

CHAPTER XV
VICE-PRESIDENT BURR

I. PRIDE GOETH

ON March 4, 1801, three men stood facing each other in the chamber of the Senate of the United States — Thomas Jefferson, President-elect, Aaron Burr, Vice-President-elect, and John Marshall, Chief Justice. Three men mutually distrustful, mutually inimical, whose duty it was to carry on the government and interpret the laws of the nation, who were to meet again in implacable conflict and under even more dramatic circumstances within a few short years. The oaths of office were administered; the new President read his Inaugural Address — a placating document in which, remarked Henry Adams, Jefferson seemed anxious to prove to his opponents that actually there had been no revolution at all.¹ The new Republican government was formally launched.

The new incumbents found themselves confronted, not merely with a complex of problems, both foreign and domestic, inherited from the old Federalist regime, but with another inheritance even more burdensome, and, to their minds, considerably more vicious. This was the famous midnight appointments of John Adams, who, seeing the twilight of the Federalist gods almost upon him, sat in his study until the very last stroke of his expiring term, signing appointments to office as fast as he could write. Chiefly they were made to the Judiciary, whose limits the Federalist Congress had thoughtfully extended for just such an emergency, and whose incumbents held tenure for life on good behavior.

Jefferson was confronted with a *fait accompli*, as well as with a horde of hungry Republican partisans seeking office under the new administration. Yet he had promised Bayard — so at least Bayard claimed — that no Federalist administrative office-holders would be disturbed for political reasons. It was a promise which, if made, he was compelled to ignore, except in isolated cases. The pressure placed upon him was tremendous. He tried to compromise, proclaiming a doctrine in his famous reply to the New Haven remonstrants that to the victors belong at least one-half the spoils.

"If a due participation of office," he wrote the merchants of

New Haven, "is a matter of right, how are vacancies to be obtained? Those by death are few; by resignation, none. Can any other mode than that of removal be proposed? This is a painful office, but it is made my duty, and I meet it as such."²

It was a difficult task with which he was confronted, and one that meets every change of party administration. Grover Cleveland was much later to use almost identical phrases when the same knotty question arose.

Aaron Burr watched the scene with somber eyes and inscrutable thoughts. He was an outsider, the skeleton at the feast. As Vice-President, technically his duties were confined to presiding in the Senate. The government hummed and buzzed with activity, the new Cabinet met and discussed questions of policy and administration, but the man who had done more than any other to achieve the revolution, to place them all in office, wandered disconsolately alone. Jefferson who had only a few months before lamented that Burr's absence from his councils would leave an irremediable gap, now politely passed him by, with cold, formal words of courtesy, seeking no way in which to avail himself and the government of the undoubted talents of the Vice-President of the United States.

Yet Burr said nothing. It is inconceivable that he did not perceive the frostiness in the atmosphere, that he was not at least partially aware of the massed forces of his enemies, and who they were. He even returned to New York to assist George Clinton in his ever-renewed race for the Governorship, once more to oppose Hamilton at the polls. Clinton was elected by a large majority.

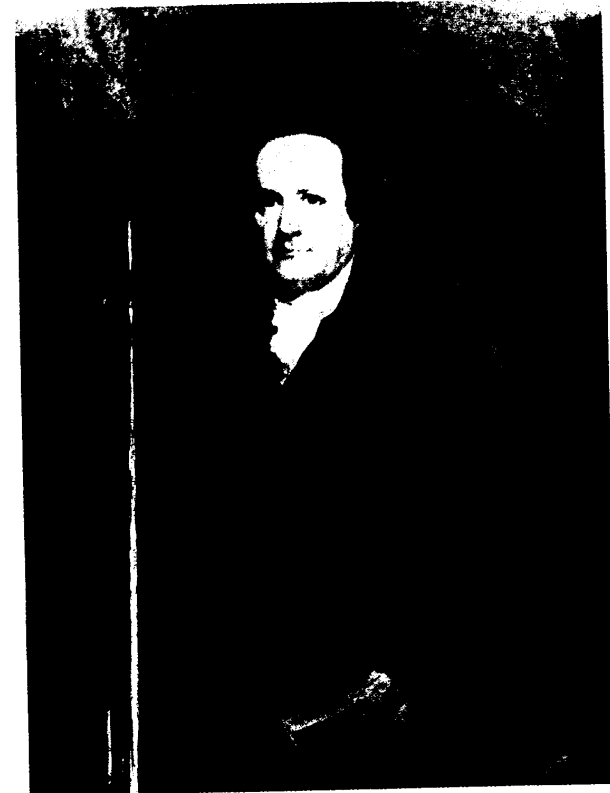
As far as the outer world knew, Burr was still a party man in good standing, at the height of his power and popularity. The hollowness of the structure, due to the boring of innumerable termites, was not yet visible. Possibly he felt that by such a show of party activity, by the maintenance of a discreet silence, he could placate his enemies. Thereby he made the mistake that no professional politician dare make without courting disaster. He underestimated the venom with which he was regarded.

He had already made another blunder during the course of the campaign. He could have cast honor aside and seized the Presidency, as Clinton had done with the Governorship in the contest with Jay, as Rutherford B. Hayes was to do in the campaign against Tilden. Failing that, the matter called for the most vigorous measures. He had done all he could, at least so he thought, with letters and announcements and avowals, to dissociate himself from the Presidency. A professional politician should have done more. Burr should have quit Albany, Theodosia's wedding, the

Assembly, forgotten his wonted reserve, and hastened to Washington to declare in ringing public accents his denunciation of the unspeakable tactics of the Federalists. Thereby he might have avoided the creeping, insidious rumors that were finally to overwhelm him. Yet, with a due regard for human nature, it is doubtful whether such a course would have avoided the secret enmity of Jefferson. An office which is palpably the gift of another excites certain inner resentments. And the matter was too deeply rooted in more fundamental oppositions.

By aiding George Clinton to regain the Governor's chair, Burr unwittingly sealed his doom. New York was not big enough for the Clintons and Aaron Burr both. Sooner or later the struggle would have to be fought to the death. And the Clintons now had the power and the backing of the Federal Government, a situation which they were quick to capitalize. It was not so much the aged Governor who led the pack. A new leader had emerged to take his place. De Witt Clinton, his nephew, young, vigorous, thoroughly unscrupulous and talented. He knew what he wanted and spared no means to achieve his ends. New York State must once more be the inviolable bailiwick of the Clintons, and the shadow of the Vice-President of the United States darkened the Clinton sun. It must be removed forthwith.

The old Legislature, being Republican, had appointed a majority of Republicans to the all-powerful Council of Appointment. De Witt Clinton was one of these, and promptly assumed the leadership of his group in a struggle for power with the then Governor, John Jay, Federalist. Both factions turned a complete somersault in their respective stands. Whereas, under Governor Clinton, a Federalist majority had proclaimed over his protests the right of initiation of nominations, now it was the Republicans who asserted that right over a Federalist Governor. A long struggle ensued, until the Legislature, to cut the Gordian knot, declared for a Constitutional Convention to settle that and certain other problems. The Convention met October 13, 1801, in Albany. Burr was nominated as a delegate from Orange County, and in deference to his high position, the Convention promptly elected him President. Under his able leadership the Assembly was reorganized, with district apportionments according to the new census, and the powers of the Council of Appointment, under Article XXIII of the Constitution, were construed. As against the invariable claim of each succeeding Governor, Federalist or Republican, that he alone possessed the power of nomination, the Convention decided that such power was vested concurrently in the Governor and each of



Courtesy of The New York Historical Society

DEWITT CLINTON

From a portrait by John Wesley Jarvis

the members of the Council. Which in effect gave all power to the Council — the Governor having but one vote out of five.³

This, it seems, may be considered the greatest blunder of Burr's entire career. As President of the Convention, as Vice-President of the United States, as a Republican whose popularity was still ostensibly unrivaled, and considering his talents for persuasion, it is quite probable that he could have swayed the Convention to adopt the position taken by Jay, and by George Clinton himself. By aiding and abetting in a triumph for De Witt Clinton and his personal henchmen in the Council, Burr had delivered himself into the hands of his enemies. More than anything else was this act to bring him crashing. Politicians do not operate in a void, beating their luminous wings in vain. They require substantial nourishment, with feet solidly planted on a firm foundation — notably, offices and the perquisites thereof. Now all appointments were placed in the hands of De Witt Clinton, who knew exactly the nature of the weapon which had been given to him by his rival, and did not hesitate for an instant to use it. "The meekness of Quakerism," he is alleged to have remarked, "will do in religion, but not in politics." George Clinton, secretly averse to Burr though he was, would never have used his power of nomination with the ruthlessness, the simple brutality, which his nephew employed. But of that more anon.

2. THE SPOILS OF OFFICE

Aaron Burr realized that his continued political strength depended entirely upon the organization he had built up in New York State, and especially in New York City. But, as has been stated, such an organization could not exist *in vacuo*, and certainly not when the party to which it was pledged had achieved all power, both State and national. There were offices to be filled, and the workers and tillers in the political fields required to be fed. Burr was as well aware of this tremendous principle as any one of his time.

The Clintons opposed him — of that he was definitely certain. But he relied, in State politics, as heretofore, on the balance-wheel of the Livingstons. He thought they were still his allies, and so was not unduly alarmed. Edward Livingston in the House, and General Armstrong in the Senate, both of the Livingston faction, were his friends. Others of the clan were personally his clients and even associated with him in certain vague speculations.⁴ As long as the alliance existed, the Clintons would be impotent, New York



"A GENUINE VIEW OF THE PARTIES IN AN AFFAIR OF HONOR AFTER THE FIFTH SHOT, AT HOBOKEN, 31ST JULY, 1802"

From a contemporary cartoon of the duel between DeWitt Clinton and Swartwout

would be safe, and even Jefferson, President of the United States, would not dare tread unduly on his feet.

For the moment his strategy seemed correct. In conjunction with these two members of the Livingstons, and with Albert Gallatin, Jefferson's new Secretary of the Treasury and erstwhile leader of his cohorts in the House, he arranged a careful list for the disposal of the Federal patronage in New York. It was a surprisingly moderate and reasonable list. Every faction in New York politics was given its due representation. The appointments in which Burr was particularly interested were those of John Swartwout as Federal Marshal and Matthew L. Davis as Naval Officer or Supervisor. In addition he would have been glad to see David Gelston appointed Collector of the Port, and Theodorus Bailey Supervisor.⁵

This list, it must be remembered, had been arrived at by a conference of the New York Republicans in Congress, Burr and Gallatin. It was submitted to Jefferson. He read it and saw his opportunity. Without the power of patronage, Burr would be cut off from his base of supplies and rendered impotent. Yet he did not wish to show his hand too openly. Whereupon he sat down and wrote a letter to Governor Clinton.

"The following arrangement was agreed on by Colonel Burr and some of your senators and representatives, — David Gelston, collector; Theodorus Bailey, naval officer; and M. L. Davis, supervisor." But objections have been made to this list — by whom, Jefferson does not state. What does the Governor think about it?⁶

The Governor, or rather De Witt Clinton, evidently thought plenty. Jefferson had tipped them off that Burr was *persona non grata* with the Administration, and that he would view with a tolerant and benevolent eye the downfall of their, and his, rival. It was not that he was particularly fond of the Clintons. He simply disliked and feared Burr more.

The appointments unaccountably lagged. John Swartwout, it is true, received the office of Marshal. Jefferson did not wish to declare open war immediately, and there were no good reasons that could be adduced against this particular appointment. Bailey withdrew his application, on the promise, it was understood, of a postmastership. The fight thereupon concentrated on Davis, Burr's particular lieutenant. There was the question, Jefferson said vaguely, of the present incumbent, a Federalist named Rogers. He was not prepared for *wholesale* dismissals of honest and efficient administrators. Perhaps he was sincere in the general effect; he certainly was not in the particular instance. New York, under

the Clintons, and Pennsylvania, under Governor McKean, were even then witnessing a veritable slaughter of Federalist office-holders. *They* held no illusions about an equitable division of the spoils.

Burr heard something of what was going on behind the scenes. He wrote in angry tones to Gallatin. "Strange reports are here in circulation respecting secret machinations against Davis," he declared. "He has already waived a very lucrative employment in expectation of this appointment . . . The opposition to him, if any, must proceed from improper motives, as no man dare openly avow an opinion hostile to the measure."⁷

But Gallatin, though personally inclined to Burr's position, and a power with Jefferson, could do nothing in this particular matter. The months dragged. Burr communicated with Jefferson direct, to receive only the shifty response that Gallatin had not mentioned the subject to him. Which was obviously a lie, for Burr had insisted that Gallatin show Jefferson what he had written. Whereupon Davis determined to beard the lion in his den — the President was then at Monticello. But first he passed through Washington to see Gallatin, who received him with embarrassment, and attempted to dissuade him from the proposed journey. Failing that, Gallatin gave him a letter addressed to Jefferson which is remarkable for its frankness. He inveighed against what he termed "the general spirit of persecution which, in that State particularly, disgraces our cause and sinks us on a level with our predecessors." He viewed with disgust the way in which the Council of Appointment, under De Witt Clinton's domination, had extended its removal of Federalists, no matter how competent, "to almost every auctioneer" — surely not a political office. However, he concluded, if Rogers, the then Naval Officer, must be removed, he would strongly recommend Davis for the vacancy.⁸

To this letter, which he gave to Davis, he added another, by private post, even more remarkable in its language. For the whole strategy of the Virginians with respect to Burr was herein mercilessly exposed. The Administration had been in office a bare six months, yet already certain points were under secret consideration.

"There are . . . two points . . . on which I wish the Republicans throughout the Union would make up their mind," he wrote. "Do they eventually mean not to support Burr as your successor when you shall think fit to retire? Do they mean not to support him at next election for Vice-President?" In the next election, he thought, though Madison would have been preferable, "it seems to me that there are but two ways, either to support Burr once

more, or to give only one vote for President, scattering our votes for the other person to be voted for. If we do the first, we run, on the one hand, the risk of the Federal party making Burr President, and we seem, on the other, to give him an additional pledge of being eventually supported hereafter by the Republicans for that office." And the second course would mean a Federalist Vice-President. The Administration was determined not to follow either alternative, and the only remedy for this particular dilemma was to distinguish constitutionally between the two offices. This was actually done soon after. The Twelfth Amendment put an end forever to the possibility of a repetition of 1800-1.

As for Burr personally, Gallatin continued, "I dislike much the idea of supporting a section of Republicans in New York, and mistrusting the great majority, because that section is supposed to be hostile to Burr, and *he* is considered as the leader of that majority. A great reason against such policy is that the reputed leaders of that section, I mean the Livingstons generally, and some broken remnants of the Clintonian party who hate Burr (for Governor Clinton is out of the question and will not act), are so selfish and so unimportant that they can never obtain their great object, the State government, without the assistance of what is called Burr's party, and will not hesitate a moment to bargain for that object with him and his friends, granting in exchange their support for anything he or they may want out of the State." Shifting to the matter of Davis's application, he warned Jefferson that "it is not to be doubted that . . . his refusal will, by Burr, be considered as a declaration of war . . . I do know that there is hardly a man who meddles with politics in New York who does not believe that Davis's rejection is owing to Burr's recommendation. On that as well as on many other accounts I was anxious to prevent Davis's journey."⁹

The warning fell on deaf ears. Jefferson plumbed the future better than did Gallatin, though even he could not have foreseen the extent of Burr's blunder in the Constitutional Convention in giving all power to his deadliest enemy, De Witt Clinton. A combination of Federal and State patronage would be sufficient, he knew, to remove all supports from Burr's political prestige. Furthermore, he knew what Burr himself was still not wholly aware of. The Livingstons had deserted to the enemy. This was in great part Jefferson's own doing. He had flattered the clan with important offices and more important promises. The Chancellor became Minister to France, Edward Livingston was given by the Clintonians the lucrative office of Mayor of New York, worth \$10,000 a

year, besides the office of District Attorney. The new Secretary of State was of their family; they held New York judgeships and had a representative in the United States Senate.

Jefferson read Gallatin's long letter in Monticello and smiled. Davis was already there. "Mr. Davis is now with me," he wrote back. "He has not opened himself. When he does, I shall inform him that nothing is decided nor can be till we get together at Washington."¹⁰ Jefferson had a positive talent for effective evasion.

Davis was never appointed. As late as March 25, 1802, Burr was still writing with a note of pathos to Gallatin, "As to Davis, it is a small, a very small favor to ask a *determination*. That 'nothing is determined' is so commonplace that I should prefer any other answer to this only *request* which I have ever made."¹¹ Jefferson had not even taken the trouble to answer Burr's previous letters on the subject, except for one formal reply that, addressed as it was to the Vice-President of the United States, was by its very terms a direct slap in his face. Especially when Burr had good reason to believe that Jefferson had not been so meticulously upright in other cases. He made it a general rule, Jefferson said coldly, not to answer letters "relating to office . . . but leaving the answer to be found in what is done or not done on them."¹²

He forgot to mention his turning Burr's list of proposed appointments over to Governor Clinton for his opinion. He forgot also to mention that the objections to this list had come directly from Samuel Osgood, a Clinton henchman, and had been acted on with unseemly haste by himself. On April 24, 1801, Osgood had written to Madison to protest against the appointment of the three candidates from New York City on the ground that they were "entirely devoted to the Vice-President." He insisted, in fact, that no appointments be made of any Burr-ites, whose "Republicanism has been and still is questioned by many." Only Clinton-ites, he declared, should receive the Presidential approval.¹³

The war had been joined. Burr was out in the cold. In the State, De Witt Clinton had made a clean sweep of all Federalist officeholders, over his own uncle's futile protests, and forthwith filled the vacancies, down to the smallest auctioneer, with relatives and friends. But the lion's share was reserved to his new allies, the Livingstons, who must be held content at all costs. Of the six or seven thousand appointive offices, not a single one went to known Burr-ites. When, in desperation, Burr turned to Jefferson, he met with a more evasive, but just as effective, lack of support. A few scattered crumbs of Federal patronage, it is true, were grudgingly

granted him, but not enough to satisfy his clamorous adherents. They could not know the inner workings of the conspiracy against their chieftain; they saw only that he was unable or unwilling to satisfy what they conceived to be their just demands. How long could they continue loyal under these circumstances? What fruitful ground would they yield later to the carefully sown seeds of suspicion against their former idol?

The story of Mr. Furman, a Republican with a natural desire to become Federal Marshal in New Jersey, conveys its own moral. On January 5, 1801, he wrote William Edgar, Burr's business associate in certain speculations, that he had, the week before, "the honour and pleasure of being introduced to the great little Burr." On March 2nd he was writing that "Mr. Burr is gone to his Post in which I hope he will be a terror to evil doers and a praise to them that do well."

On May 25th, he was abjectly grateful to Edgar and Burr both. "Thanks thanks for your prompt application to the vice [Burr] for his Interest in my behalf, nor can I make any other returns to that good man who has undertaken so arduous a task for the good of our country, in which he can have no other views, as I doubt not his professional business is more productive." The dulcet notes of an expectant office-seeker.

On August 6th, the note is still there, but a bit restrained. "When I applied through you to offer my Service as Marshall of this State, it was *as much* to gratify some of my friends as myself." He has heard, however, of others making application for office through their *Congressmen*, and seemingly with greater success than himself. But, he proceeds, "I concluded to let my application rest upon what was said by you to the Vice . . . I am bound to thank you for the application to Mr. Burr, and him for his willingness to grant it." Perhaps this is sarcasm.

In any event, by October 18, 1802, the floodgates of bitterness are opened. Another had been made Marshal, and it was all Burr's fault. "I am waiting, I cant say with patience," he writes, "to be able to form some Judgment respecting the conduct of Mr. B. Pray inform me what is the Opinion of those who have a knowledge of the business." This is a reference to Cheetham's attacks. In fact, the once dulcet politician is willing to add the strains of retrospective suspicion to the savage harmonies that are filling the air. "Believe I mentioned to you," he contributes, "that Col. Hunt and my self was invited to a Dinner last year when Mr. B. was there, the party consisted of Gentlemen that were so different in sentiments that Col. H. and myself could not account for the

cause that induced Mr. R. to make such a Collection; but the matter seems to be opening now so as to account for it; if what is publishing is true, and it seems to carry the marks of fact."¹⁴

The evolution of a disappointed office-seeker, and an intimate picture of how Burr's fall was accomplished by his enemies.

3. GRIM PROSPECTS AND IDLE DALLIANCE

"Never in the history of the United States," wrote Henry Adams in his classic volumes on Jefferson's Administration, "did so powerful a combination of rival politicians unite to break down a single man as that which arrayed itself against Burr; for as the hostile circle gathered about him, he could plainly see not only Jefferson, Madison, and the whole Virginia legion, with Duane and his 'Aurora' at their heels; not only De Witt Clinton and his whole family interest, with Cheetham and his 'Watch-tower' by their side; but — strangest of companions — Alexander Hamilton himself joining hands with his own bitterest enemies to complete the ring."¹⁵

By the beginning of 1802 Burr stood not alone in this realization of his political solitude. Astute observers in both parties were fast becoming aware of the hue and cry that snarled at his heels. Thomas Truxton, on his way to Tripoli and glory, wrote sympathetically. "My friends in politiks are aware of your situation and how cautious you ought to be just now. And there are those here who you dont know — that have lately been at Washington and have heard enough to drop from certain characters, to convince them and this society [Norfolk, Va.] that you are not in the confidence of — [Jefferson?]." ¹⁶ And one Federalist was writing to inform another that "I have the best evidence that Burr is completely an insulated man at Washington; wholly without personal influence."¹⁷

De Witt Clinton, smug with the good work he had accomplished in New York, journeyed to Washington to take his seat in the Senate, and establish more intimate contact with the Administration. From Washington he wrote back exultantly to General Horatio Gates, erstwhile friend to Burr, and now alienated by Clinton's tortuous plottings, that "I find on my arrival here that our opinion of a certain character as formed at N. York is confirmed by that of our friends who have had better opportunities of looking into the business. Little or no consequence is attached to him in the general estimation here, and he will soon appear to every eye in his true colors."¹⁸ Already, at this early date, February

25, 1802, Clinton was planning the vicious Cheetham attacks on his rival.

The Senate had begun its sessions on December 7, 1801. Burr was then still in New York negotiating for the sale of a sizable part of Richmond Hill, only to see the negotiations blow up almost at the last moment. William Edgar was the agent in the transaction, and there had been such rumors circulated about the true worth of the property by those "either utterly ignorant of the value or . . . from improper Motives," that Burr in anger withdrew it from the market.¹⁹ The sale was necessarily a forced one, due to an ever-recurring financial crisis. Already he had been compelled to sell out his stock in the Manhattan Company, or a goodly part of it, thereby paving the way for his eventual dispossession from the Directorate by the Clinton forces. The powerful tool he had forged for Republican interests was wrested from his grasp as the opening blow in a well-planned campaign. John Swartwout and other Burrrites were cast out in the same relentless purge. Even his financial speculations suffered from the secret machinations of his enemies. Brockholst Livingston, almost the last of his personal friends among the tribe of Livingstons, withdrew suddenly from a speculation of Burr to which he had promised financial support, and sailed hastily to the Madeira Islands to avoid his former friend's accusing eye.²⁰

Yet none of these defections, these alternate pinpricks and bludgeonings of fortune, could depress the eternally rebounding spirits of Burr. The resiliency of his nature is probably his outstanding characteristic. He was forty-six, already on the heights, and to the unthinking, with even more brilliant prospects ahead. But Burr knew that he was slipping — that whichever way he turned, the path led down — unless a miracle occurred. Yet never once did he give up his abounding faith in the ultimate miracle, never once did his keen brain stop its scheming and restless planning. He was alone now. His wife was long dead, and Theodosia, in whom his whole soul was wrapped, had gone to Charleston to live with her husband, twenty days' journey away.

No longer does he act the schoolmaster with this child of his loins and of his brain. His letters are more human, lighter in vein; gay, witty, utterly charming. The moralizing has disappeared; so have the stern preachments. They breathe of a wholly delightful relationship, brimming over with tenderness, with the frankness of complete understanding. Hints of gallantries and a succession of dim-seen fair ladies parade across the pages, clothed in oblique language, but evidently holding no secrets from the understand-

ing Theodosia. The Vice-President is still the gallant, the irresistible. The ladies succumb readily and willingly, nor did any of them appear to complain. Neither did his daughter, who in fact jested with him. A light-hearted acceptance of sex was a characteristic of both. Why then should the moralists of a later generation see fit to hold Burr up to opprobrium?

4. THE JUDICIARY BILL

But Burr was not forgetting public duties in private dalliances. He appeared in the Senate on January 15, 1802, and assumed his seat in the Vice-President's chair with consummate dignity and repose. The slipshod Senators, accustomed to slouching in their seats and loud talk and the noisy munching of apples and cakes, felt the subtle change in the atmosphere. They straightened up, they conducted their debates with an added decorum under the watchful, yet always courteous eye of the Vice-President. Burr was the perfect presiding officer.

On February 9th, General Armstrong, Senator from New York, suddenly resigned, and De Witt Clinton as suddenly was appointed in his place. Burr saw his enemy thus at close quarters, yet did not permit his easy calm to waver for a moment. But his friends charged that the shift in offices had been the result of a deal with the Livingstons.

Burr found the Senate in the middle of a violent and exacerbated debate on the Judiciary Bill. The Federalists, faced with the certainty of Republican victory, had rushed a bill through the previous session which reduced the number of Supreme Court Justices, after the next vacancy, to five. This was done, charged the Republicans angrily, to prevent the appointment of a Republican to that august Bench.²¹

In a further attempt to rescue the Judiciary from the oncoming Republican flood, John Marshall, bulwark of Federalism, was hastily appointed Chief Justice, and a horde of new circuit and district judgeships created, and as quickly filled, in the famous "midnight appointments" of John Adams.

The Republicans, and Jefferson in particular, very properly resented these tactics, especially as the judges, all Federalists, held office for life, and would oppose a formidable barrier to Republican measures. On January 6, 1802, Senator John Breckenridge of Kentucky moved the repeal of the National Judiciary Act. The new courts and the new judges, he argued, were not only mere surplusage and a heavy charge upon the straining finances of the Gov-

ernment, but they had been created for political purposes. The Federalists avoided the real issue and took their stand on the Constitution, which guaranteed to incumbent judges their offices during good behavior. Many even of the Republicans, though disapproving heartily of the additional offices, felt the force of the Constitutional argument, and paused in indecision.

Burr moved into this atmosphere of charged passions and political exacerbations. Every action, every change of his expression, was eagerly noted and commented upon by the opposing factions. The two parties were almost evenly divided in the Senate, and there was a frantic marshaling of forces. Every one knew by this time that war had been joined between Burr and the Administration, and the Repeal was a pet Jeffersonian measure which involved the very prestige of the Administration.

By January 25th, the excitement had grown to fever heat. The two parties were jockeying for position, and it became hourly more and more noticeable that the balance of power was being shifted into the hands of the inscrutable Vice-President. Bayard was writing, "Mr. Ross [Federalist Senator from Pennsylvania] has arrived and Mr. Ogden [Federalist Senator from New Jersey] hourly expected. These gentlemen will balance the Parties and place the scales in the hands of the Vice President. It is a situation he will endeavour to avoid and it is not certain how he would act. He openly disapproves some of Mr. Jefferson's projects and particularly the abolition of the internal taxes. There are *none* of them for which he has manifested much respect."²²

But Burr could not avoid the issue. On January 26, 1802, the usual motion was made to pass the Judiciary Bill to a third reading. A vote was taken. It was a tie — 15 to 15. All eyes turned to the presiding officer. In calm, even tones he announced his casting vote. *Yea!* The bill forthwith proceeded to its third reading.²³

The significance of this vote has been lost on historians. Only Gouverneur Morris seemed to have understood, and later recorded with some heat that "there was a moment when the Vice-President might have arrested the measure by his vote, and that vote would, I believe, have made him President at the next election; but there is a tide in the affairs of men which he suffered to go by."²⁴

This may well be believed. Had Burr stopped the bill in its tracks, not Hamilton nor any one else could have prevented the Federalists from acclaiming him with joyous shouts as their champion. It might not have led to the Presidency; certainly it would have made him Governor of New York in 1804.

Yet Burr voted to break the tie and advance the bill, when he had the opportunity to bury it. His action on the following day has been analyzed and pulled to pieces by commentators, and his enemies were prompt to seize upon the incident and belabor it to good effect. But no one except Morris mentions his far more determinative vote of January 26th. Even his friends, outside the scene of battle, passed it by, and believed, as did his decriers, that Burr wished to defeat the Judiciary Bill. With this in mind, his own explanation of the reasons for his decision on January 27th must be accepted as credible.

On that day, Jonathan Dayton of New Jersey moved that the "Bill be referred to a select committee, with instructions to consider and report the alterations which may be proper in the Judiciary system of the United States." He argued in support of his motion that he considered it a "conciliatory motion," that "both parties should unite their labors with a view to revise and amend the whole Judiciary system." Colhoun, another Federalist, added that there was time enough in the present session to iron out all differences, that "if the report made by the committee should prove agreeable, there would be time enough to bring in another bill. This attempt to harmonize all parties can do no injury, while on the other hand, a system might be framed that gentlemen may be better pleased with than even a repeal of the act."²⁵

The Republicans were adamant, however, and when the motion came on for a vote, once more the Senate divided on strict party lines. Again Burr had the casting vote. This time he voted *Yea*, and the bill was recommitted. In announcing his decision, he essayed an explanation of his stand. "He felt disposed," he said, "to accommodate the gentlemen in the expression of their wishes, the sincerity of which he had no reason to question, to ameliorate the provisions of the bill, that it might be rendered more acceptable to the Senate. He did this under the impression that their object was sincere. He should, however, discountenance, by his vote, any attempt, if any such should be made, that might, in an indirect way, go to defeat the bill."²⁶

It is difficult to see how Burr's position can be quarreled with. It aimed at that very reconciliation of which Jefferson had spoken so grandiloquently in his Inaugural Address. It was a mere recommitment, not a burial of the bill. Its passage within the next few days proves this convincingly. Had he wished, as he was charged by those seeking his downfall, for a betrayal of Republican interests to the Federalists, he could have accomplished it the previous day by killing the bill altogether.

On February 2nd, under the lash of Jefferson, Breckenridge moved to discharge the committee, and bring the bill once more before the Senate. The political complexion had changed in the interim. Howard, a Federalist, was now absent, and Bradley, a Republican, had been hurried into the Chamber. The motion passed 16 to 14. Thereafter, by straight party votes, all amendments to the bill were relentlessly defeated, until, on February 3rd, the bitterly contested Repeal went through by the narrow margin of a single vote.²⁷ On March 3rd, the House concurred.

Burr's actions, carefully considered, must be held as rigorously fair and impartial. So keen a student as the late Senator Beveridge, himself a parliamentarian of no mean note, has so designated Burr's conduct.²⁸ Prominent Republicans wrote him in warm commendation of his stand. Yet the occasion was too good for his enemies to pass by. They concentrated on the second vote, and overlooked the first. The chorus yapped at his heels with a growing lust for his blood. It was to be added to the list of his crimes.

The Washington correspondent to the *Gazette of the United States* wrote with mixed feelings of the ensuing situation. "Col. Burr's vote to refer the bill, for destroying the judiciary, to a select committee has greatly puzzled the Virginia party . . . indeed his whole conduct is incomprehensible to them. Instead of lodging and boarding (as Mr. Jefferson did when Vice-President) at an Inn, he has taken a handsome suite of rooms and lives in the style of a perfect gentleman. All invitations to drink Toddy, and play cards, at Tunncliff's Hotel, with the Virginians, have been declined, and he is not upon terms of familiarity with any one of them. It is said he has no great personal respect for the Virginia members, and indeed from what I've seen of them they are not calculated to excite the veneration of such a gentleman as Mr. Burr."²⁹

5. SUNDRY ERRORS IN TACTICS

Burr was fumbling now, untrue to his own conception of the professional politician. He seems to have lost his grip. There were two courses conceivably open to him. One was to adopt a waiting policy within the ranks of his own party, efface himself as much as possible, do nothing that might provide his enemies with material against him, and await the inevitable breaks of fortune. The other was to ally himself openly with the defeated and disgruntled Federalists, who were milling about in the utmost confusion, without competent leadership. Hamilton had proved wanting; in fact, his activities had been directly responsible for the election of

Jefferson. Burr had many friends in that party, and his essentially moderate convictions on most questions were not too far removed from Federalist dogmas.

He did neither one nor the other. By his very impartiality in the matter of the Judiciary Bill he had exasperated both factions. This was creditable to him. But his appearance at a banquet of prominent Federalists met to celebrate the birthday of their departed and already mythic leader, George Washington, was the clumsiest kind of strategy. It was obviously a bid for Federalist support, but he had determined that it must be accorded him on his own ground. Burr, in spite of universal opinion to the contrary, showed no signs of compromising his underlying Republican principles. As a matter of fact, his chief political quarrel with Jefferson arose from Jefferson's manifest disposition to compromise, to yield on those very principles which had been proclaimed so strongly before the election. Burr was ready to unite with the Federalists, it is true, but he insisted on writing the platform. Time and again he was to hold stubbornly to this point: now; in the preceding campaign; in the election of 1804. A strange position indeed for the "pliant and slippery intriguer" of tradition to take.

A year or so previous, Burr would have handled the Federalist negotiators with consummate ease. Now he blundered badly into the trap that was set for him. The leaders, without taking the rank and file into their confidence, had invited him to the birthday feast. Bayard baited the trap.

"We knew," he wrote Hamilton in explanation, "the impression which the coincidence of circumstances would make on a certain great personage; how readily that impression would be communicated to the proud and aspiring lords of the Ancient Dominion; and we have not been mistaken as to the jealousy we expected it would excite through the party."³⁰

The feasting and wining was almost over when Burr appeared dramatically, and took his seat as the guest of honor. When toasts were called for, he arose, fingered his glass, looked around the flushed and expectant faces, and proposed, "*The union of all honest men!*"

The rank and file were startled. The toast meant to them only one thing. A direct bid for union of Federalists and dissident Republicans under Burr's leadership against the regnant Virginia faction. And that, without question, was exactly Burr's intention.

The leaders — those who had engineered the invitation — smiled secretly. They hastened to spread the news of the fatal toast. It reached the ears of the Virginians, who reacted just as

Bayard thought they would. It was a direct insult to them, a flaunting in their faces of all their actions since they had broken their first promise in 1796. It roused them to a new pitch of fury. Burr's own adherents were somewhat taken aback. The Federalists, approached thus crudely, proceeded to make political capital of the situation.

The ethical Hamilton wrote gleefully, "We are told here [in New York] that at the close of your birthday feast, a strange *apparition*, which was taken for the Vice-President, appeared among you, and toasted 'the union of all honest men.' . . . If the story be true, 'tis a good thing, if we use it well. As an *instrument*, the person will be an auxiliary of some value; as a chief, he will disgrace and destroy the party."³¹ Certainly Burr had blundered.

He had already been guilty of another capital error, the reason for which is difficult to understand. It was an innocent enough bit of business, yet he should have realized that every move and every act of his was being subjected to the minutest scrutiny; that this act in particular might readily be distorted and twisted against him, no matter how honorable his motives might have been.

Toward the end of 1801, John Wood, a hack writer of the chameleon breed with which the political woods were then swarming, sent to press a voluminous pamphlet entitled "A History of the Administration of John Adams." A good deal of the material had been furnished by William Duane, editor of the Republican *Aurora*, and Jefferson's first line of offense in the party press. Ward and Barlas, New York printers, set up some 1250 copies, and advertised them for sale. Burr heard of the forthcoming volume, and managed to obtain a prepublication copy.

The book was in the best party traditions of the day — a fierce, acrimonious attack on John Adams and all his works; slanderous, vicious, full of the most outrageous lies. As against this, there were fulsome and labored eulogies of Jefferson and Burr himself, the godlike leaders of Republicanism. Burr grimaced with distaste over libelous matter and eulogies alike. It was stupid, unentertaining, and a direct invitation to libel suits by the outraged John Adams. In fact, Brockholst Livingston, to whom the publishers had submitted the proof-sheets for a legal opinion, had advised that the "History" contained much material that was actionable. So too thought Burr.³²

Inasmuch as the offending volume was being published in the ostensible interests of the Republican cause, it might do the cause

it pretended to serve considerably more harm than good. Accordingly, Burr took it upon himself to surpass the offensive "History" by offering to purchase the entire issue. Duane himself, who was later to join the attacks on Burr because of this suppression, wrote him privately on April 15, 1802, that "I think it fortunate that the pamphlet of Mr. Wood has not yet been published, and that it would be much more so if it were not ever to see the light . . . I consider it, upon the whole, as a hasty, crude and inconsistent production, calculated to produce evil than the least good — as it would be attributed to the republicans."³³ There might also have been in the back of Burr's mind the thought that such a vicious assault on John Adams, with whom he had always been on personal good terms, coupled as it was with thick-laid eulogy of himself, might alienate New England from the "union of all honest men" which he was then contemplating.

Before the bargain was consummated, however, Cheetham and Duane received private information of the negotiations, and one of the printed volumes was surreptitiously spirited away. Burr actually paid \$1000 for the edition; unavailingly, it seemed. A new edition was hastily printed from the text of the purloined copy and offered for sale on June 2, 1802. He had been overreached. Nevertheless he was willing to drop the entire matter.

But it was not permitted to rest thus quietly. De Witt Clinton, skulking in the rear, saw in this minor incident the chance for which he had been waiting so long. Hitherto he had sniped persistently at Burr in secret; now, he felt, was the time to come out into the open. The strange toast at the Federalist banquet, the distorted rumors of Burr's part in the Repeal of the Judiciary Act, the long-pursued campaign of whispered calumny, had had their cumulative effect. Burr's popularity was now sufficiently undermined for a concerted attack to bring him toppling. He therefore unleashed his jackal, Cheetham, with orders not to rest until the quarry had been brought down.

James Cheetham, an English radical, had been compelled to quit his own country rather hastily. He came to New York in 1798, and offered his peculiar journalistic talents to the highest bidder. In partnership with a cousin of De Witt Clinton, and secretly backed by the great man himself, he started a daily Republican newspaper in the city, called the *American Citizen*. Tradition has it that Burr had aided in the establishment of the party newspaper. Whether he did or not, Cheetham came to the parting of the ways at the initiation of the quarrel between the two

His attitude was best expressed in a letter to his son-in-law. "As to the publications of Cheetham and Wood," he wrote scornfully, "it is not worth while to write any thing by way of comment or explanation. It will, in due time, be known what they are, and what is Dewitt Clinton, their colleague and instigator. These things will do me no harm personally."³⁶

Therein he was terribly wrong. These charges, unanswered at the psychologic moment, were to complete the task of his ruin and bury him so deep he could never rise again. His friends, his still devoted "Tenth Legion," pleaded with him to defend himself. He refused.

The persecution grew more and more vindictive. It extended to every line of action: political, financial, social even. All communications were cut off between the Clintonites and the Burrrites. The Manhattan Bank joined in the fray. Burr had been compelled to sell most of his stock, while Clinton had been steadily consolidating his position. At a hotly waged election, Burr and John Swartwout were swept out of the Directorate. The institution Burr had founded was now a merciless weapon against him in the hands of the enemy.

In the process, De Witt Clinton permitted himself certain unguarded phrases against Swartwout. Swartwout promptly challenged. The duel took place on July 31, 1802. They fired three times at each other ineffectually. The fourth exchange left Clinton un wounded and placed a ball in Swartwout's leg. Swartwout insisted on continuing, unless Clinton signed a written apology. Clinton refused. On the fifth interchange Swartwout was again wounded. He swayed, yet stood his ground with stubborn bravery. Clinton refused to continue, or to apologize, saying, however, that he had no personal enmity against Swartwout. Whereupon the duel ended. But here, as in every matter involving Burr, controversy has raged. Clinton, it is said, terminated the duel by declaring that "I don't want to hurt him [Swartwout], but I wish I had the *principal* here — I will meet him when he pleases."³⁷ And every one knew that it was Burr he meant. Whereupon a new war started in the newspapers.

But this alleged challenge was obviously an afterthought. For the account of the duel first published on August 4th by Richard Riker, his own second, made no mention of this remark.³⁸ It was only after a rather intemperate discussion between the two seconds, conducted publicly in the newspapers, as to *how* the duel terminated, that Riker alleged the making of the offensive remark. To which *Truth* promptly rose to inquire "why if he is anxious

to *fight* this *Principal* does he not call on him for the purpose. I dare say the *Principal*, whoever he may be, will not shrink from an interview with *De Witt Clinton*."³⁹ Whatever else may be said of Burr, no one then or since has ever accused him of lacking in physical courage.

When it was too late, Burr awoke to the irremediable damage which Cheetham's unanswered attacks were causing his reputation and political fortunes. On November 25, 1802, after enduring in silence six months of untrammelled abuse, he founded the New York *Chronicle-Express* to defend himself and further his own faction in the scurrilous war of newspapers and pamphlets. Not only had the harm been done, however, but he erred in installing as editor a very cultured, kindly gentleman, Dr. Peter Irving, brother to Washington Irving. The newspaper achieved quite a genteel and literary flavor, but Dr. Irving was manifestly unfit for the knockdown and drag-out methods that were indicated. He opposed reason to violent and opprobrious tactics, he opposed gentle ridicule to brute reiterations. To the historian his defense of Burr is crushing and unanswerable. He obtained public refutations from David A. Ogden and Edward Livingston, both alleged by Cheetham to have been emissaries of Burr. He printed Burr's own positive and unequivocal denial of any attempt to displace Jefferson — the first time Burr had condescended personally to notice the vicious assaults upon his honor.⁴⁰ The public read, and turned eagerly to the more sensational columns of the *Citizen*. On November 16, 1802, the Albany *Register*, hitherto aloof, joined the fray against Burr. So did most of the other Republican newspapers. The orders had gone out to crush Burr.

These emanated probably from Jefferson himself, who managed, nevertheless, to remain skilfully in the background. As early as December 10, 1801, Cheetham had sent for his inspection a long draft of the proposed campaign against Burr, and, in response to a request from the President, he followed it up on January 30, 1802, by a draft of his future article on the suppression of Wood's History. This, it must be remembered, was months before the matter broke into public print.⁴¹ On April 23, 1802, Jefferson wrote Cheetham — and this was just before the campaign was to begin — that "I shall be glad hereafter to receive your daily paper by post, as usual . . . I shall not frank this to avoid post office curiosity, but pray you to add the postage to your bill."⁴²

Late in 1802, or early in 1803, Cheetham forged another link in his unremitting attack by the publication of a pamphlet entitled "Nine Letters on the Subject of Aaron Burr's Political

Defection." They contained no new matter, merely reiterations of stale charges, but Cheetham was now compelled to take notice of the steady flow of denials from all the parties he had named in the earlier pamphlet. To these he could only oppose what he himself admitted to be "presumptive testimony," evidence several times removed, anonymous people vouching to conversations had with other similarly anonymous individuals.⁴³ Against Ogden's denial he took refuge in the ridiculous assumption that Hamilton, Ogden's law partner, was himself involved in the plot.⁴⁴ Of such gossamer were his charges spun.

A whole year too late, another and far more redoubtable champion arose. Burr had finally roused himself to the utter danger of his spineless course and determined to strike back, and strike back hard, at all his enemies. In December, 1803, a pamphlet appeared, signed modestly, "Aristides," and called simply, "An Examination of the Various Charges Exhibited Against Aaron Burr."

The title does not give any real inkling of the dynamite contained in those few black-letter pages. It was far more than a defense of Burr; it was a bitter, relentless, excoriating attack on all of his enemies within the Republican party — which necessarily included pretty nearly every politician of prominence in New York, and extended with irreverent gestures to the President of the United States himself and the entire Virginia dynasty. Nowhere in all polemic literature, with the exception of the famous "Junius" letters, is there anything comparable to this performance. Burr's back was now to the wall and his anonymous defender lashed out with barbed language and accusations that sank deep into the most insensitive hide. No one was spared, all were flayed alike; the mighty as well as the lowly. The Clintons had long hated Burr, it was declared, and sought his downfall. George Clinton, old and doddering, had "sighed for" the Vice-Presidential nomination, and had spoken in very unflattering terms of Jefferson. As for De Witt Clinton and his colleague, Ambrose Spencer, they were "destitute of all honor, probity, or talents, of all attachment to the general welfare." Clinton himself was "the acknowledged leader of a band of hired calumniators," his mind, "matured by the practice of iniquity, and unalloyed with any virtuous principle, pointed him out as fit for every vice." He had filled every office with relatives, hirelings and the pliant. On him Aristides turned the heaviest artillery of his excoriation.

Then he turned his unflattering attention to the Livingstons.

The old Chancellor himself was "destitute of solid and useful knowledge . . . a capricious, visionary theorist"; Tillotson, Secretary of State, "had travelled the country round, like a hungry spaniel, begging an office as he went"; Richard Riker, District Attorney, was "a vain and contemptible little pest"; while as for the ineffable James Cheetham, he was "an open blasphemer of his God, a reviler of his Saviour and a conspirator against the religious establishments of his country." Brockholst Livingston was "a man who has been extricated from debts, to an incalculable amount, by means which have never been explained, but is now rioting in luxury and wealth." Jefferson himself had rewarded those who voted for him with lucrative appointments, had in fact bid for the Presidency.⁴⁵

Overnight the pamphlet was a sensation. The indicted men writhed under the allegations, the blasting characterizations. At last Cheetham was being answered in his own language, and with a pen dipped in gall and wormwood. De Witt Clinton roared with rage, and threatened the publishers, Ward and Gould, that "you have it in your power to protect yourselves from the consequences of a private prosecution by giving up in writing the name of the author and making satisfactory apology for your very improper conduct in permitting yourselves to be the instruments of the most virulent and execrable attacks on private characters ever known in this country."⁴⁶

Ward and Gould refused, feeling confident in the backing of the Burrites. But this proved a thin reed. Clinton and others whose full-length portraits had been boiled in oils, started suits for damages, two of which went to judgment. The remainder dragged until 1805, to be terminated finally by abject apologies on the part of the publishers.⁴⁷

Cheetham essayed a rather weak reply to the barbed arrows of Aristides, called "A Reply to Aristides," which was a defense of the personages attacked and a stale reiteration of stale and already smashed charges against Burr. This was in 1804, when events were moving with breath-taking rapidity.

Not until the furore had subsided was it discovered that "Aristides" was no other than William P. Van Ness, Burr's most talented lieutenant. Meanwhile, as a result of the heated controversies, Robert Swartwout fought a duel with Richard Riker and wounded him slightly. John Swartwout was ousted from office by the aggrieved Jefferson for distributing "so atrocious a libel" and, what was worse, daring to affirm it to be true.⁴⁸ Burr reluctantly commenced a libel suit against James Cheetham for

the sole purpose of placing on record the sworn statements of James A. Bayard and Samuel Smith of Maryland, relative to Jefferson's bargaining for the Presidency. Interrogatories were issued and testimony taken. Then he dropped the whole matter. By this time he was deeply involved in his Western expedition, and he considered the subject as entirely profitless. But his friends, those loyal "Martling men," "the Tenth Legion," "the little band," by whatever name you wish to call them, were fighting for political existence against overwhelming odds. For the sake of their own political fortunes as well as to clear the memory of their leader, they refused to let the matter die. They commenced another suit, a "wager suit" between two dummies, and once more obtained the depositions of the participants in that long-rumored deal. Even these, however, remained unpublished until 1890, and then only were made public by the sons of James A. Bayard, to clear *his* memory from the pert insinuations of Jefferson's recently released *Anas*.

In the eyes of the outside world, Burr had sealed his fate with the publication of the pamphlet by Aristides. But his fate had actually been determined long before. It was even better, perhaps, to force all the secret elements of opposition out into the open and into acknowledged, public warfare. In 1802 W. C. Nicholas was writing De Witt Clinton rather warily about the political effect of the attacks on Burr, and acknowledging that "our situation was like that of a man who submits to the loss of a limb to save his life."⁴⁹

And Gallatin was warning Jefferson, also in 1802, "that transaction — I mean the attack on Mr. B. by Cheetham — has deeply injured the Republican cause in this State."⁵⁰ But Jefferson was politically wiser than his Secretary. He knew that Burr had to be cut down this early to avert a reassemblage of his scattered forces by 1804, when another election would be pending. To grapple with him then would be suicidal, and might mean Federalist victory. Within a year or two most people forget, and time heals factional wounds quite readily.

How well Jefferson knew his politics and politicians may be exemplified by the course of Martin Van Buren, then young and fresh from the tutelage of Aaron Burr. He had been too well taught, perhaps, for he absorbed the *machine* efficiency of his master without those other tangible qualities which softened the bare political bones. In 1804, Van Ness was engaged in a desperate effort to rally Burr's cohorts. He wrote Van Buren, "You know that Mr. Burr is the intended victim of villainy and persecution

against which it is the duty of every friend to freedom to sustain him . . . I wish you to reflect maturely before you take a side — and when you do never change."⁵¹

But Van Buren, later to become President of the United States, was all that Burr was ever claimed to be. The simon-pure politician, anxious only for the integrity of his own skin, peeps out of his reply. "Feeling Possessed of Strong personal prejudices for Mr. Burr and feeling a pure and disinterested affection for some of his most intimate friends amongst whom it is with pleasure that I name you as first in my esteem," he commenced unctuously, and then proceeded to the meat of the matter, "Upon the most mature [and] passionate reflection however I am truly Impressed . . . that the support of Col. Burr would not under existing Circumstances be proper, . . . and in giving this opinion I wish to be understood, as not at all embracing the truth or falsity of the Charges."⁵²