# National Intelligencer.

## & WASHINGTON ADVERTISER.

VOL. VIII. WASHINGTON CITY, PRINTED BY SAMUEL HARRISON SMITH, PENNSYLVANIA AVENUE. NO. 1217.

*FIVE DOLLARS PER ANNUM,* MONDAY, AUGUST 1, 1808. *PAID IN ADVANCE.*


### SENATE OF THE UNITED STATES.

*CASE OF JOHN SMITH.*

*Mr. Key's speech concluded.*

Having now, sir, endeavored to shew the futility of the testimony adduced to support this charge; it might be sufficient here to rest our defence of the honorable member accused. But, sir, though more may be unnecessary, I rejoice that more is in our power; that we have been enabled not only to destroy the force of the proof offered to criminate him; but to exhibit the most complete and direct evidence of his innocence. I am sensible, sir, that I have tresspassed greatly upon the indulgence of this honorable Senate. I shall not, therefore, take that view of this part of the case which its importance deserves: but will only beg leave to suggest a few considerations which appear to my mind unanswerable, which will render all doubt upon this subject (if indeed a doubt yet remains) utterly impossible.

In the first place, to what but his innocence can it be attributed, that such numbers of the conspirators knew nothing of his association with them? We have produced the depositions of several who appear to admit that they had been induced to participate in this enterprise, and they declare their ignorance and disbelief that Mr. Smith was in any way concerned in it. Nay, sir, let us look at the declarations of their chief, Colonel Burr himself. He has various communications with persons whom he was desirous to bring over to his views, many of which are detailed to us in the report of the evidence at Richmond. In these he makes the most flattering representations of his prospects, endeavors to shew the adequacy of his means, the number and consequence of his adherents. Among these he never mentions Mr. Smith, though there was no man in the whole western country, the importance of whose co-operation would have been more obvious. Here is one striking instance of this which I will beg leave to mention. Lieutenant Jackson deposes that when Colonel Burr gave him the draught on Mr. Smith, he directed him to call on General Tupper, to whom he referred him for information relative to the objects of the enterprise. Now, sir, if Colonel Burr had known Mr. Smith as one of his associates, why should he have been silent on this occasion; why should he not have allowed Mr. Jackson to get his information from Mr. Smith when he presented his draught, without proceeding to General Tupper?

All the other conspirators seem equally ignorant of Mr. Smith's participation. When Bollman and Swartwout communicated with General Wilkinson in the most unreserved manner, they seem to know nothing of it, they give him no intimation that the army contractor, the very man who was supplying his troops with provisions had any connection with their schemes.

Let us even descend to Glover and M'Farland; that these men were engaged in this expedition after the proofs we have produced, cannot be questioned. And what are they able to say to criminate Mr. Smith?

If they were all living in the same place, associates in the same conspiracy, is it possible they would not have had frequent interviews? Would they not have had it in their power to produce some act, or at least some avowal to others by which his guilt could be proved, beyond the possibility of denial? Yet we hear M'Farland frequently acknowledging and twice even swearing that he knew nothing of Mr. Smith's connection with it, and all that their malignant efforts have enabled them to collect, is one solitary conversation depending wholly upon the unsupported assertion of Elias Glover.

Thus, sir, it appears that if Mr. Smith was a party in this conspiracy, the persons from whom he most studiously concealed it were those who were associated in the same project. Neither are they more fortunate who were particularly engaged in watching the progress of this enterprise and ascertaining who were its partizans. General Gano states that he used various means to determine whether the reports relative to Mr. Smith were well founded, and he satisfied himself of his innocence. He also directed Major Riddle to assist in this enquiry; that officer reported to him that he had frequent conversations with Mr. Smith, and had endeavored to ascertain whether he knew any thing of Burr's plans, and was convinced that he did not. Even Colonel Taylor, with whom these suspicions were strengthened by the conversation relative to a disunion which he thought he had heard from Mr. Smith, was yet so far from discovering any thing to confirm them in his enquiries, that he calls on Mr. Smith to aid him in procuring information, and frequently declares, (as General Carberry's deposition informs us) that he did not believe Mr. Smith was an accomplice.

In the next place, sir, how can Mr. Smith's guilt be in any manner reconciled with his conduct in opposing the progress of the expedition. Major Martin, Dr. Stall, General Gano, Mr. Totten, and numerous other witnesses prove that it was principally owing to Mr. Smith's exertions that any effectual support was rendered to the measures of government. When the President's proclamation was received at Cincinnati, it seems there was no means of arming the militia. The orders to the keeper of the arsenal to deliver out the public arms, had been neglected, and he persisted in refusing to deliver them without. At this juncture Mr. Smith, with that earnestness and decision which so strongly mark his character, crosses the river at midnight, offers his bond to Major Martin in the penalty of 10,000 dollars, to indemnify him; procures the arms and delivers them to the officers; prepares barracks and supplies for the militia; furnishes one of his own boats, and in short makes every arrangement to obstruct the passage of the expected armament.

It may perhaps, sir, be here objected, that these circumstances rather prove that Mr. Smith then abandoned the enterprise than that he never participated in it. That the vigilant measures taken by government alarmed him, and that therefore hopeless of its success, he sought by a zealous opposition to escape detection. However plausible this may seem, the least reflection will shew how unreasonable is this suspicion.

How does it appear that the situation of the conspirators was at this time more unpromising than at any former period? They had thus far proceeded without meeting any obstacles; their plans were arranged and ripe for execution; they were hourly expected to embark. And what was there so alarming in the measures taken to oppose them as to strike a panic into Mr. Smith and subvert his resolutions? The militia were called out it is true, but they were without arms. Their officers inform us that they could not even station a guard upon the river. I should rather suppose that this circumstance would have been considered as more auspicious than any thing he could have expected. Nor does it appear that this effect was produced in the minds of any of the party. For even at a subsequent period, and after the militia, by Mr. Smith's exertions, had procured arms, we find capt. Nicholls at Cincinnati still adhering to their views and far from despairing. Nay, even Elias Glover (whose courage appears from Dr. Lanier's deposition to be about equal to his veracity) and who doubtless was as ready as any one to renounce his associates when he saw them sinking, is seen at the same period persisting in his adherence to them. He tells Capt. Nicholls to hasten his departure lest the guard should stop his boats, declares that he will shortly follow and informs him that he had sent off an express to the party at the island. There is one other circumstance that totally overthrows this suspicion. If Mr. Smith had thus not only deserted but opposed his associates, would it not have excited their resentment? And would they not have revenged themselves for his treachery by disclosing his participation and shewing that he was equally guilty with themselves?

It cannot be necessary to contrast this conduct with that which we might expect to find in Mr. Smith, if, most unfortunately for his country and for himself, he had really been concerned in this enterprize. It is well known that the circumstances which first excited the suspicions of government, were the unusual preparations made by Col. Burr and his party on the Western waters. From these suspicions they would have been perfectly secure by obtaining the co-operation of Mr. Smith. His contracts for the supply of the army, and his engagements to prepare boats for the navy, would have enabled him to collect any quantity of provisions and materials, and place them in suitable situations without exciting the least attention: and whenever they were ready to act, he might in a moment have stopped the supplies of your army, and suddenly directed all his resources to aid in the most effectual and fatal manner the objects of the combination.

Thus, sir, in short it appears, that Mr. Smith has not merely forborne from the commission of those acts which if guilty it is almost certain we should have discovered in him, but has pursued a most decided and distinguished course of conduct utterly unaccountable upon any other presumption than that of his innocence.

I will now, sir, conclude by adding to these considerations those which naturally result from the view, which the testimony affords us, of Mr. Smith's character and situation in life, and the various honorable and lucrative employments committed to his trust. These alone, if properly considered, will be found more than sufficient to outweigh all the circumstances adduced against him. I will not undertake to point out the objects of Col. Burr and his partizans, but am very willing to admit the correctness of the information collected by the hon. committee on this subject, and so eloquently detailed in their report. They are there represented as having been only prevented by the "vigilance of government and of faithful citizens under its direction from a speedy termination not only in war, but in war of the most horrible description, in war at once foreign and domestic;" that "the debauchment of our army, the plunder and devastation of our own and foreign territories, the dissolution of our national union, and the root of interminable civil war, were but the means of individual aggrandizement, the steps to projected usurpation."

Now, sir, is Mr. Smith the sort of man to whom conspirators, who were in their senses, would have proposed such a scheme as this? Would he have been solicited to join in the dismemberment of the union, whose interest was so materially connected with its continuance, the profits of whose employment wholly depended upon it? Would he have been asked to join in "a war of the most horrible description" who is represented as enjoying every domestic comfort in the bosom of a happy and numerous family? Would he be called upon to unite in a scheme of plunder and devastation, who had every reason to be satisfied with his present possessions, who had so much to risque and so little to gain from civil commotion? Would he have been called upon to make all these sacrifices to the madness of ambition who was already distinguished even beyond his wishes?

Surely, sir, this is the first time that robbers ever made offers of partnership to the man whom they were about to plunder—that incendiaries ever called upon him for assistance whose house was to be destroyed by their flames.

No man in the whole Western country would have been more certainly ruined by the success of this project than Mr. Smith. There is therefore no man from whom it would have been more studiously concealed. To a disposition of this sort I think it not at all improbable is to be in some degree attributed the circumstance of col. Burr's stopping at his house. As Mr. Smith's guest he would have it in his power to say just as must as he pleased of his plans, and no more. In such a situation he would be less liable to the importunity of enquiries.

Let us, sir, for a moment fancy ourselves present at a consultation upon this subject between col. Burr and his confederates at Cincinnati; and let us suppose that that gentleman had so far lost his usual discernment, had felt such confidence in his personal influence as to presume that he could seduce Mr. Smith from his interest as well as from his duty. After enquiring about major Kibby (whom it seems he was anxious to see, and who is represented to be in distressed circumstances) let us suppose that he mentions Mr. Smith. What would his associates Glover and McFarland say to this? Would they not fear, that as Mr. Smith was their enemy, he would be tempted to inform against them? Would they not also know that if Mr. Smith assented to the proposal he would hold his rank in the expedition much above them and would have it in his power materially to affect their interests? Would they not at least have thought it highly dangerous to trust such a secret to a man so connected with the government they were about to oppose? These considerations would instantly have dictated a most decided reply. They would have said "you can have no hopes of Mr. Smith, his interests are too obviously opposed to our designs; he is too well satisfied with his present situation to consent to the change we contemplate; he is too, highly trusted and favored by the administration. He is, they would add, (repeating an expression used by Glover on a former occassion) "a damn'd army contractor and gunboat builder," he makes too much by the present system of things to be trusted with a scheme for overturning it. No, sir, from him our plans must be concealed; he is easily deceived; tell him a plausible story about your settlement of lands, shew him your Washita grants; tell him his sons are fine promising young men, and offer to take them under your patronage." The force of these observations it would have been impossible to evade.

And sir, whatever col. Burr's designs may have been, to whom does it appear that he actually did communicate them? To what kind of men does he apply to procure partizans? Why, sir, like a celebrated character of antiquity to whom he was long ago compared, it is always the discontented, the embarrassed, the turbulent, the idle, the ambitious and the enterprizing. Nor does it appear that even to all these he fully explained himself. He had a variety of schemes suited to every taste, to every possible occasion. But among this mixed assemblage of characters collected by these means, there is not one to be found who had not some strong and ruling passion to which he could successfully apply himself. Thus, to the romantic enthusiasm of Dr. Bollman he would expatiate on the glorious and benevolent attempt to liberate, enlighten, and exalt a nation of slaves. To the youthful heroism of Swartwout he would paint in all their facination,

——"The plumed trooops and
the big war
"That makes ambition virtue."

And turning from these he would address himself to such creatures as Glover and McFarland, and to them he would talk of plunder. But, sir, what motive could he expect to find in the breast of Mr. Smith that would prompt him to listen to a project that assumed any aspect of disunion, that discovered the least mark of treason, that bore even the most distant indications of "war and devastation?" What air-built castle could he picture to him to tempt him to overturn the fair and substantial fabric of his honors, the solid foundations of his happiness?

I feel, sir, that I have detained the honorable Senate upon this subject longer than I had designed. I have considered this as a question of the highest possible importance to Mr. S. as one on the issue of which more than his life depended. It is true, it has been differently represented, & I have heard it said with surprise, that the decision merely determines the right of the accused member to his seat and inflicts no punishment. I shall not attempt to describe (indeed no description could do justice to it) the horrors of that punishment threatened by the resolution now before us. I will only ask the honorable members of this House who are now anticipating an honorable discharge from their duties and a joyful return to their homes, to contrast the feelings excited by these anticipations, with those which they may presume are passing in the breast of Mr. Smith. I can fancy no tortures more dreadful, no execution more ignominious than that to which he must submit whose infamy is proclaimed to the nation, whose name is blotted from your journals; who is driven slowly and reluctantly to a home where he may hope to hide himself, but which he yet trembles to approach; who is tormented by the reflection that every step brings him nearer to the malignant exultation of enemies, to the cold civility of friends, to the inconsolable agony of a disgraced and distracted family. Surely the honorable members of this House will not inflict a punishment like this, without the most deliberate and unprejudiced consideration, without the most confirmed conviction of its justice.

From the painful necessity of such a decision, I trust that they are sufficiently preserved by the proofs which we have exhibited; that we may confidently hope for a far different result to this enquiry; one, which shall effectually wipe from the reputation of Mr. Smith, the only spot which slander has ever breathed upon it; which shall restore him to the undiminished confidence of his country and of these his honorable associates.

With this sense of its importance, and encouraged by these hopes, Mr. Smith has been enabled (by almost incredible efforts) to collect from the most distant points and within a very limited period, that mass of testimony which has so long occupied your attention. To the same motives, sir, is to be attributed, (and on that account I trust will be excused) the additional fatigue which I have occasioned.

*FOR THE NATIONAL INTELLIGENCER.*

### TO THE PEOPLE OF THE UNITED STATES.

### No. III.

*The principle of retaliation*, as a ground of belligerent pretension and deportment, is one, which it is our duty firmly to examine and deliberately to consider. Its great delicacy and vast importance may forbid a private well-intentioned individual to pronounce on the nature and extent of the rights, which an injured, endangered or provoked belligerent may practically enjoy or colorably claim, on this serious and inconvenient principle: but the same objections do not occur against argument or demonstration, calculated to quash *all pretension to retaliate* on the part of any government, from which we suffer. Hence it has been that fair and weighty considerations, applying negatively to the *British claims on the ground of retaliation* have been explicitly introduced into these papers.

After an honest and candid recollection of the rise and progress of neutral spoliations, we are unable to call to mind a single proclamation, order of council, or other act of the British government from 1791 to 1806, in which they for a moment set up, in substance or in words, the slightest pretension to retaliate on France or the neutral states any alleged original abuses or perversions of neutral trade, navigation or seamen, until the attempt of the court of London to procure an admission of that nature in their own addition to a treaty, otherwise mutual, in December 1806. This fact is the more strong, because general Hamilton, in his publications of "*Americus,*" while he was exercising the functions of a President over a federal administration in 1798, and colonel Pickering, then secretary of state, in a public official report, advanced the unfounded ideas, that England had *followed* France in all her violations of neutral commerce, whereby those eminent citizens *put into the mouth of Britain* all the pretensions of a power entitled to retaliate, *which she had never theretofore claimed.* And here, *Britain*, we will ingenuously confess, in your favor, that these and other children of America, adopted and native, while honored by our high trusts and fed by our treasures, have done *much* indeed, (and *often* have done so *much*) to mislead you into unwarrantable, irregular, and pernicious acts, and to confirm you in a course towards neutral trade and persons, which has threatened ruin to us and now suspends fearful dangers over your beautiful and noble country. But we return to our point: England, sharp and ingenious, and thus goaded by Americans as she has been, never once mentioned the doctrine of retaliation, till the last of December 1806, in the proposed rider to the treaty of Monroe, and Pinkney, Auckland and Holland.