law, and had been decided by judges Patterson and Peters, in the cases of Vigol and Mitchell, and by judges Iredell and Peters, in the case of John Fries, prisoner at the bar, in April 1799: That judge Peters remained of the same opinion, which he had twice before delivered, and he, this respondent, on long and great consideration, concurred in the opinion of judges Patterson, Iredell, and Peters: That to prevent unnecessary delay, and to save time on the trial of John Fries, and to prevent a delay of justice, in the great number of civil causes depending for trial at that term, the court had drawn up in writing, their opinion of the law, arising on the overt acts, stated in the indictment against John Fries; and had directed David Caldwell their Clerk, to make out three copies of their opinion, one to be delivered to the attorney of the district, one to the counsel for the prisoner, and one to the petit jury, after they should have been impanelled and heard the indictment read to them by the clerk, & after the district attorney should have stated to them the law on the overt acts alledged in the indictment, as it appeared to him."

After these observations, this respondent delivered one of the abovementioned copies to the aforesaid William Lewis, then attending as one of the prisoner's counsel; who read part of it, and then laid it down on the table before him.—Some observations were then made on the subject, by him and the abovementioned Alexander James Dallas, who had then come into court; but this respondent doth not now recollect those observations, and cannot undertake to state them accurately.

And this respondent further saith, that the paper marked exhibit No. 2, and herewith exhibited, which he prays leave to make part of this his answer, is a true copy of the original opinion, drawn up by him and concurred in by the said Richard Peters, as above set forth, which original opinion is now in the possession of this respondent, ready to be produced to this honorable court. He may have erred in forming this opinion, and in the time and manner of making it known to the counsel for the prisoner. If he erred in forming it, he erred in common with his colleague and with two of his predecessors; and he presumes to hope that an error which has never been deemed criminal in them, will not be imputed as a crime to him, who was led into it by their example and their authority. If he erred in the time and manner of making known this opinion, he feels a just confidence, that when the reasons which he has alledged for his conduct, and by which it seemed to him to be fully justified, shall come to be carefully weighed, they will be sufficient to prove, if not that this conduct was perfectly regular & correct, yet that he might sincerely have considered it as right; and that in a case where so much doubt may exist, to have committed a mistake is not to have committed a crime.

And this respondent further answering insists, that the opinion thus delivered to the prisoner's counsel; viz. that "any insurrection or rising of any body of people within the United States, for the purpose of resisting or preventing by force or violence, under any pretence whatever, the execution of any statute of the United States, for levying or collecting taxes, or for any other object of a general or national concern, is levying war against the United States, within the contemplation and true meaning of the constitution of the United States," is a legal and correct opinion, supported not only by the two previous decisions above mentioned, but also by the plainest principles of law and reason, and by the uniform tenor of legal adjudications in England and Great Britain, from the revolution in 1688 to this time. It ever was, and now is his opinion, that the peace and safety of the national federal government, must be endangered, by any other construction of the terms "levying war against the United States," used by the federal constitution; and he is confident that no judge of the federal government, no judge of a superior state court, nor any gentleman of established reputation for legal knowledge, would or could deliberately give a contrary opinion.

If however this opinon were erroneous, this respondent would be far less censurable than his predecessors, by whose example he was led astray, and by whose authority he considered himself bound. Was it an error to consider himself bound by the authority of their previous decisions? If it were, he was led into the error by the uniform course of judicial proceedings, in this country and in England, and is supported in it, by one of the fundamental principles of our jurisprudence. Can such an error be a crime or misdemeanor.

If, on the other hand, the opinion be in itself correct, as he believes and insists that it is, could the expression of a correct opinion on the law, wherever and however made, mislead the jury, infringe their rights, or give an improper bias to their judgment? Could truth excite improper prejudice? Could the jury be less prepared to hear the law discussed, and to decide on it correctly, because it was correctly stated to them by the court? And is not that a new kind of offence, in this country at least, which consists in telling the truth, and giving a correct exposition of the law.

As to the second specific charge adduced in support of the first article of impeachment, which accuses this respondent, "of restricting the counsel for the said Fries, from recurring to such English authorities as they believed apposite, or from citing certain statutes of the United States, which they deemed illustrative of the positions upon which they intended to rest the defence of their client," this respondent admits that he did, on the above mentioned trial, express it as his opinion to the aforesaid counsel for the prisoner, "that the decisions in England, in cases of indictments for treason at common law, against the person of the king, ought not to be read to the jury, on trials for treason under the constitution and statutes of the United States; because such decisions could not inform, but might mislead and deceive the jury: that any decisions on cases of treason, in the courts of England, before the revolution of 1688, ought to have very little influence in the courts of the United States; that he would permit decisions in the courts of England or of Great Britain, since the said revolution, to be read to the court or jury, for the purpose of shewing what acts have been considered by those courts, as a constructive levying of war against the king of that country, in his regal capacity, but not against his person; because levying war against *his government*, was of the same nature as levying war against *the government of the United States*: but that such decisions, nevertheless, were not to be considered as authorities binding on the courts and juries of this country, but merely in the light of opinions entitled to great respect as having been delivered after full consideration, by men of great legal learning and ability.

These are the opinions which he did, on that occasion, deliver to the counsel for the prisoner, and which he then thought, and still thinks, it was his duty to deliver. The counsellors admitted to practice in any court of justice, are, in his opinion, and according to universal practice, to be considered as officers of such courts and ministers of justice therein, and as such, subject to the direction and control of the court, as to their conduct in its presence, and in conducting the defence of criminals on trial before it.—As counsel, they owe to the person accused, diligence, fidelity, and secrecy, and to the court and jury, due and correct information, according to the best of their knowledge and ability, on every matter of law which they attempt to adduce in argument. The court, on the other hand, hath power, and is bound in duty, to decide and direct what evidence, whether by record or by precedents of decisions in courts of justice, is proper to be admitted for the establishment of any matter of law or fact. Consequently, should counsel attempt to read to a jury, as a law still in force, a statute which had been repealed, or a decision which had been reversed, or the judgements of courts in counties whose laws have no connection with ours, it would be the duty of the court to interpose, and prevent such an imposition from being practised on the jury. For these reasons, this respondent thinks that his conduct was correct, in expressing to the counsel for Fries, the opinions stated above. He is not bound to answer here for the correctness of those principles, though he thinks them incontestable; but merely for the correctness of his motives in delivering them. A contrary opinion would convert this honorable court, from a court of impeachment into a court of appeals; and would lead directly to the strange absurdity, that whenever the judgment of an inferior court should be reversed on appeal or writ of error, the judges of that court must be convicted of high crimes and misdemeanors, and turned out of office; that error in judgment is a punishable offence, and that crimes may be committed without any criminal intention.—Against a doctrine so absurd and mischievous, so contrary to every notion of justice hitherto entertained, so utterly subversive of all that part of our system of jurisprudence, which has been wisely and humanely established for the protection of innocence, this respondent deems it his duty now, and on every fit occasion, to enter his protest and lift up his voice; and he trusts that in the discharge of this duty, infinitely more important to his country than to himself, he shall find approbation and support in the heart of every American, of every man throughout the world, who knows the blessings of civil liberty, or respects the principles of universal justice.

It is only then, for the correctness of his motives in delivering these opinions, that he can now be called to answer; & this correctness ought to be presumed, unless the contrary appear by some direct proof, or by some violent presumption arising from his general conduct on the trial, or from the glaring impropriety of the opinion itself. For he admits that cases may be supposed, of an opinion delivered by a judge so palpably erroneous, unjust and oppressive, as to preclude the possibility of its having proceeded from ignorance or mistake.

Do the opinions now under consideration bear any of these marks? This honorable court need not be informed that there has existed in England, no such thing as treason at common law, since the year 1350, when the statute of the 25th Edward III, chap. 2, declaring what alone should in future be judged treason, was passed. It is perfectly clear that decisions made before that statute, 450 years ago, when England, together with the rest of Europe, was still wrapped in the deepest gloom of ignorance and barbarism; when the system of English jurisprudence was still in its infancy; when law, justice and reason, were perpetually trampled under foot by feudal oppression and feudal anarchy; when, under an able and vigorous monarch, every thing was adjudged to be treason which he thought fit to call so, and under a weak one, nothing was considered as treason which turbulent, powerful, and rebellious nobles thought fit to perpetrate: is it perfectly clear that decisions, made at such a time, and under such circumstances, ought to be received by the courts of this country as authorities to govern their decisions, or lights to guide the understanding of juries? Is it perfectly clear that decisions made in England, on the subject of treason, before the revolution of 1688, by which alone the balance of the English constitution was adjusted, and the English liberties were fixt on a firm basis; decisions made either during the furious civil wars, in which two rival families contended for the crown; when in the vicissitudes of war, death and confiscation in the forms of law, continually walked in the train of the victors, and actions were treasonable or praise-worthy, according to the preponderance of the party by whose adherents they were perpetrated; during the reigns of three able and arbitrary monarchs, who succeeded this dreadful conflict, and relaxed or invigorated the law of treason, according to their anger, their policy, or their caprice; or during those terrible struggles between the principles of liberty, not yet well defined or understood, on one hand, and arbitrary power, insinuating itself under the forms of the constitution, on the other; struggles which presented at some times the wildest anarchy, at others the extremes of servile submission, and after having brought one king to the scaffold, ended in the expulsion of another from his throne? Is it clear that decisions on the law of treason, made in times like these, ought not only to be received as authorities in the courts of this country, but also to have great influence on their decisions? Is it clear that decisions made in England, as to what acts will amount to levying war against the king, personally, and not against his government, are applicable to the constitution and laws of this country? Is it clear that such English decisions on the subject of treason, as are applicable to our constitution and laws, are to be received in our courts, not merely as the opinions of learned and able men, which may enlighten their judgment, but as authorities which ought to govern absolutely their decisions?—Is all this so clear, that a judge could not honestly and sincerely have thought the contrary? That he could not have expressed an opinion to the contrary without corrupt or improper motives? If it be not thus clear, then must it be admitted that this respondent, sincerely and honestly, and in the best of his judgment, considered these decisions as wholly inadmissible, or admissible only for the purposes and to the extent which he pointed out.

And if he did so consider them, was it not his duty to prevent them from being read to the jury, except under those restrictions, and for those purposes? Would his duty permit him to sit silently, and see the jury imposed on and misled? To sit silently and hear a book read to them as containing the law, which he knew did not contain the law? Such silence would have rendered him a party to the deception, and would have justly subjected him to all the contumely, which a conscientious and courageous discharge of his duty, has so unmeritedly brought on his name.

With respect to the statutes of the United States, which he is charged with having prevented the prisoner's counsel from citing on the aforesaid trial, he denies that he prevented any act of Congress from being cited, either to the court or jury, on the said trial; or declared at any time, that he would not permit the prisoner's council to read to the jury, or to the court, any act of Congress whatever. Nor does he remember or believe, that he expressed on the said trial, any disapprobation of the conduct of the circuit court before whom the said case was first tried, in permitting the act of Congress relating to crimes less than treason, commonly called the *sedition act*, to be read to the jury. He admits indeed that he was then and still is of opinion, that the said act of Congress was wholly irrelevant to the issue, in the trial of John Fries, and therefore ought not to have been read to the jury, or regarded by them. This opinion may be erroneous, but he trusts that the following reasons on which it was founded, will be considered by this honorable court, as sufficiently strong to render it possible, and even probable, that such an opinion might be sincerely held and honestly expressed:—1st, That Congress did not intend by the sedition law, to define the crime of treason by levying war." Treason and sedition are crimes very distinct in their nature, and subject to very different punishments; the former by death, and the latter by fine and imprisonment. 2dly, The sedition law makes a combination or conspiracy, with intent to impede the operation of any law of the United States, or the advising or attempting to procure any insurrection or riot, a high misdemeanor punishable by fine and imprisonment; but a combination or conspiracy with intent to prevent the execution of a law, or with intent to raise an insurrection for that purpose, or even with intent to commit treason, is not treason by "levying war" against the U. States, unless it be followed by an attempt to carry such combination or conspiracy into effect, by actual force or violence. 3dly, The constitution of the United States is the fundamental and supreme law, and having defined the crime of treason, Congress could not give any legislative interpretation or exposition of that crime, or of the part of the constitution by which it is defined. 4thly, The judicial authority of the United States, is alone vested with power to expound their constitution and laws.

And this respondent further answering saith, that after the above mentioned proceedings had taken place in the said trial, it was postponed until the next day, Wednesday, April 23d, 1800; when at the meeting of the court, this respondent told both the abovementioned counsel for the prisoner, "that to prevent any misunderstanding of any thing that had passed the day before, he would inform them, that although the court retained the same opinion of the law, arising on the overt acts charged in the indictment against Fries, yet the counsel would be permitted to offer arguments to the court, for the purpose of shewing them that they were mistaken in the law; and that the court, if satisfied that they had erred in opinion, would correct it: and also that the counsel would be permitted to argue before the petit jury, that the court were mistaken in the law." And this respondent added, that the court had given no opinion as to the facts in the case, about which both the counsel had declared that there would be no controversy.

After some observations by the said William Lewis and Alexander James Dallas, they both declared to the court, "that they did not any longer consider themselves as the counsel for John Fries the prisoner. This respondent then asked the said John Fries, whether he wished the court to appoint other counsel for his defence? He refused to have other counsel assigned; in which he acted, as this respondent believes and charges, by the advice of the said William Lewis and Alexander James Dallas: whereupon the court ordered the said trial to be had on the next day, Thursday, the 24th of April, 1800.

On that day the trial was proceeded in; and before the jurors were sworn, they were, by the direction of the court, severally asked on oath, whether they were in any way related to the prisoner, and whether they had ever formed or delivered any opinion as to his guilt or innocence, or that he ought to be punished? Three of them answering in the affirmative, were withdrawn from the pannel. The said John Fries was then informed by the court, that he had a right to challenge thirty-five of the jury, without shewing any cause of challenge against them, and as many more as he could shew cause of challenge against. He did accordingly challenge peremptorily thirty four of the jury, and the trial proceeded. In the evening, the court adjourned till the next day, Friday, the 25th of April; when after the district attorney had stated the principal facts proved by the witnesses, and had applied the law to those facts, this respondent, with the concurrence of his colleague, the said Richard Peters, delivered to the jury the charge contained and expressed in exhibit marked No. 3, and herewith filed, which he prays may be taken as part of this his answer.

Immediately after the petit jury had delivered their verdict, this respondent informed the said Fries, from the Bench, that if he, or any person for him, could show any legal ground, or sufficient cause to arrest the judgment, ample time would be allowed him for that purpose. But no cause being shewn, sentence of death was passed on the said Fries, on Tuesday the 2d day of May, 1800, the last day of the term; and he was afterwards pardoned by John Adams, then President of the United States.

And this respondent further answering saith, that if the two instances of misconduct, first stated in support of the general charge, contained in the first article of impeachment, were true as alledged, yet the inference drawn from them viz. "that the said Fries was thereby deprived of the benefit of counsel for his defence," is not true. He insists that the said Fries was deprived of the benefit of counsel, not by any misconduct of this respondent, but by the conduct and advice of the above mentioned William Lewis and Alexander James Dallas, who having been, with their own consent, assigned by the court as counsel for the prisoner, withdrew from his defence, and advised him to refuse other counsel when offered to him by the court, under pretence that the law had been prejudged, and their liberty of conducting the defence, according to their own judgment improperly restricted by this respondent; but in reality because they knew the law and the facts to be against them, and the case to be desperate, and supposed that their withdrawing themselves under this pretence, might excite odium against the court; might give rise to an opinion that the prisoner had not been fairly tried; and in the event of a conviction, which from their knowledge of the law and the facts they knew to be almost certain, might aid the prisoner in an application to the President for a pardon. That such was the real motive of the said prisoner's counsel, for depriving their client of legal assistance on this trial, this respondent is fully persuaded, and expects to make appear, not only from the circumstances of the case, but from their own frequent and public declarations.

(To be continued.)

WASHINGTON CITY.

MONDAY, February 11.

HIGH COURT OF IMPEACHMENT.

FRIDAY, FEBRUARY 8.

The court opened precisely at 12 o'clock.

Present, the Managers, and House of Representatives in committee of the whole:—and,

Mr. Chase, and his counsel, Messrs. Martin, Harper, Hopkinson, and Key.

The cryer, having, agreeably to a prescribed form, notified all those concerned to come forward and make good the charges exhibited against Samuel Chase:—

Mr. *J. Randolph*, the leading manager, requested that the witnesses, on the part of the prosecution, might be called, to ascertain who were present.

They were accordingly called, to the number of twenty-four, as follows:—those who answered are marked (p)—and those absent (a.)

Alexander James Dallas,	p
William Lewis,	p
William Rawle,	p
William S. Biddle,	p
Edward Tilghman,	p
George Read,	p
James Lea,	a
John Crow,	a
Risdon Bishop,	a
John Montgomery,	p
John Stephen,	p
Aquila Hall,	a
Philip Stewart,	a
John Thompson Mason,	p
Samuel H. Smith,	p
Thomas Hall,	a
John Taylor,	p
George Hay,	p
Philip Norborne Nicholas,	a
William Wirt,	p
John Harvie.	a
Meriwether Jones,	a
John Heath,	p
James Pleasants,	a

Fourteen being present, and ten absent. Of those marked absent, we understand that Philip N. Nicholas is in the city.

Mr. *J. Randolph* observed, that various considerations, which it was unnecessary to detail, induced him, on behalf of the managers, to move a postponement of the trial till to-morrow, when they hoped to be prepared to proceed therewith.

Mr. *Harper* said that, on behalf of Judge Chase, he would not object to the motion.

The *President* informed the Managers, that the Senate acceded to their request and added that the Senate would attend to-morrow at 12 o'clock for the purpose of proceeding with the trial.

At the request of Mr. Harper, the witnesses on the part of Judge Chase were called over, to the number of forty-one, as follows:—those present are marked (p)—and those absent (a.)

Witnesses summoned by Judge Chase.

William Marshall,	a
David M. Randolph,	p
Edmund Randolph,	a
John A. Chevalei,	p