



Project- Based Instruction -A History Based Mock Trial

This history-based mock trial focuses on the Hamilton-Burr Duel. It contains 4 major instructional activities and one performance task. The instructional activities include an analysis of the 18th century concept of a duel; the political environment surrounding the Hamilton-Burr Duel; and the development of a written mock trial including opening and closing arguments, direct and cross examination questions as well as an analysis of the crime.

Prior Instruction

Students should understand the historical context for the Hamilton-Burr Duel. This should include an understanding of Hamilton and Burr's biography and contributions to the development of the United States. The students should also understand the 18th Century concept of a duel and the political climate of the early 1800's.

Statement of the Case

On July 11, 1804 at 7 a.m. Alexander Hamilton and Aaron Burr met at the dueling grounds near Weehawken, New Jersey. This was the same spot where Hamilton's son had died in 1801 defending his father's honor. Present at the location were Judge Nathaniel Pendleton (Hamilton's Second) and W.P. Van Ness (Aaron Burr's Second). Dr. David Hosack was nearby, but not on the actual green reserved for the duel. Also present, but at a distance were the rowers for the barges that had brought the group across the Hudson River.

Colonel Burr arrived first. When General Hamilton arrived, the parties exchanged salutations and the Seconds proceeded to set up the dual. Ten full paces were marked off and lots were cast for the choice of positions. Mr. Pendleton was selected to call when to fire. Mr. Pendleton asked if they were ready and each took his position. Hamilton took the northern position. Hamilton and Burr readied their Wodgen & Barton dueling pistols. Mr. Pendleton called out the agreed upon word *fire* and both parties proceeded to fire. General Hamilton fell to the ground. Mr. Burr began to approach him but then turned away and escorted off the field and across the river. The surgeon and bargeman approached General Hamilton and found him sitting on the ground supported by Mr. Pendleton. The gunshot wound was in his abdomen. It was later discovered that it had pierced his liver, and lodged in his spine. Mr. Hamilton was then taken to the home of William Bayard in New York where he died the next day. Mr. Burr subsequently fled the country.

The events that led up to the duel began on April 24, 1804, as Burr was campaigning for the governorship of New York. *The Albany Centinel* published a letter written by Dr. Charles D. Cooper to Philip Schuyler, Hamilton's father-in-law and prominent politician in his own right. The letter alluded to Hamilton's "despicable" opinion of Burr, reportedly expressed at a political dinner the previous winter. When Burr read the letter, he wrote Hamilton demanding that Hamilton either admit or deny the alluded-to statements. Hamilton argued that he could not admit or deny a vague inference. After several more letters back and forth, Burr formally challenged Hamilton to a duel. Hamilton accepted.

Decide whether or not you think Colonel Burr is guilty of murder or was he simply defending himself at a duel that was agreed upon by both parties and in which both parties fired.

Background information - Causes of the Burr-Hamilton Duel?

In 1804, Burr ran for governor of New York and lost the election. Many say this was as result of Hamilton's opposition. Both Hamilton and Burr had been rivals for years in New York and on the national stage.

During the late 1700's and early 1800's when politicians lost elections, they would initiate duels to redeem their reputation. Between 1795 and 1807 there were sixteen duels and near-duels, most of them tied to elections in New York City. The pointof a political duel was to prove a man was willing to die for his honor, not necessarily

to shed blood. Only 5 of the 16 duels in New York were settled with gun fire. The many near-duels were settled by negotiation. Even when the men had reached the dueling stage, one or both would often fire elsewhere (calling “throwing away their shot”) and then come forward to negotiate.

The negotiation process was highly ritualized. At the outset of most honor disputes, an offended man would write a carefully phrased letter to his attacker demanding an explanation. From that point on, the two men would communicate through letters and seconds (close friends) to try and negotiate an apology. Before the event in 1804, Hamilton had been involved in ten such bloodless honor disputes.

The Law

Code Sections	N.J.S. 2C:11-3
A.K.A.	Murder in the first degree.
What is Prohibited?	A planned or intentional killing of another person, or serious bodily injury resulting in death or a killing while committing certain felonies (felony murder).
Felony Murder	If the homicide (killing of a human) took place in conjunction with a felony crime, such as robbery, burglary, a sex crime, sodomy, arson, carjacking, etc., you can be charged with felony murder.
Penalty	30 years to life imprisonment or life imprisonment without possibility of parole in some circumstances such as killing a police officer while on duty, or the killing of someone under the age of 14-years-old.



The State v. Aaron Burr

Bailiff: All rise. The Court of Room _____ is now in session.
The Honorable Judge _____ presiding.

Judge: You may be seated. Today we are going to hear the case of *The State v. Aaron Burr*, a case of first-degree murder. Prosecution, please introduce yourself:

Prosecution: [All prosecution attorneys stand and introduce themselves.] Your Honor, my name is _____ and I represent the State. [Each student-prosecutor then introduces themselves.]

Judge: Thank you. Defense counsel, please introduce yourselves.

Defense: [All defense attorneys stand and introduce themselves.] Your Honor, my name is _____ and I represent Aaron Burr, the defendant. [Each student-defense attorney then introduces themselves.]

Judge: Prosecution, are you ready to give your Opening Statement?

Prosecution: We are, Your Honor.

May it please the Court. Your Honors and Ladies and Gentlemen of the jury, we are here today to prove, beyond a reasonable doubt, that former Vice President Aaron Burr is guilty of the first-degree murder of Alexander Hamilton. We will prove beyond a reasonable doubt that Aaron Burr intentionally planned on killing Hamilton during their duel. We will hear from Mr. Pendleton, Hamilton's Second, who will testify that Hamilton never intended to hurt Mr. Burr, and that his shot

went intentionally wide. Mr. Pendleton will tell us about how Hamilton had been involved in ten previous duels, all of which had ended without any blood being drawn, and that Hamilton expected much of the same outcome on that fateful day. We will also hear from Hamilton's doctor who was present that doomed day. He will testify that Hamilton had claimed in his dying breath that he never intended to hurt Burr, and that he had come to Weehawken to settle their differences non-violently.

Today, a valued man in American history, revolution, and democracy is dead. Incontestably, Aaron Burr has shot him. Mr. Burr must be punished to the fullest extent of the law. Thank you.

Judge: Defense, are you ready to give your opening statement?

Defense: We are, Your Honor.

May it please the Court. Your Honor and Ladies and Gentlemen of the Jury, we are here today to prove that Aaron Burr is not guilty of first-degree murder, and that the prosecution cannot fulfill its burden of proving beyond a reasonable doubt that he is. We will hear from W. P. Van Ness, Aaron Burr's Second, how both parties followed the procedures for a duel, how Hamilton never gave any indication that he was not going to participate fully in the event, and that Hamilton's gun had gone off first. Mr. Van Ness will also speak about Burr's feelings after the duel, and how much he might have wished that he had never agreed to the entire violent event in the first place. We will also hear from the defendant himself, and his motivations for initiating the duel. Ladies and Gentlemen – Mr. Burr was a political man, used to political solutions, of which the duel was one. Mr. Burr had believed himself slighted by Mr. Hamilton for years, and thus sought to regain his honor by engaging in a duel. He was doing what any other slighted man during this time would have done, and he was doing so with a consenting and fully informed party. Mr. Burr is not guilty of murder – he was a participant to a duel to which both parties consented beforehand. To find him guilty would be a grave miscarriage of justice. Thank you.

Judge: Prosecution, you may call your first witness.

Prosecution: We call Mr. Nathaniel Pendleton to the stand.

Bailiff: Please raise your right hand. Do you promise to tell the truth, the whole truth, and nothing but the truth?

Nathaniel Pendleton: I do.

Bailiff: You may be seated.

Prosecutor: What is your name and occupation?

Nathaniel Pendleton: My name is Nathaniel Pendleton. That's P E N D E L T O N. I have been a District Court Judge and the Attorney General of Georgia at differing times in my life.

Prosecutor: And how is that you know both the deceased and the defendant?

Nathaniel Pendleton: I was Mr. Hamilton's Second and knew the defendant through this capacity as well.

Prosecutor: Second? Can you explain to us what that means?

Defense: Objection. Your Honor, that question is not specific enough.

Judge: Sustained – prosecution, please narrow your question.

Prosecutor: Mr. Pendleton, can you explain to the court what a Second means in terms of a duel?

Nathaniel Pendleton: Certainly. Seconds in duels are meant to correspond with each other, and to negotiate with each other. The point is to try and find some other way to resolve the problems between the two men who initiated the duel, so that the duel itself is no longer necessary. Through this capacity, I spoke at length with Mr. Van Ness, Mr. Burr's Second, regarding Mr. Hamilton's perceived slights against Mr. Burr.

Prosecutor: So, would you say that the point of a Second is to keep the duel from happening?

Defense: Objection, leading question.

Judge: Sustained. Prosecution, please rephrase.

Prosecutor: What is the point of the Second?

Nathaniel Pendleton: Well, I would say it's to smooth things over between the two men who are going to participate in the duel and see if there's any way to resolve the problem without resorting to the duel.

Prosecutor: Great, thank you Mr. Pendleton. Would you now tell us what you saw that day when Alexander Hamilton died?

Nathaniel Pendleton: Certainly. Mr. Van Ness and I each loaded the pistols in front of each other. Mr. Hamilton and Mr. Burr then took the pistols, and took their positions. I asked if they were ready. When both confirmed, I said "present," which was the signal to begin firing. Both fired in succession, but whereas Mr. Hamilton's shot went wide, Mr. Burr's shot hit its mark and Hamilton fell almost instantly.

Prosecutor: Very sad. And would you say that in your experience, Mr. Hamilton engaged in a lot of duels?

Nathaniel Pendleton: I was his Second for most of his duels, but in almost all occasions, Hamilton never made it to the actual duel stage – he was able to come to an outcome with his adversary that no longer required such an action.

Prosecutor: And is that how most political duels ended? Bloodlessly?

Defense: Objection. Your Honor, the prosecution is asking Mr. Pendleton to act as an expert in duels when he is not an expert at all, but simply a bystander.

Prosecution: Your honor, Mr. Pendleton was Second to Mr. Hamilton for years and was also a part of the political atmosphere where duels were common. I am merely asking for his observations as it was gained through his own experience,, not for an expert opinion.

Judge: I will allow the question with the stipulation that Mr. Pendleton is only speaking from his own experiences. Mr. Pendleton, you may answer.

Nathaniel Pendleton: In my experience, most political duelists did not intend to kill their opponents. The idea just was that men were willing to die for their honor, not that they actually would kill for it.

Prosecutor: And do you think that Aaron Burr, as a participant in this political environment, was aware of that?

Nathaniel Pendleton: I do.

Prosecutor: Thank you Mr. Pendleton, I just have one final question for you. Once Mr. Hamilton was shot, what happened?

Nathaniel Pendleton: I took him down to the boat and to the doctor, Dr. David Hosack.

Prosecutor: Did you say anything to the doctor at this time?

Nathaniel Pendleton: Yes – I told the doctor that Mr. Hamilton had never meant to harm Mr. Burr.

Prosecutor: Did Mr. Hamilton tell you that he had never meant to harm Mr. Burr?

Nathaniel Pendleton: Yes.

Prosecutor: Thank you Mr. Pendleton. That's all the questions we have, Your Honor.

Judge: Defense, you may question the witness.

Defense: Hello Mr. Pendleton. Is it true that you were at the duel where Mr. Hamilton lost his life?

Nathaniel Pendleton: I was.

Defense: And is it true that you wrote about the event along with Mr. Van Ness?

Nathaniel Pendleton: Yes, I did.

Defense: Permission to submit this writing into evidence, Your Honor?

Judge: Prosecution do you have an objection?

Prosecution: May we see the document?

[Defense approaches. Prosecution looks]

Prosecution: We have no objection.

Judge: Great, document xx will be admitted into evidence as exhibit 1.

Defense: Permission to approach the witness with this document, Your Honor?

Judge: Granted.

Defense: Mr. Pendleton, does this look like what you wrote?

Nathaniel Pendleton: It does.

Defense: And can you summarize this part I've highlighted here?

Nathaniel Pendleton: It is essentially me stating that I thought that Mr. Burr advanced to Mr. Hamilton with an expression of regret. He eventually turned away so that he wouldn't be recognized by the doctor.

Defense: I see. Would you say that might mean that Burr never meant to actually hurt Hamilton?

Prosecution: Objection, Your Honor. The defense is trying to get Mr. Pendleton to say something about Burr's state of mind, which he cannot possibly do without engaging in speculation.

Judge: Sustained. Please rephrase defense counsel.

Defense: What did you think [observe?] about Mr. Burr advancing toward Mr. Hamilton with a look of regret?

Nathaniel Pendleton: Well, I don't know, I was too busy trying to help Mr. Hamilton. Clearly it means at the very least that Mr. Burr regretted his actions.

Defense: Indeed. No further questions, Your Honor.

Judge: Mr. Pendleton, you may step down. Prosecution, please call upon your next witness.

Prosecution: We call Dr. David Hosack to the stand.

Bailiff: Please raise your right hand. Do you promise to tell the truth, the whole truth and nothing but the truth?

David Hosack: I do.

Prosecution: Please state your name and occupation for the court.

David Hosack: My name is Dr. David Hosack – that's H O S A C K – and I am a physician by trade.

Prosecution: How did you know Alexander Hamilton, Doctor?

David Hosack: I didn't really know him very well, but I was present that day as the doctor on call when Mr. Hamilton and Mr. Burr had their duel.

Prosecution: Please describe to me what happened that day Dr. Hosack?

David Hosack: Well, I wasn't there to see the actual duel itself, but Mr. Hamilton was brought down to me after he was shot.

Prosecution: Did Mr. Hamilton say anything to you?

Defense: Objection, Your Honor, that's hearsay!

Prosecution: Your Honor, Dr. Hosack is talking about Mr. Hamilton's dying declaration and communications for the purpose of obtaining medical treatment, which although is hearsay, is admissible under Federal Rules of Evidence.

Judge: Overruled. Please answer Dr. Hosack.

David Hosack: He recognized that he was dying and stated that the bullet was a “mortal wound.” His physical state wasn’t great, but he told me to “take care of” his pistol, and that he never meant to harm Mr. Burr.

Prosecution: Thank you Dr. Hosack. No further questions Your Honor.

Judge: Defense, it’s your witness now.

Defense: Thank you judge. Dr. Hosack, Mr. Hamilton also said something more to you that day didn’t he?

David Hosack: Well, yes.

Defense: He told you that the gun was still cocked, and that it had never been discharged, is that right?

David Hosack: He did say that. But he wasn’t in great physical shape at that point.

Defense: We will certainly take that into account. But isn’t it true that Mr. Hamilton’s statements to you – that he never fired the gun– contradict Mr. Pendleton’s own testimony that the gun had been discharged?

David Hosack: Yes, it does, but I again emphasize that Mr. Hamilton had just been shot, he was clearly aware that he was going to die, and he might not have had all his wits about him.

Defense: Thank you Dr. Hosack. No further questions Your Honor.

Judge: Prosecution, please call your next witness.

Prosecution: The prosecution rests, Your Honor.

Judge: Very well. Defense, you may call your first witness.

Defense: We call W. P. Van Ness to the stand.

Bailiff: Please raise your right hand. Do you promise to tell the truth, the whole truth, and nothing but the truth?

W. P. Van Ness: I do.

Bailiff: You may be seated.

Defense: Please state your name and what you do?

W.P. Van Ness: My last name is Van Ness, that's V A N, space, N E S S. In this case, I was the Second to Mr. Aaron Burr.

Defense: Wonderful, and please explain to us why Aaron Burr first invited Alexander Hamilton to a duel?

Prosecution: Objection, Your Honor. How is Mr. Van Ness supposed to know what is in Mr. Burr's head?

Defense: Your Honor, Mr. Van Ness was a close friend of Mr. Burr's and was involved in the attempts to resolve the issues between Mr. Burr and Mr. Hamilton peacefully, so that it would not escalate into violence. Mr. Van Ness would then be perfectly suited to tell us what Mr. Burr might have been thinking.

Prosecution: I still must object Your Honor, especially as Mr. Burr is on the defense's witness list and will also be testifying tonight – the question is better suited to him.

Judge: I agree, prosecution. The objection is sustained. Please continue defense.

Defense: Alright, Mr. Van Ness, please tell us about what you saw the day of the duel.

W.P. Van Ness: Well, Mr. Pendleton was the one who gave the word and asked if the parties were ready. When he obtained confirmation, he yelled present as he was supposed to. I saw both parties fire their guns.

Defense: And how was it you knew that Mr. Hamilton fired his gun?

W.P. Van Ness: Mr. Hamilton actually fired first, which I know because I saw the smoke coming from his gun. I saw that Mr. Burr fired a few seconds later, which, when I talked to him after, I discovered was because the smoke from Mr. Hamilton's gun was obscuring Mr. Burr's vision initially.

Defense: Great. And what happened after that?

W. P. Van Ness: Mr. Burr told me –

Prosecution: Objection, Your Honor, this is hearsay.

Defense: Your Honor, Mr. Van Ness is describing what Mr. Burr told him immediately after witnessing a relatively traumatic event – this is allowed under the Federal Rules of Evidence, as Mr. Burr made the statement immediately after perceiving the event and can also be considered as the “excited utterance” exception to hearsay

Judge: Overruled. Mr. Van Ness, you may continue.

W. P. Van Ness: Mr. Burr told me that he wanted to go and speak with Mr. Hamilton after he had seen Mr. Hamilton go down from the shot. I stopped him from doing so, ushering him away, because I believed it would not be smart of Mr. Burr to do such a thing.

Defense: Were you aware at any point of any rumors that Mr. Hamilton would “throw away his shot” and that Mr. Hamilton did not intend to actually harm Mr. Burr?

W.P. Van Ness: No. If this was Mr. Hamilton's intention, I was never informed of it, and I can say for a fact that Mr. Burr was never informed of it either.

Defense: Thank you Mr. Van Ness. We have no further questions, Your Honor.

Judge: Prosecution, you may cross-examine the witness.

Prosecution: Mr. Van Ness, you just testified that Mr. Burr fired a few seconds after Mr. Hamilton because his vision was originally obscured by the smoke – is that correct?

W. P. Van Ness: Yes, that's correct.

Prosecution: Wouldn't you say that if there was a few seconds delay, Mr. Burr would have clearly known that he was not injured, and therefore, that Mr. Hamilton had not hurt him?

W.P. Van Ness: Well, maybe, but Mr. Burr had no idea if Mr. Hamilton had just missed his shot, or if Mr. Hamilton had deliberately missed him.

Prosecution: Okay. Would you say that Mr. Burr and Mr. Hamilton were close, or at the very least, aware of each other?

W.P. Van Ness: Yes. They had been in the same political circles for years and knew a lot about each other.

Prosecution: So, you would say there's a chance that Mr. Burr knew that Mr. Hamilton had participated in numerous other duels before, all of which had ended bloodlessly, without any kind of death?

Defense: Objection, Your Honor, the prosecution is treating the witness as if he is an expert who should know about the inner workings of Mr. Burr's mind.

Judge: Overruled. I will allow this line of questioning because of Mr. Van Ness's close personal relationship with the accused, but Mr. Van Ness, please only articulate what you know and do not speculate.

W.P. Van Ness: I suppose there is a chance that Mr. Burr would know of Mr. Hamilton's previous duels and how no blood had been spilled in those instances.

Prosecution: Great, thank you Mr. Van Ness. No further questions Your Honor.

Judge: Mr. Van Ness, you may step down. Defense, please call your next witness.

Defense: We call, the defendant, Mr. Aaron Burr to the stand.

Bailiff: Please raise your right hand. Do you promise to tell the truth, the whole truth, and nothing but the truth?

Aaron Burr: I do.

Bailiff: You may be seated.

Defense: Please state your name and occupation for the record.

Aaron Burr: My name is Aaron Burr, that's B U R R. I have done many things in my life, but most recently, I was the Vice President of the United States under Thomas Jefferson.

Defense: Can you tell us what led to the duel between you and the deceased?

Aaron Burr: Mr. Hamilton expressed a bad opinion of me at a March 1804 dinner party. He apparently called me a "dangerous man," one who couldn't be trusted with the reins of the government.

Defense: I see. What happened next?

Aaron Burr: I sent letters to Mr. Hamilton asking him to confirm or deny the statements. You have to understand, a man's reputation is everything to him in this political world, and if Mr. Hamilton had actually expressed something of that sort during the dinner, then it would be bad for me, especially as I continue to run for political office. I told him that if he refused to disavow the conversation, or to apologize for the words that he said, then people would think that he actually felt that I was a dangerous man. When Mr. Hamilton refused to take any sort of action, I provoked the duel to prove that I was still a worthy leader who deserved public support. Our Seconds got involved in the negotiation, but after a lengthy process where Mr. Hamilton never agreed to apologize, we settled on a date and time for the duel.

Defense: Alright Mr. Burr. And what would you say were your intentions going into the duel?

Aaron Burr: Well, I didn't intend to harm Mr. Hamilton fatally. Dueling is illegal for a reason, and while it was one of the only ways for men to show that they had honor, a death during a duel would certainly bring calamity on the surviving party – perhaps this trial is the best evidence of that. I was Vice President at the time of

the duel, and I was openly accused of being dishonorable, of being a merciless killer. It's ruined my political career. How could I have ever wanted that?

Defense: So why did you decide to duel in the first place? Why not respect Mr. Hamilton's decision to make his opinion about you known?

Aaron Burr: Like I said before, if Mr. Hamilton would not apologize for his statements or deny that he ever made them, that meant that his insults were real and that he did feel this way about me. For me to ignore that would be greatly insulting to my own self, and no one would ever take me seriously as a politician again. I thought Mr. Hamilton knew what he was getting himself into – after years in politics and having participated in many duels himself, he had to have known the stakes.

Defense: And were you ever aware of Mr. Hamilton's alleged intention to "throw away his shot."

Aaron Burr: No. Not at all.

Defense: No further questions, Your Honor.

Judge: Prosecution? You may question the witness now.

Prosecution: Mr. Burr, is it not true that once you found out about Mr. Hamilton's death, you fled the country?

Aaron Burr: Well, uh you see, I wouldn't exactly call it fleeing –

Prosecution: Yes or no, Mr. Burr. Did you leave the country?

Aaron Burr: I did.

Prosecution: And did you or did you not plot with a General James Wilkinson to form a separate country from the western part of the United States?

Defense: Objection. How is this information relevant Your Honor?

Judge: I have to say, I agree. Prosecution, do you have an argument as to why this is relevant?

Prosecution: The jury should know about what happened to Mr. Burr after the duel; his actions speak to his guilt.

Defense: But Mr. Burr's alleged decision to form another union does not have anything to do with his motivations toward Mr. Hamilton, or his intent when it comes to the alleged crime.

Judge: I'll sustain the objection. Please strike from the record any mention of Mr. Burr's apparent plotting to form a separate country, as it does not have any bearing on his guilt. Prosecution, please proceed with your next question.

Prosecution: That's all I have your honor.

Judge: Alright. The witness may step down. Defense, please call your next witness.

Defense: The defense rests Your Honor.

Judge: Then please proceed with your Closing Statement.

Defense: Of course.

Ladies and Gentlemen of the Jury. Today we heard testimony from Mr. Van Ness, who told us that Mr. Hamilton had discharged his weapon, and that even though that shot did not hit Mr. Burr, Mr. Hamilton did intend to harm Mr. Burr. Mr. Van Ness told us that he never knew, and was never informed, of Mr. Hamilton's alleged unwillingness to harm Mr. Burr, and that any such sentiment came at a great surprise to him. Indeed, we heard differing accounts from the prosecution's witnesses about whether or not Hamilton had discharged his gun at all, and whether or not he intended to do so. If even the prosecution's witnesses are unclear about Mr. Hamilton's motivations, how can we expect the defendant to know what Mr. Hamilton intended?

We also heard from the defendant himself, Aaron Burr, who further reiterated how important this duel was to him, and how he was never aware of Mr. Hamilton's intention to throw the duel. Put yourselves into Mr. Burr's shoes for a moment. He

had just been grievously insulted. If he did not act, he would become a political pariah, never to be trusted. But if he did act, he might have the chance to regain his honor. Mr. Burr knew that in issuing the duel, he could face great consequences – the law and the people do not look kindly on those who harm others, even when the other is consenting. But Mr. Burr knew what was at stake, he knew that Mr. Hamilton was a consenting party in this duel, especially as Mr. Hamilton had participated in a great number of duels throughout his time in American politics. Mr. Hamilton consented to an act that ended in the loss of his life. That's a tragic thing. But to allow Mr. Burr to be punished for Mr. Hamilton's death, when he has done nothing wrong other than to challenge another to a duel, would be a grave miscarriage of justice. Mr. Burr participated in the duel to defend first his honor, and then to defend himself from physical injury. Both Mr. Hamilton and Mr. Burr consented to the duel. Mr. Hamilton lost his life, but that was no fault of Mr. Burr's, and the prosecution has clearly failed to uphold their burden of showing that Mr. Burr is guilty beyond all reasonable doubt. Thank you.

Judge: Prosecution. Are you ready to present your closing argument?

Prosecution: We are Your Honor.

Your Honor and Ladies and Gentlemen of the Jury, we have heard testimony today from Mr. Pendleton, who stated that Mr. Hamilton never meant to harm anyone during his final duel. He further told us that Mr. Hamilton had been involved in numerous duels throughout his lifetime, and that he had never actually drawn blood. This tells us that Mr. Hamilton was reluctant to harm Mr. Burr, and that Mr. Burr, given his political history with Mr. Hamilton, should have been aware of this reluctance. We heard further testimony from Dr. Hosack, who stated that Mr. Hamilton in his dying moments told Dr. Hosack that he never intended to harm anyone, and that Mr. Pendleton could corroborate such a story. Dr. Hosack did not know Mr. Hamilton well – he has no reason to lie or to protect Mr. Hamilton at all.

Finally, we also heard that Mr. Burr fled the country after news of Mr. Hamilton's death broke. An innocent man does not flee, Ladies and Gentleman. Mr. Burr is clearly guilty of first-degree murder, of participating in and firing a shot during a duel despite knowing that his opponent never meant to harm him in the first place. To decide otherwise would be incorrect, and would be letting Mr. Burr, a politician who continues to have sway in this country, walk away without any blemish to him. Thank you.

Judge's Instruction to the Jury:

Ladies and Gentlemen of the jury, you are the only judges of whether the witnesses are believable. As you decide this case, you should pay attention to how the witnesses looked and acted when they were testifying, to what they said, and to whether different witnesses said things that were the opposite of one another. You should pay attention to all the evidence that shows the witness is credible, and you should pay attention to whether a witness might have reason to say what he/she did even though it might not be the truth. You should also ask yourself whether a witness actually saw the things he/she testified to and whether he/she seems to have a good memory about what he/she saw. Finally, you should remember that two people who see something happen may see or hear it differently, and sometimes people do not remember things correctly and may make an honest mistake. When witnesses disagree with each other, you should decide whether they disagree on something important or on something that is unimportant. You should decide whether the disagreement is because one person made a mistake or because someone told a lie.

First degree murder is the planned or intentional killing of another person, or serious bodily injury resulting in death or a killing while committing certain felonies, also called felony murder. You may disregard felony murder in this instance, which occurs when a killing occurs during the course of a felony – the law is not yet settled about whether dueling is indeed a felony, and the court does not at this time need to make such a determination.

If you conclude that the defendant did not mean to intentionally kill the deceased, and that the defendant instead acted in a duel where both parties were consenting, you must find the defendant not guilty. If you conclude that the defendant instead meant to use the duel as a ruse to intentionally kill the deceased, who you find to have openly expressed to himself have no intention to harm the defendant, then you must find the defendant guilty. A defense to this charge includes self-defense or the defense of another party. To establish this defense, the defendant must show that he or she acted to prevent serious bodily harm or the death of himself or another person. The defendant must use only as much force as a reasonable person would use to put an end to the threat. If the defense is established, it is said to be a justifiable homicide and the defendant will be found not guilty. If you conclude beyond a reasonable doubt that the defendant caused the victim's death, but are not

persuaded that the death was due to defending himself or another, then you must find him guilty.

The jury may leave the Courtroom now to deliberate.