

One can see in this passage qualities that contemporaries commonly ascribed to Martin as an advocate: a tendency to "mix up . . . his points together and [to] argue without order, with much repetition," and at the same time an ability "never [to] miss the strong points in his case."¹²⁸ Martin's qualities served Chase well: despite having committed what modern commentators agree were serious political blunders, possibly justifying impeachment as it was then understood,¹²⁹ Chase was narrowly acquitted.

Martin then defended an even more controversial figure, Aaron Burr, who was indicted for treason in 1807 in connection with his mysterious "Western expedition," which now appears to have been a combination of entrepreneurial activity in the delta South and a prospective invasion of Mexico rather than an effort to encourage Southern states to separate from the Union.¹³⁰ The trial of Aaron Burr and his confederates has been covered in detail elsewhere and lies chronologically outside the scope of this work, but since the trial cemented Martin's national reputation as an advocate and formed the basis for the extreme antagonism to Jefferson that characterized his subsequent career, some attention to Martin's participation in it seems pertinent.

The Burr trial, held before John Marshall's circuit court in Richmond, was the *cause célèbre* of the early Marshall Court years. Momentous legal issues were involved, including the scope of executive privilege and the constitutional and common law definitions of treason. The trial's political dimensions were equally significant: at stake was the reach of Thomas Jefferson's influence over the federal courts and the power of John Marshall to limit Jefferson's influence. Burr's name was a household word for villainy: he had been Jefferson's vice-president and archenemy, and the slayer of Alexander Hamilton. At the time of the trial, Burr was, according to one recent commentator, "a ruined man, hopelessly in debt, his law practice gone, and his personal reputation close to destruction."¹³¹

Martin entered the trial when he was retained by Dr. Justus E. Bollman, a physician with a taste for intrigue, who had been caught delivering an allegedly treasonous code message from Aaron Burr to General James Wilkinson in 1806.¹³² Wilkinson, who had previously

¹²⁸ Taney in Tyler, *Memoir of Taney*, 66.

¹²⁹ See the discussion in R. Berger, *Impeachment* (1973), 224-51.

¹³⁰ Various accounts of the Burr trial are found in T. Abernethy, *The Burr Conspiracy* (1954); L. Levy, *Jefferson and Civil Liberties* (1960), 70-92; W. McCaleb, *A New Light on Aaron Burr* (1963); F. Philbrick, *The Rise of the West, 1754-1830* (1965), 234-52; D. Malone, *Jefferson the President: Sec-*

ond Term 1805-09 (1974), 215-370; Haskins and Johnson, *Foundations of Power*, 246-91.

¹³¹ George L. Haskins in Haskins and Johnson, *Foundations of Power*, 248.

¹³² On Bollman see W. McCaleb, *The Aaron Burr Conspiracy* (1936), 68-70; Philbrick, *Rise of the West*, 248-51; Beveridge, *John Marshall*, III, 307.

cooperated with Burr, now reversed himself, dissociated himself from Burr's plans, and informed Jefferson that Burr's message to him confirmed the existence of a plot to separate some southern states from the Union. In January 1807, in response to pressure from Congress, Jefferson delivered a "special message" in which he claimed that a conspiracy existed and that Burr's and Bollman's "guilt is placed beyond question."¹³³ Jefferson then interviewed Bollman, pledging confidentiality, but Bollman was subsequently imprisoned. Bollman sought release on a writ of habeas corpus, retaining Martin in his defense.¹³⁴

In February 1807 the Marshall Court dismissed the case against Bollman on jurisdictional grounds (he had not committed an indictable offense in the District of Columbia)¹³⁵ and invited the Jefferson administration to "institute fresh proceedings" elsewhere.¹³⁶ Jefferson's prosecutors responded by beginning proceedings directly against Aaron Burr in Richmond in March 1807, and Martin subsequently joined Burr's defense.¹³⁷ On June 9 Burr himself first raised the executive privilege issue when he demanded that the prosecution produce a letter written by Wilkinson to Jefferson on October 21, 1806, allegedly revealing the existence of a conspiracy to dismember the Union. Burr asked that Jefferson be served with a *subpoena duces tecum*, and when counsel for the prosecution refused, on grounds of executive privilege, John Marshall asked that the point be argued. Martin, in the course of his argument, said:

This is a peculiar case, sir. The president has undertaken to prejudice my client by declaring that "of his guilt there can be no doubt." . . . He has proclaimed him a traitor in the face of that country, which has rewarded him. He has let slip the dogs of war, the hell-hound of persecution, to hunt down my friend. And would this president of the United States, who has raised all this absurd clamour, pretend to keep back the papers which are wanted for this trial, where life itself is at stake? . . .

It may be suggested that this is a private and confidential letter from General Wilkinson to the president. . . . [I]f General Wilkinson had reposed as much confidence: if he had instilled as much poison into the ear of Eve, the president would have been still responsible to a court of justice, and bound to disclose his communications. . . . It

¹³³ Quoted in J. Richardson, comp., *A Compilation of the Messages and Papers of the Presidents, 1798-1897* (10 vols., 1899), I, 405. See also *Annals of Congress*, 9th Cong., 2d Sess. 11 (1806).

¹³⁴ *United States v. Bollmann*, 24 F. Cas. 1189 (C.C.D.C. 1807); see *Baltimore Federal Gazette*, Feb. 12, 1807.

¹³⁵ *Ex parte Bollman*, 4 Cranch 75, 127 (1807).

¹³⁶ *Ibid.*, 136.

¹³⁷ Among the other counsel for Burr were Littleton Tazewell's mentor John Wickham and Henry Tazewell's friend Edmund Randolph. See D. Robertson, *Trials of Aaron Burr* (2 vols., 1808), I, 1-8.