

NJS Presents**Museums, Archives, Artifacts, and Documents News****In this Issue:*****Aaron Burr and Alexander Hamilton's Duel:******A Brief Note on Underutilized Sources*****By Maxine N. Lurie****DOI: <http://dx.doi.org/10.14713/njs.v2i1.21>**

In 2015, fueled by a wildly successful Broadway musical produced 211 years after his death, Alexander Hamilton is having a revival. This provides an appropriate moment to look back at the duel between Hamilton (former U.S. Secretary of the Treasury) and Aaron Burr (vice-president of the United States), and to share several documents from that extraordinary event.¹ The New Jersey State Archives has a case file titled “State of New Jersey vs. Aaron Burr, Appeal to Remove the Indictment for the Murder of Alexander Hamilton.”² To support the appeal a number of documents were introduced into the records of the New Jersey Supreme Court, leaving a rather detailed account. In writing about Alexander Hamilton, Aaron Burr, and the duel itself, most historians have relied on secondary sources, some on the documents cited in the papers of one or the other of the participants.³ But none refer to all the surviving records, nor do they reproduce the images. What follows is a brief discussion of Hamilton and Burr, of their duel and its consequences, a list of the documents in the folder, and the copies of two of them (the original indictment, and the order to quash it).

¹ The author thanks the staff of the New Jersey State Archives, especially Joseph Klett, Veronica Calder, Joanne Nestor, Ellen Callahan, and Vivian Thiele for their help in making these documents available. Also Peter Charles Hoffer of the University of Georgia whose questions about the Indictment led to a closer look at the entire file.

² State of New Jersey vs. Aaron Burr, 1804-1807, Case # 34151. New Jersey State Archives, Supreme Court Case Files, 1704-1844.

³ Harold C. Syrett ed., *The Papers of Alexander Hamilton* (Columbia University Press: New York, 1979) v. 26 pp. 234-349; and Mary Jo Kline ed., *Political Correspondence and Public Papers of Aaron Burr* (Princeton: Princeton University Press, 1983) v. 2 pp. 876-908.

The Duel involved two of the founding generation of the United States, from diverse backgrounds, whose lives had crossed numerous times.⁴ Both of their lives were plagued by tragedy. Alexander Hamilton was born in the Caribbean island of Nevis. His parents were not married, his father left, and then his mother died leaving him and his brother to fend for themselves.⁵ The young Hamilton impressed local clergyman and merchants, who funded his move to the British North American colonies for an education. He studied in Elizabethtown, New Jersey, and then at Kings College (now Columbia University) in Manhattan, but soon was drawn from the life of a scholar to that of a soldier. During of the American Revolution he served on George Washington's staff, but also saw combat at Trenton and Yorktown. After the war he briefly studied and then practiced law in New York City, then joined Washington's cabinet as the first Secretary of the Treasury. A leading Federalist politician, after 1795 he returned to New York City, where he continued his involvement in politics while also practicing law.

Aaron Burr was the grandson of Jonathan Edwards, and son of Presbyterian minister Aaron Burr, Sr., one of the founders of the College of New Jersey (now Princeton University).⁶ Both of his parents and grandparents died within a brief span, leaving Burr and his sister orphans raised by family in Elizabethtown. He attended the College in Princeton, and then served during the Revolution (including a brief stint on Washington's staff). Burr studied law, practiced in New York City, and became involved in Jeffersonian-Republican politics where he proved himself a master at political organizing. In 1800 he ran on the Jeffersonian-Republican ticket, ostensibly as the vice-presidential candidate. Under the original Constitution, Electoral College members cast

⁴ On the connections between the two men see: Arnold A. Rogow, *A Fatal Friendship: Alexander Hamilton and Aaron Burr* (Hill & Wang: New York, 1998).

⁵ There are numerous works on Hamilton. For a comprehensive study see: Ron Chernow, *Alexander Hamilton* (New York: Penguin Books, 2004).

⁶ On Aaron Burr see: Nancy Isenberg, *Fallen Founder: The Life of Aaron Burr* (New York: Viking Penguin, 2007), a modern scholarly biography of his life.

two votes each; party loyalty in 1800 resulted in a tie between Jefferson (supposedly the presidential candidate) and Burr (the vice-presidential one). The House of Representatives voted 36 times before resolution was achieved (with Jefferson as president and Burr as vice-president). Some, including Jefferson, thought that Burr should have withdrawn as a presidential contender. Not surprisingly, in 1804 the president selected a different running mate. Burr then ran for governor in New York State.

During the election stalemate in 1800 Hamilton, who did not like Jefferson but distrusted Burr more, tried to convince congressmen to dump Burr. Four years later he opposed Burr's run for governor, and apparently referred to him as "despicable." The two prickly men, both of whom placed great value on their honor, made preparations for a duel. At a time of heated political divisions, dueling was one recourse gentlemen used to settle their differences and/or protect their reputation.⁷ Both men were acquainted with dueling. To Washington's dismay, his officers engaged in the practice during the war. Hamilton first served as a second when, after the Battle of Monmouth, John Laurens dueled with Charles Lee; on later occasions he served as a second for friends. Sadly, Hamilton's oldest son, Philip, died in a duel shortly before his father suffered the same fate. Burr challenged John Barker Church to a duel in 1799 over derogatory comments; they exchanged shots without injury, after which Church apologized for his remarks.

Once Burr challenged Hamilton to a duel their representatives scurried back and forth trying to avoid an actual meeting. When this failed, both tried to put their affairs in order. Dueling was illegal in New York and New Jersey, but the laws in the latter state were not enforced. On July 11, 1804, with their seconds and a doctor, both men secretly rowed across the Hudson River

⁷ See: Joanne B. Freeman, *Affairs of Honor: National Politics in the New Republic* (New Haven, Yale University Press, 2002), especially 159-198.

to a rocky ledge on the Palisades that at the time served as a dueling ground.⁸ The two paced off and then fired. Burr's shot hit Hamilton in the abdomen and lodged against his spine. Rushed back to New York City, he died the next day.⁹ News about the duel and then death spread rapidly and shocked many. Hamilton left behind a wife and seven children, surprisingly short on funds. Burr, a widower, sought refuge first with friends in Philadelphia and then in Georgia. He kept his daughter, married and living in South Carolina, informed of his whereabouts (in 1812 her only child died; she then left the south to join her father in New York, but was lost at sea).

After the duel Burr was indicted for murder in New York City, but the charges were changed to an indictment for the lesser crime of dueling (a charge also brought against his seconds).¹⁰ This indictment was then dismissed on the grounds that the duel had taken place in New Jersey, and therefore the New York courts had no jurisdiction. At the same time Burr was indicted for murder in New Jersey on the grounds that "not having the fear of God before his eyes but being moved and seduced by the instigation of the Devil" he had "willfully maliciously and feloniously" shot and killed Hamilton.¹¹ What today sounds like inflammatory language was then apparently legal jargon standard as some of it also appears in the New York indictment.

A Bergen County Grand Jury returned a "true bill." Burr hired lawyer Aaron Ogden, who, among other things, appealed to Governor Joseph Bloomfield, asking him to intervene. In addition, eleven Jeffersonian-Republican senators wrote to the governor "reminding him that political duels

⁸ There are a number of popular books on the duel. See: Thomas Fleming, *Duel: Alexander Hamilton, Aaron Burr and the Future of America* (New York: Basic Books, 1999); and the novel by Gore Vidal, *Burr* (New York: Random House, 1973).

⁹ There is controversy over who fired first and the intentions of each man: whether Hamilton deliberately wasted his shot or fired wildly after being hit, whether his pistol had a special hair trigger; whether Burr fired with the deliberate intention of killing Hamilton, or if Hamilton, depressed over the death of his son and adverse finances, was suicidal. Usually biographers of Hamilton cast him in a favorable light, those of Burr have a different view.

¹⁰ For the New York indictment of Burr for dueling see: *Papers of Alexander Hamilton*, 341-344.

¹¹ See document in *Papers of Alexander Hamilton*, 348.

were not usually prosecuted.”¹² Bloomfield, born in Elizabethtown and a College of New Jersey graduate, had served in the Revolution with Burr (and Hamilton). Even if so inclined he could not pardon Burr before a conviction. In the end the case was appealed to the state Supreme Court, which quashed (dismissed) it on the grounds that Hamilton had died in New York and therefore New Jersey courts did not have jurisdiction.

Some historians have cited political prejudices on the part of judges, juries, and governors involved in this case. Probably true, but the politics of the time were complex. Joseph Bloomfield as a Jeffersonian-Republican was supposedly sympathetic to Burr, but he had questions about Burr’s actions in the election of 1800.¹³ Elisha Boudinot, the Bergen judge, was a Federalist (reputedly sympathetic to Hamilton). In truth both political parties were divided into factions (John Adams and moderate Federalists had no love for Hamilton, while the Clinton faction in the New York Jeffersonian-Republican party had none for Burr). Whether it was politics or the slow pace of the courts, the case was not resolved until 1807.

The long term consequences were to martyr Hamilton, and ruin Burr’s political career. He then drifted into a scheme to supposedly separate southwestern states from the union. Arrested and prosecuted by Jefferson and his administration, Burr was tried for treason, only to escape that charge as well.¹⁴ The case was heard by U.S. Supreme Court Chief Justice John Marshall, a Federalist known to despise his cousin - the president. Using a strict definition of treason as an overt action attested to by two witnesses, the strict standard made conviction virtually impossible. Afterwards Burr left the country for several years. He came back but never returned to political

¹² Freeman, 178.

¹³ See Bloomfield letter to Burr, September 17, 1802, *Papers of Aaron Burr*, 737-738. Bloomfield referred to allegations that Burr had been working with the Federalists to defeat Jefferson.

¹⁴ Peter Charles Hoffer, *The Treason Trials of Aaron Burr* (Lawrence, Kan.: University Press of Kansas, 2008).

prominence. Over time Hamilton's reputation has grown, while Burr's has declined. And now Hamilton is celebrated on Broadway.

List of documents in the New Jersey State Archives:¹⁵

1. A copy of the indictment from the Court of Oyer and Terminer, Bergen County. Signed by Aaron Woodruff, Attorney for the State; John M. Mason, witness. Reverse side: October term, 1804, notes is a "True Bill."¹⁶ *See document reproduced below.*
2. Return of the True Bill from the Grand Jury. Sent by the Bergen County Court of Oyer and Terminer, 4th Tuesday, October 1804. Justice Elisha Boudinot Esq. one of the justices of the Supreme Court, two judges of the Inferior Court of Common Pleas, and then a list of the jurors. 1 page.
3. An affidavit from David Hosack, physician, attesting to the death of Alexander Hamilton at the house of William Bayard, New York City, and witnessed by DeWitt Clinton, Mayor of New York. August [?]⁶, 1806. 1 page.
4. Writ To the Justices of Oyer and Terminer of Bergen County from the New Jersey Supreme Court, September 6, 1806[?]. 1 page.
5. Bergen County Justices William S. Pennington, Lewis Moore, and Jacob Terhune, in response to a writ, remand the case to the Supreme Court, October 29, 1806. 1 page.
6. An order from the Supreme Court to the Court of Oyer and Terminer of Bergen County, to quash the indictment based on the fact that Hamilton died in New York City, outside the jurisdiction of the Court. Reverse side dated November 13, 1807. 2 scans [The last is recorded in

¹⁵ Information on the documents, and lists of those involved in the case, can be found at: <https://www.net1.state.nj.us/DOS/Admin/ArchivesDBPortal/SupremeCourt2.aspx>

¹⁶ Transcription in *Papers of Alexander Hamilton*, 348-349.

Supreme Court Minute Book 112: pp. 114, and 299-300. Returned 3 o'clock Friday November 13, 1807.]¹⁷ *See document reproduced below.*

Please scroll for the aforementioned reproductions:

¹⁷ Transcription, *Papers of Alexander Hamilton*, 349.

Bergen County Es. The Jurors for the Body of the County of Bergen
in behalf of the State of New Jersey upon their oath pre-
sent that Aaron Burr late of the Township of Bergen
in the County of Bergen esquire not having the fear
of God before his eyes but being moved and seduced
by the instigation of the Devil on the eleventh day
of July in the year of our Lords one thousand eight
hundred and four at the Township of Bergen in the
County of Bergen aforesaid and within the jurisdic-
tion of this Court feloniously wilfully and of his mal-
ice aforethought did make an assault upon Alex-
ander Hamilton in the peace of God and of the
said State then and there being. And that the said
Aaron Burr a certain pistol of the value of five dol-
lars then and there loaded with gun powder
and a leaden ball which pistol he the said Aaron
then and there in his right hand had and held
to against and upon the said Alexander Hamilton
then and there wilfully maliciously and feloni-
ously and of his malice aforethought did shoot
and discharge. And that the said Aaron with
the leaden ball aforesaid out of the Pistol aforesaid
then and there by force of the gun powder
shot discharged and sent forth as aforesaid.
The aforesaid Alexander Hamilton in and up-
on the right side of the belly near the short ribs
of him the said Alexander then and there with
the leaden ball aforesaid out of the Pistol aforesaid
by the said Aaron so as aforesaid shot dis-
charged and sent forth feloniously wilfully and
of his malice aforethought did strike penetrate and
wound giving the said Alexander with the leaden
ball aforesaid so as aforesaid sent forth shot and
discharged out of the Pistol aforesaid by the said

Aaron Burr in and upon the right side of the belly of the said Alexander near the short ribs of the said Alexander one mortal wound did give. of the depth of four inches, and of the breadth of two inches, of which said mortal wound. In the said Alexander from the said eleventh day of July in the year aforesaid until the twentieth day of the same month of July in the year aforesaid did languish, and languishing did live, on which said twentieth day of July in the year aforesaid at the Township and in the County aforesaid the said Alexander Hamilton of the said mortal wound died. And so the Jurors aforesaid upon their oath aforesaid do say that the said Aaron Burr the said Alexander Hamilton in manner and form aforesaid feloniously wilfully and of his Malice aforethought did kill and murder, contrary to the act of the Legislature in such case made and provided against the peace of this State the government and dignity of the same.

Aaron D Woodruff }
Att^y for the State }

Witness
John M Mason

24
The State }
17 } On Indictment for Murder of Alexander
Aaron Burr & Hamilton.

This Indictment having been found at the Court of Oyer and Terminer for the County of Bergen and certified hitherto by Jectioran and upon Inspection of the said Indictment, it appears that the mortal wound and death of the said Alexander Hamilton is charged in the said Indictment at the Township of Bergen in the County of Bergen and State of New Jersey and whereas it is suggested and fully appears that the said Alexander did actually die in the City of New York and State of New York out of the Jurisdiction of this State and a Trial upon the said Indictment would be totally ineffectual, as the said Aaron Burr could not be convicted on the same under the Statute in such Case made and provided - It is ordered by the Court, ~~that~~ and by the ^{and on motion} Report of the Attorney General, that the said Indictment be quashed

Maxine N. Lurie is Early American historian, who has taught and written about New Jersey history for twenty-eight years. Although retired from Seton Hall University she continues to teach (one course a year), is actively involved in several research projects, and in the history community in New Jersey. The author of scholarly articles, she also edited The New Jersey Anthology (first edition 1994, 2nd edition 2010); was co-editor-in-chief with Marc Mappen of The Encyclopedia of New Jersey (2004); worked with Peter O. Wacker and Michael Siegel on Mapping New Jersey (2009); and most recently with Richard F. Veit editing New Jersey: A History of the Garden State (2012). She and Veit are now working on Envisioning New Jersey: An Illustrated History (July 2016).