WILLIAM DUANE, CRUSADER FOR JUDICIAL REFORM

BY GLENN LEROY BUSHEY
York Springs, Pennsylvania

DURING the last few years there has been considerable agitation over plans for judicial reform. This was climaxed in 1937 by the attempt to reorganize the United States Supreme Court. The protagonists of the so-called reform were accused by opponents of attempting to destroy the independence of the judiciary. In the early years of the nineteenth century, this was an avowed aim of the radical Jeffersonian Republicans. As is well known, the attempt at court reform in 1937 created two bitter factions within the Democratic party. Students of history will recall that in the turbulent days of the early 1800's, radical court reformers caused a split in Pennsylvania Republican ranks.

One of the most powerful figures in Pennsylvania politics in those days of budding Republicanism was a man of Irish parentage who although American born, spent many years in Ireland, England, and India before returning to his native land, destined to rise to the editorship of the chief Republican organ, the *Aurora*, which deserves much credit for Jefferson's rise to the Presidency. Because of his background, it is to be expected that this gentleman would be in the front ranks of the judicial reformers and such was the case.

*Aurora*, Jan. 15, 1805. This newspaper was published in Philadelphia under the editorship of William Duane. The term Republican throughout this paper refers to the party of Thomas Jefferson.
Leading the fight in Philadelphia, with Snyder, Findley, and Boileau cooperating in the Legislature, to make justice cheap, speedy and safe was the brilliant, outspoken, fighting Irish journalist, William Duane. Perhaps his disgusting experience with the British courts after his deportation from India embittered him against the system of courts and court procedure. Or perhaps the fact that he was an Irishman and an implacable enemy of the pro-British Federalists colored his thinking. At any rate, Duane threw his vast influence on the side of the radicals against Governor Thomas McKean whom he had formerly supported.

Possessed of an indomitable fighting spirit and absolute fearlessness which frustrated the numerous attempts at intimidation by his enemies, boasting of a virile style and a brilliant journalistic tongue which caused its victims to wince under scathing denunciations, this political gladiator used the pages of what was perhaps the most powerful and influential Republican journal of the period, the *Aurora*, to wage war for judicial reforms. Since it was an extremely partisan newspaper and the general custom of the day for editors to publish sentiments in accordance with their personal views, we can safely assume that the reforms advocated in the *Aurora* generally had the stamp of approval of its editor, Duane.

The radical court reformers pushed their assault with vigor in 1805. The impeachments which had absorbed their attention rapidly approached a climax. In 1802, President Judge Addison, of one of the five courts of common pleas had been impeached, removed from office, and adjudged incapable of sitting as a judge in any Pennsylvania court. Apparently his chief offense was political bias. Now, as a result of the Passmore case, Edward Shippen, chief justice, and Jasper Yeates and Thomas Smith, assistant justices of the Supreme Court of Pennsylvania were

---

3 While in India, Duane denounced the methods of the British East India Company and espoused the grievances of the army officers. He was arrested without charge, deported without trial, and his property confiscated. He sought restitution of his property through Parliament and the courts but without avail. *Dictionary of American Biography*, V, 465-466.
4 Judge Addison was impeached (1) for refusing to permit a colleague to make an address to the grand jury; and (2) for being insolent towards his colleagues in some remarks which he himself had addressed to the grand jurors. *Trial of Alexander Addison, Esq.* (1803).
facing impeachment charges and were to be tried before the Senate of Pennsylvania. This trial got under way at the Lancaster Court House, January 7, 1805.

Attending the sessions at Lancaster and presumably missing no significant detail of the prolonged proceedings, was the editor of the *Aurora*. It is to the credit of Duane that much as he desired the conviction of the justices, he reported the proceedings of the trial very completely and with few of his own personal comments. Apparently he did little through the columns of his newspaper to influence public opinion during the actual trial. However, on the eve of the Senate's decision (January 27, 1805) the truce ended and he joyously leveled his journalistic attacks on the enemy once more. Duane was usually sincere in his convictions, but as was true in so many cases, here his passions overruled his better judgment, if the following excerpt from an editorial in the *Aurora* is to be taken as his honest opinion:

> What the judgment of the court may be is yet in the womb of time; and upon it in my judgment hangs the most important consequences to the honor, liberty, and security of Pennsylvania—I am perfectly persuaded that an acquittal (if it were possible) would involve this state in dangers and afflictions not inferior in their consequences to those which produced the revolution of 1776; that the black lettered barbarian of the thirteenth century—the jargon of special pleaders—and the terrors of *anonymous* prosecutors would subject to inevitable ruin the character, the liberty, the property, and the family of an unaccommodating individual whom the hand of *lawyers* might think it useful to their purpose to destroy.6

The above serves as a good example of the literary prowess of Duane, but as would be suspected, the acquittal of Shippen, Yeates, and Smith did not result in the dire consequences predicted by the editor of the *Aurora*. According to sentiments expressed in the journal, he believed the issue to be the Constitution established

---

5 Jefferson in a letter to William Wirt writes: "I believe Duane to be an honest man and sincerely republican; but his passions are stronger than his prudence and his personal as well as general antipathies render him intolerant," *Dictionary of American Biography*, V, 466.

6 *Aurora*, Jan. 29, 1805.

upon the principles of the Revolution of 1776 versus the "dark, arbitrary, unwritten, incoherent, cruel, inconsistent, and contradictory maxims of the common law of England." He greatly deplored the fact that the verdict of eleven senators of the Commonwealth had subjected the liberty and safety of the people to the deviousness of this common law. His hatred of the common law is expressed in no uncertain terms in many of his writings and the intensity of his convictions in regard to this matter led him to question whether or not the Revolution of 1776 had been fought in vain. In his bitterness, he saw the enormous iniquity of the common law threatening the very independence the Americans had so recently given of their life blood to attain.

To him it was vitally necessary that this common law be superseded by laws "more in accordance with our institutions."

Because of his philosophy of extreme democracy, Duane felt that an independent judiciary was a direct contradiction of the principle of representative government. He held that the British system was perhaps wise and necessary in that the judges should be independent of the monarch. There they held office for life or "good behavior." But who was judge of the behavior? It was Parliament who had the power to remove them by an address. In the United States, judges can be removed only by the process of impeachment. This Duane thought a defect in our Constitution which enabled the courts to inflict great hardship upon poor and obscure individuals, often depriving them of any redress except through the press. He said, "It is a prodigious monster in a free government to see a class of men set apart, not simply to administer the law, but who exercise a legislative and even an executive power, directly in defiance and contempt of the Constitution. This we repeat is done under the colour of the unwritten, undefined, contradictory, heterogeneous, and in numberless instances, barbarous and cruel maxims of common law!"

Though, as we have seen, his hatred of common law was practically boundless and he advocated its abolishment, nevertheless,

---

8 The vote in the Senate at Lancaster was 13 votes "guilty," 11 votes "not guilty." A two-third majority was necessary for conviction.
9 Aurora, Jan. 30, 1805.
10 Ibid., Jan. 28, 1805.
11 Ibid., Jan. 15, 1805.
12 Ibid., Jan. 15, 1805.
Duane believed that it was first necessary to place the judges under popular control. If the judges were to hold office for life, to become a class apart, losing contact with the people and perhaps forgetting that they were just common men, why should not the executive and those who make the laws have equal privileges? This, of course, would be contrary to democratic principles and was not to be considered for a moment. Hence, Duane suggests that an American maxim should be: “Where the magistrate is not elective, it becomes tyrannical.” He concludes that when a magistrate is removed from frequent responsibility (to the electorate), he is invited to be arbitrary, and that there is much danger of tyranny as long as judges remain uncontrolled.

The dangers of the tyranny of the judiciary as viewed by the radicals were vividly pictured in a series of articles in the *Aurora* by “Amicus.” This author who clearly reflects Duane’s ideas, professes to see a silver lining in the black cloud of despondency overhanging the camp of the radical Republicans following the acquittal of the three judges. “Amicus” professes to welcome the decision because he states it will arouse the people to the dangers of a judiciary who “can play the tyrant at will,” but who cannot be removed by the people or the departments of government. Now he is confident that the awakened citizens will become aware of the combination of the bar against the sovereign people. He depicts the members of the legal profession of Pennsylvania as banded together to protect their own selfish interests, to enable them to wax rich and fat by the people’s labor, and to continue their position as the “natural aristocracy.”

There was probably more than a grain of truth in the assertion that the legal fraternity had banded together. The vicious attacks upon them by the radical Republicans had spread alarm throughout the profession. Alexander J. Dallas, Jefferson’s district attorney in Pennsylvania had prosecuted Addison, but in the case of Shippen, Yates, and Smith, he not only refused to lead the prosecution but actually defended the judges. Not a lawyer of reputation in Pennsylvania would take the case and finally Caesar A. Rodney had to be summoned from Delaware as counsel for the House.

---

"Amicus" recommends a remedy for these conditions. He says that the people and the legislature are now responsible for correcting the procedure by amending the Constitution. Obviously the alteration would be to make the judiciary elective and for a term of years instead of life tenure. To restore democratic principles to the procedure and to prevent a minority from balking the wishes of the majority, a simple majority instead of a two-thirds vote would be necessary in determining a verdict in impeachment cases. To break the power of the lawyers and to make them less necessary, he would have civil disputes settled by a general law of reference.17 Court procedure must also be simplified.

But what of the oft repeated charges of exasperating delays and excessive costs? "Amicus" has the answer to that, too. Would he accept the suggestion of McKean to increase the number of judges? Certainly no "true Republican" would sanction this. Was not McKean a former judge and a member of that "rascally breed" of lawyers who preyed upon the people? "Amicus" would abolish all special pleadings, declarations, and replications, and require no writ to institute an action except "capias or summons of the case," together with a copy of the demand handed to the defendant at appearance. Every cause would be tried on its simple merits at the second term unless unavoidable and sufficient objections would be encountered. If the terms of court were every three months, most cases would be delayed less than six months, and if the courts were in session every month, as formerly, speedy justice would be a fact. The lawyer could not refuse a case, no suitor could have more than one attorney, and the fee would be fixed at three dollars, if judgment was given without trial and five dollars, if a trial.18

"Amicus" had another plan which would make justice still more cheap, speedy, and simple. This plan, one which was close to the heart of Aurora's editor, would enable the complainant on the first day of the term to demand a reference of three to five men to be named by the court. The court would be bound to do this unless the defendant suggested and the court concurred in

17 Aurora, Feb. 9, 1805.
18 Ibid., Feb. 20, 1805.
the opinion that the cause was unsuitable for reference, but ought to be tried in court.\textsuperscript{19}

The radicals in the Legislature prepared to put some of these theories into practice. Clauses providing for the simplification of court procedure and for an extension of the arbitration system, were inserted in a bill for the redistribution of judicial circuits. Evidently the plan was to insert these clauses in a bill which the governor favored in the hope that he would accept the bill in its entirety to get the part that he wanted. The strategy failed. The bill passed the house by a vote of 53-26,\textsuperscript{20} but after its passage in the Senate was vetoed by McKean because of its arbitration clauses.\textsuperscript{21} The House upheld the veto by the narrow margin of 50-26.\textsuperscript{22}

The good ship, “Judiciary Reform,” manned by the radicals was having difficulty slipping into harbor. The great rock “Veto” blocked the way and the shoals of Federalism and conservative Republicanism would not permit her to pass this barrier. But this was not true in every instance. In the \textit{Aurora} of January 2, 1805 appeared a petition addressed to the Senate and House regarding the selection of juries. It was desired that the power of the selection of juries be taken from the prothonotaries of courts and restored into the hands of the sheriff, an elective officer. The prothonotary was beyond elective control. This was more than sufficient to make him an object of suspicion to the extremists. The familiar war cry “abuses of power” is again heard. Has not this practice, the petitioners inquire, lessened respect for jury trial, endangered property and made the freedom of the press a mere shadow? No one can speak out against the prothonotary for he selects the jury for trial.\textsuperscript{23} The practice in use then, they argue, is not only incompatible with unbiased justice, but contrary to the principles of our Constitution.\textsuperscript{24} The “Aurora-man” swings into action. Petitions appear, convincing articles abound, and the sovereign people are aroused. By May

\textsuperscript{19}Ibid., Feb. 20, 1805.
\textsuperscript{20}House Journal, 1804-05.
\textsuperscript{21}Ibid., March 29, 1805.
\textsuperscript{22}Ibid., April 1, 1805.
\textsuperscript{23}Aurora, Jan. 2, 1805.
\textsuperscript{24}Ibid., Jan. 4, 1805.
the battle is won. The sheriff and commissioners select the jurors.\textsuperscript{23}

At the very beginning of the year 1805, Duane's heart was gladdened by the report from Lancaster that reform libel legislation had been proposed in the House of Representatives.\textsuperscript{26} Cursed, beaten, his property threatened, and arrested and jailed on numerous occasions for alleged libellous writings, the editor who wouldn't be silenced, who would not retract, nevertheless rejoiced as the opportunity to remove one of the most odious restrictions of the common law seemed at hand. That this legislation was needed, is scarcely debatable. Under the old law, a man accused of libel could not clear himself by proving the truth of his statements, for the underlying principles of said law apparently sprang from the maxim—"The greater the truth, the greater the libel." Henry Adams refers to Duane as a "scurillous libeller"\textsuperscript{27} and perhaps the fighting Irishman had some claim to that doubtful distinction, but we suspect that in many instances the so-called libel was nothing less than the blunt truth. It is the truth that hurts most and many editors of the day recognized this to their sorrow. However, the proposed legislation was to give the press greater protection. It was suggested that upon an indictment for libel, it would be lawful for the defendant to enter a plea of justification, and give the truth in evidence.\textsuperscript{28} But the high hopes of the press were not realized as yet, and it still remained a libel to tell the truth.

With the impeachment plans but painful memories to the radicals and with the legislative program blocked, let us now observe some other stratagems of Duane and his followers. Possessed of a deep and abiding faith in the integrity and power of the common people, and fully aware of the great power of the press in mobilizing public opinion, Duane launched an intensive campaign to give the reform movement momentum. The people must be aroused to see the need for reform, must be impressed with the ease by which the judiciary system can be made more simple and equitable, and must be furnished with arguments to compete with

\textsuperscript{23} The act relating to the selection of jurors appears in the \textit{Aurora}, May 8, 1805.
\textsuperscript{26} \textit{Ibid.}, Jan. 3, 1805.
\textsuperscript{27} \textit{History of the United States of America} (New York, 1890), I, 119.
\textsuperscript{28} \textit{Aurora}, Jan. 3, 1805.
those "scoundrels," the lawyers. Caustic editorials by the editor, and convincing articles from brilliant contributors produced excellent ammunition for broadsides from the *Aurora*. But perhaps the high water mark of journalistic effort in this direction was reached when, in April, Duane began the publishing of a series of essays entitled, *Sampson Against the Philistines*.29 They were also offered for sale in pamphlet form although extracts from these appeared in the *Aurora*. The cost of the pamphlets was nominal, interest ran high, and the demand was great. These essays perhaps give us the most complete picture of the beliefs of Duane and his followers. Ably written and with damning evidence against lawyers and the jargon of judicial procedure, they produced no end of comment.

The author asserts that he aims to expose the "prodigious evil of the jurisprudence, to show the absurdity of common law, and to suggest a method of reform for these evils." To show why the lawyers are interested in retaining the present system, he says, "Peace, honesty, and agreement among men is their happiness, but the ruin of lawyers. Fraud, disputes, and lawsuits are the happiness of the lawyers, but the ruin of honest men. They live on you, not you on them; therefore, like Pharaoh with the Israelites, 'they will not let you go from your bondage,' so long as they can retain you."30 Here we glimpse the potent power of Sampson's pen and note the attitude of the radicals.

The writer of *Sampson Against the Philistines* traces with great skill the development of the jury system. The German barbarians who overran Rome used it with much success, but they were not mercenary, he says, and were equals; hence, justice was *cheap, speedy, and safe*.31 Lawyers were unheard of, legal principles were simple and few. But in the thirteenth century, lawyers began to appear.32 They usually wore the garb of the Church, he states, because only there could be found educated men. Now complications began to grow by leaps and bounds. Common law grew in

29 *Sampson Against the Philistines, or the Reformation of Lawsuits; and Justice Made Cheap, Speedy, and Brought Home to Every Man's Door*, 2nd ed. (Philadelphia, 1805). Published by William Duane, but according to Conrad, written by Jesse Higgins of Delaware; H. C. Conrad, *History of the State of Delaware* (Wilmington, 1908), II, 528-530.

30 Ibid., Preface.

31 *Sampson Against the Philistines*, p. 6.

32 Ibid., p. 12.
extent, legal procedure was invented so that the lawyers could control the people, and special forms, pleadings, writs, etc., were added so that as time went on, no one could understand judicial proceedings except the lawyers. The process of obtaining justice became complicated, expensive, slow and was such that it enabled knaves to cheat their honest neighbors, and murderers to escape the gallows with comparative ease. The practice of appeal was introduced so that the lawyers could thereby secure greater profit. Thus we have in brief, Sampson's version of the development of the judiciary system with its abuses. To him the situation is a matter of grave concern. For, he says, the gentlemen of the profession are the only ones who are privileged to disregard the laws. He decries their loose principles, their practice of defending right and wrong indifferently to gain pecuniary rewards, their enmity to the principles underlying free government, their tyrannical conduct in court, and the obvious collusion existing among members of the bench, bar, and officers of the court. Grave charges these and effective, too, especially among the plain unlettered folk who were not too enthusiastic over "book larnin" and who were naturally suspicious of the educated who lived in comparative ease, while they earned their bread by the sweat of their brow.

But what was Sampson's reform for these evils? He says if jury trials are to be used in settling disputes, let the government stand all the expense and then fine the guilty for remuneration. Let the government furnish a lawyer for both the plaintiff and defendant, if a lawyer is desired, but the legal procedure should be so simplified that anyone of average intelligence could handle his own case and no evidence would be barred from the jury. A court in each township, and a county court to meet each month would do much to make justice speedy.

The reform especially recommended by Sampson however, was a method which might be termed the chief plank in the radicals' platform. We mean, of course, reference, adjustment, or arbitration. To make this mode of settlement more popular, he would make it available upon the request of either the plaintiff or defendant instead of the request of both being necessary. Sampson believes that this is a mode of trial, "of all yet tried, the most

---

33 Ibid., pp. 8-9.
34 Ibid., p. 12.
consistent with the principles of the ancient Saxon trial by jury; and most convenient among a free, enlightened, and commercial people." In support of this method, he cites authorities and examples. Did not St. Paul in his Epistle to the Corinthians, Chapter 7, severely rebuke them for going to law and for not leaving their disputes to brethren? Did not the Quakers have a long and successful record of settling their disputes by arbitration? Did not the Methodists use it? In Delaware, when the causes were found too difficult for the jury, was it not referred to a committee of arbitration? When the great George Washington made his will, did he not specify that all differences which might arise under said will be referred to three honest men of the neighborhood?  

The radicals roared their approval of this masterly work. Comments poured into the *Aurora* office from every side; the first edition of the pamphlets was exhausted and a second edition came from the press. Duane was elated. But so were many of the Federalists. They saw the ever widening rift in Republican ranks because of the quarrel between conservatives and radicals and bided their time. They had watched Duane unloose the flood of Republicanism that had submerged them a few short years before, and they had not forgotten nor forgiven. "Every dog has his day," and perhaps this would be theirs.

But Duane, intent upon forcing through his reforms, did not grasp the full portent of the gathering storm clouds. At Lancaster, McKean's anger and exasperation steadily mounted. And this was not unusual. A lawyer, with a record of twenty-two years' service as chief justice of the Supreme Court of Pennsylvania, he naturally resented the vicious attacks upon his profession. Then, too, there were several other facts that accelerated the rising ire of the governor. These were the call for a convention to amend the state constitution and the gubernatorial contest. Because of the opposition of the governor, the reformers could scarcely hope to put through their program unless they could (1) amend the constitution, or (2) elect a governor in sympathy with their ideals. Duane and his followers tried to accomplish both.

The draft of a memorial to the Legislature for the call for a convention to amend the constitution appeared in the *Aurora* on

---

February 28. In brief, the reasons stated for desiring an amendment were: (1) to reduce the term of senators to one year, (2) to reduce the power of the executive department in dispensing patronage, and (3) to reform the judicial department, which included making the judges responsible to the electorate, and insuring justice without sale, denial or delay. Undoubtedly the judicial reform was of greatest concern, but the petitioners also probably remembered that after the Republican victory of 1799, a Federalist Senate remained to harass the incoming party. A one-year term for senators would prevent a recurrence of this situation. Most Republicans showed little antipathy for patronage, but the radical element of the party was probably incensed because too little of its benefits came their way. Earlier, Duane had quarreled with Gallatin over this matter and thus was begun a bitter enmity which was carried by the *Aurora* editor to his grave. Then, too, many looked askance at McKean for the favoritism shown his immediate family and relatives in filling positions of importance.

Duane gave unsparingly of his energies to pave the way for a convention to amend the constitution. The *Aurora* fairly bristled with editorials and articles proclaiming the need for a constitutional amendment. On March 27 the Society of Friends of the People was organized in Philadelphia to carry on the crusade and every county and even some other states had branches with correspondence committees to carry on the good work. Circulating petitions, newspaper propaganda, mass meetings, followed with gratifying results. But Herculean efforts were necessary; Duane had underestimated the strength of his following. For on April 1, 1805, the House of Representatives decided that the number of petitioners did not justify at the time any measures of legislation for calling a convention to amend the constitution. But the fight went on, and quite bitterly during the gubernatorial campaign of 1805.

On March 21, 1805, occurred a conversation which was destined to furnish much of the fireworks of the campaign to elect

---

36 William Duane was accused of proposing the memorial, but his son, William J. Duane, refuted the charge. *Aurora*, March 2, 1805.
38 *Aurora*, March 28, 29, 1805.
a governor. While conversing with Snyder and McKenny, Governor McKean is reputed to have observed that "there was a shameful and base prejudice against lawyers which produced from ignorance; for it was absurd to say that lawyers were not the wisest and best informed in the community." He is further credited with saying that "the memorial for calling a convention is a base libel, and the authors of it are liars, rascals and villains—and the supporters of the measure, are a set of stupid geese; that the present constitution was formed by a set of the wisest and best patriots that ever was collected; and shall a set of ignorant clodhoppers in this way, overthrow that constitution formed by a set of gentlemen so extensively learned in the law?"  

What campaign ammunition for the "Friends of the People!" But perhaps McKean was misquoted. There is reason to believe that his remarks were slightly twisted and colored, but it also seems evident that he did make remarks that were extremely derogatory to his opponents. In a letter to Alexander Dallas, he refers to the memorial for calling a convention as a "palpable libel" and calls the men who, he thinks, are trying to overthrow the established form of government "a set of clodpoles and ignoramuses."  

A great hue and cry was raised by Duane and his cohorts, McKean was branded as a traitor to his party and called a haughty tyrant who affected great superiority to the people who elected him and whose petitions for reform he disdained. Nevertheless, the radicals were quick to sense the advantage of making it a mark of honor to be termed a "clod-hopper." It was adopted with gusto and soon enjoyed general usage, being employed as a signature to newspaper articles and open letters. When a caucus of the radical members of the Legislature was held at Lancaster for the nomination of a candidate for governor, it was agreed that this candidate should not be a lawyer, should be a German, and that a "clod-hopper" should be preferred. Simon Snyder, speaker of the House and a farmer from Northumberland county, was almost unanimously chosen.  

---

40 From a letter published in the *Aurora*, June 19, 1805. Daniel Montgomery, the writer, states that he overheard the conversation while waiting to see the governor.

41 Published in the *Aurora*, June 3, 1805.

Now McKean faced Simon Snyder in the political arena and a gigantic battle was waged for the position of chief executive of Pennsylvania. Snyder naturally received the support of the Society of the Friends of the People, while McKean was backed by the Society of Constitutional Republicans, a conservative organization. The latter society was avowedly organized "to preserve the constitution from the mysterious attacks of strange and obtrusive hands, and perpetuate its blessings." Cries of "down with the Tories" and "Save the constitution" filled the air. How reminiscent of the Presidential campaign of 1936!

"Politics makes strange bed fellows." Duane who had formerly been a loyal supporter of McKean, was now his severest critic. Dallas who had so brilliantly defended Duane following his arrest in 1799 for circulating a petition for the repeal of the Alien Bill, was now using his brilliance to parry the savage thrusts of the "Aurora-man." Federalists who had once winced as the name "Tory" had been contemptuously flung at them by McKean, were now rallying to the governor's standard. This was indeed a political "Civil War."

As previously stated, the principal issue in the campaign was the proposal for a constitutional convention. Both radicals and conservatives posed as champions of the people's liberties. The supporters of Snyder believed that his election meant the preservation of the rights and liberties the people had fought for in '76 and the destruction of the tyranny of the legal fraternity. McKean's followers meant to protect the liberties of the people as guaranteed by the constitution. Brilliant oratory, coarse invective and scathing denunciations were the order of the day. Witness excerpts from speeches denouncing McKean—"Are you ready then to join the lawyers, officers, and their friends against your legislature and the people?"—"As Pennsylvanians, could you be so beguiled as to join with those who live on your misery—whose riches is your wretchedness—who fatten upon your oppression?"

And now a reference to the Federalist support of McKean—"The sickly royalists, the black and barbarous traitors of the American Revolution, with all their vile and wicked descendants, openly profess attachment to him and to his cause."

---

42 Ibid., Feb. 22, 1799.
43 Ibid., Feb. 22, 1799.
44 Ibid., Aug. 19, 1805.
45 Ibid., August 30, 1805.
46 Ibid., Feb. 22, 1799. 
On the other hand, we find that McKean's supporters bitterly refer to the malcontents as those who wished to deprive them of the right of trial by jury, to substitute private courts for public courts of justice, prevent freedom of election by terrorizing denunciations, deprive the people of the benefit of the Pennsylvania common law, discard the state constitution and "subvert the federal Constitution at the hazard of civil war."47

Other charges against McKean appeared in the *Aurora*. One was his arbitrary action in removing Judge Preston,48 while he subsequently refused to remove Judge Brackenridge49 after an address from the Legislature in each case.50 Another accusation was his overstepping the bounds of his constitutional power by granting Don Cabrera, a Spaniard, partial exemption from the sentence of the law after he had been convicted of forgery.51

The heat of the campaign increased as the election in October approached, but Duane was fighting a losing battle. Conservative Republicans, frightened by the proposal for a constitutional convention whose innovations they believed might prove unpredictable and dangerous, joined with the Federalists to re-elect McKean. A conservative majority was also returned to both houses of the Legislature. The Federalists had their revenge on Duane. He had fought a good fight, but in vain. Or was it in vain? We find that some of his efforts for reform bore fruit a little later when the radicals were returned to power in 1806.

It is difficult to form a fair estimate of Duane from this description of his activities relative to judicial reform. One is likely to gather that he had a universal hatred of lawyers, a strong dislike of jury trial, and a strong predilection for arbitration. But we must not be too hasty in our conclusions. Duane comes to his own defense in a reply to Federalist papers criticizing the impeachment of the Pennsylvania judges. He says, "They talk of our enmity to lawyers, but forget that we are unfriendly to their

48 Preston was indicted for libel for expressing opinions of McKean in a former campaign.
49 Brackenridge, the one Republican judge on the Supreme Court bench, was absent when the decision of the Passmore Case had been read, but he approved of the sentence of his colleagues and requested impeachment with them. See *House Journal*, 1804-05.
50 *Aurora*, July 31, 1805.
abuses only; they talk of our dislikes of trial by jury, but they belie our motives and our wishes; we cherish trial by jury as warmly as those most loved in its eulogy; they talk of our predilection for arbitration, but forget to mention that we only advocate it in civil cases, where party to a suit is opposed to litigation, and does not wish to give enormous fees for what can be done without them.”

Biographical Note: William Duane was born on May 17, 1760 near Lake Champlain, N. Y., of Irish parentage. He was taken to Ireland in 1765. Later, after marrying Catherine Corcoran, he learned the printer's trade and in 1787 went to India where he established the successful Indian World at Calcutta. For denouncing methods of the East Indian Company and espousing grievances of army officers, he was arrested, deported, and his property confiscated. In London, failing to gain restitution of his property through Parliament and the courts, he left England in disgust and came to Philadelphia where he became associated with Benjamin Franklin Bache in editing the Aurora. Upon Bache's death in 1798, Duane became editor and made the Aurora the most powerful organ of the Jeffersonians. His courage, zeal, strength of convictions, virile style of writing, and genius in controversy, made him the most effective journalist of his time. He waged unceasing warfare upon the Federalists and all attempts to intimidate him failed. Perhaps his most important service to the nation was his exposure of the Federalist's secret plan to prevent the election of Jefferson through the notorious Ross Election Bill. In discrediting the proposed war with France over the X. Y. Z. affair, in making the Alien and Sedition Laws abhorrent, in arousing the masses, and in aiding to make Jefferson's victory in 1800 inevitable, he did more than any other single person. With Jefferson's election, Duane's national influence waned, but he remained a power in local politics. He became lieutenant colonel of rifles in 1898, served as an adjutant-general in the war of 1812 and for a number of years before his death in 1835 was prothonotary of the Supreme Court of Pennsylvania in the eastern district.

82 Ibid., Jan. 17, 1805.