Burr Conspiracy:
"guilt beyond question"

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For most of his second term in office, Jefferson and the nation became increasingly occupied by rumors of conspiracy and treason in the West. The apparent threat to the peace and safety of the Union centered on the activities of Jefferson’s former vice president, Aaron Burr. Dropped by the Republicans in 1804 to stand for re-election with Jefferson, unsuccessful in his bid for the governorship of New York, and under indictment for killing Alexander Hamilton in a duel in New Jersey, Burr seemed prepared to trade disgrace in the East for glory in the West.

Two potentially dangerous historical struggles amplified the alarm raised by Burr’s schemes in the West and his subsequent trial for treason. One struggle was a national fight for the loyalty of the territories and states west of the Appalachian Mountains. Dependent on the Mississippi River as a commercial outlet, the West had been subject to long-standing Spanish attempts to separate it from the East. The future of the West also raised a related question of political philosophy: could a republic effectively represent the rights and interests of a population spread over a large extent? Or were republics by nature small, preserving a close relationship between the governed and those elected to represent them? The second struggle was a political one, pitting the Republican executive and Congress against the Federalist-dominated judiciary. Jefferson and his party captured the executive and legislative branches in the 1800 elections, but the Federal judiciary remained in the hands of Federalists appointed to the bench before Jefferson took office. Jefferson lamented that the Federalists “have retreated into the judiciary as a stronghold.” The Republicans and the Federalist judiciary warned throughout Jefferson’s two terms, a struggle described in battles over John Adams’s appointment of “midnight judges,” the repeal of the Judiciary Act of 1801, Chief Justice John Marshall’s decision in Marbury v. Madison, Congress’s impeachment of federal judges, and the Burr trial.

Although the exact outlines of Burr’s plans are difficult to draw, it appears that he intended to raise an army to wrest Mexico from Spanish control and found a new nation. Depending on the dreams of the principal conspirators, the new creation was envisioned as either a republic or an empire. These same plans also may have included adding the American states and territories west of the Appalachian Mountains to the new country, with New Orleans as the national capital of this western nation.

To aid him in his schemes, Burr enlisted the help of General James Wilkinson, commanding general of the United States Army and acting governor of the Louisiana Territory. Wilkinson was no stranger to espionage and had supplemented his federal salary with secret payments from the Spanish. Wilkinson remained part of Burr’s cabal until he determined that Burr’s plans enjoyed no prospect of success. To protect himself, Wilkinson betrayed Burr and notified Jefferson of Burr’s dangerous plot. Translating a letter written in code (or cipher) in which Burr outlined his plans, Wilkinson carefully removed evidence of his involvement with the conspiracy and sent a copy of the edited letter to Jefferson. (See document 14, Wilkinson’s translation.)

Burr, still thinking he had Wilkinson’s support, went forward with his plans. A few hundred men gathered on the Ohio River to support Burr’s wild scheme, but most were stopped in December 1806 when their boats and supplies were seized by the order of Ohio Governor Edward Tiffin. Burr was not on the Ohio, and he and a party of men floated down the Cumberland River to join his few remaining supporters. Combining their forces and hoping to attract other adventurers, they proceeded down the Mississippi River. In New Orleans, Wilkinson arrested without charge anyone suspected of supporting Burr. Hearing rumors that Wilkinson secretly plotted his assassination, Burr wisely surrendered to civil authorities in the Mississippi Territory in January 1807, and he was sent east for trial. (See document 15, letter from Mead.)

Unaware that Burr had surrendered, Jefferson sent Congress a special message describing the conspiracy in the West. (See document 16, Jefferson’s message on the conspiracy.) In his
message of January 22, 1807, Jefferson did not hesitate to declare that Burr's "guilt is placed beyond question." Federalists then, and historians today, question Jefferson's pre-judging of Burr and what led him to act as judge and jury for an individual not yet charged with a crime. The Federalists rallied to Burr's cause to attack and embarrass Jefferson, despite Burr's killing of the Federalist hero Alexander Hamilton in 1804.

Indicted by a Richmond, Virginia, grand jury for treason, Burr stood accused in the formal indictment of "being moved and seduced by the instigation of the devil." The federal trial, which lasted from May to September of 1807, was great political theater and captivated the nation's interest. Burr's defense, constructed by Burr and prominent Federalist attorneys, rested on their efforts to make Burr appear as a victim of Jefferson's persecution. Burr maintained that he only wanted to transport settlers to the West. (See document 13, letter from Burr.) Federalist newspapers ridiculed the trial as "King Tom's Puppet Show." In an effort to stall the trial and further involve Jefferson, Burr's lawyers convinced Marshall to subpoena the president and demand delivery of the original version of the cipher letter, which could be used to discredit Wilkinson. Jefferson had already agreed to provide all necessary records (although Wilkinson's original cipher letter could not be found), and he refused to dignify the subpoena with a formal answer.

The prosecution attempted to show Burr as the conspiratorial mastermind behind the treasonous assembly of a war party on the Ohio River. The case rested heavily on the testimony of General Wilkinson and the translated cipher letter, but Wilkinson did not prove to be a credible witness. The final blow to the government's case came when Chief Justice John Marshall, the presiding judge, a Federalist, and Jefferson's staunch foe, revised an earlier ruling and defined treason so narrowly that it became impossible to convict Burr. At the conclusion of a bitter trial, the jury issued the rather unusual finding that "We of the Jury find that Aaron Burr is not proved to be guilty under this Indictment by any evidence submitted to us."

Jefferson, and much of the nation, remained convinced of Burr's guilt and blamed the Federalists for letting Burr escape unpunished. Although frustrated with the outcome, Jefferson reconciled himself with the thought that the loyalty of the West had been forcefully demonstrated by the comic folly of Burr's conspiracy. Jefferson also hoped that the Federalist party and Federalist-controlled judiciary would be irreparably damaged in the court of public opinion by their close association with the scoundrel Burr.
Letter from Burr to Senator John Smith.  
October 26, 1806.

Lexington 26 Oct. 1806

Dear Sir,

I was greatly surprised and really hurt by the unusual tenor of your letter of the 23rd and I hasten to reply to it as well for your satisfaction as my own.

If there exists any design to separate the Western from the eastern States I am totally ignorant of it - I never harboured or expressed any such intention to any one nor did any person ever intimate such design to me - Indeed I have no conception of any mode in which such a measure could be promoted, except by operating on the minds of the people and demonstrating it to be their interest. I have never written or published a line on this subject nor ever expressed any other sentiments than those which you may have heard from me in public companies at Washington & else where & in which I think you concurred. [J. Smith has heard Col. Burr and others say that in fifty or a hundred years the Territory of the U.S. would compose two Distinct Governments] It is a question on which I feel no interest and certainly I never sought a Conversation upon it with any one, but even if I had written and talked ever so much on the matter, it could not be deemed criminal.

But the idea, as I am told, which some malevolent persons circulate is, that a separation is to be affected by force - this appears to me to be as absurd and as unworthy of contradiction as if I had been charged with a design to change the planetary System - all the armies of France could not effect such a purpose, because they could not get here & if they could get here, they could not subsist & if they could subsist they would certainly be destroyed.

I have no political views whatever those which I entertained some months ago and which were communicated to you, have been abandoned [J. Smith presumes that Mr. Burr refers to an invitation to settle in Tennessee, of which he heard him speak]

Having bought of Col. Lynch four hundred thousand acres of land on the Washita, I propose to send thither this fall, a number of settlers as many as will go & labour a certain time to be paid in land and sound in provisions for the time they labour, perhaps one year - Mr. J. Breckinridge, Adam and Fowler have separately told me that it was the strong desire of the administration that American settlers should go into that quarter & that I could not do a thing more grateful to the Govt - I have some other views which are personal merely & which I shall have no objection to state to you personally, but which I do not deem it necessary to publish - If these projects could any way affect the interests of the U.S. it would be beneficially. Yet I acknowledge that no public considerations have led me to this speculation but merely the interest & comfort of myself & my friends

(This may be an unnecessary caution - but I never wrote for publication) This is the first letter of explanation which I have ever written to any man & will probably be the last - It was perhaps due to the frankness of your character and to the friendship you once bore me - I shall regret to see that a friendship I so greatly valued must be sacrificed on the altars of calumny.

Be assured that no changes on your part can ever alter my desire of being useful to you and I pray you to accept my warmest wishes for you happiness

A. Burr

Hon John Smith

His Excellency General Wilkinson

Together with a packet which he informed me he was charged by the same person to deliver me in private. This packet contained a letter in cipher from Colonel Burr, of which the following is substantially as far an interpretation as I have heretofore been able to make, the original of which I hold in my possession.

"1. Aaron Burr, have obtained funds, and have actually commenced the enterprise. Detachments from different points, and under different pretences, will rendezvous on the Ohio 1st November. Everything internal and external favors views; protection of England is secured. It is going to Jamaica to arrange with the admiral on that station, it will meet on the Mississippi - England - 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 1st August, never to return, with him go his daughter; the 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 may be useful, with a note delineating their characters. By your messenger send me four or five of the commissions of your officers, which you can borrow under any pretence you please; they shall be returned faithfully. Already are orders to the contractor given to forward six months' provisions to points Wilkinson may name. This shall not be used until the last moment, and then under proper injunctions. The project is brought to the point so long desired. Burr guarantees the result with his life and honor; with the lives, the honor, and fortune of hundreds, the best blood of our country. Burr's plan of operations is to move down rapidly from the falls on the 15th November with the first five hundred or one thousand men in light boats, now constructing for that purpose, to be at Natchez between the 5th and 15th of December, there to meet Wilkinson, there to determine whether it will be expedient, in the first instance, to seize on or pass by Baton Rouge on receipt of this. Send Burr an answer, draw on Burr for all expenses, &c. 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 a foreign Power, in three weeks all will be settled. The gods invite to glory and fortune. It remains to be seen whether we deserve the boon. The bearer of this goes express to you; he will hand a formal letter of introduction to you from Burr, he is a man of inviolable honor and perfect discretion, formed to execute rather than to project; capable of relating facts with fidelity, and incapable of relating them otherwise. He is thoroughly informed of the plans and intentions of ———, and will disclose to you as far as you inquire, 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."

— 29th July
Extract of a letter from Cowles Mead.  
January 19, 1807.

Extract of a letter from Cowles Mead, Secretary and Acting Governor of Mississippi Territory, to the Department of War, dated Washington, M. T., January 19, 1807.

Sir,

In obedience to your instructions by express of the 20th of December last, I, immediately after proroguing the Legislature, proceeded to put the Territory in a state of preparation for the arrestation of the suspicious persons and boats, which were contemplated therein. My militia were collecting at particular points on the river, when I received a letter from Colonel Burr, who had landed at Bayou Pierre with nine boats and about one hundred men. This letter went to an avowal of his innocence of the charges which rumor and public apprehension had announced against him, and solicited me to appease the fears which his approach had begotten. at the same time, he guarded me against the horrors of civil war, and the evils resulting from such a state of things. This seeming threat induced me to adopt a different mode of conduct from what the colonel might have expected, and instead of adopting his pacific admonition, I ordered a very large portion of the militia of the Territory to rendezvous at certain points, and wait further orders. With the promptitude of Spartans, our fellow-citizens shouldered their firelocks, and in twenty-four hours I had the honor to review three hundred and seventy-five men at Natchez, prepared to defend their country. They were ordered, under the command of Colonel Clairborne, to a point on the river, about twenty-one miles above the city, there to remain to guard the river, and intercept, for inspection, all boats that might descend the river. On the 16th I despatched two of my aids to Colonel Burr, who had tendered his respect to the civil authority. These gentlemen engaged on my part to give the colonel an interview in the neighborhood of the detachment stationed at the mouth of Cole's creek, conformably thereto. I met the colonel on the 17th, and, after a lengthy interview, he offered to surrender himself to the civil authority of the Territory, and to suffer his boats to be searched. On the 18th Colonel Burr, accompanied by my aids, Major Shields and Poindexter, rode down to the place, and was committed to the highest tribunal of the civil authority, where he now remains for trial.

Four gentlemen of unquestionable respectability, with a detachment of thirty men, are now in the act of making the search of the boats, and to-morrow I expect their report.

Thus, sir, this mighty alarm, with all its exaggerations, has eventuated in nine boats and one hundred men, and the major part of these are boys, or young men just from school. Many of their depositions have been taken before Judge Rodney, but they bespeak ignorance of the views or designs of the colonel. I believe them really ignorant and deluded. I believe that they are the dupes of stratagem, if the asseverations of General Eaton and Wilkinson are to be accredited.

To the Senate and House of Representatives of the United States:

Agreeably to the request of the House of Representatives, communicated in their resolution of the 16th instant, I proceed to state, under the reserve therein expressed, information received touching an illegal combination of private individuals against the peace and safety of the Union, and a military expedition planned by them against the territories of a Power in amity with the United States, with the measures I have pursued for suppressing the same.

I had for some time been in the constant expectation of receiving such further information as would have enabled me to lay before the Legislature the termination, as well as the beginning and progress of this scene of depravity so far as it has been acted on the Ohio and its waters. From this the state of safety of the lower country might have been estimated on probable grounds, and the delay was indulged the rather because no circumstance had yet made it necessary to call in the aid of the legislative functions. Information now recently communicated has brought us nearly to the period contemplated. The mass of what I have received in the course of these transactions is voluminous, but little has been given under the sanction of an oath so as to constitute formal and legal evidence. It is chiefly in the form of letters, often containing such a mixture of rumors, conjectures, and suspicions as renders it difficult to sift out the real facts and unadvisable to hazard more than general outlines, strengthened by concurrent information or particular credibility of the relation. In this state of the evidence, delivered sometimes, too, under the restriction of private confidence, neither safety nor justice will permit the exposing names, except that of the principal actor, whose guilt is placed beyond question.

Some time in the latter part of September I received intimations that designs were in agitation in the Western country unlawful and unfriendly to the peace of the Union, and that the prime mover in these was Aaron Burr, heretofore distinguished by the favor of his country. The grounds of these intimations being inconclusive, the objects uncertain, and the fidelity of that country known to be firm, the only measure taken was to urge the informants to use their best endeavors to get further insight into the designs and proceedings of the suspected persons and to communicate them to me.

It was not until the latter part of October that the objects of the conspiracy began to be perceived, but still so blended and involved in mystery that nothing distinct could be singled out for pursuit. In this state of uncertainty as to the crime contemplated, the acts done, and the legal course to be pursued, I thought it best to send to the scene where these things were principally in transaction a person in whose integrity, understanding, and discretion, entire confidence could be reposed, with instructions to investigate the plots going on, to enter into conference (for which he had sufficient credentials) with the Governors and all other officers, civil and military, and with their aid to do on the spot whatever should be necessary to discover the designs of the conspirators, arrest their means, bring their persons to punishment, and to call out the force of the country to suppress any unlawful enterprise in which it should be found they were engaged. By this time it was known that many boats were under preparation, stores of provisions collecting, and an unusual number of suspicious characters in motion...
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on the Ohio and its waters. Besides dispatching the confidential agent to that quarter, orders were at the same time sent to the governors of the Orleans and Mississippi Territories and to the commanders of the land and naval forces there to be on their guard against surprise and in constant readiness to resist any enterprise which might be attempted on the vessels, posts, or other objects under their care; and on the 8th of November instructions were forwarded to General Wilkinson to hasten an accommodation with the Spanish commandant on the Sabine, and as soon as that was effected to fall back with his principal force to the further bank of the Mississippi for the defense of the interesting points on that river. By a letter received from that officer on the 25th of November, but dated October 21, we learnt that a confidential agent of Aaron Burr had been deputed to him with communications, partly written in cipher and partly oral, explaining his designs, exaggerating his resources, and making such offers of emolument and command to engage him and the army in his unlawful enterprise as he had flattered himself would be successful. The General, with the honor of a soldier and fidelity of a good citizen, immediately dispatched a trusty officer to me with information of what had passed, proceeding to establish such an understanding with the Spanish commandant on the Sabine as permitted him to withdraw his force across the Mississippi and to enter on measures for opposing the projected enterprise.

The General's letter, which came to hand on the 25th of November, as has been mentioned, and some other information received a few days earlier, when brought together developed Burr's general designs, different parts of which only had been revealed to different informants. It appeared that he contemplated two distinct objects, which might be carried on either jointly or separately, and either the one or the other first, as circumstances should direct. One of these was the severance of the Union of these States by the Alleghany Mountains; the other an attack on Mexico. A third object was provided, merely ostensible, to wit, the settlement of a pretended purchase of a tract of country on the Washita claimed by a Baron Bastrop. This was to serve as the pretext for all his preparations, an allurement for such followers as really wished to acquire settlements in that country and a cover under which to retreat in the event of a final discomfiture of both branches of his real design.

He found at once that the attachment of the Western country to the present Union was not to be shaken, that its dissolution could not be effected with the consent of its inhabitants, and that his resources were inadequate as yet to effect it by force. He took his course then at once, determined to seize on New Orleans, plunder the bank there, possess himself of the military and naval stores, and proceed on his expedition to Mexico, and to this object all his means and preparations were now directed. He collected from all the quarters where himself or his agents possessed influence all the ardent, restless, desperate, and disaffected persons who were ready for any enterprise analogous to their characters. He seduced good and well-meaning citizens, some by assurances that he possessed the confidence of the Government and was acting under its secret patronage, a pretense which procured some credit from the state of our differences with Spain, and others by offers of land in Bastrop's claim on the Washita.

This was the state of my information of his proceedings about the last of November, at which time, therefore, it was first possible to take specific measures to meet them. The procla-
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FORMATION of November 27, two days after the receipt of General Wilkinson's information, was now issued. Orders were dispatched to every interesting point on the Ohio and Mississippi from Pittsburgh to New Orleans for the employment of such force either of the regulars or of the militia and of such proceedings also of the civil authorities as might enable them to seize on all the boats and stores provided for the enterprise, to arrest the persons concerned, and to suppress effectually the further progress of the enterprise. A little before the receipt of these orders in the State of Ohio our confidential agent, who had been diligently employed in investigating the conspiracy, had acquired sufficient information to open himself to the governor of that State and apply for the immediate exertion of the authority and power of the State to crush the combination. Governor Tifft and the legislature, with a promptitude, an energy, and patriotic zeal which entitle them to a distinguished place in the affection of their sister States, effected the seizure of all the boats, provisions, and other preparations within their reach, and thus gave a first blow, materially disabling the enterprise in its outset.

In Kentucky a premature attempt to bring Burr to justice without sufficient evidence for his conviction had produced a popular impression in his favor and a general disbelief of his guilt. This gave him an unfortunate opportunity of hastening his equipments. The arrival of the proclamation and orders and the application and information of our confidential agent at length awakened the authorities of that State to the truth, and then produced the same promptitude and energy of which the neighboring State had set the example. Under an act of their legislature of December 23 militia was instantly ordered to different important points, and measures taken for doing whatever could yet be done. Some boats (accounts vary from five to double or treble that number) and persons (differently estimated from 100 to 300) had in the meantime passed the Falls of Ohio to rendezvous at the mouth of Cumberland with others expected down that river.

Not apprised till very late that any boats were building on Cumberland, the effect of the proclamation had been trusted to for some time in that State of Tennessee; but on the 19th of December similar communications and instructions with those to the neighboring States were dispatched by express to the governor and a general officer of the western division of the State, and on the 23d of December our confidential agent left Frankfort for Nashville to put into activity the means of that State also. But by information received yesterday I learn that on the 22d of December Mr. Burr descended the Cumberland with two boats merely of accommodation, carrying with him from that State no quota toward his unlawful enterprise. Whether after the arrival of the proclamation, of the orders, or of our agent any exertion which could be made by that State or the orders of the governor of Kentucky for calling out the militia at the mouth of Cumberland would be in time to arrest these boats and those from the Falls of Ohio is still doubtful.

On the whole, the fugitives from the Ohio, with their associates from Cumberland or any other place in that quarter, can not threaten serious danger to the city of New Orleans.

By the same express of December 19 orders were sent to the governors of Orleans and Mississippi, supplementary to those which had been given on the 25th of November, to hold the militia of their Territories in readiness to cooperate for their defense with the regular troops and armed vessels then under command of General Wilkinson. Great alarm, indeed, was excited at
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New Orleans by the exaggerated accounts of Mr. Burr, disseminated through his emissaries, of the armies and navies he was to assemble there. General Wilkinson had arrived there himself on the 24th of November, and had immediately put into activity the resources of the place for the purpose of its defense, and on the 10th of December he was joined by his troops from the Sabine. Great zeal was shown by the inhabitants generally, the merchants of the place readily agreeing to the most laudable exertions and sacrifices for manning the armed vessels with their seamen, and the other citizens manifesting unequivocal fidelity to the Union and a spirit of determined resistance to their expected assailants.

Surmises have been hazarded that this enterprise is to receive aid from certain foreign powers; but these surmises are without proof or probability. The wisdom of the measures sanctioned by Congress at its last session has placed us in the paths of peace and justice with the only powers with whom we had any differences, and nothing has happened since which makes it either their interest or ours to pursue another course. No change of measures has taken place on our part, none ought to take place at this time. With the one, friendly arrangement was then proposed, and the law deemed necessary on the failure of that was suspended to give time for a fair trial of the issue. With the same power friendly arrangement is now proceeding under good expectations, and the same law deemed necessary on failure of that is still suspended, to give time for a fair trial of the issue. With the other, negotiation was in like manner then preferred, and provisional measures only taken to meet the event of rupture. With the same power negotiation is still preferred, and provisional measures only are necessary to meet the event of rupture. While, therefore, we do not deflect in the slightest degree from the course we then assumed and are still pursuing with mutual consent to restore a good understanding, we are not to impute to them practices as irreconcilable to interest as to good faith, and changing necessarily the relations of peace and justice between us to those of war. These surmises are therefore to be imputed to the vauntings of the author of this enterprise to multiply his partisans by magnifying the belief of his prospects and support.

By letters from General Wilkinson of the 14th and 18th of December, which came to hand two days after the date of the resolution of the House of Representatives—that is to say, on the morning of the 18th instant—I received the important affidavit a copy of which I now communicate, with extracts of so much of the letters as comes within the scope of the resolution. By these it will be seen that of three of the principal emissaries of Mr. Burr whom the General had caused to be apprehended, one had been liberated by habeas corpus, and two others, being those particularly employed in the endeavor to corrupt the general and army of the United States, have been embarked by him for ports in the Atlantic States, probably on the consideration that an impartial trial could not be expected during the present agitations of New Orleans, and that that city was not as yet a safe place of confinement. As soon as these persons shall arrive they will be delivered to the custody of the law and left to such course of trial, both as to place and process, as its functionaries may direct. The presence of the highest judicial authorities, to be assembled at this place within a few days, the means of pursuing a sounder course of proceedings here than elsewhere, and the aid of the Executive means, should the judges have
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occasion to use them, render it equally desirable for the criminals as for the public that, being already removed from the place where they were first apprehended, the first regular arrest should take place here, and the course of proceedings receive here its proper direction.
Th Jefferson.