

CHAPTER XXIII
 DICTATORSHIP IN NEW ORLEANS

I. GOOSEFLESH AND SWORD RATTLING

ON October 21, 1806, Wilkinson had sent his famous warning to Jefferson; on November 12th he had written that he was about to be overwhelmed by furious bands of descending Burrites, and on the same day he was alarming poor, befuddled Claiborne with a letter well calculated to shake the heart of the stoutest man. *Sacredly Confidential*. "You are surrounded by dangers of which you dream not and the destruction of the American Union is seriously menaced. The Storm will probably burst on New Orleans, when I shall meet it & triumph or perish." There are spies in every nook and cranny; be secret, oh, Claiborne, and act so "that no Emotions may be betrayed." The plot "implicates thousands and among them some of your particular friends as well as my own." Hasten and fortify the town, turn over artillery, troops, everything, to the savior, Wilkinson! ¹

Turgid bombast, of course, but quite effective for its purpose, which was to scare both Claiborne and New Orleans out of their respective wits, to sow the seeds of distrust between friend and friend, to prepare the way for his assumption of all power and unrestricted authority. If this letter were not sufficient to throw Claiborne into a state of panic, the letter soon to follow from Jackson completed the task.

Yet, in spite of denunciation, of hobgoblins thick and threatening, the amazing Savior of his Country took his good and leisurely time in reaching the threatened town. It was not until November 25th that Wilkinson rode with pomp and circumstance into the city of New Orleans. Bursting with importance, yet maintaining an ominous silence, he took up his Headquarters. The way had been well paved. The citizens were uneasy, alarmed with vague rumors; treachery and conspiracy were in the air, the fortifications were being hastily strengthened, the Governor looked grim and a bit frightened. The conditions were ideal for utter panic, for utter relaxation of power to a self-announced Dictator.

Claiborne had been having his own difficulties with the populace over whom he was placed. He was the uneasy master of a rest-



Courtesy of Estate of Dr. John E. Stillwell

THEODOSIA BURR ALSTON, 1811

From a portrait by John Vanderlyn



Courtesy of The New York Public Library

THE ARREST OF AARON BURR

From an old engraving

less volcano, which might at any moment erupt and bury him under the ruins. A week before receiving Wilkinson's agitated communication, he himself had written to Jefferson that he had heard Burr was in the Western States, and that he feared his views to be "political and of a kind the most injurious."² In fact, soon he was telling Cowles Mead, the Acting Governor of the adjoining Mississippi Territory, that Daniel Clark was plotting his downfall, that "I may fall; but I can never be disgraced."³ Unconsciously he was adopting Wilkinson's style.

When the doughty General rode into town, the panicky Governor breathed a sigh of relief and hastened to inform Madison in far-off Washington that "General Wilkinson and myself will, to the best of our judgments and abilities support the honor and welfare of our Country."⁴ He did not yet realize that Wilkinson had no intention of permitting any one to share that glorious burden with him.

Claiborne met him in secret conference with Captain Shaw, who commanded the naval flotilla in the port, and clamored for an explanation. Wilkinson locked all doors, impressed upon his startled hearers the necessity for the utmost secrecy, intimating that his own life would not be worth a rush if the truth leaked out. Thus, in deep conspiratorial seclusion, did he unfold the dark tale to the astounded men. He read to them the cipher letter from Burr, in his own inimitable translation; then he spoke impressively of Swartwout's alleged disclosures — that the West would secede, New Orleans be revolutionized, and Claiborne slaughtered in his bed; that the money in the banks would be seized — perhaps to be returned at some future date — and that "a Mr. Spence of the Navy, a Mr. Ogden and a Doctor Bollman, who either were or had been in New Orleans, were agents of Colonel Burr."⁵

But outwardly, to the city at large, to Burr's adherents, Wilkinson maintained a bland face and air of impenetrability. Bollman had arrived some time before and had sent his credentials on to Wilkinson. Now, on November 30th, the General called on him in confidential interview, disclosing nothing of his purposes. In fact, he seemed still to the unsuspecting Bollman to be the willing partner in the project. For the brave General was taking no chances. To overcome Bollman, Swartwout *et al.*, he was gathering all the troops at his and Claiborne's command, rushing fortifications behind which he could retire in case of need, calling all units of the navy to his assistance. Once the troops from Natchitoches arrived, there would be some 800 regulars available,

volunteers to the number of 180, two bomb ketches and four gunboats.⁶ Until they were all gathered, however, the desperate Bollman must be temporized with.

On December 5th, with the troops in sight, Wilkinson felt brave enough to inform Bollman that he intended to oppose Burr's schemes, but even then he managed to leave the Doctor a trifle puzzled as to his intentions. On December 6th, Wilkinson disclosed himself to Claiborne. "The dangers which impend over this City and menace the laws and Government of the United States, from an unorthozed [*sic*] — and formidable association, must be successfully opposed at this point, or the fair fabric of our independence, purchased by the the best blood of our Country will be prostrated, and the Goddess of Liberty will take her flight from this globe forever." After which exordium, Wilkinson settles down to business. "Under circumstances so imperious, extraordinary measures must be resorted to, and the ordinary forms of our Civil institutions must, for a short period, yield to the Strong arm of Military Law." He therefore "most earnestly" entreats Claiborne "to proclaim martial law over this City its ports and percints [*sic*]."

As for Claiborne's idea of moving his militia up the river and taking a position against the oncoming hordes, he disposes of it with dark words, for it would have meant the collapse of his private plans. "You could not for a moment," he warned Claiborne, "withstand the desperation and superiority of numbers opposed to you, and the Brigands provoked by the opposition, might resort to the dreadful expedient of exciting a revolt of the negroes. If we devide our force we shall be beaten in detail, we must therefore condense it here." ⁷ If it were not for the tragedy that stalked in his wake, here in truth was the very essence of a comic-opera general. But the matter was too grim for that. Martial law was what he demanded, and martial law was what he was going to get — the Governor, courts and civil authorities notwithstanding.

The following day he returned to the attack. "I believe I have been betrayed," he told Claiborne, "& therefore shall abandon the Idea of temporizing or concealment, the moment after I have secured two persons now in this City." He must have martial law, he insists, as "I apprehend Burr with his Rebelious Bands may soon be at hand."⁸

But Claiborne, frightened though he was by the General's bogies, stuck obstinately to the strange idea that suspension of habeas corpus "properly devolves upon the Legislature," though, he hastened to add, if the danger should augment, he would not

hesitate to suspend the saving Constitutional clauses by proclamation. Wilkinson's revelations together with Jackson's wild letter, had convinced him of Burr's plan to dismember the Union.⁹

On December 9th, he called a meeting of the New Orleans Chamber of Commerce to consider the situation. The members met in considerable excitement, not quite knowing what to expect. Rumors there had been aplenty, but Wilkinson had not seen fit as yet to take the city into his confidence. It would be easier, he had thought, to wrest martial law from the single hand of the Governor. But Claiborne, for the moment at least, had proved of more stubborn fiber than he had anticipated. And, as he informed the national Government with considerable naïveté, "I had concealed my intentions from the double view of preserving my person from assassination, and to keep open the channels of communication by which I received information of their secret designs and movements."¹⁰

Now, however, it was necessary to throw New Orleans into a state of such alarm that the citizens would turn to him as the single savior. Dramatically, the fearful conspiracy was presented to the startled merchants. They were a trifle skeptical perhaps — some of them were members of the Mexican Association and friendly to Burr — and they did not fall down on their knees in terror; but they could do no better than yield on certain points to Wilkinson's insistence. Reluctantly they agreed to furnish sailors and carpenters from their own vessels for the needs of the United States Navy, in the person of Captain Shaw; and even more reluctantly they agreed to a temporary embargo of the port, and to force their idle sailors into the service of the United States.¹¹ These measures were immediately carried into effect.

Now in truth the town was in a state of panic. Burr was an unspecified distance up the river, traveling fast with thousands of men, desperadoes all, bent on plunder and rapine; he intended raising the blacks in frightful insurrection; he was going to loot the banks and commandeer the shipping. In every corner of their city lurked conspirators, ready at a word to rise and burn and slay. Wilkinson said so, Claiborne chimed in, Shaw was convinced. Unfortunately, Daniel Clark, who might have quieted the storm, was then in Washington as Territorial Delegate.

But there were skeptics, and there were even base wretches who openly mocked at the doughty General who was braving the dangers of assassination to defend them from tremendous perils. Burr, they insisted, had no thoughts of New Orleans or secession. In fact, Mexico was his goal, as it was the goal of all patriotic

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Americans. They pointed out that, strangely enough, no word had reached them of the imminent approach of this mighty armada except through the General himself, and they went so far as to laugh loud and long at the frantic preparations, the dread that mantled every official face. The bluster, the braggadocio, the seclusive hiding of the General from his fictitious enemies, were beginning to turn the citizens from their induced fears to smiles, and smiles were on the verge of giving way to ridicule.

Claiborne himself was sadly addled, and knew not which way to turn. "I am sincerely desirous to co-operate with you, in all your measures," he wrote Wilkinson, but "many good disposed Citizens do not appear to think the danger considerable, and there are others who (perhaps from wicked Intentions), endeavour to turn our preparations into ridicule." He had done everything possible, even to authorizing an embargo, though this, he was afraid, "can alone be exercised legally by the General Government," and the Collector of the Port will no longer submit to it, he apprehends.¹²

Wilkinson witnessed these manifestations of turning public sentiment with dismay. If he did not act promptly and decisively, the whole fantastic specter he had evolved would be dissolved in gusts of ridicule, and his own strutting self blown away on the wind of public disapproval. Cursing Claiborne as a fool and weak-kneed idiot, he acted on his own. He had the power, if not the authority. He was the military commander of the troops who swarmed the city, Claiborne had given him the militia also, and Shaw of the Navy was prepared to back him up.

On December 12th, he initiated his own private reign of terror. Burr, the ostensible cause of all the alarm, was just then entering Nashville, quietly and with only a few companions, about a thousand miles away. Swartwout and Ogden, to their own considerable astonishment, were arrested at Fort Adams by Wilkinson's personal orders. On December 14th, a file of the military seized Bollman in New Orleans. All three were hurried incommunicado aboard the bomb ketch *Aetna*, under strict guard. Swartwout's watch was stolen from him by the General himself, his clothing and personal apparel refused him. On board the ship, he, as the most dangerous of the conspirators, was placed in chains, and was so to be held on the voyage to Washington.¹³

On December 15th, Wilkinson wrote the Governor, upon whose legal authority he had just trespassed, that "in the *impending awful moment*, when I am myself absolutely hazarding every thing for the National Safety, by unauthorized dispositions

of the Troops and treasure of our Country, you must pardon me should I lament & indeed have felt a little impatient when I could no-where find authority, for the apprehension and safe custody of men, either the Known Agent, Emissaries, or Supporters of the dark and destructive combinations formed or forming in the Heart of the nation." There was only one way out, he cried. Martial law! Compulsory enlistment of seamen to man the navy! While his own life and character had been placed in opposition to the "flagitious enterprize of one of the ablest men of our Country, supported by a crowd of coequals," Claiborne, he charged, had suffered himself to be "unduly biased by the solicitation of the timid, the capricious or the wicked" against himself. Unless, he threatened, sufficient seamen were granted him, he will have to "abandon the City, and suspend further labour on its defences."¹⁴

To which Claiborne replied on the following day, beginning to yield to the repeated clamors, "believe me, that I am fully sensible of the impending Danger, and am disposed to exert all my constitutional *powers* in support of our Country and even *these* I will exceed, if the means at present pursued, should not (in a short time) produce the desired effects."¹⁵ The Civil Government could no longer stand out against the Military.

But in the city the stupefaction of the people gave way to a mounting indignation and wrath at this ruthless assumption of military rule. On the afternoon of the 15th, an application was made for a writ of habeas corpus before the Superior Court in behalf of Bollman. Similar applications were made before Judge Workman, of the County Court, for Swartwout and Ogden. On the 16th, all writs were granted. But they were too late to save Bollman and Swartwout. For, under secret orders from Wilkinson, they were already on the high seas, sailing for Washington in the custody of Lieutenant Wilson. Young Ogden, however, by some oversight, had been left behind, and after a consultation with Claiborne, he was delivered to the jurisdiction of the Court by Captain Shaw.

On the return day of the writs, Wilkinson sent his aide to court, with a prepared statement, blustering in tone, to the effect that Bollman's arrest and removal had been accomplished on his own responsibility, and avowing openly that he intended to continue his military arrests as long as he saw fit.¹⁶ As for Ogden, there being absolutely no evidence against him, he was freed. But not for long. Within twenty-four hours, he was re-arrested by Wilkinson, together with James Alexander, a young member of the New Orleans Bar, whose sole crime had been to appear in be-

half of the imprisoned men. They were hastily transported across the river, then taken to Fort Saint Philip, out of the jurisdiction of the Court, and Alexander was later hustled to Washington, also without extra clothes, to stand trial for an unknown offense.

Edward Livingston had held his peace thus far, though immensely indignant over the treatment meted out to Bollman. Bollman, in fact, had been the bearer of a draft on him from Burr. "Doctor Bollman will receive whatever you may be disposed to pay him on my account, and will give you a discharge on payment of fifteen hundred dollars."¹⁷ Livingston explained this later to be a sum due on a judgment against himself before he had left New York, and which had been assigned to Burr.

Now, however, on Alexander's disappearance, he roused himself to action. No doubt the young lawyer had intervened for Bollman at his request. He applied to Workman for new writs, which were granted. Wilkinson replied contemptuously that his answers in the case of "the traitor Bollman are applicable to the traitors who are the subjects of this writ."¹⁸ Livingston pressed for an order to show cause why an attachment should not issue against the raging Wilkinson himself. Whereupon Workman, who had no love for the General, and who had been included by him in broad denunciation as a member of the Conspiracy, adjourned court to inquire of Claiborne if he would assist the civil authorities against Wilkinson. He received no satisfaction, however. Claiborne had at last yielded unconditionally to the formidable General. On December 26th, Livingston appeared again, and moved for the attachment, which was granted. Defiantly, Wilkinson informed the Court that Ogden was not "in his power, possession or custody."¹⁹

Again Workman turned to Claiborne to uphold the arm of the Court in its controversy with the Military. Claiborne, in sore distress, had already justified the arrests to Wilkinson, but thought, rather weakly, that when any prisoner "was claimed by the Civil authority, I did think, that (if within your power) it would have been right and proper to have surrendered him."²⁰ Weasel words, to be arrogantly ignored; indeed, they were in effect a complete abdication of the civil to the military power.

Despairing of further efforts, Workman wrote formally to the Governor. "Not having received any answer to my letter to your excellency . . . and considering your silence on the subject of it as a proof, in addition to those that previously existed, that your excellency not only declines the performance of your duties as chief magistrate of this territory, but actually supports the lawless

measures of its oppressor, I have adjourned the court of the County of Orleans *sine die*."²¹ Following that, he resigned forthwith and sent a strong protest to the Territorial Legislature.

Meanwhile New Orleans was held fast in the iron grip of Wilkinson's soldiers. No one dared dispute his progress, no man's liberty was safe. Secret visitations were the order of the day; the press — at least those newspapers who dared raise their voices in protest — was suppressed; indiscriminate arrests were made daily, and the prisoners hurried no one knew where. Workman himself was to fall into the toils, Livingston was in hourly peril of seizure, Lewis Kerr was rushed off to jail. So, too, was Bradford, editor of the *Orleans Gazette*. And, on January 14, 1807, John Adair rode into New Orleans, all unsuspecting. A detachment of regular troops, 150 strong, burst suddenly and violently into his hotel, dragged him away from his meal, and hurried him off to the barracks. A writ of habeas corpus was sued out and ignored as a mere scrap of paper. He, too, went the way of all others — the sea route to Washington, trophy of Wilkinson's valor.²² On February 25th, Lieutenant Spence, the bearer of messages to Burr in Kentucky, followed in the well-trodden path of arrest and imprisonment.

Claiborne fluttered helplessly back and forth, tossed by storms not of his own contriving, not knowing exactly what to do. Events were moving too swiftly for his addled senses. On December 16th he had issued a Proclamation against unlawful combinations, in the manner of Jefferson, but the next day he was writing Madison "that the Danger is not as great, as the General apprehends; but in no event will I take upon myself to suspend the privilege of the *Writ of habeas Corpus*, & to proclaim *martial Law*."²³

Bold words, but without meaning. Wilkinson had gaged him only too well, and knew he could proceed without fear of opposition. "Cet bête," he wrote contemptuously of the Governor, "is at present up to the chin in folly and vanity. He cannot be supported much longer; for Burr or no Burr, we shall have a revolt, if he is not removed speedily."²⁴

Wilkinson now had the city at his mercy. Claiborne had proved a muddle-headed nonentity, the civil government was prostrate, the courts were closed. He purloined letters from the post-office, set an army of secret agents to work ferreting out evidence of the Conspiracy, and they found — exactly nothing. And all the while he was bombarding Jefferson with bragging details of his exploits — it was not until Swartwout and Bollman were *en route* to the North that he condescended to send the President a much garbled version of the notorious cipher letter which had precipi-

tated the entire unwarranted proceedings. Nor did he, even then, see fit to inform the President that he had actually answered Burr's letter with a cipher of his own, which he had posted, only to suffer a change of heart immediately after. He had raced after it all the way from Natchitoches to Natchez, caught up with it in time, and destroyed it. Had the letter eluded his retrieving grasp, and gone through, he would never have dared send warning to Jefferson and act as he did, for Swartwout, who had helped him encode the response, testified later that it had contained the words, "I am ready." Which impelled Wilkinson to admit that the expression actually was, "I fancy Miranda has taken the bread out of your mouth — and I shall be ready for the grand expedition before you are."²⁵ On such little threads does the course of history depend. Nor did Wilkinson breathe a word of his constant correspondence, during all this troublous period, with the Spaniards. Was it possible that he was also considering, while Dictator, a sudden shift to Spain — if the price were right?

But the end of the reign of terror was soon in sight. In fact, Cowles Mead, Acting Governor of Mississippi, was already planting disturbing seeds in Claiborne's mind as to Wilkinson's purpose and integrity. On December 14th, he wrote his fellow Governor that "Burr may come — and he is no doubt desperate," but, "should he pass us your fate will depend on the Genl. not on the Col: If I stop Burr — this may hold the Genl. in his allegiance to the U. States — but if Burr passes this Territory with two thousand men, I have no doubt but the Genl. will be your worst enemy. Be on your guard against the wily General — he is not much better than Cataline — consider him a traitor and act as if certain thereof — you may save yourself by it."²⁶ Mead knew Wilkinson, even if he did not know Aaron Burr.

And then the bubble burst, when Burr's much rumored expedition actually hove into sight, and the frightened Orleaners crept out of their holes. They started asking each other the questions Mead had long before propounded to Claiborne. "Is New Orleans invaded? is it threatened? or is it believed that any enemy is nearer, than the General Himself?"²⁷

But by the time they bestirred themselves, still a bit fearful of the shadow of the military, Wilkinson had departed from their midst, to strut anew on a different stage. At a time when New Orleans had accurately gaged the remarkable talents of the General, and the Territorial Legislature, after an investigation, had laid all the facts in a scathing memorial before Congress, he was aiding the Government in its prosecution of Burr, and hence became a

"sacred cow," against whom not the slightest suspicion might be murmured.²⁸ In fact, the *Orleans Gazette* was to charge that the whole uproar was but a method of extracting financial profit by the interested parties, who had "some snug contracts for supplying the government with materials of defense."²⁹

2. SURRENDER IN MISSISSIPPI

Farther up the river, in the Territory of Mississippi, under the jurisdiction of Secretary Cowles Mead, Acting Governor in place of Robert Williams, then absent in the East, the excitement was almost as intense, if not as provocative of harsh repression and dictatorial methods. On December 15th, a day before Claiborne issued his similar Proclamation, Mead sent a message to the Territorial Legislature announcing the existence of a plot to dis sever the Union; on the 23rd, he proclaimed it to the inhabitants.³⁰ Yet to him Wilkinson was even more of a menace than the faintly mythical Burr. He was taking no chances, however. Wherefore he mustered the Territorial regiments for service, and ordered them to take stations to repel invasion.

"It is apprehended that Colo. Burr may land at or near the walnut Hills," he instructed Colonel Woolridge. "You are therefore ordered to appoint such number of persons as you may think sufficient to act as a guard along the river."³¹ Orders of mobilization flew thick and fast. Rumors multiplied. The oncoming Burr swelled to monstrous proportions. On January 12th, Mead pro rogued the Legislature so that, he told them, "you who blend the civil & the military characters must relinquish for the moment the functions of the first, while you assume the prerogatives of the latter."³²

Then, on January 13th, came the dreadful news. Aaron Burr had arrived at Bayou Pierre, not a great distance up the river.³³ At once the feverish preparations for defense multiplied. Wilkinson, down in New Orleans, proposed to ascend the stream with 1000 men to cooperate with Shaw's flotilla of gunboats. There were, he warned, numerous adherents of Burr in the city, ready at a signal to rise and pillage the town, seize the shipping, and carry on an expedition against Spain. It pained him to declare that he had "the strongest grounds for believing that Judge Workman, has been deeply and actively engaged in these nefarious projects."³⁴

Burr had floated down the river with his little fleet of unarmed houseboats, wholly ignorant of the tremendous alarm to the

southward, of the marchings and countermarchings, proclamations, reign of terror and all. On the placid drift of the Mississippi everything was singularly peaceful and bucolic. Fort Massac had been left behind, and New Year's Day was spent at New Madrid, opposite the mouth of the Ohio. Three days later they were at Chickasaw Bluffs, where Lieutenant Jacob Jackson was in command of a small garrison. It was an oasis of quiet. Jackson was even ready to join the expedition in any move against Mexico, and took money from Burr to raise recruits against the day.³⁵

On January 10th, they reached the boundaries of the Mississippi Territory, after some misadventures due to squalls and treacherous eddies. Burr pushed on ahead with a single bateau and twelve men to Bayou Pierre, where the other boats caught up with him on the 11th. Here, for the first time, they learned of the rousing of the country against them. Already Captain Ryan was marching with a detachment of troops, and a civil warrant in his pocket, to arrest the traitor, Burr.³⁶

The bewildered adventurers, seeing a party of militia take their station in the woods, some distance from the boats, pushed off hurriedly in the night, and landed four miles below on the opposite shore, within the jurisdiction of Louisiana. There, for the moment, they were safe.

Colonel Woolridge, in obedience to Mead's instructions, had hastened to Bayou Pierre with 35 men to intercept Burr, but found that the quarry had escaped. He followed the flotilla down the river, and gazed impotently at the broad river that interposed itself between them. Burr had anchored his boats on the Louisiana side, opposite the mouth of Cole's Creek.

But Burr politely sent a skiff across, so that Woolridge and two of his officers might visit him in camp. Woolridge reported later that Burr seemed glad to see him, and declared the complete innocence of his intentions. He returned to his own encampment baffled and fuming, because he had no boats to bring his men across to capture Burr. His detachment was surprisingly still "in good Order but Darn hungry." He confessed, however, that there were only some 55 men in Burr's expedition, a few women and children, and some negro servants; and that he had seen no stand of arms or other evidences of warlike intent. Meanwhile his own "malish" were discontented and resigning from service in groups.³⁷

Burr, exceedingly surprised at the tumult his coming had raised, had issued from Bayou Pierre a public letter, and another personally addressed to Mead, in which he had strongly avowed the

innocence of his views and protested vigorously his patriotic motives. His sole objects, he averred, were agriculture and the settlement of the lands he had purchased, and his boats were merely the vehicle of emigration.³⁸

Mead forwarded the letter to Colonel Fitzpatrick with the comment that he "should be proud to find him as innocent as he there professes himself." In fact, "should Colo. Burr be disposed to pay due regard to the authority of our Government, you are requested to assure him from me that every security shall be given to private property and every respect paid him and his associates, which can be done after being assured that his plans are not directed against the United States or its Territories — You may further assure him of the particular solicitude I feel for the verification of his professions to me — and further if he has been vilified or injured by rumour or the *Pensioned* he shall receive all the benefits of my individual civility and the full and complete protection of the laws of the Territory."³⁹ The disgusted Acting Governor was already smelling a rat. The armed invasion had petered out to a mere handful of boys, women and children, unarmed, in peaceful emigrant boats. Very rightly he placed the blame for the alarm upon Wilkinson, the *Pensioned*, and began to hold serious doubts of Burr's alleged guilt. The skies were clearing.

Accordingly, Mead sent Colonel Shields, his confidential Aide-de-Camp, with an explanatory letter to Burr.⁴⁰ But before he arrived, Colonel Fitzpatrick had already rowed across the river, where Burr met him courteously, disclaimed indignantly any treasonable purposes, and expressed his willingness to surrender and stand trial on the charges against him, provided such trial would take place in the Mississippi Territory and nowhere else. By this time he was fully apprised of Wilkinson's inexplicable betrayal, and feared that, to protect himself, his erstwhile friend would not stop at any measures to close his mouth forever. Fitzpatrick agreed to submit his offer to Mead, and started back to Natchez. But on the way he heard that Colonel Claiborne (of the Mississippi militia, not to be confused with Governor Claiborne of Orleans) was on his way up the river with a considerable force to arrest Burr. Whereupon he returned to Burr's encampment and told him he must "under these circumstances submit [*sic*] to the civil authority, or trust to events."⁴¹

Claiborne arrived on January 16th with 275 men and took his position on the Mississippi side of the river, where he captured four unsuspecting members of the encampment who had just landed from a boat. But Natchez was becoming restless at all these

manifestations of force. Burr's friends were numerous and powerful. Mead, in some alarm at their expressed hostility to himself, ordered Claiborne to seize all malcontents and send them under guard to Judge Rodney of the Federal Court. "The number of Burrs friends require much vigilance," he wrote. "Their licentiousness must be curbed."⁴²

On the 16th, Shields and Poindexter, U. S. District Attorney, clothed with plenipotentiary powers, conferred with Burr and an agreement was reached, after a further meeting with Mead himself. Burr offered to surrender to the Mississippi civil authorities and to permit his boats to be searched for the rumored munitions of war. The next day he crossed the river with Mead's aides, and rode with them to the little village of Washington, the capital of the Territory, and there was committed for trial. "Thus Sir," reported Mead to the national Administration, "this mighty alarm (with all its exaggerations) has eventuated in nine boats and one hundred men and the major part are boys or young men just from school — many of their depositions have been taken before Judge Rodney, but they bespeak ignorance of the views or designs of the Col. — I believe them really ignorant and deluded, I believe that they are the dupes of stratagems, if the asserations of Gen'l Eaton and Wilkinson are to be accredited."⁴³ Manifestly, Cowles Mead held many mental reservations concerning the latter.

As for Burr, he had adopted the wisest course. He had thrust his head unwittingly into the lion's mouth. He could not remain long on the Louisiana side. Shaw and Wilkinson would soon be appearing, in such overwhelming force that resistance would be futile. And the thought of falling into his former partner's clutches was not to be viewed with equanimity. Across the river, on the Mississippi side, lay Colonel Claiborne with a formidable force to block passage that way. He, too, was of the military, and liable to instructions from far-off Washington. To abandon the boats and attempt to force a desperate passage through trackless woods and tangled swamps into Spanish territory was equally unthinkable. His expedition was small and unused, most of them, to frontier hardships. There were women and children along, and the Spaniards would welcome him only too warmly. Already Governor Folch was marching at the head of 400 men from Pensacola to protect Baton Rouge against the dreaded American. By surrendering to the civil authorities, Burr assured himself of a civil trial, surrounded by all the Constitutional safeguards which he knew so well how to invoke. Besides, as Mead had complained, his friends were numerous and powerful in the Territory. Burr anticipated

nothing more than a quick trial, acquittal, and permission to continue peacefully on his journey to the Washita. New Orleans, of course, was now definitely out of the picture.

3. VINDICATION

On January 18, 1807, Burr appeared before Judge Thomas Rodney and was bound over in \$5,000 bail for the Grand Jury. Substantial citizens of the Territory immediately came forward and produced the necessary bail, with the result that he was once more a free man. It was extremely unfortunate, however, that Rodney was the Federal Judge in the Territory; for he was father to Caesar A. Rodney, Jefferson's Attorney General, and therefore closely attuned to the desires of the Administration. Burr could expect no even-handed justice from him.

But he had plenty of other friends; old comrades from Revolutionary times, men in sympathy with his views and resentful of what seemed vindictive persecution. They were tired of the uproar Wilkinson had managed to create with such obviously insubstantial materials. In Natchez, the induced hysteria of a few days before was subsiding. On January 7th, Silas Dinsmore had written satirically of the local situation. "We are all in a flurry here hourly expecting Colonel Burr & all Kentucky & half of Tennessee at his [back] to punish General Wilkinson, set the negroes free. Rob the banks & take Mexico. Come & help me laugh at the fun."⁴⁴

Back in their camp, the little band, under the leadership of Blennerhassett, huddled in their boats, cooked their meals to the accompaniment of constant searches, and awaited the return of their Chief. Fitzpatrick, with a squad of men, searched in vain for the warlike equipment they had been led to expect. They found nothing but a few hunting rifles, blunderbusses, some small arms and pistols, such as are the essential equipment of all pioneers, frontiersmen and emigrants. Burr's men watched and jeered the discomfited snoopers, and hot-headed Davis Floyd became involved in an argument with the newly arrived Major Flaharty, at the head of 30 Territorials, and swelling with his own importance. Flaharty would not permit the boats to shift their positions and was firing on all traffic as it tried to pass down the river. Floyd sent him a letter of defiance, tantamount to an offer to discuss the matter on the field of honor. Blennerhassett, cowed by the excitement of the past few days, dissociated himself completely from the altercation, which ended inconclusively. On January 22nd, Comfort Tyler was removed from the camp by a squad of militia for ap-

pearance in the Territorial capital to answer charges alongside of Burr. Others of the camp, mere enlisted men, were taken for examination and deposition, and attempts were made to get them to swear to the treasonable purposes of the expedition, and to the secretion of warlike armaments by Burr before the militia had arrived. One and all, however, swore with the utmost sincerity to lack of knowledge of the one and the complete absence of the other.

Burr rejoined his men on the 24th. He was not required to appear in Washington (the Territorial capital) until the Grand Jury convened in February. Rodney, he said, had expressed his indignation at the exercise of military law against Burr, and threatened "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 . . . put on old '76', and march out in support of Col. Burr and the Constitution."⁴⁵

This was no vain fear. Immediately upon the receipt of news in New Orleans that Burr had come to the Mississippi Territory, Wilkinson and Claiborne sent off a joint express to Mead, in which they urged "the expediency of placing him without delay on board one of our armed vessels in the river with an order to the officers to descend with him to this city. Otherwise, if his followers are numerous, as they are represented to be, it is probable it may not be in your power to bring him to trial."⁴⁶

Wilkinson was determined to lay his hands on Burr, at whatever cost. As early as December 4th, before Burr had appeared on the scene, he had laid his plans "to cut off the two principal leaders." As soon as they reached Natchez, he wrote a resident of that place, "it is my wish to have them arrested and carried off from that place, to be delivered to the Executive authority of the Union . . . If you fail, your expences shall be paid. If you succeed I pledge the Government to you for Five Thousand Dollars."⁴⁷ An exceedingly sinister note. Once in Wilkinson's power, the chances for Burr to reach the "Executive authority" would be rather remote. This kidnaping scheme failed, but Wilkinson was to try again.

Trouble piled up. Mrs. Blennerhassett and her two children, after much perilous journeying, had finally joined her distracted husband at Cole's Creek. Ominous reports drifted up the river from Natchez that Shaw was coming full speed with nine or ten gunboats, armed with express orders from the Secretary of the Navy to "capture or destroy all of Burr's boats."⁴⁸ There was other disturbing news. Burr's drafts on New York had been protested, and he now found himself without any funds to pay his

men or supply them with additional provisions. They were beginning to turn on him, and to accuse him as the author of all their misfortunes. They became drunk and mutinous, and refused to perform the most necessary tasks about the boats. There were threats that they would decamp and take with them the remaining supplies on board. It required all of Burr's tact and presence of mind to quiet the grumblers.

A new element was now injected into the situation. Governor Williams had returned to the Territory to take up his duties, and Burr rode immediately to Washington Town to pay his respects and sound out his attitude. Seemingly it was friendly. On the first Monday in February the Grand Jury convened, with Judges Rodney, he of "'76," and Bruin, friendly to Burr, presiding. On Tuesday, at the opening of Court, United States District Attorney Poindexter suddenly arose and moved for a dismissal of the proposed bill of indictment on the ground that there was no evidence of any criminal acts within the jurisdiction of the Court, and on the further ground that the Supreme Court, being an appellate tribunal, had no jurisdiction over original causes.

Judge Rodney was manifestly upset and annoyed at this unexpected motion, which sounded as if it had been prepared for the prosecutor by Burr himself, and differed angrily. In spite of his fine speech to Burr at the time of bail, he owed it to his son and to his political connections in the national capital to press Burr with all the rigors of the law. Judge Bruin, however, inclined to the position of the District Attorney, and argued, even, that should the motion be granted, the bail must likewise be discharged. There being a tie vote in the Court, the motion was considered overruled, and the evidence, consisting wholly of depositions, was placed before the Grand Jury for consideration.⁴⁹

The Jury soon returned without an indictment, and, following the example of an earlier Kentucky jury, went out of its true province to excoriate the Government, Wilkinson and Claiborne, and to denounce all and sundry who had participated in the persecution of Burr. An astonishing document indeed. "The grand jury of the Mississippi Territory," they declared, "on a due investigation of the evidence 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 cause of alarm or inquietude to the good people of the same." Then they paid their respects to Wilkinson and Claiborne, and to Mead himself, in scathing phrases. "The grand jurors present, as a grievance, the late military expedition, unnecessarily, as

they conceive, fitted out against the person and property of the said Aaron Burr, when no resistance had been made to the civil authorities. The grand jurors also present, as a grievance, destructive of personal liberty the late military arrest [at New Orleans], made without warrant, and, as they conceive, without other lawful authority; and they do sincerely regret that so much cause has been given to the enemies of our glorious Constitution, to rejoice at 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 this glorious fabric in the dust."⁵⁰ They did not hesitate even to lash out at Jefferson himself.

For the third time Burr had appeared in a Federal Court and been acquitted of any criminal intent.

Burr's friends carried him off in triumph. They were wealthy planters, Federalists chiefly, and openly scornful of Jefferson and his satellites. On February 4th, Burr demanded his release from bail. Rodney, furious at the prospect of this easy escape of the man on whose destruction the Government was determined, denied the motion, and bound him over to appear from day to day before him. This was wholly illegal, an unheard-of proceeding, and in violation of Burr's constitutional rights. The bail had been set to compel his appearance before the Grand Jury. That body had considered the evidence and had refused to indict. Instead, it had brought in a ringing vindication of the accused. The bail, therefore, should necessarily have been annulled. There was no charge, no accusation, upon which it could be predicated.

It was obvious now that constitutional guaranties and orderly legal processes alike would not avail Burr any more. His enemies were determined to destroy him, and would use every weapon at hand to do the trick. More ominous even than the procedure of Judge Rodney were the activities of Wilkinson, whose long arm was reaching up from New Orleans to pluck his prey. His earlier attempt at kidnaping had failed; he tried again and with more effective weapons. He sent Dr. Carmichael, a civilian, and Lieutenants Peter and Jones, as well as men in disguise, "armed with Dirks & Pistols," to seize and convey Burr to him, or to assassinate him if possible. In the case of Dr. Carmichael, the remonstrances of Governor Williams were sufficient to dissuade him from his task, but Peter announced that he "felt himself bound to obey the orders of his General like a good soldier." The assassins were bound by no moral scruples whatever.⁵¹

Burr went into conference with his friends to determine on his

course of action. They pointed out to him that the laws of the Territory no longer sufficed for his protection, that each moment he remained, increased the danger of illegal incarceration or private assassination. On their advice he decided to go into hiding.

From his place of concealment Burr wrote the Governor that because of the "vindictive temper and unprincipled conduct of Judge Rodney he withdrew for the present from the public," but offered to appear before the court again whenever his rights as a citizen could be assured.⁵² The Governor's answer was to declare his bond forfeited, and to offer a reward of \$2,000 for his arrest. To which Burr, still in hiding, protested that his bond had been merely for appearance before the Grand Jury, that he had obeyed that provision, and therefore it could not legally be forfeited.⁵³ Williams retorted sharply that he could only regard him as a fugitive from justice, and that all questions as to legality or illegality of proceedings were the province of the courts, and not his to consider.⁵⁴

Burr was in despair. He had stood three legal proceedings and been acquitted of all wrongdoing; yet the acquittals were of no avail. Hourly his situation was becoming more dangerous. Mississippi had turned against him as well as Orleans and Louisiana. He consulted his friends again and they strongly advised his immediate flight. Reluctantly he bowed to the inevitable.

But before he went, he visited secretly his disheartened and somewhat mutinous followers in the unguarded boats. It was a sorrowful farewell. *They* were certain of eventual freedom; *he* could expect only unrelenting public and private vengeance. He made them a little speech that moved them to tears. He told them that they might sell all his property in the flotilla, and divide the proceeds among themselves; that if they wished, they might go on to the Washita lands and take up such shares as they desired. With a heavy heart he told them "that he stood his trial and was acquitted; but that they were going to take him again, and that he was going to flee from oppression."⁵⁵ Then he disappeared from their midst as suddenly as he had come, leaving them with renewed faith and belief in their tormented leader. Later, they took the boats and provisions to Natchez, sold what they could, stored the balance, and divided the money. Of all the members of the expedition, in spite of arrest, in spite of Wilkinson's threats and promises of reward to any one who turned informer, only one man was later to testify to damaging circumstances against Burr. That man was Dunbaugh, the soldier on furlough, and peculiarly amenable to Wilkinson's threats.

The saga of their journey's end is soon told. Williams, furious at Burr's escape, ordered their wholesale arrest. The pretext was ready at hand. A negro boy, so it was said, had been discovered near the mouth of Cole's Creek, riding on Burr's horse and wearing Burr's coat. It was alleged that within the folds of his cape there was a note, dated February 1st, and addressed to Tyler and Floyd. It read, "If you are yet 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." The note was unsigned, but it was claimed to be in Burr's handwriting.⁵⁶

This seems to be the clumsiest of forgeries. The original was never produced for inspection, and it was never disclosed when it had been seized. Furthermore, why had such a note been written at all? On its purported date, Burr was openly in Washington Town, awaiting the Grand Jury proceedings. He was confident of gaining a dismissal; there was no need for the utter secrecy. The note was an obvious attempt to pin a new crime upon Burr — the reference to arms could mean only resistance to authority. But it had been intended to date it as of Burr's escape, and in the hurry of the forgery, the forger had miscalculated.

Nevertheless, on the strength of this, some sixty were arrested at Natchez, most of them to be freed in a few days. But Blennerhassett, Floyd, Ralston and Tyler continued to be held. After many vicissitudes, Ralston was freed; so was Blennerhassett, only to be re-arrested in Kentucky and sent to Richmond to stand trial with Burr; Floyd and Tyler were also indicted by the Richmond Grand Jury.

As for the rank and file of the expedition, they soon made friends with the people of Natchez, and finding conditions to their liking, "dispersed themselves through the territory and supplied it with school masters, singing masters, dancing masters, clerks, tavern keepers, and doctors."⁵⁷

4. ESCAPE AND ARREST

Mounted on a fleet horse given him by Colonel Osmun, one of his most loyal friends in the Territory, accompanied by Chester Ashley as a guide, and disguised, according to Wilkinson's account, in "an old blanket coat begirt with a leathern strap, to which a tin cup was suspended on the left and a scalping knife on the right," Aaron Burr galloped into the tangled wilderness. De-

spair was in his heart and a settled melancholy in his voice — this man who had always been gay and sanguine. Behind him lay oppression and death; before him — what? Everywhere he turned, a hostile nature and more hostile men awaited him. It is asserted that he meant to seek refuge within Spanish territory, but there he would have been subjected to rather brief shrift. The United States by and large was hostile country — the government, the courts, the minds of the people themselves, were poisoned by the constant propaganda. Wilkinson told Jefferson that "Burr's destination was France beyond all doubt."⁵⁸ Which was plausible; but the probabilities lay more in favor of England — and Charles Williamson.

The problem was how to get there. The ports would be guarded, and the way to Canada was long and difficult. The elements were also against him. Heavy rains had rendered the streams swollen and unfordable, necessitating a change in route over the one first mapped.

On the 18th of February, 1807, Nicholas Perkins, a young lawyer, and Thomas Malone, Clerk of the Court, were seated in their cabin, in the village of Wakefield, Washington County, deeply immersed in an exciting game of backgammon. It was late at night and the scattered citizens were mostly in bed and fast asleep. A knock sounded on the outer door. Perkins arose, thrust open the door. Two mounted travelers loomed dark in the road. One came forward with an inquiry for the village tavern. Perkins pointed it out in the distance. Then the traveler, muffled to the chin in a blanket coat, asked also the way to Colonel Hinson, a local celebrity. That, too, was pointed out, and the travelers rode away.

But Perkins had been studying the broadcast descriptions. By the dim light of the fire as it eddied out through the open door into the night, he observed that the inquirer wore exquisitely shaped boots under the coarse pantaloons of a farmer, and that his eyes, even in the semi-darkness, sparkled and glowed. There could be only one man in all the Territory with eyes like that. He turned at once to Malone and exclaimed, "*That is Aaron Burr!*"

The thought of the reward — two thousand dollars — was a huge temptation to a penniless young lawyer. He seized his cloak and hastened over to the cabin of Theodore Brightwell, the sheriff, awoke him from his sleep, and breathlessly told him that he had found the fugitive. The sheriff dressed, and together they went to Hinson's. Perkins hid outside in the woods so as not to awaken suspicion, while the sheriff went in alone. Mrs. Hinson, the mistress of the house, was his relative. She welcomed him, all unsus-

pecting; her husband, the Colonel, was not at home. The sheriff went casually into the kitchen and there discovered the two travelers who had inquired the way of Perkins. One of them was obviously muffled and avoiding observation. They stayed overnight; so did the sheriff. It seems that he had regretted his hasty action, and was not disposed to bear the onus of Burr's arrest. The next morning the two gentlemen left, politely taking their leave of Mrs. Hinson and expressing disappointment at her husband's absence.

In the meantime, Perkins had become impatient at the sheriff's non-appearance. He mounted and rode away to Fort Stoddard, the nearest military post. There he explained the situation to Lieutenant Edmund P. Gaines, in command. Gaines, with Perkins and four soldiers, heavily armed, hastened back on the road to Hinson's. About two miles out of Wakefield they came upon Burr and Ashley, and Sheriff Brightwell, who, far from arresting Burr, had volunteered to guide him on his way. No resistance was possible, as the soldiers presented their arms. Burr at first refused to answer questions, but finally admitted his identity.⁵⁹

He was taken to the Fort, and imprisoned. But Gaines was uneasy over his unexpected prisoner. He was afraid that the country might rouse at the news and rescue him by force. Ashley, who had been allowed to go free, was popular in the neighborhood, and Burr himself had many friends. Burr was also making friends daily within the Fort by reason of his attractive personality and considerateness. It was necessary to get rid of him at once. Nicholas Perkins, hot after the reward, volunteered to escort him all the arduous miles to distant Washington, and to deliver his prisoner direct to the President. Gaines, glad of this solution to his difficulties, gave Perkins a file of eight soldiers to guard the prisoner, and wished them Godspeed. He declared to Wilkinson in justification of his course that the inhabitants were ready to follow Ashley to the rescue, that "the plans of Burr are now spoken of in terms of approbation, and Burr in terms of sympathy and regard. I am convinced if Burr had remained here a week longer the consequences would have been of the most serious nature."⁶⁰

But the countryside seethed with adverse criticism. Gaines, in self-defense, denied he had arrested Burr "militarily," and shifted all the blame to Perkins.⁶¹ But Perkins did not mind. By that time he was in Washington, and had already collected \$3,331 as his share of various rewards for Burr's capture.

John Graham, the Government agent, whose dilatory following in the footsteps of Burr still excites incredulous wonder, reported also to the Administration a change of heart in the Southwestern

Territories. He had come up with Burr in Washington Town on January 30th, to find Burr already awaiting trial. He interviewed Burr, who spoke to him frankly, disclaiming, as always, any treasonable intentions. On February 8th, he was writing mournfully to Madison, "I am sorry to say that since my arrival in this Territory I have met with many people who either openly or indirectly attack the government for not countenancing Colonel Burr in the invasion of Mexico, for it is generally considered here that that was his object. I am well persuaded that most of his followers were of this opinion."⁶²

When he proceeded to New Orleans, he discovered a similar state of public feeling. The city was rent by factions, and only just recovering from Wilkinson's tyrannical yoke. It was, he admitted, most "unpleasant."⁶³ Workman and Kerr had been tried on Wilkinson's trumped-up charges and speedily acquitted. Burr's friends once more raised their voices in protest, and Claiborne was vainly trying to have a reluctant Legislature suspend the writ of habeas corpus so that he could deal properly with them.

5. VIA DOLOROSA

About March 6, 1807, Perkins, with eight soldiers and Aaron Burr, started out from Fort Stoddard on the long Via Dolorosa to Washington, the capital of the United States. Burr was still attired in the homespun pantaloons, the flapping, wide-brimmed beaver hat in which he had been arrested. It was a perilous and a fatiguing journey for escort and prisoner as well. They traveled in secrecy, avoiding towns and settled communities for fear of rescue of their distinguished prisoner; through swamps and trackless forests, swimming their horses over unbridged rivers, in daily danger from hostile Indians. They rode hard and fast, making forty miles a day; but never once was Aaron Burr "heard to complain that he was sick, or even fatigued."

Then they reached comparatively settled country, and their precautions redoubled against the chance of rescue. Burr had been biding his time. In South Carolina, the State of his son-in-law, Joseph Alston, the cavalcade was galloping fast near the courthouse of the Chester District. As they passed a tavern before which a group of people were assembled, Burr suddenly flung himself from his horse, and exclaimed in a loud voice, "I am Aaron Burr, under military arrest, and claim the protection of the civil authorities!" Perkins and his men immediately dismounted, presented their pistols, and ordered him back on his horse again. Burr re-

fused; whereupon Perkins, who was a large man, seized him around the waist and heaved him bodily into the saddle. Thomas Malone, the Court Clerk who had played backgammon with Perkins that fateful night, and now a member of the escort, caught the reins and urged the horse along, while the soldiers whipped it from behind. Thus, still struggling, Burr was whisked out of sight in a cloud of dust before the astonished citizens could recover their wits. For the first time in his life Burr, fatigued, oppressed with emotion, gave way to tears, and Malone sobbed with him.⁶⁴

Perkins took no more chances with his prisoner. He placed him in a closed and shaded gig, and conveyed him by stealth to Fredericksburg, there to find orders awaiting him from Jefferson to carry Burr to Richmond, where the President had determined to set the stage for his trial on the charge of high treason.

John Randolph of Roanoke, in the town of Bizarre, looked out of his window and beheld a strange sight the afternoon of March 23rd. "Col. Burr (quantum mutatus ab illo!) passed by my door the day before yesterday under a strong guard."⁶⁵

On March 26th, in the evening, the sorry cavalcade cantered into Richmond — and journey's end.

CHAPTER XXIV

THE STAGE IS SET

1. CONVICTED IN ADVANCE

IN Washington, the President of the United States was jubilant. Burr was at last in his power, and he was determined that he should not escape this time. He proclaimed exultantly that "Burr has indeed made a most inglorious exhibition of his much overrated talents. He is now on his way to Richmond for trial."¹ But the following day, with a fine inconsistency, he was informing an anonymous correspondent, "No man's history proves better the value of honesty. With that, what might he [Burr] not have been!"²

Since Wilkinson's vague alarms had come to trouble his ears the preceding November, he had steadily increased his already overabundant spleen toward the man who had made him President. He became judge, prosecutor and jury, all in one. He had tried the question of Burr's guilt in the public eye before his capture; he had given the impression that he had in his possession the most irrefutable proofs of his treason and convicted him accordingly. He had utilized every resource of the Government to achieve his purpose — to blacken the name of Aaron Burr forever — whether the means were legal or illegal; and now, during the course of the ensuing trial, he injected himself into what was a judicial proceeding in a way that bespoke the most vindictive persecution and interference with the orderly processes of the law of the land. It is indeed a strange episode in the life of an otherwise great figure in American history. A philosopher displaying spleen, passion and enmity; a democrat acting the tyrant; a scientist rearing a structure of hate on the flimsiest premises; the ardent prophet of the Bill of Rights tearing every constitutional guaranty of personal liberty to shreds; the disciple of the Enlightenment adopting the Jesuitical doctrine that the end justifies the means!

Had Jefferson been sincerely convinced of Burr's guilt, and that the nation was in danger of subversion, his course might at least be understandable, if not wholly to be approved. But the record casts serious doubts on Jefferson's own convictions, no matter what he pretended to the public. His first Proclamation made no mention