

Chapter 6 (11-01-11)

**“What was treason thirty
years ago, is patriotism now.”**

Aaron Burr 1756-1836

How did Davis Floyd get mixed up
with the Aaron Burr Conspiracy?

And what was the extent of
Floyd’s involvement?

Thoughts on Burr

Near the end of his life Aaron Burr would say in connection with the crime of treason with which he had been charged earlier in his life “What was treason thirty years ago, is patriotism now.” Burr may have been guilty of killing Alexander Hamilton, who had fought in several duels compared to Burr’s one or two duels. Burr may have been guilty of being a womanizer but he claimed the women eagerly and voluntarily sought his advances and he merely accommodated them. But Burr was never guilty of treason under the laws of the United States.

Burr’s 1805 Incursion into the Ohio River Valley/Indiana Canal Company

Davis Floyd met Burr at the Falls of the Ohio in 1805. He was introduced to Burr at the Jeffersonville home of Judge Thomas Terry Davis who would later play a role in Floyd’s conviction in Burr’s famous downriver expedition. Some people referred to it as a “conspiracy” but that was never proved in the courts, and courts in Kentucky, the Mississippi Territory, Virginia, and the Indiana Territory

each addressed the issue. In 1805 Floyd was elected Clark County's representative in the Indiana Territorial House of Representatives. At that time Clark County composed about twenty percent of modern day Indiana. Floyd had previously been the first Register of Deeds in Clark County and was still Sheriff of that county in 1805. By that time Floyd had garnered a lot of political support in the Indiana Territory. Legislation was introduced into the General Assembly composed of an elected House and an appointed Legislative Council, and a law was passed creating the Indiana Canal Company. Among the prominent persons on the company's first board of directors in addition to Burr and Floyd were John Brown, a U. S. Senator who represented Kentucky from 1792 until 1805; General George Rogers Clark, who lived in Clarksville overlooking the Falls of the Ohio; Marston G. Clark, a cousin of the Gen. Clark who served under General Anthony Wayne; William Croghan (pronounced Croan), who was a major in the Revolutionary War, was General' Clark's brother-in-law, and lived across the river at Locust Grove in Louisville; Jonathan Dayton, a U. S. Senator who represented New York; John Gwathmey, a local politician in Jeffersonville and brother-in-law to General Clark; John Harrison, the son of Gov. Harrison and the receiver of public funds in the land office in Vincennes; Benjamin Hovey, a New York speculator who after inspecting both sides of the Falls in 1804 concluded that the Indiana side was superior; Josiah Stephens, an active canal promoter; and Samuel C. Vance, from Lawrenceburg, Indiana. Political influence determined who Burr and Floyd brought to the table in this venture.

Coincidentally, in 1805 the General's brother, William Clark, and his co-commander, Meriwether Lewis, and the Corps of Discovery were between Fort Mandan in present day North Dakota where they spent the winter of 1804-1805 and Fort Clatsop near the mouth of the Columbia River in modern day Oregon and where they wintered in 1805-1806. It was during this time that Clark and

Lewis had met Sacagawea and that she, her no-good husband, Charbonneau, and their just born boy child, Pomp, had joined the expedition.

By the end of the third quarter of 1805 \$120,000 in stock in the canal company had been subscribed. However, a canal on the Indiana side of the Ohio River was never to be. As far as it is known no money came into the company's coffers, no land was assigned thereto, and no construction was ever performed. Jeffery G. Mauck, in his unpublished *The Floyd Family of Virginia in the Settlement of the Ohio Falls Region and the American Westward Migration* prepared for the Carnegie Center for Art and History in New Albany, Indiana in 2002, said "The whole venture became a political and social black eye for Davis Floyd as well as the Clarks, who had loaned their good name to the plan." This may or may not be true. There were twelve members of the canal company's board of directors and they and others were prepared to invest heavily in the enterprise. Speculation was rampant on the Western frontier of the United States at that time and this project was probably recognized by the investors as just that. Burr's expedition in 1806, which is discussed in this chapter and the next chapter, was another such speculative venture promoted by him, and in which Floyd expended his own funds.

Burr had a gripping personality and easily attracted other men to his way of thought. His credentials as former vice-president carried a lot of weight. And in the area west of the Appalachian Mountains the fact that he had shot and killed Hamilton, a hated Federalist by many, added to his charisma. Burr thought that killing Hamilton would bolster his reputation in the Eastern United States but it had done just the opposite. But in the West things were different.

In June 1805 Burr was on his way up the Cumberland River in one of Jackson's boats to rejoin his friends on the Ohio River. Now enters into Burr's life one of the vilest men in the history of the United States Army. General James Wilkinson

had followed Burr down the Ohio River and was at Fort Massac in the Indiana Territory (Illinois country) when Burr arrived at that post. Wilkinson had just been appointed by Pres. Jefferson as the Governor of Upper American Louisiana. To support the accusation of General Wilkinson's vileness, it is necessary at this point to quote liberally from Stephen E. Ambrose's classic book on the Lewis and Clark Expedition, *Undaunted Courage*:

General James Wilkinson (born 1757) was a fabulous if despicable character. As an officer in the revolution, he had entered into the Conway Cabal (a group trying to supplant General [George] Washington), and from then until his death in 1825 he never met a conspiracy he didn't embrace. Charming, amoral, shrewd, a high risk-taker, and a survivor, he was a double agent. As Donald Jackson writes, "one never really knows at any given time whether Wilkinson is acting on behalf of the United States, Spain [it was later discovered that in 1787 Wilkinson took the oath of allegiance to Spain and became secret agent number 13 on the records of the Ministry of Foreign Affairs at Madrid Spain], or – as was often the case – his own arcane greed for power and money.

He had betrayed Washington; he betrayed his superior, General Anthony Wayne, intriguing against him for his job; he betrayed General George Rogers Clark, his rival for popular leadership in the West, spreading rumors and telling lies about him, he betrayed his country when he swore to Spain that he would work for the secession of the western United States from the Union.

He further betrayed his country in a March 1804 message to Madrid. At the time he was in New Orleans. He reported that Lewis's expedition was about to depart from St. Louis, Missouri to ascend the Missouri River, and its objective was to cross to the Pacific. In New Orleans, Louisiana, the established French and the newly arrived Americans were making bets on how long it would be before the United States established a seaport on the Pacific. Wilkinson told Madrid the big money was saying five years.

Ambrose, Stephen E., *Undaunted Courage*, Simon & Schuster, New York, 1996, pp. 334-335.

Burr became another cog in the wheel of General Wilkinson's betrayals. Co-authors Wandell and Minnigerode said "General Wilkinson's role in Colonel Burr's concerns was that of Judas..." (See Wandell, *Aaron Burr*, Vol. Two, p. 77.)

Burr's 1806 Incursion into the Ohio River Valley and His Alleged Conspiracy

It was not until 1806 that Burr's alleged conspiracy got underway. Earlier that year there had been another so-called conspiracy or filibuster led by General Don Francisco de Miranda. The two filibusters were very similar to each other. Co-authors Wandell and Minnigerode state that "Each was in effect, although the details varied, a filibustering adventure organized on American soil against a technically friendly nation [Spain]; each was reported to have enjoyed the private support of the Government [Pres. Jefferson]; each resulted in a trial involving the testimony of administration officials; and each was betrayed by a traitor, necessitating, perhaps, a hasty repudiation by the Executive [Jefferson again]." (See Wandell, *Aaron Burr*, Vol. Two, pp. 62-63.) In the Miranda conspiracy a ship loaded with volunteer soldiers from the United States landed near Caracas where the fighting against the Spanish led to a momentary success but when the British abandoned the cause the soldiers had to withdraw. The Marquis Yrujo had already sent the necessary warnings to Spain after being informed of them by none other than Sen. Dayton. According to Sen. Dayton, Vice-President James Madison had told General Miranda that his official approval was out of the question, "but that if private citizens...chose to advance their funds for the undertaking...the Government would shut its eyes to their conduct, provided that Miranda took his measures in such a way as not to compromise the Government." (See p.63.) And if there should be war with Spain, "this undertaking would prove to be a diversion favorable to the views of the American Government." (See p. 63.)

The Miranda filibuster demonstrated how Jefferson privately supported the clandestine venture against Spain but then abandoned his support when things did not go according to his wishes. The same thing happened with the Burr filibuster but this time the villain was a United States Army General.

At the end of the Revolutionary War, Spain and France were trying to persuade England not to recognize America's independence. When this strategy failed Spain decided to recruit secret agents in America and pay them handsomely for information. It was during this effort that Gen. Wilkinson switched allegiance. These agents would stir up Indian massacres and try to close the Mississippi River to the trans-Appalachian areas of Kentucky and Tennessee. When Burr was in Philadelphia after he left office, the British Minister at Washington, Anthony Merry, was writing to his superior in England as follows:

Mr. Burr (with whom I know that the [British] deputies became very intimate during their residence here) has mentioned to me that the inhabitants of Louisiana seem determined to render themselves independent of the United States, and the execution of their design is only delayed by the difficulty of obtaining...assurance of protection and assistance from some Foreign power, and of concerting...their independence with that of the inhabitants of the western parts of the United States... It is clear that Mr. Burr...means to endeavor to be the instrument of effecting such a connection.

Wandell, Samuel H., and Minnigerode, Meade, *Aaron Burr*, Vol. Two, G. P. Putnam's Sons New York, New York, 1927, p. 36.

The "assistance" which Burr sought from England was money. It would cost money to carry out his plan. Did Burr ever receive money from England? There is no evidence he did.

There is no doubt when Burr was talking to Gen. Wilkinson, the two men were discussing the separation of the Trans-Allegany West from the United States; when he was talking to the men who would become his key leadership he was talking about the invasion of Mexico, primarily Texas; and when he was talking with the rank and file members of the expedition he was talking about the Bastrop colonization. Incidentally, in 1805 secession was not a crime in the United States but treason was. How did it therefore come about that Burr was charged with a "high misdemeanor" two times and with treason two times?

However, as Burr was traveling back to the East another Spanish secret agent was circulating rumors in the West that Burr was proposing a revolution and organizing a separation of the Trans-Allegany West. Newspapers were picking up these stories and they were being published; as newspapers frequently do, they tried to do a “job” on Burr. Authors Wandell and Minnigerode came to Burr’s defense on the issue of revolution:

Precisely—nonsense, all the revolutionary part of it. Except at the hands of Number Thirteen Wilkinson, there was never produced against Colonel Burr any evidence that he had ever mentioned the subject even during his Mississippi journey. Colonel Burr was not disturbed by what the papers were saying. And what is perhaps more interesting, the government was not disturbed. Could it have been, then, that certain important personages in the government saw no cause for alarm because they were perfectly aware of what the Colonel was actually planning?

Wandell and Minnigerode, *Aaron Burr*, Vol. Two, p. 51.

Rumors were also being circulated by the Spanish minister that Burr and his followers were going to attack Washington, assassinate or capture the president, and appropriate the United States treasury. However, at no time did Jefferson sound any alarm. Co-authors Wandell and Minnigerode defended Burr again:

And on November 30, 1806 Mr. Jefferson was having a secret conference with Colonel Burr which lasted for more than two hours. What were they conferring about, what did Colonel Burr suggest to Mr. Jefferson and what did Mr. Jefferson hint to Colonel Burr? Was Mexico mentioned, did the verbal assurance of a tacit understanding pass between them? These questions have never been, they can probably never be answered. To some people—to Commodore Truxtun who despised Mr. Jefferson—Colonel Burr said that the President was not involved in his Mexican venture; to a far greater number of persons the Colonel always maintained that Mr. Jefferson was conversant with his scheme and that the administration viewed it with complaisance. It was so understood by the Mexican Association. Certain it is that for some fifteen months the Government did not lift a finger against Colonel Burr. Mr. Jefferson was not alarmed.

It is important to look at all of the facts that support or fail to support what Burr was planning to do. Jefferson and his administration supported the Miranda conspiracy until it turned sour. They ignored for 15 months what the papers were full of and what was being talked about on the streets of Washington about Burr. Burr had met with Jefferson before the critical month of December 1806. In November 1806 Burr wrote General William Henry Harrison, governor of the Indiana Territory "it may not be unsatisfactory to you to be informed that I have no wish or design to attempt a separation of the Union...that I never meditated the introduction of any foreign power or influence into the United States...in fine, that I have no project or views hostile to the interest, or tranquility, or union of the United States, or prejudicial to its government; and I pledge you my honour for the truth of this declaration." (Wandell, *Aaron Burr*, Vol. Two, p. 94.) Co-authors Wandell and Minnigerode say Burr's "plea for money [leading up to this time] was made on the basis of western land speculation" (p. 69.) and that "Burr was planning to establish a colony on the great Bastrop Grant—a million acre tract on the Washita River in Louisiana, ceded by the Spaniards to the Baron Bastrop, and now in great part owned by Colonel Charles Lynch, of Lexington, Kentucky, from which Colonel Burr expected to purchase some four hundred thousand acres." (pp. 69-70.)

Floyd's September 1806 Activities in the Indiana Territory

In September 1807 David Fisk from Clark County, Indiana gave testimony in Aaron Burr's trial in Richmond, Virginia in what was Burr's third and final trial. Burr had previously been charged in Kentucky and the Mississippi Territory but more about that later. The sworn testimony of David Fisk from the record of the proceedings in the trial court in Richmond gave more information about Floyd's involvement in the expedition than anyone else's testimony about him and the other leaders other than Burr. The other leaders were considered

Blannerhasset, Tyler, and Smith. Part of the record of Fisk's testimony showed the following:

..[S]ome time in the month of September, 1806, a certain Davis Floyd, of the Indiana Territory, came to this affiant, and asked him if he did not wish to take a voyage down the river with him during the course of the fall or winter; that he was going to settle a new country, the Washita, on the Red River. This happened either the next day, or a few days after Colonel Burr had been in Jeffersonville, the residence of the said Floyd. At that time this affiant did not tell him whether he would go or not; but about two or three weeks afterwards he did agree to go, the said Floyd having several times mentioned what a fine chance there would be for him; that they would not agree to give to any one man more than twelve dollars a month, and one hundred and fifty acres of land at the end of six months, besides clothes and provisions; but as he and this affiant were well acquainted, if he would have a confidence in him, he would do something very clever for him; and if they succeeded in their object, there would be fortunes for all who went. This affiant asked what other object they had besides settling the Washita. The said Floyd answered, that there was a new road to be cut a great distance, and several houses to be built, which would be a very profitable undertaking. No positive bargain was made between the said Floyd and this affiant.

American State Papers, Misc., Volume I, 1789-1809, p. 524.

Nov. 1806 Charges Filed against Burr in Kentucky/Floyd Is Government's Key/Only Witness

On Wednesday, November 5th, 1806 Burr's enemies in Kentucky, specifically Joseph Hamilton Daveiss, U. S. District Attorney in that state, made a motion in the federal court in Frankfort, Kentucky for a compulsory process requiring the presence of Colonel Burr and various witnesses to answer a charge of "high Misdemeanor." The affidavit in support of the motion said:

Aaron Burr...for several months past hath been, and is now engaged in preparing and setting on foot and in providing and preparing for the means for a military expedition and enterprise within this District for the purpose of descending the Ohio and Mississippi there with, and making war upon the subjects of the King of Spain who are now

in a state of peace with the people of these United States, to-wit on the Provinces of Mexico on the westwardly side of Louisiana which appertain and belong to the King of Spain, an European Prince with whom these United States are at peace.

...the agents and emisaries of the said Burr have purchased up and are continuing to purchase large stores of provisions as if for an army-- while the said Burr seems to conceal in great mystery from the people at large his purposes and projects, and while the minds of the good people of this District seem agitated with the current rumor, that a military expedition against some neighbouring power is preparing by said Aaron Burr

Wilson, Samuel M., "The Court Proceedings of 1806 in Kentucky against Aaron Burr and John Adair," *The Filson Club History Quarterly*, Volume X, 1936, pp. 31-32.

The affidavit was signed by Daveiss but was based on pure hearsay; that is, he had no personal knowledge of any of the facts recited in the affidavit. Two factors jump out of this sworn statement. First, Daveiss accused Burr of engaging in his military expedition against Spain "for several months past" in Kentucky. The date of the affidavit was November 5th, 1806. "Several month past" indicated misconduct since sometime after the beginning of 1806. It did not appear Daveiss was accusing Burr of misconduct in 1805. Second, the affidavit admitted that the "facts" of a military expedition were based on a "current rumor," These assertions tend to prove that Burr's plans were fairly new at least in Kentucky, the jurisdiction in which Daveiss had to prove his allegations. The federal law that Daveiss claimed had been violated by Burr said:

That if any person shall within the Territory or jurisdiction of the United States, begin or set foot, or provide or prepare the means for any military expedition or enterprize to be carried on from thence against the territory or dominions of any foreign prince or State with whom the United States are at peace, every such person so offending, shall, upon conviction, be adjudged guilty of high Misdemeanor, and shall suffer fine and Imprisonment at the discretion of the Court in which the conviction shall be had, so as that such fine shall not exceed

three thousand dollars, nor the term of imprisonment be more than three years.

Wilson, *The Court Proceeding of 1806 in Kentucky against Aaron Burr and John Adair*, p. 32.

This federal "high Misdemeanor" was harsh enough to carry a penalty of a \$3,000.00 fine and three years in jail. But it was not as harsh as treason which carried a penalty of death.

The November 17th, 1806 issue of *The Kentucky Gazette* reported on the court's activities as follows:

On Wednesday the 5th inst. when it was currently reported and generally believed in this place, that Colonel Burr had left Lexington, Joseph H. Daviess attorney for the United States for this district, appeared in court and after some preliminary observations calculated to excite great expectations, read the affidavit which appears in this paper, and moved the court for a capias [a warrant or order for arrest of a person] against Colonel Burr, and for compulsory process to compel the attendance of witnesses.

The judge conceiving the applications of a novel nature, and the form very unusual, took time to consider. It happened that Colonel Burr had not left Lexington and on hearing of this proceeding, sent a messenger to Frankfort, to inform the court that he should on the day following present himself to meet an enquiry.-- -- On Friday [November 7] Colonel Burr arrived in Frankfort attended by several gentlemen from Lexington; on Saturday morning [November 8] he presented himself in court, his appearance caused much sensation--to his enemies it was evident chagrin--to the impartial, that is to nine-tenth in the house, it gave the utmost satisfaction.

Before Colonel Burr came into court the judge delivered an opinion, which may be seen in this paper. Colonel Burr rose and in a brief impressive manner stated his surprise at a proceeding so extraordinary at a time when he was supposed to have left the state, with some other remarks which cannot be correctly detailed, and offered to meet, and invited any investigation in any form, provided it was prompt. Mr. Daviess professed to be ready to proceed as soon as the witnesses could be had, and on consulting the marshal, said that the attendance of the witnesses could be procured by Tuesday [November 11, 1806] evening; that he would engage to proceed on Wednesday [November 12, 1806] morning, and that in case an

indictment should be found, that he would also be ready to proceed forthwith to the trial---to this Col. Burr assented. A grand jury was empannelled from persons in the court, immediately sworn and adjourned to attend on the next Wednesday morning, when they would receive a charge from the judge. On the same day subpoenas being granted, the deputy marshals were sent to Louisville, Jeffersonville, Lexington, Danville and other places to summon witnesses, principally persons supposed to be confidants of Colonel Burr.

The Kentucky Gazette, Vol. XX, No. 1093, Monday, 17 November 1806.

It is obvious from this newspaper account that Burr was willing to meet his protagonists face to face. It was also obvious that the general public in Kentucky admired Burr and doubted his involvement in any misconduct. On Saturday, November 8th, 1806 Federal Judge Harry Innes, who served in that position from 1789 until his death in 1816, issued his opinion on Daveiss' motion. Judge Innes observed that there were four ways to convict persons of crimes and misdemeanors and that the way used by Daveiss was not one of them. The salient parts of the order read:

These reflections extend to the general principle arising out of this case.--Admit however that they are erroneous--To award process would be improper--it would be an act of oppression; Because there is not legal evidence before the Court to authorize an arrest of the person accused. The evidence is the oath of a person [Daveiss], who has been informed by one not upon oath, that the deponent believes the fact to be true. I have no doubt of the truth of the affidavit--that is, that the deponent has been informed of the fact stated--and it is possible the fact as stated is true--yet it is not legal evidence, and not being legal evidence the Court cannot act upon it.

Upon this view of the Subject, I am compelled to declare: that as the case is a new one--as no precedent has been shewn to justify such a proceeding which are regularly and well understood, vizt., by applying to the Judge out of Court and obtaining a warrant upon legal evidence--or by the Court ordering a Grand Jury to be summoned instanter and preferring an Indictment--this motion is overruled.

Wilson, *The Court Proceedings of 1806 in Kentucky against Aaron Burr and John Adair*, pp. 34-35.

In overruling Daveiss' motion the court was in effect saying that there were no legal grounds in the motion to prosecute a case against Burr. This would be the first of a series of attempts to bring criminal charges against Burr and others. For Daveiss the handwriting was on the wall and he instantly took Judge Innes' advice; and selecting one of the options suggested by Judge Innes, he moved the court to empanel a grand jury. The judge granted this motion and ordered the United States Marshal to cause twenty-four freeholders (property owners) to be empanelled. The following is the order of the court on Saturday, November 8th, 1806:

**To Joseph Crockett
Marshal of said District**

And thereupon the said Marshal caused to come immediately twenty four freeholders to be sworn and empannelled in and for the body of said District, to-wit, Hubbard Taylor, Foreman, William Taylor, George Thompson, Joshua Barbee, Robert Alexander, William Trigg, Henry Lee, James Knox, Thomas Arnold, Nicholas Lafon, George Greir, Harman Bowmar, John Payne, John Machir, Nathaniel Hart, John Patrick, Jacob Fishback, William Harp, George Madison, Richard Apperson, Norbourn B. Beall, John McKinley, John Overton & John Brown, who being elected, tried and sworn as the manner is--the said attorney [Daveiss] moved the Court to adjourn the said Jury until Wednesday [November 12, 1806]...and to compel the appearance of certain witnesses to give testimony before said Jury upon an Indictment preferred by said attorney [Daveiss] against Aaron Burr Esquire--It is therefore ordered that the said Jury and Witnesses Subpoenaed accordingly....

Wilson, *The Court Proceedings of 1806 in Kentucky against Aaron Burr and John Adair*, pp. 35-36.

Col. "Joseph Crockett," was the Marshal for Judge Innes' District Court. He fought in the Battle of Point Pleasant in 1774 and then served under Gen. George Rogers Clark commanding the Illinois or Crockett Regiment in 1779. He returned to Virginia, married a beautiful widow, and they moved to Kentucky.

The November 10th, 1806 issue of *The Kentucky Gazette* reported as follows:

The attorney [Daveiss] then moved for a warrant to summon a grand jury, before whom he was to prefer an indictment against Col. Burr. This the court immediately granted; and a warrant was given to Col. Crocket, the marshal of the district for that purpose. A copy of it, therefore, shall be obtained and published in an extra half sheet in the beginning of the week, with the farther proceedings of the court on this important question.

The Kentucky Gazette, Vol. XX, Number 1091, Monday, 10 November 1806.

The Kentucky Gazette then went on to report:

About one o'clock on Saturday [November 8, 1806], Col. Burr entered the Federal Court attended by General Posey, General Hopkins, and Henry Clay, esq. and after having seated himself for a few minutes, rose and addressed the Court: He stated that he had been on the eve of his departure from Lexington, of which he had advised his friends, when he was informed that his name had been mentioned in that Court with reproach, that he immediately made it his business to hasten to Frankfort and present himself before the Court for investigation; that his business was of such a nature that a long detention would be injurious, and he wished to know from the attorney [Daveiss] whether the investigation would be gone into without delay.

Mr. Daviess observed that in making the observations to the Court, he had used no reproachful term of the private character of Mr. Burr, and he should avoid it during the investigation; that it would require some time to collect the witnesses which he wished to summon; but that no unnecessary delay should take place. Some further observations were made and the Grand Jury ordered to assemble at ten o'clock Wednesday morning [November 12, 1806], at which time witnesses are summoned to attend. Col. Burr's deportment was very dignified and his observations concise and impressive. What evidence will be offered by the Federal Attorney is not known; but publick opinion in Frankfort appears much in favour of Col. Burr.

The Kentucky Gazette, Vol. XX, No. 1091, Monday, 10 November 1806.

Apparently, the twenty-four men who were selected to sit on the Grand Jury were either in the courtroom or in the proximity therewith. The court record indicates that Col. Crockett caused them "to come immediately" and apparently they were "elected, tried and sworn." This panel was probably a blue-ribbon

group of men. One of the Grand Jury members was John Brown, who would later be subpoenaed as a witness by Daveiss. Daveiss then moved for a continuance of the hearing and for a court order compelling the attendance of certain witnesses to testify before the Grand Jury. The motion was granted by Judge Innes.

Who were the three men who attended Court with Burr? "Gen. Posey" was Gen. Thomas Posey, who was a Revolutionary War soldier, and moved to Kentucky in 1802 near Henderson. In 1805 he was the Lt. Governor for Kentucky. From 1813 until 1816, when Indiana became a State, he served as the Governor of the Indiana Territory. Floyd was his personal secretary at least for part of his term. "Gen. Hopkins" was General Samuel Hopkins, who was also a Revolutionary War soldier. He came to Kentucky in 1793 and settled in Green County. At the time of Burr's trial in Kentucky he was a State Representative. "Henry Clay, esq." was Burr's primary lawyer. He was also a U. S. Senator from Kentucky.

On Wednesday, November 12, 1806 the Grand Jury assembled to hear the evidence. Burr was in court on this date with his lawyer, Henry Clay. And supposedly Daveiss was ready to proceed. However, here is the Court's entry for that date:

And thereupon came also the attorney for the United States, and suggested to the Court that, altho all of the Witnesses actually summoned on behalf of the United States attended, yet he could not now proceed on the enquiry intended for the Grand Jury--because Davis Floyd a Witness on behalf of the United States for whom the Marshal had been sent with a Subpoena to Jeffersonville [Indiana Territory] his usual residence, could not be had during the Session of the Indiana Legislature, now in Session [at Vincennes], of which he was a member, and that his attendance was indispensable.

It is thereupon ordered that the Grand Jury be discharged &c.

The Indiana Legislature was actually in session in Vincennes from November 3 until December 6, 1806, and the records show that Floyd was there. While the other subpoenaed witnesses were present in the Court on November 12, Floyd was not there and he was the only witness that Daveiss thought could help him prove his case. Had Daveiss ever spoken to Floyd about his knowledge of Burr's activities? Had he ever spoken to his other witnesses? The Court "ordered that the Grand Jury be discharged." Previously the Grand Jury had been "adjourned," not "discharged." Did the Judge think that the Grand Jury would not be needed again as far as Burr was concerned? The Judge had already dismissed Daveiss' motion and when the newly appointed Grand Jury and all of the witnesses were present and ready to proceed except Floyd, Daveiss said he could not continue without Floyd's presence because his testimony was "indispensable." Daveiss had not made much of an impression on the judge.

By this time Floyd was the acknowledged leader of Burr's efforts in Louisville and Southern Indiana; Floyd was recruiting men like David Fisk and gathering boats and supplies to go downriver to eventually join Burr and others in whatever adventure Burr was contemplating. Daveiss and Floyd may have known each other intimately since Daveiss was a member of the Louisville Lodge of Freemasonry and Floyd was probably a member thereof. There is sufficient information available today to assume that Daveiss knew about Floyd's activities and that they involved a military expedition against a Spanish possession namely Mexico. Floyd may have suggested to someone who relayed it to Daveiss that by the time the expedition was carried out that the United States would have declared war on Spain and that would make everything legal for Burr and his followers.

The November 17th, 1806 issue of *The Kentucky Gazette* reported:

These events have circulated rapidly throughout the country and generally mingled with error and exaggeration, except great solicitude and expectation. On Wednesday...[November 12, 1806] this town was crowded with persons from all quarters, beyond any former example; all was eagerness and impatience. The witnesses who had been summoned attended without an exception, the court was opened, the grand jury was called and appeared. Just as the judge was expected to deliver his charge, Mr. Daviess rose and moved that the grand jury might be dismissed, declaring that he was not prepared to proceed with the enquiry, by reason of the absence of a witness whom he deemed material. The disappointment and chagrin of a crowded audience may be conceived, but the ridicule and laughter which followed was universal. The public sentiment which had all along been strongly in favour of colonel Burr, now burst forth without disguise. There is not time to comment on these transactions, but two or three facts may tend to disclose the motive of this *prosecution*, which is generally viewed as a *persecution*.

At the time it was commenced it was believed that colonel Burr had left the state.

Mr. Daviess swears that the information he had received, convinced his mind of the truth of the charge. Why was this information not given to the grand jury?

The subpoenas returned then the names of the twelve witnesses, all of whom attended, one more was desired by Mr. Daviess, this was by him stated to be, a gentleman of Jeffersonville, (opposite Louisville on the Ohio) who had some days previous gone to Vincennes, to attend the Legislature of the Indiana territory----this legislature had commenced on the 5th inst. Mr. Daviess did not profess to have had any communication with this gentleman directly or indirectly----hence this testimony could have no influence with Mr. Daviess in giving his affidavit or in instituting the prosecution.

There is some reason to believe that the absence of this gentleman [Floyd] and the occasion of it, were known to Mr. D. when the grand jury were summoned on Saturday [November 8, 1806].

Colonel Burr throughout this business conducted himself with the calmness, moderation and firmness which have characterized him through life----He evinced an earnest desire for a fair and speedy investigation; free from irritation or emotion, he excited the strongest sensation of respect and friendship in the breast of every impartial person present.

The subpoenaed witnesses were not identified in the court records but they were identified in the November 17th, 1806 issue of *The Kentucky Gazette*. They were Sam. N. Lockett, William Fleckner and Benjamin Sebastian of Jefferson Co.; John Jordan, jun., Thomas Bodley and Jesse Bledsoe of Fayette Co.; Thomas P. Reed and John Adair of Mercer Co.; Thomas T. Davis of the Indiana Territory; Charles Lynch of Shelby Co.; and John Brown of Franklin Co. Some things are known about some of these witnesses. Benjamin Sebastian lived in Louisville and served as a member of the Kentucky Court of Appeals from 1792 until December 6th, 1806 when he resigned. His connection with the Spanish commercial alliance and its investigation by the Kentucky legislature probably prompted his resignation. He retired to his home in Grayson County at the Falls of the Rough and lived out the remainder of his life there. John Jordan lived in Lexington where he operated a merchandizing business and served as a town trustee for many years. At one time he was a director of the Kentucky Insurance Company. In 1802 he was appointed postmaster of Lexington by Pres. Jefferson in which position he served until his death in 1813. Thomas Bodley was the circuit clerk in Lexington. Jesse Bledsoe was a Lexington lawyer. Thomas T. Davis was a federal judge in Jeffersonville in whose home Floyd was introduced to Burr. Davis was also the judge who later accepted Floyd's guilty plea for his involvement in Burr's adventures, for which he sentenced Floyd three hours in jail and fined him \$10.00. Floyd, after the death of his first wife, would marry Judge Davis's widow. Charles Lynch was the purchaser of 700,000 acres in the Washita River Valley in 1804 and in 1806 Burr arranged to purchase one-half of this acreage from him. This acreage was the proposed site of Burr's settlement to be known as the Bastrop Colony. John Brown was a member of the U. S. House of Representatives from 1789 until 1792. He lived in Virginia at that time. He was instrumental in the founding of the State of Kentucky and served as one of its U. S. Senators from 1792 until 1805.

The Kentucky Gazette raised some valid issues. Where did Daveiss get the so-called facts upon which he based his affidavit? Apparently, they were not from the witnesses who were all in the courtroom on Wednesday, November 12th, 1806. Apparently, they were not from Davis Floyd. The reporter said that Daveiss did not have any "communication" with Floyd either "directly or indirectly" and hence his affidavit was not based on anything that Floyd had told him. Or was that the case? It is most probable that Daveiss' information and list of witnesses came from the infamous Gen. Wilkinson, whose loyalties may have favored Burr originally but were intended by him to only benefit Spain.

By way of a side bar, on November 17th, 1806 *The Kentucky Gazette* announced "Captain [Meriwether] Lewis, of the Oregon-Missouri exploring party, passed through Frankfort last week on return to the City of Washington, and was accompanied by a chief of the Mandan tribe."

Back on the main tract, on November 17th, 1806 *The Kentucky Gazette* published the following queries addressed to Daveiss "by his friend EXCANTATION":

Were you not informed, before your illegal motion was submitted to the court, that Col. Burr had left Lexington and could not have it in his power to meet the charges against him?

Is it a fact that the grand jury were discharged by you, for want of evidence, without one witness being examined, although every one did attend who had been summoned?

If Mr. Floyd evidence would have been sufficient to convict Col. Burr, why were so many others summoned?

For what purpose were the witnesses summoned, that they were not examined?

What has been the expenses of this farcical prosecution, and who pays it?

Did not an avowed enemy of Col. Burr obtain a copy of your affidavit, previous to its being presented to the court? For what purpose was it granted?

Which do you think the most likely, that the citizens will address the legislature for the removal of Judge Sebastian, or that they will address the president [Jefferson] for your removal?

The Kentucky Gazette, Vol. XX, No. 1093, Monday, 17 November 1806.

These were stinging questions addressed to the U. S. Attorney, whose entire proceeding until this time, was fraught with missteps, innuendoes, and the complete absence of any evidence against Burr. The "avowed enemy of Col. Burr" was probably Gen. Wilkinson. Everything points to the General as the foundation for Daveiss' prosecution in Kentucky. And since that foundation was built on sand it tumbled.

The Court's record is silent for thirteen days from, Wednesday, November 12th until Tuesday, November 25th, 1806. On the latter date the following order was entered by the Court:

This day came the attorney for the United States and moved the Court to award a warrant to summon a Grand Jury to appear here on Tuesday, [December 2, 1806]...to enquire upon the breach of the laws of the United States alluded to in the affidavit filed on...[November 5, 1806] by the said Attorney and upon such other matters as may be submitted to them. And on the farther motion of the said attorney for the United States, stating that it was necessary to have Subpoenas issued to compell the attendance of witnesses to give testimony to the said Grand Jury to support the indictments he intends to prefer against the sd. [said] Aaron Burr Esquire, It is ordered that the clerk issue Subpoenas upon the request of the said attorney for Witnesses. __

Wilson, *The Court Proceedings of 1806 in Kentucky against Aaron Burr and John Adair*, p. 36.

During this time when Floyd was in Vincennes, Burr visited Gov. Harrison in the Indiana Territory's capitol to either gain his favor or to squash the rumors circulating in the Ohio River Valley about him or both. Floyd probably welcomed Burr's visit. Since Burr was supposedly in Washington city on November 30th, 1806 it is unlikely that the visit occurred in the latter part of November of that year. This visit probably occurred several days before the following November 27th, 1806 letter was sent by Burr to Harrison:

Considering the various and extravagant reports which circulate concerning me, it may not be unsatisfactory to you to be informed (and to you there can be no better source of information than myself) that I have no connection with any foreign power or government, that I never meditated the introduction of any foreign power or influence into the United States, or any part of its territories, but on the contrary should repel with indignation any proposition or measure having that tendency; in fine, that I have no project or views hostile to the interest or tranquility or union of the United States, or prejudicial to its government, and I pledge my honor to the truth of this declaration. It is true I am engaged in an extensive speculation, and that with me are associated some of your intimate and dearest friends. The objects are such as every man of honor and every good citizen must approve. They have been communicated to several of the principal officers of our government, particularly to one in the confidence of the administration. He has assured me my views would be grateful to the administration. Indeed, from the nature of them, it can not be otherwise, and I have no doubt of having received your active support, if a personal communication with you could be had.

Esarey, Logan, *Governors Messages and Letters of William Henry Harrison*, Vol. II, 1812-1816, Indiana Historical Commission, Indianapolis, Indiana, 1922, pp. 200-201.

Floyd was probably present during the meeting in Vincennes and felt relieved that Burr was giving the facts to Harrison. Burr's letter phrased everything in the present tense with the exception that he never considered any overture to introduce a foreign power or foreign influence into the young nation. A footnote to Burr's letter to Harrison in Esarey's book said:

Burr's movements had been the chief object of interest in the Ohio Valley since the summer of 1805. Davis Floyd had been active in his support, building and loading boats. Burr had visited Harrison at Vincennes, with what result is not known. So far as is known Harrison offered no opposition.... Butler, *History of Kentucky*, 320, says Burr made advances to Harrison but the latter repelled him.

Esarey, *Governors Messages and Letters of William Henry Harrison*, Vol. II, 1812-1816, p. 201.

On Tuesday, December 2nd, 1806, Judge Innes entered the following order:

Pursuant to an order made on Tuesday [November 25, 1806]..., directing the Marshal under a warrant from the Judge to cause to be empannelled a Grand Jury, they were accordingly on this day empannelled by the marshal and being called are as follows, to-wit, Abraham Hite (foreman), William Steele, George Madison, John Patrick, Thomas Lewis, Richard Apperson, Peter B. Ormsby, Nathaniel Hart, Joseph Winlock, Abraham Owen, Richard Davenport, Elijah M. Covington, Robert Johnson, Nicholas Lafon, John Kenton, Nicholas Miller, Richard Price, George Greir, John Bacon, Richard Fox, Thomas Johnston, Thomas Respas, and Francis Ratcliff, who were sworn as a Grand Jury of the United States in and for the body of the Kentucky District, to enquire &c.; they received a charge delivered by the Judge, and then retired from the barr to consider &c., and in a short time returned & informed the Court that they had no presentments to make nor had the attorney for the United States preferred any indictments to them. The attorney then on behalf of the United States [Daveiss] moved the Court that the Grand Jury be adjourned until tomorrow morning ten o'clock [Wednesday, December 3, 1806], as he would have then indictments to prefer for their consideration.

Wilson, *The Court Proceedings of 1806 in Kentucky against Aaron Burr and John Adair*, p. 37.

This appears to be a brand new Grand Jury panel. There were only twenty-three names on this list rather than twenty-four. And this was the third time that Daveiss had moved for either a continuance or an adjournment of the Grand Jury. What was taking him so long to find witnesses that could help him? He did indicate that "he would have indictments [more than one] to prefer for their consideration" on the next day.

In the November 27th, 1806 issue of *The Kentucky Gazette* the following was reported:

COL. BURR----AGAIN!

By a gentleman who left Frankfort yesterday, we learn, that the United States Attorney moved the Federal Court on Tuesday [November 25, 1806], that a Grand Jury should be summoned, which was accordingly done, to meet on Monday next [December 1, 1806], at 10 o'clock, for the purpose of enquiring into the conduct of Col. Burr. It is understood that Mr. Daveiss now, conceives he has it in his power to substantiate the charges against Col. Burr, made in his affidavit of a former occasion.

The Kentucky Gazette, Vol. XX, No. 1096, Thursday, 27 November 1806.

Here is what happened in Court on Wednesday, December 3rd, 1806:

On the Motion of the attorney for the United States [Daveiss], It is ordered that an attachment issue against John Adair for a contempt to the court in failing to attend as a witness on yesterday in behalf of the said United States to give testimony to the Grand Jury of the United States in and for the Kentucky District when he had been legally summoned by the Marshal so to do, and that the said attachment be made returnable as soon as executed.

The Grand Jury of the United States in and for the Kentucky District, who were adjourned until today, being called appeared in court agreeable to the adjournment. Whereupon the attorney for the United States [Daveiss] preferred to them an indictment against John Adair,--and there not being sufficient time to go through with the enquiry--It was ordered by the Court that the Grand Jury be adjourned until tomorrow morning ten o'clock.--

Wilson, The Court Proceedings in 1806 in Kentucky against Aaron Burr and John Adair, p. 37.

This was the third adjournment, not counting the one continuance, brought about by Daveiss' inability to produce witnesses who could testify against Burr. Adair had just resigned as Kentucky's U. S. Senator probably because of his connections with Burr. Like a lot of Burr's friends during this time Adair was eventually rehabilitated and served as Kentucky's governor from 1820 to 1824

and then as its 7th District Representative to Congress from 1831 to 1833. The indictment which Daveiss presented against Adair to the Grand Jury read as follows:

That a certain John Adair, farmer of the County of Mercer, in said district, did at said County and District on the first day of August last past [1806] in the present year One thousand eight hundred and six with force and arms then and there willfully and unlawfully and from evil premeditation set on foot and prepare for a military expedition and enterprise then and there against the dominions of the King of Spain who is an European Prince at peace with the Said United States, to-wit, The provinces of Mexico in North America which appertain to the dominions of the said King of Spain, contrary to the laws of the said United States in such cases provided and against the peace and dignity of the said United States.

Wilson, The Court Proceedings of 1806 in Kentucky against Aaron Burr and John Adair, p. 38.

This indictment differed slightly from the indictment filed against Burr. The Adair indictment used the words "willfully and unlawfully and from evil premeditation." Lawyers call that the "mens rea" element of a crime, or simply "premeditated criminal intent." Why did Daveiss add these words to the indictment against Adair? These words were not in the statute. Was he trying to protect Adair? Had someone told him that his charges were flawed without these words? Did Daveiss have information from someone that Adair had met with Burr on August 1, 1806 in Mercer County, Kentucky and that the two men had discussed plans of a military expedition. Was this someone Gen. Wilkinson? Burr may have said something to Wilkinson that he and Adair had met at the latter's farm and discussed the expedition. The Court entries for the next day, Thursday, December 4th, 1806, read as follows:

This day came the defendant John Adair, and it appearing to the satisfaction of the Court, that it was not contempt by him to the Court offered--It is therefore ordered that all further proceedings on the said attachment be discontinued.

The Grand Jury who had been adjourned until today [December 4, 1806] being called appeared in court agreeable to adjournment and thereupon the said Grand Jury returned into court the indictment which was preferred to them on yesterday against John Adair, “Not a true Bill.”

The Attorney for and on behalf of the said United States [Daveiss] then preferred to the said Grand Jury an Indictment against Aaron Burr. And there not being sufficient time to go through with the inquiry, It is ordered by the Court that the Grand Jury be adjourned until tomorrow morning ten o’clock.

Wilson, The Court Proceedings in 1806 in Kentucky against Aaron Burr and John Adair, pp. 38-39.

Daveiss lost first on the attachment order for contempt against Adair and then he lost again with the Grand Jury on the indictment against Adair. A “not a true bill” meant a finding of no indictment and no criminal case ensued. How many times had Daveiss “stuck out?”

Next Daveiss presented the Grand Jury with a new indictment against Burr. The new indictment read as follows:

That a certain Aaron Burr, late of the City of New York and vice president of the Said United States, did with force and arms at the County of Fayette [Kentucky] in said District on the twenty-fifth day of November last past willfully and unlawfully, and from evil premeditation, then and there set on foot & prepare for a military expedition against the dominions of the King of Spain who is a European Prince at peace with the said United States, to-wit, against the provinces of said King in North America, contrary to the laws of the said United States in such cases provided and against the peace and dignity thereof.

Wilson, The Court Proceedings in 1806 in Kentucky against Aaron Burr and John Adair, p. 39.

The new indictment recited Burr had engaged in misconduct on a specific day, to-wit: November 25, 1806, just ten days before in Fayette County, Kentucky, being Lexington. Was Burr still in Kentucky? This was brand new evidence or was it. There was not enough time that day for the Grand Jury to consider this matter so they returned the next day (December 5th, 1806). The grand jury was

not pleased with the proceedings by Daveiss against the two men as shown by their statement to the Court:

The Grand Jury are happy to inform the Court that no violent disturbance of the Public Tranquility or breach of the laws has come to their knowledge.

We have no hesitation in declaring that having carefully examined and scrutinized all the testimony which has come before us, as well on the charges against Aaron Burr, as those contained in the indictment preferred to us against John Adair, that there has been no testimony before us which does in the Smallest degree criminate the conduct of either of those persons, nor can we from all the inquiries and investigations of the Subject discover that anything improper or injurious to the interest of the Government of the United States or contrary to the laws thereof is designed or contemplated by either of them---December fifth one thousand eight hundred and six.

Wilson, *The Court Proceedings of 1806 in Kentucky against Aaron Burr and John Adair*, pp. 39-40.

The findings were signed by twenty-two of the twenty-three Grand Jury members. All indications are that Judge Innes was greatly annoyed with the proceedings advanced by Daveiss. The only entry on the subject that he made was "And the said attorney for and on behalf of the said United States having no more indictments to prefer, the said Grand Jury were discharged." (See Wilson, p. 40. That ended the proceedings in Frankfort. There was no return of a "not a true bill," but the Grand Jury's statement said enough. In the end Mr. Daveiss could not produce a single witness against Burr. At this point Burr had been cleared of any crimes, first by the Court, and second, by a Grand Jury. The members of the Grand Jury are identified in their report; the witnesses were not. It is not known what testimony was "examined and scrutinized" by the Grand Jury. It is not known whether Burr and his attorneys were present at this time. But they probably were not. It is not known what "inquiries and investigations" were made by the Grand Jury.

There were no more reports on the Court's proceedings against Burr in *The Kentucky Gazette*. It, its staff, and its readers no doubt had enough of Daveiss' imprudence. It was time to move onto other subjects.

In trying to explain the many letters that Burr had written to his friends and acquaintances during this time, co-authors Wandell and Minnigerode wrote:

In all of these letters, in all these declarations and assurances—one must try to record the apparent underlying facts—Colonel Burr was probably making out the best case for himself. Ostensibly, he was preparing a colonization expedition to the Bastrop lands—actually there can be no doubt that Mexico was his principal objective; Mexico, the whole Spanish dominion in North America judging by his maps, involving a naval expedition to Vera Cruz. That this invasion of Spanish territory must be contingent upon an American war with Spain was always his professed proviso, and that of his friends in the New Orleans Mexican Association—that it would have taken place in time, war or no war, is not so certain. It was understood differently in many enlisting centers! The Colonel always maintained that the Government approved of his plans; in his recruiting he made use of a letter from the Secretary of War which Mr. Jefferson afterwards pronounced a forgery; the fact remains that Colonel Burr had several conferences in Washington with government officials, and that, in any case, the evident connivance of the administration with the Miranda adventure would be no less accommodating in the matter of Mexico.

Wandell and Minnigerode, *Aaron Burr*, Vol. Two, p. 96.

Burr's Real Intentions

Bastrop Colonization, yes, Mexico conquest, maybe; secession and treason, never. How did Floyd get mixed up with Burr? It has previously been pointed out that Burr as a supposed expert in building canals and Floyd as a convenient, local politician, merged their skills to attract investors for the Indiana canal project at the Falls of the Ohio. The project never got off the ground and whether any money was raised is doubtful. Was Floyd duped into getting involved in Burr's alleged conspiracy? Probably not, he was aware in the fall of 1806 of rumors about Burr's intended purpose which might have included

separatist activities. However, after being shown the supposed letter from the Secretary of War and Burr's letter to Gov. Harrison denying that he had any secession desires, Floyd was satisfied and joined Burr.

In her book entitled *Children and Grandchildren of William and Abadiah (Davis) Floyd* compiled by Anna Margaret Cartlidge in 1966, the authoress says:

[Floyd] met Aaron Burr in Jeffersonville [in 1805] at the home of Judge Thomas T. Davis. [He] became interested in Burr's project for a canal through Jeffersonville around the Falls. When Burr came west again [1806], he showed Floyd a letter which was supposed to be from Mexico. Floyd raised troops and outfitted boats under the guise of colonizing lands along the Washita. Unaware that Burr was entertaining the hope of founding an independent empire west of the Alleghenies, Floyd probably believed they were acting for the United States Government on a dangerous secret mission.

Cartlidge, Anna Margaret, "Children and Grandchildren of William and Abadiah (Davis) Floyd," (Unpublished Manuscript), 1966.

While Floyd may have thought that Burr was a secessionist planning to separate part of the trans-Appalachian territories from the United States the evidence is scant that such was his actual purpose. There were a lot of Westerners who probably favored such a scheme but it was not Burr's intention to be that vehicle. There is no evidence that Burr was ever disloyal to the United States. Mrs. Cartlidge may have said that "Floyd raised troops" but in reality he raised men who probably had a variety of ideas what they were going to do ultimately. Also the letter that was shown by Burr to Floyd was from the U. S. Secretary of War and not "from Mexico."

Floyd's December 1806 Activities on the Ohio River

David Fisk's testimony about Davis Floyd in the record of proceedings at Richmond picked up again as follows:

On the 16th of December, 1806, this affiant moved down the river from the falls of the Ohio, in the Indiana Territory, with the said Davis Floyd, with two boats and one batteau [flat bottomed boat pointed on one or both ends], which the said Floyd had built there. On the same day, just as they were about to start, they were joined by Herman Blannerhasset, Comfort Tyler, and Israel Smith, with four batteaux and a number of men; the exact number he cannot state, nor does he know the number that started with the said Floyd; but when the boats joined Colonel Aaron Burr at the mouth of the Cumberland, (which was of a Saturday night, either on Christmas night or the first Saturday after Christmas,) he understood that the whole number of men, including those of Aaron Burr, were one hundred and three. After the boats had left the falls of the Ohio three or four days, he discovered for the first time, on board one of said Floyd's boats, a chest and a box, the former of which [the chest], it afterwards appeared, contained muskets and bayonets, a few fusees [probably a flare], and blunderbusses [short gun with a large bore and a broad, flaring muzzle, accurate at only close range] and pistols; the latter [the box] rifles. A day or two afterwards, the said Floyd inquired of the men if they did not want, each of them, a gun to take care of; that he had some there which he was afraid would get rusty. The chest and box were then opened, and all the arms taken out and cleaned, and some of them occasionally used by the men in hunting as they went down the river. There were, as near as he can judge, between twenty-five and thirty muskets with bayonets, two or three fuses, three or four blunderbusses, ten pair of pistols, and about eight or ten rifles. Some short time after the boats had joined Col. Burr, and before they had got into the Mississippi river while this affiant was lying sick on his trunk, he heard the said Floyd tell several of the men that they were going to take Baton Rouge and Mexico; this affiant asked how they were going to do it with so few men; the said Floyd answered, that a large party of men were to join us at Natchez, and General Wilkinson and his army were to join us at the mouth of Red River. Nothing of importance occurred till the boats got down to Bayou Pierre.

American State Papers, Misc., Volume I, 1789-1809, pp. 524-525.

Floyd was convinced that a large party of men was going to join them at Natchez and that Gen. Wilkinson and the U. S. Army were going to join them at the mouth of Red River. Fisk's quotation of Floyd's overheard conversation with some of the latter's men indicate Floyd knew more than contained in Burr's disclaimer in his letter to Harrison. It also indicated Wilkinson's involvement in

plans regarding Mexico. What Floyd did not know was Wilkinson had already exposed Burr.

In the *Journals of the General Assembly [of Indiana Territory]* Floyd is sketched as follows concerning his involvement with Burr:

It was probably his love for adventure that caused his involvement in the Aaron Burr conspiracy. Floyd first met Burr at Jeffersonville 1805, at the home of Judge Thomas T. Davis, and probably saw him frequently in Washington the following winter. They were both interested in the projected Ohio Falls Canal, and both appear among the first directors of the canal company incorporated at the first session of the Indiana General Assembly in 1805. The aim of Burr's plot—invasion of Mexico, capture of Baton Rouge, or whatever it was—remains to this day vague and obscure. There is no evidence that Floyd ever suspected Burr's intentions of being anything but strictly loyal and patriotic. His participation centered around Burr's projected colony on the Washita.

Thornbrough and Riker, *Journals of the General Assembly of the Indiana Territory--1800-1815*, p. 974.

It is again important to quote from Co-authors Wandell and Minnigerode to understand the full picture at this time:

Colonel Burr himself was still at Nashville, late in December, completing his arrangements. General [John] Adair had gone riding off to New Orleans; General [Andrew] Jackson had finally made up his mind that there was nothing illicit in the Colonel's projects. Indeed, at the time—whatever his previous intentions or his eventual hopes—Colonel Burr can have had nothing in mind but the Bastrop colony. The news of General [James] Wilkinson's Sabine treaty with the Spaniards had already reached him; he was "sorry for it" and felt that the General should have fought the enemy; but, at all events, he understood that war with Spain was again postponed, he realized, undoubtedly, that General Wilkinson had withdrawn his interest in the Mexican venture, there was nothing he could do, temporarily, except proceed with his colonization scheme.

After various delays, he set out, therefore, on December 22, to join Mr. Blennerhassett at the mouth of the Cumberland. He took with him some horses and thirty colonists, one of whom was a nephew of

Mrs. [Andrew] Jackson; in the two boats which alone were completed out of the five ordered from General Jackson's yard, receiving seventeen hundred and twenty-five dollars from the General for the unfinished barges. On December 23, he was at the rendezvous, greeted by his aides, Blennerhassett, Tyler, and Floyd, and being introduced to the young men who comprised the expedition.... There were perhaps sixty of them, all told, and nine boats—comfortable vessels, roofed over and divided into sleeping and living compartments. In the hold of were stores and implements for the colony, some necessary arms and ammunition, and one of the rafts carried horses.

Wandell and Minnigerode, *Aaron Burr*, Vol. Two, p. 151-152.

How was it that Burr and Floyd and others would be arrested for treason in the Mississippi Territory? The American Civil Liberties Union would have had a field day if it had been in existence in 1807. Remember that Burr and Adair had already been found innocent of any wrongdoing by Judge Innes and a Grand Jury in Frankfort, Kentucky. How much more would he and his cohorts need to endure?

Judge Davis' Letter to Pres. Jefferson

On January 12th, 1807, Judge Thomas Terry Davis wrote the following letter from Jeffersonville to Pres. Jefferson:

Colo Burr's Boats left this place about the 15th of Decr [1806] and was to Rendezvous at the Iron Banks The Whole number of Boats did not exceed 18--the men about 30, and I hear 4 or 5 from St Vincenes on the 26th of Decr they left the mouth of the Cumberland, and I am well informed with about 90 men.--their destination is not known--Ten Days after Burrs party left here about 250 of the Kentucky Militia came to the opposite shore and are there still.

Carter, Clarence Edwin, *The Territorial Papers of the United States, Vol. VII, 1800-1809*, United States Government Printing Office, Washington, D.C., 1939, p. 413.

Apparently, the Kentucky governor had ordered out the Kentucky Militia to Louisville to monitor the situation but the boats and men had already left.

Taylor's Letter to Gov. Harrison

Waller Taylor wrote a letter from Louisville to the Gov. Harrison on the same day that Judge Thomas sent his letter to Jefferson:

I arrived at Jeffersonville on Saturday morning last, after an extremely disagreeable journey, occasioned by the badness of the roads, and the difficulty of making our stages of a night. The public mind at this place appears to be much agitated, on account of Colonel Burr's mysterious movements. Conjectures are various about his intentions; but nothing certain has transpired to throw any light on his views. There is stationed at this place about two hundred militia, who examine all boats that descend the river. No discoveries have yet been made by them; and only two boats have yet been detained, which were built by Burr's direction at Jeffersonville, or this place, I am not certain which. A large drove of horses, said to be purchased for the expedition, will be seized to-day, by the civil authority of the State. It seems to me that the precautions now taken are perfectly useless; because Burr, I believe has got all the force he could raise from this State, and is, probably, before this time, at Natchez.

Esarey, Logan, *Messages and Letters of William Henry Harrison*, Vol. II, 1812-1816, Indiana Historical Commission, Indianapolis, Indiana, 1922. pp. 201-202.

What Had Happened to Floyd and What Lay Ahead?

As 1806 drew to a close Floyd had become involved with Burr to the extent that he was his quartermaster and had gathered men, boats, and supplies for the downriver trip. In the meantime U. S. Attorney Daveiss had tried to prove his case against Burr in Kentucky based upon Floyd's testimony. But neither the judge, nor the grand jury, nor Floyd had cooperated with Daveiss. What was next for Floyd? There would be three more trial proceedings against Floyd in the Mississippi Territory, the Commonwealth of Virginia, and the Indiana Territory.

Books and references other than those cited in this chapter:

None.

Images:

(1) Engraving of Aaron Burr.

(2) Map of Burr's Activities in the Ohio and Mississippi Rivers Valleys.