prove the offence, shall be put in writing by the said justice within two days after the said examination, . . .”

While it might be argued that this only applied to the commission of “treason or felony,” it should be noted that the definition of the word *felony* seems to have changed since Joseph Smith’s time. In the 1828 edition of Noah Webster’s *An American Dictionary of the English Language*, the word *felony* even includes those guilty of “petty larceny.” Furthermore, we know that in at least one case, what was written concerning a felony “would seem to extend to all criminal cases” (*A New Conductor Generalis*, page 141). The *Revised Statutes of the State of New-York*, seem to indicate that in 1829 the rules concerning written evidence at an “examination” applied to “any criminal offence” (see Part 4, pp. 706-708). It would appear, then, that Justice Neely was trying to follow regular legal procedure when he recorded the information. We believe, however, that it is possible that what appears in Neely’s docket book would be his own copy (possibly abbreviated) taken from individual sheets which would have been “signed by the witnesses respectively” (*Revised Statutes*, page 709). These sheets probably would have been turned over to the Court of Special Sessions when it met, whereas the copy appearing in his docket book—prepared for his own use at the trial—would have remained in his possession after the proceedings. This, of course, would have been consistent with the story that the record remained in the Neely family until Albert Neely’s niece, Emily Pearsall, brought it to Utah.

The reader will note from the material quoted above that every word did not need to be written down—only that which was “material to prove the offence.” This tends to nullify another objection to the printed transcript—i.e., the last portion of the Neely record indicates that there were seven witnesses sworn, whereas the document itself only gives the testimony of five. It seems obvious from the law quoted above that if a witness did not give any significant testimony in relation to the case, it was not necessary for the Justice of the Peace to record it. In this regard, it is interesting to note that W. D. Purple, a man who was actually present during the legal proceedings, claimed that Joseph Smith, Senior, also gave testimony. (*The Chenango Union*, May 2, 1877) It is very possible that Joseph Smith’s father did testify at the examination. The statement that seven witnesses were sworn makes plenty of room for him. On the other hand, the fact that it was not necessary to record irrelevant testimony

could certainly explain the absence of his statements in the record. The new information which has been found concerning examinations seems to completely destroy Francis Kirkham's arguments regarding discrepancies with regard to who testified at the hearing (see *A New Witness For Christ In America*, vol. 2, pp. 357-358).

JOSEPH SMITH GUILTY?

As we have shown, the Mormon Church's *Deseret News*, argued that the court record was "a fabrication of unknown authorship." In the same article we find the following:

Then the recital is that the court "finds the defendant guilty." . . . Then, more wonderful still, the record does not tell what the judgment or sentence of the court was. The really vital things which a true record must contain are not there, though there is a lot of surplus verbiage set out in an impossible order which the court was not required to keep. (*Deseret News*, Church Section, May 11, 1946, as cited in *A New Witness For Christ In America*, vol. 2, page 431)

While one might think a sentence would be recorded toward the end of a record of proceedings from a Court of Special Sessions, the fact that this was an *examination* seems to negate this criticism. This matter would have to be settled by the three justices who would later meet to make the final decision concerning the case. Justice Neely had concluded from his examination of Joseph Smith that he was guilty as charged, and the evidence seems to show that he ordered Smith held for trial before the Court of Special Sessions. The Mormon writer Paul Hedengren argues that the use of the words "the Court find the Defendant **guilty**" in the Neely transcript casts some doubt on the accuracy of the printed text:

If it is an examination, the guilty judgment given at the end of the testimony poses a problem. . . . the judgment of guilty . . . is appropriate only at the conclusion of a trial before the Court of Special Sessions. . . .

The preponderance of evidence is that the account is at best an account of an examination; yet the judgment of guilt is inappropriate to such proceedings. This is evidence that listing of guilt in the 1873 account does **not come** [from] the actual legal proceedings but is a **later inclusion**. (*In Defense of Faith*, pp. 216-217)

Actually, the appearance of the word "guilty" is not a mark against the authenticity of the printed text. In fact, it seems to fit the terminology used in Joseph Smith's time. In *Acts of a General Nature, Ordered to be Re-printed, at the First Session of the Eighteenth General Assembly of the State of Ohio . . .*, Columbus, Ohio, 1820, we read the following concerning an "examining court" declaring a prisoner "guilty":

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

It is interesting to note that Joseph Smith's own diary refers to an examination in Nauvoo, Illinois, as a "trial" in which the defendant was found "guilty":

Monday Dec[ember] 18[th] . . . Constable Follet returned with Elliot. **Trial** in the Assembly room for **examination** . . . [Elliot was] **found guilty** of Kidnapping and bound over for trial to the Circuit Court in the sum of \$3,000. (*An American Prophet's Record: The Diaries and Journals of Joseph Smith*, edited by Scott H. Faulstich, 1987, pp. 432-433)

Some Mormon scholars have recently argued that Joseph Smith was examined before Justice Neely but was exonerated. In a paper entitled, "It's Time to Halt the Nonsense About Joseph Smith's So-called '1826 Trial,'" page 4, Gerry L. Ensley wrote: "The conclusion is, therefore, inescapable that Smith was found 'innocent' at the March 20, preliminary examination." We can not agree with this statement. Besides the Neely transcript which shows that Joseph Smith was found "guilty," the earliest known printed statement by A. W. Benton (1831) indicates that Joseph Smith was "arrested as a disorderly person, tried and condemned before a court of Justice" (*Evangelical Magazine and Gospel Advocate*, April 9, 1831, page 120). On March 8, 1842, Joel K. Noble, who had acquitted Joseph Smith of some charges brought against him in 1830 (see *History of the Church*, vol. 1, pages 91-96), wrote a letter in which he spoke of Joseph Smith's "first trial"—i.e., the case before Justice Neely. According to Noble, Smith "was condemned" at that time (*Joseph Smith's Bainbridge, N.Y., Court Trials*, by Wesley P. Walters, Part 2, pages 132-133).

Wesley Walters gives this information:

Both before and during the examination Joseph remained under guard, with Constable De Zeng in "attendance with Prisoner two days & 1 night," referring to the day of the examination and the day and night preceding. Since the evidence appeared sufficient to show that Smith was guilty as charged, he was ordered held for trial. (*Ibid.*, p. 139)

Walters has also noted that in the summary of Justice Neely's costs at the end of the printed transcript, he listed a "Mittimus." This provides very strong evidence that Joseph Smith was condemned at the examination and was facing trial before the Court of Special Sessions. Webster's 1828 dictionary gives this definition of the word Mittimus: "In law, a precept or command in writing, under the hand or hand and seal of a justice of the peace or other proper officer, directed to the **keeper of a prison**, requiring him to imprison an offender; a warrant of **commitment to prison**. 2. A writ for removing records from one court to another." Constable De Zeng's bill proves that the mittimus related to the imprisonment of Joseph Smith rather than the "writ for removing records from one court to another." It plainly states: "10 miles travel with **mittimus** to take him." Furthermore, Justice Neely listed a charge for "Recognisances of witnesses." This also shows that Neely had found Joseph

Smith “guilty” and was turning him over to the “next court having cognizance of the offense.” In the *Revised Statutes of the State of New-York*, 1829, page 709, we read:

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

Mormon writer Paul Hedengren seemed to be willing to admit that the machinery had been set in motion for “a trial before the Court of Special Sessions”: “Notice that in anticipation of such a trial, two justices were notified and 12 witnesses subpoenaed, as evidenced by the bill of Constable De Zeng” (*In Defense of Faith*, page 216). All of the evidence, therefore, indicates that Joseph Smith was in real trouble with the law. In *A New Conductor Generalis*, 1819, page 109, we read:

A justice of the peace may convict disorderly persons, . . . to the bridewell or house of correction, at hard labor, for a time not exceeding sixty days, or until the next general sessions. . . .

When a person has been thus committed by a justice, to remain till the next general sessions, if the justices at the sessions adjudge him to be a disorderly person, they may, if they think convenient, order him to be detained, at hard labor, for any future time not exceeding six months, and during his confinement to be corrected by whipping, according to the nature of the offence, as they shall think fit.

Joseph Smith seems to have had three choices:

1. He could face three justices and stand the chance of being “detained, at hard labor” for up to “six months” if convicted.
2. He could have admitted his guilt and struck an agreement with the county. Many times officials who wanted to cut expenses would be willing to let prisoners go if they would agree to leave the county where the crime took place.
3. He could have attempted an escape. This was the method Joseph Smith used thirteen years later in Missouri when he was indicted:

This evening our guard got intoxicated. We thought it a favorable opportunity to make our escape; knowing that the only object of our enemies was our destruction; . . . Accordingly, we took advantage of the situation of our guard and departed, and that night we traveled a considerable distance. (*History of the Church*, vol. 3, page 321)

The evidence would seem to indicate that Joseph Smith chose either the 2nd or 3rd option, or possibly a combination of the two. We have already shown that Justice Noble claimed that Smith “was condemned” at his “first trial.” Wesley P. Walters wrote:

Mr. Noble succinctly states that the “whisper came to Jo., ‘Off, Off!’” and so Joseph “took Leg Bail,” an early slang expression meaning “to escape from custody.” . . . What is obviously happening is that the justices are privately suggesting to this first offender to ‘get out of town and don’t

come back,’ and in exchange they will not impose sentence. . . . Judge Nobel’s statement agrees precisely with an early account of this 1826 trial published just five years after the trial had taken place. It was written by a young medical doctor who lived in South Bainbridge at the time, Dr. Abram Willard Benton, who like Mr. Noble mentions that Joseph had been involved in glass looking, and that he had been “tried and condemned.” Dr. Benton adds that because Joseph was a minor at the time, being 20 years old, “and thinking he might reform his conduct, he was designedly allowed to escape.” Therefore, the court, though it found him guilty of being in violation of the law, had intentionally not imposed sentence as a way of showing mercy on this youthful offender. Young Joseph, aware that returning to the Bainbridge area might find him suddenly sentenced to jail, was careful to return, as Noble puts it, “in Dark corners” and “in the Dark.” (*Joseph Smith’s Bainbridge, N.Y., Court Trials*, Part 2, page 123)

On page 140 of Part 1 of the same pamphlet, Walters commented: “Another possibility, of course, is that Joseph jumped bail and when the Court of Special Sessions met they may have decided not to pursue the matter further, hoping the youth had learned his lesson.”

A DISORDERLY PERSON

An examination of the law concerning “disorderly persons” leads to the conclusion that Joseph Smith would have had a very difficult time avoiding conviction if he had remained for his trial at the Court of Special Sessions. According to *A New Conductor Generalis*, published in 1819, page 108, the following would be “deemed disorderly persons”:

All Jugglers;

All who **pretend** to have skill in physiognomy, palmistry, or like **crafty science**, or pretend to tell fortunes, or **to discover where lost goods may be found**; . . . 1 R. L. 1813. p. 114.

Webster’s 1828 dictionary gives this definition for the word *juggle*: 1. To play tricks by slight of hand; to amuse and make sport by tricks, which make a false show of extraordinary powers. 2. To practice artifice or imposture. Joseph Smith’s practice of “glass looking” — i.e., using a seer stone to divine things not seen by the natural eye would certainly be viewed as making a “false show of extraordinary powers.” The printed transcript says that Smith was charged with being “a disorderly person and an impostor.” Joseph Smith’s practice of “glass looking” would also fall into the category of a “crafty science” mentioned in the law. Moreover, in the examination before Justice Neely, Smith admitted that he had “been in the habit of looking through this stone **to find lost property** for three years.” As the reader can see, the law deemed anyone who used a “crafty science . . . to discover where **lost goods may be found**” as a “disorderly person.” In his docket record, Justice Neely was careful to record the statements concerning Joseph Smith’s “glass looking” and his claim to find “lost goods.” For example, he recorded the following from Jonathan Thompson, a witness

who seemed favorably disposed towards Joseph Smith: “Thompson says that he believes in the prisoner’s professed skill; . . . he is certain that prisoner can **divine** things by means of said stone. That as evidence of the fact prisoner looked into his hat to tell him about some **money witness lost** sixteen years ago, and that he described the man that witness supposed had taken it, and **the disposition of the money:**” The fact that the transcript seems to focus in on the very things that would convict Joseph Smith as a “disorderly person” under the laws of early New York bears witness to its authenticity.

As we have shown, Apostle John A. Widtsoe argued that in the transcript, “Joseph Smith is made to confess to all his errors, including treasure hunting, peepstone practices, etc., etc. In fact, it is such a complete self-confession as to throw immediate doubt upon the genuineness of the document.” (*Joseph Smith—Seeker After Truth*, 1951, page 78) Actually, Joseph Smith was not under oath, and he did not have to confess to anything. Furthermore, in the publication *Revised Statutes of the State of New-York*, 1829, page 708, we find that “the prisoner shall be informed by the magistrate, that he is at liberty to refuse to answer any question that may be put to him.” While Joseph Smith’s statements may have seemed rather silly to Apostle Widtsoe, the truth of the matter is that Smith found himself on the horns of a dilemma. Since he knew that there were a number of witnesses who would testify concerning his involvement in the “crafty science” of “glass looking,” he could hardly deny the charge. Moreover, Joseph Smith’s own employer, Josiah Stowell was a devout believer in his ability at divination and testified that he “had the most implicit faith in prisoners’ skill.” Jonathan Thompson testified in a similar vein. Ironically, it seems that Smith’s best friends were his worst enemies as far as his attempt to escape the penalty of the law. The more they defended his ability as a diviner, the less chance he had of being acquitted. If Joseph Smith were to deny that he had ability to see the treasures and lost goods in his stone, he would disillusion his closest followers in the money-digging business. Under these circumstances, the best he could do was to try to minimize his involvement. He, therefore, claimed that “of late” he had “pretty much” given up the practice of divination and “that he did not solicit business of this kind, and had always rather declined having anything to do with this business.”

Wesley P. Walters made this interesting comment concerning the matter:

Joseph Smith put himself in the position of meriting such punishment by the line of defense he took at his 1826 trial. According to the docket record, Joseph’s defense at his trial was that he really could discover where lost goods could be found and was therefore not an imposter trying to sponge off the public as a vagrant might do. Such a defense, however, was a virtual admission that he was in violation of the law against “pretending . . . to discover where lost goods may be found.” The court, therefore, after hearing a few witnesses who corroborated that fact, summarily pronounced Joseph “guilty.” (*Joseph Smith’s Bainbridge, N.Y., Court Trials*, Part 2, page 124)

In Part 1, page 148, of the same pamphlet, Wesley Walters observed:

There is therefore neither a legal nor a factual basis for rejecting the Neely trial record as an authentic record of Smith’s 1826 trial. The main Mormon objection really seems to rest upon an emotional reaction to the admissions Smith makes in the court record, which seem tantamount to making him a religious fraud. However, at the time of the trial it was the only way he could establish that he was *not* a fraud. The point of the trial was that while he claimed to be a “glass-looker,” he actually only pretended to have such powers and was therefore an “Impostor.” Smith’s only defense against this charge was to claim that he did have such ability, but had never sought customers for it, had used it very little, and really intended to give it up, . . .

VERY CONVINCING

Since we began to have doubts about the authenticity of Mark Hofmann’s documents in February 1984, we have published a great deal of material concerning forgeries. The more we examined his documents, the more problems we found. Our work with regard to the Hofmann documents turned out to be a very disillusioning experience. Fortunately, the question of Joseph Smith’s encounter with the law in 1826 has turned out to be just the opposite. The more we have examined the question, the more convinced we have become that both the Neely docket record and the bills found by Wesley P. Walters are authentic.

The new information concerning the Neely docket record being “an examination” and that it conforms to what we should expect to find in such a document greatly strengthens the case for its authenticity. While the Mormon writer Paul Hedengren still feels that it may be a “a fabrication,” he is forced to concede that “it is quite clear that the account is not a fabrication composed by someone having no understanding of legal practices or of the legal difficulties encountered by Joseph Smith in 1826. Whoever wrote the 1873 account did so with some detailed knowledge of what actually occurred” (*In Defense of Faith*, page 232). As far as we can tell, Hedengren seems to accept the bills of Neely and De Zeng which Walters discovered as authentic documents. We feel that since these bills dovetail with the Neely docket record with regard to the nature of the trial (glass looking), the date and the costs, it would be very difficult to believe that the Neely record could be anything other than a transcript of the original document created by Justice Neely in 1826.

While people like Ronald Jackson, who are not well grounded in Mormon history, would try to discredit Walters’ discoveries, there are many things about the Neely and De Zeng bills that show they are authentic. Besides all the evidence that we have presented, it should be noted that Wesley Walters initially seemed to have no idea that the transcript of the legal proceedings took the form of “an examination.” Walters, in fact, strongly believed that the case was decided by three justices in a Court of Special Sessions. He seems to have held this belief for about seventeen years. From this it is obvious that if Walters were creating a forgery, it is likely that he would have tried to bolster his theory in the

bill itself. Instead, the Neely bill seems to support the idea that it was “an examination,” not a special sessions trial, that occurred on March 20, 1826. While Justice Neely listed nine cases on his bill, only two include the word “examination” i.e., the case of Joseph Smith and that of Newel Evans. With regard to the case of “Joseph Smith The Glass looker,” Neely wrote: “To my fees in **examination** of the above cause.” The names of Joseph Smith and Newel Evans are not found on any of the 1826 bills of Justices Humphrey, Tarble or Bigelow. This, of course, is exactly what we would expect to find if these were examinations rather than trials before a Court of Special Sessions.

While Mormon apologists have labored very hard since 1945 to try to undermine the authenticity of the 1826 court case, their efforts have been in vain. Dale Morgan, Stanley Ivins, Wesley Walters and Michael Marquardt have heaped up a mountain of evidence which seems to be irrefutable.

THE IMPLICATIONS

If this were just a case that involved a young man getting into trouble with the law, Mormon critics would be foolish to spend their time rehashing the story. Most people would allow Joseph Smith the right to make a few youthful mistakes without maintaining that it would seriously affect his role as a prophet. The issue, however, is much more serious than just the transgression of an early New York law which many today would regard as antiquated. What is involved here is the question of whether Joseph Smith was a true prophet of God or merely a man entangled in occultic practices. The implications of this matter are very serious indeed. Once we accept the validity of the documents concerning Joseph Smith’s trouble with the law, we are forced to admit that he was engaging in magical practices at the very time he claimed he was being tutored by the Angel Moroni to receive the gold plates of the Book of Mormon.

More important than this, however, is the fact that the Neely transcript undermines the whole story of the divine origin of the Book of Mormon. A careful examination of Joseph Smith’s story of the coming forth of the Book of Mormon and even the text of the book itself reveals that it is just an extension of the money-digging practices so clearly portrayed in the transcript. For example, the court record shows that Joseph Smith had used a stone placed in his hat to find treasures “for three years” prior to 1826. Now, according to eye witnesses to the translation of the Book of Mormon, Joseph Smith used this exact method to translate the golden plates. David Whitmer, one of the three witnesses to the Book of Mormon, stated: “I will now give you a description of the manner in which the Book of Mormon was translated, Joseph would put the seer stone into a hat, and put his face in the hat, drawing it closely around his face to exclude the light; and in the darkness the spiritual light would shine. A piece of something resembling parchment would appear, and on that appeared the writing. . . . Thus the Book of Mormon was translated by the gift and power of God, and not by any power of man” (*An Address All Believers In Christ*, Richmond, Missouri, 1887, page 12).

Although Mormon historian B. H. Roberts claimed that Joseph Smith used the Urim and Thummim, he frankly admitted that he sometimes used a “Seer Stone” to translate the plates:

The Seer Stone referred to here was a chocolate-colored, somewhat egg-shaped stone which the Prophet found while digging a well in company with his brother Hyrum, . . . It possessed the qualities of Urim and Thummim, since by means of it—as described above—as well by means of the Interpreters found with the Nephite record, Joseph was able to translate the characters engraven on the plates. (*Comprehensive History of The Church of Jesus Christ of Latter-day Saints*, vol. 1, page 129)

Joseph Smith’s father-in-law, Isaac Hale, noticed a definite relationship between the method Joseph Smith used to translate the Book of Mormon and the way he searched for buried treasures. In an affidavit, published in 1834, Hale wrote:

I first became acquainted with Joseph Smith, Jr. in November, 1825. He was at that time in the employ of a set of men who were called “money diggers;” and his occupation was that of seeing, or pretending to see by means of a stone placed in his hat, and his hat closed over his face. In this way he pretended to discover minerals and hidden treasure. . . . young Smith . . . asked my consent to his marrying my daughter Emma. This I refused, and gave him my reasons for so doing; some of which were, that he was a stranger, and followed a business that I could not approve; . . . while I was absent from home [he] carried off my daughter, . . . they were married . . . In a short time they returned, . . .

Smith stated to me that he had given up what he called “glass looking,” and that he expected to work hard for a living, . . . He also made arrangements with my son, . . . to go up to Palmyra, . . . after this, I was informed they had brought a wonderful book of plates down with them. . . . The manner in which he pretended to read and interpret, was the same as when he looked for the “money diggers,” with the stone in his hat, and his hat over his face, while the book of plates was at the same time hid in the woods! (*New York Baptist Register*, June 13, 1834)

The reader will notice that Joseph Smith claimed he was able to read the Book of Mormon plates without looking at them in exactly the way that Arad Stowell testified that he claimed he could divine the contents of a modern book: “. . . prisoner [Joseph Smith] laid a book upon a white cloth, and proposed looking through another stone . . . turn his head to book, and read.”

There are also other important parallels. For example, Smith claimed that he could find buried gold for the money-diggers and in the case of the Book of Mormon he found gold plates which were buried in the earth. The idea of the Angel Moroni guarding the gold plates before Joseph Smith obtained them seems to have stemmed from a story he told Jonathan Thompson: “Prisoner would not look again, . . . pretending that he was alarmed on account of the circumstances relating to the trunk . . . the last time he looked he discovered distinctly the two Indians who buried the trunk, that a quarrel ensued between them, and that one of said Indians was killed by the

other, and thrown into the hole beside the trunk, to guard it, as he supposed.” (Testimony of Jonathan Thompson) It is hard to resist the idea that the spirit guardian of the treasure was transformed into the Angel Moroni. The idea of treasures slipping into the earth, as testified to by Josiah Stowell and Jonathan Thompson, appears to have been incorporated into the Book of Mormon itself (see our book, *Mormonism, Magic and Masonry*, pages 37-39).

That Joseph Smith was ensnared in occultic practices at the very time God was supposed to be preparing him to receive the golden plates of the Book of Mormon seems to place his work in an eerie light, and the fact that he embodied some of these magic elements into his new religion entirely undermines the foundation of Mormonism. We agree with the assessment of the Mormon apologist Francis W. Kirkham. As we have shown, Mr. Kirkham allowed no middle ground. He frankly conceded that if the court record could be proven true, Joseph Smith’s followers “must deny his claimed divine guidance which led them to follow him. . . . How could he be a prophet of God, the leader of the Restored Church to these tens of thousands, if he had been the superstitious fraud which ‘the pages from a book’ declared he confessed to be?” The observation which appears in Hugh Nibley’s book, *The Myth Makers*, is also very close to the truth: “. . . if this court record is authentic it is the most damning evidence in existence against Joseph Smith.” While Dr. Nibley set out to prove that “the whole structure of anti-Mormon scholarship rests on trumped up evidence,” (*Ibid.*, Forward) the tide has turned against him. Not only has the authenticity of the 1826 court record been established since Nibley wrote his book, but a number of discoveries have come to light which are equally, if not more damaging to Joseph Smith’s claims — for example, the “strange account” of Smith’s First Vision which was suppressed by the Mormon leaders for 130 years.



A TREACHEROUS PATH

One of the writers of this newsletter recently had an experience with a group hiking on a mountain near Salt Lake City which served as a reminder of how much we need God’s light to help us along the path of life. As it sometimes happens, we started up the trail too late in the day and most of those in the group were caught up on the mountain after the sun went down. Fortunately, however, some flashlights were made available, and we all made it down without any problem. As we descended, however, we could see places where the trail was partially washed out. Because of the flashlights, these sections presented no serious problem, but we could see that it would be very hazardous to try to pass over them in the dark.

This experience brought to mind a story that Catherine Marshall told concerning her husband, Peter Marshall, who served as Chaplain of the United States Senate:

Walking back from a nearby village to Bamburgh one dark, starless night, Peter struck out across the moors, thinking he would take a short cut. He knew that there was a deep deserted limestone quarry close by the Glororum Road, but he thought he could avoid that danger spot. The night was inky black, eerie. There was only the sound of the wind through the heather-stained moorland, the noisy clamor of wild muir fowl as his footsteps disturbed them, the occasional far-off bleating of a sheep.

Suddenly he heard someone call, “Peter! . . .” There was great urgency in the voice.

He stopped. “Yes, who is it? What do you want?”

For a second he listened, but there was no response, only the sound of the wind. The moor seemed completely deserted.

Thinking he must have been mistaken, he walked on a few paces. Then he heard it again, even more urgently: “Peter! . . .”

He stopped dead still, trying to peer into that impenetrable darkness, but suddenly stumbled and fell to his knees. Putting out his hand to catch himself, he found nothing there. As he cautiously investigated, feeling around in a semicircle, he found himself to be on the very brink of an abandoned stone quarry. Just one step more would have sent him plummeting into space to certain death.

This incident made an unforgettable impression on Peter. There was never any doubt in his mind about the source of that Voice. He felt that God must have some great purpose for his life, to have intervened so specifically. (*A Man Called Peter*, by Catherine Marshall, 1965, page 24)

Although we may never have an experience like Peter Marshall, the Lord does give his people light to help them avoid the many pitfalls they encounter in their trip through life. In Colossians 1:13 (New King James Version), we read that God “*has delivered us from the power of darkness and translated us into the kingdom of the Son of his love.*” In Psalm 119:105, we find this comforting statement: “*Your word is a lamp to my feet And a light to my path.*” In John 8:12, Jesus declared: “*I am the light of the world. He who follows Me shall not walk in darkness, but have the light of life.*” In John 12:46, Jesus stated: “*I have come as a light into the world, that whoever believes in Me should not abide in darkness.*”

To live our lives without the light of Jesus leading us through the darkness is to invite disaster. The night is very dark, and the trail of life is strewn with stones and other objects which we will continually stumble over. In addition, the path is washed out in many places, and we never know when we will encounter a drop off which will ruin us spiritually. Moreover, Jesus has made it plain that those who refuse his offer of grace in this life will eventually be “*cast out into outer darkness*” (Matthew 8:12).

Those of us who have turned our hearts over to Christ, know that he does provide the light we need for guidance in our lives. While we still have problems, we have a great sense of peace, comfort and direction in hard times. We would encourage all those who have not made that decision

to yield themselves to the Lord before it is too late. Jesus himself gives this invitation in Matthew 11:28-30:

“Come to Me, all you who labor and are heavy laden, and I will give you rest.

“Take my yoke upon you and learn from Me, for I am gentle and lowly in heart, and you will find rest for your souls.

“For My yoke is easy and My burden is light.”

CHARGES AGAINST US

During the past year we have been charged with being “unChristian,” misquoting material and being unethical in our writings. We have completed our response to these charges and have published it in the new edition of *The Lucifer-God Doctrine*. Although we originally stated that the new edition was going to be available at \$2.00 a copy, it ended up being four times larger than the first edition. For this reason we have had to raise the price to \$4.00. We are, however, having a special offer on this book. If it is ordered before September 15, 1988, the price will be only \$3.00 a copy (on mail orders please add shipping charge of \$1.00). All those who have been affected by these charges against us should take the time to read our side of the story before drawing any conclusions.

GETTING RICH?

Utah Lighthouse Ministry is a non-profit organization which is supported by both Christians who are anxious to help the Mormons find the truth and members of the Mormon Church who feel that the church is suppressing important information which needs to be in the hands of the public. Mormon apologists have often argued that we (Jerald and Sandra Tanner) are getting rich through the publication of material which is critical of the church. This charge was effectively destroyed in 1983 when a Mormon scholar made an unsuccessful attempt to sue us for copyright violations. During the course of the suit, we were ordered to produce our “1982 and ‘83 tax returns.” To the embarrassment of the critics who had charged that we were getting rich, our tax return for 1982 showed an “Adjusted Gross Income” of only \$9,935.83 and the return for 1983 listed our income at \$22,285.15 (see photographs in the book *The Tanners On Trial*, pages 139-140). We made this comment in the March 1985 issue of the *Messenger*: “Since we both worked full-time [in 1983] for Utah Lighthouse Ministry, this would amount to just over \$11,000 each.” At the present time we estimate that the salary we make amounts to less than \$6 an hour. Considering the amount of hours we have to work and the stress that comes from this type of ministry, we do not feel that we are taking advantage of the public.

At the present time we find ourselves running a little short (we have not had a pay check for six weeks). We are not desperate, however, because a man has given us some land. Although we could sell it, at the present time the market is so poor that we would have to let it go at a greatly reduced price. Our temporary shortage of funds probably stems from the fact that we have not raised the prices of most of our books over the past several years and that we have been putting out larger issues of the *Salt Lake City Messenger* and sending them to a greater number of people. We have been mailing out about 14,000 copies to those on our mailing list and giving out thousands more at a later time. Many people feel that this is a very valuable service, but less than 4% of those who receive the newsletter make donations. Fortunately, however, many others buy materials, and this helps us to meet our obligations. Some people have felt that if they do not send support, they should not remain on the mailing list. We do not feel this way at all. In fact, we desire that everyone who is blessed by the *Messenger* should remain on the list. It does not make any difference whether they can give contributions or buy our material. The most important thing is that the information is disseminated to those who need it.

In March 1987, we extended our ministry to SUPPORT 100 CHILDREN through the World Vision Childcare Partner plan. Although we were able to remain current on this obligation for about a year, we are now three months behind. We are concerned about this but hope to continue this work in the future. We have also been able to provide about 18 hours a week to Rescue Mission work. The work with the Mormons continues to prosper. Many of them are turning to the Lord.

We do hope that our friends will continue to pray earnestly for this ministry for this is the real key to success. We know that God “*is able to do exceedingly abundantly above all that we ask or think, according to the power that works in us, . . .*” (Ephesians 3:20)

Those who are interested in helping out financially with this important ministry can send their tax deductible contributions to UTAH LIGHTHOUSE MINISTRY, P.O. Box 1884, Salt Lake City, Utah 84110.

NEW HOFMANN BOOK

Linda Sillitoe and Allen D. Roberts have recently completed their long-awaited book on Mark Hofmann, [*Salamander: The Story of the Mormon Forgery Murders*] the man who murdered two people and forged Mormon documents. Although we feel that it is unfortunate that the authors have preserved some improper language used by investigators in the case, that is the worst criticism that we can make of the book. Many people felt that since Sillitoe and Roberts were Mormons, they could not write an objective book about the subject. We are happy to report that these fears have been proven groundless. The authors have, in fact, been very objective in their treatment of this sensitive

subject. Not only have they dealt with the mysterious presence of Church Security in the case just after the bombings, but they have also brought to light the fact that the investigators felt church leaders were not telling the truth with regard to certain aspects of the case. For example, on page 129, they report the following concerning an interview investigators had with Gordon B. Hinckley, a member of the First Presidency: "Afterwards, Mike George left Hinckley's office unexpectedly angry. When he interviewed a bandit he expected lies, not when he interviewed a respected citizen and church leader. He soon realized, however, that his anger was simple—his fellow investigators, born and raised Mormons, were furious." In addition to the excellent research of Sillitoe and Roberts, the document expert George J. Throckmorton has a section showing what his examination "of twenty-one Hofmann documents" revealed. Although *Salamander: The Story of the Mormon Forgery Murders* will normally sell for \$17.95, if it is ordered before September 15, 1988, the price will be only \$16.95 (mail orders please add 10% for postage and handling).

EXTRA SPECIAL OFFER!

Besides the book by Linda Sillitoe and Allen Roberts, two other major books, a mini-series on television and a movie will draw national attention to the Mormon document scandal. At this time we are offering a very special price on the three-volume set entitled, *Hofmann's Confessions, A Photographic Printing of the Transcripts of Salt Lake County Prosecutors' Interviews With Convicted Forger and Murderer Mark Hofmann*. This will probably be a collectors' item in the years to come. The regular price is \$25, but if it is ordered before September 15, 1988, the reader will receive it for only \$14.95 (mail orders please add 10% for postage and handling).

* * OTHER BOOKS * *

Mail Orders Add 10% Handling
\$1.00 Minimum Shipping Charge

Are the Mormon Scriptures Reliable? A revision of Harry L. Ropp's *The Mormon Papers*, by Wesley P. Walters. **Price: \$6.95**

Early Mormonism and the Magic World View, by D. Michael Quinn. **Price: \$14.95**

Mormon Enigma: Emma Smith (Prophet's Wife, "Elect Lady," Polgamy's Foe, 1804-1879), by Linda King Newell and Valeen Tippetts Avery. **Price: \$19.95**

Where Does It Say That? by Bob Witte. Over 100 photos of oft-quoted pages from early LDS sources. **Price: \$5.95**

New Testament Documents—Are They Reliable? by F. F. Bruce. A well-researched book by a Greek scholar showing the reliability of the translation of the New Testament. **Price: \$2.95**

Mere Christianity, by C. S. Lewis. Good defense and explanation of Christianity. **Price: \$3.95**

Indian Origins & The Book of Mormon, by Dan Vogel. Shows that the Book of Mormon fits well into "the pre-1830 environment of Joseph Smith." **Price: \$8.95**

Know Why You Believe—A Clear Affirmation of the Reasonableness of the Christian Faith, by Paul E. Little. **Price: \$4.95**

Know What You Believe—A Practical Discussion of the Fundamentals of the Christian Faith, by Paul E. Little. **Price: \$4.95**

Mormon Polygamy—A History, by Richard S. Van Wagoner. **Price: \$19.95**

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