

COL. BURR BEFORE THE FEDERAL COURT.

The judge read his charge to the grand jury, which was no way important, only as it appeared to conclude without acknowledging the right of the United States' attorney to go out with the grand jury and assist in the examination of witnesses; and the giving the jury particular directions not to receive any matter upon information—nor to let their enquiries extend beyond the limits of the state, by which, we suppose, the honorable judge meant the hither shore of the Ohio, and would of course exclude all the Pittsburg, Marietta, Cincinnati and Jeffersonville business. Mr. Daveiss then stated that two material witnesses had not made their appearance. He observed that John Adair and Mr. Luckett, were absent, and that he could not proceed without them—that this was a business of the utmost importance, and he would not hazard the issue by going on in the absence of these two witnesses. Mr. Henry Clay, who appeared in conjunction with Mr. John Allen as the counsel for Col. Burr, rose, and in reply observed, that Col. Burr was only apprehensive of delay, that is was painful, and particularly irksome to be obliged perpetually to dance attendance upon such a charge in that court.

Mr. Daveiss perfectly understood the drift of the gentleman. Let the jury go out continued Mr. D. and under the present circumstances, in the absence of these important witnesses, the charges not being proved, they imagine to themselves a triumph. The grand jury have been called upon a particular occasion, to enquire into a subject which immediately affects the welfare of our country. This is no common cause, and should therefore not be too hastily disposed of. Mr. Clay complains of the painful inconvenience of Col. Burr's dancing a perpetual attendance upon the court. Who asked him to dance an attendance? Who has solicited his presence in court? His appearance here is entirely voluntary; and I will venture to say that in case of indictment no counsel can be legally heard or recognized by the court until the indictment is found by the jury. This is the practice which has universally prevailed in this country heretofore, and I believe every where else—I therefore trust that I shall not again be interrupted in my proceeding. I hope there will be no further interference on the part of Colonel Burr and his counsel, until they can be legally in court.

There are a number of indispensable witnesses in this case; and general Adair is one, without whom I cannot proceed. The inquiry now before the grand jury is such as to require the testimony of each witness in order to connect the chain of evidence necessary to produce conviction. The object must be distinctly and perfectly understood. The materiality of the testimony of general Adair, induces me to apply to the court, and request they will direct the grand jury not to proceed without him.

Mr. Clay was only desirous (he said) that the attorney for the United States would pursue what the law of the land warrants. Something has been said, continued Mr. Clay, about Col. Burr's presence not being necessary; and will Mr. Daveiss tell me this after what has already passed? Is his name to be mentioned, and is he not to appear because there is no process, no deputy marshal directed to take his person?

Mr. Daveiss replied to the court nearly in the same manner as before; and stated his right of going on in the business as directed by law, and his own judgment, and observed that by him Col. Burr nor his counsel were considered in court, and he should proceed as though they were not, as he deemed any interference by them highly improper. He also slightly mentioned his right to examine witnesses before the grand jury.

Mr. Clay observed, he understood the constitution of a grand jury to be very different—He should never cease (he said) to contend for the liberty of the country. All at once continued Mr. C. the office of public attorney springs into an importance which never before was heard of. I appeal to the practice of every other court whether or not the public attorney has the privilege now contended for? I take the functions of the grand jury to be these, to send for what witnesses they please, and examine whom they please. They ought to retile and enquire of the proper persons to send for.

Mr. Daveiss said, that respecting the grand jury, he was the proper agent and certainly acted under the auspices of the court, and he hoped the court would

agree with him in opinion. He then moved for an attachment against general Adair, for non-attendance. This was opposed by Mr. Clay, on the grounds that no hour had been mentioned in the summons, and consequently the attachment could not issue during the whole day to which he was summoned, until Wednesday morning; in which objection he was supported by the opinion of the judge.

WEDNESDAY, DECEMBER 3.
Mr. Daveiss rose & stated to the grand jury, that they might call on him, if they thought proper, to assist them to examine witnesses; and was proceeding to make some remarks to the foreman, when Mr. Clay interrupted him, and addressing the court, observed, that the privilege contended for by Mr. Daveiss, was a novel one, and he hoped the court would not grant it.

Mr. Daveiss saw nothing novel, nothing out of the common mode of procedure, except the conduct of Mr. Clay. He confessed there was something novel, and something extremely singular & unprecedented in the proceeding had in this business. No person, continued Mr. D. has a right to call me to order in this proceeding, but the judge himself. Upon what ground then, am I now interrupted? I have once stated, and I had hoped gentlemen have understood me, that the trial, until an indictment was found, must be entirely ex-parte; that no counsel, except the U. States' attorney could be listened to, or legally recognised by the court. I am therefore surprised to see col. Burr and his counsel still present themselves in court; and more so, when interrupted by them, in the discharge of my duty, and called to order. He hoped the judge would permit him to proceed.

Mr. Clay said, he appealed to the practice of other courts—yesterday his honor addressed the public attorney on this subject—he was willing to give up the point of either equity or law appeared in his favor; but he was confident that neither would warrant the demand of Mr. Daveiss.

Mr. Daveiss. Although (said he) I respect the jury and believe they will do what is right, yet I believe they are ignorant of the plan—they possess no detail of themselves. He said the most studied attempts to cut off all investigation had been made on the part of col. Burr and counsel; observe the proceedings before this court; see the opposition made to every measure I attempt; then mark the course of proceedings among the people, and say who will, that the object is not to prevent that full and fair investigation which would promise success? Mr. Clay still called it a novel proceeding. He again repeated he saw nothing novel except the appearance of col. Burr and counsel in court and thrusting themselves forward to be heard, when the court, in strict legal justice, could not know them in that capacity. He hoped the court would not hamper him, or suffer colonel Burr's counsel to interfere in the present case.

Mr. Allen declared his right to be heard on this occasion, and he was indifferent in what capacity he was considered. He wished the grand jury to attend to the spirit of the constitution.—The right (he said) for which the public attorney contended was of the most serious nature, and if allowed would affect in a material degree the rights of the citizen. In matters of fact, Mr. Allen said the public attorney had no right to appear; it was solely in matters of law that his presence was necessary. Even in the government of England this is the case, and much more should it be so in the United States, where our constitution is much more explicit and better defined.

Mr. Clay cared not in what attitude he should be considered as standing; but he would instantly renounce colonel Burr and his cause, did he entertain the slightest idea of his guilt, as to the charges exhibited against him by Mr. Daveiss.—You have heard of inquisitions in Europe, (said Mr. Clay) you have heard of the screws and tortures made use of in the dens of despotism, to extort confession; of the dark conclaves and caucuses, for the purpose of twisting some incoherent expression into evidence of guilt. Is not the project of the attorney for the United States, a similar object of terror? But all will not do; all the art of the attorney will not effect his purpose. I call upon him to produce a single instance where the public attorney has been accustomed to examine the witnesses before the grand jury, to sound the jury and enter into all their secrets.

Mr. Daveiss. Should the court agree with the counsel of col. Burr I shall consider it as completely smothering all the testimony, and the jury will go into the examination hoodwinked. Upon a former occasion, when it was known I could not proceed, Mr. Burr was grieved to the heart, that I could not. He appeared in court, and bewailing his fate that I had not proceeded before the grand jury, and addressing the people, prayed in future that they would pass no opinion hereafter till he was heard in his own defence. What follows? I get better prepared—call for another grand jury; expenses dart through the country from Mr. Burr in all directions—the grand jury comes; and before it, comes Mr. Burr—for what? To challenge enquiry? No sir, no, it is to stifle it—it is to display vast management in precluding investigation. An attempt was even made this morning to get the panel of the grand jury altered.

The innocence Mr. Burr tries for is an exemption from punishment; but this is desired to be got with much eclat as possible. Great cries of persecution against the innocent Mr. Burr, are stored up ready to issue against me if the event will justify. But public clamor although very unpleasant, never shall alter my course; for after the information I have received, and on which my mind implicitly reposes, even what I have heard from that gentleman, though the whole community should cry out against me, and run after this adventurer, yet I would stand as a rock left by the ebbing sea, ever confident that a little time more would find me again surrounded by the flood.

Mr. Clay declares his confidence of the innocence of the accused. I was in hopes after this that he would have renounced all attempts to stifle enquiry; for if there is no scheme, my examination cannot make the witnesses swear there is one—if there is an enterprize, my enquiry may develop it.

Col. Burr rose and addressed the court—he said he was willing to submit to every right for which the public attorney contended, that was sanctioned by law and equity; but that he regarded the rights of a citizen in the strongest light, and should not submit to any infringement whatever upon those privilege to which every citizen was entitled. He himself he said had been the public attorney of another state; but never in one instance did he exercise the right of examining witnesses before the grand jury. He expatiated upon the stories that had been circulated about himself, and declared their falsity. He said it had been reported that three boats loaded with men, provision and arms had descended the Ohio, belonging to him—he said they were not his, and ultimately proved to be the boats of some families who were moving; and the one with guns, were the property of Mr. Berthoud of Louisville. He declared in unequivocal terms his innocence.

The judge delivered his opinion, that it had been the practice of every court with which he had been acquainted, for the public attorney, never to examine witnesses before the grand jury; but if the jury were doubtful of any matters relating to law, that they should invite the public attorney to come before the and explain them. He had been a public attorney and he never examined witnesses before the grand jury during his continuance in office.

Some by conversation here took place between the judge and Mr. Daveiss in the course of which Mr. Daveiss stated to the judge that on a former occasion he had given it as his opinion that the public attorney had a right to examine the witnesses before the grand jury. His honor very briskly replied that the opinion spoken by Mr. Daveiss was given out of court. Mr. D. acknowledged it was, but nevertheless, as it was given after his motion against Mr. Burr was made, he considered the same opinion would also be given in court. He went to remark that unless he had been convinced by that opinion that the judge would acknowledge his right as attorney for the U. S. to examine witnesses before the grand jury, he never would have run the country to the expense of calling a grand jury. The judge observed, that opinion was out of court, and of course no way binding on the court. Of course the jury examined the witnesses with the aid of Mr. Daveiss, and under the peculiar restrictions in the judge's charge.

I could but remark something in the manner and decisions of the honorable judge, which induced me to believe, his mind was not as free from bias as it should be. Every act, every determination he gave, went to prove he felt deeply interested in the acquittal of col. Burr. A pre-determination to thwart the proceedings of Mr. Daveiss, and hamper enquiry as to col. Burr, was plainly visible to the physiognomist, in every line of his face; and to the close observer in his every act. It will be remembered by my readers, that the judge had but a few days previous to this, on examination before the committee appointed to enquire into Sebastian's conduct, deeply implicated himself, in a former attempt to separate the judge was clear of any connection with Burr's scheme, (for the sake of argument) he must have had a fellow feeling for so great, good and persecuted a man, who is now engaged in an enterprize against the interests of his country. I would not wish to be understood as acquitting judge Innes of being engaged in the scheme of disunion, with col. Burr; far be it from me to give celebrity to an opinion so very different from the one I entertain, in the face of circumstances which are certainly calculated to generate suspicion in the bosoms of the most unsuspecting. Some of them are even worthy the serious attention of the people, and I conceive myself bound, as an impartial editor, to give them to my fellow-citizens, who, from their remote situations, are deprived of a personal knowledge of what is going on, at the seat of government. During the time col. Burr lay under the ignominy of the charges of the attorney for the U. S. col. Innes and Burr were almost constantly together at an evening, at John Brown's, and the moment the grand jury returned without finding a true bill, preparations were gone into, and a ball was given to col. Burr, at

which the families of judge Innes, and John Brown attended, even to a child; but when a ball was given in honor of the union, not one of them attended—not because they were not prepared, for on the same evening they attended a party at George Green's, a merchant of this town; who, it may be requisite to remark, was himself from home. These circumstances, when combined with the judge's explosion before the committee who sat on Sebastian, have a tendency to convince my mind, that some improper motives, which lay concealed, like col. Burr's projects, beneath the veil of uncertainty, have operated on this honorable judge. The people will determine; it is only my province to lay before them information which I deem important, with my remarks, and they must ultimately decide and determine the innocence or guilt.

When the grand jury returned their finding, and very remarkable and unprecedented address to court, Mr. Allen rose, and desired leave to copy it, that it might be published; for he felt uneasy himself, as men with whom he was intimate were implicated. He desired therefore that it might be taken out, to show that there was no shadow of suspicion.

Mr. Daveiss said, he fully assented to the copy and publication. I know, said he, that much parade of innocence will be affected; for me, I repose upon events. The public mind may be carried off—but yet in a few months it will see this project as it really is. My conviction is not shaken. The grand jury seem to have aimed a blow at the root of *veniar and suspicior*. Let the court fix the disgrace on me or on them.

I will venture to assert, that the address of the grand jury is altogether unprecedented, and consequently improper. Why was it necessary to depart from the common course of proceeding. Whenever in any case it is found necessary to leave the ordinary practice and regular mode of proceeding something has occasioned it, and you may begin to look somewhere for a motive which has produced this departure from established custom. Why then I ask, in this case did the jury travel out of the established course, which from time immemorial has been pursued, as well by the grand jurors of Kentucky, as of every other country, from the dawn of jurisprudence? And what but an idea of its impropriety induced one of the jurymen to positively refuse his signature to it. Did the jury think it necessary to remove suspicion from the character of col. Burr for them to transcend the usual limits of their duty by eulogising the man whom they could in their capacity as jurors, only condemn or acquit from the evidence before them? And when I again repeat this uncommon vindication? Why this eulogium? Did the jury attend to the proceedings before the court? Did they not see every nerve exerted by col. Burr and his counsel, to suppress enquiry? Does this look like innocence? I think not. And I trust the great body of the people in Kentucky will join me in opinion, that the jury have, by their singular address strengthened the idea which is entertained that col. B. is now engaged in a project inimical to the perpetuity of the union. Was there no evidence which though not legal, might yet be convincing to private individuals? But col. Burr is a man of so much importance to the community and his innocence, & even his exemption from suspicion so essentially requisite, that the jury drew up an address not only declaring him not guilty, which was the proper stopping place, but they go on to declare him clear of suspicion. This is one step farther than I believe any grand jury in the United States have gone. And I would ask the jury (for many of them have been on a jury before) whether, in acquitting any obscure individual, they would have made the same address? And whether they ever did? I fancy candor will force them to answer in the negative.

My feelings have been deeply interested in this subject as one which will in my opinion materially, I hope not fatally affect the prosperity, liberty and happiness of my country, and I have been led beyond my original intention in making these remarks, by a patriotic wish to guard my fellow citizens against the secret plans of col. Burr, and to prevent them if possible from being lulled into security by the peculiar address of the grand jury. I cannot here conclude without remarking the thorough conviction produced on my mind of the guilt of col. Burr, by the proceedings in court and the address of the grand jury. Every attempt was made by col. B. and his counsel in court to prevent an open enquiry; difficulties were thrown in the way of the public attorney, and nothing appeared to be left undone which might in any way embarrass him, or prevent his arriving at the truth.

And here again I cannot but extend my remarks by observing the apparent pre-determination of the honorable judge to have col. Burr acquitted with eclat, if possible. The judge was observed to remark, and with astonishment I listened whilst his honor was speaking, that he regretted that on the former occasion when the grand jury were called, he did not send them out before their discharge, and have a finding. Mr. Daveiss had stated to the court the reasons why he could not proceed against col. Burr, and yet the judge regretted he had not forced the jury to go out and bring a finding without evidence. What could be the object in a question which presents itself

to the mind of every reflecting man, of having a finding upon the indictment and the bare affidavit of Mr. Daveiss, without other evidence? No possible end could be answered except the display of innocence which such an event like the late one would have enabled col. Burr to make. And this is certainly the face which the subject wears. The judge appears from the whole tenor of his conduct, to have pre-determined that Burr should come off with eclat, and he therefore regretted that on the first call of the grand jury he had not cleared him by a finding on a mere blank paper of not guilty.

The executive will shortly be in possession of this judge's evidence before the committee who sat on Sebastian, and will then I trust be enabled to judge of his motives, and can account for things which now appear to want explanation. The cases of Burr and Innes will be before them and their country; their fellow citizens of western America expect them to act with decision and energy upon them; as upon them perhaps depends the future happiness and prosperity of our country.

PITTSBURGH, December 31.
THE CONSPIRACY.—Yesterday morning, in consequence of information given to Nathan Smith and George Robinson, esquires, justices of the peace, and to Lieut. Swearingen, commandant of the United States' garrison at Fort Fayette, two keel boats, from Freeport, (a small town on the Allegheny river, about 30 miles from Pittsburgh) were seized, as the property of the conspirators.

From the large size of the boats, and their being numbered 1 and 2, they carry strong evidence of being the property of a company, and calculated for visualizing an expedition.

Their loading, it appears, consisted principally of provisions, with some military stores—and the number of men not more than sufficient to navigate them to Natchez—the headquarters of Burr.

When seized, they were under the orders of Weaver, of Greenough, who is well known to be one of Burr's contractors—and Davis, the Irish royalist of Pittsburgh, also put a variety of articles on board, for the same destination.

Upon examination before the magistrates, Weaver produced an affidavit made before the probatory of Westmoreland county, bearing that the articles in the boats were consigned to a Mr. Pottlewale, at Natchez, to be by him sold on his (Weaver's) account, to the highest bidder.

The magistrates and Lieut. Swearingen therefore agreed to discharge them. We hope, however, that the Ohio militia at Cincinnati, will detain them, as a notwithstanding Weaver's affidavit, there is no doubt of the boats being destined for a treasonable purpose. Comfort Tyler is the person from whom Weaver received his instructions.

Extract of a letter from a gentleman at Chillicothe, (Ohio) to the Editor, dated Dec 19, 1806.

I assure you that the infamous traitors are putting on long faces; they are few in number, in this quarter—and the militia, from 15 years of age and upwards are ready at a moment's warning, to suppress the efforts of the traitors. It is said young Newell, Butler and Robinson, are on their way, with a band of forty men, to join the standard of Colonel Burr—if so, they will find that one pair of heels is worth two pair of pistols. All the militia want is a fight of the traitors.

MUNDEN, (HAR.) October 20.

Yesterday arrived here the brave Prussian Lieut. Hellwitz, of the regiment of Plotz, with his hussars, with which near Eisenach he attacked the French, escort of 300 men, who had in possession the late Prussian garrison of Erfurt, (7000 men) which they were marching towards the French army—the escort was either cut down, or made prisoners, and the garrison liberated—they are now marching in here.

The Prussians have evacuated Hanover—Hameln is garrisoned, and commanded by Gen. Von Schiller.

The disfigured corpse of Prince Louis, of Prussia, covered with wounds, has been deposited at the castle Saalfeld, till it can be removed to Berlin.

Another Prussian army of 50,000 men has assembled between Brunswick and Magdeburgh, and another battle was expected.

The Swedish troops have advanced towards the Elbe.

On the 17th, a convention was signed at Nauenburgh, by France & Saxony—the troops of the latter were to abandon the Prussians.

All strangers have been compelled to leave Magdeburgh—the French army was not far from it on the 22d, and sent in a trumpeter.—The Prussian army have passed over the Oder.

The French have ordered the merchants at Leipzig to deliver up all British property in four days.

On the 18th Oct. it was stuck up at Berlin—The King has lost a battle; the first duty of a citizen is quietness; & the Government desires every body to conform thereto. The King & his Brethren live!

The villages on the high road from Bamberg to the frontiers of Thurgovia, are mostly ruined and abandoned by their inhabitants. Several houses had between 50 and 100 men quartered upon them at a time—the inhabitants gave what they had, and when all was finished, they bade adieu to their paternal roofs. Beef costs at Cronach one guilder per pound.

A Cook Wanted,
To hire or purchase, one that can well recommend. Also, a GIRL about 14 years old, accustomed to house work. Apply to the printers.

A Carriage.
An old Family Carriage, will be sold cheap. It may be converted into a good Hack at small expense. Apply to the printer.
December 24