

Supplementary Material

Chapter 4: The Early National Era – Criminal Justice/Infamous Crimes and Criminals

The Burr Treason Trials (expanded)

The first “trial of the century” in United States history took place after former Vice President Aaron Burr was arrested on January 16, 1807 in Natchez, Mississippi, and accused of treason. Aaron Burr was the most notorious politician of the early republic. During the 1790s, he was a senator from New York, a member of New York legislature, and Jefferson’s “running mate” in the 1796 presidential election. Burr was also Jefferson’s “running mate” in the 1800 presidential election. We put “running mate” in scare quotes because presidential electors before 1804 cast their ballots for two persons. When every member of the Jefferson majority in 1800 cast their ballots for Jefferson and Burr, the presidential election was officially tied. Republicans assumed that Burr would defer to Jefferson. He did not. Worse, Burr said nothing when prominent Federalists urged fellow partisans to support him for the presidency. This effort failed. After some very nervous moments, the House of Representatives chose Jefferson. For not stepping aside, Burr became a political outcast among Republicans. As his vice presidential term was ending, Burr sought elective office in New York. He was thwarted by Alexander Hamilton. The Federalist leader publicly declared that Burr was a scoundrel who had engaged in “despicable” conduct. Burr challenged Hamilton to a duel. On July 11, 1804, Burr mortally wounded the former Secretary of the Treasury and Federalist leader. This ruined Burr’s political standing among Federalists.

Seeking to recoup his financial and political fortunes, Burr went to the American West, which was then Kentucky, Louisiana, and Mississippi. What Burr did between 1805 and 1806 is not clear. We know he was raising money to organize a group of armed men. President Jefferson was convinced that Burr intended to deploy those men to separate the American west from the rest of the United States. That is treason. Other evidence indicates that Burr intended to attack Spanish territories in Central America. That is a violation of American neutrality laws. Burr claimed that he intended only to attack Spanish territories in the event of a war between the United States and Spain. That may have been legal. One commentator suggests that, anticipating the movie and Broadway hit *The Producers*, Burr, who was nearly penniless, spent the year raising money he planned to pocket, proposing vague plots that he knew were flights of fancy.¹

Burr was arrested in 1807 and charged with treason. Many leading political luminaries participated in the Burr treason trials. President Jefferson helped direct the prosecution. Caesar Rodney, the attorney general of the United States, ran the prosecution. Burr was defended by the “Dream Team” of the early American bar. His lawyers included Charles Lee, a prominent Federalist attorney who had previously argued *Marbury v. Madison* (1803), Luther Martin, a former member of the convention that drafted the Constitution, and John Randolph, a former Jeffersonian leader in the House of Representatives. Burr’s trial was presided over by Chief Justice John Marshall, in his capacity as circuit court judge in Richmond, Virginia. Jefferson and Marshall had a longstanding feud that predated Jefferson’s presidency and Marshall’s assuming the Chief Justiceship. The events of the Burr trial increased the antipathy between the two.

¹ For a good account of the adventures and misadventures of Aaron Burr, see Peter Charles Hoffer, *The Treason Trials of Aaron Burr* (Lawrence: University Press of Kansas, 2008).

The Burr treason trials consisted of two distinct legal proceedings. The first, *Ex parte Bollman* (1807), was a habeas corpus proceeding held before the Supreme Court of the United States. The Supreme Court in that case concluded,

1. The Supreme Court may issue writs of habeas corpus only when authorized by federal legislation.
2. Conspiracy to commit treason is not treason as treason is defined in the Constitution.

The second, *United States v. Burr* (C.C. Va. 1807), was the treason trial of Aaron Burr that took place in the federal circuit court in Virginia with Chief Justice Marshall presiding. The Supreme Court in that case concluded,

1. A defendant in a criminal case has a constitutional right to have the court issue a subpoena to the president of the United States.
2. Judges determine when witnesses may refuse to answer questions on the ground that the answer may incriminate the witness.
3. The Sixth Amendment permits the seating of a juror who has formed an opinion about the case as long as the juror's mind is open to reaching a contrary conclusion.
4. The prosecution in a treason trial must prove the actual use of military force.
5. Hearsay evidence violates the confrontation clause of the Sixth Amendment.

In part because Chief Justice Marshall resolved most issues against the government, Burr's confederates were released and Burr was found not guilty.

As you read the materials below, consider whether Marshall applied neutral principles of law to fend off politically motivated convictions or acted as a partisan interested in weakening the Jefferson administration. Jefferson, after the trial ended, suggested that Congress might consider impeaching the Chief Justice. Did that attempt have any merit?



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