



PROFILES IN COURAGE

Teacher's Guide

JOHN MARSHALL

CREDITS:

Starring Gary Merrill, Murry Matheson, Christopher Dark, Alan Hewitt, Perry Wilson, Lloyd Corrigan, and Katherine Squire. Written by David Karp. Directed by Gordon Oliver and Robert Saudek Associates. Inspired by John F. Kennedy's Pulitzer Prize-winning book. **50 minutes.** Guide prepared for Social Studies School Service by Robert D. Barnes, 1983.

OBJECTIVES:

- To understand the right of dissent in a democracy.
- To examine the concept of the independence of the judiciary.
- To discuss and interpret the charge of treason as presented in the Constitution.
- To understand the meaning of moral courage.

SYNOPSIS:

The time is March, 1807; the place, Richmond, Virginia. John Marshall, Chief Justice of the United States, is there to preside over Grand Jury hearings into the treason charged against Aaron Burr, previous vice president of the United States. If the Grand Jury indicts, Burr will be on trial for his life and Marshall will preside.

The treason charges stem from Burr's armed adventures in the West. Whether his plan is to provoke Spain into war or simply to set up a Western empire independent of the United States is unclear.

The Republican president, Jefferson, is determined that his former vice president, a Federalist, be punished severely. He fears that Marshall, also a Federalist, will plot to thwart justice. Marshall does little to assuage these fears; he sets bail at \$10,000, and appears at a dinner party at the home of John Wickham, Burr's defense attorney. Burr is also present.

The public mood is anti-Burr, and newspaper stories have played up Marshall's friendship with Wickham. Aware of the pressure for conviction, Marshall is determined that Burr will have a fair trial. He accepts a Burr motion calling for papers pertaining to the case held by Jefferson. Jefferson is furious at Marshall's subpoena, but supplies the papers, not wanting to give Burr any pretext for claiming an unfair trial. The Grand Jury returns an indictment against Burr.

Prosecutor George Hay, the United States attorney, calls witnesses who testify to Burr's treasonous intentions. While some of the evidence is highly questionable, it is clear that Burr has plotted treason. However, under the Constitution, treason is a narrow, clear charge. Article III, Section III, Clause I, states: "Treason...shall consist only in levying war...adhering to...enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court."

The trial is conducted "impeccably," and while recognizing that Jefferson has every reason to be "terrified" of Burr, and viewing Burr as "ill advised," "rash," and "treacherous," Marshall finds no treason, no overt act.

Jefferson feels that the fact treason has been plotted is sufficient to convict. As it becomes clear that Marshall will not cut corners, talk of his impeachment begins.

Polly, Marshall's wife, urges he do his duty, stating: "If Tom Jefferson has you impeached, I'll go to Washington and slap his silly face for him!" In his opinion and instructions to the jury, Marshall says that unless the act or "open deed" has been proved, and he sees no indication that it has, then treason has not been committed. The jury returns a verdict of not guilty.

VOCABULARY:

The following words and phrases appear in the program. Teachers may wish to check for student understanding:

jeopardy	corroborative
Federalist	overt act
judiciary	collateral
impeach	misconstruing
scrutiny	supersede
subpoena	solvency
Marbury v. Madison	requisite
grand jury indictment	usurp
patrimony	calumny
barrister	dereliction

QUESTIONS FOR DISCUSSION:

1. Why was President Jefferson prepared to offer pardons, through his U.S. attorney, George Hay, to Burr's fellow conspirators? How does this tactic compare with today's use of plea bargaining?
2. Why does Marshall, make no apologies for attending the dinner party given by John Wickham? What did Rodney, Jefferson's attorney general, say about Marshall's attendance? Do you agree? Explain.
3. Marshall's subpoena of Jefferson's papers represents a clear reversal of the position he held in *Marbury v. Madison*. What explanation does he give? Do you think his argument is sound?
4. Marshall held several discussions concerning law in general and the Burr case in particular with his wife, Polly. It was evident that Polly's interest was strong, but her knowledge limited. Did this harm their relationship as husband and wife? Give examples to support your argument. Did their discussions help you understand the issues?
5. The tavern owner admired Marshall and referred to him as "his own man." What did he mean? Give examples that would support his view. Do you know people you would characterize as being "their own person"? Can you think of some who are not? How do they fall short? Explain.

ACTIVITY:

Using a copy of the United States Constitution as your guide, turn to Article III, Section III, and read what it says about treason. Imagine that you have been accused of treason or another serious crime. Turn to the Bill of Rights (first 10 Amendments) and read carefully the First, Fourth, Fifth, Sixth, and Eighth Amendments to the Constitution. Do you have considerable rights as an accused person? Can you think of any rights you would add? Delete? Defend your position.

FOR RESEARCH AND DISCUSSION:

1. Read about the English treason trials of such people as Sir Thomas More, Anne Boleyn, Lady Jane Grey, Mary Queen of Scots, and Sir Walter Raleigh. Compare the charges, evidence, and results with what you learned in the Burr case.
2. Burr was the first, but not the last vice president to leave his office accused and disgraced. Richard Nixon's first vice president was Spiro Agnew, the former governor of Maryland. Find out what happened. Why did Agnew leave office?
3. President Jefferson was reluctant to give up his papers, claiming that they contained privileged information. During the Watergate investigation President Richard Nixon attempted to keep hold of 950 reels of tape and 46 million pieces of paper containing White House business and conversations. Find out why Nixon was so anxious to keep this material. What finally happened?