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A

LETTER

to the

President of the United States,

touching the

PROSECUTIONS,

under his patronage,

before the

CIRCUIT COURT

in the

DISTRICT OF CONNECTICUT:

CONTAINING A FAITHFUL NARRATIVE OF THE EXTRAORDINARY MEASURES PURSUED, AND OF THE INCIDENTS BOTH SERIOUS AND LAUGHABLE, THAT OCCURRED, DURING THE PENDENCY OF THESE ABORTIVE PROSECUTIONS.

BY HAMPTON.

Tantane animis cœstibus lice! — Can a Philosopher be angry!

NEW-HAVEN:

PRINTED BY OLIVER STERLING AND CO.

1808.
EDITOR'S PREFACE.

TO the reader who is unskilled in the History of these Prosecutions, (I speak of those for alleged Libels,) it may seem mysterious that Mr. Jefferson should ever have permitted his District Attorney to bring them before a Court. But this mystery is easily solved. The expectation which the President and his friends entertained—and the apprehension of the federalists also—was, that the Common Law in its broadest extent, to wit, that the Truth shall not be admitted in justification of the accused, would be the principle adopted by the Circuit Court. In this most essential point the enemies of free enquiry were foiled through the independence of the Judge, who decided that the common law, as ameliorated by the Statute of this state, should be the only rule for the Court; and the defendants were thereby allowed to prove the facts for uttering of which bills of indictment had been found against them. This decision utterly disconcerted the harpies, both here and elsewhere, whose vindictive maws had anticipated a banquet of revenge. After it became known at Washington, that the truth would be received in evidence on these prosecutions, Mr. Jefferson gave unequivocal assurances, that the several actions should never come to trial; and accordingly, so soon as decorum permitted, they, one after another, made an easy exit.

It is a subject of some regret that Hampden has not interwoven with his narrative a detailed statement of the measures taken by the President to prevent the witnesses summoned in Virginia, in the case of Mr. Backus, from attending the court; together with certain et ceteras connected therewith. This is a very curious history! It abounds with pithy incident, and probably, at some period not remote, will be laid before the public. But the reason assigned by Hampden for now withholding it is, that the details are too imperfectly stamped on his mind to recite them with precision and certainty; he therefore passes over the circumstances with a slight allusion only.

The same reason also prevents the writer of this article from laying before the reader a detailed account of this very extraordinary business. In one of the southern States, a few months since, I became acquainted with the gentleman who summoned the several
witnesses in Virginia; among whom were Col. Walker and Mr. Madison. This gentleman informed me that he saw and conversed freely with the former, and was assured by him that, painful as was the nature of the summons served on him, he should obey the mandate of the Court, and must consequently testify to all the material facts alleged in the public prints, respecting Mr. Jefferson's conduct towards his lady. He further stated to my informant, (what was previously understood to be the fact,) that Mr. Madison was the person confidentially employed by Mr. J. to effect, if possible, a reconciliation for the insult, and was the bearer of several letters to him on the subject. Having summoned Col. W. and two or three other witnesses, my informant proceeded to the seat of Mr. Madison, with a subpoena for his attendance. But, while there, that gentleman received a letter from the President, a part of which letter he read, acquainting him (Mr. M.) that in case he should be subpoenaed his attendance would be unnecessary, as the indictment against Mr. Backus was to receive a quiescence. The other witnesses summoned in Virginia were furnished with notifications of similar import, and consequently neither of them attended the Court. Thus the only opportunity that ever did, or ever will occur, of proving before a court and jury the inane attempts of Mr. Jefferson upon the wife of his friend, have been superseded by Mr. Jefferson himself!

Many other circumstances of an interesting nature were communicated by the gentleman alluded to; but as they are now imperfectly remembered, I pass them in silence lest some error might escape me.
TO

THOMAS JEFFERSON, ESQ.

PRESIDENT OF THE UNITED STATES.

Sir,

A FAITHFUL narrative of the rise, progress and termination of the prosecutions in the Circuit Court of the United States, against certain Magistrates, Clergymen and Printers in Connecticut, cannot fail to excite your attention, as the Constitution under which you act, and your oath of office, oblige you to “take care that the laws be faithfully executed.” Such narrative you will never obtain from your political friends: it is therefore addressed to you by one who will tell you the truth, and the whole truth, without fear, favor, affection, or hope of reward.

It was deemed improper by men of sound principles to enter into a detail of these proceedings while they were pending before the courts of law. It was generally believed in Connecticut, that a man charged with an offence should have a fair trial before a court and jury, uninfluenced by popular opinion, and that newspaper publications respecting the nature of the charges against him, might create a bias in the minds of the triers unfavorable to an impartial issue. Nor did the precedents set by the jacobinic publications at Boston, regarding Mr. Selfridge, or those in the governmental papers at Washington, under your eye, relating to the trial of Col. Burr at Richmond, furnish sufficient reasons to adopt a course of conduct so obviously unjust. Hence the narrative has been delayed till all the prosecutions, considered as merely political, have come to a perpetual end,
except one against Hudson & Goodwin, depending solely on a point of law, and removed to the Supreme Court of the United States.

At a meeting of the democrats of this State in October, 1805, Alexander Wolcott, Esq., one of your officers, was appointed State Manager. You will understand by this, that to him was committed the sole direction of our elections. His powers were ample to the purpose—such as an authority to appoint county, town, and district managers, and to remove them at pleasure—to demand a minute account from every section of the State of the proceedings of the freemen at all their elections—to note down in a book kept for that purpose, all the remissness, errors, and delinquencies of his followers, and all the outrages of his adversaries, and generally “to take care that your will should be faithfully executed.” The object immediately in view was to revolutionize the State, and this plan was doubtless suggested to our democrats by those parts of your Excellency’s inaugural speech, in which you mention, as “the essential principles of our government, and those which ought to shape its administration,” among others, “the support of the state governments in all their rights as the most competent administrations for our domestic concerns,” and a “jealous care of the right of election by the people.” This scheme of State Managership is not here noticed with a design to enter into its intrinsic merits or its effects. It should however be observed, that by an unlucky accident, one of the county managers lost the whole of the first edition of the general orders of Mr. Wolcott, which, with like ill fortune, fell into the hands of the people, who had learned “to have a jealous care of the right of election,” and thus the project, like all others resorted to here by your friends, recoiled on its authors.

“*But as some muskets so contrive it,*
“*As oft to miss the mark they drive at,*
“*And though well aim’d at duck or plover,*
“*Bear wide and kick their owners over.*

*McFingal.*

These orders were issued in Nov. 1805, and from that time till April (our then next election) the State Mana-
ger was busily employed in enforcing his new system, one of the prominent features of which was to appall the federalists, and thus to paralyze their exertions against the inroads of democracy. Hence, in March 1806, and just before the proxy in April, it being then well understood that Judge Patterson, by reason of ill health, would not attend the Circuit Court on the 13th of April, and that the District Judge would sit alone, the leading democrats everywhere declared, that prosecutions were to be instituted against several gentlemen for sedition. They even went so far as to point out the names of the victims, and that too with such precision, as events have proved, as to evince, either that they were inspired to foretell future things, or that the State Manager, like his great predecessor Robespierre, had on his list of proscriptions, certain names as the devoted victims of his malice. The latter is the most probable supposition, since it is doubtful if the gift of prophecy is not denied to evil spirits since the days of the Witch of Endor.

At length the Court sat at the time appointed, and Judge Patterson, as was anticipated, did not attend.

The Marshal, Gen. Joseph Wilcox, a determined, and, since his disappointment in not obtaining the command of a regiment in the army raised by Mr. Adams, an impassioned democrat, selected as a grand jury the following persons: William Vanduursen and Seth Wetmore, of Middletown; Eli Kelsey, of Killingworth; John Potter, Dan Linsley and Heman P. Brooks, of Branford; Augustus Bushnell, William Willard and Danforth Clark, of Saybrook; Osias Lewis and Samuel Seymour, of Litchfield; Francis French, of Derby; Joseph Trowbridge, Phinehas Taylor and Zalmon Wildman, of Danbury; and George Kimberly and Charles Faulkner, of Guilford. Of this grand jury captain William Vanduursen was foreman. This gentleman had solicited the command of a United States vessel, under the former administration of President Adams; but owing to a want of discernment somewhere, had not succeeded, and consequently was now a very strong and powerful friend of an administration which deemed a naval defence as the greatest of all evils.

At the opening of the Court the Judge delivered a
charge to the jury, in which he recommended, among
other things, a strict attention of the jury to libellous pub-
llications against the government, and also enjoined upon
them secrecy not only now, but at all times thereafter, as
to the enquiries which they might make, and as to the
evidence which might be given in.

After eight or ten days session, the jury returned to
the Court three bills of indictment, viz. one against Tho-
mas Collier, a printer, of Litchfield, for a publication ex-
tracted from the New-York Evening Post—one against
Thaddens Osgood, a candidate for the ministry, for cer-
tain sentiments alleged to have been uttered by him in
a sermon preached on the anniversary thanksgiving day
at Branford—and one against the Honorable Tapping
Reeve, one of the Judges of our Superior Court, for hav-
ing published in the paper printed by Mr. Collier, an
opinion that your expenditure of the public money on the
French privateer, the Berceau, was unconstitutional.—
The District Attorney, who had drawn those bills of in-
dictment, and who is a "meet person" for that office,
and "learned in the law," because he was by you ap-
pointed to that office, (and by law you was bound to ap-
point a man of those qualifications,) immediately moved
that warrants might issue against the persons charged.
The Judge refused to issue a warrant against Judge
Reeve, on account of the relationship subsisting between
them.

Mr. Collier was arrested and brought before the Court.
Elias Shipman and David Daggett, Esquires, entered
special bail for him, and he was permitted to go at large.
Mr. Osgood was also arrested, and, being a stranger in
Connecticut, and not able, at once, to procure bail, was
committed to prison, where he remained two days, when
Mr. Jeremiah Atwater and Col. Samuel Bellamy be-
came bound for him also. These indictments were all
continued to the next term of the Court.

The State Manager above noticed attended, and was
in frequent consultations with the District Attorney.
The grand jurors from Litchfield were the open and
avowed enemies of Judge Reeve; several of the others
were extremely embittered against Mr. Osgood, and
particularly for the plain and pointed manner in which,
in the sermon above-mentioned he had boldly maintain-
ed the antiquated doctrine, that "he who ruleth over men
must be just, ruling in the fear of God." It is to be ho-
oped that these considerations did not influence their de-
cisions.

The doings of this grand jury excited a variety of emo-
tions in the good people of this State. Your friends
boldly asserted that a court was now in existence by
which they should effectually suppress the wicked slan-
ders of the federalists, and that too without the aid of the
sedition law, which, you will recollect, had already ex-
pired. On the other hand, your political enemies were
wholly undismayed, except by one consideration, viz.
that the common law rule might be enforced against
them, prohibiting the truth to be given in evidence. From
this however they were soon relieved by a declaration
of the Judge, that he would be governed by our statute,
which allowed such evidence to be given.

In the May following this court, the gentlemen of the
bar from various parts of the State, attending on the Ge-
neral Assembly, addressed a polite and respectful letter
to Judge Reeve, offering their professional assistance to
him. This assistance however never became necessary,
as will be seen hereafter.

It may appear surprising to you, how Judge Reeve
should have become an object of the vengeance of the
common law against libellers. Is he not, you may say,
a gentleman of spotless fame—of distinguished talents
and commanding popularity, with all the worthy and vir-
tuous parts of the community? Yes, Sir, you have hit
off his character exactly—but he is an unshaken federal-
ist—he has labored to convince the people of the United
States that "virtue exalteth a nation," and that "sin is
a reproach to any people." Such sentiments you know
have of late been considered by one class of the commu-
nity as "speaking evil of dignities," and as meriting
high punishment.

At the Circuit Court in Sept. 1806, holden at Har-
tford, Judge Edwards again sat alone. The same Mar-
shal again summoned a grand jury of his own choice.
They were, Elisha Tracy, John Deshon, David Young,
Peter Webb, Jonathan Townsend, Jonathan Peters, Joel
Hine, Timothy Skinner, David Kelsey, John Welch, William Law, Noahah Woodruff, Eli Todd, Cushing Eells, David Hill, Alexander Mills, and Henry Seymour. It was amusing to see the latter gentleman walking up daily, during the session of the Court, with a file of Hudson & Goodwin’s paper under his arm—thereby intimating that these gentlemen were to expect the tender mercies of a democratic grand jury.

The charge of the Judge was pertinent, and calculated rather to soothe than to agitate the public mind.

The indictment against Mr. Collier was not moved. In that against Judge Reeve, the "learned and meet" District Attorney renewed his motion for a warrant, which was denied on the same ground as at the former term. The prosecution against Mr. Osgood was faintly proposed for trial by the Attorney for the United States, but Mr. Osgood’s counsel soon relieved him from the vexation of a trial to the jury, by moving to quash the indictment, on the ground, that the offence was charged to have been done in the year eighteen and five, which was seventeen hundred and eighty-two years too far back. The indictment was immediately quashed by the Judge. The Attorney however was not to be defeated by his own blunders; he had encountered these too frequently to be dismayed. He instantly prepared a new one, laid it before the jury, who speedily returned a true bill, and Mr. Osgood was again arrested, not however till he had been repeatedly solicited by the friends of the Attorney to receive a pardon upon an acknowledgment of his errors, in arraigning the conduct of democratic rulers. These terms he rejected with disdain, saying that he had neither written or uttered any thing but the truth. On being brought to the bar of the Court, he observed that he could not procure bail, whereupon the Attorney consented that he might go at large on his own bond, which was accordingly taken.

The witnesses against Mr. Osgood from Branford, and those against Mr. Collier and Judge Reeve, attended thus far on the Court, at an expence to the United States of one dollar and one quarter per day each, and ten cents per mile travel.

After ten days session, the grand jury came into Court.
with a bill of indictment against the Rev. Azel Backus, of Bethlehem, alleging that, on various occasions, he had uttered very heavy and calumnious charges against the private and public character of the President. This bill of indictment was expected by the friends of Mr. B., as it was known that he was on the list of the State Manager’s proscriptions. A warrant was immediately issued, and a deputy-marshal, by the name of Frederick Phelps, was sent to bring in the prisoner. This Phelps had received this appointment, it is presumed, as a small compensation for being unfortunately compelled by a jury of his fellow-citizens to pay five or six hundred dollars for uttering a foul slander against his clergyman at Harwinton. On Wednesday this deputy-marshal entered Mr. Backus’s house, a little before sunrise, slapped him on the back by virtue, as he said, of a capias of the Court to take his body for sedition, and to have it in Hartford by two o’clock in the afternoon of that day. Mr. Backus was denied the privilege of shaving himself, shifting his linen, or taking his breakfast, the myrmidon of a marshal observing that no time must be lost, as the distance was about forty miles.

In travelling to Hartford, this marshal frequently rode forward to call democrats to the doors of the houses to see the prisoner. In passing a collection of people assembled at the raising of a building, a shout was given, and much low scurrility offered. Clergymen, from the defenceless nature of their office, are often the objects of the abuse of cowards and poltroons. Viewing Phelps conducting a highly respectable clergyman as his prisoner in this manner, the words of the poet force themselves upon us.

.............. "O, but man! proud man,
Dress’d in a little brief authority,
Most ignorant of what he’s most assur’d,
His glassy essence, like an angry ape,
Plays such fantastic tricks before high heaven,
As make the angels weep."

The prisoner arrived in Hartford about the proposed time; the Court was not ready for his appearance at the bar, and the marshal, beginning to relax in his severity, took his word for his appearance at the opening of the
Court on the next morning. He appeared accordingly, and pleaded not guilty. Mr. District Attorney then rose, and moved that the trial should come on the next day. What a motion for a "meet person learned in the law!!" This motion the Judge refused: he then moved an adjournment for a fortnight to try this particular case; this was also refused, and the cause was ordered to be continued, Mr. Backus having first given bail. His bondsmen were John Caldwell, Esq., President of Hartford Bank, and Gen. Henry Champion.

To close this session of the Court, the grand jury presented a bill of indictment against Messrs. Hudson & Goodwin, for publishing an extract from the Utica Patriot. This publication treated with great severity a certain secret appropriation of two millions of dollars. As that measure was adopted under your Excellency's eye, by your direction, and with closed doors, it is probable that the real object of it is perfectly in your recollection. A single remark shall be indulged—One powerful engine in elevating your party to office, was their incessant clamor that "republican governments should have no secrets!!"—"Risum teneatis?"

Thus, Sir, we have got through two Courts, acting with the aid of republican marshals, attorney, clerk and jurors, and are saluted with only six indictments at common law for sedition. Surely the reign of terror is o'er!!! We will strike our harps to the tune of Jefferson and Liberty, and sing the following elegant stanza, composed when the "doors of honor and confidence" were burst open to you.

"The gloomy night before us flies,
"The reign of terror now is o'er;
"Its gags, inquisitors and spies,
"Its hordes of harpies are no more.

Chorus—"Rejoice, Columbia's sons, rejoice;
"To tyrants never bend the knee,
"But join with heart, and soul, and voice,
"For Jefferson and Liberty!"

The next term of the Court was in April 1807. The following statement of the proceedings, taken from the Evening Post, it is believed, is just and true.

"The late Circuit Court of the U. S. for the district of Connecticut, was holden by the District Judge (the hon.
Pierpont Edwards alone, Judge Livingston, of New York, the successor to Judge Patterson, on the bench of the Supreme Court, had not been allotted to this or any other Circuit; and it is understood to be his opinion, as well as that of the District Judge, and of the profession in general, that as the judiciary law of the U. S. now stands, revised, corrected and improved, he cannot be allotted to any. It seems then that the Circuit Court for Connecticut District, as now organized, consists of a District Judge.

It is already well known to the public that there were depending in this Court five indictments, at common law, for supposed slanders upon a certain great character, and upon the national administration: And it was expected that they would all be tried at the late April term. This circumstance may possibly account for a trifling innovation in the mode of summoning a petit jury.

By the law of Connecticut, all petit jurors who may be summoned to serve in court, are to be drawn by lot from the jury-boxes, lodged in the hands of the town clerks in the several towns. This law had been considered binding upon the Circuit Courts of the U. S. sitting in the District of Connecticut; and had been uniformly observed by those Courts for sixteen successive years. Is it then strange, or is it not so, that the petit jurors, summoned to attend this particular Circuit Court, helden in the year of our Lord 1807, were all personally selected by the Marshal, without any reference to the law of the state, or to the constant and long established practice of the Court? If any one should happen to be surprised at this, his wonder may possibly be increased when he learns that one of these very petit jurors requested the Marshal, that he might be summoned as a juror, and at the same time nominated two others; that these three were summoned and returned as jurors; and that one of the two thus nominated, had previously declared, that he would rather lose one hundred dollars than fail to be upon the jury which should try Mr. Backus.

Early in the term, the Judge informed the bar, that as the petit jury had not, as he understood, been summoned in the usual mode, he would discharge them, if any,
objection was to be made on that account. He added, that in his own opinion they were legally summoned—but that it was important to guard, as far as possible, not only against actual partiality, but even the appearance of it, in the administration of justice. It being then suggested from the bar, that an objection would be made whenever a case should be called on for trial, he discharged the jury, and ordered a new venire facias to be issued, in the usual form, for a new jury. It was issued accordingly to the towns of Wallingford, Cheshire, Hamden, North-Haven, Woodbury and Huntington—all of them towns from which democratic jurors alone could be obtained, as the clerk of the court well knew.

The question intended to be raised, Whether the Courts of the United States have a common law jurisdiction in criminal cases, was not discussed. Before any of the indictments were disposed of, a motion was made in behalf of the defendants for the continuance of all of them, that this question might not be determined till two judges should be present. The Judge thought it inexpedient that the cases should be continued in that stage of the proceedings. He assured the counsel, however, that he would not give final judgment in any of them; but, when the question should be directly raised, would continue them for the purpose of taking the opinion of a circuit judge, at a future term; and added, that whatever the opinion of that Judge upon the question of jurisdiction, might be, he would dissent from it, that the point might be finally settled by the Supreme Court. Under these circumstances, neither the district attorney, nor the counsel for the defendants, wished to argue the question.

The indictment against Mr. Collier was then demurred to, and continued, for the reason already explained. That against Mr. Backus had some unlucky qualities about it, which, as the district attorney, one Hezekiah Huntington, had learnt, between the months of September and April, exposed it to a certain mortal catastrophe, called quashing, or to some other violent end. He therefore entered a nolle prosequi upon it; or, to use an expression more intelligible to readers in general, withdrew it. On the indictment against Messrs. Hudson & Goodwin, a trial by the jury was begun. The defendants
were at the bar—the jury empanelled and sworn—the indictment read—and all things proceeding prosperously, till it became necessary for Mr. Attorney to read in evidence to the jury, the publication on which the indictment was founded. Here a difficulty was started by the counsel for the defendants, on account of some five or six little flaws in the indictment, called in the law variances! Mr. Attorney doubted whether the "book rules" on this subject would be adopted by the courts of the United States, and his colleague in the prosecution, John T. Peters, Esq. supposed, that as certain parts of the publication were correctly laid in the indictment, those parts might be read!!—The Judge decided, without hesitation, that neither the whole publication, nor any part of it, could be read. Mr. Attorney then announced the catastrophe by declaring he would enter another *nolle prosequi*.

The indictment against Mr. Osgood was the second that had been found against him upon the same facts. The first was quashed at the term of September, 1806. At that term the new one was found, and was now to be tried on Thursday of the second week of April term. In the mean time the District Attorney had discovered, or it had been discovered for him, that the second was much worse than the first! Hence it happened, that when the time arrived at which the trial was to come on, he was not ready to proceed, because (as it appeared from his answers to questions put by the Judge) his witnesses were not present—and they were not present, because he gave them leave to be absent—and he gave this leave, because he did not expect the trial would come on at that time—he knew not why? While this explanation was coming out, Mr. Osgood's counsel put an end to it, by moving to quash the indictment. By this time Mr. Attorney had contracted an unaccountable disrelish for quashing. He abhorred quashing above all things! And to save himself and—the audience—the disgust of hearing even the ground of the motion, he entered—sblood! he entered another *nolle prosequi*, and thus cut the motion in two in the middle!!

It ought to be made public and remembered, that after the Attorney for the district was certain that the last
indictment was bad, and after he had dismissed his witnesses, because he knew that it could not be supported, he endeavored to get rid of it at the expense of Mr. Osgood, by repeated offers to withdraw it if Mr. Osgood would pay the costs, or a part of them.

Upon the indictment against Judge Reeve no warrant was issued. A new one was found, however, against Mr. Backus, and another against Messrs. Hudson and Goodwin, upon the same charges upon which they were before indicted.

Is it not really very convenient for a public prosecutor to keep a Grand Jury under pay ten or twelve days, for the purpose of patching up holes in his indictments, while, like the labors of the unskilful tinker, every patch makes two new holes?

The Judge, on motion, continued the new indictments against Mr. Backus and Messrs. Hudson & Goodwin, without requiring them to plead.

The State Manager, Alexander the Great, was present, during the first of the term, aiding, abetting, counselling, advising, comforting, assisting, and perhaps directing the district attorney, in the discharge of his duty.

It should here be mentioned that the District Attorney laid before the grand jury, evidence against Gov. Treadwell, Major Hooker and Mr. Joseph Porter, all of Farmington, on a charge of stopping the public mail passing through that town from New-York to Hartford. Several of the jurors, being discreet and sensible men, refused, after great deliberation, to find any bill. This was greatly discredited by several leading democrats in the vicinity of Gov. Treadwell, and they insisted on another chance to be avenged. An account of the future proceedings on this subject is reserved for the next Court.

In Sept. 1807, the prosecutions already commenced, except that against Mr. Osgood, which had received two death-blowes, were expected to be tried. The history of the proceedings of the Court at this term was given in a newspaper of that date, and is as follows:

Hartford, September 30, 1807.

On Thursday the 17th of September, the Circuit Court of the United States was opened in this place, and
closed their session on Friday last. No Judge of the Supreme Court attended. The business was consequently conducted by Mr. Edwards, the District Judge.

No civil business of consequence was done; one case only was tried by the jury, in which they returned a verdict of thirty dollars, and after being sent to a second consideration, gave the plaintiff eighty-five dollars damages.

But the governmental prosecutions principally occupied the attention of the public; we have therefore detailed the proceedings upon them with some minuteness.—To the indictment against the editors of this paper [Courant] a demurrer was entered, and it was continued of course, to await the decision of the whole court.

On Thursday the Rev. Azel Backus was called to plead to an indictment found against him at the last term similar to that in which the District Attorney at the same term entered a nolle prosequi, for words spoken by him against the President of the United States.

To the indictment he pleaded not guilty. The District Attorney wished to know when Mr. Backus would be ready to proceed to trial. The Judge suggested the propriety of continuing the case till the case of Collier and Hudson & Goodwin were decided, in which the question was raised whether this Court have jurisdiction of common law offences. Mr. Wolcott, of counsel for the government, doubted the propriety of continuing the case at present, as reports were in circulation that witnesses from Virginia were in town, to prove that the words spoken were true—which reports were as unfounded as the charges against the President. The counsel for Mr. B. said they were not answerable for such reports; they were as likely to come from one party as the other.

The Judge said there was no motion before the Court.

The counsel for Mr. B. understood the Attorney to move that the trial come on.

Mr. Wolcott said he did not move it; but wished them to say whether any such witnesses were here as had been reported.

The counsel for Mr. B. informed the Court that they had summoned witnesses from Virginia, who had prom-
ised to attend, but who were not present; and that Mr. Backus had good reason to believe had been prevented from attending by the interference of the Executive of the United States; who had declared to the witnesses that the prosecution would be put an end to, and consequently their attendance would be unavailing. They wished to lay those facts regularly before the Court by an affidavit, and then move for an attachment against the witnesses, and to have a special Court at some short period for the trial of this cause.

The Judge said they might have opportunity to make affidavit.

Soon after the opening of the Court in the afternoon, before any further motion was made by the counsel, Judge Edwards observed—that he had further reflected upon what passed in the morning in the case of Mr. Backus—that there was a plea to the jurisdiction of Court in the prosecutions against Collier and Hudson & Goodwin.—If that plea prevailed, a trial upon this would be useless; and would therefore be a great hardship upon the defendant, and subject him to needless expense—that it was the duty of the Court not only to see that legal justice was dispensed, but also to see that justice was unoppressively administered. He therefore thought proper that the prosecution against Mr. Backus should be continued; and that the defendant should not be called upon to come to trial upon the facts till the Attorney of the United States had given him one term’s notice that he meant to proceed to trial—and directed the Clerk to enter the rule accordingly.

The counsel for Mr. Backus informed the Court that they did not wish for such a rule, but would file an affidavit stating the reason of the absence of their witnesses, and move for an attachment against them. The Judge observed that in the morning they said they were not ready for trial.

They admitted they were not now ready for trial, yet they wished to procure the process of the Court to bring in their witnesses, and to have a trial upon the facts. That were this a question of law merely, it might be proper to await the decision in the other cases. But this was a case in which facts were in controversy, and in
which the character of the defendant was involved. That
the defendant was desirous of having the question upon
those facts tried, and not to shelter himself under a plea
to the jurisdiction.

The Judge informed them, that by the rule he had
made, Mr. Backus would not be precluded from a trial
at the next term, if he wished it. The rule would only
prevent the Attorney for the United States from
compelling him to a trial.

The counsel for the prosecution then observed, that
if the defendant could insist upon a trial the next term,
it would be attended with great expence and inconve-
enience to the United States, as the witnesses must be re-
ognized and attend at the next term, although the coun-
sel for the prosecution could not know whether a trial
would be had or not.

The Judge remarked that Mr. Backus must give to
the Attorney reasonable notice, if he intended to move
for a trial.

The counsel for Mr. Backus then informed the Court,
that they were about to move for a special Court to try
this case, and for an attachment against the witnesses
who had failed to attend.

Judge Edwards said he should not add to the burthens
already by law imposed upon him, by calling a special
Court, and this motion was reflected upon by him before
he decided that the cause should be continued.

The counsel for Mr. Backus then gave notice that they
should insist upon a trial of this cause at the next term.

The counsel for the prosecution understood the deci-
sion of the Court to be, that it was not proper to try this
cause while the question of jurisdiction remained unde-
cided.

The Judge said that would certainly be his opinion.
But he could not tell what would be the opinion of the
Court at a future term. He might not then be upon the
Court. He might not then be in esse.

The counsel for the defendant understood the Court
to say, that the rule was to operate only upon the prose-
cutor, and that the defendant might have a trial if he
pleased. At the last term of this Court at New-Haven,
they moved for the continuance of an indictment simi-
lar to this against Mr. Backus, until the question of jurisdiction was settled, and until a Judge of the Supreme Court should attend. But they understood the Court then to say, that it was improper the public mind should be kept in a ferment as to the facts charged. That the defendant must go to trial to the Jury upon the facts, and if a verdict should be found against him, he might then have the advantage of this question upon a motion in arrest.

The Judge said that some such expressions might have fallen from him as was suggested, but the motion was to continue it on account of the absence of the Judge, and on that ground he refused to continue it.

The counsel for the defendant expressed their surprise at the unexpected turn the case had taken, but still wished to lay before the Court an affidavit stating that witnesses from Virginia had been served with a subpoena and neglected to attend, and to move for an attachment against them.

The Judge informed them that if they wished for an attachment, to bring in persons ad testificandum, he had formed a settled opinion that the Court had no authority to issue such a process. That Judge Patterson, in the cases of Smith and Ogden, intimated such an opinion. That he was concerned in those causes, and that the able counsel opposed to him could produce no authority, not even a dictum in support of such an opinion. That by procuring an attachment for a contempt, the party summoned would be brought into Court, and then indirectly it might operate to procure his attendance as a witness. However, he would hear them.

The counsel said if the Court had formed a settled opinion upon the question, it would be in vain for them to proceed.

The Court said this opinion would not preclude them from moving for an attachment for contempt.

The counsel declined this, and said they did not believe the witnesses had been guilty of a contempt of Court. They had failed to attend not for want of respect to the process of the Court, but in consequence of the interference of the Executive of the United States.

No further business was done. The Court waited for the Grand Jury, who at last came in with several bills of indictment.
The bills of indictment mentioned in the foregoing narrative, were against Gov. Treadwell, the second magistrate of the State; Major Hooker, a justice of the peace in the county of Hartford, and Mr. Joseph Porter, a constable and a respectable citizen of Farmington. The crime laid to their charge was stopping the public mail passing from New-York to Hartford, through Farmington, against the third section of the act entitled "an act to establish the post-office of the United States," vol. 4, Laws of the United States, page 506.

It will be recollected that this subject, and all the proof thereon, was before the grand jury at New-Haven, in April term, but no bills were found. The present grand jury were much more pliant, and more suited to the inglorious task. Their names are Nathan Preston, Joshua Stow, Frederick Lee, Medad Stone, William Lynde, John Shipman, Hezekiah Goodrich, Samuel W. Spencer, Timothy Skinner, Samuel Woodward, Zebini Smith, Arah Phelps, Nehemiah Meacham, David Dibble, Luther Loomis, Timothy Phelps, Jared Lewis, Chauncey Cook, Hezekiah Reynolds, Zadock Hinsdale, Lemuel White, Henry Seymour, and Noah M. Bronson. One of these gentlemen was largely concerned in the rebellion of Shays, in Massachusetts, in 1786—several of them were the enemies of Gov. Treadwell, and all of them, one or two excepted, were furious jacobins. In their view it was a very proper thing to arraign Gov. Treadwell and the other gentlemen at the bar of the Court for crimes against the laws of the United States.

It will be recollected that the person here indicted is Gov. Treadwell, who from his youth has acted in the eye of the public in important stations, and for eleven years successively been elected by the suffrages of a free and enlightened people, to the office of Lieutenant-Governor. To his present advanced period in life, his reputation has been unsullied by crime, or even suspicion of crime. His private life, his public conduct, prove his pre-eminent regard to the sacred injunction, "let every soul be subject to law." His maxim, as all who know him will bear witness, uniformly has been, the empire of laws is the empire of freedom.
To see such a man, clothed with such an office, arraigned for an offence before a court of high criminal jurisdiction, is indeed a portentous spectacle.—It affords the writer heartfelt satisfaction to be able to say that this hostile attack on this greatly respected magistrate and citizen, has not produced the slightest diminution of public or private confidence. All good men have traced the origin of this prosecution to that collision of political interests, and those conflicts of fierce passions, which mark the present period.

The facts which laid a foundation for these indictments, are, that the road from New-York to Hartford, through Litchfield and Farmington, is, and for several years has been, a post-road. There was in Jan. 1807, (the time when these offences are charged to have been committed) a contract between the Post-Master-General, on the one part, and White & Ely on the other part, to carry the mail on this road once in each week. It was no part of the contract, nor was it any part of the directions of the Post-Master-General that this mail should pass through Farmington on the sabbath. This notwithstanding, one Isaac Kellogg, the driver of the stage and carrier of the mail, habitually drove his stage through this town and by the Meeting-House, on the sabbath. For this public violation of a statute of the state, complaints were exhibited against him to Gov. Treadwell—He was arrested by warrant on such complaints by Mr. Porter, the constable, and brought before him, and there found guilty and fined.—Through this whole proceeding, great pains were taken to avoid any thing like severity against the delinquent, or delay to the mail. The carrier to be sure was arrested while with the mail, not however, till he had been notified of the process and requested to submit to it, which he obstinately resisted.—This constituted the offence of Gov. Treadwell and Mr. Porter.—Major Hooker was indicted for performing a duty enjoined by the statute, viz. stopping the passengers in the stage travelling on the sabbath, and having no reasonable excuse therefor.—Thus, Sir, have the magistrates and officers of this state been dragged before tribunals erected for the punishment of offenders, for an honest and conscientious discharge of their duty.
On these indictments warrants issued, and the gentlemen were taken; but the Marshal only required of them to say that they would appear at April term, 1808—this they at once said, and appeared accordingly.—In this proceeding the Marshal's conduct was proper and decorous, so far as we have learned; indeed, in all the cases, the gentlemen, while before the Court or immediately under the care of Marshal Willcox, were treated with clemency and respect.

At the Circuit Court in April, 1808, Judge Livingston took his seat on the bench. There were now depending four prosecutions for sedition, and three for stopping the mail. Their progress to this time has been detailed—It will now be traced to their termination.

The counsel for Hudson & Goodwin had demurred, on the ground that the Circuit Court had no jurisdiction of offences at common law. This case was now handed to the Court without argument, as the counsel had been notified that there would be a difference of opinion in the judges on the point. This difference existed, and the cause was referred to be considered by the Supreme Court of the United States, in March next. The Attorney for the United States, after all the blustering and parade which had been shown, very gravely, towards the close of the session of the Court, entered a nolle prosequi, or a withdraw, on the indictments against Judge Reeve, Mr. Backus, and Mr. Collier.

No warrant had ever issued against Judge Reeve—indeed the offence in the indictment was charged to have been done more than two years before the bill found, and therefore by a plain law of the United States, no prosecution could be sustained. This trifling circumstance was probably overlooked by the learned Attorney-General, and by Capt. Vanduerson, the foreman of the Grand Jury.

The bill against Mr. Backus had been in four Courts. At the first Court only three witnesses attended. At each of the three last, it is believed, not less than fifty, some say sixty witnesses attended the whole time, at the expence of the United States. Indeed if they attended at all, it must have been at the expence of others, for they were chiefly unable to bear their own.—
These witnesses were summoned principally to support the characters of the three persons on whose testimony the bill was found, and, in this view, it was a prudent measure, for fifty witnesses at least were necessary for the purpose. The Marshal took separate subpoenas for the witnesses, and with all fidelity to the United States, brought forward from the grog-shops and taverns, all that could avail on such a trial. A more choice collection never appeared—a spectator, if he had believed a word about the story of Gog and Magog, would have supposed that they had broke loose. It is probable the expense of this single prosecution amounts to 3000 dollars. If it is over-rated, the gentlemen who set it on foot can rectify the mistake. Thus terminated the prosecutions for sedition at common law. You will constantly bear in mind that the sedition act (so called) had expired.

The indictments for stopping the mail were continued by consent, till September 1808, when that against Joseph Porter was brought on for trial to the Jury. The District Attorney, assisted by Mr. Wolcott, offered testimony in support of it, which was objected to by Messrs. Goodrich, Daggett, and Dwight, of counsel for the prisoner, as not comporting with the allegations in the indictment—the Court allowed the objection, and rejected the testimony. The Attorney having no better to offer, proposed to take refuge in his old hiding-place, and enter a nolle prosequi. The opposite counsel claimed a verdict of Not Guilty, and the Court said that the prisoner was entitled to it, and directed the Jury to acquit him without leaving their seats, which they instantly did. The Attorney immediately entered a nolle on those against Gov. Treadwell and Major Hooker, and all were discharged.

Thus, you perceive, that eleven prosecutions have been instituted by your officers in Connecticut against our Magistrates, Clergymen, and Printers, all of which, one excepted, have been defeated, or voluntarily abandoned by the public prosecutor. The amount of the money of the people, thus worse than wasted, which is the least part of the evil, is unknown—it can be seen at the public offices at Washington. There you may learn
how your friends have followed your sage advice in your inaugural speech, by promoting "economy in the public expence, that the labour may be lightly burthened." There you may know, what all others have long since known, that in the expence of public money, "the little finger of" Democracy "is thicker than the loins of" Federalism.

If you should ask whether these proceedings originated in the ignorance of your District Attorney or in the malice of Connecticut Jacobinism, the answer would be difficult—it would be safest to ascribe them to a mixture of both, while either would be sufficient for the effect.

If "time had been taken and information sought," in the appointment of an Attorney for this District, you would have been convinced that the only difficulty lay in deciding whether obstinacy, stupidity, or unskilfulness in his profession, most predominated. You would also have discovered that not a lawyer of any grade would have been more unsuitable for the office. Was it not known that you had made this appointment under the solemn injunction of the Constitution, that the President "is to take care that the laws be faithfully executed," and the direction of the Judiciary act, that "there shall be appointed in each District a person learned in the law, to act as Attorney for the United States in such District," your political enemies might have believed, that his only recommendation was his democracy.

In reflecting on the preceding statement, permit me to remind your Excellency of the following sentences in your inaugural Speech of March, 1801: "All too will bear in mind this sacred principle that though the will of the majority in all cases is to prevail, that will to be rightful must be reasonable; that the minority possess their equal rights, which equal laws must protect, and to violate would be oppression. Let us then, fellow citizens, unite with one heart and one mind; let us restore to social intercourse that harmony and affection without which Liberty and even life itself are but dreary things. And let us reflect that having banished from our land that religious intolerance under which mankind so long loked and suffered, we have yet gained little, if we countenance a political intolerance as despotic as wicked, and capable of as bitter
and bloody persecutions.” And again, in detailing “the essential principles of the government and those which ought to shape its administration,” you suggest as among the most important, “The diffusion of information and arraignment of all abuses at the bar of public reason: freedom of religion:—freedom of the press: and freedom of person under the protection of the Habeas Corpus: and trial by juries impartially selected.”

Has your administration been shaped by these silver sounding professions? Or were they uttered for ornament? Were they designed to regulate your practice; or like Peter Pindar’s razors, “made to sell?”

Hudson & Goodwin were indicted for publishing a piece, questioning the propriety of the appropriation, secretly, of two millions of dollars.—Mr. Collier was indicted for publishing an extract from the Evening Post, asserting that our government had arrived to a high pitch of profligacy, quoting the words of your friend Gibbon, the author of the History of the Roman Empire.—Judge Recce was indicted upon a charge of having written and published that the expenditure upon the Bereco was unconstitutional.—Mr. Backus and Mr. Osgood were indicted for having, in sermons on thanksgiving days, declared to their respective congregations, that your election to the chief magistracy of this nation gave just reason to fear that the judgments of heaven would follow; for that you was not a believer of Christianity. In support of this fact, they quoted from your Notes on Virginia; they instanced your appointments to office, and your bosom friends, particularly the infamous Thomas Paine.

These prosecutions were known to you at least as early as the winter of 1806-7; for during that time they were publicly announced, on the floor of Congress, to be depending before the Circuit Court in Connecticut; and if the same solicitude had been shown to preserve these gentlemen from the fangs of persecution, as was shown, years before, to screen a gross calumniator of Washington from a paltry fine, or if your own solemn declarations, made in the face of the nation, had the least influence on your practice, you would have exhibited the meanness of an elevated understanding; and or...
...ndered them to be withdrawn, instead of the weakness of a pigmy mind, in endeavoring to prevent the proofs from Virginia being laid before the Court and Jury.

Do you see any thing in these proceedings of your Marshal, Attorney and Jurors, against the most respectable citizens of Connecticut, like “restoring harmony to social intercourse”—like the “equal rights of the minority”—like “trials by juries impartially selected”—like “the arraignment of all abuses at the bar of public reason”? Do you see nothing in the conduct, the ungentlemanly conduct, of your Deputy-Marshall Phelps, in seizing Mr. Backus as a felon—in conducting him on the public road to Hartford, as the object of the scorn and derision of an infamous rabble?—of arraigning him at the bar of a Court of criminal jurisdiction, under the direction of a bloody minded State Manager? Do you see nothing in a bill of indictment against the second magistrate of our State? in a similar bill against a highly respected Judge of our Superior Court?—In these things, do you see nothing of that “political intolerance, as despotic as wicked, and capable of as bitter and bloody persecutions”? We see, Sir, in these proceedings, a malignant spirit of revenge, the constant inmate of little and depraved hearts, towards Mr. Backus, because he had by superior talents, by a life of piety, and by commanding eloquence, frustrated the diabolical schemes of a few unprincipled Jacobins in his neighborhood, and retained, as the friends of Washington, a very respectable portion of this community.—We see the same spirit excited to destroy Gov. Treadwell and Judge Reeve, because they were alike the unshaken supporters of Washington, and strong pillars in our political fabric. We see a like spirit, always mischievous, but often inefficient, operating to ruin printers, old and respectable, and who had fearlessly made a noble stand against the desolations of democracy.—We further see, and notice, and will remember, Sir, in these proceedings, as well as in many other parts of your administration, an open and palpable design to insult the State of Connecticut—a State, Sir, which did more to achieve the independence of this nation, than other States of far greater dimensions and population—a State which always co-operated with
the Union in all wise and just measures—a State in which the genuine rights of man are amply secured, and where every man sits under his own vine and fig-tree—a State which, to her immortal honor it will be said, has resisted, successfully resisted, a reign of terror; and persecutions, wicked and despotic.—This State, Sir, has not feared—she will not fear, "though a host should encamp against her."

With due respect,
Your most obedient servant,

HAMPDEN.

October, 1808.

P. S.—According to the best calculation which can be made, without a sight of the documents, the expenses of the foregoing prosecutions, for extra attendance of grand and petit jurors, attendance and travel of the host of witnesses, fees to marshal, deputy-marshals, crier, attorney and clerk, &c. &c. cannot be less than Ten Thousand Dollars—a sum greater than the whole amount of the salaries for a year of the Judges of our Superior Court. The democrats can furnish, if they please, proofs from the bills of cost as taxed, to counteract this statement: and I would advise them to give the public an accurate estimate, by way of appendix to the next edition of their account of the expenses of this State from the Comptroller’s Report.

The End.