**Jury Selection in United States v. Burr** (C.C.Va., 1807)

*Jury selection during the Burr trial presented a problem endemic to all "trials of the century." The Constitution requires a fair and impartial jury. When such persons as O.J. Simpson or Aaron Burr are arrested, news and rumors abound about their alleged crimes. Selecting jurors whose minds are open may be difficult. The challenge of obtaining an impartial jury was even greater during the early nineteenth century. Jurors were often local notables. Several persons called for jury service in the Burr trial served with Burr in Congress. Many knew him personally. One, Williams Giles, was the leading Jeffersonian in Congress.*

*Chief Justice Marshall ruled that the right to trial by jury entailed a right to a jury composed of persons who had not prejudged the case. This did not require that prospective jurors know nothing about the events leading up to the trial, only that they had not made their minds up on guilt or on any crucial case fact. On what basis does Marshall determine this standard? Is this the proper constitutional rule?*

CHIEF JUSTICE MARSHALL

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The great value of the trial by jury certainly consists in its fairness and impartiality. Those who most prize the institution, prize it because it furnishes a tribunal which may be expected to be uninfluenced by an undue bias of the mind. I have always conceived, and still conceive, an impartial jury as required by the common law, and as secured by the constitution, must be composed of men who will fairly hear the testimony which may be offered to them, and bring in their verdict according to that testimony, and according to the law arising on it. This is not to be expected, certainly the law does not expect it, where the jurors, before they hear the testimony, have deliberately formed and delivered an opinion that the person whom they are to try is guilty or innocent of the charge alleged against him. The jury should enter upon the trial with minds open to those impressions which the testimony and the law of the case ought to make, not with those preconceived opinions which will resist those impressions. . . . The end to be obtained is an impartial jury; to secure this end, a man is prohibited from serving on it whose connection with a party is such as to induce a suspicion of partiality. . . .

It would be strange if the law was chargeable with the inconsistency of thus carefully protecting the end from being defeated by particular means, and leaving it to be defeated by other means. It would be strange if the law would be so solicitious to secure a fair trial as to exclude a distant, unknown relative from the jury, and yet be totally regardless of those in whose minds feelings existed much more unfavorable to an impartial decision of the case. It is admitted that where there are strong personal prejudices, the person entertaining them is incapacitated as a juror; but it is denied that fixed opinions respecting his guilt constitute a similar incapacity. Why do personal prejudices constitute a just cause of challenge? Solely because the individual who is under their influence is presumed to have a bias on is mind which will prevent an impartial decision of the case, according to the testimony. He may declare that notwithstanding these prejudices he is determined to listen to the evidence, and be governed by it; but the law will not trust him. Is there less reason to suspect him who has prejudged the case, and has deliberately formed and delivered an opinion upon it? Such a person may believe that he will be regulated by testimony, but the law suspects him, and certainly not without reason. He will listen with more favor to that testimony which confirms, than to that which would change his opinion; it is not to be expected that he will weigh evidence or argument as fairly as a man whose judgment is not made up in the case. . . .

Were it possible to obtain a jury without any prepossessions whatever respecting the guilt or innocence of the accused, it would be extremely desirable to obtain such a jury; but this is perhaps impossible, and therefore will not be required. The opinion which has been avowed by the court is, that light impressions which may fairly be supposed to yield to the testimony that may be offered, which may leave the mind open to a fair consideration of that testimony, constitute no sufficient objection to a juror; but that those strong and deep impressions which will close the mind against the testimony that may be

offered in opposition to them, which will combat that testimony, and resist its force, do constitute a sufficient objection to him. . . .

. . . The question now to be decided is whether an opinion formed and delivered, not upon the full case, but upon an essential part of it, not that the prisoner is absolutely guilty of the whole crime charged in the indictment, but that he is guilty in some of those great points which constitute it, does also disqualify a man in the sense of the law and of the constitution from being an impartial juror. This question was adjourned yesterday for argument and for further consideration. It would seem to the court that to say that any man who had formed an opinion on any fact conducive to the final decision of the case would therefore be considered as disqualified from serving on the jury, would exclude intelligent and observing men, whose minds were really in a situation to decide upon the whole case according to the testimony, and would perhaps be applying the letter of the rule requiring an impartial jury with a strictness which is not necessary for the preservation of the rule itself. But if the opinion formed be on a point so essential as to go far towards a decision of the whole case, and to have a real influence on the verdict to be rendered, the distinction between a person who has formed such an opinion and one who has in his mind decided the whole case appears too slight to furnish the court with solid ground for distinguishing between them. . . .

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