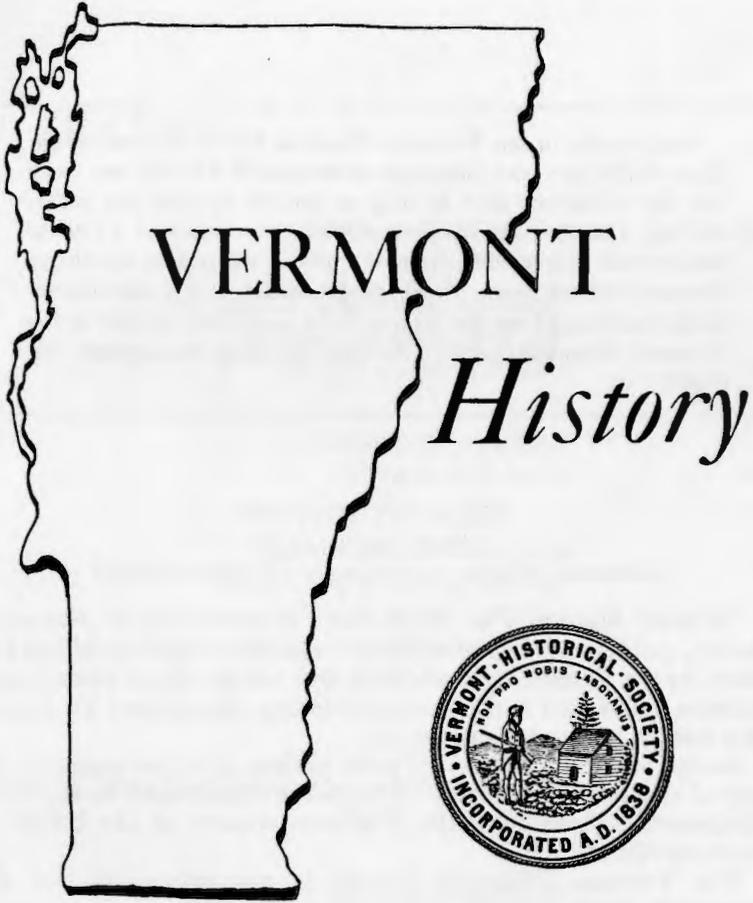
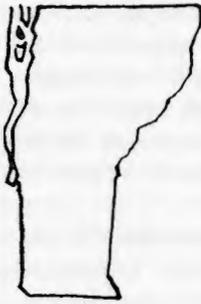


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The political history of Vermont in the interim period from 1815 to 1830 has not yet been detailed nor examined from a modern perspective.

**“I saw the ruin all around” and “A comical spot
you may depend;”
Orsamus C. Merrill, Rollin C. Mallery
and the Disputed Congressional
Election of 1818**

By J. KEVIN GRAFFAGNINO

The recent furor arising from the eventual resolution of the 1976 campaign for Lieutenant Governor in Vermont serves as a reminder of the fact that closely contested or disputed elections have not been uncommon in the Green Mountain State. Although the near-century of Republican dominance following the Civil War gave Vermont a reputation for monotonous political predictability, the state has witnessed a fair number of dogfights over important state and federal positions. Martin Chittenden v. Jonas Galusha for Governor in 1813 and Galusha's "lost" vote in Chittenden's 112-111 victory; the eight elections needed in the Fifth Congressional District in 1828-29 before Anti-Mason candidate William Cahoon finally went to Washington; the twenty ballot struggle in the Legislature in 1853 resulting in the election of John Robinson as Governor (the last Democrat to hold that office until Philip H. Hoff won election in 1962) over popular vote winner Erastus Fairbanks; the Republican split over local option in 1902 and the John McCullough-Percival Clement campaign for Governor which followed, to name but a few. No matter what the political climate around the state or throughout the nation, Vermont has never lacked the potential for very real and very energetic battles come election time.

The election in 1818 to determine Vermont's six Representatives to the United States House of Representatives was certainly one such con-

test.¹ The controversy began a year before the election and did not end until more than a year afterward. It split both the newspapers and the voters of Vermont and reached all the way to the halls of Congress before it was finally decided. In the process the campaign's heated nature encapsulated a contemporary national political issue, launched an influential Congressional career for the winner, and relegated the loser to quiet obscurity in Vermont.

At the outset the election of 1818 had none of the earmarks of an impending battle. The Federalists gradually disappeared from Vermont as an organized party after the War of 1812, leaving the field to the National Republicans until the late 1820's. A few Federalist holdovers were still in office in 1818 including United States Senator Isaac Tichenor, but in 1816 the Republicans had taken all six of the Congressional seats, regained the Governor's chair with Jonas Galusha, supplied all of the twelve-member Council elected at large in the state, and achieved a clear majority in the Vermont Legislature. Thus when the Republican state caucus assembled at Montpelier in the fall of 1817 to nominate a ticket for the next year's election, it was without any serious worry about opposition to the party's candidates.

Yet, as it developed, the ticket that the state caucus finally presented to the public turned the election of 1818 into a bitter, divisive intraparty struggle. Popular incumbents Galusha and Lieutenant Governor Paul Brigham won renomination as a matter of course, but one caucus nomination for Congress proved less routine: the caucus disregarded regional caucus winner Ezra Meech of Shelburne, as well as freshmen incumbents Samuel C. Crafts of Craftsbury and Orsamus C. Merrill of Bennington. Instead, the Montpelier meeting nominated General John Peck of Waterbury over Meech and William A. Griswold of Danville and Rollin C. Mallary of Poultney to replace Crafts and Merrill.

A storm of protest swept across Vermont as soon as the caucus nominations were released. The caucus was denounced for ignoring Meech's regional support and for sending Crafts and Merrill off to finish their terms in Washington with what amounted to a vote of "no confidence." In addition, foreshadowing what would become a major national political issue in the next decade, newspaper editors and writers around Vermont began to question the validity of nominating by caucus. In a short piece entitled, fittingly enough, "The People Against the Caucus," Burlington lawyer Sandford Gadcomb attacked the caucus system as undemocratic and anti-American and urged Vermonters to resist the attempt to control their votes "But we do most solemnly protest, against that *slavish, disgraceful* doctrine; that 'passive obedience and nonresistance' principle inculcated

by some to answer their selfish purposes that a *caucus* nomination constitutes a claim to office. It is a nomination and no more."²

Opposition to "King Caucus" did not confine itself to mere denunciation. A splinter Republican ticket surfaced in the summer of 1818 and received heavy promotion in such important newspapers as the Burlington *Northern Sentinel* and the Bennington *Vermont Gazette*. Supposedly the brainchild of Cornelius P. Van Ness of Burlington, this second Republican ticket differed from the caucus nominations only in its choice of candidates for Congress; Meech, Crafts and Merrill were proclaimed the rightful nominees over the caucus ticket's Peck, Griswold and Mallary.⁴ Broadside and newspaper columns extolled the new ticket as representative of the true feelings of Vermont voters, in contrast to their surreptitiously selected caucus opponents.

Supporters of the caucus system and its nominees proved equally adept and vocal in defense of their cause. *The Rutland Herald* and Danville *North Star* led the way in applauding the time-honored caucus method and villifying the renegade Republicans and their ticket for sowing the seeds of discord within the party.⁵ A broadside signed "Montgomery" circulated around the state claiming that splinter ticket nominees Crafts and Merrill had been nominated in 1815 only after each promised not to stand in for a second term and deprecating Merrill as a mere tool of his wife's family, the powerful Robinsons of Bennington.⁶ These and other straight party propaganda organs all emphasized the threat the intra-party struggle posed to Republican control of Vermont, conjuring up the vision of a dormant but dangerous Federalist party lying in wait for the opportunity to seize the reins of power once again.

In fact, a few Federalists did see in the Republican split a chance for their party to make a modest comeback in Vermont. A "People's Ticket" emerged in August, consisting of Galusha, Brigham and a mixture of Republican and Federalist candidates for the Council and the six seats in Congress.⁷ Although no Federalist claimed credit, the state's Republican newspapers immediately caught on and alerted their readers to the danger. However, the Federalists did relatively little to promote their hybrid slate, and the "People's Ticket" garnered little support around the state.

Election day in Vermont in 1818 was Tuesday, September 1, but the votes were not counted until the Legislature convened in Montpelier the following month. There was no question that Galusha and Brigham had won, even after some printed ballots were rejected because the state law required handwritten votes.⁸ However, the presence of twelve candidates for six Congressional spots complicated that issue and kept the newspapers from making any firm predictions about the outcome. In addition, Ver-

mont elected its Representatives by general ticket or at large, a common practice among the smaller states. Because this meant that the six candidates with the most votes would go to Washington, regardless of geographic distribution of Congressional districts, the results were of great statewide interest.

The Legislature turned to the Congressional election on October 10, appointing a committee of three members from each county to tally the votes. Three days later the committee made its report: the splinter Republican ticket candidates had all won, with Orsamus C. Merrill edging William A. Griswold and Rollin C. Mallary for the sixth House seat.⁹ Significantly, the chairman of the canvassing committee, Jonathan Robinson of Bennington, was Merrill's father-in-law. A resolution of protest came up on October 19, asking that the committee reconsider and recount the votes, but the measure met defeat the next day. With that defeat it appeared the three caucus candidates had lost to their splinter ticket opponents, and Meech, Crafts and Merrill would join Charles Rich, Mark Richards and William Strong to begin their terms on March 3, 1819, although the next session of Congress would not meet until the following December.¹⁰

Yet despite the long wait, when the sixteenth Congress assembled on December 6, 1819, one caucus candidate was still not ready to give up. On December 9, Charles Rich of Shoreham introduced a petition on behalf of Rollin C. Mallary, asking the House of Representatives to consider his right to Orsamus C. Merrill's seat. The petition was immediately referred to the House Committee of Elections (of which, ironically, Merrill was a member), and the two claimants set about working behind the scenes to support their causes.¹¹

As individuals, neither Orsamus C. Merrill nor Rollin C. Mallary had had spectacular careers before the election of 1818. Merrill had moved to Bennington in 1791 at the age of sixteen from western Connecticut, signing on as an apprentice in Anthony Haswell's printing shop. After printing for Haswell and briefly on his own in Bennington and Pittsfield, Massachusetts, Merrill turned to the study of law and gained admittance to the Vermont bar in 1805. That same year he married Mary Robinson, and the close connection with the Robinson family proved very helpful in advancing his career. He served as an officer in the War of 1812, and after the war received an appointment as Register of Probate and Clerk of the Probate Court for Bennington County, serving under his father-in-law the judge. Merrill's term in the fifteenth Congress had been his first elected office.¹²

Nine years younger than Merrill, Mallary also emigrated from western Connecticut as a boy. After graduating from Middlebury College in

1805, he studied law under Horatio Seymour in Middlebury and Robert Temple in Rutland and then practiced in Castleton for eleven years before moving his practice to Poultney. Mallary had served as Secretary to the Governor and Council ten times since 1807, as well as State's Attorney for Rutland County four times between 1810 and 1816. Lacking Merrill's family connections, Mallary nonetheless had developed strong support in Rutland County, and his years with the Council gave him valuable experience which proved useful to him in arguing his case before Congress.¹³

It took nearly a month for the Committee of Elections to return its report on the Mallary-Merrill dispute. When John W. Taylor of New York finally delivered it before the House on January 5, 1820, Merrill could have wished Jonathan Robinson held the same chairmanship in Washington as he had in Montpelier. The Committee recommended passage of resolutions unseating Merrill and offering Mallary his place. The House delayed a vote on the resolutions until the following week, but Mallary's petition was read into the record and Merrill received an immediate chance to reply.¹⁴

The Committee of Elections report and Mallary's petitions together give the details of his claim to Merrill's seat. Mallary argued that the vote totals from six Vermont towns — Wardsborough, Berlin, Fairhaven, Plymouth, Woodbury and Goshen — had been improperly rejected by the Legislature and that both he and William S. Griswold had beaten Merrill for the sixth Congressional seat. Mallary admitted that Merrill had lost twenty-four votes in Wardsborough and fifty-nine in Berlin, giving him a total of 7038 rather than the 6955 allowed him by the Legislature. However, Mallary declared he had been wrongfully denied a total of 215 legal votes and Griswold 159 from four towns, giving them respective totals of 7094 and 7067. All four towns — Fairhaven, Plymouth, Goshen and Woodbury — had had their votes rejected on technicalities by the Legislature, but Mallary argued that correctly registering the will of the people was more important than observing exactly every minute detail of the election process and that justice should take precedence over the letter of the law.

Merrill's reply, naturally, took the opposite view. Long-winded and dry, it demanded that the House adhere strictly to the Vermont election laws and the decision of the Legislature. The law was the only protection of the Vermont freemen, Merrill said, and Congress had no right to break that law and abrogate their rights, especially as Rollin C. Mallary was the only Vermonter to ask Congress to reconsider the case and his self-seeking arguments and demands should carry no weight against the collective wisdom of the Vermont legislators. Justice, certainly, but justice could only be found safely within the bounds of the law.

The House resumed consideration of the disputed Vermont election on January 11, going into a Committee of the Whole with Arthur Livermore of New Hampshire in the chair. After some introductory debate, Mallary spoke for over an hour on his own behalf, and the affair was held over until the following day. When discussion resumed on the 12th, Merrill made a last-gasp appeal for more time to prepare his case. He was turned down, however, and after a full day of debate the House finally approved by a large majority the resolution denying Merrill his seat. That Mallary should take his place would seemingly have been a foregone conclusion, but the House spent all of January 13 debating that proposition before passing it, 116-47, with all five members from Vermont abstaining. It had taken sixteen months since the election before Rollin C. Mallary became the sixth United States Representative from Vermont.¹⁵

For Orsamus C. Merrill, on the other hand, the House votes of January 12 and 13 came as a crushing blow. He described his immediate reaction to losing his seat in a remarkable letter written on the afternoon of January 13:¹⁶

Washington City, Jany. 13, 1820

Dear Sir:

The House of Representatives are in a State which is very curious — yesterday after two-days parley & debate they decided I was not entitled to a seat. — I had asked for the printing of some papers, which were deemed important to an understanding of my case — the House granted leave, Mr. Speaker [Henry] Clay, who is a great political gambler, & plays deep, & bets on trumps at every opportunity, sent to the printer for the papers, & presented from the chair the manuscripts. The House perhaps indifferent, & Mr. Clay & some others, shewed a determination right or wrong to bring it to a close — to a close it came. — the *papers* in manuscript about 10 minutes previous to the decisions against me was found to have importance and an objection was immediately started to Mallary's right to a seat, the yeas & nays were called and ordered, when the question should be taken — & the House ajourned until to-day. — To-day the House are upon it, and it is half-past *three* o'clock P.M. — If Mallary obtains, it will be, in my opinion be by reason of something disconnected with the principles of the case. — Thus my dear friend, I have reckoned upon the law & the tribunals of the state — I had reposed upon them as the ark of safety, as the sheet-anchor of the safety & purity of suffrage — but I have seen them a wreck — repudiated, defiled, prostituted — & their fair system & their excellent proportion & symmetry of parts made to bow & kneel to parol testimony, & battered & broken down by depositions; & made, vilely made, to truckle to the ambitious views of an individual, who delighted in the ruin, if he could make these ruins the stepping stones of his own insatiable ambition, if he could wed thereby a seat in Congress Hall; — vainglorious victory over the system of states, over the purity of elections. — The elections of the Green Mountain, pure as her mountain-springs, pure as the elections of any state —

have been treated contumeliously — they have been branded with *corruption*, and for what, that an individual might gain a seat of power. — When I saw the ruin all around, & in order that the stigma, if any, might have a *local* character, I memorialized the House (yesterday) for time — but it was put down. — Now after all, if Mallary has his seat, how humbling. — To me it would be a seat of thorns — if he gets it — it will be owing to certain matters, sounding in expediency, or policy. The motives are pure — yet many out of doors, will perhaps have the effrontery to say, they were in a state of hallucination & saw things as thro' a glass very darkly — How frail and mutable is man in his best estate — it is proper I should return — I have viewed men at a distance, & contemplated them as beings, standing on the dividing line of finite and infinite intellectual intellect almost, I have approached near & wondered I saw defects, that these suns had *spots* — a little accustomed to their dazzling, & familiarized to look on them, I have exclaimed "all is not gold that shines" — the shine came not neither from the body & place I had expected — the body was opaque — the irradiations were not those of the intellect, it did not proceed from the place looked at — it was illusion, it was a something on the retina of the beholder — it was a something extraneous of the object admired — I have meditated upon it, & approached nearer, & I have found it "dust and ashes" — thus having "seen an end of what they call perfection, here below" — it is proper I return.

I had rather trust to a town meeting, than the House of Representatives, for they would decide with a single eye to the objects — other objects distract the attention here, & insensibly bias the mind. — Granny Palmer,¹⁷ who has introduced into the Senate a resolution about "oil stones" became the runner of Mallary; Rich fugged with him¹⁸ — Shaw looked comical, & wonderful, & still aided Mallary¹⁹ — Taylor from pride of opinion, and a cold, clammy hearted incentive as I think said he decided for the "law of Vermont"²⁰ — He said voters need not however, be taken as it directed, nor sorted, nor counted, nor returned. — Amen & Amen —

I shall leave this as soon as the 17th inst. I think — please inform my family I hope to be with them at any rate within a fortnight.

Your friend,
O.C. Merrill

For Mallary, of course, the events of January 12 and 13 were cause for rejoicing. He, too, gave an account of his actions and their result in portions of a letter written on January 28 to John Kellogg of Benson, Vermont.²¹

I attended before the Committee of Elections. Told them a good story, as how I wished they would — &c &c —

The committee reported in my favor to the House & a resolution was introduced to admit me to advocate my claim, which passed. — The day came and your humble servant was introduced into the presence of the Wisdom of the Nation, into one of the most splendid rooms in the world . . . My humble Station was in the broad ally [sic] you would call it in Benson. My table & chair — pens ink & paper & a tumbler

of water to cool my parched lips were presented before me. A comical Spot you may depend. I took my Station with due respect & the cause was opened & then I was called upon to Support my claim. Well Sir to cry for quarters then would not answer for a Vermonter — And so Sir — as the Paddy said of the hound, that was after the fox, I gave tongue for about an hour & a quarter — the battle then became general & at the expiration of three days (long ones too brother John) the business was decided. —

Since then nothing of importance has been considered. We are now on the Missouri question.

Despite all the rancour and political strife generated by the Congressional election of 1818, Mallary's ousting of Merrill sixteen months later produced virtually no reaction in Vermont. The newspapers noted the change in a paragraph or two reprinted from the Washington and New York press, but there were no cries of "foul" and no complaints against Congress' infringement of the powers of the Legislature. The fact that both Mallary and Merrill were of the same party, no matter how divided, undoubtedly helped soothe any resentment. The main reason for the lack of protest, however, was probably that another, nationwide issue of a more pressing and immediate nature dominated the news just then. Although Mallary dismissed it in his letter to Kellogg as unimportant, the question of the Missouri Compromise and the extension of slavery held the collective attention of the State of Vermont. A majority of Vermonters would not espouse radical anti-slavery doctrines for another thirty-five years or more, but in 1820 the possibility of its extension into the northern territories aroused their heated indignation and opposition. By comparison, such a minor matter as an intraparty dispute over an old election attracted little attention and soon faded entirely from consideration.

The careers of the two protagonists differed considerably after the resolution contested election of 1818. Orsamus C. Merrill returned to Bennington and developed a modest political and legal career in Vermont. He filled a number of county and state offices over the next quarter century — State's Attorney, member of the Council, Judge of Probate, State Senator, State Representative and delegate to the state Constitutional Convention, but he never again achieved the prominence which had carried him to Washington.²² Perhaps the waning of the influence of the Robinsons in Vermont after the War of 1812 or perhaps Merrill's unhappy experience in Congress in January of 1820 led him to remove himself voluntarily thereafter from the competition for major power or office. Although almost entirely local in scope, his influence and reputation remained high throughout the years, and when he died on April 12, 1865, at the age of ninety, Orsamus C. Merrill was honored

throughout Bennington County as a man "remarkable for great purity, elevation, and urbanity of character."²³

Rollin C. Mallery's star was far brighter but less lasting than Merrill's after 1820. Mallery retained his House seat for eleven years and became "the most conspicuous champion of the protective [tariff] policy in Congress."²⁴ He held the important chairmanship of the Committee on Manufactures and helped write the famous Tariff of 1828 which infuriated Southerners designated the Tariff of Abominations. Mallery appeared headed for a long and brilliant career as a statesman, but his health began to deteriorate in the winter of 1830-31, and he died in Baltimore, Maryland, on April 15, 1831, at the age of forty-seven. His place was taken by William Slade, who served capably in Congress until 1843, but Mallery's role as a leader among advocates of a high tariff to protect New England manufacturing and industry was not filled again in Congress until the 1850's and the election of Justin Smith Morrill of Stafford to the House.²⁵

The impact of the disputed election of 1818 was not limited to the lives of the two main combatants. The problems and discord attending the battle for the six Congressional seats helped expedite an important change in Vermont's election law. Since 1812 the Legislature had occasionally considered amendments to both the state and federal constitutions to abolish general ticket voting for Congress and substitute geographic Congressional districts. Much had been written and said in favor of the change, but nothing effective ever resulted. The legislative session of 1818, however, quickly drafted and approved a law establishing six Congressional districts in Vermont. They could not have foreseen Mallery's victory in Washington a year later, but the confusion and intraparty enmity fresh in their minds convinced the solons of 1818 of the advantages of voting by Congressional districts.²⁶

More significantly, the details of the election of 1818 offer an insight into the state of Vermont politics between the War of 1812 and the rise of the Anti-Masons and Whigs in the late 1820's. The political history of Vermont in this interim period has not yet been detailed nor examined from a modern perspective, and the nature of Republican-Democratic party politics within the state remains largely unexplored territory.²⁷ The excitement over the caucus nominations which split Vermont national Republicans in the middle of the Era of Good Feelings indicates the tenuous balance of power within the ruling party after the war. The Republicans may have controlled the state from 1815 to 1830, but there were still fierce struggles for power. The political divisions evident in Vermont in those years eventually led to such campaigns as Van Ness v.

Seymour for the United States Senate in 1826 and the development of the Whigs as a major second party in Vermont. That the period 1815-30 was not one in which "a remarkable unanimity of sentiment with regard to men and measures prevailed" is unquestionable, but until a comprehensive study of state politics in those fifteen years is completed, smaller analyses of individual campaigns and elections will help fill some of the many gaps in our knowledge of early nineteenth century Vermont.²⁸

NOTES

¹There is no adequate account of the events of the election of 1818. The most complete version is in Walter Hill Crockett, *Vermont: The Green Mountain State* (New York: The Century History Co., 1921-23), III, 157-59.

²Sandford Gadcomb MSS, Wilbur Collection, Guy W. Bailey Library, University of Vermont, Burlington, Vermont (hereafter Wilbur, UVM), pp. 1-14.

³*Northern Sentinel* (Burlington), August 21 and 28, 1818; *Vermont Gazette* (Bennington), September 1, 1818.

⁴Abby M. Hemenway, ed., *The Vermont Historical Gazetteer* (Burlington: A.M. Hemenway, 1867-91), I, 622.

⁵*North Star* (Danville), August 21 and 28, 1818, quoting *The Rutland Herald*.

⁶Reprinted in *Ibid.*, August 28, 1818.

⁷*Ibid.*, *Vermont Gazette*, September 1, 1818.

⁸*Northern Sentinel*, October 16, 1818; Vermont, *Records of the Governor and Council of the State of Vermont* (Montpelier: J.S. Poland, 1873-80), VI, 213.

⁹As reported in the *Vermont Intelligencer and Bellows Falls Advertiser*, October 26, 1818, the vote totals were: Charles Rich, 13,635; Mark Richards, 13,518; William Strong, 13,174; Samuel C. Crafts, 10,996; Ezra Meech, 10,239; O.C. Merrill, 6,955; Griswold, 6,908; Mallary, 6,879; Peck, 6,582; David Edmund, 4,615; Phineas White, 4,572; and Richard Skinner, 3,551.

¹⁰Vermont, *Journals of the General Assembly of the State of Vermont . . . October, A.D. 1818* (Bennington: William Haswell, 1819), pp. 18, 22, 26, 60, and 65.

¹¹United States, *The Debates and Proceedings of the Congress of the United States . . . Sixteenth Congress* (Washington: Gales and Seaton, 1855), p. 710.

¹²Crockett, *Vermont*, III, 139-40. Marcus A. McCorison, *Vermont Imprints 1778-1820* (Worcester: American Antiquarian Society, 1963), pp. 519-20.

¹³Crockett, *Vermont*, III, 139-40; Marcus A. McCorison, *Vermont Imprints 1778-1820* (Worcester: Burlington: Ullery Publishing Co., 1912), p. 69.

¹⁴United States, *Debates and Proceedings of the Congress*, pp. 860-76, for the Committee of Elections report, Mallary's petition and Merrill's reply.

¹⁵*Ibid.*, pp. 897-911; see Hemenway, *Vermont Historical Gazetteer*, I, 622, for a story that John Randolph of Virginia declared Griswold the winner but that the seat was given to Mallary in his absence. The House debates make no mention of this incident.

¹⁶O.C. Merrill to [?], January 13, 1820, Spargo Autograph Collection, Box 3, Wilbur, UVM.

¹⁷William A. Palmer (1781-1860), United States Senator 1817-25, Governor of Vermont 1831-35.

¹⁸Charles Rich (1771-1824), United States Representative from Vermont 1813-15 and 1817-24.

¹⁹Henry Shaw (1788-1857), United States Representative from Massachusetts 1819-21.

²⁰John W. Taylor (1784-1854), United States Representative from New York 1813-33.

²¹R.C. Mallary to John Kellogg, January 28, 1820; MS Box 33, Vermont Historical Society, Montpelier, Vermont.

²²Crockett, *Vermont*, III, 139-140.

²³Isaac Jennings, *Memorials of a Century* (Boston: Gould and Lincoln, 1869), p. 318.

²⁴Crockett, *Vermont*, III, 246.

²⁵*Ibid.*, III, 244-246.

²⁶Vermont, *Governor and Council*, VI, 456-60.

²⁷The only article to deal with politics in this period is T.D.S. Bassett, "The Rise of Cornelius Peter Van Ness 1782-1826," *Proceedings of the Vermont Historical Society*, 10, no. 1 (March 1942), 3-20.

²⁸Zadock Thompson, *History of Vermont, Natural, Civil, and Statistical* (Burlington: Chauncey Goodrich, 1842), part II, 100.