

is a sacred principle that in all such cases the accused has a right to all the evidence which is necessary for his defense. . . .¹³⁸

Marshall ruled that except for "matters whose disclosure would endanger the public safety," the president was constitutionally required to produce subpoenaed documents and appear in court.¹³⁹ Jefferson had already agreed "voluntarily to furnish, on all occasions, whatever the purposes of justice may require," although he reserved the right to decide for himself "what papers . . . the public interests permit to be communicated."¹⁴⁰ Nonetheless, Jefferson was furious at Martin for his remarks, and suggested to George Hay, the government's chief prosecutor, that Martin be indicted for treason, since Jefferson claimed that he had evidence that Martin "knew all about the criminal enterprise" by the summer of 1806. Jefferson stated to Hay that an indictment of Martin would "put down this unprincipled and imprudent federal bull-dog, and add another proof that the most glamorous defenders of Burr are all his accomplices."¹⁴¹

The Burr trial lasted until September 1807, when the jury acquitted Burr and one of his alleged accomplices, Harman Blennerhassett,¹⁴² of treason and of conspiring against the government. While Martin had won the case, he suffered both personally and financially from his association with Burr. He had twice stood surety for Burr's bail,¹⁴³ and when Burr fled the country after his 1807 trial he forfeited his bail, since a charge of conspiracy against the government was still pending against him in Ohio.¹⁴⁴ Martin was accordingly made responsible for the payment of

¹³⁸ Quoted in *ibid.*, I, 127-28.

¹³⁹ *United States v. Burr*, 25 F. Cas. 25, 33 (C.C.D. Va. 1807).

¹⁴⁰ T. Jefferson to G[eorge] Hay, June 17, 1807, in P. Ford, ed., *The Works of Thomas Jefferson* (12 vols., 1905), X, 400.

¹⁴¹ *Ibid.*

¹⁴² For an ornate, and highly purposive, sketch of Blennerhassett, see William Wirt's remarks at the Burr trial, quoted in Robertson, *Trials of Burr*, II, 96-98. Wirt, who was aiding in the prosecution, said, in part, of Blennerhassett:

Who is Blennerhassett? A native of Ireland, a man of letters, fled from the storms of his own country to find quiet in ours. His history shows that war is not the natural element of his mind. If it had been, he never would have exchanged Ireland for America. . . .

Wirt then went on to suggest that Burr had "wound himself into the open and unpractised heart of the unfortunate Blennerhassett," infusing "into it the poison of his own ambition." The Harman Blennerhassett family were close friends with the Thomas Emmets: when Emmet arrived in New York in 1806 Blennerhassett came to visit him, and in 1809, after Blennerhassett had been acquitted of treason, the two corresponded about their children's educational prospects. Blennerhassett eventually returned to Ireland in 1822, leaving his family in New York, where they came into regular contact with the Emmets. See Emmet, *Memoir*, I, 405, 422, 455.

¹⁴³ See Robertson, *Trials of Burr*, I, 106; W. Safford, ed., *The Blennerhassett Papers* (1864), 461.

¹⁴⁴ Clarkson and Jett, *Luther Martin*, 292.

Burr's bail, which came to about \$20,000.¹⁴⁵ In addition, Martin, Burr, Blennerhassett, and Marshall were hanged in effigy by a mob in Baltimore in November 1807, the participants referring to Martin as "Lawyer Brandy Bottle."¹⁴⁶ The association with Burr also affected Martin's political ambitions: when he ran for the Maryland House of Delegates in 1811, an unfriendly newspaper contributed to Martin's defeat by reminding its readers of his defense of Burr and of the mock hanging.¹⁴⁷ The Burr trial also revealed, as had the Chase trial before it, Martin's tendency to personalize his advocacy. He defended Chase because Chase was an old friend; he attacked Jefferson because he felt Jefferson was using the presidency to persecute his client. In both trials he felt no compunction about presenting his arguments as his own theories or about making outspoken comments on his adversaries. He was, as Adams noted, "audacious" and candid: he did not conceal his feelings in "rhetoric and affectations."

Despite the unpopularity of some of his causes, Martin's law practice continued to thrive, and he began to appear in the Supreme Court with increasing frequency, arguing principally prize and insurance cases. He appeared twenty-five times between 1808 and 1813.¹⁴⁸ The most famous case he argued in that period was *Fletcher v. Peck*, the first major Contract Clause case decided by the Marshall Court.¹⁴⁹ Martin's professional responsibilities also increased. In 1813 he was named chief justice of the municipal criminal court for Baltimore city and county, a position he held until the court was abolished in 1816. He continued to practice law and serve as "unofficial attorney general" of the state of Maryland in this period (the office being temporarily abolished),¹⁵⁰ and in 1818 was officially reappointed to the office when it was re-established.¹⁵¹ Martin was now seventy, and he continued to thrive despite a tendency toward chronic alcoholism. As attorney general of Maryland, he was among the distinguished group of lawyers—Webster, Wirt, Pinkney, Joseph Hopkinson, and Walter Jones—who argued the great case of *McCulloch v. Maryland*¹⁵² in 1819.

Martin's life was intimately bound to his profession. Like many

¹⁴⁵ F. Wandell and M. Minnegrode, *Aaron Burr* (2 vols., 1925), II, 308.

¹⁴⁶ See *Baltimore Federal Gazette*, Nov. 4, 1807.

¹⁴⁷ *Baltimore Whig*, Sept. 28, 1811; *Baltimore Federal Republican*, Oct. 8, 1811.

¹⁴⁸ See 4 Cranch (1808)-7 Cranch (1812 and 1813). There was no 1811 Term of Court because of the absence of a quorum, Justices Chase and Cushing having died after the 1810 Term.

their replacements, Justices Duvall and Story, not having been appointed in time to begin hearing cases by February 1811, and Justice Todd having been absent for the 1811 Term.

¹⁴⁹ 6 Cranch 87 (1810). *Fletcher v. Peck* is briefly discussed in Chapter IX.

¹⁵⁰ Clarkson and Jett, *Luther Martin*, 290-91.

¹⁵¹ *Ibid.*, 292.

¹⁵² 4 Wheat. 316 (1819). See the discussion in Chapter VIII.