

HEADNOTES

LEGAL LORE

The Treason Trial of Aaron Burr

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In the treason trial of Aaron Burr, Chief Justice John Marshall, sitting as the trial judge under the judicial system at the time, found that his hated cousin, Thomas Jefferson, who reciprocated that hate, was indeed under a legal obligation to produce key papers within his possession—letters to him from the government’s key witness about the underlying charges. Chief Justice Roberts cited the holdings of that decision in his opinion rejecting the president’s objections to subpoenas directed to his accountants. *Trump v. Vance*, 140 S. Ct.



2412, 2020 U.S. LEXIS 3552 (July 9, 2020). Beyond the holdings, there is an entertaining story of legal history.

After his service as vice president, Burr was charged with treason for leading a small group of armed men into the southeast United States to wage a rebellion that would lead to several states leaving the Union. He claimed the purpose of the group was to be ready to attack Spanish interests in the area if the U.S. declared war on Spain. Major James Wilkinson, army commander in the area, had refused orders to attack the Spanish interests. It was suspected at the time that he might be a Spanish agent. Wilkinson was a Burr confidant turned accuser who would be a key witness against Burr at trial.

The trial was held in Richmond,

Virginia. Several thousand visitors flocked to the area. Most were Republicans who wanted Burr convicted because Thomas Jefferson did. But Burr was still loved in the western states where dueling was not a dishonor and where many were in favor of a war with Spain. Burr’s most prominent supporter was none other than Andrew Jackson, who by this time had soured on Jefferson. Jackson came to Richmond for the trial, maintained a very high profile, and made many derogatory comments about Jefferson. The trial also brought many reporters from around the country, including a young Washington Irving, who later gave us “Rip Van Winkle” and “The Legend of Sleepy Hollow”.

Far and away the ablest lawyer involved in the prosecution effort was Jefferson

Headnote illustration by Sean Kane

himself, though he never set foot in the courtroom. He provided detailed written instructions to the government's courtroom lawyers not only about the strategy but also about specific evidence and how to present it. It is the only time in American history a president was intimately involved in the day-to-day presentation of a lawsuit. And the ablest lawyer for the defense was Aaron Burr himself. Burr was generally thought to be one of the two best lawyers in New York City (the other being Alexander Hamilton) and he was very active in his own defense. He successfully challenged the array of the grand jury, because it was not picked from the first 24 names drawn, and then proceeded to cross-examine the next group seated, quickly showing the prejudice of many. He argued the most complex legal motions in his rhetorically spare and direct fashion.

The trial served as the setting for the summer social scene. Richmond society had always featured dinner parties—but now there were many more noted guests to attend. The most famous party was thrown by John Wickham, one of Burr's lawyers. He invited Burr and John Marshall, his good friend, to a dinner. The greater weight of historical

evidence supports Marshall's claim that he was not aware that Burr was to be a guest and that he was too embarrassed to leave the party after he ascertained that fact. Needless to say, Marshall was vilified in the Republican press for attending.

The testimony by the initial witnesses did not support any effort at secession. That put much weight on the testimony of Major Wilkinson, who had "confessed" the plot to Jefferson, but an examination of Wilkinson's letters to and from Burr made a strong case that Wilkinson had altered them from the original version. There was much drama outside the courtroom attached to Wilkinson. He was challenged to a duel by a Burr supporter. He declined the invitation. By the time he left the stand, sentiment was moving to Burr.

Marshall gave the jury a set of instructions establishing a very high standard of what the government needed to prove to establish treason. Such a high standard would be useful for Marshall's fellow Federalists, who were already being targeted for future prosecution. When the jury returned its verdict, it did not render a traditional guilty or not guilty verdict. Rather it proclaimed that "Aaron Burr is not guilty under this indictment by any

evidence submitted to us." Burr immediately objected that this was not a proper verdict (the promptness of the objection being further evidence of his skill as a lawyer). Marshall let the verdict stand and ordered that an entry of "Not Guilty" be entered into the record.

The Republicans were incensed. Burr was escorted to the stagecoach under guard and immediately left town. Police were sent to protect the home of one of Burr's lawyers. The vituperations against Marshall were intense. A latter-day analogue to the Federalist Papers was published attacking Marshall. Jefferson called for his impeachment in a message to Congress. The Republican drumbeat against Marshall was extinguished only by the approaching war with Great Britain. Years later, it was learned that Wilkinson was indeed a Spanish agent. Noted historian Frederick Jackson Turner observed that Wilkinson was "the most consummate artist in treason that the nation ever produced." Jefferson had prosecuted the wrong person for treason. After a cooling-off period in Europe, Burr eventually returned to New York City, where he practiced law until his death in 1836. ■