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# THE TRIALS OF MR. JUSTICE SAMUEL CHASE

By ROBERT R. BAIR\* and ROBIN D. COBLENTZ\*\*

## I. INTRODUCTION

During the 180 years in which our Constitution has authorized the impeachment of civil officers of the United States for "treason, bribery, or other high crimes and misdemeanors," this power has been invoked by the House of Representatives only twelve times. It is a tribute to the integrity of our public officials that of the twelve accused, only four, all judges, were convicted after arraignment and trial before the United States Senate.

The most famous impeachment trial was that of President Andrew Johnson in 1868, who escaped the only penalty for impeachment provided by the Constitution, that is, removal from office, by the narrow margin of one vote less than the necessary two-thirds vote of the members present. In addition to President Johnson, one Cabinet officer,<sup>1</sup> one Senator<sup>2</sup> and nine judges<sup>3</sup> have been impeached.

By far, the most celebrated impeachment trial involving a federal jurist was the trial of Samuel Chase in 1805. Between 1796 and 1801, in the course of the furious political contest between the Federalists, led by President John Adams, and the Republicans, led by Thomas Jefferson, the Supreme Court had become "openly what it had always been at heart, a political organ of the Federalist party."<sup>4</sup> No Justice

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1. Secretary of War William W. Belknap, in 1876.

2. William Blount of Tennessee, in 1798. These proceedings were dropped when the words "civil officers" were construed by the Senate not to apply to members of Congress.

3. *John Pickering*, Judge of the District Court of New Hampshire (1803) (convicted of corruptly releasing a libeled vessel without requiring bond, of using indecent language, and of being drunk while on the bench); Samuel Chase, Associate Justice of the Supreme Court (1805); James H. Peck, Judge of the District of Missouri (1830); *West H. Humphreys*, Judge of the District of Tennessee (1862) (convicted of upholding the right of secession and inciting rebellion in the course of a public speech and of accepting a judicial position under the Confederate Government); Charles Swayne, Judge of the Northern District of Florida (1904); *Robert W. Archibald*, Judge of the Circuit Court of Pennsylvania (1913) (convicted of entering into corrupt alliances with coal mine owners and railroad officials); George W. English, Judge of the District of Illinois (1926) (resigned before trial); Harold Louderbach, Judge of the District of California (1933); *Halsted Ritter*, Judge of the District of Florida (1936) (convicted of accepting fees while in office). The four judges whose names are in italics were convicted by the Senate and removed from office. See generally JOURNAL OF THE UNITED STATES SENATE IN ALL CASES OF IMPEACHMENT PRESENTED BY THE HOUSE OF REPRESENTATIVES FOR THE YEARS 1798 TO 1904, S. Doc. No. 876, 62d Cong., 2d Sess. (1912); Brown, *The Impeachment of the Federal Judiciary*, 26 HARV. L. REV. 684 (1913); Ten Broek, *Partisan Politics and Federal Judgeship Impeachment Since 1903*, 23 MINN. L. REV. 185 (1939). Other judges have been charged, eight of them during the period 1903 to 1939, but in none of the cases were the judges actually impeached. *Id.* at 185 n.3.

4. 1 C. WARREN, THE SUPREME COURT IN UNITED STATES HISTORY 167 (1926) [hereinafter cited as WARREN].

had contributed more to the partisanship of the Court than Mr. Justice Samuel Chase.<sup>5</sup>

When President Jefferson took office in 1801, he began to show marked impatience at the independence of the judiciary. He thought that the judges should be more under the control of Congress, or even of the Executive, that they should be appointed and removed as other public officers, and that they should hold the political sentiments of the majority.<sup>6</sup> Jefferson's dissatisfaction knew no bounds when, in 1803, in the case of *Marbury v. Madison*,<sup>7</sup> Chief Justice John Marshall refused to apply an act of Congress<sup>8</sup> by which the Court had been conferred with the power to issue a mandamus against the Secretary of State, James Madison. The Court also boldly lectured the administration upon the President's duty to issue a commission to the plaintiff, William Marbury.<sup>9</sup>

Senator William B. Giles of Virginia, a staunch Jeffersonian, treated with utmost contempt the idea of an independent judiciary. John Quincy Adams reports Giles' sentiments as follows:

Power of impeachment [he said] was given without limitation to the House of Representatives; the power of trying impeachments was given equally without limitation to the Senate; and if the Judges of the Supreme Court should dare, (AS THEY HAD DONE), to declare an act of Congress unconstitutional, or to send a mandamus to the Secretary of State, AS THEY HAD DONE, it was the undoubted right of the House to impeach them and of the Senate to remove them for giving such opinions, however honest or sincere they may have been in entertaining them. . . . [A] removal by impeachment was nothing more or less than a declaration by Congress to this effect: You hold dangerous opinions, and if you are suffered to carry them into effect you will work the destruction of the Nation. *We want your offices* for the purpose of giving them to men who will fill them better.<sup>10</sup>

In such terms, Senator Giles made plain the state of mind and the objective of the dominant political party in the year 1803.

The question whether the federal judiciary was to remain independent of the will of the Congress and of the party then in power was soon to come into sharp focus.

In 1803, Judge John Pickering, a district judge for the district of New Hampshire, who had been insane for three years, was impeached; and in 1804, he was tried and removed from office when convicted of corruptly releasing a libeled vessel without requiring bond, of using profane language, and of being drunk while on the bench.<sup>11</sup> This

5. *Id.* at 273-75.

6. 3 A. BEVERIDGE, *THE LIFE OF JOHN MARSHALL* 167 (1919) [hereinafter cited as BEVERIDGE]; W. PLUMER, JR., *LIFE OF WILLIAM PLUMER* 253 (1857). See WARREN at 279-80.

7. 5 U.S. (1 Cranch) 137 (1803).

8. Act of Sept. 24, 1789, ch. 20, § 13, 1 Stat. 80, 81.

9. BEVERIDGE at 132.

10. 1 MEMOIRS OF JOHN QUINCY ADAMS 322 (Charles Francis Adams ed. 1874) [hereinafter cited as ADAMS MEMOIRS]; BEVERIDGE at 158.

11. BEVERIDGE at 164-67.

trial, which had been instigated wholly by administration leaders, emboldened the followers of Jefferson to similarly attempt to chasten the Supreme Court.

Justice Chase, an overbearing man and a candid partisan, became an easy target for the assault of the Republicans. In March, 1804, within *one hour* after the conviction of Judge Pickering, the House of Representatives voted to impeach Samuel Chase.<sup>12</sup>

The fundamental importance of this impeachment trial in our Constitutional history cannot be overstated. It is generally agreed that Chase's acquittal probably saved Marshall from a like fate.<sup>13</sup> Moreover, if Jefferson's party faithful had succeeded in their grand design, Franklin Delano Roosevelt would have found it unnecessary to attempt to "pack" the Court, and the efforts of contemporary rightist groups calling for the impeachment of certain "activist" Justices would take on added significance.

## II. LAWYER, REVOLUTIONARY, POLITICIAN, JUDGE

Samuel Chase was born in 1741 on a farm in Somerset County, the son of the Reverend Thomas Chase, an Episcopal clergyman, who emigrated from England. Three years later, having lost his wife, Thomas Chase was called to St. Paul's Parish in Baltimore where he raised and carefully educated his son Samuel in the classics.<sup>14</sup>

When eighteen, Samuel Chase went to Annapolis to study law in the busy offices of Hall and Hammond. Admitted to practice in the Mayor's Court in 1761 and in the Chancery Court two years later,<sup>15</sup> Chase's aggressive character quickly asserted itself. "What he felt, he expressed; and what he expressed, came stamped with all the vigor of his mind, and the uncompromising energy of his character. . . ."<sup>16</sup>

He was married twice; first to Anne Baldwin in 1762, who bore him two sons and two daughters, and later to Hannah Kilty Giles in 1784, by whom he had two daughters.<sup>17</sup>

He loved people, politics, and the excitement of good debate. In 1764, after a bold and vigorous campaign in which he received eighty-eight votes, Chase was elected to the House of Delegates where he remained a member for more than twenty years.<sup>18</sup>

Rude, bold, and independent at the outset, he aligned himself with the opposition to the Royal Governor and treated the Royal Governor and his Tory partisans with contempt and defiance.<sup>19</sup>

When the British attempted to enforce the Stamp Act of 1765 by sending an official stamp distributor named Hood to Annapolis, Chase

12. 13 ANNALS OF CONG. 315-63, 1180-82 (1804); BEVERIDGE at 169.

13. 2 HENRY ADAMS, HISTORY OF THE UNITED STATES OF AMERICA 243 (1889). BEVERIDGE at 220.

14. 9 J. SANDERSON, BIOGRAPHY OF THE SIGNERS TO THE DECLARATION OF INDEPENDENCE 187-88 (1827) [hereinafter cited as SANDERSON]; Corwin, *Samuel Chase*, in 4 DICTIONARY OF AMERICAN BIOGRAPHY 34 (1930) [hereinafter cited as CORWIN].

15. CORWIN at 34.

16. 1 J. SCHARF, HISTORY OF MARYLAND 537 (1879).

17. SANDERSON at 189; CORWIN at 34. There is a portrait of the second Mrs. Samuel Chase and her two daughters at the Baltimore Museum of Art.

18. Maryland Gazette (Annapolis, Maryland), Nov. 29, 1764.

19. See note 24 *infra*.

and his friend William Paca, who had organized the local chapter of high-spirited patriots called "The Sons of Liberty," led the group in trying to prevent Hood from landing. Later in raids upon public offices, they seized and destroyed the stamps and burned Hood in effigy.<sup>20</sup>

This prompted the mayor and aldermen of Annapolis to attack Chase, calling him a "busy restless Incendiary — a Ringleader of Mobs — a foul mouth'd and inflaming son of Discord and Faction — a common Disturber of the public Tranquility, and a Promoter of the lawless excesses of the multitude."<sup>21</sup> Chase, equally adept at vituperation, compared his critics to "despicable Pimps, and Tools of Power, emerged from Obscurity and Basking in proprietary Sunshine. . . ."<sup>22</sup>

His violent and fearless opposition to British rule made young Chase so popular that he was elected to the Committee of Correspondence.<sup>23</sup> Later when Parliament closed the port of Boston in 1774, Chase was elected by the Maryland Convention to be one of the five Maryland delegates to the First Continental Congress which assembled in Philadelphia in September, 1774.<sup>24</sup> He hotly urged the measures of armed defense which led to the appointment of Washington as Commander-in-Chief of the Continental Army.<sup>25</sup> In the spring of 1776, Chase, Benjamin Franklin and Charles Carroll of Carrollton were sent by the Continental Congress to Canada to seek aid and to persuade Canada to join the rebellious colonies. However, military reverses on the northern frontier removed any hope of success and the mission failed.<sup>26</sup> Chase hurried back to Philadelphia where, disregarding the instructions of the Convention of his own state, which was then reluctant to support a break with England. Chase championed the adoption of the Declaration of Independence. He led such a vigorous campaign that the Maryland Convention rescinded its previous instructions and ordered its delegates to vote for independence.<sup>27</sup> Chase signed the Declaration of Independence on August 2, 1776.<sup>28</sup>

20. Neil Strawser, *The Early Life of Samuel Chase* 137-38, 168 (1958) (unpublished master's essay, George Washington University); BEVERIDGE at 184 n.5.

21. *Maryland Gazette* (Annapolis, Maryland), June 19, 1776; SANDERSON at 191.

22. "To the Public," speech by Samuel Chase, July 18, 1776, reprinted in *EARLY AMERICAN IMPRINTS* 10253.

23. SANDERSON at 193; 2 J. SCHARF, *HISTORY OF MARYLAND* 141, 144, 150, 163, 168 (1879) [hereinafter cited as SCHARF].

24. SCHARF at 158. The following illustrates Chase's contempt for the Royal Governor; in 1774 at a dinner given by Charles Carroll of Carrollton to which Robert Eden, the last proprietary Governor of the Colony, was invited, the conversation turned to the rumor that the King was going to supplement his forces in America with Hessian soldiers. When Eden admitted the truth of it, Chase exclaimed, "By G-d, I am for declaring ourselves independent." The Governor immediately dropped his knife and fork, and did not eat another mouthful. *Id.* at 218 n.1.

25. BEVERIDGE at 184-85 n.5.

26. SANDERSON at 195-97; SCHARF at 220-23.

27. SCHARF at 197, 230-35; SANDERSON at 197-98; CORWIN at 35. 3 *THE WORKS OF JOHN QUINCY ADAMS* n.54 (Charles Francis Adams ed. 1851). Chase's forensic abilities as displayed in the House of Delegates, in election contests, and in the Continental Congress earned him the style of the "Demosthenes of Maryland." SANDERSON at 210. He was the first person in the Congress who declared that he "owed no allegiance to Great Britain." SCHARF at 179.

28. CORWIN at 35.

During the same year he was elected a member of the convention which framed the first constitution for the State of Maryland.<sup>29</sup> He was responsible for many of its aristocratic features and thoroughly approved of the suffrage provision which conferred the right to vote only upon "all free men, above twenty-one years of age, having a freehold of fifty acres of land . . . and all freemen having property in this State above the value of thirty pounds current money. . . ."<sup>30</sup>

He continued as a member of the First Continental Congress until 1778.<sup>31</sup> In July, 1778, a letter from Commissary-General Wadsworth of the Army was read in confidence to the Congress commenting on the alarming scarcity of flour and requesting authority to make purchases in the Southern states where abundant supplies had kept the price low. After the letter was stalled a month in committee, a secret resolution was passed authorizing Wadsworth to purchase 20,000 barrels of flour in Maryland. The anxious Wadsworth hastened to Baltimore only to find flour scarce, prices high, and every flour mill engaged. Investigation revealed that John Dorsey, a business partner of Samuel Chase, had made heavy purchases in flour for speculation. The Maryland delegates were charged with revealing a secret resolution. His colleagues denied the accusation. Chase remained silent.<sup>32</sup> Alexander Hamilton launched a bitter attack on Chase in the New York newspapers.<sup>33</sup> The Maryland General Assembly passed a law under which Chase was disqualified from sitting in the Congress. However, the law expired in 1781, and Chase was again nominated and appointed to Congress only to have the flour scandal issue resurrected by Charles Carroll who demanded to know why Chase, if innocent as maintained, had kept silent when accused.<sup>34</sup> Charges were filed with the House of Delegates accusing Chase of a breach of trust in revealing a secret resolution of Congress. Twenty-five witnesses were called but no conclusive evidence was produced which proved that the resolution was meant to be secret or that Chase had revealed its contents to Dorsey. On January 16, 1782, by a vote of 36-2, Chase was acquitted.<sup>35</sup>

He served as a member of the Second Continental Congress from 1784 to 1785.<sup>36</sup> As a member of the Maryland Convention called to

29. The convention met at Annapolis on August 14, 1776, and completed its labors on November 9, 1776. The constitution was not submitted to the people. A. NILES, *MARYLAND CONSTITUTIONAL LAW* 9, 360-74 (1915) [hereinafter cited as NILES]; SCHARF at 269-70, 278-81. See generally *CONSTITUTIONAL CONVENTION COMMISSION, REPORT* 25-37 (1967).

30. *MD. CONST.* art. 2 (1776).

31. SCHARF at 342-43.

32. J. Doland, *The Constitutional Opinions of Mr. Justice Samuel Chase* 5-6 (1938) (unpublished doctoral dissertation, Georgetown University) [hereinafter cited as *DOLAND*]; Letter from Col. Jeremiah Wadsworth to John Cadwalader, April, 1782 on file in Cadwalader Collection, Pennsylvania Historical Society.

33. R. MORRIS, *ALEXANDER HAMILTON AND THE FOUNDING OF THE NATION* 47-50 (1957); CORWIN at 35.

34. Letter from Charles Carroll to Samuel Chase, August 23, 1781, which appears in the *Maryland Gazette* of that date.

35. *DOLAND* at 8-9; *Maryland Journal and Baltimore Advertiser* (Baltimore, Maryland), Jan. 22, 1782; *Maryland Gazette* (Annapolis, Maryland), Jan. 24, 1782.

36. *MARYLAND SOCIETY OF THE SONS OF THE AMERICAN REVOLUTION, THE MARYLAND SIGNERS OF THE DECLARATION OF INDEPENDENCE* 2 (1912).

ratify the Federal Constitution, he vigorously opposed its acceptance unless it was amended to secure certain basic rights, such as trial by jury and freedom of the press, and unless more protection was given to preserve the sovereign powers of the States; he feared that otherwise public liberty would be sacrificed by placing too much power in the hands of the federal government.<sup>37</sup> His outspoken anti-Federalist views and delaying tactics were to no avail. His adverse vote notwithstanding, Maryland ratified the Constitution on April 26, 1788 by a vote of 63 to 11.<sup>38</sup>

One year later, in 1789, quite shamelessly, the outspoken anti-Federalist wrote to George Washington, asking for the opportunity to serve the Federalist Administration as one of the five associate justices of the Supreme Court.<sup>39</sup> He was not appointed.

A few years before, in 1786, Chase had moved from Annapolis to Baltimore at the urging of his friends, particularly Col. John Eager Howard, who had made a gift to Chase of a square of land bounded by Eutaw, Lexington, Fayette and Paca Streets, a lot upon which Chase built his permanent home, where he lived and died.<sup>40</sup>

In 1788, he became Chief Judge of the newly organized Criminal Court of Baltimore City and County.<sup>41</sup> In 1791, Chase also was appointed Chief Judge of the General Court of Maryland, only to become the center of controversy once again.<sup>42</sup> He was charged in the House of Delegates with violating the State's Declaration of Rights by accepting and executing the two judicial offices at the same time. The attempt to remove him as a judge in these impeachment proceedings failed by a vote of 41-20 in his favor; but a majority subsequently concurred in a resolution that the state constitution had been violated by his simultaneous tenure of the two offices.<sup>43</sup>

### III. JUSTICE ON THE SUPREME COURT

Just why Chase turned Federalist is something of a mystery. At any rate, not discouraged by his earlier failure, in 1794, he again wrote

37. Letter from Samuel Chase to John Lamb, June 13, 1788, a copy of which appears in the collection of Chase manuscripts of the Maryland Historical Society; J. FREDERICK ESSARY, *MARYLAND IN NATIONAL POLITICS* 84 (1915) [hereinafter cited as *ESSARY*]; SANDERSON at 218-20; SCHARF at 547.

38. E. DELAPLAINE, *THE LIFE OF THOMAS JOHNSON* 444, 447 (1927); SCHARF at 543. Crowl, *Anti-Federalism in Maryland 1787-1788*, 4 *WM. & MARY Q.* 446, 457 (1947) (3d ser.).

39. Letter from Samuel Chase to George Washington, Sept. 3, 1789, in *GEORGE WASHINGTON PAPERS* (microfilm at Columbia University).

40. SCHARF at 590; SANDERSON at 217.

41. Chase's resolute determination to assert the supremacy of the law was characteristically displayed in 1794, when, as chief judge of the criminal court at Baltimore, he ordered the arrest of two popular ringleaders of a riot. When one of them refused security and was ordered taken to the jail, the sheriff hesitated to execute the warrant. Chase told him to summon the *posse comitatus* to his assistance. When informed that no one would serve, Chase said, "[S]ummon me, sir, I will be the *posse comitatus*, I will take him to jail." SCHARF at 590.

42. *ESSARY* at 82; SANDERSON at 217.

43. CORWIN at 35; SCHARF at 591. *MD. DECL. OF RIGHTS*, art. 32 (1776) stated that "no person ought to hold, at the same time, more than one office of profit. . . ." See NILES at 399.

Washington of his desire to serve the national government.<sup>44</sup> In June 1795, James McHenry, a close friend of Washington, recommended Chase for the Supreme Court.<sup>45</sup> Washington was cautious, noting the man's abilities but also aware that Chase had opposed the Constitution and was accused by many in his own state of "impurity in his conduct."<sup>46</sup> By January, 1796, however, Washington made up his mind. He wrote McHenry offering him the office of Secretary of War and, almost as a postscript, continued: "Sound, I pray you, and let me know without delay, if Mr. Saml [sic] Chase would accept a seat on the Supreme Judicial bench of the United States. . . ."<sup>47</sup>

The acceptance was as unconventional as the offer. McHenry replied that he would undertake the duties of War Secretary and added, "Chase will accept too."<sup>48</sup>

According to one commentator: "Chase's performance on the Supreme Court was the most notable of any previous to Marshall. [In the early years, the Justices gave their opinions *seriatim* and] Chase was required for several terms to give his opinions first. This accident of position, together with the colorful quality of his judicial utterances . . . [and] their richness in political science all contributed to give his opinions predominant importance in this period."<sup>49</sup> In his opening term, February 1796, he delivered two notable opinions — *Hylton v. United States*<sup>50</sup> and *Ware v. Hylton*.<sup>51</sup>

*Hylton v. United States* sustained a specific tax on carriages as an excise tax rather than a direct tax. In addition, a definition of direct taxes which was to prevail for 99 years was enunciated. Chase said, "I am inclined to think that a tax on carriages is not a direct tax within the letter or meaning of the constitution [*sic*]. . . . [A] tax on expense is an indirect tax; and I think, an annual tax on a carriage for the conveyance of persons, is of that kind; because a carriage is a consumable commodity; and such annual tax on it, is on the expense of the owner."<sup>52</sup> By considering the tax indirect, Chase avoided declaring an act of Congress unconstitutional; however, his decision openly assumed that the Court possessed the right of judicial review, a doctrine made indelible seven years later by John Marshall.

*Ware v. Hylton*<sup>53</sup> remains to this day the most impressive assertion of the supremacy of national treaties over state laws. In *Ware*, a

44. Letter from Samuel Chase to George Washington, July 19, 1794, in GEORGE WASHINGTON PAPERS (microfilm at Columbia University).

45. Letter from James McHenry to George Washington, June 14, 1795, in B. STEINER, THE LIFE AND CORRESPONDENCE OF JAMES MCHENRY 159 (1907).

46. Letter from George Washington to Alexander Hamilton, Oct. 29, 1795, in 34 THE WRITINGS OF GEORGE WASHINGTON 347, 349 (J. Fitzpatrick ed. 1931-1940).

47. Letter from George Washington to James McHenry, Jan. 20, 1796, in *id.* at 423-24.

48. Letter from James McHenry to George Washington, Jan. 24, 1796, in STEINER, *supra* note 45, at 164.

49. CORWIN at 36.

50. 3 U.S. (3 Dall.) 171 (1796).

51. 3 U.S. (3 Dall.) 199 (1796).

52. 3 U.S. (3 Dall.) at 173, 175. Chase added gratuitously that, "The direct taxes contemplated by the constitution are only two, to wit, a capitation or poll tax, . . . and a tax on land." *Id.*

53. 3 U.S. (3 Dall.) 199 (1796).



1777 Virginia law which sequestered debts owed by its citizens to British creditors was held to have been nullified by the Treaty of Paris of 1783 which provided that no legal impediments would be met by creditors on either side seeking collection of bona fide debts.

Another outstanding opinion of Chase is *Calder v. Bull*<sup>54</sup> delivered in 1798. According to Corwin: "It is still cited for its definition of an *ex post facto* law, but is even more important for its suggestion that there are unwritten, inherent limitations on legislative powers. This doctrine was presently taken up by the state courts and may be fairly regarded as the germ of the modern doctrine of due process of law as 'reasonable law.'"<sup>55</sup>

His opinion in *Cooper v. Telfair*,<sup>56</sup> rendered in 1800, is interesting because of his statement that "It is, indeed, a general opinion, it is expressly admitted by all this bar . . . that the supreme court [*sic*] can declare an act of congress [*sic*] to be unconstitutional, and, therefore, invalid."<sup>57</sup>

While traveling on circuit, Chase delivered an important opinion in *United States v. Worrall*<sup>58</sup> in which, traversing the previous views of his brethren, he stated that the courts of the United States have no jurisdiction over crimes at common law. Years later, in 1812, this view was accepted by the Supreme Court,<sup>59</sup> and it still remains the law of the land.

From the time of Marshall's accession to the Supreme Court in January, 1801, Chase's role on the Court became a subordinate one.<sup>60</sup> The Chief Justice himself now spoke out for the Court, and, during the next ten years that followed, Chase delivered but one opinion of the Court, and that in a case which had been appealed from one of Marshall's own decisions while on circuit.<sup>61</sup> He also delivered one brief concurring opinion<sup>62</sup> and once announced his dissent.<sup>63</sup> Through ill health, more specifically gout, he was absent from the bench for the entire term of 1806 and also that of 1810. In 1811, the year of his death, no Court was held.<sup>64</sup>

#### IV. THE JUSTICE ON CIRCUIT; PROLOGUE TO IMPEACHMENT

Events leading up to Chase's impeachment began to take shape in 1798, when censure of the party in power, the Federalists, by the Republicans became common because of rapidly deteriorating relations with France. When some of the federal judges, including Justice Chase, refused to bring to trial persons thought to be subversive under federal common law, Congress, to resolve the conflict, passed the Sedition

54. 3 U.S. (3 Dall.) 386 (1798).

55. CORWIN at 36.

56. 4 U.S. (4 Dall.) 14 (1800).

57. *Id.* at 19.

58. 28 F. Cas. 774 (No. 16,766) (C.C.D. Pa. 1798).

59. *United States v. Hudson & Goodwin*, 11 U.S. (7 Cranch) 32 (1812).

60. CORWIN at 37.

61. *Blaine v. The Ship Charles Carter*, 8 U.S. (4 Cranch) 328 (1808).

62. *Head & Amory v. Providence Ins. Co.*, 6 U.S. (2 Cranch) 127, 169 (1804).

63. *Hudson v. Guestier*, 8 U.S. (4 Cranch) 293, 298 (1808).

64. CORWIN at 37.

Act in July, 1798, which made it illegal for any person to write, print or publish any false, scandalous and malicious writing against the government of the United States or either House of the Congress or the President.<sup>65</sup>

The Federalists maintained the constitutionality of the law as an establishment of the English common law of seditious libel.<sup>66</sup> The Jeffersonians, of course, attacked the law as an inordinate unconstitutional violation of the first amendment.

The political storm generated by the passage of the Act was considerably intensified by its enforcement. Judges, whose interpretation and application of the law were distinctly partisan, drew the judiciary into the realm of politics as it had never been before. Of all the judges involved in enforcing the Sedition Act, none took his duties more seriously than did Mr. Justice Chase.

Thomas Cooper, Editor of the *Sunbury and North UMBERLAND Gazette* in Pennsylvania, was indicted for an attack made upon President Adams in his newspaper. The trial in the Circuit Court at Philadelphia received wide attention. It was presided over by Samuel Chase.<sup>67</sup> Cooper, who had chosen to defend himself, first applied for a subpoena duces tecum to compel President Adams to appear with certain documents necessary to the defense. In a rage, Samuel Chase refused to issue the writ as an indecent request. Cooper then requested a postponement so he could procure certified copies of Adams' writings to use in his defense. Chase gave him three days. Cooper subsequently appeared without his evidence and attempted to explain that the President's secretary refused to cooperate with his request. The defendant, still hoping to gather evidence, again asked for a postponement, but Chase's patience was exhausted. Why had Cooper not thought of these things when he wrote his libel. Chase maintained that Cooper could not demand the papers by any law or reason, nor rely on newspapers except at his own risk. The statements, Chase emphasized, should never have been made when no proof was available.

Chase instructed the jury to acquit Cooper if the government had failed to prove that the defendant wrote the words and that he had published them with malicious intent. If Cooper had proven the truth of his remarks, then they were justified despite the intent. Considered in the context of the political turmoil of the time, Chase thus seemed to place the burden of truth on Cooper and in effect told the jury to consider him guilty until proven innocent.<sup>68</sup> After the evidence was in,

65. See Anderson, *The Enforcement of the Alien and Sedition Laws*, ANNUAL REPORT OF THE AMERICAN HISTORICAL ASSOCIATION 118 (1912).

66. A. KELLY & W. HARBISON, *THE AMERICAN CONSTITUTION* 197 (1955).

67. T. COOPER, AN ACCOUNT OF THE TRIAL OF THOMAS COOPER 8-10, 13 (1800) [hereinafter cited as COOPER]; F. WHARTON, *STATE TRIALS OF THE UNITED STATES DURING THE ADMINISTRATIONS OF WASHINGTON AND ADAMS* 659-79 (1849) [hereinafter cited as WHARTON]; BEVERIDGE at 33-34.

68. J. SMITH, *FREEDOM'S FETTERS* 325 (1956) [hereinafter cited as SMITH]. The burden of proof provisions of the Sedition Law (Act of July 14, 1798, ch. 74, §§ 1-4, 1 Stat. 596) were unclear. Section 2 seemed to place the burden on the government to prove that the defendant's utterance was "false, scandalous and malicious." Section 3 permitted the defendant to give evidence of the truth of his utterance. Judge Chase's

Chase charged the jury at intolerable length. His words were not impartial. Chase's confession to the jury that "he could not suppress his aversion to Cooper's gross attack upon the President" was the final stroke. An inevitable verdict of guilty followed. Cooper was sentenced to six months in prison, to pay a \$400 fine, and to furnish security for his good behavior upon the expiration of the sentence in the sum of \$2,000.<sup>69</sup>

Almost immediately following the Cooper trial, Justice Chase and District Judge Peters presided at the trial of John Fries, an itinerant auctioneer who had been indicted for treason for promoting an insurrection to resist the Federalist land tax, [a direct property tax based on the number of windows in each house].<sup>70</sup> This was Fries' second trial. His first one had been before Justice James Iredell and Judge Peters, but a new trial had been granted because of alleged prejudice of a juror.<sup>71</sup> At the second trial before Justice Chase and Judge Peters, the facts were agreed to by defense counsel, who nevertheless strenuously contended that the prisoner's misdeeds fell short of the legal definition of treason. Chase had read and agreed with the judicial opinions of Justice Iredell and Judge Peters (who had convicted Fries and sentenced him to death for treason). Thinking it would save time to inform everyone of the judgment he had formed on the law of treason, before the jury had even been sworn, Chase handed out three papers in writing and announced that these contained the opinion of the judges upon the law of treason. One copy was for the prosecution, one was for the defendant's counsel, and one was reserved for the jury. Chase asserted that it was the duty of the judges "to state to the jury their opinion of the law arising on the facts," although he added that "the jury are to decide . . . in all criminal cases both the law and the facts, on their consideration of the whole case."<sup>72</sup> Chase was thus willing to permit defense counsel to argue to the jury that the court was mistaken in its opinion of the law even though that opinion had been written down and distributed. John Fries' distinguished and able counsel, William Lewis and Alexander J. Dallas, of the Philadelphia bar, were enraged. Lewis looked upon the paper and flung it from him declaring that his hand never should be "tainted with a prejudged opinion," and he withdrew from the case, although Chase tried to persuade him to "go on in [his] own way."<sup>73</sup> Dallas likewise withdrew, and the terrified prisoner was left to defend himself. Chase told the prisoner that the judges, personally, would see that justice was done, saying, "[We] will be your counsel, and give you every assistance and indulgence. . . ."<sup>74</sup> Whatever aid the court gave the poor man was

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charge placed little emphasis on the government's burden of proving the falsity of the utterance and attached paramount importance to defendant's right to present evidence as to truth, thus in effect shifting the burden of proof. *Id.*

69. *Id.* at 326-28; COOPER at 50; WHARTON at 679.

70. WHARTON at 610-41; BEVERIDGE at 34-36.

71. For Justice Iredell's charge to the grand jury, the trial of Fries, Iredell's charge to the petit jury and his opinion granting a new trial, see WHARTON at 458-609.

72. 14 ANNALS OF CONG. 166 (1805); WHARTON at 634.

73. 14 ANNALS OF CONG. 166-68 (1805).

74. WHARTON at 629.

unavailing. The jury delivered a verdict of guilty, and Chase pronounced the sentence, which was that the condemned man should be "hanged by the neck until dead."<sup>75</sup>

The Republicans furiously assailed the conviction and sentence. Only one man could save John Fries. Before leaving office, President Adams issued a pardon<sup>76</sup> allowing the prisoner to return to his former life as an auctioneer, much to the disgust of the Federalist leaders.

In June, 1800, on the heels of the Fries trial, came the trial of James Thompson Callender for sedition, over which it was once again the fate of Chase to preside.<sup>77</sup> Every controversial element from the preceding trials came into sharp focus — political bias, seditious criticism, strong-willed men, and judicial intimidation — and it all came together in the May, 1800 term, this time in the Circuit Court for the Commonwealth of Virginia.

Callender was an ex-patriate who fled his native land of Scotland to escape trial there for publishing seditious material. He came to the United States and became a member of the editorial staff of the Philadelphia *Aurora*. In that capacity and with the encouragement of Jefferson, Callender initiated the most sustained and violent denunciation of the Adams administration ever circulated. In 1800, he published a book, *The Prospect Before Us*,<sup>78</sup> which would end his career. The Adams administration was characterized as "a tempest of malignant passions;" Adams' system had been "a French war, an American navy, a large standing army, [and] an additional load of taxes." Adams was "a professed aristocrat and he had proved faithful and serviceable to the British interest" by sending John Marshall (Secretary of State) and his associates to France. In the President's speech to Congress, the book went on, "this hoary headed incendiary . . . bawls to arms! then to arms!"<sup>79</sup>

Luther Martin, Attorney General of Maryland and Chase's good friend, purchased the book and underscored such passages as he thought remarkable and when he next saw Chase, he gave him the marked copy, saying, "You may amuse yourself with it [the book] as you are going down [to Richmond], and make what use of it you please."<sup>80</sup> In Annapolis, Chase was heard to remark in a "conversation, altogether of a jocular complexion," that "before he left Richmond, he would teach the people to distinguish between the liberty and the licentiousness of the press." He is reported to have added that, although a sincere friend to liberty, "if the Commonwealth or its inhabitants were not too depraved to furnish a jury of good and respectable men, he would certainly punish Callender."<sup>81</sup>

Although his words were probably in jest, Chase undoubtedly desired to demonstrate that a law of the United States could be enforced

75. *Id.* at 641.

76. Adam's pardon of Fries is reprinted *id.*

77. *Id.* at 688-718; BEVERIDGE at 36.

78. JAMES T. CALLENDER, *THE PROSPECT BEFORE US* (1800).

79. *Id.*, *passim*; BEVERIDGE at 37.

80. 14 ANNALS OF CONG. 246 (1805).

81. *Id.* at 216-17, 247 (1805).

in a state whose legislature had officially condemned it. Within two days after Chase arrived in Richmond, Callender was indicted. When Jefferson realized the inevitability of Callender's prosecution, he wrote James Monroe, Governor of Virginia, saying, "I think it essentially just and necessary that Callender should be substantially defended. . . ."<sup>82</sup>

Philip Nicholas, William Wirt and George Hay of the Virginia bar, welcoming a chance to attack the Sedition Law, offered their services in the cause of the free press. The hot-spirited Chase soon resolved to forestall these passionate young defenders of liberty. Counsel immediately applied for a continuance to the November term because of the absence of material witnesses and documents. Chase reasserted the opinion stated at the Cooper trial that a person should not publish an alleged libel without having on hand documents which would prove the truth of one's assertions. He deferred the case for three days.<sup>83</sup>

The next clash occurred when Hay requested permission to ask each juror the question, "Have you ever formed and delivered an opinion on the book entitled 'The Prospect Before Us,' from which the charges in the indictment are extracted?" Chase immediately answered, "That question is improper, and you shall not ask it." The only proper question according to the Judge was, "Have you ever formed and delivered an opinion upon this charge [contained in the indictment]?"<sup>84</sup> John Bassett, like the rest of the jurors, answered in the negative, but then asked to be excused because he was convinced the book was a violation of the Sedition Law. Chase refused the request. Prejudicial opinion of the book was not just cause for removal, and since neither Bassett nor any of the jurors (all Federalists) had read the actual indictment, Chase maintained they could therefore have formed no opinion about it. All were duly sworn.<sup>85</sup>

Throughout the trial, Chase was witty and fearless and brought down on Hay and Wirt the laughter of the spectators. Chase frequently interrupted the defendant's counsel with exclamations such as, "What, must there be a departure from common sense to find out a construction favorable to Callender?"<sup>86</sup>

The most important witness in Callender's behalf was John Taylor of Caroline, by whom the defense hoped to prove that Adams had avowed sentiments favorable to monarchy and aristocracy and that part of Callender's statements were true. Chase's immediate reaction to the swearing of Taylor was to ask what defense counsel expected to prove by the witness. When told, the Judge requested that all questions for Taylor be reduced to writing and submitted to the court for approval. Counsel, though indignant, submitted the questions to the Judge who, after examining them, declared Taylor's evidence inadmissible. The proffer [said he] had "no direct and proper application to the issue;

82. Letter from Thomas Jefferson to James Monroe, May 26, 1800, in 7 *THE WRITINGS OF THOMAS JEFFERSON* 447 (P. Ford ed. 1896).

83. He made this decision when Nicholas was dissatisfied with Chase's offer of a two to six weeks' continuance. 14 *ANNALS OF CONG.* 267-69 (1805).

84. *WHARTON* at 696-97.

85. 14 *ANNALS OF CONG.* 118-19, 250-51, 254 (1805).

86. *BEVERIDGE* at 39.

[and] would deceive and mislead the jury." It was "an argumentative justification of a trivial, unimportant part of a libel, [which] would be urged before a jury as a substantial vindication of the whole." "No evidence is admissible," said Chase, "that does not go to justify the whole charge."<sup>87</sup>

Singularly unsuccessful thus far in their joust with Justice Chase, defense counsel now proceeded to advance a contention which all Federalist judges presiding over sedition trials theretofore had refused to hear, namely, that the Sedition Act was unconstitutional. Young Wirt tackled the job. But each time he argued that the jury could decide the constitutionality of the Sedition Act, Chase interrupted. Wirt insisted that he was going on. Chase retorted, "No, sir, you are not going on, I am going on."<sup>88</sup> Chase agreed that the jury could decide whether the acts committed were prohibited by the law. "It is [however] one thing to decide what the law is, on the facts proved, and another and a very different thing, to determine that the statute produced is no law."<sup>89</sup>

Young Wirt persisted. He argued that if the jury "have the right to consider the law," (a point on which Chase agreed), "and since the constitution [*sic*] is the law, the conclusion is certainly syllogistic, that the jury have a right to consider the constitution [*sic*]." "A *non sequitur*, sir," replied Chase with a deep bow. To the laughter of the spectators, Wirt sat down. Still later, after another interruption, in which Chase referred to Wirt as "the young gentleman" in a manner which greatly amused the audience, the discomfited attorney abandoned the case.<sup>90</sup>

George Hay, in turn, in one last vain attempt, addressed the jury, stating that since they had the right to determine every question necessary to a decision of guilt or innocence, he would attempt to convince the jury that the statements at issue were not libel since there was no law defining a libel or prescribing its punishment. Chase twice interrupted Hay, asserting that the beardless attorney was not stating the law correctly. Thereupon, Mr. Hay folded up and put away his papers and prepared to leave. The Judge begged Hay to continue but Hay and his colleagues indignantly stalked from the court room.<sup>91</sup>

Upon instructions from Chase, the jury rendered a verdict of guilty within two hours, and the court sentenced the accused to serve nine months in prison and to pay a \$200 fine.<sup>92</sup>

Following the Callender trial, Chase travelled on circuit from Richmond to New Castle, Delaware, where he doggedly refused to discharge the grand jury until the prosecutor first investigated the activities of a newspaper publisher to ascertain whether any seditious material had been printed and whether an indictment should be issued.<sup>93</sup>

87. 14 ANNALS OF CONG. 211 (1805); WHARTON at 707; SMITH at 353.

88. 14 ANNALS OF CONG. 272 (1805).

89. WHARTON at 713; BEVERIDGE at 40.

90. WHARTON at 710; BEVERIDGE at 40.

91. 14 ANNALS OF CONG. 202-03 (1805); WHARTON at 711-12; BEVERIDGE at 40.

92. WHARTON at 718.

93. 14 ANNALS OF CONG. 228, 284-85 (1805); BEVERIDGE at 41.

Two years and some months passed by. Then in May, 1803, only two months after *Marbury v. Madison* had been decided, Justice Chase, in charging the grand jury at Baltimore, mercilessly denounced and assailed Republican principles, making particular reference to the repeal by the Republicans of the Judiciary Act of 1801<sup>94</sup> and to an amendment to the constitution of Maryland which removed property qualifications and conferred the right to vote upon all free white male citizens over the age of twenty-one.<sup>95</sup> He said:

[T]he bulk of mankind are governed by their passions, and not by reason. . . . The late alteration of the Federal judiciary . . . and the recent change in our State Constitution, by the establishing of universal suffrage, . . . will . . . take away all security for property and personal liberty . . . and our republican constitution will sink into a mobocracy, the worst of all possible governments.<sup>96</sup>

Chase condemned "the modern doctrines [espoused] by [our] late reformers, that all men, in a state of society, are entitled to enjoy equal liberty and equal rights, [which] have brought this mighty mischief upon us." [a mischief which he feared] "will rapidly progress until peace and order, freedom and property, shall be destroyed . . . [Will justice be impartially administered by judges dependent on the legislature for their support?] Will liberty or property be protected or secured by laws made by representatives chosen by electors, who have no property in, or a common interest with, or attachment to, the community?"<sup>97</sup>

John Montgomery, an irate young Republican member of the Maryland Legislature, who had listened to this tirade to the grand jury, denounced Chase in the *Baltimore American* newspaper<sup>98</sup> and demanded Chase's impeachment and removal from the bench. The legislator hastened to send a clipping of the article to President Jefferson.<sup>99</sup> Newspapers throughout the country assailed or defended Chase's charge, according to the partisan bias of each paper.<sup>100</sup>

President Jefferson promptly wrote to Representative Joseph Nicholson of Maryland, who had managed the impeachment of Judge Pickering, saying:

You must have heard of the extraordinary charge of Chace[sic] to the grand jury at Baltimore. Ought this seditious and official

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94. Act of Feb. 13, 1801, ch. 4, §§ 1-41, 2 Stat. 89. The Judiciary Act of 1801 increased the number of judicial districts from thirteen to twenty-three and the number of circuits from three to six, with three circuit judges in each circuit, thus excusing the Justices of the Supreme Court from riding circuit. President Adams appointed all the judges, marshals and attorneys less than one month before Jefferson took office, hence the term "midnight judges." The Jeffersonians lost no time repealing the Judiciary Act of 1801 by an act passed in March, 1802, thus reviving the Judiciary Act of 1789. In April, 1802, another act divided the country into six instead of three circuits, with one Justice of the Supreme Court and a judge of the district being designated to preside over the courts in these circuits. SCHARF at 607-08.

95. NILES at 376.

96. C. EVANS, REPORT OF THE TRIAL OF THE HONORABLE SAMUEL CHASE 60-61 (appendix) (1805).

97. *Id.*

98. June 13, 1803.

99. BEVERIDGE at 170.

100. WARREN at 277.

attack on the principles of our Constitution, and on the proceedings of a State, go unpunished?<sup>101</sup>

Nicholson, who hoped to have Chase's seat on the bench, thought it prudent to defer to the eager John Randolph of Virginia. And so it was that in January, 1804, John Randolph submitted to the House a resolution demanding an inquiry into Chase's conduct. On March 12, 1804, the House voted to impeach Chase, 73 to 32.<sup>102</sup> Months of inquiry into his activities and months of careful courting of public opinion by the Republicans followed.<sup>103</sup>

## V. IMPEACHMENT AND TRIAL

At the time of the inquiry, a majority of the Republicans in positions of power sanctioned the impeachment of federal judges as a means of successfully stifling the ideas of the opposition, maintaining that since impeachment was the only constitutional means of removing judges, "high crimes and misdemeanors" must be broadly construed so that poor judicial ethics or misconduct would be included.<sup>104</sup> As mentioned earlier, Senator William Giles went considerably further than this, saying that impeachment was nothing more than an inquiry by the two Houses of Congress into whether a public office should be taken away in order to give it to a man who might fill it better.<sup>105</sup>

On November 30, 1804, in culmination of the investigation, Representative Randolph reported the articles of impeachment to the House of Representatives.<sup>106</sup> Article I charged Chase with "arbitrary, oppressive and unjust" conduct in delivering an opinion in writing at the trial of John Fries on the pertinent question of law which tended "to prejudice the minds of the jury against . . . [John] Fries, the prisoner, before counsel had been heard in his defense." Articles II through VI concerned the Callender trial; Chase's refusal to excuse the juror, John Bassett; his refusal to allow John Taylor, a material witness for Callender, to testify; his intemperate behavior and manifest partiality, along with the "unusual, rude and contemptuous expressions towards the prisoner's counsel," and the "indecent solicitude . . . for the conviction of the accused, unbecoming even a public prosecutor, but highly disgraceful to the character of a judge." Article VII concerned Chase's conduct at the Circuit Court in Newcastle, Delaware in June, 1800 when he refused to discharge the grand jury. Article VIII, the concluding article, concerned Chase's charge to the Grand Jury in Baltimore in May, 1803 characterizing it "as an intemperate and inflammatory political harangue," which was intended to incite "the fears and

101. Letter from Thomas Jefferson to Joseph Nicholson, May 13, 1803, in 10 THE WRITINGS OF THOMAS JEFFERSON 390 (A. Lipscomb ed. 1903).

102. 13 ANNALS OF CONG. 1180-81 (1804); 14 ANNALS OF CONG. 83 (1805); WILLIAM PLUMER'S MEMORANDUM OF PROCEEDINGS IN THE UNITED STATES SENATE 1803-07, at 101 (E. Brown ed. 1923) [hereinafter cited as PLUMER].

103. BEVERIDGE at 171.

104. CORWIN at 37.

105. See note 10 *supra*; BEVERIDGE at 173.

106. 14 ANNALS OF CONG. 680 (1804).



resentment" not only of the grand jury but of the good people of Maryland against their State government, their Constitution and the Government of the United States.<sup>107</sup> The eighth Article (upon which the House managers based their strongest hopes) concluded by referring to Chase's opinions delivered to the grand jury as "highly indecent, extra-judicial, and tending to prostitute [sic] the high judicial character with which he was invested to the low purpose of an electioneering partisan."<sup>108</sup>

In December, 1804, eleven months after the inquiry began, the House voted upon the eight articles of impeachment and elected seven managers to conduct the prosecution. The articles were carried to the Senate which, after hearing them read, issued a summons for Chase, returnable January 2, 1805, at which time the Justice was to answer the charges against him. Chase begged for a postponement until the next term to give him time to prepare his defense. A remorseless Senate gave him but one month.<sup>109</sup>

On February 4, 1805, the Senate convened to the cry of the Sergeant at Arms: "Oyez oyez! oyez! All persons are commanded to keep silence on pain of imprisonment, while the grand inquest of the nation is exhibiting to the Senate of the United States, sitting as a Court of Impeachments, articles of impeachment against Samuel Chase, Associate Justice of the Supreme Court of the United States."<sup>110</sup>

Aaron Burr, Vice President of the United States, an indictment of murder hanging over him in the State of New Jersey as a result of his recent duel with Hamilton, presided over the trial and had sole power to make the necessary arrangements, which were as dramatic as the event itself.<sup>111</sup> The Senate chamber had been specially fitted up "in a style of appropriate elegance," reflecting the importance of what was to transpire in the coming weeks. "It is a Roman amphitheatre," exclaimed Senator Uriah Tracy.<sup>112</sup> From either side of Vice President Burr's chair there extended two rows of benches covered with crimson cloth. Here sat the thirty-four Senators who were to act as jurors. The remainder of the floor was outfitted with rows of benches covered in green cloth, to be occupied by the members of the House. Below the permanent gallery, a temporary gallery had been constructed, to provide a place for the ladies who might attend. To the front of the Vice President's chair, two boxes covered with blue cloth had been placed, one on the right to accommodate the managers, and one on the left, for Judge Chase and his counsel.<sup>113</sup>

The managers for the House were Representatives John Randolph, Caesar Rodney, Joseph Nicholson, Peter Early, John Boyle, Christo-

107. *Id.* at 728-31.

108. *Id.* at 731.

109. *Id.* at 92-94, 98-100, 731-62 (1804-1805); PLUMER at 216, 236-37, 241; SCHARF at 613; Maryland Gazette (Annapolis, Maryland), Jan. 10, 1805.

110. BEVERIDGE at 175. A colorful summary of the trial appears in BEVERIDGE at 175-220.

111. *Id.* at 180.

112. Johnson, *Impeachment and Politics*, 63 So. ATL. Q. 552, 554 (1964).

113. 14 ANNALS OF CONG. 100 (1805). See BEVERIDGE at 179-80; PLUMER at 235; Independent Chronicle (Boston, Massachusetts), Feb. 18, 1805.

pher Clark and George Washington Campbell, Randolph being the chairman and main spokesman.<sup>114</sup>

Charles Lee, former Attorney General under John Adams, Joseph Hopkinson of the Philadelphia bar, Philip Barton Key, brother of the author of the "Star Spangled Banner," and Robert Goodlow Harper, an early Federalist leader, comprised a battery of brilliant lawyers for the defense.<sup>115</sup> Also, in the chair next to Chase sat his old friend Luther Martin, sixty-one years of age, "near-sighted, absent-minded, shabbily attired, harsh of voice . . . with a face crimsoned by the brandy which he constantly imbibed . . .," who later was to dominate the proceedings.<sup>116</sup>

For two and one-half hours the Senate listened as Chase read his answers to the charges contained in the eight articles of impeachment. Randolph then requested time to prepare a replication which he delivered several days later. Finally, on February 9, 1805 the trial began.<sup>117</sup>

For five days, witnesses for the prosecution were paraded to the stand, sworn and questioned concerning Chase and his conduct at the trials of Cooper, Fries and Callender and before the Grand Juries at Newcastle, Delaware and Baltimore, Maryland. Some fifty-two witnesses were examined and the testimony fills two volumes, being the most elaborate record of any impeachment trial before the Senate.<sup>118</sup>

John Quincy Adams, who of course may be charged with some bias for the Federalist cause, subsequently described the prosecution's case as follows:

Not only more [sic were?] witnesses examined as to points of *opinion* . . . to say whether the deportment of the Judge was *imperative* or *imperious*, but hours of interrogation and answer were consumed in evidence to *looks*, to *bows*, to tones of voice and modes of speech — to prove the insufferable grievance that Mr. Chase had more than once raised a laugh at the expense of Callender's counsel, and to ascertain the tremendous fact that he had accosted the *Attorney General of Virginia* by the appellation of *young gentleman!*

. . . In short, sir, gravity himself could not keep his countenance at the nauseating littlenesses which were resorted to for proof of atrocious criminality, and indignation melted into ridicule at the

114. SCHARF at 613; WARREN at 289.

115. ESSARY at 89; BEVERIDGE at 185.

116. BEVERIDGE at 186. During the period from 1780 until 1819, Luther Martin appeared in 259 of the 721 cases (36%) heard before the General Court of Maryland and the Court of Appeals of Maryland. In addition to this, between 1776 and 1805, as Attorney General of the State, Martin prosecuted all the criminal cases in Baltimore County, which then included Baltimore City. Stanley, *A Great Maryland Lawyer and His Relation to His Times*, 57 TRANSACTIONS OF THE MARYLAND STATE BAR ASSOCIATION 268-69 (1952).

117. 14 ANNALS OF CONG. 107-51, *passim* (1805); PLUMER at 274, 279.

118. 14 ANNALS OF CONG. 164-233, *passim* (1805); PLUMER at 278, 280, 283-85; BEVERIDGE at 189-91.

puerile perseverance with which *nothings* were accumulated, with the hope of making *something* by their multitude.<sup>119</sup>

The defense in turn used four days and the testimony of thirty-three witnesses to explain Chase's actions. On February 19, Chase was suffering from such a painful attack of the gout that Burr granted him permission to withdraw from further attendance at the trial.<sup>120</sup> The next day brought an end to the testimony and lengthy summations began.

Peter Early spoke first on behalf of the managers, covering the whole ground of accusation.<sup>121</sup> Next, George Washington Campbell, although disclaiming any political motives, presented a long and elaborate argument in support of the Jeffersonian view of impeachment:

Impeachment, according to the meaning of the Constitution, may fairly be considered a kind of inquest into the conduct of an officer, merely as it regards his office; the manner in which he performs the duties thereof; and the affects that his conduct therein may have on society . . . more in the nature of a civil investigation, than of a criminal prosecution.<sup>122</sup>

He then analyzed in great detail the official acts of Chase, particularly at the Callender trial. Referring to copious notes, Campbell spoke in a dull and confused manner for parts of two days, often to a nearly empty Senate chamber, drinking nine glasses of water in the process.<sup>123</sup>

Joseph Hopkinson then opened for the defense.<sup>124</sup> He first addressed himself to the threshold question of what acts or offenses of a public officer are the objects of impeachment. The Constitution, he argued, authorized impeachment only in cases of treason, bribery, or other high crimes or misdemeanors. "No judge can be impeached and removed from office for any act or offense for which he could not be indicted." "The House of Representatives," he continued, "has the power of impeachment; but for what they are to impeach, in what cases they may exercise this delegated power, depends on . . . the Constitution, and not on their opinion, whim, or caprice."<sup>125</sup> Chase had not been charged with treason or bribery, and certainly the commission of a "high crime or misdemeanor" had not been established. To permit the impeachment of a judge in these circumstances would prostrate the judiciary at the feet of the House and undermine its independence. "[I]f a judge is forever to be exposed to prosecutions and impeachments for his official conduct, on mere suggestions of

119. Letter from John Quincy Adams to John Adams, March 8, 1805, in 3 WRITINGS OF JOHN QUINCY ADAMS 112-13 (W. Ford ed. 1913); BEVERIDGE at 190 n.4.

120. BEVERIDGE at 196-97.

121. 14 ANNALS OF CONG. 312-29 (1805). See BEVERIDGE at 197.

122. 14 ANNALS OF CONG. 332 (1805); BEVERIDGE at 198.

123. 14 ANNALS OF CONG. 329-53 (1805); BEVERIDGE at 198; PLUMER at 295-97; Letter from John Davenport to John Cotton Smith, Feb. 25, 1805.

124. The complete text of Hopkinson's address is set out in 14 ANNALS OF CONG. 354-73 (1805).

125. *Id.* at 358.

caprice, and to be condemned by the mere voice of prejudice . . . can he hold that firm and steady hand his high functions required?" asked Hopkinson. An independent and permanent judiciary, he declared, gave firmness, stability, and character to the government, and supplied a vital need of the American republic. Without it, "[n]othing can be relied upon; no faith can be given either at home or abroad to a people whose systems and operations and policy are constantly changing with popular opinion." Furthermore, an independent judiciary provided security from oppression. "Tyranny and oppression have not been confined to despotisms, but have been freely exercised in Republics . . . sprung from the impulse of some sudden gust of passion or prejudice." It was therefore necessary to provide some "firm, unshaken, independent branch of Government," such as the judiciary, "protected and protecting by the laws" in order to protect the people from themselves.<sup>126</sup> So spoke Hopkinson for nearly three hours, hours "made brief and brilliant by his eloquence and learning."<sup>127</sup>

Philip Barton Key and Charles Lee then spoke for the defense.<sup>128</sup> It was Friday, February 22, and it was George Washington's birthday, but a celebration was not held, certain Senators feeling that such a gesture would be inappropriate and impolitic.<sup>129</sup>

On the next day, Luther Martin rose in Chase's behalf, addressing an overflowing Senate chamber.<sup>130</sup> The case, he began, was of importance not only to Chase and his accusers, but to their posterity, "for a decision at this time will establish a most important precedent as to future cases of impeachment." He reiterated that the Constitution allowed impeachment only for indictable offenses. If officers of government could be impeached years after the event for acts perfectly legal at the time they were committed, such officers could never be certain as to what was permissible conduct. Any such rule would leave judges and all other officers "at the mercy of the prevailing party." Treason and bribery were clearly indictable offenses. And to interpret "other high crimes and misdemeanors" to include non-indictable offenses would lead to the absurd result that a judge could be removed from office "when he has done nothing which the laws of his country prohibit."<sup>131</sup>

Following a protracted defense of Chase's conduct of the Fries trial, Martin examined Chase's behavior at the Callendar trial. Martin argued that even if Chase had on occasion given too free a rein to his emotions, his behavior was "rather a violation of the principles of politeness, than of the principles of law; rather the want of decorum, than the commission of a *high crime and misdemeanor*."<sup>132</sup> The bow to Wirt after calling his syllogism a "*non sequitur*" was a perfect example, said Martin. "[B]ows, sir, according to the manner they are

126. *Id.* at 363. See BEVERIDGE at 199-200.

127. BEVERIDGE at 200-01.

128. See 14 ANNALS OF CONG. 394, 413 (1805); BEVERIDGE at 201.

129. PLUMER at 299.

130. BEVERIDGE at 201. The complete text of Martin's address is set out in 14 ANNALS OF CONG. 429-502 (1805).

131. 14 ANNALS OF CONG. 429-34 (1805).

132. *Id.* at 475.

made may . . . convey very different meanings." The Senate could not assume that there was even anything rude or improper about it without having seen it.<sup>133</sup> At five o'clock, Martin, who had not eaten that day, asked to be excused until the next morning.<sup>134</sup>

When Martin resumed, he dwelt on the correlation of the Sedition law with the liberty of the press, finding support in the words of Benjamin Franklin, himself a printer, and "as great an advocate for the liberty of the press, as any reasonable man ought to be" and yet who had declared that "unless the slander and calumny of the press is restrained by some other law, it will be restrained by club law."<sup>135</sup> Thus did he justify Chase's conduct at the Callender trial.

Beveridge summarizes the effectiveness of Martin's argument by saying: "[It] impressed the Senate that . . . the integrity of the whole National judicial establishment was in peril, and that impeachment was being used as a partisan method of placing the National Bench under the rod of a political party."<sup>136</sup>

Robert Goodlow Harper closed for the defense. Most of his speech was a verbose repetition of what had already been said.<sup>137</sup>

Managers Nicholson, Rodney and Randolph then concluded for the prosecution. Randolph spoke for two and one-half hours, even though he had been sick the day before and had lost his notes.<sup>138</sup> John Quincy Adams noted in his diary that Randolph spoke

with as little relation to the subject matter as possible — without order, connection, or argument; consisting altogether of the most hackneyed commonplaces of popular declamation, mingled up with panegyrics and invectives upon persons, with a few well expressed ideas, a few striking figures, much distortion of face, and contortion of body, tears, groans and sobs, with occasional pauses for recollection and continual complaints of having left his notes.<sup>139</sup>

It is hard to believe that the *Aurora* covered the same incident. Randolph's reply, the paper reported, was "executed in a style of brilliant and captivating eloquence — a mere description could not furnish any adequate idea of the force and beauty of his speech."<sup>140</sup>

The Senate resolved to meet at noon on Friday, March 1, 1805 to pronounce judgment. Twenty-five of the thirty-four Senators were Republicans. Conviction required but twenty-three votes.<sup>141</sup> Aaron Burr, addressing himself to the members of the court, said: "Gentlemen: You have heard the evidence and arguments adduced on the trial

133. *Id.* at 480. See BEVERIDGE at 201-02.

134. ADAMS MEMOIRS, *supra* note 10, at 357.

135. 14 ANNALS OF CONG. 488 (1805); BEVERIDGE at 204-05.

136. BEVERIDGE at 205-06.

137. 14 ANNALS OF CONG. 502-59, *passim* (1805); BEVERIDGE at 206-07.

138. 14 ANNALS OF CONG. 641-62, *passim* (1805); BEVERIDGE at 213.

139. John Quincy Adams Diary, February 27, 1805, in ADAMS MEMOIRS at 359.

140. *Aurora* (Philadelphia, Pennsylvania), March 5, 1805. For a collection of authorities and newspaper accounts which give vivid descriptions of the trial, see WARREN, *supra* note 4, at 290 n.1.

141. BEVERIDGE at 217-18, 219-20.

of Samuel Chase, impeached for high crimes and misdemeanors; you will now proceed to pronounce distinctly your judgment on each article."

The first article of impeachment was read. Burr then polled the court, asking each Senator in turn: "Mr. - - - how say you; is the respondent, Samuel Chase, guilty or not guilty of a high crime or misdemeanor, as charged in the first article of impeachment?" Sixteen Senators, all Republicans, voted "Guilty" on the first article. Nine Republicans aligned themselves with the Federalists and voted "Not Guilty."

The other articles were read, and the same procedure followed. On the second, third, and fourth articles, the votes were five or more short of the necessary twenty-three votes. On the fifth article, the Senators voted unanimously for Chase. On the sixth article, only four Senators voted "Guilty;" and on the seventh article, ten. On the eighth article, the Republicans made their strongest showing, but to no avail; the vote was nineteen to fifteen.<sup>142</sup> The trial had ended.

That very afternoon, an angry and defeated Randolph appeared before the House and proposed the following constitutional amendment:

The Judges of the Supreme and all other Courts of the United States, shall be removed by the President, on the joint address of both Houses of Congress, requesting the same, anything in the Constitution of the United States to the contrary notwithstanding.<sup>143</sup>

Nicholson, similarly frustrated, followed with a proposal that the Constitution be amended to permit the state legislatures to recall Senators "whenever the said Legislature shall think proper."<sup>144</sup> Consideration of both proposals was postponed until the following December.

Jefferson's feelings were mixed. His view of impeachment as expressed by Giles and Randolph had been rebuffed, but now he could hope to gain future support from the Northern Republicans who could not accept this idea of impeachment.<sup>145</sup> He later wrote to William Giles that "impeachment is a farce which will not be tried again."<sup>146</sup>

By far the most important consequences of the trial were a reduction of the fear of the use of impeachment for political ends and a strengthening of Marshall's position. But there were others. Manners of the judges improved considerably. Federal judges, especially, confined their official opinions and actions to judicial matters; and, although they did not lose sight of political considerations, they no

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142. 14 ANNALS OF CONG. 664-69 (1805). See BEVERIDGE at 217-19.

143. 14 ANNALS OF CONG. 1213 (1805). See BEVERIDGE at 220-21; WARREN at 295.

144. 14 ANNALS OF CONG. 1214 (1805); BEVERIDGE at 221; WARREN at 295.

145. See BEVERIDGE at 221-22.

146. Letter from Thomas Jefferson to William Giles, April 20, 1807, in 9 THE WRITINGS OF THOMAS JEFFERSON 46 (P. Ford ed. 1898); WARREN at 295; BEVERIDGE at 221-22 (Beveridge attributes this remark to a communication from Jefferson to William Plumer).

longer subjected the public to lectures from the bench on political and moral issues.<sup>147</sup>

Not much is known of Chase's activities during the period from 1805 to 1811, the year of his death.<sup>148</sup> We do know of one instance, however, which exemplifies his feelings for Luther Martin. Martin was arguing a case in the Baltimore Circuit Court over which Chase and a district judge presided. Affected by alcohol, Martin was insolent and overbearing, whereupon the district judge drew up a commitment for contempt and handed it to Chase for his signature. Justice Chase threw down his pen and said: "Whatever may be my duties as Judge, Samuel Chase can never sign a commitment against Luther Martin."<sup>149</sup>

At his prime, Chase was a man of striking appearance, large in proportion, his face broad and massive, his complexion a brownish red. "Bacon Face" was the nickname applied to him by the Maryland bar.<sup>150</sup> Joseph Story, appointed to the Supreme Court in 1811, leaves us with the best of all descriptions of Chase in his later years, Chase now being nearly seventy years old. Story wrote:

[T]he elements of his mind are the very first excellence; age and infirmity have in some degree impaired them. His manners are coarse, and in appearance harsh; but in reality he abounds with good humor. He loves to croak and grumble, and in the very same breath he amuses you extremely by his anecdotes and pleasantry. His first approach is formidable, but all difficulty vanishes when you once understand him. In person, in manners, in unwieldy strength, in severity of reproof, in real tenderness of heart, and above all in intellect, he is the living, I had almost said the exact, image of Samuel Johnson. To use a provincial expression, I like him hugely.<sup>151</sup>

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147. Chase was never lukewarm on anything, much less party politics, and could not separate his feelings from his judgment, which, if mistaken, was unquestionably sincere and patriotic. "Yes, sir," he said to a son-in-law, a few years before his death, 'you are a democrat; and you are right to be one, for you are a young man; but an old man, Mr. — — —, would be a fool to be a democrat.'" SANDERSON at 234.

148. Although the year is unknown, Chase was responsible for the last man who was publicly whipped in Maryland, a postmaster who was convicted in the United States Court in Annapolis, of tampering with the mails. There was no whipping post in Annapolis at the time, but Chase had the convict tied up to one of the columns under the portico of the State House, and the punishment inflicted. SCHARF at 43-44.

149. Gould, *Luther Martin and the Trials of Chase and Burr*, 1 GEO. L.J. 17, 22 (1912).

150. BEVERIDGE at 184.

151. Letter from Matthew Bramble (Story) to P.O. Fay, Esq., Feb. 25, 1808, in 1 LIFE AND LETTERS OF JOSEPH STORY 167 (William W. Story ed. 1851).