

1995

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### Recommended Citation

Gray, O. Ronald and Calvasina, Richard Victor (1995) "1826 contract for construction of facilities at the Pensacola Naval Station and its implications for historical research using agency theory," *Accounting Historians Journal*: Vol. 22 : Iss. 1 , Article 3.

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## **THE 1826 CONTRACT FOR CONSTRUCTION OF FACILITIES AT THE PENSACOLA NAVAL STATION AND ITS IMPLICATIONS FOR HISTORICAL RESEARCH USING AGENCY THEORY**

*Abstract:* This contract dispute enhances our understanding of agency relationships and fosters greater recognition of the limitations and hazards of historical research using an agency literature framework. The accounting records, related memoranda, and reports submitted also provide insight into the nature and character of early defense contract accounting and relationships between these contractors and the government. Difficulties confronted by the Navy in securing a contractor; contract terms; civilian contractor's project accounting records, related memoranda, and correspondence with naval authorities are reviewed. The post-contract correspondence provides insight into how early 19th century government contractors attempted to resolve disputes with the government.

### **Introduction<sup>1</sup>**

Today, government is the largest consumer of products and services in the United States. Government contracting with private sector suppliers has been a constant from the earliest days of U.S. history. Modern legislation, e.g., the Federal Acquisition Regulation Act and Truth in Negotiations Act, have established standards governing contractors' dealings with the government. The Cost Accounting Standards Board has issued standards to promote uniformity and consistency in the way defense contractors measure, assign, and allocate contract costs. The Defense Contract Audit Agency, the General Accounting Office, and

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<sup>1</sup>The authors would like to acknowledge and thank the anonymous reviewers who so generously devoted time to providing constructive and well-reasoned suggestions for the improvement of this article. Without this capable input and feedback, this article would not have been possible.

other audit agencies have responsibilities for auditing compliance with contract terms. In short, doing business with the government has become highly institutionalized; contractor rights and obligations are highly circumscribed by contract, regulation, and law. A formal process for mediating contract disputes is in place, and when mediation fails there is access to the court system. In our era, this formal institutionalized framework is largely taken for granted. Such was not always the case. The contracting environment confronting the government contractor of the early 19th century stands in stark contrast to the norm of today. An appreciation for the efficacy of our current bureaucratic contracting environment can be gained by examining an early government contract. Moreover, the dangers inherent in extending modern rational expectations and assumptions to earlier periods of history become evident. Modern assumptions may be invalid in a pre-bureaucratic era where justice was more personalized and less systematized. In earlier periods, due process was less assured, and arbitrariness and personally motivated animosity or favoritism was less restrained. Such conditions may preempt and negate assumptions underlying historical research using an agency theory framework.<sup>2</sup>

In 1826, Samuel Keep of Boston received a contract from the federal government to superintend the construction of the original facilities at the Pensacola Naval Air Station then known as the Pensacola Naval Station or Navy Yard.<sup>3</sup> This 19th century contract dispute affords some insights that may contribute to our contemporary understanding of agency relations. Specifically, much of contemporary accounting agency theory focuses on instances where the agent breaches, reneges, or otherwise shortchanges the principal to the contract. In this instance, how-

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<sup>2</sup>See Max Weber's short essay on bureaucracy in *From Max Weber*, H. H. Gerth and C. W. Mills (eds), Oxford University Press 1946, pp. 216-221, for a discussion of the significant differences between justice based on personal factors and justice based on abstract procedures and rules of law.

<sup>3</sup>In 1975, the John C. Pace Library at The University of West Florida acquired the personal correspondence and accounting memoranda of Samuel Keep. Among these records are a copy of the original contract, payment vouchers for supplies and materials, payroll records, and construction progress reports as well as many letters addressed to members of his family and such notables of Keep's day as President Andrew Jackson, Vice-President Henry Clay, Senator Daniel Webster, Secretary of the Navy Samuel Southard, and William Bainbridge who was the highest ranking naval officer of the time and chairman of the Board of Navy Commissioners. These documents provide the basis for this paper and unless specifically stated otherwise all quotes come from them.

ever, it was the principal, i.e., the federal government, that re-neged on the contract despite diligent performance by the civilian contractor/agent.

Contractual relations are frequently a good deal more complicated than simple principal-agent models suggest. While simple principal-agent models may be helpful in understanding relationships, the contract under consideration in this article is complex in structure and operation. There is a hierarchy of control in this early defense contract that is typical of many modern contracts. Specifically, roles are less clearly defined than simply agent-principal, i.e., an actor may be simultaneously an agent of some principal and the principal of another agent. In this instance, both the civilian contractor and the naval officers were acting as agents of the federal government. However, from the perspective of the civilian contractor/agent Samuel Keep, the agent/naval officers were principals.

A basic assumption underlying agency theory is that all parties to a contract behave in a rational, utility maximizing manner [Jensen & Meckling, 1976, p. 307; Fama, 1980, p. 289]. Often, agency theory literature depicts actors in agency models as self-interested individuals with the goal of maximizing net income [Baiman, 1990, p. 155]. However, Mills has stated that income or wealth utility maximization alone is not sufficient to explain the behavior of all agents [Mills, 1993, p. 802]. In some circumstances, agents may seek to maximize some utility function that transcends pursuit of personal financial advantage, e.g., a sense of duty, honor, loyalty. The Keep contract provides some insight into agency relationship frictions that can not be directly attributed to income maximization. The naval authorities who were party to this contract as principals did not reap any personal advantage, and yet they were unrelenting in their refusal to honor the terms of the contract with the civilian contractor.

The Keep contract is particularly interesting because enforcement of its terms became an issue; it gave rise to one of the first defense contract disputes in American history. Contemporary agency theory presumes that contract enforcement is a matter of judicial intervention. Specifically, Baiman states:

The central focus of agency theory is the employment contract (which includes the agent's payment schedule and the monitoring system). Contracts are enforced by legal institutions. The decision of legal institutions as to whether an employment contract has been honored or

violated depends upon the evidence that can be submitted by the contracting parties to the legal enforcement mechanism. [Baiman, p. 168, 1990]

Keep's efforts to enforce the terms of his contract with the government suggest that this agency theory assumption was not satisfied in the early 19th century. The contractor's pursuit of reparations from the government through personal lobbying and pleading provides a stark contrast to the institutionalized conflict resolution assumed by agency theory.

### THE HISTORICAL CONTEXT OF THE CONTRACT

The United States bought Florida from Spain for \$5,000,000 in 1819. This transfer was formally accepted in Pensacola on July 17, 1821 by General Andrew Jackson, who was then military commander of the territory. In 1822, Congress established the Territory of Florida with Pensacola as its capitol; Jackson was appointed its first governor.

During the Napoleonic Wars, most of the Spanish and Portuguese colonies in Latin America took advantage of the unsettled conditions in Europe to break away from their mother country. By the end of 1822, Mexico and many countries in Central and South America had freed themselves from colonial rule, and the United States had formally recognized their independence. However, the three leading monarchies of Europe, i.e., Russia, Austria, and Prussia, encouraged Spain and Portugal to reassert their authority over their former colonies. In an address to Congress in December 1823, President James Monroe proclaimed that the United States would defend all independent nations of the Western Hemisphere against European intervention; this Monroe Doctrine became a cornerstone of United States foreign policy.

This backdrop of political upheaval and uncertainty provided the impetus for major military development along the southern coast of the United States. Over a period of twenty-five years a series of strategically placed forts and navy yards were built. In Pensacola, Ft. Pickens and Ft. McRee were built to guard the entrance to the port; the harbor itself became home to the first permanent U.S. Navy installation on the Gulf Coast. At the same time, fifty miles to the west, Ft. Morgan and Ft. Gaines were built to guard the entrance to the port of Mobile, Alabama. At the conclusion of this defense build-up, many passes from the open sea to important seaports were guarded by forts [Bailey, 1966, pp. 236-242].

## THE TASK

The first of the defense installations to be built was the Pensacola Navy Yard. On February 25, 1825, a bill authorizing construction of facilities for a new navy yard and depot at Pensacola, Florida was passed by the U.S. Senate, and the House gave its approval on March 3, 1825 [Pearce, 1980, p. 5].

At the time, journeymen construction workers or "master mechanics" were scarce. There was an abundance of work for such skilled workmen along the populated Eastern Seaboard. It was not easy to entice workmen to leave familiar surroundings, family and friends, to journey three weeks (under the best of sailing conditions) to a frontier town known for yellow fever epidemics and poor living conditions.

## THE PRINCIPAL

An important component of any principal's task in the principal-agent relationship is the selection of the "best" agent. The principal in this contractual relationship was the Board of Navy Commissioners, most frequently referred to in correspondence of the day as the Navy Board. This organization was charged with responsibility for letting the contract and supervising construction.<sup>4</sup> To this end, the Navy Board circulated notices soliciting bids among qualified "master builders," published invitations to bid in major newspapers, and posted notices in federal government offices. After unsuccessfully negotiating with several contractors for over a year and a half, the Navy Board concluded negotiations with Samuel Keep.

The circumstances surrounding the Navy Board's acceptance of Keep as labor contractor for the Pensacola Navy Yard are necessary background for understanding subsequent events relating to the contract. First, the Navy Board was motivated and eager to commence work on the new facilities as quickly as possible. Moreover, established and presumably knowledgeable contractors were reluctant to bid on the project or demanded compensation that the Navy Board deemed excessive. As will become apparent later, the fact that the Navy Board granted the contract to Keep is itself some measure of its desperation and

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<sup>4</sup> The Board of Navy Commissioners was created by act of Congress in 1815 and was made up of three captains (then the highest rank in the Navy). Commissioners were appointed by the President with the consent of the Senate and were invested with delegated executive authority.

frustration. Certainly, given more favorable circumstances, the Navy Board would not have awarded the contract to Keep.

Both principal and agent confront considerable risk when they enter into a contract each knowing relatively little about the other. The Navy Board and Keep had no on-going relationship, and there was an extreme degree of information asymmetry present in the contract negotiation. Given the time and distance between Boston and Pensacola (three weeks by ship down the Atlantic coastline, around Key West, and up the west coast of Florida) and the communications capabilities of the time, Samuel Keep must have been markedly ignorant of the conditions in Pensacola. By contrast, the Board was better informed. As a consequence of receiving reports from Navy personnel already in place in Pensacola, the Board was knowledgeable of local conditions at the proposed construction site. In addition, after unsuccessfully negotiating with other prospective contractors, the Navy Board knew precisely what other contractors required in terms of compensation to take on the Pensacola project. Presumably, this information asymmetry worked to the advantage of the Navy Board in its contract negotiations with Keep. In addition, Keep was totally inexperienced in bidding on government contracts. Overall, Keep must have been at a great disadvantage in contract negotiations.

From the perspective of agency theory, each party to this contractual relationship was motivated by self-interest. No doubt, Keep thought he had negotiated a contract that would allow him to break into government contracting and maximize his personal net worth. From the perspective of the Navy Board, they needed the work to commence as soon as possible at the cheapest possible rates. To this end, the Navy Board exploited the asymmetric information set they possessed and Keep's eagerness to make a start in the construction business. The Board was successful in securing below market rates for the project as evidenced by the fact that no other supplier was interested in the contract.

### THE AGENT

Samuel Keep, an unmarried man in his mid-twenties, was the youngest son of an established and prosperous Boston area builder and the brother of Dr. Nathan C. Keep who founded the Dental School at Harvard University. Keep's personal correspondence and his business records suggest that he was an articulate

and well- educated man of his time. Samuel served his apprenticeship working for his father on various construction projects in and around Boston. Previously, Keep had never been awarded or even bid a single construction contract, his very first venture as an independent builder in his own right was the Pensacola Navy Yard contract. Given Keep's personal circumstances — young, well to do, and eager to begin a business in his own right — it is reasonable to assume that he was less risk averse than an established builder. From Keep's point of view, the Pensacola contract must have looked like a great opportunity. In summary, Samuel Keep was young, inexperienced as a builder and totally unproven as a contractor. Certainly, this is not the profile of the ideal candidate for a major government contract. It seems that Keep's principal qualification was his lack of risk aversion, as evidenced by his willingness to accept the contract.

### THE CONTRACT

According to the terms of the contract signed on September 8, 1826, Keep was to go to Pensacola and superintend the construction of the wharf and buildings at the new navy yard. All construction materials including tools and implements were to be supplied by the Navy Board. Keep was to hire "8 master masons and 10 skillful wharf builders" and transport them to the project site. In addition, Keep agreed to remain in Pensacola with his builders for two years. In compensation, Keep was to receive:

\$2,000 per annum for himself and \$2.50 per day for the mechanics to be in full compensation for all the services which may be rendered by him or them and for all charges and expenses which he the said Keep may incur and subject himself to on account of this contract.

The contract provided that Keep's salary and the \$2.50 per day for the mechanics would commence with departure from Boston. Payments were to be made to Keep at the Pensacola Naval Station upon the presentation of bills to the local commanding officer.

### PRELIMINARY PREPARATIONS

Before departing from Boston, Keep recruited 8 masons and 10 wharf builders. According to Keep's correspondence, the prevailing wage in Boston for such men was \$1.75 per day. To induce men to travel to the Florida hinterlands, separated from



friends and family, Keep offered premium wages as well as food and lodging. Keep negotiated worker wage rates based on his judgment of each worker's skill and experience. Exhibit 1 is a list of Keep's crew and their associated pay rates. Wages ranged from \$2.10 to \$3.00 per day with an average daily wage of \$2.33. This was a premium of 25 percent over the existing wage in Boston without considering the value of food and lodging provided by Keep in Pensacola.

## EXHIBIT 1

Names of Mechanics who came  
from Boston Sept 15, 1827

M. R. Hopkins	=	\$ 2.50 per day
M. C. Loring	=	2.75 a Board, & you at 10
Wm. Dickwell	=	3.00
Benj. Gould	=	2.50
Charles Parker	=	2.25
Thomas [unclear]	=	2.10
Marshall Mills	=	2.10
Curtis [unclear]	=	2.10
Benj. Copeland	=	2.50
John King	=	2.00
Lotus [unclear]	=	2.50
John D. Sedgwick	=	2.10
Thomas Stearns	=	2.75
Wm. Knapp	=	2.10
John Beatt	=	2.10
A. A. Tibbets	=	2.10
John [unclear]	=	2.10
Nathaniel [unclear]	=	2.10
Lemuel [unclear]	=	2.10

I certify that the foregoing are the names  
of the mechanics who came from Boston  
Sept 15, 1827. & that the I gave to  
each the price offered to his  
names ~~and~~ [unclear]

(Copy)

Each builder executed a labor contract (some preprinted and others handwritten) agreeing to work with Keep for two years at the Pensacola Naval Station. Exhibit 2 is an example of the preprinted contracts signed by each worker. The difference between the worker's wages and the \$2.50 government contract amount was justified in Keep's mind by the fact that he provided food and lodging for the workers and paid the cost of their transportation from Boston to Pensacola.

## EXHIBIT 2

THIS CONTRACT, made and entered into this *eight* day of *January* in the year of our Lord one thousand eight hundred and twenty seven, by and between Samuel Keep, now at and of Pensacola, W. Florida, on the one part, and *Apollos Wing* of Boston, county of Suffolk, and state of Massachusetts, on the other part, WITNESSETH. That the said *Apollos Wing*, doth hereby contract, engage, and agree with said Keep, that he will embark on board such schooner, brig, ship or other craft, as shall first sail from this port to the port of Pensacola, and there enter immediately into the service of said Keep, as *Wharf Builder* for the purpose of erecting a wharf and such structures as the U. S. Government may require at their yard or station, or such other work as said Keep may wish and require of him, in that vicinity. Said *Apollos Wing* further contracts, engages and agrees, that he will conform to the rules and regulations of the Yard or Station aforesaid, and remain in the employment of said Keep for the term of *two years*, unless the work shall be sooner completed at said station. Said *Apollos Wing* further contracts, engages and agrees, that he will at all times be subject to the controul of said Keep, that he will neither commit fraud himself or knowingly and silently allow others to practise it upon said Keep, or his interest, or the interest of the U. S. Government. The conditions of the above Contract the said *Apollos Wing* contracts, engages, and agrees effectually to fulfill and truly to abide by, for the sum of *Thirty Five Dollars per Month and board for every month he works* agreeably to the regulations of the yard. Said *Apollos Wing* further contracts, engages and agrees that said Keep shall be allowed to retain in his possession, a sum equal to the wages of one month as security for the faithful performance of this contract. The above sum of *Thirty Five Dollars per Month* to be in full compensation for all services rendered by said *Apollos Wing*, and for all expenses said *Apollos Wing* may subject himself to, on account of this contract *except board*. The aforesaid Samuel Keep, on his part, contracts, engages and agrees, that he will furnish said *Apollos Wing* with work upon his arrival at Pensacola, or the station aforesaid, for the term of two years, unless the works there to be erected, shall be sooner completed, and also that he will furnish, or cause to be furnished, all tools which may be necessary for the performance of said work, and to be responsible to said *Apollos Wing* for the payment of his wages at *Thirty Five Dollars and board* for every *Month* he shall work agreeably to the regulations of the Yard, and that at the final settlement, the whole amount of the money retained as security, shall be paid to him the said *Apollos Wing*. The above payments are to be quarterly, semiannually, or oftener, if the same can be done without injury to said Keep, and said *A.W.* shall request the same, at the U. S. Naval Station in Pensacola. And it is further agreed and understood, that if said *Apollos Wing* shall wish to send money to Boston, said Keep will render such assistance as he can, to forward said money in the most safe and economical manner.

In Witness of the above the parties have herunto set their signatures, and affixed their seals in presence of

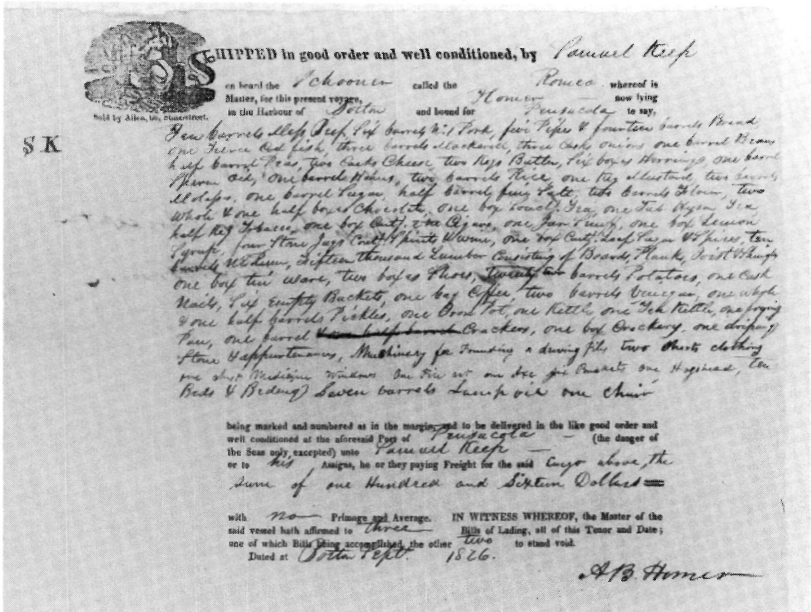
*Thomas J. Wentworth*

*Apollos Wing*  
*Samuel Keep*  
by *M. C. Herp. Atty.*

Besides hiring builders, Keep hired an accounting clerk who was charged with responsibility for maintaining project records. This clerk contracted to work for the sum of \$50 per month plus food and lodging; an amount that was approximately equal to the wages received by the master builders. The salary of the accounting clerk was not reimbursable cost under the terms of the contract; therefore, Keep absorbed this cost out of his \$2,000 per year. Surviving project records and memoranda are testimonials to the thoroughness and competence of this accounting clerk. However, one might reasonably question the business judgment of Samuel Keep; he committed better than 30 percent of his annual contract compensation for the services of a full-time bookkeeper.

The contract granted Keep permission to erect on navy yard property "such barracks or other buildings as may be found necessary and convenient for the accommodation of himself and men while employed at the naval station." The materials and labor cost for construction of the barracks were to be born by Keep. Before departing from Boston, Keep purchased a considerable amount of food, building materials for the barracks including 15,000 feet of lumber and nails, furnishings for the barracks, clothing, and medical supplies. Cash disbursement records for these purchases total \$848.98. According to the shipping contract presented as Exhibit 3, the transport of the building materials and supplies to Pensacola via Key West cost \$116. The cost of passage on the same ship for Keep and his nineteen men was \$380. Therefore, documented support exists for \$1,344.98 in cost before the first dollar of government contract money was received. Available personal correspondence and accounting records give no indication as to the source of Keep's start-up money. However, it seems reasonable to surmise that these funds were provided by his family.

EXHIBIT 3



PROJECT ACCOUNTING RECORDS

There is no evidence of a double entry bookkeeping system in any of the project records. The financial records are single entry "day book" accounts that chronicle cash disbursements and receipts. There are no financial statements for either Samuel Keep personally or the construction project. Labor reports submitted to the officer in charge of the navy yard constituted billing under this contract. Hence, construction labor in terms of duties assigned or work performed and labor time for each of Keep's employees is fully documented.

The records show that the first three weeks of October 1826, i.e., the first three weeks at the construction site, were spent constructing the barracks for the crew. In addition to the building materials brought from Boston, brick and other construction materials for the barracks were purchased locally. For the period October 1826 to June 30, 1827, local purchases for food and building materials totaled \$1,288.82. These expenditures are supported by itemized statements from various Pensacola suppliers. Exhibit 4 is an itemized statement of cash payments made to one Pensacola supplier for the period October 26-December 30, 1826.

EXHIBIT 4

*M Samuel King* To the C. W. (Museum)

1826

Oct 26	To 4000 Shicks a ft	44.00	
27	To 4000 hauling sand	0.25	
Nov 3	To Cash paid you	5.00	
7	To 1000 Shicks	0.25	
10	To 2000 in 1000 Shicks	1.00	
11	To 1000 Shicks	0.30	
Dec 5	To 1000 Eggs 300, 2000 Eggs 75	4.10	
	1 Bushel Corn meal 1/2 Bay 25	1.00	
	pa for 1/2 Bushel Shicks	0.50	
	3 Bushels 33 Corn 25	0.63	
6	To 1000 Shicks	3.25	
8	To 4000 Shicks 50 1 Shick 25	0.75	
9	To 500 Shicks 75	3.25	
	1 Shick	1.00	4.75
10	To 6000 Eggs a ft	2.25	
	50 1/2 Shicks a ft	12.50	
	1 Salt Branch	2.25	17.00
18	To 2 1/2 C Shicks a ft	1.50	
	1 Shick	2.50	
	1 1/2 Shicks	2.25	
	10 1/2 Shicks	1.00	7.25
26	To 1 Bushel Walnuts	3.50	
	1 Bushel Corn	1.00	
	1 1/2 Eggs Potatoes	3.50	
	1 Shick 100 1/2 100	2.03	
	50 Oranges pt. 100 Shicks a ft 400		
	1 1/2 Eggs Potatoes 150	1.50	
	To the Co account	0.80	16.03
	paid Cartage on Sand	0.25	
30	To 2 Bushels Planting	1.25	
	E & P		107.53
	Pensacola Aug 1 1827		

The principal project accounting records were reports of days worked submitted to the commanding officer of the Pensacola Naval Station as a basis for payment under the contract. During the developmental stages of the project all men were engaged in such activities as digging sand or felling and hewing timber for use in the construction. During this period, project reports were submitted on an infrequent basis. Between December 1826 and March 1827 three reports which covered

overlapping intervals — October 27-November 30, October 27-February 28, and February 16- February 28 — were submitted. The 5 column tabular February 16- February 28, 1827 project report presented as Exhibit 5 is typical of these reports. After February 16, project reports were submitted biweekly in a

**EXHIBIT 5**

*Report of work done in the Wharf Division and Mason's Department  
 from the 16 to the 25<sup>th</sup> of February (inclusive), 1827*

	on Commandant's Order	Having Timber for Wharf	Days Work
1	M. Hopkins	8	8
2	J. Powell	7 1/2	7 1/2
3	A. Thacher	10	10
4	M. Woodruff	12	12
5	H. Loring	11	11
6	B. Hoate	2	2
7	A. Tibbitts	10	10
8	So. Sautelle	10	10
9	Geo. Kibel	10	10
10	J. Sumrell	10	10
11	B. Webster	10	10
12	Sam. Baker	10	10
13	J. Whittier	11	11
14	J. Washburn	10	10
15	J. Hoate	11	11
16	A. Backus	11	11
17	J. Conzette	11	11
18	Th. Sawyer	11	11

*Total Days 174*

*Very Respectfully  
 Sir, Your Obedt. Servt*

*E. R. McCall Esq:  
 Com'g Army Post  
 Pensacola*



“spreadsheet” format. Exhibit 6 is typical of these reports. Beginning with the February 16-28 report, these reports show that the men were assigned to a multitude of small and large projects which were going on simultaneously. The columnar headings on these reports were consistent: workers’ name, occupation (either brick layer or wharf builder), days worked (no hourly work records were maintained and the smallest time increment which appears in these reports is 1/2 day), and project (commandant’s house, hospital, barracks chimney, wharf, et al.)

### THE CONTRACT DISPUTE

As noted, Keep invested a significant amount of money in performance of this contract before arrival at the job site. Upon arrival in Pensacola, Keep presented a bill for \$945 (21 days in passage for 18 men at \$2.50 per day) to the commanding officer. Unfortunately, Keep discovered that the local commanding officer, Lt. Commander Edward R. McCall, did not feel bound by the Navy Board’s contract. This officer refused to pay Keep \$2.50 per man as the contract stated. Why a United States Navy officer would take it upon himself to act in this way is pure speculation. The officer’s actions were clearly inconsistent with the explicitly stated terms of Keep’s contract with the Navy Board. At this juncture, Keep threatened to take his craftsmen and leave Pensacola. Faced with this threat the commanding officer backed down and paid Keep. However, McCall wrote the Navy Board for instructions about how he should proceed in the future.

There is little doubt that personal animosity existed between McCall and Keep. According to Keep’s correspondence, McCall referred to Keep as “You God damned Yanke.” McCall was described by Keep as “a vile and intemperate man.” It is evident from reading Keep’s personal correspondence that he feared McCall. Early in his stay in Pensacola, Keep began carrying two loaded pistols because McCall had threatened him.

Little is known of Keep’s antagonist — Edward R. McCall. However, according to the 1827 Navy Register, McCall was born in South Carolina, commissioned an officer in the U.S. Navy on January 1, 1808, and promoted to the rank of lieutenant commander on March 3, 1825 when he assumed command of the Pensacola Navy Yard [Navy Register, 1827, pp. 782]. The personal antagonism between McCall and Keep coincidentally paralleled larger historical currents. In many ways, the ill tempered relationship between Keep, a Massachusetts Yankee, and



McCall, a fiery South Carolinian, seems to personify regional animosities that afflicted the United States at this time in its history.

Subsequently, Keep submitted his labor bill for the month of October. The bill submitted included the time spent by the men building the barracks. McCall refused to pay stating that "men were not to draw wages when they did not work." As justification, Keep cited a clause in his contract which stated that he "shall not suffer for the want of materials and tools" and pointed out that the Navy had failed to provide materials to begin construction and that if the men had not built the barracks they would have been idle. Signed stores receipts show that it was not until October 27, 1826 that the navy delivered supplies and tools to Keep for the actual construction project. According to the terms of Keep's contract, it was the responsibility of the Navy to provide all tools, implements, and materials for the construction.

In response to McCall's request, the Navy Board's instructions were that he should authorize payment for the actual amount to be received by each worker and that payment should be made directly to the worker and not Keep. This is in clear contradiction of the explicit terms of Samuel Keep's contract with the Navy Board. At this point, it seems that the Navy Board summarily abrogated its contract with Keep.

Given the hindsight provided by almost 170 years, it appears that the Navy Board acted in bad faith by agreeing to Keep's terms, alluring him to the job site in the remote hinterlands, and ignoring the explicitly stated terms of the contract. Surviving documents leave little doubt that the Navy Board acted dishonorably. In the correspondence files between the Navy Board and Samuel Keep, there is no indication that the Navy found any fault with either the pace or quality of Keep's work at the Pensacola Naval Station. To the contrary, even Lt. Commander Edward R. McCall, the very same commanding officer who refused to honor the payment terms of Keep's contract, described the quality of Keep's work as "commendable."

Whether the government's conduct in this matter is an isolated incident or part of a widespread pattern of "bad faith" contract dealing is a question not easily answered. It may be that the seeds of this contract dispute lie in a personality clash between two agents of the Navy Board — Keep and McCall. Acting as agent for the Navy Board in its dealings with Keep, McCall challenged the terms of the contract and refused to dis-

burse funds according to its terms. It is significant that once McCall acted, the Navy Board never wavered in its support of his position. Perhaps, loyalty to a fellow career naval officer was the overriding motivation of the Navy Board. If this was the case, then any civilian contractor doing business with the Navy did so at their own peril. Written contracts could be ignored or completely disregarded with impunity — not a very comforting prospect for an outsider doing business with the government.

Without the difference between what he received from the Navy and what he paid the men, Keep had nothing to defray the cost of food and lodging provided to his craftsmen. Keep protested to the Navy Board and attempted to bring formal charges against McCall and Lt. Commander Thomas S. Cunningham, Sr. who succeeded McCall as commandant of the Pensacola Naval Station. Secretary of the Navy Samuel Southard's response to Keep's attempt to bring charges against the officers was simply to assert that "as a civilian Keep had no standing" that allowed him to bring charges against uniformed officers of the United States Navy. Keep was fired by the Navy Board on June 28, 1827 and accused of "practicing deception before the contract was signed in that he assured them (the Navy Board) that he could not obtain mechanics for less than \$2.50 per day when he knew that he could and that he actually did hire them for less and did put the difference in his own pocket amounting to \$3.00 per day to his own advantage."

This assertion of "deception" by the contractor sounds particularly disingenuous and implausible considering the fact that the Navy Board had unsuccessfully attempted to sign a contractor for a year and a half before awarding the contract to Keep. The Board was in a position to know the going rate of pay for skilled workmen.

A more plausible explanation is that the Navy Board chose to back the actions of its career officers notwithstanding the terms of the contract. Or, perhaps the Board concluded that they had made a bad bargain, and first tried to rewrite the contract to their liking and when that did not work they simply fired the contractor after much of the work had been completed.

In a letter addressed to his brother shortly before his July 1827 departure from Pensacola, Keep stated, "I have spent more to fulfill my contract than I should make in ten years if I should stay so long in this country for two thousand per annum." The Navy Board's flagrant disregard for his contract left Keep with little recourse. Keep left Pensacola and went to Washington to

pursue his claims against the Navy Board.

Today, in the event of a contract dispute, the issue as to whether a contract has been honored or violated is likely to be decided in the court system. Evidence is submitted according to specific rules of admissibility in an ostensibly impartial court proceeding and the contested issue is decided by judge or jury. This manner of conflict resolution has been institutionalized, is expected, and largely taken-for-granted. Such was not true in Keep's day; he did not retain legal counsel nor did he sue the government for breach of contract. At this point in our history, it seems that government was less securely based on the rule of law. Justice was more a matter of personal contact and influence.

Keep pursued his claim personally with the Washington bureaucracy. Unfortunately, Keep's experience battling the Washington bureaucracy was frustrating and dispiriting. Initially, he pursued his claim for reparations with the civilian Secretary of the Navy. In an October 1827 letter to Secretary of the Navy Southard, Keep stated: "Such has been the high handed injustice & injury to me, that I have come to the defensive action to demand redress at the bar of Congress for the severe losses I have sustained." Secretary Southard was not sympathetic to Keep's claims against the Navy, but suggested that Keep document his case and submit it to the Treasury Department for a decision on the merits of his case.

Acting on Southard's recommendation, Keep took his cause to the Treasury Department's 4th Auditor's Office which was charged with adjudicating claims made against the government. In a March 28, 1828 opinion addressed to Navy Secretary Southard, the auditor disallowed Keep's claims by declaring:

Having carefully examined the documents in the case of Mr. Samuel Keep late Superintendent referred to me by you, I have the honor to report, that nearly all the charges made by Mr. Keep appear to be founded upon an assumed violation of his rights and an improper interference in his duties, by E. R. McCall and Thomas S. Cunningham Sr. U.S.N. commanders, officers at the Pensacola Station. Not having any thing explanatory or defensive from these two officers, you will readily see the improbability of my forming any decision on the justice of Mr. Keep's claims. The vouchers to support the several items in his account are not sufficiency clear to justify me in allowing it. By letter from the Navy Commissioners it will be seen that his salary was to

cease on or about the 28th June 1827. If however these claims were to be decided on at present, without further information, according to the terms of the contract, I do not think they ought to be allowed. [[T. Matkins], 18 March 1828]

Keep was equally unsuccessful in stimulating any interest in his dispute with members of either the U.S. House or Senate. Daniel Webster, who represented Keep's home state of Massachusetts in the U.S. Senate, stated in a letter to Keep that "he could not attend to applications of this kind, that the business is between you and the Navy Board" [Keep, 23 April, 1828].

For three years, Keep remained in Washington and petitioned the government for redress for the Navy's conduct. Notwithstanding his persistent efforts to remedy the wrongs done to him by the government, he was totally unsuccessful. After termination of his contract, Keep never received another penny from the federal government.

In 1830, a week after his marriage to a wealthy Washington widow, Keep died an untimely and tragic death at the age of 29. Keep and his new bride checked into a Baltimore inn while awaiting a ship sailing to Boston. Following dinner on the evening before their planned departure, Keep drank from a stone jug thinking it contained apple cider. Unfortunately, the stone jug contained a caustic acid used for cleaning wood-burning stoves. Despite the best efforts of physicians to purge his system of the caustic acid, he lingered a week in what was described in a letter to his Boston family as "tormenting pain" before he finally died.

## CONCLUSION

As it turned out, this contract became something of a Greek tragedy. Keep's successful pursuit of the government contract to build naval facilities at Pensacola recalls the maxim, "For fools rush in where angels fear to tread." Both literally and figuratively, Keep's fatal undoing was the Pensacola Navy Yard contract with the government.

From the vantage point of 170 years, the motivation that moved the Navy Board to renege on its contract with Keep is largely speculation and conjecture. Agency theory suggests that the government agent's actions were motivated by self-interest. And yet, Lt. Commander McCall, who was Keep's chief antagonist, gained nothing monetarily from his actions. Self-interest

narrowly defined as furtherance of monetary advantage does not measure up to the task of explaining the conduct of government agents in this situation. Thus, Mills' concerns with the application of agency theory into the study of accounting history appear to be supported.

Agency theory assumes the rule of law. The legal system is assumed to enforce the contract based on publicly observable and verifiable information. At this stage in the development of our country, the rule of law was not systematized, institutionalized, and enforced without regard to the personalities involved to the extent assumed in modern agency theory. Therefore, the Keep contract demonstrates the hazards of projecting modern agency theory too far in historical research. If agency theory is to be used in historical research, its limitations must be acknowledged. Agency theory must allow for certain frictions, e.g., furtherance of personal antagonism and overriding loyalty, to afford an adequate explanation for conduct.

It is unfortunate that neither members of Congress nor representatives of the executive branch of government were interested or sympathetic to Keep's claims against the Navy. Had an institutionalized appeal process been in place, e.g., an independent and impartial civilian contract review board, perhaps Keep would have fared better.

In general, the level of literacy and competence exhibited by participants in this contract is impressive. The project accounting records and supporting memoranda are remarkable for their clarity and completeness. Contrary to the government auditor's commentary, Keep and his accounting clerk maintained meticulous records of cash disbursements and detailed reports on construction labor. For the nine months (October 1826 to June 1827) all the construction activities at the Pensacola Naval Station are completely chronicled. Construction costs, at least in terms of labor provided by the civilian contractor, are fully documented. Labor cost information was recorded in a way that facilitated cost analysis by individual structure or task, i.e., labor costs for the commandant's house, base hospital, and other buildings and structures were each tracked separately. The project financial records are the product of a rudimentary single entry system which simply chronicled cash receipts and disbursements activities in a day book format. No double entry ledgers were maintained nor were financial statements for the project prepared.

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