

Chapter 7 (11-01-11)

Davis Floyd was the only person convicted of a crime in connection with the Aaron Burr conspiracy

How did Davis Floyd extricate himself
from the Aaron Burr Conspiracy?

Burr's Trial in the Mississippi Territory

The *Third Annual Report of the Director of the Department of Archives and History of the State of Mississippi*, Oct. 1, 1903-Oct. 1, 1904 (Nashville, Tenn., 1905) contains copies of the historical documents concerning the Aaron Burr conspiracy in the Mississippi Territory. As early as December 15th, 1806 Cowles Mead, the acting Governor of the Mississippi Territory, warned the Mississippi Territorial Legislative Council and the House of Representatives that there was underway "a plot designed to destroy the connection, which exists between this Territory and the Government of the United States...." (See p. 40). It is likely that this report of a "plot" emanated from Gen. Wilkinson. On December 25th, 1806 a general order was issued by Acting Gov. Mead ordering the muster of four militia regiments at various towns along the Mississippi River. Mead received a letter from one of his military commanders which said "If Burr comes I hope to be able to render a satisfactory account of him." (See p. 43). On January 12th, 1807 Mead reported to one of his regimental commanders "Colo. Burr may land at or near the walnut Hills--...." (See p. 49). On the same day another one of his regimental commanders reported that "the Boats in which Coll. Burr came down amounting to four or five were this morning at Coll. Bruin's." (See p.51). It was at the home of Col. Bruin that Burr learned that his confidential letter to Gen. Wilkinson had been given to the media and that the good General had publicly called Burr a traitor. Mead dispatched a letter to Henry Dearborn, the Secretary of War, that he had "recd. [received] this

morning [January 12th, 1807] a letter from Colo. Burr at Bayou Pierre avowing the innocence of his views and the fallacy of certain rumors against his patriotism--his object is agriculture and his boats the vehicles of emigration--." (See p. 52). On January 14th, 1807 one of Mead's regimental commanders reported "[Burr] has four Flat Bottom Boats and five Barges filled principally with provisions. I did not see One stand of arms--and Colo. Tiler informed me that they had none. I saw some fifty five or sixt men some women & children & a few negroes--So much for the first Campaign you will receive...." (See p. 54). It is not likely that a military expedition would be accompanied by women and children. One of the reasons that Lewis and Clark wanted Sacagawea and her infant child along on their expedition was to cause the Indians along their route to look upon them as a non-war party. Indians did not take women and children on war parties. It is unlikely that Burr and his men would have women and children on their expedition if war was their intent. On the next day (January 15th, 1807) Mead sent the following letter to Burr:

Your approach to this Country has excited not only the apprehensions of the General Government, but alarmed in a high degree the good Citizens of this Territory--from these causes I have ordered my militia to rendezvous at such places as will enable them to guard this Territory against any designs inimical to the Government--But having heard from Colo Woolridge that you profess innocence of the views charged to you, I have thought proper to send you, a confidential Aid de Camp to receive from you such information on this subject as you may please to make.

Third Annual Report of the Director of Archives and History of the State of Mississippi, pp. 57-58.

On January 19th, 1807 Mead sent the following letter to Secretary Dearborn:

Four Gentlemen of unquestionable respectability with a detachment of 30 men are now in the act of making the search of the boats and tomorrow I expect their report--Thus Sir this mighty alarm (with all its exaggerations has eventuated in nine boats and one hundred men and the major part are boys and young men just from school--many of their depositions [sworn statements] have been taken before Judge

Rodney, but they bespeak ignorance of the views or designs of the Col. -- I believe them really ignorant and deluded, I believe that they are the dupes of stratagems....

Third Annual Report of the Director of Archives and History of the State of Mississippi, pp. 65-66.

On January 21st, 1807 Acting Gov. Mead sent the following letter to Gen. Wilkinson:

I have the satisfaction to announce to you that we have delivered Col. Burr to the civil authority of this Territory.... I have therefore to solicit that you will immediately take measures to procure and forward to the Hon; the Judges of the Supreme Court of this Territory such testimony as may be in your possession or power to establish the charge of treason or any other crime or misdemeanor committed by Colo. Burr against the U States....

PS It is expected that an indictment will be preferred in the above mentioned case on the 1st Monday of next month [February, 1807].

Third Annual Report of the Director of Archives and History of the State of Mississippi, p. 67.

This letter from Acting Gov. Mead confirms that he was looking at Gen. Wilkinson for the evidence with which to charge Burr, just as Daveiss had looked to him for evidence in the proceedings at Frankfort, Kentucky. Gen Wilkinson had started the rumors and now could not deliver on any evidence without incriminating himself. As will be seen no such evidence was ever forthcoming at least from the good General. Burr allowed himself to be delivered to the civil authorities even though there was no evidence against him on any charge. Admittedly there were unverified reports of a boat filled with military arms that Burr and his supporters had hid in a wetland near the Mississippi River and that 200 men were stationed nearby. On January 26, 1807 Acting Gov. Mead sent this letter to Sec. Dearborn:

My last communication of the 19th inst. informed you that Colo. Burr was in the custody of the law---he has given bail before Judge Rodney in the sum of 10000 dollars for his appearance at court to be held on the first Monday of February....

Third Annual Report of the Director of Archives and History of the State of Mississippi, p. 70.

On January 22nd, 1807 Blannerhasset entered in his diary "This morning an altercation took place between Major Floyd and [Major] Flaharty, which induced the former to address a letter to the latter in a sort of defiance." (See p. 189). This entry arose because of a letter from Major Flaharty to Floyd advising him that Acting Gov. Mead had ordered him to move Col. Burr's boats from their present position to a point on the Mississippi River opposite Cole's Creek, and if he did not do this willingly he was going to send for two militia companies to force the move. Blannerhasset understood that Floyd was willing to militarily engage the militia companies, and therefore, he induced Floyd to write the following letter to Flaharty to soften his approach:

Petit Gulf, January 23d, 1807

Sir: -- Your communication, by the hands of Capt. Burney, I just now had the honor of receiving. You mention your wish for us to move to the mouth of Cole's Creek; the request I would take a pleasure in complying with, had not Col. Burr directed me to stay where we now are until his further commands. I do expect to have a messenger from Col. Burr to-day, perhaps time enough to move down this evening. At all events, we will determine, to-morrow meaning (23d), what step will be proper for us to take....we are awaiting a legal investigation into our conduct; and I contend that, during the investigation, and while we are properly speaking, in the hands of its authority, the military has no right to interfere

**Respectfully etc
Davis Floyd**

Third Annual Report of the Director of Archives and History of the State of Mississippi, p. 190.

The letter from Floyd was dated January 23rd but it should have been dated January 22nd. The altercation was defused when Col. Fitzpatrick arrived and Major Flaharty was sent elsewhere. Members of the militia were allowed to board the boats "civilly, without firing upon them, and seize only such arms and ammunition as they might contain." (See p. 190). Burr had been in the capitol

of the Mississippi Territory since January 17, 1807. Blennerhassett's diary continued as follows:

Col Burr, this day [January 24th] returned to the boats from Washington, [Mississippi Territory] where he had remained since the 17th under a voluntary submission to the civil authority, which had been exacted from him at Cole's Creek, on his reception there on the 17th by Mead, at the head of five or six hundred of the militia, half armed and generally discontented, in disregard of the connection that had been entered into by Mead and himself [Burr]. The Acting-Governor, it now appeared, had threatened him with all the armed force of the country unless he submitted. No securities, however, were required for his appearance at the adjourned Federal Court, to be holden on the first Monday of February. His own single recognizance was taken in the sum of _____ dollars. Accordingly, his return to the boats was free. I soon heard from him [Burr] that Mr. Mead had received dispatches announcing the statements by Flaharty of what had passed between him and Major Floyd, which so exasperated the Governor, that he threatened to have Floyd brought to him in irons, but was induced to retract his menaces on learning Flaharty's character to be fraught with the utmost ignorance and assurance, while Major Floyd's temper was mild and amicable. Col. Burr also acquainted me with the indignation the Federal Judge, Rodney, had expressed at the exercise of the military law over Col. Burr and his friends, both in the Mississippi and Orleans Territories; the Judge assuring him, in opposition to the U. S. Attorney, Mr. Poindexter, that the civil authority of the Territory was competent to try him, adding at the same time, that if Wilkinson, or any other military force, should attempt to remove his person out of the Mississippi Territory, prior to his trial, he, the Judge, would again, as he expressed it, put on an old "76," and march out in support of Col. Burr and the Constitution....

The Blennerhassett Papers, Moore, Wilstach & Baldwin, Cincinnati, Ohio, 1864, pp. 190-191.

In February 1807 the following article appeared in the *Mississippi Messenger*:

The Supreme Court of the Mississippi Territory was convened at the town of Washington, the [Mississippi] Territory capitol, in special session on Monday February 2, 1807, with Judge Thomas Rodney and Peter Bryan Bruin presiding. A grand jury was summoned and empanelled and returned into open court the following report:

The Grand Jury of the Mississippi Territory, on a due investigation brought before them, are of the opinion that Aaron Burr has not been guilty of any crime or misdemeanor against the laws of the United States or of this Territory, or given any just occasion for alarm or inquietude to the good people of this Territory.

The Grand Jury present as a grievance, the late military expedition [the Mississippi Militia], unnecessarily as they conceive, fitted out against the person and property of said Aaron Burr, where no resistance had been made to the ordinary civil authority.

The Grand Jury also present as highly derogatory to the dignity of this Government, the armistice (so called) concluded between the Secretary acting as Governor [Mead], and the said Aaron Burr.

The Grand Jury also present as a grievance, destructive of personal liberty, the late military arrests made without warrant, and as they conceive without other lawful authority: and they do seriously regret that so much cause should be given to the enemies of our glorious Constitution, to rejoice in such measures being adopted in a neighboring Territory, as if sanctioned by the Executive of our Country, must sap the vitals of our political existence, and crumble the glorious fabric into dust.

Third Annual Report of the Director of Archives and History of the State of Mississippi, p. 101.

However, when Burr asked for his release from bail and to be discharged, Judge Rodney, doubtlessly not a friend, refused. Co-authors Wandell and Minnigerode described his predicament as follows:

A grand jury's verdict had been ignored by the civil judge; the Governor had announced his intention of seizing him at the first opportunity; attempts were being planned on his person, if not his life, by General Wilkinson who of course knew of his presence in Mississippi. Indeed, it was later to appear that the General had sent various officers in disguise, on different occasions, to kidnap the man he had betrayed. Lieutenant Peter testified that he had reached Natchez on February 2 [1807] with a party of five, "dressed in citizens clothing" and "armed with dirks and pistols;" that they were acting

under orders from General Wilkinson “to seize Colonel Burr...and to return to New Orleans;” that there were no warrant from any civil authority to his knowledge; that the orders “did not specify any charge or crime against Colonel Burr;” that if the Colonel had resisted arrest “we certainly should have used our arms.” and that Governor Williams [Williams had returned] was cooperating with them. Colonel Burr knew himself to be between the military devil at New Orleans [General Wilkinson] and the deep sea of civil persecution [in the capitol town of the Mississippi Territory].

All his friends were of the same opinion, and urged him to conceal himself. On February 5, [1807] therefore, he did not appear in court; on February 6, Governor Williams proclaimed him a fugitive and offered a reward of two thousands dollars for his capture. Colonel Burr, writing from his hiding place which can not have been too far distant, notified the Governor that he was ready to submit himself whenever his citizen’s rights should be guaranteed, and again, on February 12, reminded him that he was only bound by law to appear if an indictment should have been found against him. The Governor replied that “from the judicial proceedings in this Territory you cannot be considered in any other light than as a fugitive from the laws of your country.”

Colonel Burr knew what to expect now. A court-martial by General Wilkinson, the outcome of which would never have been in doubt, seizure by the Governor of Mississippi, with perhaps the same result. In secret, he visited his boats and took leave of his men. They must keep the barges and go on to Bastrop’s and settle there, or else sell them and divide the money. As for him, he had been tried and acquitted, but here were going to take him again, and “he was going to flee from oppression.” The men did as he advised; many of them “dispersed themselves through the territory and supplied it with school masters, singing masters, dancing masters, clerks, tavern keepers and doctors”—so Mr. Claiborne, the historian of Mississippi, lists the professions. Pathetic young men. As the result of a spurious note alleged to have been addressed to them by the Colonel after his final disappearance—although clumsily enough the date given was on a day prior to the convening of the Grand Jury—some of them were arrested at Natchez; but they were soon released, with the exception of Mr. Blennerhassett, Mr. Tyler, Mr. Floyd and a Mr. Ralston. These were held for trial, but in April [1807] they were in turn released, for good, as they no doubt imagined. To the very end, most of them had not the slightest idea what it was about....

Wandell and Minnigerode, *Aaron Burr*, Vol. Two, pp. 165-167.

On March 1st, 1807 Acting Gov. Roberts (?) sent the following letter to Gen. Wilkinson:

I wrote you fully on the 25th ultimo [February 25th, 1807] respecting the proceedings had in this Territory against Burr Floyd, Tyler & others--since which nothing has taken place worth notice, except that Floyd has given bail and started for Kentucky.

Third Annual Report of the Director of Archives and History of the State of Mississippi, p. 76.

On April 3rd, 1807 Gov. Harrison sent the following letter to Gov. Williams who had returned to his job in the Mississippi Territory:

Mr Davis Floyd who was so unfortunate as to have become the dupe of the artful & mischievous Aaron Burr has requested me to write to you in his favor, and to State his Standing and Character in this Territory before his late expedition. I have been intimately acquainted with this Gentleman for Six Years and I can truly affirm that there was not a man in the Territory, who possessed more intirely my Confidence & esteem, As sheriff of the County [Clark] in which he resided, Representative in the Legislature and an Officer in the Militia, (in which he held the rank of Major] his Conduct was equally honorable to himself and useful to his fellow Citizens nor do I believe that there is any man who possessed a higher sense of Patriotism or more devotion to the Constitution of his Country, You will ask then how he came to engage in the late treasonable enterprise? The copy of Colo. Burrs letter to me which is inclosed will furnish the Solution from which You will See that the grosest falshoods were Used to entrap those whose honesty he knew to be proof against any proposal to violate the Laws of their Country,--This letter of Colo Burrs, was addressed to me in Consequence of Major Floyd and another gentleman [probably William Prince] having waited on him at Louisville & declared their intention of abandoning him unless he would give to me the most explicit assurances in writing that his object was known to, and approved of by the Government, This You see he did not hesitate to do, and I must Confess that the Solemnity of his Declarations imposed for Some time on me as well as Major Floyd.

Should You be able Consistently with Your duty to render Major Floyd any Service in the prosecution now pending against him it would Confer an Obligation on me and restore his family and

numerous friends a man whom I am Convinced never had an *intention of Violating the Laws of his Country*

Indiana Historical Collections, Volume I, Indiana Historical Commission (1922) pp. 205-207.

What happen to Davis Floyd at this point? It is necessary to turn to several accounts of this event. The *Journals of the General Assembly* in sketching Floyd stated as follows:

Floyd escaped to Indiana Territory where he was indicted on June 2, 1807, for aiding in setting on foot a military expedition against his Catholic Majesty, the King of Spain, with whom the United States was then at peace. He was found guilty of the charge on the 12th of June, [1807] and on the following day the sentence was pronounced—three hours in jail and a fine of ten dollars. The two judges were Thomas T. Davis, at whose home Floyd had met Burr, and Waller Taylor. Taylor wrote to President Jefferson the reasons for what seemed a very lenient sentence: Floyd’s conviction rested almost entirely on his own confession. He had been convinced that the expedition had the approval of the government. He also added that the Territory had no jail in which to secure Floyd, and that a heavier fine would work a real hardship on his family.

Thornbrough and Riker, *Journals of the General Assembly of Indiana Territory 1805-1815*, p. 974.

Continuation of David Fisk’s Testimony regarding Floyd

The rest of David Fisk’s testimony before the Richmond court regarding Floyd recited the following:

A day or two before their arrival there [Bayou Pierre], Colonel Burr took a boat and four or five men, and went on ahead, as this affiant understood, to do some business, which he expected to do before the boats got down. Floyd’s boat, in which he went himself, and in which this affiant was, arrived there on Sunday morning, and the other boats not until the evening. On our arrival, Colonel Burr was standing on the bank of the river, about a mile above the town; some short time after the men from our boat went ashore, this affiant saw Colonel Burr and a certain Robert A. New (who had the charge of Floyd’s boat in his absence, he having then gone to Natchez,) talk together for some time. The said New then came on board our boat,

and called all the men into it and said he understood they were all going to be stopped, and inquired of them whether they would stand by Colonel Burr and go on, or quit. Most of the men were for going on, but two or three were for quitting. In the course of that day, this affiant mentioned to the said New that he mistrusted they were going upon some unlawful scheme. He assured him that they were not, that nothing was going to take place but what was lawful and countenanced by the Government. After dark the boats were removed over to the other side of the river. This affiant inquired the reason of their being removed, and was answered by the said New, that there was a party of men coming to take them, and it was best for them to make their escape. The boats lay seven or eight days at that place, and then moved about six miles lower down. While the boats were lying there, they were searched by several military officers [from the Mississippi Militia], by the permission of Colonel Burr; but the night before they were searched, all the muskets and pistols, except a few pair belonging to individuals, were taken out; the rifles were left. This affiant never knew what became of the muskets and pistols; some of the men said they were sunk in the river; others that they were hid in the woods. One night, while the boats were lying at the place, a young man came and said there were three or four hundred men crossing above us, and many below us, and that we should all be taken. A guard posted at some distance from the encampment on that night, but what their orders were this affiant does not know, as he was not one of their number. After our removal from this place, Colonel Burr went to the town of Washington [Mississippi] to stand his trial; but it not coming on, he returned. He remained with the boats one day, told the men that he had stood the trial and was acquitted; but that they were going to take him again, and he was going to flee from oppression. He said that what property there was the men might sell, and make the most they could of; and if there was not enough to satisfy them, they might go to the Washita land, and take up what land they wanted, and go to work upon it. The boats and provisions were taken to Natchez, and part of them sold, and part of the provisions stored which would not readily sell, and the money divided among the men. The boats were different in their construction from any this affiant had ever seen, rather larger than were usual on those waters; and such of them as were sold, brought seventy-five dollars apiece; the usual price of boats being twenty to thirty dollars. But there was a great demand for boats at that time to freight cotton down the river.

Question. After the boats and men had joined Colonel Burr at the mouth of Cumberland, who appeared to have the command of the expedition?

Answer. It was generally understood that the expedition was under the command of Colonel Burr; but I do not recollect to have heard him give any orders, except as to the sale of the boats and provisions, after we were stopped; though I often saw him in conversation with Blannerhasset, Tyler, Smith, Floyd, and New, and supposed that he communicated his orders to them.

The following questions were propounded to Fisk by Colonel Burr:

Question by defendant [Burr, who was allowed to ask questions of witnesses]. How did you understand the number of men to be one hundred and three?

Answer. From some of the men; I never counted them. This included the men in all the boats at the island.

Question. How many men came with Colonel Burr?

Answer. I do not know, but not more than three or four, I believe.

Question. Do you include Dean's, Ellis's, and Boyce's boats? **Answer.** Yes

Question. Where did the conversation with Floyd, about Mexico and Baton Rouge, take place? and was Colonel Burr, Blannerhasset, or Smith, present?

Answer. I do not recollect at what place it happened; but neither of the three gentlemen named above was present.

Question: Was Colonel Burr present when the boats were searched, or was he then at Washington [Mississippi Territory]?

Answer: He was with the boats.

Question: Did Blannerhasset have any command over any of the boats?

Answer: None, except his own boat, which was in company.

Question: Did you not, at this time, expect a war with Spain?

Answer: I did; it was the general expectation of the party.

Question: How did you understand Mr. Floyd, as to Mexico and Baton Rouge?

Answer. I expected we were going on in the event of war, and that we should be joined by the army of the United States [Wilkinson's army].

Question. Were you not told that, in the event of no war, you were to settle the Washita lands?

Answer. Yes; and, after we were stopped, Colonel Burr advised us to proceed and make the settlement.

American State Papers, Misc., Vol. I, 1789-1809, p. 525.

Floyd is mentioned in several places in the record of proceedings at Richmond, Virginia. Several men testified they considered Colonel Burr, Tyler, Smith, Blannerhasset, and Floyd as the leaders of the expedition. (See *American State*

Papers, Misc., Vol. I, p. 522.) On September 18th, 1807 William Love, who considered himself Blannerhasset's servant, testified that he had been with his master since their boat left Blannerhasset's Island in Virginia. He said "Mr. Floyd had joined...[them] with three boats at the falls of the Ohio: one was loaded with provisions, and the rest had provisions likewise." He reported, when asked how many boats there were in all, "There were four of Colonel Tyler's; two of Mr. Floyd's, who joined at the falls of the Ohio; and Capt. Dean's boat, called the commissary boat, and one small boat of Mr. Blannerhasset's." He said that he had seen "one chest [with arms] and a box with rifles in Blannerhasset's boat" and "There were some bullets in a barrel, standing at the bow of one of Col. Tyler's boats." He also saw a chest of arms in Mr. Floyd's boat. (See *American State Papers, Misc., Vol. I, pp. 507-508.*)

On September 19th, 1807 Jacob Dunbaugh testified "he saw several stands of arms, that is, muskets with bayonets in Floyd's boat, and about twelve rifles." (See *American State Papers, Vol. I, 1789-1809, p. 515.*) Dunbaugh also testified to the following information which was given to him confidentially by Col. Burr:

On Sunday, the 11th January [1807], while we were three hundred yards from the shore, Colonel Burr told me to arm myself with a rifle, and conceal a bayonet under my clothes; he told me he was going to tell me something I must never relate again; he then told me that General Wilkinson had betrayed him; that he had played the devil with him, and had proved the greatest traitor on earth. I told him I could not believe it, and asked him how he knew it; he said he had seen published in a paper a letter, which he had some time before written to General Wilkinson in ciphers [code], he mentioned that General Wilkinson had made oath to this letter before the court, or in open court, I do not recollect which; he then told me he was fearful of being injured or taken; that I must keep a good look out at Judge Bruin's....

American State Papers, Misc., Vol. I, 1789-1809, p. 517.

Burr, Blannerhasset, Tyler, Smith, and Floyd's Trial in Richmond,

Virginia

What happened to Burr? He had been found not guilty of any crimes twice in Kentucky and once in Mississippi. One would think that would end it but it did not. Not long after his going into hiding he was discovered by nose-y citizens and arrested by a contingency of U.S. military soldiers sent from New Orleans by Gen. Wilkinson. Mr. Burr was then escorted by the soldiers to Richmond, Virginia. In the meantime, Gen. Wilkinson had written President Jefferson that the conspiracy had collapsed and that the West and Louisiana were safe. Safe from Burr but was it safe from Wilkinson? Burr and his co-conspirators were headed for trial on charges of treason.

Treason is the only crime defined in the U. S. Constitution. Section 3 of Article III says:

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have power to declare the Punishment for Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Sec. 3, Art. III, *United States Constitution*.

This provision mimicked in part the Apostle Paul's final advice to the Corinthian Church when he said in 2 Corinthians 13:1, "The facts of every case must be established by the testimony of two or three witnesses." The words "no Attainder of Treason shall work Corruption of Blood or Forfeiture except during the Life of the Person attainted" do not mean what they seem to say in modern language. The purpose of this clause was to distinguish English law from American law. These words meant that if Congress punished a convicted traitor

by seizing his property, that upon the traitor's death the property would be inheritable by his heirs. In other words, Congress would only have a life interest in the seized property. That would reduce the value of the property to a prospective buyer.

Section 2 of Article III provided, and still does, that the "Trial of all Crimes, except in Cases of Impeachment, shall be by jury; and such Trial shall be held in the State where the said Crimes shall have been committed..." Amendment V to the Constitution provided that "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury..." Amendment VI provided that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crimes shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense." It was under these Constitutional provisions that Burr, Blannerhasset, Tyler, Smith, and Floyd were indicted by the U. S. Attorney in the District Court of Virginia at the City of Richmond on May 22nd, 1807. The charges were in part as follows:

[O]n the...tenth day of December, [1806]...at...Blannerhasset's island...in the county of Wood...in the district of Virginia...and within the jurisdiction of this court, with a great multitude of persons, whose names at present are unknown to the grand inquest...to the number of thirty persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, swords, and dirks, and other warlike weapons, as well offensive as defensive, being then and there unlawfully, maliciously, and traitorously assembled and gathered together, did falsely and traitorously assemble and join themselves together against the United States, and then and there with force and arms did falsely and traitorously, and in a warlike and hostile manner, array and dispose themselves against the said United States; and then and there,...at the island aforesaid,...in pursuance of such

their traitorous intentions and purposes aforesaid, he, the said Aaron Burr, with the said persons so as aforesaid traitorously assembled and armed, and arrayed in manner aforesaid, most wickedly, maliciously, and traitorously did ordain, prepare and levy war against the said United States, contrary to the duty of their said allegiance and fidelity, against the constitution, peace, and dignity of the said United States, and against the form of the act of Congress of the said United States in such case made and provided.

American State Papers, Misc., Volume 1. 1789-1809, pp. 486-487.

On May 28th, 1807 Burr made bail in the sum of \$10,000.00. On June 13 the Court ordered that a "subpoena duces tecum" be served on Pres. Jefferson and the Departmental Secretaries requiring production of a letter from Gen. Wilkinson to the President dated October 21st, 1806. On June 24th, 1807 the Grand Jury appeared in Court and presented true bills for treason and for the high misdemeanor. That meant that the Grand Jury had considered certain evidence presented by the U. S. Attorney in Richmond and determined that there was sufficient evidence for a Petit Jury to hear the case on the merits. Unlike the U. S. Attorneys in Kentucky and the Mississippi Territory, the U. S. Attorney supposedly presented enough evidence to meet the minimum legal threshold to take the case the next step forward--a trial by jury of one's peers. While the Grand Jury was a blue-ribbon panel of American notables, the Petit Jury did not rise to that level. On June 26th, 1807 Burr was moved from the city jail to the front room of a boarding house where he was kept under lock and key. On the same day Burr pleaded "not guilty" to the indictments and the Court ordered that "forty-eight fit persons," twelve from Wood County, Virginia where Blannerhasset Island is located, be summoned to appear on August 3rd, 1807 as a pool of petit jurymen for Burr's trial. On August 10th Burr and his lawyers were given a list of the jurymen and a list of 131 government witnesses. On August 17th, a list of four more witnesses were furnished to them and the trial started. It is not necessary to review all of the evidence. In the end Chief Justice Marshall issued the following opinion on the charge of treason:

It is, then, the opinion of the court, that this indictment [of treason] can be supported only by testimony which proves the accused to have been actually or constructively present when the assemblage [gathering] took place on Blennerhasset island, or by admission of the doctrine that he who procures an act may be indicted as having performed that act.

It is further the opinion of the court, that there is no testimony whatever which tends to prove that the accused [Burr] was actually or constructively present when that assemblage did take place. Indeed, the contrary is most apparent.

American State Papers, Misc., Vol. 1, 1789-1809, p. 634.

The Court then reasoned that if the principal, that is Burr, is not guilty of treason, then the accused accessories could not be. That meant that Blennerhassett, Tyler, Smith, and Floyd were not guilty of treason. Of course, Floyd was never at Blennerhasset Island as far as is known, at least at the time the alleged assemblage occurred there. He was at the Falls of the Ohio doing the same things that Blennerhassett, Tyler, and Smith were doing, assembling a small group of men, a few boats, and some supplies.

The Court next proceeded to the misdemeanor crime, with which Burr was charged by the U. S. Attorney in Kentucky in November and December, 1806. The only difference was that the location of the Kentucky crime was Lexington while the location of the Virginia crime was Blennerhassett Island in Wood County. On October 20th, 1807, after reviewing the evidence, the Judge concluded:

It is also a circumstance of considerable weight with me, that the proof exhibited by the United States to establish a general design to dismember the Union, applies only to Colonel Burr and Mr. Blennerhasset. It is not proved to have been ever communicated even to Tyler or Floyd. There is not only a failure to prove that such a design was communicated to or entertained by the men who assembled at the mouth of Cumberland, but the contrary is in full

evidence. The United States have adduced several witnesses belonging to that assemblage, who concur in declaring that they heard nothing, that they suspected nothing, and that they would have executed nothing, hostile to the United States. This testimony cannot be disregarded, for it is uncontradicted and is offered by the prosecution. How can this assemblage be said to have levied war against the United States?...

It is contended that they [Burr, Blannerhasset, and Smith] are not guilty of the misdemeanor on one of these grounds; Either the United States were actually at war with Spain, or the expedition was dependent on war; and, in the event of peace, was to be converted into a settlement on the Washita.

It is alleged that we were at war with Spain, because a Spanish army had crossed the Sabine, and entered the territory of the United States.

That a nation may be put in a state of war by the unequivocal aggressions of others without any act of its own, is a proposition which I am not disposed to controvert; but I cannot concede this to be such an act. The boundaries claimed by the United States to their recent [1803-04] purchase of Louisiana are contested by Spain. Now if either nation takes possession of the contested territory as its own, it is an act which the opposite Government may elect to consider either as an act of war or otherwise; and only the Government can make that election. No citizen is at liberty to make it, or to anticipate his Government.

But it is alleged that war, if not absolutely made, appeared to be inevitable; and that the prosecution of the expedition depended on its taking place. That the probability of war was great may be admitted; and this may extenuate the offense, but it still remains an offense which is punishable by law. If the expedition was really eventual, and was not to take place in the time of peace, then certainly, preparations might be made for it without infracting any law; but this is a fact proper for the exclusive consideration of a jury, and I shall make no comment upon it which might, the one way or the other, influence their judgment.

I shall commit Aaron Burr and Herman Blannerhasset, for preparing and providing the means for a military expedition against the territories of a foreign Prince, with whom the United States were at peace. If those whose province and duty it is to prosecute offenders against the laws of the United States shall be of opinion that a crime of a deeper dye has been committed, it is at their choice to act in conformity with that opinion.

Israel Smith is not proved to have provided or prepared any means whatever, and therefore I shall not commit him. If he has really offended against the laws, he may be prosecuted for the treason in Kentucky, or for the misdemeanor in his own State, where, if any where, his offence has been committed.

American State Papers, Misc., Vol. 1, 1789-1809, pp. 644-645.

That ended the case as far as Tyler and Floyd were concerned. The Court concluded that there was no evidence against either of them on the issue of treason or on the issue of the misdemeanor. The only testimony that implicated Floyd was that of David Fisk when he said he overheard Floyd tell some of the men on his boat sometime after Burr joined the flotilla but before they reached the Mississippi River "that they were going to take Baton Rouge [not in the United States at the time] and Mexico; this affiant [Fisk] was asked how they were going to do it with so few men; the said Floyd answered to him, 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 the Red River." (See *American State Papers*, Misc., Vol. 1, p. 525.) That would account why Floyd left the group and went to Natchez. Floyd was probably very disappointed when he reached Natchez and there were no men there. He probably learned later that Gen. Wilkinson had betrayed Burr. Fisk's testimony rings with a lot of credibility. Floyd did not know about Fisk's testimony when he pleaded guilty to the misdemeanor in Judge Davis' Court in Jeffersonville on June 12th, 1807. Floyd no doubt considered that he may have transgressed the law about making war against a friendly foreign power in Indiana and decided that he needed to plead guilty to that offense. Had he waited for the outcome of the trial in Richmond, he may have never encountered the criticism which came his way in the Indiana Territory. In a letter that Gov. Harrison wrote to Pres. Jefferson from Vincennes on July 16th, 1808, he said the following about Floyd:

Until a few months ago I have believed that Davis Floyd was no farther engaged in Burrs Conspiracy than he acknowledged to have

been made in the Statement he made after his return & which was forwarded by me to the Secretary of State in the Spring of 1807. I have lately however discovered that besides the circumstances mentioned by Mr. [George] Poindexter [of the Mississippi Ter.] in his Testimony on Burr Trial--He knew that there was a Connection between the latter & the British Government. He now acknowledges that Burr told him that he was to receive a large sum of money from the British Minister.

Indiana Historical Collections, Vol. I, 1800-1811, pp. 297-298.

This letter confirms that Burr had asked England for money to finance his adventures but that he received no such funds.

Several things in the reported testimony of the George Poindexter at Richmond related adversely to Floyd. Mr. Poindexter was the Attorney General for the Mississippi Territory. He gave his testimony in Richmond on October 13th, 1807. He had been sent by Acting Governor Meade on January 16th, 1807 to visit Burr for acquiring accurate information as to Burr's motives in the Territory. Burr told him "As to any projects or plans which may have been formed between General Wilkinson and myself heretofore, they are now completely frustrated by the perfidious [treacherous, deceitful] conduct of Wilkinson, and the world must pronounce him a perfidious villain." (See *American State Papers, Misc., Vol. 1, page 568.*) Poindexter admitted that Burr's men did not appear to be armed, but they did not appear to be a group of men ready to settle farms. Poindexter testified that during this visit, a man, whom he learned later to be Floyd, "approached Burr and asked what could be done, saying that a boat [under the command of the Mississippi Militia] had landed a short distance below on the same side of the river, that he was not afraid to attack the boat, provided such was his [Burr's] directions." (See *American State Papers, Misc., Vol. 1, p. 570.*) One of the men in Poindexter's party upon Burr's request took control of the tense situation and ordered his boat not to attack. That ended the possibility of open warfare on the Mississippi River. Had Burr allowed Floyd to attack the other boat, the outcome of their encounter with the Mississippi Militia may have

been much different. Burr, Floyd, et al. may have ended up being hung for treason. Floyd was impetuous at times while Burr was under control of the situation. Floyd may have been thinking there was a large group of men at Natchez and Gen. Wilkinson and the U. S. Army were waiting for them at the mouth of the Red River. Burr probably knew better. At another point in his testimony at Richmond, Poindexter said that a note hidden in the coat of a courier for Burr had been intercepted by the Mississippi Militia. The note was addressed to "C.T. and D. F." and was in Burr's handwriting. The note said "If you are still together, keep together, and I will join you to-morrow night. In the meantime, put all your arms in perfect order. Ask the bearer no questions, but tell him all you may think I wish to know. He does not know that this is from me, nor where I am." (See *American State Papers*, Misc., Vol. 1, p. 570.) Poindexter confirmed that the initials meant "Comfort Tyler and Davis Floyd."

Poindexter's testimony may have been sufficient to persuade Gov. Harrison that Floyd's involvement was more culpable than he originally thought. Why would Floyd tell Harrison that Burr had told him he was to receive a large sum of money from the British Minister? Again Floyd's complete honesty may have been the catalyst for this disclosure and his guilty plea. He was honest enough to admit his errors.

Badollet's Letter to Sec. of Treasury, Gallatin

On December 21st, 1807 John Badollet, Register of the Land Office in Vincennes, wrote the following letter to his friend, Albert Gallatin, U. S. Secretary of Treasury:

An event has taken place in this place, to which too much importance is attached at a distance. I mean the election of Davis Floyd as clerk of our honorable house of representatives. It is owing entirely to private attachment (he having been heretofore a member of than body) and family connexions. It is by no means an indication of the

dispositions of the people's temper in this quarter, than which no district of the Union is more loyal, but only an egregious instance of wisdom foresight & and I may say decency in our representatives. I am one of those who conscientiously believe that Davis Floyd was deceived by that Arch-cunning traitor A. B. into the persuasion that his project met with the approbation & countenance of Government, but when I first heard of the intended election, I immediately perceived the impropriety of the step, & foresaw the wrong inferences which at a distance would, no doubt, be drawn from it & I expressed myself in company to that purpose. The animadversions of the Richmond examiner on that transaction, which I have read lately, though justified by the appearances are I do assure you intirely unmerited by this Territory, as well as by the house of representatives who can only be charged with a momentary folly. The severe censure of Judges Davis and Taylor are not better merited. If I am well informed the *quo animo* which only constitutes criminality, was not made out at trial, & Floyd appeared, more like a deluded man, than a guilty one, & I have been told that the impressions of both Jury & Attorney General [Benjamin Parke] were so strong in favour of the innocence of his views, that both interested themselves with the Court to obtain a mild sentence. The Court being under the same impressions readily granted the request.

Thornbrough, Gayle, *The Correspondence of John Badollet and Albert Gallatin--1804-1836*, Indiana Historical Society, Indianapolis, Indiana, 1963, pp. 89-91.

Proceedings of the Citizens of Knox

Davis Floyd was not popular with everyone in the Indiana Territory for his involvement with Aaron Burr. The following are minutes of a proceeding held in Vincennes on January 4th, 1808:

At a numerous and respectable meeting of the Citizens of the county of Knox in the Indiana Territory holden at the Court House in Vincennes on Monday the 4th day of January 1808 for the purpose of taking into consideration the appointment of Davis Floyd Clerk to the House of Representatives, and to remove the Odium which has been cast upon the people of the Territory in consequence of that Appointment.

Abel Westfall was called to the Chair, and Henry Hurst appointed Secretary.

On motion of John Johnson Esqr William McIntosh, William Bullitt, and Peter Jones were appointed a committee to draft and report to this meeting such resolutions as they necessary who retired, and in a short time reported the following, which were unanimously adopted, as follows--

The citizens of the County of Knox having taken into serious and mature consideration the various paragraphs in several papers published in different parts of the United States containing injurious remarks and observations on the conduct of two of the Judges of the Supreme Court of the Territory as it respects the Judgment which they pronounced on Davis Floyd, and on the conduct of the Legislature for appointing him as their Clerk immediately after his conviction; also the inferences, conclusions and insinuations, which in those papers are deduced from those circumstances, tending to impress on the minds of our fellow Citizens throughout the Union, and the Federal Government that the people of this Territory participated in the unlawful enterprise and schemes of Aaron Burr, and also the evil consequences that might result to the people of this Territory if they remained any longer silent, and did not publish and declare to the world, and especially to the Federal Government their freedom from any participation in those enterprises, and also their real sentiments on those subjects__Have therefore come to the following resolutions

***Resolved unanimously* that it would indecorous to make any animadversions on the conduct of the Judges before whom Davis Floyd was convicted, or ascribe motives for their conduct which have not avowed by themselves.**

***Resolved unanimously,* That whilst the Citizens of Knox are sensible of the weight and importance of the principle, which declares that the acts of the Representatives on subject which they have a right to act on, express the feelings and opinions of the Constituents, they sincerely lament that there exists a case involving a necessity which compels them to declare to the world their disapprobation of an act of the House of Representatives of the Territory, or by their silence remain implicated with its Authors, in the Odium in which it has involved them.**

***Resolved unanimously* that the Citizens of Knox feel more indignation than words can express, at the conduct of the House of Representatives at their Sessions of August last [1807] in electing as their Clerk Davis Floyd, who had recently been Juridically convicted of a misdemeanor against the United States in the Territorial Circuit Court for the county of Clark; and moreover stood indicted in the**

Federal Court in Richmond for a misdemeanor and Treason against the United States.

Resolved unanimously, That the election of Davis Floyd was at the time reprobated by the Citizens of Knox individually, and that collectively they would have declared to the world their disapprobation of it, and the apprehensions they entertained that it was calculated to draw from their fellow Citizens in the Union the most injurious reflections on the Character of the Territory; but for a consciousness of their innocence, and the indulgence of a consequent hope that their fellow Citizens in the Union would have ascribed the act of the House of Representatives, solely, to the few, and the influence by which they were governed, who on the first day of the Session composed the majority that balloted for Davis Floyd in the House of Representatives.

Resolved unanimously that altho the Citizens of Knox believe that the motives which actuated those members who balloted for Davis Floyd were intirely of a personal and private nature; Yet they consider, as they always have considered the election of Davis Floyd under those peculiarly evident circumstances of criminality as highly derogatory and subversive of the confidence of the constituents in their representatives; tending in a high degree to destroy the fidelity and attachment of the Citizens of the Government; calculated to excite the evil disposition of desperate and ambitious men, to subvert and prostrate the constitution and laws of the United States and of this Territory, and consequently a stigma on the characters of those members who balloted for him.

Resolved unanimously that while we observe and lament that our fellow Citizens in various parts of the Union indulge suspicions of our fidelity and attachment to the constitution and Government of the United States and insinuate that we participated in the unlawful enterprises and schemes of Aaron Burr, we cannot but admit that from our Geographical situation, our political circumstances, and above all by the consideration of the obnoxious act of the House of Representatives they had sufficient ground to hazard those injurious suspicions: And we trust that these Resolutions will be considered and taken by our fellow Citizens and the Federal Government, and for a compleat vindication of the Citizens of Knox.

Resolved unanimously that the conduct of a Small number of the Citizens of Knox who were addressed by the Agents of Aaron Burr in declining the offers made to them, in consequence as is believed of entertaining suspicions of the legality of the enterprise, and which may have never have been remarked was and now is considered by

the Citizens of Knox as highly honorable to those men, and is on this Occasion noticed in addition to the foregoing evidence of the freedom of the Citizens of Knox from any Participation or suspicion of Participation in the enterprise or schemes of Aaron Burr.

***Resolved unanimously* That the Citizens of Knox, ever have been, now are, and ever will be, sincerely attached to the Constitution and the United States, and that they will at all times be found ready to stake their lives and fortunes in the defence of the Union and peace of their Country against internal faction and foreign enemies.**

***Resolved unanimously* that the Citizens of several Counties in the Territory, be, and they hereby are invited to express their sentiments on the subject of these Resolutions.**

***Resolved unanimously* that the Secretary make triplicates of these resolutions that one Copy signed by the Chairman and attested by the Secretary be transmitted to the President of the United States one to the Editor of the Western World and one to the Editor of the Western Sun for publication; and that the Editors throughout the Union who have published on this subject be and they are hereby requested to publish these Resolutions in Justice to their fellow Citizens of Indiana**

Carter, *The Territorial Papers of the United States*, Vol. VIII, The Territory of Indiana, 1810-1816, pp. 511-514.

These resolutions were a vicious attack on Floyd who may have deserved some of the venom in them but not all of it. Floyd would disappear from public notice for several years. Floyd lost his commission as a Falls of the Ohio river pilot and his rank as major in the Indiana militia, two appointments that were valuable to him and his family. He had resigned as Clerk of the House of Representatives and now he was condemned in a most vitriolic way. Was there any other motive for the Citizens of Knox?

Badollet's Response to the Citizens of Knox

On January 30th, 1808 Badollet disguised as "Anti Tristram" in the *Western World*, a Vincennes newspaper, took aim at the instigator of the attack on Floyd. It was one man who had motivated certain Knox County citizens to publicize

Floyd's indiscretions as a cover for his own treasonous activity. After exposing the perpetrator William M'Intosh for falsifying the testimony of a non-English speaking Frenchman in a land dispute in which M'Intosh stood to gain from the false testimony, Anti Tristram reported as follows:

You may perhaps be surprised Mr. Editor that a man [M'Intosh] of this character, should be appointed one of a committee on the part of a number of citizens [Citizens of Knox] lately assembled at this place, to draft resolutions, expressive of the sense of the appointment of Davis Floyd to be clerk of this territorial house of Representatives--It is indeed, a most surprising, a disgraceful circumstance--but it was a preconcerted scheme of this man's, to serve a particular purpose--For some months past the probability of a war with Great Britain had excited a considerable degree of apprehension on the part of many of the citizens of this frontier, from the belief that hostilities with the Indians would be the inevitable consequence. It was well known that in their wars with the United States, the savages had been always set on and assisted by the British traders in Canada, whose agents and factors are scattered throughout this country, and it was believed that, in that which was about to take place, some of these would remain for the purpose of giving information to the enemy. This idea was promulgated in a piece published in the paper of this place, and M'Intosh from his known attachment to the government of G. Britain, from the circumstances of all his connexions residing in Canada, was particularly pointed at--In his answer to this place, his attachment to the country of his birth, so far got the better of his usual art, as to cause him to assert that the American farmers were only enabled to clear and cultivate their lands, in consequence of the credit given to our merchants, by those of Great Britain. His own reflections, however or some remarks made by the Governor [Harrison], in an address to the French citizens which he affected to think were intended for himself soon opened his eyes to the delicacy of his situation and it became necessary that he should do something to manifest his regard for the country in which he lived. His ingenuity soon discovered the advantage he might derive, from warmly joining in the censure of those members of the legislature who had voted for Floyd--And thus it happened that he was never before heart to bestow a single remark of approbation upon the government, by which he was protected--who alone had always refused to join in the celebration [July 4th], which gave birth to that liberty and those rights, the benefits of which, he daily participated--who on that hallowed festival, had viewed with scowling eye and haughty demeanor, the joy and hilarity which sat on every face, but his--hence it was that this man

had become a patriot and a vindicator of American honour.--From such patriots good Lord deliver us!

The resolutions that were adopted by the meeting of the citizens of this county on the 4th instant [January 4th, 1808], were drawn by M'Intosh previously to the meeting. This circumstance was, I believe known to the gentleman who nominated him as one of the committee, and as he approved of them he might not think it material by whom they were presented. I am however, well persuaded that one the gentlemen at least, who sat with him on the committee did not think the association a very honorable one, as he had a few days before denounced him to his friend [Peter] Jones as a scoundrel.

From the specimen which mr. Bachus [Roman god of wine; a "likerous mouth most han a likerrous tayl;" [translated a "liquorish mouth most has a liquorish tale."]] has exhibited of his principles, in the short time he has resided in the territory, there is every reason to believe that if the history of his previous life, was as well known that it would be found to contain as many act of perfidy, as that of his *worthy* coadjutors; to say nothing of his official conduct, which has been severely arraigned, he has been *convicted* (by a gentleman of respectability) of the most egregious falshoods; and as vile a swindling trick, as ever was committed by a man, who professed to be a gentleman.

Carter, *The Territorial Papers of the United States*, Vol. VIII, The Territory of Indiana, 1810-1816, pp. 99-100.

This letter to the *Western World* was signed by Badollet using the nom de plume, "Anti-Tristram." These words probably referred to the medieval legend about Tristram who was sent by King Mark of Cornwall to Ireland to bring back the Princess Isolde to be the King's betrothed. There was a "double cross" by Tristram and Isolde when they fall in love and tragically die together. Badollet who had been trained in the classics in Switzerland and France before he came to America would have been familiar with this legend. There were several double-crosses in Burr story. First, Burr was double crossed by Gen. Wilkinson; second, Floyd felt the effects of the double-cross; and third, which is the most likely, Floyd had been double-crossed by William M'Intosh. Badollet's pen name signified that he was against (anti-) the double-cross that was being orchestrated by M'Intosh. This would be the last time the Citizens of Knox or

Davis Floyd were mentioned in the *Western World* in regard to the latter's involvement with Aaron Burr.

However, the matter was not finished with certain other citizens of Vincennes who were anti-Tristram. In 1810 the following petition was filed with the General Assembly of the Indiana Territory by Elias McNamee and others:

To the legislative Council and House of Representatives of Indiana Territory the Petition of the undersigned humbly sheweth

That the Citizens of this Territory, have been accused of abetting Aaron Burr in his late wicked attempt to divide or overthrow the Government of the United States that those accusations have been lately republished in some Newspapers treating of the canal company of Indiana.

It therefore becomes a duty which we owe to ourselves and to our fellow Citizens throughout the Union to acquite ourselves of those charges conscious of our innocence and indignant, at the supposition of our criminality we call on you as our Representatives to examine into those charges, and to made such statement to our fellow Citizens as you shall find Just, If we have by our suffrages appointed any who were concerned with Burr let it be known, or if we have recommended them for executive appointment let it be known, but let not that guilt be imputed to a whole people, which a lone is chargeable to a few individuals, we therefore earnestly request and instruct you as our representatives, to examine what grounds there may be for such reproaches, whether the people have dishonored themselves, by electing any concerned in this plot to a seat in this honorable house, or whether any such have been appointed to offices of Honor trust or profit by our executive, and that you will make such report as will exonerate the innocent and criminate alone those who are guilty---On entering into political existance and becoming a member of the Union; as shortly we must do, it is highly necessary that we should take with us as a people a character unstained with treason and not even suspected. A minute investigation into all and singular the premises we hope for and expect and your petitioners as in duty bound will ever pray &c.

Thornbrough and Riker, *Journals of the General Assembly of Indiana Territory 1805-1815*, pp. 362-363.

On December 6, 1810 a Committee of the Territorial House of Representatives issued the following report:

The Committee to whom were referred the Memorial of William Prince Esqr of the 1st instant, and the petition of Doct. Elias McNames & other citizens of the County of Knox praying an investigation into the conduct of such of the Citizens of the Indiana Territory as had any criminal concern in the Treasonable designs of Aaron Burr and whether any such had been appointed to offices of honor trust or profit by our Executive---Beg leave to report...

Your committee have been thus minute in order to shew that every fair Opportunity has been offered, not only to Doct. McNamee but the other petitioners whose views & wishes coincided with his'n, to establish the criminality complained of in the petition and there to attach infamy to Mr Prince as an individual or as an officer of this Territory, or any other Citizens who "have received executive patronage" but it has all turned out like the mountain in labor--- Wherefore the Petition seems to your Committee to be rather *soiled* with a spirit of *vindictiveness*, that not any of the least Criminality was established or appeared against William Prince or any other person who has heretofore received Executive patronage on the contrary that the conduct of Mr Prince so far as respects the schemes and designs of A Burr was that of a man firmly attached to the Constitution & laws of his Country and deserves encomium instead of obliquy---all of which is respectively submitted

Decr 6. 1810

**Genl W Johnston
Chairm Comee**

Thornbrough and Riker, *Journals of the General Assembly of Indiana Territory 1805-1815*, pp. 363-366.

This report probably exonerated Floyd as well as Prince. Apparently, their involvement in the Burr affair did not affect their respective careers after that time unless one would want to argue that they would have gone much further in their pursuits had the stigma of the Burr connection not been present.

Gov. Harrison's Letter to a Gentleman in Clark County

In a letter dated March 18th, 1811 from Gov. Harrison to "a gentleman in Clark County I. T.", he said as follows:

Upon Floyds' return from Burr's expedition knowing that the Government was grooping [probably groping] in the after testimony to develop the actual of Burr's designs and believing that Floyd might give much useful information, I wrote him and engaged on the part of the Government that if he would come forward and disclose what he knew I would procure him a complete pardon and that I would moreover use my personal influence, to reinstate him in the good opinion of his constituents. He declined the pardon but accepted the other conditions. His two statements together with my obligations to him were communicated to the then Secretary of State (Mr. Madison). I have from the Secretary of War (who saw my communication) a letter in which my conduct in this affair is mentioned with approbation [approval]. Agreeably, to my promise, Floyd was continued in office, although much abuse was poured out upon me in the public papers on account of it. After this clamor had entirely subsided, I had some reason to believe from information that I then received, that Floyd had not acted candidly with me in the confession he made and therefore immediately dismissed him from his appointments.

Esarey, *Messages and Letters of William Henry Harrison*, Vol. I 1800-1811, pp. 297-298.

In a letter written by Jonathan Jennings to William Eustis in the War Department on February 7th, 1812, Jennings recited the letter from Gov. Harrison and then said the following:

Quere, whether the information alleged to have been given, was given before the appearance of the Proclamation of Mr. Jefferson in the Western States. Floyd was indicted and convicted before Walter Taylor & Thomas T. Davis, sitting as judges of the General Court of the Indiana Territory, for a misdemeanor in having been associated in Burr's conspiracy.

Both Prince & Floyd are qualified for the Office of Capt. if their concern with A. Burr forms no objection.

Riker, Dorothy, *Unedited Letters of Jonathan Jennings*, Vol. 10, No. 4, Indiana Historical Publications, Indianapolis, Indiana, 1932, pp. 182-184.

William Prince

Who was the Prince that was mentioned in Gov. Jennings to Sec. Eustis? He was born in 1772 and came to Vincennes before 1800. He was appointed the first sheriff of Knox County in that year and served until September 1804. He studied law during this time and was appointed a justice of the peace of Knox County. Five years later he was appointed Territorial auditor. Floyd succeeded him in this office in 1813. Prince was then appointed prosecuting attorney for Knox County, Gibson County, and Warrick County. He also intermittently held the office of post master in Vincennes. Prince was always a loyal supporter of Gov. Harrison and served as a special messenger for Harrison to the various Indian tribes. The *Journal of the General Assembly* reported the following regarding Prince's involvement with Aaron Burr.

Prince unfortunately got entangled with the Burr conspiracy, though probably not to quite the extent that Davis Floyd did. During the campaign for election to the Legislative Council in 1809 Prince wrote a letter to the *Western Star* giving an account of his part in the affair. He stated he was approached by a representative of Burr in 1806 [probably Floyd] inviting him to engage in his enterprise against the Spanish province of Mexico. He was told that the United States would shortly be at war with Spain and that Burr was authorized by the government to prepare an expedition against her possessions. Before Prince committed himself he spoke with Harrison and related what he had been told. It was at this time that Harrison wrote to the President [Jefferson] to ascertain what authority if any Burr had for such undertakings. Later Prince conferred with Burr who reassured him and also to Judge Thomas T. Davis who, said Prince, state that he had seen a letter from the Secretary of War declaring the President's approbation of Burr's projected expedition. Burr, at Prince's request, wrote to Harrison assuring him he had "no design to attempt a separation of the Union." Prince still hesitated and had not actually joined in the undertaking when the charges of treason were brought against Burr. The truth of his statements were certified by Judge Waller Taylor who had acted as an intermediary when Prince first approached Harrison on the subject.

Journals of the General Assembly, p. 1006.

As has been seen Prince was attacked in 1808 by the Citizens of Knox for his connection with Burr. Prince apparently survived these attacks both politically

and militarily. He served as Major Parke's sergeant-major at the Battle of Tippecanoe. Next he joined Harrison's Army of the Northwest during the War of 1812 and in 1814 he was commissioned a captain in a cavalry squadron. When Gibson County was organized in 1813 Prince named the county seat Princeton. He would later serve as county treasurer, county agent, trustee of Princeton Academy, and senator of the first Indiana General Assembly. In 1817 he was appointed and then elected the president judge of the First Judicial Circuit which meant that he and Floyd were two of the three Indiana Circuit Judges. He resigned that position in 1818 and became an Indian agent where he concluded several treaties with various Indian tribes. He ran for U. S. Congress in Indiana's First Congressional District in 1822 and won but only served for one and one-half years which term was interrupted by his death in 1824. Judge Prince was described "as an attorney...neither ready nor brilliant, was slow in forming an opinion, but his opinions were from deliberate thought, for which reason a judgment was his sphere." *Journals of the General Assembly*, p. 1007.

Naylor's Comments on Floyd

Isaac Naylor on a date unknown also wrote about Floyd's involvement with Aaron Burr:

In the year 1805 Aaron Burr, the arch conspirator came to Jeffersonville, and enlisted some of our good citizens in his conspiracy. Davis Floyd, of Jeffersonville, was one of these. Burr induced him to believe that his expedition was authorized by Mr. Jefferson, the then president of the U.S. by Secret instructions. What Burr's ultimate object was in this conspiracy is not known. It is a matter of conjecture only. Floyd was prosecuted for high misdemeanor against the U.S. found guilty and sentenced to imprisonment in the county Jail of Clark County for one hour. So great was the confidence of the people in Floyd's honesty and patriotism that the Sheriff in executing the sentence remained with him in the prison during the hours without locking the door.

Undated Manuscript in the Indiana Library of History, Indianapolis, Indiana, p. 17.

Why did Floyd plead guilty to a misdemeanor and why did he refuse a pardon? The answers to these questions are probably summed up in the legal maxim, "double jeopardy."

The "double jeopardy" rule arises from a clause in the Fifth Amendment to the U.S. Constitution which says "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb." Floyd and his friends probably thought that it was prudent for him to plead guilty to a misdemeanor and avoid a trial or, at least, provide him with a defense on the more serious treason charge that the U.S. government had levied against him. Floyd, as will be pointed out later, avoided any trial on the treason charge but by pleading guilty to the lesser charge he put himself in a more favorable position. Under modern day law on this issue it is questionable whether he could avoid the double charges but 200 years ago the Constitution was in its infancy and English common law frequently controlled interpretations of laws in the United States. The question would be whether there were separate offenses based upon the same acts. Floyd gambled, pleaded guilty, and was convicted by his own admissions, but he and none of his co-conspirators were ever found guilty of treason. Had Floyd not pleaded guilty he may have gotten away with his involvement in the conspiracy. But it is likely that the two judges who convicted him (accepted his guilty plea) were probably in on the scheme and may have even advised Floyd to plead guilty to the lesser charge to avoid the major charge.

On the other hand Floyd's integrity and his remorse for what he had done, and perhaps his blameworthiness for being duped by Burr, may have overwhelmed him into pleading guilty. He may have been thinking he was lucky to be back in Indiana with his life.

Why did Floyd refuse the pardon? Article II, Section 2 of the U.S. Constitution provides that the President “shall have the power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.” A pardon is a forgiveness or exoneration of a crime and the penalty coupled with it. Accepting such a pardon has been said to constitute an implied admission of guilt. Floyd and his friends may have thought a pardon could result in him being charged again with treason or they may have disliked the notion that the acceptance of the pardon implicitly constituted another admission of guilt. Whatever the reasons Floyd pleaded guilty to a misdemeanor to avoid a felony, and refused to accept a pardon.

Co-authors Wandell and Minnigerode say the following at this point:

From the very first, it was inevitable that this trial should resolve itself into a political contest between Federalists and Republicans; into an arraignment of General Wilkinson and his protector [Jefferson]. The prisoner at the bar of justice was Aaron Burr; the reputation at stake before the bar of public opinion that of Thomas Jefferson. Aaron Burr must be convicted or the President must emerge discredited and utterly ridiculous. The issue was never for a moment ignored at Washington; Mr. Jefferson’s personal prosecution of Colonel Burr never at any time to be denied. Other gentlemen were indicted—Jonathan Dayton, Senator Smith, Comfort Tyler, Davis Floyd, Israel Smith and Harman Blennerhassett—and all but the first two arrested, but it was against Aaron Burr that the Government’s utmost effort was put forward, propelled by the tireless persistence of the presidential hands.

Wandell and Minnigerode, *Aaron Burr*, Vol. Two, pp. 176-177.

At the end of his life Burr said:

I am not a libertine. I am not a murderer; I am not a traitor. I never broke a promise to a woman in my life. I did not intend to kill Hamilton and did not shoot first. I never got within ten thousand leagues of a wish to break up the United States by a separatist or

secessionist movement, though I did hope to establish an empire in Mexico and to become its emperor.

Wandell and Minnigerode, *Aaron Burr*, Vol. Two, p. 340.

The first clause in the last sentence is very interesting compared to the first four. The latter were all denials while the first clause in the last sentence dodges whether he and Wilkinson ever planned a separatist movement or secession. Did he mean he never got close to a desire to break up the Union or that he was not allowed to do it? Burr never recovered from his antics but Floyd did. In the meantime Floyd was involved in an ever-widening battle over the slavery issue in the Indiana Territory.

Books and references other than those cited in this chapter:

- (1) Cox, Isaac J., "The Burr Conspiracy in Indiana," *Indiana Magazine of History*, Vol. XXV, No. 4, December, 1929.
- (2) Johnson, Leland R., PH.D., "Aaron Burr: Treason in Kentucky," *The Filson History Quarterly*, Vol. 75, No. 1, Winter 2001.
- (3) Henry, William Wirt, "The Trial of Aaron Burr," *Virginia Law Register*, Vol. III, No. 7, November, 1897.

Images:

- (1) Engraving of Gen. James Wilkinson.