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*The Aurora and the Alien and
Sedition Laws*

Part I: *The Editorship of Benjamin Franklin Bache*

THE chief target of the Sedition Law of 1798 was Benjamin Franklin Bache, namesake of his illustrious grandfather and editor of the Philadelphia *Aurora*, the nation's most influential Republican newspaper.¹ So anxious were the Federalists to bring him to "condign punishment,"² however, that they moved to silence his criticism of their administration without awaiting the enactment of that law. On June 26, 1798, nearly three weeks before President John Adams signed the sedition bill, the Republican editor was arrested to answer a Federal common law indictment for seditious libels against the President and the executive branch of the government.³

The Federalists had plenty of reasons for wanting to move against

¹ Thomas Jefferson to James Madison, Phila., Apr. 26, 1798, Paul Leicester Ford, ed., *The Writings of Thomas Jefferson* (New York, 1892-1899), VII, 245-246. Jefferson wrote that the Federalists planned to enact a sedition law to suppress the opposition newspapers. "Bache's," he added, "has been particularly named."

² See the speech by Robert Goodloe Harper, June 18, 1798, *Debates and Proceedings in the Congress of the United States, Fifth Congress, Second Session, 1797-1799*, II, 1972, hereafter cited as *Annals*.

³ *Aurora*, June 27, 1798.

the leader of the opposition press. Bache had founded his paper in 1790, when he was only twenty-one, building it into the leading Republican journal by 1798.⁴ In his brief career he directed a constant fire against the Federalists, hitting every prominent leader of that party from Washington down. An ardent democrat and a defender of the French Revolution, he opposed Washington's domestic and foreign policies with vigor. In 1795 he disclosed an important state paper by printing the complete text of Jay's Treaty while the Senate was discussing it behind closed doors.⁵ Late in 1796 he reprinted letters which the British had forged in 1777 to discredit Washington.⁶

During the embroglio with France which followed the signing of Jay's Treaty, Bache consistently opposed war, urging that difficulties should be settled by diplomacy rather than by an appeal to arms. For his advocacy of this policy, he was condemned by the Federalists as "a dull-edged, dull-eyed, haggard-looking hireling of France."⁷ *Porcupine's Gazette*, edited by William Cobbett,⁸ claimed that:

⁴ The only study of Bache is by Bernard Faÿ, *The Two Franklins: Fathers of American Democracy* (Boston, 1933). Journalistic in style and romantically dramatic, it nonetheless illustrates the role which Bache played in bringing about the change in the public mind that made possible the shift from a Federalist to a Republican administration in 1800. Faÿ also has a short article on "Benjamin Franklin Bache, A Democratic Leader of the Eighteenth Century," in the *Proceedings of the American Antiquarian Society*, New Series, Vol. 40, Pt. 2 (October, 1930), 277-304.

John C. Miller, *Crisis in Freedom: The Alien and Sedition Acts* (Boston, 1951), 60-65, 93-96, discusses the sedition proceedings against Bache.

⁵ *Aurora*, June 30, 1795. Sen. Stevens T. Mason of Virginia gave a copy of the treaty to Bache.

⁶ One of the last official acts of President Washington was to deposit in the Office of the Department of State a statement "to the present generation and to posterity" that these letters were "a base forgery." See his letter to the Secretary of State, Phila., Mar. 3, 1797, John C. Fitzpatrick, ed., *The Writings of George Washington from the Original Manuscript Sources, 1745-1799* (Washington, 1931-1944), XXXV, 414-416.

⁷ *Porcupine's Gazette* (Phila.), July, 1797, reprinted in William Cobbett, *Porcupine's Works; containing Various Writings and Selections*. . . . (London, 1801), VI, 329 (note).

⁸ Cobbett was an English citizen whose paper gained great favor with the Federalists between 1796 and 1799. For an analysis of his appeal, see William Reitzel, "William Cobbett and Philadelphia Journalism: 1794-1800," *The Pennsylvania Magazine of History and Biography*, LIX (1935), 223-244.

The President's wife was a great admirer of Peter Porcupine's efforts. To her sister she wrote that "Peter says many good things, and he is the only thorn in Bache's side. He [Bache] is really affraid to encounter him [Peter], but he [Peter] frequently injures the cause he means to advocate for want of prudence and discretion. I have a great curiosity to see the Creature. There is a strange mixture in him. He can write very handsomely, and he can descend & be as low, and vulgar as a fish woman." Abigail Adams to Mary Cranch, Phila., Mar. 13, 1798, Stewart Mitchell, ed., *New Letters of Abigail Adams, 1788-1801* (Boston, 1947), 143-144.

“The most infamous of the Jacobins is
BACHE

“Editor of the *Aurora*, Printer to the French Directory, Distributor General of the principles of Insurrection, Anarchy and Confusion, the greatest of fools, and the most stubborn sans-culotte in the United States.”⁹

Bache’s antiadministration views did nothing to endear him to the majority leaders in Congress, who barred him from the House floor in 1797. The editor condemned Speaker Jonathan Dayton’s action as an “act of tyranny” which injured his press at the same time that it kept “a free and firm statement of the proceedings” from the public.¹⁰ When the Republicans sought to establish uniform rules for stenographers and reporters attending the House, the Federalists ruled that newspapermen were admitted by the indulgence of the Speaker, who could revoke the privilege at any time. Speaker Dayton agreed, and accused the Republicans of pandering to the public with their remarks in favor of widely reported debates.¹¹ Throughout the 1797–1798 session of Congress, therefore, Bache was barred from the House.¹²

When the *Aurora* showed some sympathy for President Adams after his conciliatory inaugural address in March, 1797, the new executive was wary. To his wife he predicted that he would “soon be acquitted” of that paper’s criminal praise.¹³ Following Adams’ warlike message which urged the special session of Congress to adopt an accelerated defense program against France, Bache stopped lauding the President. By June Mrs. Adams was deploring the *Aurora*’s impudence, fearing that the common people would be misguided by its stories about her husband’s administration.¹⁴ In a near classic statement of the “bad tendency” test of words,¹⁵ she wrote: “Scarcely

⁹ *Porcupine’s Gazette*, cited by Faÿ, *The Two Franklins*, 338.

¹⁰ Benjamin Franklin Bache, *Truth Will Out! The Foul Charges of the Tories against the Editor of the Aurora repelled by Positive Proof and Plain Truth, and his Base Calumniators put to Shame* (Philadelphia, 1798), “Prefactory Remarks.”

¹¹ *Annals*, 1293–1294 (Mar. 21, 1798). For the preliminaries to this debate, see *ibid.*, 1036, 1044, and 1068. Also see the *Aurora*, Feb. 27, 1798.

¹² For one of his complaints against his exclusion, see the *Aurora*, June 14, 1798.

¹³ John Adams to Abigail Adams, Phila., Apr. 24, 1797, letter CCLXXXVII, Charles Francis Adams, ed., *Letters of John Adams addressed to his Wife* (Boston, 1841), 254.

¹⁴ Abigail Adams to Mary Cranch, Phila., June 8, 1797, Mitchell, 96.

¹⁵ For a discussion of the Sedition Law and the “bad tendency” test of words, see my article, “The Sedition Law, Free Speech, and the American Political Process,” *William and Mary Quarterly*, 3rd Series, IX (1952) 497–511.

a day passes but some such scurrility appears in Baches paper, very often unnoticed, and of no consequence in the minds of many people, but it has, like vice of every kind, a tendency to corrupt the morals of the common people. Lawless principles naturally produce lawless actions."¹⁶

As the crisis with France grew worse, the Presidential family became increasingly insistent upon the need for legal action to suppress criticism of the government and the Chief Executive. In one of his public pronouncements, President Adams called attention to the "agitations of the human species which have affected our people and produced a spirit of party which scruples not to go all lengths of profligacy, falshood and malignity in defaming our government."¹⁷ His wife branded "this lying wretch of a Bache" and all Republicans as agents of the French. "There is no end," she wrote, "to their audaciousness, and you will see that French emissaries are in every corner of the union sowing and spreading Sediton. We have *renewed information* that their System is, to calumniate the President, his family, his administration, untill they oblige him to resign, and then they will Reign triumphant, *headed by the Man of the People* [Thomas Jefferson]. It behoves every pen and press to counteract them," she concluded, "but our Countrymen in general are not awake to their danger."¹⁸

President Adams, however, suggested stronger measures than counterargument. In his answer to a Newark address, he asserted that "the delusion and misrepresentations which have misled so many citizens must be discountenanced by authority as well as by the citizens at large."¹⁹ "Unless the spirit of libelling and sediton shall be controlled by an execution of the laws," he warned, the spirit of disunion would increase.²⁰ He considered libels against the

¹⁶ Abigail Adams to Mary Cranch, Phila., Dec. 12, 1797, Mitchell, 117.

¹⁷ President Adams to the Mayor, Aldermen and Citizens of the City of Philadelphia, Apr. 23, 1798, *Claypoole's American Daily Advertiser*, Apr. 24, 1798. This address is also given in Charles Francis Adams, ed., *The Works of John Adams, Second President of the United States: with a Life of the Author, Notes and Illustrations* (Boston, 1850-1856), IX, 182.

¹⁸ Abigail Adams to Mary Cranch, Phila., Mar. 20, 1798, Mitchell, 146-147.

¹⁹ *Gazette of the United States* (Phila.), May 2, 1798.

²⁰ President Adams to the Citizens of Easton, Pa., May 11, 1798, *Columbian Centinel* (Boston), May 26, 1798. Adams apparently refers to the need to execute state libel laws as the Federal sediton law had not been introduced into Congress at this time. However, he might have referred to the possibility of utilizing Federal proceedings at common law until a national

government as odious as those against persons. "Reputation," he declared, "is of as much importance to nations, in proportion, as to individuals. Honor is a higher interest than reputation. The man or the nation without attachment to reputation, or honor, is undone. What is animal life, or national existence, without either?"²¹ In another of his public addresses, the President informed his fellow townsmen that the tongue and pens of slander were instruments "with which our enemies expect to subdue our country."²²

As if to verify the Federalist charge that the Republican party was an agency of the French, Talleyrand's negotiators demanded a bribe for the Directory as a prerequisite to settling Franco-American difficulties, boasting that "the diplomatic skill of France and the means she possesses in your country, are sufficient to enable her, with the French party in America, to throw the blame which will attend the rupture of negotiations on the Federalists, as you term yourselves, but on the British party, as France terms you."²³

Although the American envoys replied that France miscalculated on the party situation in the United States,²⁴ the Federalists in Congress took advantage of the foreign crisis to strike at their domestic political opponents. Charging that the *Aurora* was the chief engine of the "diplomatic skill of France," Congressman John Allen of Connecticut condemned it as a "vile incendiary paper" engaged in the business of sowing discord, dissension, and distrust of the government. "A flood of calumny is constantly poured forth

sedition law could be enacted. In addition to Bache, two New York editors, John Daly Burk of the *New York Time Piece* and William Durrell of the *Mount Pleasant Register*, were arrested by Federal authorities prior to the passage of the Sedition Law of 1798. See the excellent article by Frank M. Anderson which serves as a guide to all later investigation of this problem, "The Enforcement of the Alien and Sedition Acts," *Annual Report of the American Historical Association for the Year 1912*. For a discussion of the use of the Alien and Sedition laws against Burk, see my article entitled "The Case of the Seditious Alien: John Daly Burk and the *New York Time Piece*" in a forthcoming issue of the *Journalism Quarterly*.

²¹ President Adams to the Students of New Jersey College, C. F. Adams, IX, 205-206. This address is undated, but it is placed between those of June 29 and July 14, 1798, the date on which he signed the Sedition Law.

²² President Adams to the Inhabitants of Braintree, Mass., June 2, 1798, *ibid.*, 197.

²³ Charles C. Pinckney, John Marshall, and Elbridge Gerry, American Envoys to France, to Col. Timothy Pickering, Secretary of State, Dispatch No. 2, Paris, Nov. 8, 1797, *Annals*, III, Appendix, 3355.

²⁴ *Ibid.*, 3357.

against those whom the people have chosen as guardians of the nation." It was well known, he added, that Bache's paper always spoke the sentiments of the Republicans in the House, and was supported by them.²⁵

Mrs. Adams was convinced that "not a paper from the Bache press issues . . . but what might have been prosecuted as libels upon the President and Congress." So "wicked and base" was the *Aurora's* "violent and calumniating abuse" of her husband²⁶ that she thought it ought "to be Presented by the grand jurors."²⁷ Indeed, she finally concluded that if Bache's press and other Republican newspapers were "not surpressd, we shall come to civil war."²⁸

Federalist bitterness against Bache was so intense that Cobbett suggested that no man should pay the slightest respect for his feelings. The Republican editor, he observed, "has outraged every principle of decency, of morality, of religion and of nature." Sharpening his quills, Porcupine advised his readers always to treat Bache "as we should a TURK, A JEW, A JACOBIN, OR A DOG."²⁹

Charging that the French intended to overturn the American government through the agency of the Democratic-Republican newspapers, Cobbett urged the government to "regenerate" the press. Unless opposition newspapers were dealt with immediately, he continued, a set of villainous Republican editors, "most unquestionably in the pay of France," would continue to distribute their corroding poison throughout the Union. Although he agreed with one of his correspondents that strict postal control might be utilized to prevent the circulation of Republican journals, he suggested that as a more immediate step all Federalist merchants should withdraw their advertising from the opposition press in an effort to force it to the wall.³⁰

This economic pressure was not without its effect on the *Aurora*. Although Bache claimed that the paper was profitable enough to support itself, he admitted that the withdrawal of support rendered

²⁵ *Ibid.*, II, 1484-1485 (Apr. 20, 1798).

²⁶ Abigail Adams to Mary Cranch, Phila., Apr. 26, 1798, Mitchell, 165.

²⁷ Same to same, Apr. 21, 1798, *ibid.*, 159.

²⁸ Same to same, May 10, 1798, *ibid.*, 172. Mrs. Adams hoped that her native state would set the example for the rest of the states by passing a sedition law "to hold in order the base newspaper calumniators." Same to same, June 23, 1798, *ibid.*, 195-196.

²⁹ *Porcupine's Gazette*, Mar. 17, 1798, quoted by Fay, *The Two Franklins*, 344-345.

³⁰ *Porcupine's Gazette*, May, 1798, reprinted in Cobbett, VIII, 194.

the paper less lucrative than it might have been.³¹ Jefferson, however, reported that its circulation was tottering.³²

Economic coercion was not the only method of intimidation practiced against Bache in 1798 when political passions ran highest. Twice in that year Bache's house was attacked by mobs and twice the editor was personally assaulted. On May 7 twelve hundred young men paraded to martial music through the streets of Philadelphia, finally halting before President Adams' home to offer their services against France. When the President appeared to address them, he wore full military uniform, including a sword at his side.³³ After the youths had heard the Chief Executive's remarks, they marched off and continued their celebration with a dinner. In the evening a group of the intoxicated enthusiasts left the party and mobbed Bache's home, but his friends drove them off.³⁴ Two nights later, on a day proclaimed by the President as one of fasting and prayer, another mob in the City of Brotherly Love smashed the windows in Bache's house.³⁵ The Republican editor viewed these assaults as an attempt to awe him into "a base dereliction of his duty."³⁶

While visiting a Philadelphia shipyard, Bache was brutally assailed by Abel Humphreys, son of the builder of the frigate *United States*.³⁷ For this attack "the champion of the faction," as Bache called his assailant, was prosecuted, convicted, forced to pay damages, and bound over to keep the peace. Shortly thereafter this "friend of order" was appointed by President Adams to a diplomatic mission to Europe.³⁸ Later in the year Bache was assaulted by John Ward Fenno, son of the editor of the chief Federalist organ, the *Gazette of the United States*.³⁹

³¹ Bache, *Truth Will Out!*, "Prefatory Remarks."

³² Jefferson to Madison, Apr. 26, 1798, Ford, VII, 245-246. This letter "leaked" to the *Gazette of the United States*, June 4, 1798. For Bache's statement that his circulation was at a peak, see the *Aurora*, June 5, 1798. This assertion was probably bravado.

³³ *Porcupine's Gazette*, May 7, 1798.

³⁴ *Aurora*, May 9, 1798. Also see Bache, *Truth Will Out!*, "Prefatory Remarks," and the *New York Time Piece*, May 14, 1798.

³⁵ *Gazette of the United States*, May 10, 1798.

³⁶ Bache, *Truth Will Out!*, "Prefatory Remarks."

³⁷ Edmund Kimball Alden, "Benjamin Franklin Bache," *Dictionary of American Biography*, I, 462-463.

³⁸ Bache, *Truth Will Out!*, "Prefatory Remarks." Also see *Independent Chronicle* (Boston), May 21, 1798.

³⁹ *Gazette of the United States*, Aug. 9, 1798.

None of these tactics silenced the *Aurora* or its youthful editor. But on June 16, 1798, Bache disconcerted the administration by printing a secret state paper two days before Congress received a copy of it from President Adams. This action set in motion a series of events which enabled the Federalists to strike a legal blow at the editor and his paper. The embarrassing document which he published was Talleyrand's offensive yet conciliatory letter to the American envoys in France—offensive because it virtually disregarded John Marshall and Charles Cotesworth Pinckney as proper negotiators, conciliatory because it offered to discuss all outstanding issues with the remaining plenipotentiary, Elbridge Gerry. Although Talleyrand's letter had reached the Secretary of State only two days before it appeared in the *Aurora*, Bache defended his publication of the "scoop" on the ground that the administration was withholding it in an effort to embroil the United States in an unnecessary war with France.⁴⁰

The Federalists immediately accused the editor of being in open and treasonable correspondence with Talleyrand, claiming that he had printed the letter at the order of the French Directory. When President Adams transmitted to Congress on June 18 the official version of Talleyrand's letter, as well as the reply of the American envoys, the Federalists hailed the latter as an incontrovertible answer to Talleyrand's letter which should be published to counteract the machinations of the French Directory and its agents in America.⁴¹

That they had no evidence for these accusations against the Republicans other than their suspicions the Federalists readily admitted. Representative George Thatcher of Massachusetts, who called Bache an agent of the Directory, said that "he hoped soon to lay before the House satisfactory evidence of the fact."⁴² Robert Goodloe Harper, who became coauthor of the Sedition Law three weeks later, did not wait for evidence, but charged that France had secret agents in the United States. "Every means," he asserted gravely, "had been made use of to excite resistance to the measures of our Government, and to raise a spirit of faction in the country

⁴⁰ *Aurora*, June 16, 1798.

⁴¹ For the text of Talleyrand's letter and the reply of the American envoys, see Charles C. Pinckney, John Marshall, and Elbridge Gerry to Col. Timothy Pickering, Secretary of State, Dispatch No. 8, Paris, Apr. 3, 1798, *Annals*, III, Appendix, 3425-3459.

⁴² *Ibid.*, II, 1972.

favorable to the views of France." Bache's publication of Talleyrand's letter was only one of the ramifications of the scheme.⁴³

President Adams' wife thought that Bache ought to be "seized" immediately. The appearance of the French Foreign Minister's letter in the *Aurora*, she wrote, should convince "the most unbelieving of the close connection between the Infernals of France & those in our Bosoms."⁴⁴

On the day that the much discussed letter appeared, *Porcupine's Gazette* declared that it was certain that Bache had received it from France or from some French agent in America "for the express purpose of *drawing off the people from the Government*, of exciting discontents, of strengthening [Republican] opposition, and to procure a *fatal DELAY of preparation for war*." Ought not this "prostitute printer," he asked, "to be regarded as an organ of the *diplomatic skill* of France? And ought such a wretch to be tolerated at this time?"⁴⁵

The *Gazette of the United States* also joined in the accusations against its old antagonist, claiming to have proof of Harper's and Thatcher's charge. It announced that John Kidder had arrived in Philadelphia only the week before with dispatches from the Directory to Bache. These he innocently delivered to the editor of the *Aurora* and Bache printed one of them on June 16. Here was an open and shut case of treason proved by the courier.⁴⁶

The *Philadelphia Gazette*, however, gave a different version. On March 18, a clerk from Talleyrand's office had handed two packets to William Lee of Boston, one of Kidder's fellow passengers bound from France to America. One envelope was addressed to Bache and bore the seal of the French Foreign Affairs Office. The *Gazette* claimed that Lee left the ship before it reached Philadelphia, but did not say whether he or Kidder had charge of the letters to Bache at that time.⁴⁷

⁴³ *Ibid.*

⁴⁴ Abigail Adams to Mary Cranch, June 19, 1798, Mitchell, 193. This letter is mistakenly dated from Quincy, for it was written at Philadelphia. Mrs. Adams was much incensed by Bache's criticism of her husband and of her son, John Quincy Adams, then ambassador at Berlin. On one occasion she addressed a reprimand to Bache for criticizing his former schoolmate, John Quincy. See Abigail Adams to Bache, quoted by Fay, *The Two Franklins*, 339.

⁴⁵ *Porcupine's Gazette*, June 16, 1798.

⁴⁶ *Gazette of the United States*, June 18, 1798.

⁴⁷ *Philadelphia Gazette*, June 18, 1798.

In an attempt to correct these stories and to prove his innocence of complicity in the "treasonable plot," Kidder published a statement in *Claypoole's American Daily Advertiser* which contradicted all the previous stories. He declared that his traveling companion Lee had begged him to take charge of a number of letters addressed to Bache, Genêt, and other American citizens. He said that after he landed, he had put the letters in the New York Post Office, without suspecting their contents. Thus, he denied handing the letters directly to Bache as the *Gazette of the United States* claimed. Kidder's statement, said Porcupine, nevertheless proved that "the infamous Lightning-rod, jun. was a hireling of, and in correspondence with the despots of France."⁴⁸

The Federalists hailed such evidence as proof of the claims of Harper and Thatcher. The *New-York Gazette* printed Kidder's statement as a handbill.⁴⁹ Another of Lee's traveling companions, however, feared that Kidder's story portrayed Lee as a French courier. Samuel M. Hopkins therefore hastened to explain how Lee, a man of "respectable character," came into possession of the papers. According to Hopkins' story, he had sailed from France with Kidder and Lee. Because the time of Lee's intended departure had been known for some time before he left Paris, many letters were entrusted to him for delivery in America, as was customary. When these were sorted, those bearing the seal of the French Minister of Foreign Affairs attracted Lee's attention, since they were addressed to Bache, James Monroe, Citizen Genêt, and "some other persons of the same description." Lee therefore decided to send these letters to Secretary of State Pickering, rather than drop them into the post office. Hopkins and Lee had left the ship while it was still off the American coast, and Hopkins presumed that in Lee's hurry to sort the letters for their different destinations, he had left some with Kidder.⁵⁰

In a separate statement, Lee asserted that he did not recall who had handed the letters to him, that he knew nothing of the contents of the one addressed to Bache or any of those bearing the French seal, and that his attention was not attracted to them until he was at sea. By mistake some of them had been left with Kidder when Lee

⁴⁸ *Porcupine's Gazette*, June, 1798, reprinted in Cobbett, VIII, 245.

⁴⁹ *New-York Gazette and General Advertiser*, June 20, 1798.

⁵⁰ *Ibid.*, June 21, 1798, reprinted in the *Aurora*, June 23, 1798.

left the ship. All the others Lee had turned over to government officials.⁵¹

Administration officials were eager to probe to the bottom of the allegedly treasonable plot. After a hasty trip from the nation's capital, Secretary Oliver Wolcott arrived in New York on June 19 for a personal interview with Lee. In their discussions, which took place at the home of Samuel Hopkins, the Secretary indicated that he was not so much interested in the letters to Bache, Monroe, and Genêt as in those which Hopkins had said were addressed to "other persons of the same description." He made it clear that he was after the leader of the "traitors" by asking repeatedly "*if there were any letters for Mr. Jefferson.*" The invariable answer was "No."⁵²

Failing to implicate the Vice-President in the plot, Wolcott settled for lesser game. He accepted the letters which Lee offered, gave a receipt to the interceptor, and mailed them to Secretary of State Pickering. These letters included a packet for Bache, sealed with the official stamp of the French Office of Foreign Affairs.⁵³

In the meantime Bache had not been idle. On June 20 he appeared before the mayor of Philadelphia and swore that he had not received the Talleyrand letter from France. He insisted that a man in Philadelphia had delivered it to him for publication.⁵⁴ He added that he had not yet received the mysterious packet which Kidder claimed he

⁵¹ *Ibid.*

⁵² *Diary of William Dunlap (1766-1839), The Memoirs of a Dramatist, Theatrical Manager, Painter, Critic, Novelist, and Historian* (New York, 1930), entry of June 20, 1798, I, 294. Dunlap was a friend of Hopkins and was present when Wolcott received the letters from Lee. Although the Secretary's trip figures in the standard discussions of this episode, his attempt to obtain evidence of Jefferson's "treason" was not revealed at the time and, so far as I know, has never before been incorporated in any discussion of the period. It is not mentioned in John B. McMaster, *History of the People of the United States* (New York, 1883-1913), II, 390-393, which gives the fullest account in the secondary works.

George Gibbs, ed., *Memoirs of the Administrations of Washington and John Adams, Edited from the papers of Oliver Wolcott* (New York, 1846), does not discuss Wolcott's role in this episode, although he does print a revealing letter from Stephen Higginson to Wolcott. In listing the names of those whom he hoped Wolcott would implicate as receiving letters brought from France by Lee, Higginson placed Jefferson first, then added James Monroe, Edmund Randolph, Abraham Baldwin, Citizen Genêt and Bache. See Higginson to Wolcott, Boston, June 29, 1798, *ibid.*, 68-70.

⁵³ *Diary of William Dunlap*, I, 294. Wolcott endorsed the packet on the back before mailing it to Pickering.

⁵⁴ Faÿ, *The Two Franklins*, 347-348, speculates that Jefferson probably gave it to him.

had put into the post office.⁵⁵ The Republican editor also pointed out that since his publication of Talleyrand's letter to the American envoys, the greatest effort had been made to divert public attention from its contents "by making noise about the *manner* in which it came into print." The Federalists had followed this plan of attack, he said, because the letter "had a tendency to counteract the system of alarm, which it has been the avowed object of the Tories to encourage." Bache also published an interview with Kidder in which the latter again stated that he had posted all the letters which had been entrusted to him. He was not sure, however, that the one addressed to Bache was among these.

Bache was now ready to refute the alarming stories about treasonable correspondence. Denying that he was an agent of the French, he surveyed the discrepancies in the various stories advanced by the Federalists. First of all, the letter which he published had not been received from France. Second, the elusive packet from France had not yet been received. Fenno's story that Kidder had delivered it punctually had been repudiated by Kidder, who first said that he had dropped it into the post office, but later said he was not sure that it was among those posted. It was on this contradictory evidence, Bache continued, that the two mouthpieces of the administration, Harper and Thatcher, had made their insinuating accusations; he now called on them for proof. For his part, he offered written testimony that he had not received any such letters from France.⁵⁶

The editor then challenged the administration to inform him where he could find his delayed letter, which was "said to be sealed with the seal of the French Department of Foreign Affairs." From his interview with Kidder he suspected that it was a pamphlet by Pichon, a personal friend, formerly an attaché at the French Legation in Philadelphia, who was now in the Office of Foreign Affairs in France. Bache ridiculed the idea that Pichon was carrying on a treasonable correspondence. It hardly seemed likely, he said, that a conspirator would identify his letters with the seal of the Foreign Office. Nor was it likely that he would entrust his correspondence to Lee, a man

⁵⁵ *Aurora*, June 21, 1798.

⁵⁶ Signed statement of Frederick Woolbert and Michael Leib, June 19, 1798, *ibid.* Kidder deposited the mail from the ship on June 11, 1798. The two witnesses above were present when Bache asked postal clerks whether he had received any of the mail posted that day. The clerks replied in the negative.

whom he did not know. The editor concluded by requesting the Federal authorities to surrender the delayed packet immediately. He asserted that even if it were returned with the seal broken or defaced, he would attribute it to accident, and never suspect that the authorities had done either.⁵⁷

Two days later a messenger from Secretary Pickering delivered the missing packet to the *Aurora* office. Keeping the sealed envelope in the view of the messenger all the time, Bache summoned two other persons to witness the opening of the diabolical package. On the outside the letter was addressed "Au Citoyen B. F. Bache imprimeur a Philadelphie," and sealed with a stamp bearing the words "Republique Francaise, Relations Exterieures." On the back of the letter over the seal were two endorsements in which Wolcott acknowledged receipt of the packet from Lee on June 20, and Pickering noted that he had received it in the mail from New York on June 22, 1798.⁵⁸

When the seals were broken and the letter opened, the "treasonable correspondence" proved to be two pamphlets on English affairs by Pichon.⁵⁹ This, of course, exploded the Harper-Thatcher "plot." They had maintained that the Talleyrand letter which Bache published had been delivered by Kidder from France. This packet, which had sent the Federalists in search of Republican "traitors" and had kept the nation in a state of constant alarm for a week, contained not a single word on American relations with France.⁶⁰

The story of what he thought had happened was then reconstructed by Bache. Lee, he said, probably informed the administration of the packet and asked whether he should turn it over to its addressee or to the government. Fearful of receiving another man's property without authority or law, the executive departments dispatched Wolcott to New York to inspect the suspected letter and decide "whether it worth while to violate every principle of law and honor to get at their contents." At the same time, two administration mouthpieces, anticipating startling revelations against the edi-

⁵⁷ *Ibid.* Also see Bache's comments in *ibid.*, June 22, 1798.

⁵⁸ Certified statement by Matthew Carey and Joseph Clay, Phila., June 23, 1798, in "The Plot Unravelled," *Aurora*, June 25, 1798.

⁵⁹ One was entitled "Lettre D'un Francais a M. Pitt," and the other was "Seconde Lettre d'un Francais a M. Pitt." Both were directed to "B. F. Bache de la port du Cn. Pichon." *Ibid.* The messenger from the State Department was present during these proceedings.

⁶⁰ *Ibid.*

tor, were instructed to accuse Bache of being a French hireling. Even if the charges were untrue, they would damage the editor, who would be hard put to disprove them. If the letter contained nothing damaging, it could be destroyed and the claim made that it had been seized by a boarding officer. The fact that there had been a packet would allow the calumnies against him to continue to circulate.⁶¹

This Federalist plot had been foiled, Bache continued, by Kidder's published statement in Claypoole's paper. In this Kidder made it appear that Lee was the go-between for Talleyrand. To clear himself of this suspicion, Lee admitted that he had turned the letters over to the government. After this revelation, Wolcott and Pickering finally delivered the package rather than face a prosecution for illegally detaining property not belonging to them.

What right, Bache asked, had Wolcott to receive an editor's mail and then send it to a third person rather than to its proper addressee? He was sure that Wolcott would seek redress if an editor received a letter or any other property addressed to the Secretary, detained it for a time, and then sent it to a third person. Yet here was a Cabinet official holding back proof that Bache was innocent of the charges assiduously circulated by Wolcott's friends in Congress. And where, he queried, had these legislators obtained the information on which to base their charges? It could only be from those government officials whom Lee had notified. They were Cabinet officers not even known to the Constitution, Bache continued; they were creatures of the President, "subject to his will and pleasure, and independent of the People."⁶²

Shall these men, the editor persisted, be permitted to place themselves above the law with impunity, to intercept private correspondence, and to defame private character? He considered it unnecessary to bring them before courts of justice for defamatory libel because he thought that the tribunal of the press could counter their arrogant claims. Conceding that the charges which Harper and Thatcher made in the House were privileged, he nevertheless demanded that they do justice to "injured innocence" by withdrawing their thor-

⁶¹ *Ibid.* Capt. Pender of the British navy boarded the ship on which Lee was a passenger and seized some letters from France.

⁶² *Ibid.* The *New London Bee*, Aug. 1, 1798, observed that "we do not recollect the particular law that gives the secretary of state a right to stop and examine the letters of private citizens." Reprinted in the *Boston Independent Chronicle*, Aug. 13, 1798.

oughly disproved accusations. If they remained silent, they would not only deprive him of plenary justice; they would also disgrace themselves.⁶³

Finally, Bache asked why his accusers had spread reports that he had been arrested, or had fled, or had been jailed. From an "almost official" source, he had learned that a warrant actually had been signed for his arrest. Was this done to intimidate him, to force him to flee? If it was, he replied, his enemies had miscalculated. He had not truckled before his accusers nor was the spirit of his paper cowed. "Persecution," he vowed, "shall only fan the flame of his detestation for those whom he considers the enemies of the best interests of his country. They shall not make him abandon his post for fear of a trial even before their tribunals. He will even prefer death, as a victim, to a flight that would render his innocence suspected. This is high language, it may be said. It is the language of injured and triumphant innocence. Perhaps administration may not understand it."⁶⁴

Bache's convincing proof of his innocence, the Boston *Independent Chronicle* declared, should be inserted by all the "Ministerial printers" who, along with official spokesmen, had subjected the editor to "very extraordinary treatment." If they had succeeded in fixing the charge of treason on Bache, "he would have been justly consigned to exemplary punishment, and his name to the execration of his fellow citizens, and of posterity." His defense against "the botched up charge of conspiracy," however, had defeated the malignant intentions of his traducers, and the Federalist papers could not honestly and honorably refuse it a place in their columns.⁶⁵

According to the Republican newspapers, Bache's publication of Talleyrand's letter had stymied the Federalist warmongers by revealing France's willingness to negotiate with Gerry. The New York *Time Piece* contended that even if Bache had obtained the letter directly from Talleyrand, he would have committed no crime. The two countries were at peace, the editor argued, and even if they were at war, nothing would hinder an American editor from procuring

⁶³ *Aurora*, June 25, 1798. On June 22 Bache claimed that if Thatcher had proof of his treason and failed to produce it, the Representative would be guilty of misprision of treason for concealing the crime. See *ibid.*, June 22, 1798.

⁶⁴ *Ibid.*; Bache's articles in the *Aurora* of June 19, 21, 23 and 25 were published in pamphlet form, with a two-page preface, under the title *Truth Will Out!*

⁶⁵ *Independent Chronicle*, reprinted in the *Aurora*, July 7, 1798.

from any person, "no matter whom, intelligence, useful to America. The re-taking of Toulon," he continued, "was announced ten days before the official account of it; consummate blockheads! insolent traitors, is it treason, to publish intelligence useful to America?"⁶⁶

The administration appeared willing to concede that it had no evidence of Bache's treason. At least, the Republican editor was not prosecuted for printing the Talleyrand letter. Indeed, the President communicated it to Congress on June 18 along with the reply which the American envoys had written to Talleyrand.⁶⁷ Three days later, he vowed that "I will never send another Minister to France, without assurances that he will be received, respected, and honored, as the representative of a great, free, powerful, and independent nation."⁶⁸

Thus, while the administration failed to obtain the necessary proof of Bache's participation in a treasonable plot, it was clearly in no mood to brook his criticism. In defending himself against the Federalists' unfounded charge of treason, however, the editor not only censured the conduct of Wolcott and Pickering; he also reflected on the President himself in words tending to bring his administration into disrepute. Despite the absence of a Federal sedition statute, the administration, eager to crush its foe, launched a sedition prosecution at common law rather than wait until Congress acted.

Arrested on a warrant issued by District Judge Richard Peters, Bache was brought into court on June 26 and charged with "libelling the President & the Executive Government, in a manner tending to excite sedition, and opposition to the laws, by sundry publications and re-publications."⁶⁹ Alexander J. Dallas, Secretary of Pennsyl-

⁶⁶ *New York Time Piece*, June 22, 1798.

⁶⁷ John Adams to the Gentlemen of the Senate and the House of Representatives, United States, June 18, 1798, *Annals*, II, 1972.

⁶⁸ Same to same, June 21, 1798, *ibid.*, 2029.

⁶⁹ *Aurora*, June 27, 1798. The words "Executive Government" in the indictment refer to Bache's statements about the Cabinet officials, Pickering and Wolcott.

Pickering had instituted a personal libel suit against Bache as early as February, 1798, because of a letter which charged the Secretary with "a shameful breach of the laws" in receiving gratuities from persons seeking passports which were supposed to be issued without cost. For this accusation by "South Front Street," see the *Aurora*, Jan. 24, 1798. Also see Pickering to Bache, Department of State, Phila., Jan. 25, 1798, Pickering Papers, XXXVII, 264, Massachusetts Historical Society, in which the Secretary condemns the story as false and malicious so far as it respects him personally.

An investigation by Pickering revealed that gratuities had been accepted in the Office of the State Department as had been charged. The Secretary therefore discharged the guilty

vania, and Moses Levy, a leading radical Democratic lawyer, represented Bache. After obtaining a two-day delay, the editor was paroled to the District Marshal until June 29.

Bache assured the public that the prosecution could not be supported in the Federal courts if the opinion of Supreme Court Justice Samuel Chase was followed. In the case of the *United States v. Worrall*, argued in Philadelphia only three months earlier, Chase had declared that Federal courts lacked common law jurisdiction in criminal cases. Bache, however, thought that the ultimate decision would turn not on the question of jurisdiction, but on that of liberty of the press.⁷⁰ Apologizing for the scarcity of news in the *Aurora* of June 27, he attributed it to the novelty of his arrest the day before. "The faction," he wrote, "have, so far, only obtained a day's respite." The editor pledged that "prosecution no more than persecution, shall cause him to abandon what he considers the cause of truth and republicanism; which he will support, to the best of his abilities, while life remains."⁷¹

On June 29 Bache appeared with his counsel before Judge Peters at his chambers. District Attorney William Rawle represented the government and supported the validity of the warrant. The editor's lawyers denied that the Federal courts were vested with common law jurisdiction in criminal cases and cited Judge Chase's ruling in the Worrall case. Since Judge Peters had expressed the opposite view in

clerks. See Pickering to Rev. John Clark, Jan. 26, 1798, *ibid.*, 265-266. After consulting his lawyers, Pickering brought suit against both Bache and Dr. James Reynolds, the author of the original charge. See William Rawle to Pickering, Feb. 27, 1798, *ibid.*, XXII, 48. I have found no indication in Pickering's papers or in the *Aurora* that this suit ever came to trial.

⁷⁰ *Aurora*, June 27, 1798. After Bache's arrest, the Federalists moved speedily to enact a sedition law specifically conferring jurisdiction on the Federal courts. As early as Apr. 26, 1798, Jefferson noted that the Federalists planned to pass such an act. He wrote that "one of the war party, in a fit of unguarded passion, declared some time ago that they would pass a citizen bill, an alien bill, and a sedition bill. . . . there is now only wanting, to accomplish the whole declaration before mentioned by the Federalists, a sedition bill, which we shall certainly see proposed." Jefferson to Madison, Phila., Apr. 26, 1798, Ford, VII, 244.

On June 4 the Federalists introduced into the House an omnibus alien and sedition bill "for the prevention and restraint of dangerous and seditious practices." *Annals*, II, 1771. This bill was replaced on June 26, the day of Bache's arrest, by Sen. James Lloyd's more drastic treason and sedition bill, which became the basis of the final Sedition Law. *Ibid.*, 589-590.

⁷¹ *Aurora*, June 27, 1798. In an article the day before his arrest, the editor had observed that the proceedings of the legislature "may be commented on in papers." See *ibid.*, June 25, 1798.

that case, they conceded that it was useless to emphasize this point, although they asserted that it was proper to present their objection to him. In the event that the charge was not dismissed for lack of jurisdiction, they had advised Bache to enter in recognizance for his appearance at the next circuit court term. This move would give them time to arrange a mode of proceeding which would not only guarantee complete justice to their client, but, if possible, would avoid a collision between state and Federal courts. The posting of bail, the defense counsel argued, in no way impaired Bache's right to object to Federal jurisdiction before a full panel of the United States Circuit Court, or his right to any other legal proceedings, such as testing the legality of any imprisonment with a writ of habeas corpus returnable before a state judge or court.⁷²

Judge Peters agreed that it would be superfluous to discuss the question of jurisdiction before him because he had not changed his opinion as announced in the Worrall case. He therefore could not hesitate to take cognizance of the charge, especially since he had issued the arrest warrant. By posting bail, Bache did not waive the right to take exception to the court's jurisdiction when the case came up. The Judge then set bail at \$4,000 and required Bache to give security for \$2,000 and two sureties for \$1,000 each. The trial date was set for the October term.⁷³

True to his word, Bache did not slacken his criticism of the administration's measures. Instead, he attacked them as warlike and singled out the Alien and Sedition Laws for special censure. In a pamphlet entitled *Truth Will Out!*, he accused the administration of a studied attempt to suppress his press by official and unofficial action. This, he claimed, became necessary "when it was determined to enlist this country on the side of despotism and then to pass alien, treason and sedition bills, that have not a parallel even in the British code." He asserted that his persecution included attempts to deprive his paper of support, "a cowardly, premeditated and unprovoked attack" by Humphreys, arbitrary removal from the floor of the

⁷² *Ibid.*, June 30, 1798. The trial of *United States v. Worrall* is reported in 2 *Dallas*, 384-396, and in Francis Wharton, ed., *State Trials of the United States during the Administrations of Washington and Adams* (Philadelphia, 1849), 189-199.

⁷³ *Ibid.*

House of Representatives, attacks upon his home, and libelous attacks on his character by "the tools of faction connected with the administration." When all these efforts failed to ruin him and his paper, he concluded, a prosecution was instituted against him for a seditious libel on President Adams. Although Bache thought it improper to discuss the merits of the pending case, he assured his readers that it would furnish him another "cause of triumph" even if he were obliged to submit to the "assumed jurisdiction" of the Federal courts.⁷⁴

On July 16, two days after the President signed the Sedition Law, Bache wrote a penetrating paragraph discussing the question of liberty and order in a republican form of government. He concluded that the attempt to safeguard the security of the state had been pushed so far as to endanger the liberty of the individual. "The efforts of the administration," he wrote, "seem to be to protect themselves." Declaring that the Constitution guarantees certain rights of the people as well as those of the government, he observed that "it is as much the sworn duty of the administration to protect the one as the other. . . . one of the first rights of a human is to speak or to publish his sentiments; if any government founded upon the will of the people passes any ordinance to abridge this right, it is as much a crime as if the people were, in an unconstitutional way, to curtail the government of one of the powers delegated to it."⁷⁵

In Turkey, the *Aurora* concluded, the voice of the government, rather than the voice of the people, was law, and Turkey was called a despotism. "Here the voice of the government is likewise the law and here it is called *liberty*. We may next expect to hear the African tyger, on being imported here, has been metamorphased into a Lamb!"⁷⁶

Although Federalist editors gloated over the prospect of Bache's coming trial, they deplored the continued circulation of the *Aurora*. "The Devil," said a Philadelphia paper, "is represented as coming forth with wrath, because he had but a short time; so his emissaries, by their rage and violence, appear to anticipate an arrest in their

⁷⁴ Bache, *Truth Will Out!*, "Prefactory Remarks."

⁷⁵ *Aurora*, July 16, 1798.

⁷⁶ *Ibid.*

career of villainy—since the passage of the Sedition Law, the scum, filth and foam of the Aurora Cauldron has flowed more than ever.”⁷⁷ Fashionable eating places, such as the Coffee House in Philadelphia and the Tontine Coffee House in Albany, barred Bache’s paper.⁷⁸

The harassed editor continued to publish his paper despite these discouragements. Nor did he leave his post when the worst yellow fever epidemic since 1793 moved into Philadelphia in the late summer of 1798. On September 5, Bache caught the fever. Five days later death cheated the Federalists of their first victim of a sedition prosecution.⁷⁹ Although the Republican press agreed with the Boston *Independent Chronicle* that “the real friends of their country cannot but lament the loss of so valuable a citizen,”⁸⁰ most Federalists echoed the epitaph of *Russell’s Gazette*: “The memory of this scoundrel cannot be too highly execrated.”⁸¹

Bache’s death did not silence the *Aurora*. In an extra which was on the streets before dawn on September 11, his widow assured “the friends of civil liberty, and patrons of the *Aurora*” that she would continue the paper as soon as arrangements could be made. “In these times,” she added in tribute to her husband, “men who see, and think, and feel for their country and posterity can alone appreciate the loss; the loss of a man inflexible in virtue, unappalled by power or persecution, and, who, in dying knew no anxieties but what were excited by his apprehensions for his country—and for his young family.”⁸²

On November 1, 1798, the *Aurora* resumed publication under the editorship of William Duane, who had been Bache’s assistant. Pledging to continue his predecessor’s “undeviating adherence to the principles of our Constitution, and an unwearied watchfulness against

⁷⁷ *Albany Centinel*, Aug. 24, 1798. This paragraph appeared under a Philadelphia dateline of Aug. 6, 1798.

⁷⁸ *Ibid.*, Aug. 14, 1798.

⁷⁹ Faÿ, *The Two Franklins*, 356.

⁸⁰ *Independent Chronicle*, Sept. 17, 1798. The New York *Argus* published a “Monody on the death of Benjamin Franklin Bache” which the *Aurora* reprinted on Nov. 8, 1798. The poem was written by John D. Burk, the editor of the New York *Time Piece* then being prosecuted under the Federal common law for a seditious libel on President Adams. Burk’s case never came to trial. See Note 20.

⁸¹ *Russell’s Gazette* (Boston), Sept. 20, 1798.

⁸² *Aurora*, handbill, Sept. 11, 1798, cited by Faÿ, *The Two Franklins*, 356.

those eternal foes of republics, avarice, ambition, and corruption," Duane promised to publish the *Aurora* "with inflexible fidelity to the principles upon which it was founded and reared up."⁸³ Under his guidance Bache's paper continued as the leading journal of Republican opinion in the United States. Indeed, the new editor's criticism of the administration soon marked him out as successor to the Federalists' animosity for Bache, but the most concerted attempts to bring him to trial under the Sedition Law failed.⁸⁴

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⁸³ *Aurora*, Nov. 3, 1798, reprinted in the *New London Bee*, Nov. 14, 1798.

⁸⁴ For a summary of these proceedings, see Miller, 196-202.