AARON BURR: TREASON IN KENTUCKY?

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Vice President Aaron Burr's tours of Kentucky in 1805 and 1806 have long interested historians investigating his conspiracy. Disgraced by his duel with Alexander Hamilton, Burr left office in 1805 and crossed the Appalachians to voyage down the Ohio River, stopping at Marietta and Cincinnati in Ohio, at Frankfort, Lexington, Louisville, and Eddyville in Kentucky, and then going on to Nashville and New Orleans. He returned to Washington in late 1805, and in September 1806 he embarked on another whirlwind trip into Kentucky. During his second tour, his conspiratorial ventures excited suspicion; he narrowly escaped grand-jury indictment at Frankfort, and he embarked down the Mississippi with federal and state agents in close pursuit. As his conspiracy disintegrated, Burr left his fleet and slipped away, only to be captured, imprisoned, and tried for treason.

Historians have repeatedly traced Burr's peregrinations through Kentucky to learn which leaders he met and what mysterious schemes he broached to them—colonizing a land grant in Louisiana, leading a filibustering expedition against Mexico, fomenting revolution in Kentucky and its separation from the Union? Joseph Hamilton Daveiss, the United States Attorney at Frankfort in 1806, and President Thomas Jefferson's prosecutors at the 1807 trial charged

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Burr with treasonously planning a revolution and filibustering expedition, while Burr's defense maintained he merely sought to colonize a land grant. Although the court acquitted Burr, some historians sided with the Jefferson administration, arguing that Burr's acquittal was mistaken, while others thought Burr innocent of treason, a victim of mass hysteria and his own charismatic ambition.[1]

Among recent studies of Burr's conspiracy, Lowell Harrison sided with the prosecution, concluding that Burr's acquittal resulted from legal technicalities, and Charles Hobson, editor of John Marshall's papers, contended that Burr's acquittal reflected Chief Justice Marshall's opinion that prosecution for treason should not become an instrument of party politics. Raymond Mohl's review of the conspiracy made him certain that Burr's activities, although perhaps illegal, were not treasonable. Thomas Slaughter concluded that Burr certainly planned to invade Mexico. Burr's biographer Milton Lomask pictured him more as a victim than a traitor, and the editors of Burr's papers concluded that General James Wilkinson successfully branded an innocent Burr as a traitor. Stuart Sprague, closely detailing Burr's travels in Kentucky, suggested that, during his 1805 trip at least, Burr innocently sought to build a canal around the Falls of the Ohio at Louisville. These reviews of Burr's nefarious activities in Kentucky, however, neglected damning evidence in United States Navy records.[2]

[1] Older studies of Burr's conspiracy are: Henry Adams, *History of the United States of America during the Administrations of Thomas Jefferson* (New York: Library Classics, 1986; originally published in nine volumes, 1889-1891); Walter F. McCaleb, *The Aaron Burr Conspiracy* (New York, 1903); Samuel H. Wandell and Meade Minnigerode, *Aaron Burr* (New York: G. P. Putnam's Sons, 1927); Walter F. McCaleb, *The Aaron Burr Conspiracy and a New Light on Aaron Burr by Walter Flavius McCaleb* (New York: Argosy-Antiquarian Ltd., 1966); Thomas P. Abernethy, *Burr Conspiracy* (New York: Oxford University Press, 1954); Francis F. Beirne, *Shout Treason: the Trial of Aaron Burr* (New York: Hastings House, 1959).

[2] Lowell H. Harrison, "The Aaron Burr Conspiracy," *American History Illustrated* 13 (June 1978):16-25; Charles F. Hobson, ed., *The Papers of John Marshall* (8 vols.; Chapel Hill: University of North Carolina Press, 1993), 7: 3-10; Raymond A. Mohl, "Britain and the

Exactly what Burr planned may never known for certain because he cleverly tailored what he said to fit his audience, telling each person what he thought he wanted to hear, and because everyone involved in Burr's escapades sought to conceal their roles after his arrest. But it is not necessary to know fully what Burr planned in order to reach a conclusion on his guilt or innocence, if while making his plans he committed treasonable acts. Regardless of whether he planned colonization, invasion, or revolution, Burr required certain essentials: credit to finance his expedition, influential allies to foster his ventures, a cadre of men recruited as his armed forces, and boats for transportation. Investigations of Burr's campaign to acquire these necessities in Kentucky during 1805 and 1806, however, missed evidence of his efforts to obtain warships.

The Ohio Valley lacked railroads and improved highways in 1806; therefore it was imperative that Burr secure boats to transport his expedition down the Ohio and Mississippi rivers, and, moreover, he needed armed gunboats to defend his forces on the rivers. Navy records reveal that during his visits to Kentucky, Burr diligently sought out shipbuilders at Eddyville, Louisville, Lexington, Marietta, and Cincinnati, who were under contract to construct United States Navy gunboats, hoping to make them his allies. His veiled attempt to wrest control of these warships from the navy presents a new perspective on his conspiracy.

When Thomas Jefferson became president, in the interest of economy he suspended construction of the ships-of-the-line and the harbor fortifications program begun by John Adams's Federalist

Aaron Burr Conspiracy," *History Today* 21 (June 1976): 391-98; Thomas P. Slaughter, "Conspiratorial Politics: The Public Life of Aaron Burr," *New Jersey History* 103 (Spring 1985): 69-81; Milton Lomask, *Aaron Burr* (2 vols.; New York: Farrar, Straus & Giroux, 1979-1982), 2: 175-99; Mary-Jo Kline and Joanne Wood Ryan, eds., *Political Correspondence and Public Papers of Aaron Burr* (2 vols.; Princeton, New Jersey: Princeton University Press, 1983), 2: 973-86; Stuart Seely Sprague, "The Louisville Canal: Key to Aaron Burr's Western Trip of 1805," *Register of the Kentucky Historical Society* 71 (1973): 69-86.

administration. Jefferson's defense policy substituted mobile cannon at seaports supported by small, armed gunboats manned by militia rather than by regulars. He estimated that defending American waters could be accomplished by 240 gunboats built at a cost of $1 million, substantially less than the $50 million cost of the defensive system begun by Adams. For this economy measure, Jefferson found support from navy officers, such as Commodore Edward Preble, who had used gunboats effectively against Barbary pirates in the Mediterranean, and from such army officers as General James Wilkinson of Kentucky, who had launched gunboats on the Ohio River to confront Spanish ships on the Mississippi.[3]

When the Jefferson administration ordered the construction of gunboats along the Ohio River, it had ample historical precedent. Thomas Hutchins, the Royal British engineer, had built gunboats to patrol the Ohio even before James Harrod and Daniel Boone established the first Kentucky settlements; George Rogers Clark had used gunboats to defend Kentucky during the Revolution, and in 1798 James Wilkinson had constructed gunboats to confront a Spanish armada. Many experienced shipbuilders were available in Kentucky to build gunboats.[4]

During Jefferson's administration, shipyards along the Ohio were building sea-going vessels for foreign trade and sailing them

[3] Gene A. Smith, *For the Purposes of Defense: The Politics of the Jeffersonian Gunboat Program* (Newark: University of Delaware Press, 1995), analyzes Jefferson's gunboat program.

[4] On Hutchins and the gunboat *Gage*, see Clarence Alvord and Clarence E. Carter, eds., *Trade and Politics, 1767-1769*, volume 16 of the *Collections of the Illinois State Historical Society* (Springfield, Illinois, 1921), 267-68, 322, 440, 498-99, 571-73; Clarence E. Carter, ed., *The Correspondence of General Thomas Gage with the Secretaries of States, 1763-1775* (2 vols.; New Haven, 1931), 1: 309-10, 347; Charles G. Talbert, "A Roof for Kentucky," *Filson Club History Quarterly* 29 (1955): 154-55, describes George Rogers Clark's gunboat; General James Wilkinson's Order Book, 1796-1808, Records of the Adjutant General Office, Record Group 94, National Archives, Washington, D.C., details gunboat construction and operations in 1798.

down the Ohio and Mississippi rivers to enter the Caribbean and coastal commerce, even trading to France and Italy. This shipbuilding industry had begun near Pittsburgh during the 1790s and subsequently expanded down the Ohio to the ports of Marietta, Cincinnati, Frankfort, Louisville, and Eddyville. Rather than transporting commodities in flatboats to New Orleans and there transshipping cargo to sailing ships, Kentucky's shipbuilders sought to increase profit by eliminating the middlemen, loading commodities onto their own ships and sailing directly to foreign ports.[5]

In Kentucky, Louisville's chief shipbuilders were Richard Anderson on Beargrass Creek and the firm of Tarascon Brothers and Berthoud, which moved its shipyard from Pittsburgh to Shippingport below the Falls in 1802. Matthew Lyon and the New Englanders colonizing Eddyville on the Cumberland River began ship construction there about 1803, building the schooners *Conclusion* and *Perseverance*, the brig *Clarissa Claiborne*, and the schooner *Beulah*.[6]

On the Kentucky River, three seagoing vessels were launched at Frankfort by John Instone and John Melanthy, wealthy English friends of James Wilkinson. Instone, who had the first house on Wapping Street (which he named), built the *Go-By* and the *Ceres*. A two-mast, eighty-ton schooner, the *Go-By* left Frankfort in February 1803, hoisted sail at New Orleans, and entered Gulf commerce; the next year Instone's schooner *Ceres* went to New Orleans, and John

[5] William F. Trimble, "From Sail to Steam," *Western Pennsylvania Historical Magazine* 52 (1975): 149-51; Richard T. Wiley, "Ship and Brig Building on the Ohio and Its Tributaries," *Ohio Archaeological and Historical Publications* 22 (1913): 54-64; Josephine E. Phillips, "Fine Timber," *Ohio Archaeological and Historical Quarterly* 46 (January 1937): 16-24.

[6] Doyce B. Nunis, Jr., "Tarascon's Dream of an American Commercial Empire in the West," *Mid-America* 42 (1960): 170-84; Richard C. Anderson, *Ship Caroline of 1794* (Louisville, 1953); *Ship Registers of the Port of New Orleans* (3 typescript volumes; National Archives, Washington, D.C.), 1: 14, 26, lists Lyon's ships.

Mullanphy launched the schooner *Jane*. John Jordan, Jr., shipping merchant and Lexington postmaster, funded construction of the 250-ton *General Scott*, launched his "elegant and substantial" ship in May 1805 at Scotts Landing, twenty miles upstream of Frankfort, and sailed it to New Orleans to enter foreign trade.[7]

When Napoleon acquired Louisiana from the Spanish, it alarmed the Jefferson administration and Kentuckians who feared a possible closure of New Orleans to American shipping. Kentuckians had exported $1.2 million worth of commodities through New Orleans in 1802, and the state assembly enacted resolutions protesting any threat to this trade. Senator John Breckinridge presented Kentucky's resolutions to Congress, which authorized President Jefferson to build gunboats to defend the Mississippi River and Gulf coast. Robert Smith, Jefferson's secretary of navy, issued requests for contract proposals to build gunboats at Louisville, Pittsburgh, and Marietta, specifying that the ships be fifty-six-feet long, fourteen-and-a-half-feet wide, drawing five feet and eight inches, and be armed with cannon on the forecastle and howitzers on deck. Jefferson's purchase of Louisiana from Napoleon in 1803 thwarted threats to Kentucky's export commerce, however, and the navy suspended its gunboat contracts along the Ohio, instead constructing its first twelve at Atlantic ports. These gunboats patrolled coastal harbors and sailed to the Mediterranean to battle the North African Barbary pirates.[8]

[7] *Frankfort Palladium*, 3 March 1803; *Kentucky Gazette* [Lexington], 1 March and 17 May 1803; 1 May 1804; 17, 21, and 28 May 1805; *Ship Registers of the Port of New Orleans*, 1, 22 and 71, lists Instone and Mullanphy ships; Abernethy, *Burr Conspiracy*, 260; James F. Hopkins and Mary W. M. Hargreaves, eds., *The Rising Statesman, 1797-1814*, volume 1 of *The Papers of Henry Clay* (Lexington: University of Kentucky Press, 1959), 135-36, 194, 241-42, 253, and 839, outlines John Jordan, Jr.'s career.

[8] Smith, *For the Purposes of Defense*, 94-95; Lowell H. Harrison, *John Breckinridge, Jeffersonian Republican* (second publication series, no. 2; Louisville: The Filson Club Historical Society, 1969), 148-53; Robert Smith, "Proposals for Building at Pittsburgh,

When federal defense appropriations for 1805 provided funding for more gunboats, Congressman Matthew Lyon of Kentucky and Senator John Smith of Ohio personally approached Secretary of Navy Robert Smith with construction contract proposals — no law then prohibited members of Congress from accepting federal contracts. Senator Smith advised Secretary Smith that he owned sawmills and shipyards near Cincinnati and wanted a contract to build gunboats. Representative Lyon told the secretary that he and his stepson Elisha Galusha had a 120-ton brig on the stocks at Eddyville and would be happy to contract for building navy gunboats cheaply if the secretary would recommend a nautical architect to supervise their design and construction.[9]

Unlike Lyon and Smith in Washington, shipping merchant John Jordan, Jr., of Lexington had no inside information on the navy gunboat contracts, but he was developing the navy market at the time, offering to supply large quantities of hemp rope and gunpowder to the fleet at New Orleans. The navy was interested as well in General Edward Tupper, an Ohio militia officer of Marietta, who employed shipwrights from New England to build ships on the Muskingum River, a few miles upstream of its confluence with the Ohio.[10]

Marietta, and Louisville, 11 April 1803," AD Subject File, U. S. Navy Records, Record Group 45, National Archives, Washington, D.C. (cited hereafter as NARG45).

[9] Smith, *For the Purposes of Defense*, 80-81; Aleine Austin, *Matthew Lyon, "New Man" of the Democratic Revolution, 1749-1822* (University Park: Pennsylvania State University Press, 1981), 133-34; Matthew Lyon to Robert Smith, 7 January and 28 February 1805, Letters Received, Secretary of Navy (M124), NARG45; John Smith to Robert Smith, 28 February 1805, ibid.

[10] John Jordan, Jr., to Robert Smith, 19 February 1805, Letters Received, Secretary of Navy (M124), NARG45; Leland D. Baldwin, "Shipbuilding on the Western Waters, 1793-1817," *Mississippi Valley Historical Review* 20 (1933): 29-34; Wiley, "Ship and Brig Building on the Ohio and Its Tributaries," 54-64; Leland R. Johnson, *Men, Mountains and Rivers: An Illustrated History of the Huntington District* (Huntington, West Virginia: U. S. Army Engineer District, 1977), 11-13.

In early 1805 the secretary of navy contracted with Representative Lyon, Senator Smith, John Jordan, Jr., and Edward Tupper for the construction of two gunboats each at their shipyards, based on plans supplied them by the navy. Rather than use competitive bidding, the navy negotiated these contracts as experiments, offering to pay the contractors $4,000 a gunboat, the price for which its own shipwrights had built prototype gunboats at Boston. The shipbuilders would receive their pay in four installments: $1,500 when the gunboat timbers were cut, $1,000 when the keels were laid, $1,000 when the hulls were planked, and the balance on delivery at New Orleans. To Representative Lyon and Senator Smith in Washington, however, the secretary of navy made a mobilization cash advance to get the gunboats swiftly under construction.[11]

As gunboat contract administrator, Secretary Smith named Henry Carbery of Newport, Kentucky, as navy agent for the states of Ohio and Kentucky. Carbery had joined the Continental Army in 1777 as a lieutenant, became a captain in General Wayne's American Legion in Ohio, and left military service in 1794 to settle at Newport. Often called "General Carbery" by acquaintances, Carbery's mission for the navy required managing and coordinating the gunboat contracts, inspecting the completed work, and paying the contractors' invoices. Because Newport then had no banks, Carbery received cash to pay the contractors from General James Findlay, receiver of public monies at Cincinnati, and he locked the cash in the home of a friend who owned an iron safe. This subsequently proved prudent because

[11] Matthew Lyon to Robert Smith, 18 March 1805, Letters Received, Secretary of Navy (M124), NARG45; Robert Smith to John Jordan, John Smith, Edward W. Tupper, and Matthew Lyon, 4 April 1805, Letters Sent, Secretary of Navy (E173), NARG45; Robert Smith to Matthew Lyon, 16 and 19 March 1805, ibid.; Henry Carbery to Robert Smith, 15 July 1805, Letters Received, Secretary of Navy (M124), NARG45.

robbers stole public money from General Findlay.[12]

Secretary Smith issued general design specifications to the contractors, directing that the navy gunboats be sixty-feet long, eighteen-and-a-half-feet wide, with a five-foot hold. The gunboats' main masts were to be fifty-four-feet high with a forty-five-foot boom and sloop-rigged sails. They were to be iron fastened and equipped with two 700-pound anchors.[13]

As the gunboat contractors initiated the construction, news of their projects reached Aaron Burr. As Matthew Lyon later remembered, he received an invitation to meet with the Burr through James Wilkinson, then commanding the United States Army. When Wilkinson urged Lyon to recommend Burr's appointment as an ambassador to President Jefferson, Lyon suggested Burr should move instead to Tennessee, where dueling was not a handicap to public office, and there enter law practice and seek election to Congress. Wilkinson relayed this suggestion to Burr, and Lyon received an invitation to visit Burr in Washington. On arriving at Burr's lodging, Lyon waited in an anteroom for Burr to conclude a meeting with

[12] Robert Smith to John Jordan, John Smith, Edward Tupper, and Matthew Lyon, 4 April 1805, Letters Sent, Secretary of Navy (E173), NARG45; Henry Carbery to Robert Smith, 15 July 1805, Letters Received, Secretary of Navy (M124), NARG45; Richard C. Knopf, ed., *Anthony Wayne: A Name in Arms* (Pittsburgh: University of Pittsburgh Press, 1960), 24, 224; James A. Padgett, ed., "The Letters of James Taylor to the Presidents of the United States," *Register* 34 (1936): 117-18; Robert C. Vitz, "General James Taylor and the Beginnings of Newport, Kentucky," *Quarterly* 50 (1976): 353-68.

[13] Robert Smith to Henry Carbery, 27 May 1805, Letters Sent, Secretary of Navy (E173), NARG45; Robert Smith to John Smith, 11 June 1805, ibid.; Robert Smith to Tupper, Smith, Jordan, Lyon, Carbery, 27 June 1805, ibid.; Data on Gunboats Built by the United States, 1804-1808, Box 9, Subject File AC, U.S. Navy Historical Files, NARG45. The navy used different gunboat plans in 1803 than in 1805. The plans adopted in 1805 apparently were based on Commodore Preble's experience with gunboats in the Mediterranean. Contracts provided that the navy would install the guns at New Orleans; the wooden gun carriages were built in Kentucky and sent with the boats to New Orleans. Smith stated that the navy expected to install two twenty-four-pounder cannon on each gunboat at New Orleans. See Smith to Henry Carbery, 2 November 1805, E173, NARG45.

Wilkinson, Senator Jonathan Dayton, and others, reportedly concerning a proposed canal around the Ohio River Falls at Louisville on the Indiana side of the river. After the meeting ended, Burr met with Lyon and asked to join him on a trip to Pittsburgh, where Lyon would purchase the iron needed for his gunboats, and then to accompany him on a voyage down the Ohio to Kentucky.[14]

Lyon consented to Burr's request and at Pittsburgh they lashed their two barges together in tandem and floated downstream to Marietta, Ohio, where Burr stopped to visit Harman Blennerhassett, who pledged personal and financial support for Burr's schemes. At Marietta, Burr also searched for Edward Tupper, another gunboat contractor, but Tupper was traveling in New England at the time. With credit advanced by Blennerhassett, however, Burr arranged with Tupper's shipbuilding associates, Dudley Woodbridge and Joshua Barker, to build fifteen boats on the Muskingum River for Burr's use the following year.[15]

After providing a nucleus for his navy at Marietta, Burr went to Cincinnati and stopped again to confer with Senator John Smith, another gunboat contractor. Smith became intimately involved in Burr's plans, offering funding and even enlisting his two sons for Burr's proposed expedition down the Mississippi. Burr then again boarded his barge, caught up with Matthew Lyon at Louisville, and accompanied him to the Eddyville shipyard on the Cumberland. There they found Lyon's shipwrights cutting timbers and fabricating keels and planks for the navy gunboats. At the navy's insistence, Lyon had employed master shipbuilder William Eyre of Pennsylvania and

[14] Lyon's deposition, 28 February 1811, in James Wilkinson, *Memoir of My Own Time* (Philadelphia, 1816), appendix; Kline and Ryan, eds., *Political Correspondence*, 2: 922-24; Mark Van Doren, ed., *Correspondence of Aaron Burr and His Daughter Theodosia* (New York, 1929), 209.

[15] Kline and Ryan, eds., *Political Correspondence*, 2: 934-35; Sprague, "Louisville Canal" carefully traced Burr's itinerary.

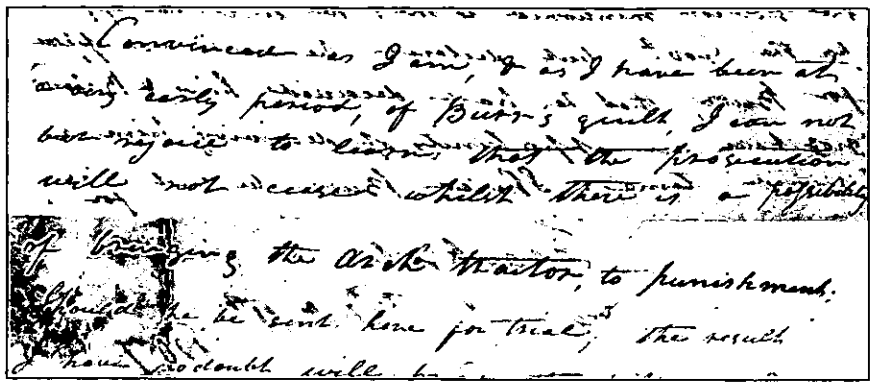
brought him west to supervise gunboat assembly. Burr then visited John Mason Brown at Frankfort and met at Lexington with John Jordan, Jr., the fourth and last of the navy's gunboat contractors.[16]

Some of Burr's meetings along his route ostensibly concerned organizing a company to fund a canal around the Falls at Louisville, and John Jordan, Jr., the gunboat contractor at Lexington, was also a charter member of two canal companies. Burr's charisma soon overwhelmed Jordan and made him an avid ally as it had already made allies of Smith, Harman Blennerhassett, and others. Using his personal credit and his position as director of the Kentucky Insurance Company, Jordan provided substantial funding for Burr's schemes, eventually advancing him $40,000 in credit.[17]

With Jordan firmly in his camp, Burr went south to Nashville to visit Andrew Jackson, Tennessee's political leader, who agreed to build five boats on the Cumberland River and furnish supplies for Burr's use the following year. In a barge supplied by Jackson, Burr descended the Cumberland to Eddyville for another conference with Lyon and then went on to Fort Massac to meet with Wilkinson. From Fort Massac, he descended the Mississippi to New Orleans, developed a network of allies among malcontents in that city, then retraced his steps, returning to Nashville, Lexington, Frankfort, and Louisville before going to St. Louis to meet with Wilkinson in September 1805. When defending himself later against charges of conspiring with Burr, Wilkinson said that Burr first revealed his schemes

[16] Matthew Lyon to Robert Smith, 18 July 1805, Letters Received, Secretary of Navy (M124), NARG45; Austin, *Matthew Lyon*, 142-44.

[17] Sprague, "Louisville Canal," 78-86; Van Doren, *Correspondence of Aaron Burr*, 240; Hopkins and Hargreaves, *Rising Statesman*, 253; Kline and Ryan, eds., *Political Correspondence*, 2: 935, 955-56. On 25 April 1806 John G. Stuart saw Jordan's vessels under construction at the mouth of Beargrass Creek (in modern downtown Louisville). See his "A Journal of Remarks or Observations in a Voyage down the Kentucky, Ohio, Mississippi Rivers," *Register* 50 (1952): 15.

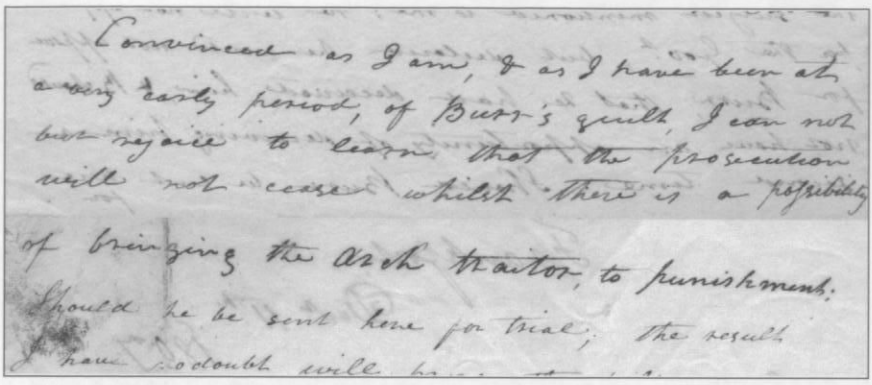


George Bibb gives his opinion of Aaron Burr in a letter to
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At Marietta on his return trip, Burr found gunboat contractor General Edward Tupper at home, met with him several times, then returned to Washington. During the winter of 1805 Burr corresponded with Tupper, and according to Tupper, when Burr sought his support for an expedition to Mexico, he proffered his services only if the United States went to war with Spain and Burr received an army command. In response, Burr sent Tupper a French military manual and asked him to raise a regiment in Ohio for a campaign

[18] Kline and Ryan, eds., *Political Correspondence*, 2: 941. Although an aide to Wilkinson swore he had seen the letter to Smith in September 1805, no evidence confirms that Smith received the letter. Andrew Jackson had his aide John Coffee contract for the construction of Burr's five boats at Cloverbottom on Stones River. See Harold D. Moser and Sharon MacPherson, eds., *The Papers of Andrew Jackson* (5 vols.; Knoxville: University of Tennessee Press, 1984), 2: 113, 122. For the relations between Burr and Jackson, see ibid., 2: 91-166. There were grave suspicions of Jackson at the time, and Jackson's opponents later made it an issue during the 1828 election, but historians generally have absolved him, just as they have also absolved Henry Clay who defended Burr at the Frankfort trials.


Convinced as I am, & as I have been at a very early period, of Burr's guilt, I can not but rejoice to learn that the prosecution will not cease whilst there is a possibility of bringing the arch traitor, to punishment. Should he be sent here for trial; the result I have no doubt will

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against Spanish possessions in Mexico.[19]

Burr's movements through Kentucky in 1805 were not merely for his amusement, and his meetings with the gunboat contractors were not by chance. By the end of 1805, Burr had established cordial and cooperative relationships with all four of the navy's contractors along the Ohio. Senator Smith and John Jordan, Jr., had fully committed to Burr's visions both personally and financially, and Matthew Lyon and Edward Tupper were definitely interested. In addition, Burr had fifteen boats under construction by Tupper's associates on the Muskingum and five more by General Jackson's workers on the Cumberland. Burr was well on his way toward acquiring the nucleus of a navy for his expedition down the Mississippi, and he foresaw the need for experienced naval officers to command his fleet.

In Washington during the winter, Burr engaged in traitorous negotiations with the British ambassador and secret agents, offering to seize Louisiana and lead it out of the Union and asking in exchange that the British provide financial aid for his plans and station warships at the mouth of the Mississippi to block a counterattack on his navy by the U. S. Navy. Burr also approached prominent but disgruntled United States Navy officers, notably Commodore Thomas Truxton. Burr showed Truxton the plans for a gunboat, asking if it were suitable for navigating the Mississippi and the high seas, perhaps to Mexico. Truxton replied that such a craft might safely navigate the Mississippi, and at Burr's request he had the plans copied, presumably as the design for Burr's boats built on the Muskingum River. "Sometime in July 1806," Truxton later recalled, Burr "told me that he wished to see me unwedded from the navy of the United

[19] Deposition of Edward Tupper, 8 September 1807, National Archives, Records of District Courts, Record Group 21, Great Lakes Region, Chicago, Illinois; Sprague, "Louisville Canal," 78-86; Abernethy, *Burr Conspiracy*, 44, 72; Kline and Ryan, eds., *Political Correspondence*, 2: 960, 1002-04.

States, and not to think more of those men at Washington; that he wished to see or make me an admiral." Truxton added that Burr said that he "intended to provide a formidable navy, at the head of which he intended to place me; that he intended to establish an independent government, and give liberty to an enslaved world." Commodore Truxton said he politely declined Burr's generous invitation.[20]

During Burr's travels, the navy's gunboat contractors pressed on with construction. In addition to Matthew Lyon's two boats at Eddyville, Edward Tupper laid the keels for two on the Muskingum River near Marietta; Senator Smith assembled his two at Columbia near Cincinnati on the Ohio, while John Jordan, Jr., elected to build his two at the mouth of Beargrass Creek in Louisville. Matthew Lyon had the keels for his two gunboats laid by July 1805, pronouncing them "beautiful in the extreme," and he requested Navy Agent Carbery to deposit the partial payment on his contract in John Jordan, Jr.'s Kentucky Insurance Company office, which functioned as a bank at Lexington. Lyon also complained to the secretary of navy of slow payment for his work, pointing out that his correspondence with Carbery required two weeks to travel from Eddyville to Newport and that it cost him one hundred dollars a trip to employ a courier to deliver invoices to Carbery.[21]

In addition to slow communications with the navy agent at Newport, the gunboat builders encountered the ogre of all contractors: change orders. Although Secretary of Navy Smith had contracted with them for gunboat construction on the basis of plans used by Commodore Preble, he also had navy architect Josiah Fox modify

[20] Beirne, *Shout Treason*, 167-69; Mohl, "Britain and the Aaron Burr Conspiracy," 391-98; Kline and Ryan, eds., *Political Correspondence*, 2: 927-30, 943-47; David Robertson, *Reports of the Trials of Colonel Aaron Burr for Treason* (2 vols.; Philadelphia, 1808), 1: 485-89, prints Truxton's testimony.

[21] Matthew Lyon to Robert Smith, 18 July and 4 August 1805, Letters Received, Secretary of Navy (M124), NARG45.

and improve the design, sending Fox's new drawings to the contractors for their guidance in July 1805. Fox's gunboat dimensions differed substantially from those of Preble and called for two masts where Preble's plans had provided for a single mast. By the time the contractors received the change order, they had already cut the masts, spars, keel timbers, and hull planks to meet Preble's design specifications; it would be necessary for them to cut more at increased costs to comply with the Fox plans.[22]

The loudest complaint about the change order came from Senator Smith, and Navy Agent Carbery made the short ride from Newport to Columbia to inspect Smith's progress in fulfilling the contract. Like Lyon, Smith had brought eastern shipwrights to Cincinnati, and these had already sawed the two gunboat keels—one keel was of white oak and the other of hickory, both sixty-four-feet long. Carbery thought the keels admirable workmanship and Smith's progress satisfactory. As material samples, Carbery sent planks of the lumber used in Smith's gunboats to navy headquarters for examination. Also, in responding to contractor complaints about slow payment, Carbery advised Secretary Smith that he could not send Lyon the cash payments on the contract in the mail at his own risk and that he would not deliver them personally to Eddyville for fear of robbers "who would knock my head off for a tenth part of the sum."[23]

Although Secretary Smith had first pressed the contractors to complete the gunboats and deliver them to New Orleans by the close of 1805, in October he ordered them to suspend their work, leaving

[22] Henry Carbery to Robert Smith, 22 and 29 July 1805 and Matthew Lyon to Robert Smith, 4 August 1805, ibid.

[23] John Smith to Robert Smith, 5 August 1805 and Henry Carbery to Robert Smith, 22 July, 8, 13, and 20 August 1805, ibid. Daniel Mayo of Newport, Kentucky, furnished ship rigging for John Smith's boats and sought to sell rigging for the other gunboats; see Daniel Mayo to Robert Smith, 19 August 1805, ibid.

the gunboats on the stocks at riverside to season the timbers. This delay upset the contractors because they could not collect final payment for their work until the gunboats were delivered at New Orleans. Lyon, for example, complained to Secretary Smith that the suspension would force him to employ master shipwrights throughout the winter and also would embarrass him financially because the loans he had taken to finance the work were due and had to be repaid. Lyon demanded that the navy pay him an extra three hundred dollars for additional costs caused by the delay, and he left Eddyville immediately for Washington to attend Congress and to press his claim in person.[24]

A few days after suspending the gunboat construction, Secretary Smith again changed his mind; he informed the contractors that news from New Orleans of a threatened war with Spain in Mexico led him to rescind his suspension order, and he directed them to finish the work forthwith. He told Carbery at Newport to have gun carriages for two twenty-four-pound cannon fabricated for each of the eight gunboats immediately and to send them to New Orleans aboard the gunboats.[25]

Smith's reversal ignited more protests by contractors. Senator Smith told the secretary that, although he had already dismissed his master craftsmen, he would rehire them to comply with the secretary's new order, but he warned that he would not pay damages for planking the gunboats with unseasoned lumber. John Jordan, Jr., encountering financial constraints perhaps resulting from his loans to

[24] Robert Smith to Tupper, Jordan, Smith, and Lyon, 30 October 1805, Letters Sent, Secretary of Navy (E173), NARG45; Matthew Lyon to Robert Smith, 26 November 1805 and Henry Carbery to Robert Smith, 16 November 1805 Letters Received, Secretary of Navy (M124), NARG45

[25] Robert Smith to Tupper, Jordan, Smith, and Lyon, 2 November 1805 and Robert Smith to Henry Carbery, 2 November 1805, Letters Sent, Secretary of Navy (E173), NARG45; *Nashville Impartial Review*, 13 December 1805.

Burr, sublet the contract for finishing his two gunboats at Louisville to Colonel James Morrison of Lexington.[26]

To inspect progress, Navy Agent Carbery started at Eddyville and worked his way up the Ohio during October and November 1805. He thought the gunboats at Eddyville "well executed," although, rather than cutting new keels, Lyon had merely spliced additional five-foot timbers on the keels to comply with the navy's change order. Carbery ordered the spliced timbers bound with iron, bolted through and riveted securely. At Louisville, he found Jordan's gunboats ready to launch at the first high water, but he ordered additional deck fastening to the hull timbers. Carbery thought Senator Smith's gunboats at Cincinnati ready to launch, while Tupper's at Marietta were behind schedule. After making partial progress payments to the contractors, Carbery left for Washington to meet personally with Secretary Smith.[27]

In his December 1805 message to Congress, President Jefferson called for the construction of more gunboats, and in early 1806 Secretary Smith commissioned Matthew Lyon and John Smith to begin building two more gunboats each. In May, the secretary called on Ohio River shipbuilders for competitive bids on building more gunboats, instructing bidders to submit their proposals to Navy Agent Carbery at Newport.[28]

[26] Edward Tupper to Robert Smith, 30 November 1805 and John Jordan, Jr., to Robert Smith, 28 November 1805, Letters Received, Secretary of Navy (M124), NARG45; Robert Smith to James Morrison, 3 October 1806, Letters Sent, Secretary of Navy (E173), NARG45.

[27] Henry Carbery to Robert Smith, 9 and 16 November, 19 December 1805, Letters Received, Secretary of Navy (M124), NARG45; Secretary Smith's reports to House Committee on the Naval Peace Establishment are printed in Walter Lowrie and Walter Franklin, eds., *American State Papers, Naval Affairs* (4 vols.; Washington, D.C., 1834), 1: 142-54; Robert Smith to Matthew Lyon, 20 and 23 January, 17 July 1806 and Robert Smith to John Smith, 5 June 1806, Letters Sent, Secretary of Navy (E173), NARG45.

[28] Robert Smith, Circular Letter to Contractors, 22 May 1806 and Robert Smith to Henry Carbery, 30 May 1806, Letters Sent, Secretary of Navy (E173), NARG45. Smith and Lyon received contracts for two more gunboats each, while Thomas Reagan at Cincinnati

Senator Smith was the first of the four original contractors to get his gunboats in the water, sailing his first two boats to New Orleans in the summer of 1806. But Captain John Shaw at New Orleans and his master shipwrights examined Smith's gunboats from keels to masts and reported them to be unsatisfactory—"rough made, badly finished." Using green timbers in the hulls had resulted in leaky seams caulked with oakum, and Shaw predicted that their poplar decks would rot within a year. In response, Secretary Smith told Captain Shaw to overlook these defects because he had approved the use of light and soft poplar as an experiment.[29]

When Aaron Burr returned to Kentucky in September 1806, rumors about his plots, his meetings with the gunboat contractors, and his efforts to acquire a navy, were spreading. James Taylor, the founder of Newport and contractor for the army's Newport Barracks, warned Secretary of State James Madison that Burr and his cohorts possibly contemplated dividing the Union. Taylor had read newspaper articles, purportedly written by Harman Blennerhassett, that strongly suggested treason was afoot. He also advised Madison of Burr's suspicious meetings with Navy Agent Carbery at Cincinnati, and he warned that "Woodbridge & Co. of Marietta with whom it is said this Blanahazard [Blennerhassett] is connected are building 10 gun boats or vessels resembling them, at a Navy yard about 7 miles up the Muskingum." Taylor revealed also that Burr

and John Connell and Peter Mills at Charleston, Virginia (now Wellsburg, West Virginia), received contracts for four. W.F. Galpin, "The Grain Trade of New Orleans, 1804-1814," *Mississippi Valley Historical Review* 14 (1928): 500; Smith to Carbery, 18 July 1806 (E173), NARG45.

[29] Smith, *For the Purposes of Defense*, 81-83; Robert Smith to John Shaw, 22 July 1806; Robert Smith to John Smith, 4 and 13 September1806; Robert Smith to Edward Tupper, 15 September 1806, Letters Sent, Secretary of Navy (E173), NARG45. John R. Bedford, "A Tour in 1807 down the Cumberland, Ohio, and Mississippi Rivers from Nashville to New Orleans," *Tennessee Historical Magazine* 5 (April 1919): 50, described Lyon's ships and gunboats at Eddyville.

had received a large, mysterious package that Blennerhassett sent to him care of gunboat contractor Senator John Smith at Cincinnati.[30]

While in Cincinnati, Burr lodged at the home of Senator Smith and discussed his plans with him. Smith later admitted that Burr told him he expected to receive substantial aid from elements of the British Navy and part of the United States Navy. When Burr pointedly asked Smith about the disposition of the gunboats, Smith confessed that he had told Burr that if the navy did not pay for the gunboats he was constructing, he might surrender them to him.[31]

In October Burr went again to Lexington and lodged at the home of John Jordan, Jr., where he was joined by his daughter Theodosia, her husband Joseph Alston, and Harman Blennerhassett. With funds advanced by Jordan, Burr sent General Andrew Jackson an advance payment for the five boats and supplies that Jackson was to send in November down the Cumberland from Nashville to Eddyville.[32]

By October suspicions about Burr's designs on the gunboats waxed higher in Kentucky. The *Frankfort Western World* printed an anonymous letter declaring, "It is announced as a fact, and doubtless is true, that a number of gun-boats and a schooner of singular construction, are preparing for this man [Burr], on the Ohio River." The letter asserted that the gunboats were destined for Burr's military

[30] Padgett, ed., "Letters of James Taylor," 113-14. Newspaper articles written by Blennerhassett urged the separation of western states but did not directly implicate Burr. People reading these articles and knowing of the Burr-Blennerhassett connection, however, soon concluded that the articles reflected what Burr as well as Blennerhassett himself had in mind. See Victor R. Turner, "Harman Blennerhassett: His Rise and Fall," *Quarterly* 38 (1964): 318.

[31] Abernethy, *Burr Conspiracy*, 69, relates Burr's plotting with Smith and Smith's offer of the gunboats. See also Leslie Henshaw, "The Aaron Burr Conspiracy in the Ohio Valley," *Ohio State Archaeological and Historical Quarterly* 24 (1915): 126-27 and "Testimony of Elias Glover" in Henshaw, ed., "Burr-Blennerhassett Documents" in *Quarterly Publications of the Historical and Philosophical Society of Ohio* 9 (1914): 58-61.

[32] Abernethy, *Burr Conspiracy*, 72. General Jackson completed only two of the five boats Burr had ordered, and he refunded part payment to Burr.

expedition, "But whether it is intended for the Spanish mines of Santa Fe, for the city of New Orleans, or the Spanish Territory on the Gulf of Mexico, or elsewhere, is all uncertainty and conjecture." Convinced that Burr planned an expedition against Mexico and possibly the separation of Kentucky from the Union, United States District Attorney Joseph Hamilton Daveiss, a Federalist appointee at Frankfort, sought Burr's indictment by grand jury.[33]

Troubled by swelling anti-Burr sentiments in the Ohio Valley, Mrs. Harman Blennerhassett dispatched a servant, Peter Taylor, from Blennerhassett Island to find and warn her husband and Burr. Taylor went first to Lexington, where he was told the two were in Cincinnati meeting with Senator John Smith. When he reached Cincinnati, however, Senator Smith told him he would find Burr and Blennerhassett at the home of John Jordan, Jr., in Lexington, and he gave Taylor a letter to deliver. Returning to Lexington, Taylor found Jordan at home, and Jordan introduced him to Burr, who opened the letter from Smith. The next day, Blennerhassett arrived at Jordan's, and he and Taylor then set off back to Blennerhassett Island.[34]

Burr was also about to leave Lexington to visit the Blennerhassetts and General Tupper at Marietta when District Attorney Daveiss at Frankfort demanded his presence at a grand-jury hearing. With Henry Clay serving as his attorney, Burr attended the Frankfort hearing on 12 November. When the judge delayed the hearing pending the arrival of more witnesses, Burr circled again through Lexington, Cincinnati, and Louisville before returning to

[33] James Taylor to James Madison, 13 October 1806, in Padgett, ed., " Letters of James Taylor," 114; Abernethy, *Burr Conspiracy*, 80-81; *Frankfort Western World*, 15 October 1806, reprinted in Charles Kerr, ed., *History of Kentucky* (2 vols.; Chicago, 1922), 1: 441; Ronald Rayman, "Frontier Journalism in Kentucky: Joseph Montfort Street and the Western World, 1806-1809," *Register* 76 (1978): 98-111.

[34] McCaleb, *Aaron Burr Conspiracy*, 80-81; *Kentucky Gazette* [Lexington], 15 September 1807, printed Taylor's testimony at the Burr trial.

Frankfort at the end of November for the grand-jury hearing. Much to the chagrin of Daveiss, the grand jury saw no overt criminal actions by Burr in the evidence presented, leaving Burr free to go. President Jefferson thought this attempt to indict Burr premature, and he later dismissed Daveiss from office.[35]

The Jefferson administration was uncertain as to what actions to take in Burr's case. In consultation with his cabinet on 24 October, Jefferson had decided that Burr's activities required a response, and he ordered gunboats dispatched from the Atlantic coast to New Orleans, also sending Commodore Edward Preble and Stephen Decatur to command the fleet that might confront Burr's navy. Reconsidering this decision in following days, however, Jefferson decided to await further news of Burr's activities from Kentucky and rescinded the order, instead determining to reinforce the New Orleans garrison and sending special agent John Graham in pursuit of Burr.[36]

Secretary of Navy Smith in November 1806 suspended the construction of more gunboats along the Ohio, advising Carbery at Newport that:

> We experienced so much inconvenience in building gunboats in the Western Country, that the President has determined that he will build no more in that Country after those now contracted for shall be completed. I am persuaded that it is impracticable for one agent to superintend the building of vessels, which are building at places so remote from each other, and

[35] Abernethy, *Burr Conspiracy*, 96-97; McCaleb, *The Aaron Burr Conspiracy and a New Light on Aaron Burr by Walter Flavius McCaleb*, 156-57; Samuel M. Wilson, ed., "The Court Proceedings of 1806 in Kentucky against Aaron Burr and John Adair," *Quarterly* 10 (1936): 31-40; Joseph H. Daveiss, *View of the President's Conduct Concerning the Conspiracy of 1806* (Frankfort, 1807), reviews Burr's hearings at Frankfort.

[36] Adams, *History of the United States*, 830-31; McCaleb, *The Aaron Burr Conspiracy and a New Light on Aaron Burr by Walter Flavius McCaleb*, 90-92.

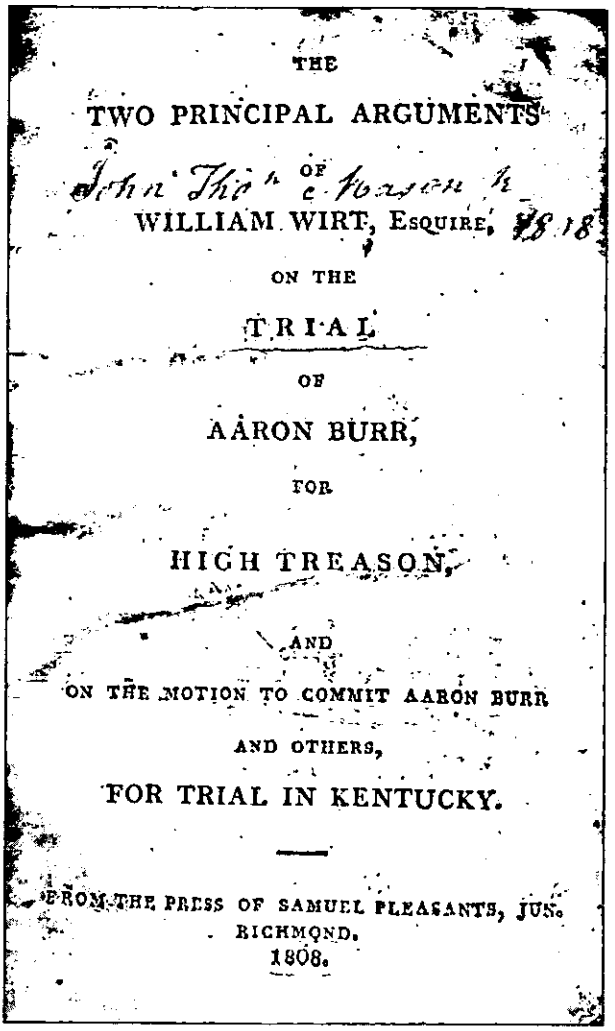
> the appointment of an agent for each place would be subjecting the public to too much expense.

This perhaps was the truth, although the secretary may also have been disturbed about the shoddy quality of the gunboats reported by Captain Shaw at New Orleans or by the rumored collusion of the contractors with Burr.[37]

When Wilkinson turned against Burr's conspiracy, furnishing Jefferson copies of coded correspondence, the president issued a proclamation on 27 November warning state governors to guard against surprises and authorizing Burr's arrest. Fearing Burr's gunboats might assault New Orleans before sailing for Mexico, President Jefferson instructed Secretary Smith to prepare for this contingency. Smith accordingly ordered navy gunboats on the east coast to sail as reinforcements for the fleet at New Orleans and ordered Captain John Shaw to deploy his gunboats in position to destroy Burr's navy as it descended the Mississippi before it reached New Orleans. John Bradford, a printer who had published the *Kentucky Gazette* and had passed through Eddyville on the way to New Orleans, warned Captain Shaw that he had seen the nearly finished gunboats and that the workmen building them said that Lyon had given control of the navy's gunboats to Burr. Bradford saw a large store of rifles and cannon ready for loading aboard the gunboats, and he also reported that the shipwrights had told him that Burr had sufficient weapons and ammunition to arm a force of twelve hundred men aboard his gunboat fleet and that a ten-gun brig that Lyon also had on the stocks was ready for launching.[38]

[37] Robert Smith to Henry Carbery, 10 November 1806, Letters Sent, Secretary of Navy (E173), NARG45.

[38] Smith, *For the Purposes of Defense*, 99-100; McCaleb, *The Aaron Burr Conspiracy and a New Light on Aaron Burr by Walter Flavius McCaleb*, 239-41; Lowrie and Franklin, eds., *American State Papers, Miscellaneous* (2 vols.; Washington, D.C., 1834) 1: 556-63, prints Captain Shaw's testimony on Bradford's report on gunboats at Eddyville; Robert Smith's,



THE

TWO PRINCIPAL ARGUMENTS

OF

WILLIAM WIRT, ESQUIRE,

ON THE

TRIAL

OF

AARON BURR,

FOR

HIGH TREASON,

AND

ON THE MOTION TO COMMIT AARON BURR

AND OTHERS,

FOR TRIAL IN KENTUCKY.

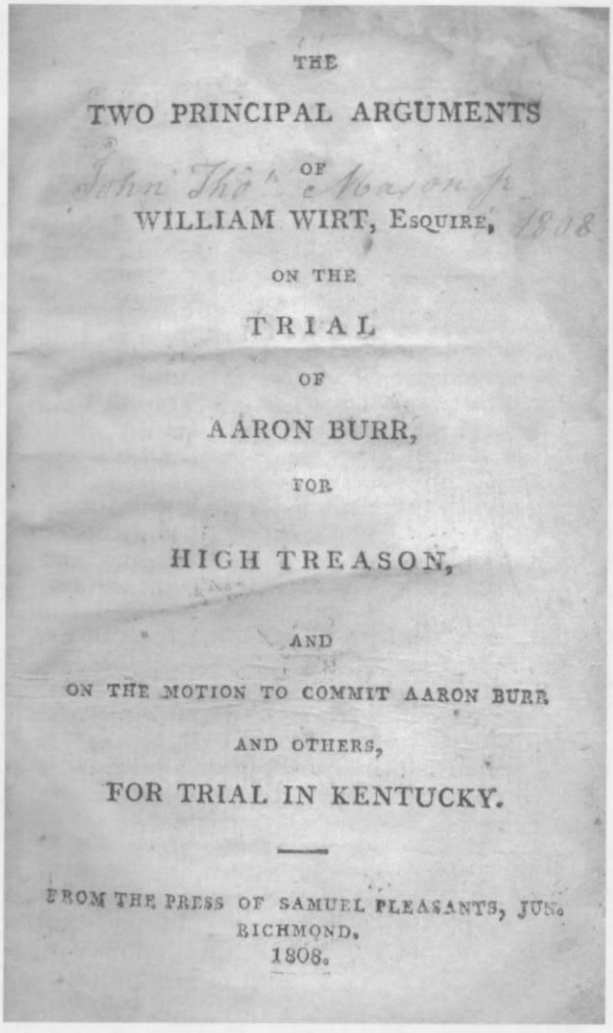
FROM THE PRESS OF SAMUEL PLEASANTS, JUN.

RICHMOND.

1808.

One of a number of contemporary works on the Burr Conspiracy
Filson Library Rare Book Collection

Report on New Orleans Defenses, 3 January 1807, printed in Lowrie and Franklin, eds., *American State Papers, Naval Affairs*, 1: 162; Gerald W. Gawalt, "Strict Truth: The Narrative of William Armistead Burwell," *Virginia Magazine of History and Biography* 101 (1993): 103-32, presents the notes of Jefferson's secretary on the Burr conspiracy; Thomas D. Clark, ed., *The Voice of the Frontier: John Bradford's Notes on Kentucky* (Lexington: University Press of Kentucky, 1993), supplies biographical data on Bradford. Kline and Ryan, eds., *Political Correspondence*, 2: 973-90, conclude that the coded message sent by Wilkinson to Jefferson was written by Jonathan Dayton, not by Burr.



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By December the rumors of Burr's conspiracy filled the newspapers; Jefferson's special agent pursuing Burr had warned the state governors, and persons who had corroborated with Burr, even tangentially, had begun to fear for their necks. Urged by the president's agent, Ohio's governor Edward Tiffin ordered the militia to Marietta, where on 9 December the militia seized the boats built for Burr and Blennerhassett on the Muskingum River. Burr and Blennerhassett had been pressing General Tupper to join their "enterprise," and Tupper was at Blennerhassett Island, ostensibly to collect accounts they owed him, on 10 December when Blennerhassett with a few boats of supplies and men hastily embarked from the island, narrowly escaping pursuit by the Virginia militia. Although Tupper did not join the expedition, he made no significant effort to prevent its departure, later claiming that he did not learn of Jefferson's proclamation against Burr until after the boats had sailed. Blennerhassett's boats slipped past the forces awaiting them at Cincinnati during the night of 14 December, reaching Louisville on 16 December, where District Attorney Daveiss tried but failed to prevent their departure south. By the time the Kentucky legislature, acting in response to warnings from Jefferson's agent, enacted a law to prevent Burr's unlawful and warlike enterprises, the boats were near the mouth of the Ohio, reuniting with Aaron Burr on 23 December at Smithland, Kentucky.[39]

[39] Deposition of Edward Tupper, 8 September 1807, Records of the District Courts, Record Group 21, National Archives, Great Lakes Region, Chicago, Illinois. Tupper's deposition is also printed in Henshaw, ed., "Burr-Blennerhassett," 13-27; Adams, *History of the United States*, 800-805. Daviess came to Louisville on the day Blennerhassett and some boats arrived. Daveiss saw boxes which appeared to contain military supplies being loaded into a boat, but Anthony New, former congressmen of Virginia who had become customs collector for the port of Louisville, was aboard the boat, and it was clear that there would be no interference with Burr's friends. Indeed, New's son was joining the expedition which left that day. Jefferson's agent John Graham did not reach Kentucky until a few days later, and on 23 December the Kentucky legislature enacted a law against Burr's operations. Governor Christopher Greenup sent the militia to Louisville to catch Burr, far too late. See Abernethy,

During this crisis, Navy Agent Carbery ordered the contractors not to launch any of their gunboats. Also instructed by Secretary Smith to pursue Burr personally, Carbery replied that Burr was reported already at the mouth of the Cumberland River with four hundred armed men. Although protesting that it would distress him to seize "an old revolutionary patriot" like Burr, Carbery agreed to find militia reinforcements and start downriver in pursuit of Burr's forces. Carbery did not start his chase, however, before news arrived that Burr had left the Ohio and gone down the Mississippi. For this neglect, Carbery was castigated by James Taylor of Newport, who accused Carbery of supporting Burr's plans to separate Kentucky from the Union. Carbery responded by challenging Taylor to a duel. For similar reasons, Taylor also received challenges to duels from District Attorney Daveiss and Senator John Smith, all of which, however, were settled without resort to pistols.[40]

Lacking even a single gunboat for defending his small fleet, Burr floated down the Mississippi, stopping at New Madrid and Chickasaw Bluffs (Memphis) to recruit more men and purchase supplies, billing the supplies to John Jordan, Jr., and John Smith. At Bayou Pierre near Natchez, however, he saw a newspaper printing of Jefferson's 27 November proclamation against him, and soon he forsook his sailors and escaped overland. He rode east across Mississippi to slip into Spanish Florida, but government forces caught and arrested him, sending him under guard to Richmond, Virginia, for imprison-

Burr Conspiracy, 109 and Joseph H. Daveiss, *View of the President's Conduct*, 103-105 which quotes a letter Daveiss had written Greenup on 16 December 1806. Kline and Ryan, eds., *Political Correspondence*, 2: 960, 1002-1004. The expedition consisted of the boats which had left Blennerhasset Island along with ten or so other boats which joined it as it proceeded down the river.

[40] Henry Carbery to Robert Smith, 15 January 1807 and Edward Tupper to Robert Smith, 4 March 1807, Letters Received, Secretary of Navy (M124), NARG45; Padgett, ed., "Letters of James Taylor," 122-28, 343.

ment and trial for treason.[41]

In March 1807, the United States District Attorney at Richmond indicted Burr, Blennerhassett, Senator Smith, and four associates for treason, presenting two charges against Burr:

> 1st, For a high misdemeanor, in setting on foot, within the United States, a military expedition against the dominions of the king of Spain, a foreign prince, with whom the United States, at the time of the offence, were, and still are, at peace. 2d, For treason in assembling an armed force, with a design to seize the city of New Orleans, to revolutionize the territory attached to it, and to separate the western from the Atlantic states.

Chief Justice John Marshall presiding at Burr's trial, however, strictly adhered to the constitutional definition of treason: it consisted only of levying overt war against the United States or giving aid and comfort to its enemies, and no one could be convicted of treason except by his own confession or by the testimony of two witnesses to his overt traitorous act. Although the prosecution called many witnesses, it did not produce two who could confirm that Burr had levied overt war against the United States or aided its enemies, and the court finally acquitted Burr of treason.[42]

As Burr's prosecution proceeded, the secretary of navy resumed the gunboat construction program. Matthew Lyon sent his gunboats

[41] Harrison, "The Aaron Burr Conspiracy," 20-21; McCaleb, *The Aaron Burr Conspiracy and a New Light on Aaron Burr by Walter Flavius McCaleb*, 215-38; Kline and Ryan, eds., *Political Correspondence*, 2: 960, 1002-21; William H. Safford, *The Blennerhassett Papers* (Cincinnati, 1864), 184-88, prints Blennnerhassett's journal of the voyage down the Ohio and Mississippi.

[42] Beirne, *Shout Treason*, 28-29, 127; Robertson, *Reports of the Trials*, 1:3-4. Although he acquitted Burr of treason, Chief Justice Marshall bound him over for trial on misdemeanors in Ohio, but the case never went to trial.

south toward New Orleans in January 1807 under command of Elisha Galusha, taking advantage of the sailing to ship bales of cotton to market. Lyon also began building the two additional gunboats ordered in 1806, pressing Secretary Smith for early payment because he had to pay debts for the materials and labor. Senator Smith nearly lost his second set of gunboats, when they broke their moorings on a rise and floated from Columbia downstream to Cincinnati before workmen in canoes caught the boats, anchoring them in the mouth of Mill Creek on Cincinnati's west side.[43]

To assure proper command and control of the gunboats built by Senator Smith and General Tupper, Secretary Smith dispatched Sailing Master John Owings and Midshipman Horace Sprigg to the Ohio. They commanded Smith's boats on their maiden voyage to New Orleans in March 1807, returning to take Tupper's boats downriver. Christian Schultz, who saw them with Tupper's gunboats at Newport in October 1807, described the boats: "Here we found two gunboats belonging to the United States, waiting for a fresh to take them over the falls; they were built at Marietta, and are about the size of large Albany sloops."[44]

In November 1807, Secretary Smith instructed Lyon and Senator Smith to launch their second set of gunboats and send them promptly to New Orleans. When the secretary paid Colonel James Morrison six thousand dollars for the two gunboats built by John Jordan, Jr., at Louisville, these also went south along with the other

[43] Matthew Lyon to Robert Smith, 13 and 15 January 1807, Letters Received, Secretary of Navy (M124), NARG45; Charles Cist, *The Cincinnati Miscellany* (2 vols.; Cincinnati, 1845), 2: 26; Cargo Manifests, New Orleans Flats and Barges, Record Group 36, National Archives, Washington, D.C., contain manifests for Lyon's *Gunboat No. 16* and *Gunboat No. 17*, reaching New Orleans on 2 March 1807 laden with 150 cotton bales each.

[44] John Smith to Robert Smith, 16 February and 6 March 1807; Edward Tupper to Robert Smith, 10 May 1807; James Leonard to Robert Smith, 10 March 1808, Letters Received, Secretary of Navy (M124), NARG45; Christian Schultz, *Travels on an Inland Voyage in the Years 1807 and 1808* (2 vols.; New York, 1810), 1: 182.

boats in early 1808. This ended the gunboat construction program in Kentucky. With the end of Jefferson's administration in 1809, his gunboat construction program concluded abruptly after a total of 176 had been completed at a cost of $1.5 million.[45]

In the James Madison administration, Colonel James Morrison of Lexington replaced Henry Carbery as the navy's administrative agent in Kentucky. With the gunboat program terminated, Morrison's service for the navy consisted of purchasing such naval stores as hemp cordage until the War of 1812, when he contracted for building boats to transport supplies and munitions to General Andrew Jackson and the Kentuckians at New Orleans. Naval historians sometimes attribute Jackson's 1815 victory against the British at New Orleans to action by the navy's gunboats, which delayed the landing of British troops, allowing Jackson to concentrate his forces to meet the assault.[46]

Neither Edward Tupper nor John Jordan, Jr., were ever indicted for their association with Burr. In a sworn deposition to the court making no mention of his gunboats, Tupper exonerated himself of any nefarious plotting with Burr. Although Jordan lost heavily on his defaulted loans to Burr, the Jefferson and Madison administrations ignored his involvement in the conspiracy, continuing him in office as Lexington's postmaster until his death in 1813. Senator John

[45] Robert Smith to Henry Carbery, 22 August 1807; Robert Smith to James Morrison, 20 August 1807; Robert Smith to Matthew Lyon, Thomas Reagan, John Connell, and Peter Mills, 28 November 1807, Letters Sent, Secretary of Navy (E173), NARG45; Secretary of Navy Paul Hamilton, Condition of Naval Forces, 24 May and 6-7 June 1809, Lowrie and Franklin, eds., *American State Papers, Naval Affairs*, 1: 193-99. Congress authorized a total of 263 gunboats; 176 were built, and forty were stationed at New Orleans.

[46] On contributions of navy gunboats to Jackson's victory at New Orleans, see Dudley W. Knox, *A History of the United States Navy* (New York: G. P. Putnams Sons, 1936), 130-35. Robert Davidson, *History of the Presbyterian Church in the State of Kentucky* (New York, 1847), 306-308 and Charles Kerr, *Transylvania University's Law Department* (Washington, D.C., 1937), 22-23, provide biographical data on James Morrison, whose estate endowed Transylvania University at Lexington.

Smith, however, lost everything. Indicted at Richmond as one of Burr's conspirators, his case was quashed at Burr's acquittal, whereupon the Senate appointed a committee chaired by John Quincy Adams to investigate his conduct. The Adams committee resolved that:

> John Smith, a Senator from the State of Ohio, by his participation in the conspiracy of Aaron Burr against the peace, union, and liberties, of the people of the United States, has been guilty of conduct incompatible with his duty and station as a Senator of the United States. And that he therefore, and hereby is, expelled from the Senate of the United States.

This resolution failed of passage by a single vote, and Smith thereon resigned his Senate seat.[47]

Matthew Lyon escaped indictment, but Kentucky turned him out of office at the end of his congressional term. While still in Congress, however, Lyon completed the last of the four navy gunboats he built at Eddyville, sent them to New Orleans, and told the secretary of the navy he wanted to contract to build more gunboats at Eddyville. But Congress in early 1808 enacted the Contract Bill, legislation prohibiting members of Congress from entering into federal contracts. "Considering the Spirit of what is commonly called the Contract Bill," the secretary replied to Lyon, "I would rather not have any kind of correspondence with any member of Congress, in relation to a

[47] Deposition of Edward Tupper, 8 September 1807, Records of the District Courts, Record Group 21, National Archives, Great Lakes Region, Chicago, Illinois; Abernethy, *Burr Conspiracy*, 262-63; Wandell and Minnigerode, *Aaron Burr*, 226-29; U.S., Congress, *Annals of Congress*, 10th Cong., 1st Sess., 62. Smith moved to Louisiana; he ultimately went bankrupt and fled to Spanish Florida to escape creditors; see M. Avis Pitcher, "John Smith, First Senator from Ohio and His Connections with Aaron Burr," *Ohio State Archaeological and Historical Quarterly* 45 (1936): 68-88.

contract, to be made either by himself or by his particular friend."[48]

Available records clearly show that Burr sought out and met repeatedly with all four gunboat contractors and also with the contract administrator, Navy Agent Carbery. Of these, he obtained substantial funding support for his schemes from Senator Smith of Cincinnati and John Jordan, Jr., of Lexington. There can be little doubt that he made veiled overtures to add all the navy gunboats to his fleet similar to those he made to Senator Smith, who admitted consenting to deliver his gunboats to Burr. By December 1806 when Burr marshaled his forces for the descent to New Orleans, however, the contractors surely knew that state governors, courts, and federal agents were close on Burr's trail, and none gave up the warships to Burr at the critical moment. Burr left Kentucky that December with about ten boats, sixty men, and no armed gunboats, a force insufficient to accomplish any of the schemes charged to him.[49]

Burr's intrigue with navy gunboat contractors was not made a major issue by the prosecution during his trial for treason. The prosecution focused instead on proving an overt act of war on Blennerhassett's Island when Burr's boats and supplies escaped the clutches of the Virginia militia. But because Burr was not present on the island at the time, the prosecution could not demonstrate any personal overt act on his part, and Burr was acquitted. Although Burr was bound over for a second trial in Ohio, the Jefferson administration never prosecuted the case, leaving Burr free. Burr went to

[48] Matthew Lyon to Robert Smith, 8 December 1807, Letters Received, Secretary of Navy (M124), NARG45; Dudley W. Knox to Mrs. Wallace Smith, 9 September 1931, Box 10, AC Subject File, NARG45, summarizes correspondence between Lyon and the secretary of the navy; U.S. Congress, *Annals of Congress*, 10th Cong., 1st Sess., 1242, 1466, 2174. The prohibition against members of Congress participating in federal contract work may have resulted largely from the experience with Senator Smith.

[49] Smith, *For the Purposes of Defense*, 100, reports that Captain Shaw at New Orleans had only four gunboats, two bomb ketches, and 134 seamen in his fleet defending the Mississippi.

Europe, thereby escaping his creditors suing to recover their investments, and resumed his efforts to secure foreign support for his filibustering plans.[50]

Burr's traitorous collaboration with foreign agents was discovered in British archives by historian Henry Adams long after Burr's trial, and some historians wondered whether Burr would have walked away from the treason trial a free man if these records had been available to the courts in 1807. The same might be said of Burr's intrigues with the gunboat contractors. If the prosecution had concentrated on Burr's efforts to wrest control of warships from the United States Navy, bringing contractors Lyon, Jordan, Tupper, Smith, and agent Carbery to the stand under oath, it might have more easily obtained a guilty verdict. Regardless of whether Burr planned colonization, invasion, or revolution, attempts to transpose command and control of warships were heinous transgressions, criminal and treasonous, in 1807 as they are today.[51]

Consider what Burr's actions might have been had he succeeded in commandeering the eight gunboats from the contractors and, with his other boats, escaped the pursuit. Descending the Mississippi with eight gunboats and his ten supply boats, along with the fifteen boats built on the Muskingum near Marietta and the five boats he ordered from General Jackson at Nashville, Burr's navy could have presented a formidable threat. An armada of thirty, laden with cannon and frontier militia perhaps commanded by General Tupper or General Jackson, such a force could easily have overwhelmed the tiny

[50] The prosecution at the Richmond trial sought to prove an overt act through a witness who claimed General Tupper attempted to arrest Blennerhassett's forces at gunpoint but was stopped when those forces resisted by pointing guns at Tupper. No other witnesses confirmed this, however, and Tupper denied it. Deposition of Edward Tupper, 8 September 1807, Records of the District Courts, Record Group 21, National Archives, Great Lakes Region, Chicago, IL; Harrison, "Aaron Burr Conspiracy," 23-24; Beirne, *Shout Treason*, 184-87; Kline and Ryan, eds., *Political Correspondence*, 2: 1038-46.

[51] Beirne, *Shout Treason*, 275.

United States gunboat fleet at New Orleans, gained control of the mouth of the Mississippi, and used this as Burr's base for an expedition against Mexico.[52] Furthermore, if Burr had seized New Orleans and the mouth of the Mississippi plus Spanish lands in Louisiana and Texas, his empire could have attracted support in Kentucky and the fledgling states west of the Appalachians. Certainly if Burr had secured the gunboats and sailed them toward New Orleans, the history of Burr's conspiracy would have been written differently.

[52] For the relations between Burr and Jackson, See Moser and MacPherson, eds., *Papers of Andrew Jackson*, 2: 91-166.