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THE AARON BURR TRIAL

by Claudia Bell

typed by Susie Johnston

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PREFACE

The Aaron Burr trial was one of the most interesting cases in American history. Not only was the testimony at the inquiry significant but all events leading to the trial were important. Only those occurrences in Burr's life which led to his trial are described, since personal situations have no bearing on the case. The trial itself has been done with as much detail as possible in order to make the outcome of the inquest understandable.

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CHAPTER 1

BACKGROUND

One of the most important events of 1807 was the Aaron Burr trial. By the final day of the inquest a dispute between the judicial and executive branches of the federal government had been brought to a head and the constructive definition of treason had been negated. Viewers saw a conflict between the President of the United States and the Chief Justice, and between the defendant at the trial and the Republican administration. During the trial men perjured themselves for money or for prestige whereas others fought for the honor of a man who had formerly been praised by the citizens of the United States. The trial was destined to become one of the most disputed cases in United States history.

The presidential election of 1800 marked the first of many events which culminated in the Aaron Burr trial. Because of a tie in electoral votes between the candidates Thomas Jefferson and Aaron Burr, the decision as to who would be the next chief executive had to go to the House of Representatives.¹ The Twelfth Amendment to the Constitution remedied the situation of a tie in electoral votes by creating separate ballots for the election of president and vice-president. Antagonism developed between these two men when the Federalists, excluding the Federalist leader, Alexander Hamilton, threw their support behind Burr, hoping that he would support their policy.² As dislike grew between the candidates,

Burr, who had thought of himself only as vice-president and then found himself running, against his wishes, for president, went to Jefferson to assure him that he (Burr) would support a Jeffersonian administration and would not divert one vote from the true presidential candidate. Jefferson was sure of Burr's honorable conduct until his good friend and astute politician, James Madison, insisted that Burr's men had in some way paid the Federalists. Jefferson would have lost the election if he had not had the support of Alexander Hamilton who hated and mistrusted Burr more than he disliked Jefferson.³ In the years following, the estrangement grew between these two men, until, in 1804, when Burr was running for governor of New York, the Republicans accused the gubernatorial candidate of buying votes from the Federalists.⁴ This enmity reached its peak in the 1807 trial.

When Thomas Jefferson took the office of President in 1801, he began his assault on the judiciary. He included in his attack the Chief Justice of the Supreme Court, John Marshall, who had been appointed Chief Justice in January, 1801, and was soon to be a lawyer of great renown. Previously the Republicans had succeeded in passing a law which again required all justices to ride circuit.⁵ Ironically, this law was the very one which brought the Chief Justice of the Supreme Court to preside over the Aaron Burr trial. The President was sensitive and almost afraid of the criticism that he received from the Supreme Court. He attacked Marshall's effort to write a biography of George Washington and accused him of having "frigidity toward liberty."⁶

During Jefferson's first term of office as chief executive, his vice-president, Aaron Burr, took part in a duel, in 1804, with Alexander Hamilton, which resulted in the death of the Federalist leader. Because

of the duel, Burr became a political outcast and was forced to leave the government after making his farewell speech to the Senate. At the time Burr left the government, his supporters said that he had served with honesty, whereas others were suspicious of his actions. After Burr withdrew as vice-president, he began to conceive of an expansion into the Spanish territories of Mexico and Florida which eventually led to his trial for treason.⁷

The idea of attacking Spanish possessions was not an original idea with Burr. Previously the Miranda Plot, named after the chief perpetrator of the plot, Francisco de Miranda, originating in the United States, was discovered whereby armed vessels were to capture Spanish Caraccas. Since the federal government did not want any trouble with Spain, it halted the plot and ordered those arrested prosecuted for violation of the neutrality law of 1793 which had been passed to keep the United States out of war with European countries.⁸

Aaron Burr was later unjustly accused of plotting to divide the Union. Even this plan had been discussed in government circles, as well as by private citizens. The Federalists spoke of dividing the United States in 1804, and many settlers beyond the Allegheny desired a separate country.⁹ Also, Thomas Jefferson himself said that some of the states, meaning Louisiana and Kentucky, might be better off as a separate entity. He said, "God bless them both, and keep them in Union if it be for their good but separate them if it be better."¹⁰

After his 1804 farewell speech, Aaron Burr began his first trip through the West. He saw that the spirit of expansion was widespread in the West; that many westerners were eager for war with Spain to retaliate for commercial and territorial grievances; and that most were

eager for adventure.¹¹ With such encouragement, Burr began to draw up plans for an invasion of Mexico. He told the westerners that the federal government would feel no need to interfere with his plans because an invasion would take place only when the inevitable war with Spain broke out. If a clash with Spain did not materialize, then Burr and his men would settle the Bastrop lands on the Washita River in the Louisiana Territory (now Texas and Oklahoma), which Burr had brought from Colonel Livingston.¹²

In order to finance this expedition, Burr needed money which he did not have in his possession. Since Burr could not obtain as much money as he needed from friends, he concocted two outlandish tales whereby he could procure money from foreign governments. Burr's first appeal for funds was on August 6, 1804, to Anthony Merry, the British foreign minister in Washington. Since Great Britain desired the separation of the western lands from the rest of the United States, Burr proposed to lend his assistance to effect this separation. In March, 1805, in order to further convince Merry to give support, the foreign minister was told that the inhabitants of Louisiana desired to separate but were waiting for foreign assistance.¹³

When the English grew suspicious of these endeavors, the adventurer turned to Spain for aid. Again he proposed a plan for separation to Don Carlos Martinez de Yrujo, Marquis de Casca Yrujo, an influential Spanish official. Spain wanted more than a separation, so a plan was put forth to infiltrate Washington with Burr's men; to seize the president and vice-president; and to take over the public money and arsenal. If the plan did not work, Burr would take ships and men to establish the independence of Louisiana and the West.¹⁴ Although the plans were purely propaganda and were used only to gain the support of foreign nations, they gave rise to wild speculations convincing some

that Burr was really involved in treasonable designs.

In addition to needing money, Aaron Burr needed men for the expedition. He tried to interest Commodore ^{Thomas} Muxton, a leading officer in the navy, who, although he actually never gave any support, also was hostile to Jefferson.¹⁵ Andrew Jackson, destined to become president of the United States, supported the cause by loaning money to Burr and by writing letters of introduction to officials in various cities, such as New Orleans.¹⁶ General James Wilkinson, commander at New Orleans, was to be second in command. He helped Burr recruit men and gather supplies.¹⁷ Some authorities have even speculated that he might have been the one who suggested the plot to Burr. Friends such as Matthew Davis, who later compiled Burr's memoirs, and Samuel Swartwout, an impressionable young man who worshipped Wilkinson and became Burr's messenger, joined the enterprise along with men from the West.¹⁸ Burr was introduced to the wife of Herman Blennerhassett, whose husband was an immigrant from Ireland. After becoming a close friend of Mrs. Blennerhassett, Burr used Blennerhassett's island on the Ohio River in the territory of Virginia as the base for all his operations and training programs.¹⁹ These men and more joined for friendship's sake, for glory, and for the promise of land. At no time did Burr openly advocate to them an invasion of Mexico without a war with Spain, nor did he so much as hint to anyone that he intended to separate the western states from the Union.²⁰

News of Burr's arrangements began to filter to the East and to the President. In January, 1806, Colonel Joseph Hamilton Daviess, United States District Attorney for Kentucky, wrote to the President about Burr's designs.²¹ Then General James Eaton, who had asked Burr if he could be second in command and had been denied the post, went to Jefferson with his story. Eaton had heard that the former vice-president wished

to divide the country but did not say a word about this to Jefferson. Instead, he suggested that Burr was a dangerous man and should be appointed as a foreign minister to get him out of the country. However, Eaton did tell Congress about Burr's plans hoping that this body would reimburse him (Eaton) for his Barbary States exploits while a navy agent.²²

Even with all the information he had received, by March the President still was not alarmed. For three months he mulled over the information, instead of immediately sending out agents to look into any traitorous designs or to stop any plot that had been formed. Then, in April, 1806, when word of Jefferson's exploits with Alexander Hamilton in the 1800 election came to light, the President, thinking that Burr had disclosed this news to the press, decided to look into possible treasonable designs. By the time that he sent John Graham to the area to investigate, rumors about Burr were beginning to get out of hand. Because of these rumors General Wilkinson was told to repel an invasion of Spain. Later Jefferson sent Andrew Jackson to uncover any information but when Jackson's report said that Burr had only ten boats manned by unarmed men, the President put it aside.²³

During the summer of 1806 Burr and his associates thought that Wilkinson was a loyal member of the group that would invade Mexico, but actually, the General was beginning to withdraw from the conspiracy. Partly on the orders of the President and partly on his own initiative, Wilkinson began to negotiate with the Spanish, commanded by Cordero, to remove their troops from the disputed area around the Sabine River. For some unknown reason, the Spanish withdrew in the autumn of 1806 on their own accord. Because of the Spanish withdrawal, Wilkinson decided that the Burr plot would eventually fail and therefore, he would be wise to disengage himself from the conspiracy or he would be arrested

along with Burr. The General also received a letter from Burr stating that all was ready for the invasion. Wilkinson got as much incriminating evidence on Burr as possible from the unsuspecting Swartwout, Burr's messenger, hoping somehow to use the information to accuse Burr without endangering himself.²⁴ After the Spanish withdrew and the letter had been delivered, Wilkinson began to hint to the government that he knew of treasonable designs in the West. Wilkinson said that an illicit project was on foot which was a threat to the peace of the United States and that he meant to penetrate it.²⁵

After the summer of 1806 developments began to go against the former vice-president. No longer was the invasion of Mexico a sure thing, since war with Spain had been averted. Now Burr would have to make more detailed plans for a settlement of the Bastrop lands, while still hoping for a war with Spain. Then, on November 5, 1806, Judge Daviess filed an affidavit in Kentucky for Burr's arrest saying that Burr planned to invade Mexico. Since the judge had not presented sufficient evidence, the request for a grand jury was about to be denied when Burr himself asked for an investigation. Eventually Burr was acquitted by the grand jury and by the people of Kentucky.²⁶

While Burr was in Kentucky, General Wilkinson spoke with President Jefferson ^{in Washington} about Burr's treasonable designs in the West. On November 25, 1806, Wilkinson showed to the Chief Executive the cyphered letter that he had received from Burr, except that, in the copy shown to the President, the first line had been left out and some parts had been changed so that the letter would not incriminate Wilkinson. The letter, as shown to the President, read as follows:

Your letter, postmarked thirteenth May, is received. At length I have obtained funds, and have actually commenced. The Eastern detachment, from different parts and under different pretences, will rendezvous on the Ohio first of November. Everything

internal and external favors our views. Naval protection of England is secured. Truxtun is going to Jamaica to arrange with the admiral on that station. It will meet us at the Mississippi. England, a navy of the United States, are ready to join, and final orders are given to my friends and followers. It will be a host of choice spirits. Wilkinson shall be second to Burr only; Wilkinson shall dictate the rank and promotion of his officers. Burr will proceed westward first August, never to return. With him goes his daughter; her husband will follow in October, with a corps of worthies. Send forthwith an intelligent and confidential friend with whom Burr may confer; he shall return immediately with further interesting details; this is essential to concert and harmony of movement. Send a list of all persons known to Wilkinson west of the mountains who could be useful, with a note delineating their characters. By your messenger send me four or five commissions of your officers, which you can borrow under any pretenses you please; they shall be returned faithfully. Already are orders given to the contractor to forward six months' provisions to points Wilkinson may name; this shall not be used until the last moment; and then under proper injunctions. Our object, my dear friend, is brought to a point so long desired. Burr guarantees the result with his life and honor, with the lives and honor and fortunes of hundreds, the best blood of our country. Burr's plan of operation is to move rapidly down from the Falls, on the fifteenth November, with the first five hundred or a thousand men, in light boats now constructing for that purpose; to be at Natchez between the fifth and fifteenth of December, there to meet you; there to determine whether it will be expedient on the first to siege or pass by Baton Rouge. On receipt of this send Burr an answer. Draw on Burr for all expenses, etc. The people of the country to which we are going are prepared to receive us; their agents, now with Burr, say that if we will protect their religion, and will not subject them to foreign Power, that in three weeks all will be settled. The gods invite us to glory and fortune; it remains to be seen whether we deserve the boon. The bearer of this goes express to you. He's a man of inviolable honor and perfect discretion, formed to execute rather than project, capable of relating fact with fidelity, and incapable of relating them otherwise; he is thoroughly informed of the plans and intentions of Burr, and will disclose to you as far as you require, and no further. He has imbibed a reverence for your character and may be embarrassed in your presence; put him at ease and he will satisfy you.²⁷

At no place in the letter, which became disputed evidence in the trial, did Burr write that he would attack New Orleans or set up an independent western country, but Jefferson chose to believe Wilkinson's unconvincing report for two reasons: first, because he did not want to be involved in another Miranda affair; and secondly, because he did not want hostilities with Spain.²⁸

Since Jefferson chose to believe Wilkinson's report, he thought that he had better warn the people of the United States about Burr. Accordingly, on November 26, 1806, the Chief Executive issued a proclamation which was the first official statement to give credence to the rumors being circulated about treason. In the proclamation, Jefferson warned responsible citizens to stay out of any unlawful enterprises.²⁹

Finally on December 10, 1806, after Jefferson had warned the people about Burr, the Colonel finally committed the act which men would later call overt and which would lead to his trial for treason. Sixty unarmed men with ten flatboats started down the Ohio River from Blennerhassett's island for the express purpose of settling western lands. Burr was not even with his men at this time but was two hundred miles away in Kentucky. Officials immediately jumped to the conclusion that the flotilla was going to attack New Orleans and the West. The Navy Department issued orders for the arrest of an unsuspecting Burr and his men.³⁰

General Wilkinson, in the midst of the scare that an attack would be made on New Orleans, received permission from Jefferson to bring troops to New Orleans to protect the city. New Orleans was put under martial law and Wilkinson, a Benedict Arnold as far as Burr was concerned, posed as saviour and leading patriot of the country. Merchants and officials were told that Burr had at least two thousand men with which to invade the city. Private papers were confiscated and citizens were thrown into jail, supposedly because they were spying or were part of the underground. At this time Dr. Eric Bollman and Samuel Swartwout, whose case was destined to become important in the Aaron Burr trial, were arrested on December fourteenth and twelfth respectively.³¹

Eventually Congress began to clamor for a statement about the supposed conspiracy. On Thursday, January 22, 1807, Thomas Jefferson addressed a joint session of Congress about the conspiracy. Then on January 29, 1807, the President again addressed both houses informing them that Burr had passed Ft. Massac on the Ohio River on December 31, 1806, with ten boats, none of which had any military appearance. Jefferson's delay in alerting Congress to the danger of conspiracy raises questions on the President's motives and on the reliability of his information on the supposed conspiracy. Even before the November Proclamation Jefferson had reports of maneuvers in the West. Actually, he first heard of the scheme in January, 1806, if not before. In informing Congress of the plot he mentioned earlier information concerning Burr's activities saying that as early as September he had reports, which continued into October. When the information remained confused, a man was sent to the West to investigate the possibilities of a filibustering expedition.³²

About the time Congress was asking for information about the conspiracy, Burr and his men arrived at Bayou Pierre near Natchez in the territory of Mississippi. Here Burr, learning that he was still being accused of treason, wrote Cowles Meade, acting governor of the Mississippi territory, of his innocence and invited the citizens in the area to search his boats for any evidence of treason. Even though the Department of War directed Meade to call out the militia to arrest Burr and his men, the governor agreed to meet with the suspect on January seventeenth. At this meeting, Burr said that he and his men were innocent and would resist any attempt at coercion. Meade promised to protect the settlers but instead had the suspect arrested to stand trial for treason in the territory of Mississippi on February 2, 1807.³³

Although the grand jury did not find Aaron Burr guilty of any

crime against the United States, when the alleged traitor was acquitted and asked to be discharged, the Judge, Thomas Rodney, father of the Attorney-General for the United States Caesar Rodney, refused to grant the request. Instead, the Judge ordered Burr to either renew bail or stay in jail, and until he decided between the two alternatives, the suspect must report to the court every day. The decision of Rodney was the breaking point for Burr, who, on February fourth, fled from the oppression of the court. Plain^{clothe}smen were sent after the suspect and a reward of two thousand dollars for Burr's capture was offered by Robert Williams.³⁴

Meanwhile, on February eighteenth, the case of Eric Bollman and Samuel Swartwout versus the United States, in which the defendants were charged with treason against the United States, was brought before the Supreme Court.³⁵ The defense made two points for the defendants: first, that a message to the President (the November proclamation) was inadmissible as evidence; and secondly, the deposition of General Wilkinson against the prisoners was not authenticated.³⁶ Opinions of the court were "that unless men were assembled, war could not be levied," and "to constitute that specific crime for which the prisoner now before the court has been committed, war must be actually levied against the United States."³⁷ By virtue of these two statements conspiracy to levy war was not treason. John Marshall, the presiding judge, also said that the court considered all those who had any part in the levying of war as traitors. Marshall's words, which caused so much uncertainty in the Burr trial were, "if a body of men be actually assembled for the purpose of effecting by force a treasonable purpose, all those who perform any part, however minute or remote from the scene of action, and who are actually leagued in the general conspiracy, are considered traitors."³⁸ Even as he gave this opinion, Marshall was unsure that the statement was a correct interpretation of the Constitution and vowed to take the

question again before the Supreme Court. From these opinions, the court decided that since no evidence of the actual levying of war had been given, the case was not within the jurisdiction of the court.³⁹

At the time of the trial of Bollman and Swartwout, Colonel Burr was on his way to the inn of Colonel Hensons. When he stopped for directions to the inn, Burr was recognized by a Nicholas Perkins, who informed Sheriff Theodore Brightwell of the suspect's location. When the sheriff did not come out of the inn with the accused man, Perkins contacted Lt. Gaines from Ft. Stoddart. As Brightwell, who had been convinced of Burr's innocence the day before, was leading the Colonel to safety on February nineteenth, Lt. Gaines and a small group of soldiers arrested the suspected conspirator on the Tombigbee River in the territory of Mississippi. The soldiers took Burr to the fort to prepare for the trip to Washington. On the way to Washington the prisoner was diverted to Fredericksburg and from there to Richmond, Virginia.⁴⁰

The arrest, based almost exclusively on Jefferson's proclamation, was illegal because Burr was seized by a military force without a warrant.⁴¹ Since Burr was arrested without a warrant, he was denied his fundamental rights as a citizen of the United States. With the irregular detention of Burr, judicial cards were stacked against him before the trial ever began. When the trial actually began the illegality of the arrest was mentioned, but the fact was never really impressed upon the minds of the judge and the jury.

CHAPTER II

INDICTMENT BEFORE THE GRAND JURY

On Tuesday, March 26, 1807, Aaron Burr arrived in Richmond, Virginia, the district where the overt act had occurred. On March 30, 1807, he was taken to Eagle Tavern to stand before John Marshall, who was riding circuit at the time. The United States, represented by Caesar A. Rodney, the Attorney-General, charged Burr with high misdemeanor, in preparing a military expedition against Spain and with treason, in designing to sieze New Orleans. Evidence issued at this time was the case of Bollman and Swartwout versus the United States and the testimony of Nicholas Perkins.¹

During the next few days, the pleas for and against binding Burr for trial were heard at the courthouse. Counsels for the prosecution were Caesar A. Rodney, and George Hay, attorney for the United States in the District of Virginia. Both Rodney and Hay followed the dictates of Jefferson to the letter. Counsels for defense were Edmund Randolph and John Wickham. Wickham was a rising young lawyer, whereas Randolph, the senior member, was a good orator but mistook the strength of his adversaries. Hay opened the arguments for binding the prisoner by asking that Burr be committed on two counts: first, that he violated the congressional act of June, 1794, stating that any person who set foot on foreign soil or prepared an invasion against a foreign country on peaceful terms with the United States was guilty of high misdemeanor; and secondly, that he committed treason in plotting to sieze New Orleans. The letter which General Wilkinson received from Burr would prove the first charge and the affidavits received for the case of Bollman and

Swartwout would prove the charge of treason. Both of these incriminating facts were bolstered by Burr's flight from the law.² Hay's motion read:

The attorney of the United States, for the district of Virginia, prays that Aaron Burr, may be committed, upon the evidence now submitted to the Judge, in order that he may be tried at the next Circuit Court for this district, or at a special court, to be held for the purpose, upon a charge of treason against the United States, in setting a foot within the territory thereof, a military expedition, to be carried from thence, against the dominance of the King of Spain, with whom the United States were then and are now at peace.³

Wickham countered the prosecution's argument for an indictment of his client. He said that the United States should have positive proof of an overt act. No one could prove that Burr wrote the letter and if he did write the letter, Wilkinson either decoded it incorrectly or changed the meaning for his benefit. The defense also contended that Burr's intentions toward Spain were honorable since the United States had expected a war with Spain. Randolph declared that the boats were to be used only to move families and that any man in Burr's predicament would flee from military and judicial persecution.⁴

By April 1, 1807, John Marshall was ready to deliver his opinion on whether or not Aaron Burr would be bound over for trial. He said that because of the charges no proof was necessary to commit Burr but that proof must be furnished showing probable cause to believe Burr committed the crime. Wilkinson's letter from Burr did give proof of probable cause, but Marshall had misgivings about the letter. He said that proof from the letter would have been more valid if the original copy had been submitted along with the code. Also, since proof of treason based on Swartwout's statement about the levying of troops could only mean a future assembling of men, the strength of the statement lay on when the affidavit was made. Furthermore, Marshall stated that an assemblage to levy war should be a visible fact that the prosecution

could prove. Rodney stated that he had no visible proof because voluntary affidavits were hard to obtain. Since no visible evidence was submitted, Marshall committed Burr for misdemeanor only, but said that the prosecution could call for an indictment for high treason at the trial. Misdemeanor was bailable, so Burr's bail was set at \$10,000.00 and then he was ordered to appear May twenty-second, in the Circuit Court of the United States in Virginia.⁵

When Marshall refused to charge Burr with treason, President Jefferson was absolutely furious. The latter accused Marshall and his fellow Federalists of making the prisoner's case their own and of causing anxiety in the public's mind over whether or not the prisoner was guilty of treason, because the necessary proof had not been furnished.⁶ Jefferson then determined to direct the trial from behind the scenes with Rodney as his representative, so that the government would not lose the case that the administration had made such a fuss over. Jefferson hoped thereby to prove five overt acts: first, the enlistment of men to levy war; secondly, the fortification of Blennerhassett's island when government troops were expected; thirdly, the rendezvous of Burr with his men on December 22, 1806, on the Cumberland River; fourthly, Burr's letter to Cowles Meade saying that the party of settlers would resist coercion; and fifthly, "his capitulation with the aids of the Governor, as between two independent and hostile commanders."⁷ The Chief Executive sent blank affidavits to Hay and specified that those witnesses for the prosecution who had a long way to come should be given money for their expenses.⁸ Caesar Rodney was ordered to direct justices of the peace to examine all persons who had knowledge of Burr's designs.⁹ By the time the trial was over the President had spent \$11,721.11 of federal funds to prove Burr's guilt, none of which had been appropriated for this particular purpose. ¹⁰

On the day of the trial, May 22, 1807, Richmond was in a frenzy of excitement. At that time the population was about five thousand but thousands of visitors from all over the country were in the city to see the trial. Whereas the minority of these visitors were dressed in elegant attire, with silk knee breeches, ruffled blouses, and long coats, most of the men had on buckskin coats and wore homespun clothes. The curious came from the mountains, from towns, from plantations, and from the frontier. Where inns, covered wagons, and private homes proved inadequate, tents served as their shelter during the night. All had come for one purpose--to see either their enemy, or, as the case may be, their hero tried for treason.¹¹

The inquest was held in the Hall of the House of Delegates of the Fifth Circuit and District of Virginia at 12:30 p. m. on May 22, 1807, with John Marshall and Cyrus Griffin, judge of the district, presiding. Crowded into the courtroom, along with the hundred or more spectators, were the counselors for Burr and for the United States. Counsel for the defense consisted of Edmund Randolph, John Wickham, Benjamin Botts, John Baker, and later Luther Martin. George Hay, who was eager and nervous, William Wirt, and Alexandre Mackae, who was aggressive and sarcastic, represented the United States.¹²

Almost before the trial began, the defendant was complaining about irregularities in the grand jury. The court had struck out some jurors and had inserted others but Marshall said that the action of the court was not a violation of the law and ordered the jury sworn in. After two contested jurors, William B. Giles, who was already convinced of Burr's guilt, and Wilson Cary Nicholas, who had long born animosity toward the defendant, consented to withdraw, sixteen freeholders, of whom fourteen were Republicans and the other two Federalists, were sworn in.¹³

The jury consisted of: John Randolph, a haughty man and foreman of the jury; John Eggleston, a member of Congress; John C. Campbell, brother of the governor; Littleton Walker Tazewell, member of the Virginia legislature; Robert Taylor, a lawyer; James Pleasants, clerk of the Virginia House of Delegates; John Brock~~en~~brough, cashier of the Bank of Virginia; William Daniel, member of the Senate; John Mercer, member of the Virginia legislature; and James M. Garnett, Edward Pegram, Munford Beverly, John Amber, Thomas Harrison, Alexander Shephard, and James Barbour.¹⁴

After the jury was sworn in, George Hay moved to commit Aaron Burr on the charge of high treason on evidence formerly given and testimony to be given. The prosecution took this step because, although Burr was charged with misdemeanor, he was freed on bail. A charge of treason would keep the defendant from leaving the city if Wilkinson came to testify. The defense objected on the grounds that Hay's motion took them by surprise and because the effects of the procedure would be to influence public opinion against the defendant. A legal battle then ensued over the question of whether or not the court had the power to commit a person, and if the power was assured, did the authority apply in the case of treason. Marshall said that the power of the court was implied and that the object of the commitment was not solely for bringing the prisoner before the grand jury but also to subject him to the judgment of the law.¹⁵

When the prisoner had been charged with treason, the defense stated that the charge of high treason must be proved by an overt act and also, the prosecution must prove that the accused participated in the overt act. The prosecution intended to prove the charge by laying down all the evidence in chronological order but Burr objected insisting that the

evidence must be admitted in a legal order. Since the prosecution's star witness, James Wilkinson, had not arrived, George Hay desired to have Wilkinson's affidavit read and to have the oral testimony later. Defense objected because they desired to cross-examine Wilkinson. Since the affidavit did not prove an overt act, Marshall decided that the deposition was inadmissible as evidence at this particular time. However, Marshall did tell Hay that he could pursue the course, that he thought best, either by oral or, by certified affidavits. Marshall did qualify himself on the matter of affidavits saying that depositions could not be admitted if the witness could be produced and any affidavits admitted must be authenticated.¹⁶

As the trial progressed, the defendant decided that his letter to Wilkinson and the orders of the Departments of War and Navy would be of some help in proving his innocence. Accordingly, Burr asked that a subpoena duces tecum be directed against the President. This subpoena would require Jefferson to appear before the court with the desired papers. To save time, Marshall suggested that Rodney produce the documents but Hay questioned whether Burr had a right to the use of the subpoena and if he did, could the President be made to bring the letter and orders. Since the prosecution was not sure that Burr's demand was legal, they decided that instead of producing the original letter, copies would suffice. Randolph in turn argued that if a copy of the letter was presented, Wilkinson might deny that he had received the letter from Burr. Prosecution argued that the original letter might contain personal parts that should not be shown.¹⁷

On June thirteenth, John Marshall gave his famous opinion on the subpoena. He said that the question before the court was whether or not a subpoena duces tecum could be issued to the President by the prisoner,

and, if so, could Jefferson be made to bring the papers with him.

Marshall said that Burr could issue a subpoena because, according to the Constitution, the accused had a right to a speedy trial and to witnesses in his behalf. Also, the accused was entitled to all processes of law before the indictment was found.¹⁸ Since Marshall was the chief authority on the view that the President was subject to the processes of law, he directed the subpoena duces tecum to Jefferson.¹⁹ Illogically the Chief Justice said that no one ever questioned the idea that the President could be called to testify, since he was elected by the people; therefore, the prosecution should not object to the idea of asking the President to bring papers with him.²⁰ If Jefferson was too busy to attend, work was a reason for disobeying the court, not for refusing to issue the subpoena.²¹ Even though the President was subject to the processes of law, he might have a good reason not to produce a particular document and the court would have to abide by his reason.²²

Upon hearing the verdict, Jefferson reported to Hay that he would be unable to obey the subpoena. He said that private government documents should not have indiscriminate inspection and that the court was ridiculous to say that the President could be taken away from his work for any trivial business.²³ Jefferson asked Hay if he could be punished for disobeying the summons and also reiterated his former statement saying that the President was concerned about the welfare of a million people and could not be taken away from official duties for just one of them.²⁴ Finally, Jefferson did relent and sent the papers to the court but only with the stipulation that the personal parts be removed.²⁵

After Marshall gave the decision of the subpoena, Dr. Eric Bollman was called to the witness box. The witness, a foreigner and one of the defendants in the case of Bollman and Swartwout, had previously tried to correct a statement made about an assemblage of two thousand men in the West.

Jefferson told him to write the true statement down, promising the doctor that the paper would never get out of the government's hands or be used against him (Dr. Bollman) in any way. After the statement was written the Chief Executive transferred the document to Hay in Richmond with instructions to pardon Bollman if he would testify for the prosecution.²⁶ When Bollman took the stand, he refused to accept the pardon. Marshall would not let the prosecution send Bollman before the grand jury until the court found out the validity of the pardon. If the doctor refused the pardon, he could not be made to testify, thereby incriminating himself, but if Bollman accepted the pardon, the court would have to ponder the question. Therefore, Marshall sent Bollman before the grand jury without any particular direction.²⁷

Finally, the long awaited star witness for the prosecution, James Wilkinson, arrived on Monday, June 15, 1807.²⁸ After his arrival, Wilkinson was sworn in and sent to the grand jury. Immediately, counsel for defense asked that censor be brought against Wilkinson because of the force used to bring witnesses to testify. Defense said that the witness caused the arrest and imprisonment of James Knox in order to compel Knox to testify, whereas, the prosecution said that the orders to convey the prisoner to Richmond were the acts of a Judge Hall. On the basis of the information given, no censor was placed upon Wilkinson since he could not control or influence the acts of a civil magistrate.²⁹

After considering the evidence, especially Burr's letter, on Wednesday, June 24, 1807, the grand jury found two true bills against Aaron Burr, indicting him for high treason and misdemeanor. The indictment was made because Marshall's definition of treason in the case of Bollman and Swartwout was unclear. The jury thought that in treason all were principals and that an assemblage even without force was treasonable.³⁰

Marshall had stated previously that he hoped to take the decision that in treason all are principals before the Supreme Court to see if the statement could be reversed.

When the jury had been dismissed, Marshall committed Burr to the city jail to wait for his trial in August. Burr's counsel objected to confinement on the ground that the jail would be injurious to their client's health. The defense hoped to place Burr under guard in Luther Martin's house but the court gave Burr three rooms on the third floor of the penitentiary.³¹

CHAPTER III

TRIAL BEFORE THE PETIT JURY

On August 3, 1807, the trial for treason began in the circuit court of the United States for the Fifth Circuit and Virginia District with the judges and counsels for the prosecution and defense the same as in the previous inquest. The indictment read that Aaron Burr had levied war and rebelled against the United States of America on December 10, 1806, at Blennerhassett's island in the county of wood and District of Virginia in the jurisdiction of the court of Virginia.¹

Almost immediately a battle over prospective jurors began which lasted two weeks. Juror after juror was rejected because he had formed an opinion of the prisoner from the newspapers or from a friend. Eventually the defense suggested that they be permitted to choose any one of the panel of jurors that they desired. When permission was granted, Burr's counselors proceeded, as an avowal of their client's innocence, to choose those men most hostile to Burr, thereby appealing to each juror's honor.² The jurors chosen were Edward Carrington, the foreman, David Lambert, Richard C. Parker, Hugh Mercer, Christopher Anthony, James Shepherd, Reuben Blakey, Benjamin Graves, Miles Botts, Henry Coleman, John M. Sheppard, and Richard Curd.³

After the jury was sworn in, the prosecution proceeded to make their main points about the case according to their interpretation of the Constitution. In Article III, Section 3, the Constitution states that "treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort" and that "no person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or in confession in open court."⁴

The prosecution said that according to the Constitution, arms were not a necessary ingredient to committing a treasonable act. Testimony would prove that Burr devised a treasonable plan and had an assemblage of men and supplies to effect the plan. Witnesses would show that the defendant invaded Spanish territory and tried to divide the Union in order to establish an independent country.⁵ Also, the prosecution interpreted the Constitution to say that if a war was actually levied, any person who had a part in the conspiracy, however remote from the action, was considered a traitor.⁶

Only by interpreting the Constitution according to the doctrine of constructive treason could Aaron Burr have been a participant in the overt act of levying war. The doctrine of constructive treason stated that in treason all are principals and that, in adherence to the law, Burr was present even though in reality he may have been hundreds of miles away. The supposed traitor was not on Blennerhassett's island at the time of the overt act but was two hundred miles away.⁷ The prosecution readily admitted that they were trying to convict Burr on connection with the overt act rather than on physical presence. William Wirt said:

We are endeavoring to make the accused a traitor by connection, by stating the act which was done, and which act, from his conduct in the transactions he made his own, that it is sufficient to make this charge generally not only because it is authorized by the constitutional definition, but because it is comfortable to modern cases, in which the indictments are pruned of all unnecessary luxuriations.

After the preliminary remarks of Hay, the long line of witnesses for the prosecution began. First, General William Eaton was called to the stand. He said that he knew nothing of the overt act but much about the prisoner's treasonable intents. The defense objected to any

testimony proving intent before the overt act had been proved.⁹ Marshall said that evidence of intention could be given if the evidence applied to the acts in the indictment. The Chief Justice ruled, "that the witness might testify as to Burr's intentions to commit the particular acts specifically set forth in the indictment, but that no testimony of general treasonable designs would be received--a distinction with a difference which was to prove increasingly important as the case proceeded."¹⁰ When Eaton resumed his testimony, he said that in 1805 Burr had organized an expedition against Spain, in which the witness had also been a part. However, Eaton began later to suspect Burr of treasonable designs and repudiated the plot.¹¹

Following Eaton's testimony for the prosecution, the counsel for the defense cross-examined him. They asked Eaton why he denounced the plot to Congress but not to the President. Burr asked the witness if Congress paid him the money that he was supposed to receive from the Barbary State exploits after the prosecution persuaded him to testify. Also, the defense tried to invalidate Eaton's testimony on the grounds that he had once received a court martial and was therefore an unfit witness. At the conclusion of this line of questioning, the witness was completely discredited.¹²

After the disgraced Eaton stepped down from the witness box, the prosecution called Commodore Truxtun to the stand. Truxtun said that he knew nothing about a plot to invade New Orleans. He knew only about the settlement of lands, the building of boats, the digging of canals and the invasion of Mexico. Furthermore, the witness told the court that the defendant had said that Wilkinson formulated the plot whereas he (Burr) matured the plans. Burr also told the Commodore that an

invasion of Mexico depended on a war with Spain.¹³ Not only did Truxtun not help the prosecutions case but he gave more impetus to the idea of Burr's innocence.

Following Truxtun's testimony came a bevy of witnesses for the United States. Most of these men disproved, or at least failed to prove, an overt act. The first of the witnesses was Peter Taylor who said that he heard from a friend about Burr enlisting the aid of young men with rifles for an expedition to Mexico. Taylor stated that he was on Blennerhassett's island when the men left and that Burr was not among the men; in fact, he had never even seen Burr.¹⁴ Next Colonel George Morgan, a long time political enemy of the defendant, took the stand. He testified that he and Burr had held a conversation in which Burr had stated that in less than five years the land west of the Allegheny would be separated from the Atlantic because of the weakness of the central government.¹⁵ Although this testimony showed Burr's dissatisfaction with the government, the statement did not prove an overt act.

After Morgan testified, Jacob Albright, a worker on the island, came to the stand to prove an assemblage of men. He did say that twenty or thirty men were on the island but none of the men had bayonets. Since Albright went to bed he was unable to see any boats leave the island, if boats did leave the island.¹⁶ Supposedly, the worker was the only one of the witnesses to testify to an overt act. He stated under oath that when a General Tupper went to the island to arrest Herman Blennerhassett, the General's life was put in danger and he was forced to lead Blennerhassett to safety. Later in the trial Tupper denied this statement.¹⁷ When Albright stepped down, John Graham was called to the stand. Graham testified that both he and Burr believed that the

West would benefit by a separation from the rest of the country but that the section was not ready for a division.¹⁸ None of these men, except perhaps Allbright, helped the prosecution in any way.

Finally, after all other witnesses for the prosecution had testified, General Wilkinson took the stand. Wilkinson also stated that he knew nothing about the overt act itself but that he did have the cyphered letter and communications from Burr which would incriminate the defendant. Then Wilkinson said that he put New Orleans under martial law because Burr asked about provisions in the city and the General was afraid that New Orleans would be attacked. Returning to the matter of the cyphered letter, Wilkinson said the letter, which he understood because of previous communications with Burr, proved beyond any doubt that the defendant was guilty of treason. Actually, the letter did not say a word about invading any part of the United States. When asked if he had orders from the President to sieze Burr, Wilkinson said that he had no such orders. Later in the testimony, the witness said that the administration had ordered the arrest, but Wilkinson refused to show the order on the grounds that that paper was both public and private. Marshall said that in this case producing the order was not necessary. After Marshall said the order need not be produced, Wilkinson again contradicted himself saying that the order for the prisoner's arrest had originated with the Secretary of War. At this point, the defense pointed out the inconsistencies in the witness's report, saying that Wilkinson must have perjured himself while he was being examined.¹⁹ When these accusations were heard by the spectators and by the jury, Wilkinson's testimony, although not completely discredited, was looked upon with suspicion.

During Wilkinson's testimony and for many yeats later, two men who believed that General Wilkinson was guilty of treachery and perjury, were trying to prove Wilkinson's guilt to the administration and the public. John Randolph, foreman of the jury, was one of the men who was trying to gather information of the General's corruption. He turned to Daniel Clark, a former friend of Wilkinson, for knowledge concerning the General's actions. Clark said that he had proof that the Spanish under Miró approached Wilkinson about a Spanish invasion of American territory with Wilkinson's aid. To induce Wilkinson to help, Miró offered to him the leadership of the new country.²⁰ The General was known to be agent number thirteen on the record of foreign affairs at Madrid. Randolph also found out that the star witness was a Spanish pensioner from 1787 to 1807 and was a leader of the Kentucky secessionist movement in 1796.²¹ Wilkinson accused Randolph of persecuting him wherever he went and of turning life long friends, such as Clark, into enemies.²² Under such dubious testimony, Wilkinson's statements raise doubts on his integrity. If Burr was a traitor, Wilkinson was also an enemy of the people.

After the testimony of General Wilkinson, both the prosecutors and the defenders began to sum up the main points in their respective cases. Edmund Randolph refuted the doctrine of constructive treason. Burr could not be a principle even if he was an accessory because the Constitution did not specify that in treason all are principles. The defense maintained that no precedent could be drawn from the case of Bollman and Swartwout since military force was not used in their Activities. In summing up, Wickham said that the Constitution spoke of treason only in the levying of war; therefore, the prisoner could not be convicted since no overt act had been proved by the prosecution.²³

Following the concluding remark made by Wickham, Wirt tried to negate all the statements made by the defense. He said that since the case of Bollman and Swartwout was on the government's side, the defense tried to deny that it had any bearing on the case at hand. The question of whether the prisoner's presence on the island was needed to make Burr a principal of the overt act of war should be left to the jury.²⁴ Force could mean an assembled body but force did not need to be proved when intent could be demonstrated by separate evidence.²⁵ In his closing remark Wirt said, "Who then is Aaron Burr, and what the part which he has borne in this transaction? He is its author; its projector; its active executor."²⁶

When Wirt suggested that the prosecution hoped to have more testimony to prove the overt act, the defense moved that since no overt act had been proved, any evidence of intention to commit an overt act was inadmissible. The defense stated four main reasons for the exclusion of evidence: first, since Burr was not present at Blennerhassett's island, he was an accessory and not punishable; secondly, if he was a principal, he was a principal in the second degree and therefore the prosecution must first convict the principals of the first degree; thirdly, the fact must be proved as laid; meaning that since the prosecution charged the prisoner with levying war on Blennerhassett's island, evidence that did not prove the overt act on the island was inadmissible; fourthly, an assemblage was not an act of treason.²⁷

George Hay was furious with the attempt of the defense to exclude new evidence to prove intent. He said that the defense was trying to deny justice by keeping facts hidden from the jury. Even though Burr was an accessory or a principal in the second degree, the prosecution charged him with levying war and therefore had the right to introduce

all the evidence, and then to call upon the jury to decide from the evidence Burr's guilt or innocence.²⁸ Hay threatened to impeach Marshall if he excluded any evidence.²⁹

On August 31, 1807, John Marshall delivered the opinion of the court on whether or not Burr was guilty of committing treason at Blennerhassett's island. Marshall began with a definition of the levying of war and of who could be accused of levying war. Marshall, in his interpretation of the Constitution, declared that levying war is raising or creating war, but the definition was further extended to mean making or carrying on war. Since levying war meant using a part of the military force, force must exist or a man could not commit a crime of treason. Anyone who performed a part in war, levied war, but performing a part did not include persons who counseled or failed to perform their part. The principal of constructive treason, stating that whatever makes a man an accessory makes a man a principal, did not apply in this case. Marshall said that he would take the decision in the case of Bollman and Swartwout, stating that in a conspiracy all those involved are traitors, before the Supreme Court.³⁰

After defining war and people involved, Marshall stated that conspiracy to levy war against the United States was not treasonable unless put into execution. Only force connected with a conspiracy was an act of levying war. Marshall's idea of conspiracy was not overturned in the case of Bollman and Swartwout because no declaration was made to the effect that any assemblage of men constituted a levying of war.³¹ In Marshall's opinion, conspiracy to levy war was not treason.

Upon concluding the court's ideas on conspiracy, Marshall went on to explain assemblage and the use of force in an assemblage. When the

court said that a design to overthrow the United States government in New Orleans was treasonable, the judge meant to convey the necessity of an assemblage of men, with force as a part of the assemblage. One of the questions to be asked was whether or not Burr had advanced so far in levying an army as to have assembled them with force. Men need to assemble and meet at a rendezvous point, but the act of traveling to the point and meeting had no warlike appearance. The Supreme Court^{had} said that an assemblage of men with force was war; therefore, force is an indispensable ingredient in war.³² The court would like to instruct the jury that "...unless an assemblage on Blennerhassett's island was an assemblage in force...it was not a levying of war."³³

Following his statement on force and assemblage, the Chief Justice began his opinion on the indictment. Since the indictment charged the prisoner with levying war on Blennerhassett's island, and did not contain any other overt act, no proof could be submitted that the war was levied on the island by another man taking Burr's place. Even if the indictment could be supported by such evidence, the conviction of people who committed the act was inadmissible to the conviction of a person who supposedly advised or procured the act. Since the prosecution admitted that Burr was nowhere near the area when the overt act occurred,[✓] the question was asked whether the indictment must specify the place of the overt act or whether the prisoner could be charged with levying war without reference to the place. Marshall said the place of the overt act was essential to the indictment; therefore, under no circumstances could the prisoner be charged as legally although not physically present. If a man was legally absent from the place of the overt act but had procured or commissioned the treasonable

act, the prosecution must indict him as being absent in order to be able to prosecute the prisoner for being legally present. In the Burr case, the indictment was levying war at Blennerhassett's island; therefore, the prisoner could be convicted only on proof of the overt act as laid in the indictment.³⁴

In connection with the opinion that only evidence proving the indictment could be given, Marshall said that the prosecution controverted his opinion on two grounds: first, that the indictment did not say that the prisoner was physically present on Blennerhassett's island; and secondly, that even though Burr was absent he caused the assemblage and therefore should be convicted on evidence proving that he caused the acts. In answering these charges, the Chief Justice said that he understood from the indictment that Burr was a part of the assemblage. Also, to counsel and to assemble were two different acts.³⁵

Marshall then made one of the main points of the court's opinion. He said that an overt act must be proved by two witnesses. If the accused procured an assemblage at Blennerhassett's island and then took part in an overt act, the prosecution must prove the act by the testimony of two witnesses, which George Hay and the other prosecutors had been unable to do. In common law the prisoner would be guilty if had advised the act but common law was not a statute law so it did not apply in the Burr case, although the prosecution probably could prove with two witnesses that Burr advised the act. The prosecution must prove the part played by Burr, even the smallest part, with two witnesses.³⁶

Marshall said that a misunderstanding had arisen about the difference between an accessory and a principal. Those men who assembled were principals whereas those who caused the assemblage were accessories.

Accessories are not guiltier than the principals; therefore, the prosecution must prove the guilt of the principals first. Burr's guilt relied on the degree of guilt attached to the act performed by others. Reiterating, Marshall said that no man could be an accessory unless an overt act, proved by two witnesses, was proved.³⁷

Finally Marshall finished delivering the opinion of the court on the Burr case. The Chief Justice then instructed the jury to retire and to return the verdict, since no further evidence had been given to prove the overt act. Colonel Carrington delivered the opinion of the jury saying, "We of the jury say that Aaron Burr is not proved to be guilty under any indictment by any evidence submitted to us. We therefore find him not guilty."³⁸ Marshall ordered the scotch or not proved verdict to be entered on the court records.³⁹

Aaron Burr was acquitted of treason but he was ordered to stand trial on the charge of misdemeanor. The trial for misdemeanor was more of an attempt to gather evidence for Marshall's impeachment, although no evidence was found. The inquest dragged on for seven weeks and again the jury acquitted the prisoner but this time with a straight verdict.⁴⁰ Burr was committed to Ohio to stand trial for preparing an expedition against Spain.⁴¹

CHAPTER IV

SUMMARY

By the end of the trial, the ^{reputation} life of one man, Aaron Burr, had been destroyed, and the administration was still trying to ruin the career of another, John Marshall. After the trial Burr escaped to Europe, whereas the Chief Justice remained to face the criticism and anger of the country. The defense said that the scotch verdict should not have been allowed to stand, whereas the prosecution accused Marshall of withholding testimony. The Chief Justice was burned in effigy and was threatened with impeachment by some of the members of Congress, such as Senator Giles of Virginia.¹ William Thomson, who wrote a view of the trial, said that Marshall abandoned the principle of constructive treason so essential to the safety of the people.² Jefferson accused the Chief Justice of being a monarchist and of trying to overrun the Union.³ The President also denounced Marshall as a "mounteback, a trickster, a corrupt judge, and worthy of impeachment."⁴ The administration even went so far as to ask for a bill to define treason. Senator Giles introduced into Congress this bill which provided for the punishment of persons for treason although not physically present at the overt act and included in the bill all those who forcibly resisted the execution of the law. Fortunately, after the bill passed in the Senate, the House of Representatives voted it down.⁵

In addition to casting the blame for the outcome of the case on John Marshall, the trial created two precedents--one for future

presidents who are subpoenaed and one for future decisions concerning the nature of treason. President Jefferson refused to obey a subpoena issued to him by John Marshall, thereby creating one of the precedents. The Chief Executive believed in a complete separation between the powers of the executive, judicial and legislative branches of the government. He also believed that an error had been made in forming the judiciary as an independent body and hoped that a constitutional amendment would change this situation.⁶ Because Jefferson did believe in a separation of powers and did have some ill feeling towards the judiciary, he refused to go to court when Marshall issued the subpoena although the desired papers were sent on Burr's behalf. In rejecting the subpoena Jefferson said, "The leading principle of our Constitution is the independence of the Legislature, executive, and judiciary of each.... But would the executive, be independent of the judiciary, if he were subject to the commands of the latter, & to imprisonment for disobedience.... Since Marshall did say that business was a reason for disobeying the court's subpoena, Jefferson said that he hoped that the court would understand that he could not come to court in compliance with the subpoena because of national duties."⁸ The Chief Executive knew that he had no prerogative in disobeying the subpoena, but, at the same time, he did not want to obey the court because by obeying he would make the executive subordinate to the judiciary and would also create a precedent for future presidents.

The other precedent formed was the decision to judge treason according to a strict constructionist view of the Constitution. John Marshall once said that the court would not usurp power, nor would it shrink from its duties.⁹ In forming his opinions about the

law of treason the Chief Justice did not vary from this point. Since treason was defined in the Jeffersonian view of strict construction of treason the Chief Executive should have had no reason to object to the procedures used in the trial. In following the Constitution, Marshall rejected the essential feature of the Common Law whereby only legal presence was necessary at the scene of the overt act. He said that a man was a traitor only if involved in an overt act as a principal.¹⁰

In rejecting the Common Law some authorities, such as Edward Corwin, argued that Marshall formed some questionable decisions at the Burr trial. Corwin said that in the case of Bollman and Swartwout versus the United States, Marshall adhered to the Common Law since the outcome of this case stated that in treason all are principals. Corwin ignored the fact that Marshall insisted that he would take this decision before the Supreme Court. Marshall is accused of taking a stricter view of the treason than even the Constitution because he insisted that an overt act must be proved by two witnesses and that the act must be a personal act. Opponents of Marshall's interpretation of the Constitution argue that the document does not require two witnesses to a personal overt act but two witnesses to an act of treason to which the accused may be linked.¹¹

Other authorities, such as Robert K. Faulkner, argue that Marshall did interpret the Constitution correctly. The Constitution did not specify that all people involved in an overt act are principals. If the Constitution was interpreted to mean that all were principals then the interpretation would be opposed to the aims of the framers of the Constitution. The authors desired treason to be defined in a limited sense so that treason could not be used in domestic quarrels.

They said that too many heads had been chopped off in the name of treason in Great Britain. Therefore, John Marshall articulated the true spirit of the Constitution when he rejected the doctrine of constructive treason.¹²

The Aaron Burr trial was not a victory for either Burr or for the United States. Both sides won something and both lost something. The defense succeeded in getting their client acquitted of the charge of treason, but the stigma of guilt still hung over Burr's head. The prosecution was not able to convince Burr of treason but they were able to put doubt in the nation's mind as to Burr's innocence. The Burr trial went down in history as a compromise between Burr and the United States.

FOOTNOTES

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31. Ibid., 124-126.
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33. Ibid., 139.
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36. Ibid., 165-169.
37. Ibid., 170-173.
38. Hill, Decisive Battles, 61.
39. Ibid.
40. Beveridge, John Marshall, 516-517, 522.
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3. Beveridge, John Marshall, III, 388.

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