



JOSEPH ALMEIDA

PORTRAIT OF A PRIVATEER, PIRATE & PLAINTIFF, PART I

Jeffrey Orenstein

ON SAINT VALENTINE'S DAY, 1832, Spain executed one of its most prized prisoners, the pirate Don Jose Almeida. Before his capture in 1827, Almeida had ceaselessly molested Spanish merchant vessels for more than a dozen years. He haunted Spanish trade routes and ports of call in the West Indies and on many cruises he circled like a shark off the coast of Spain itself. There, Almeida preyed on gold-laden vessels clearing Cadiz and merchantmen returning with precious colonial cargo. The vessels he plundered numbered in the hundreds and were valued in the millions.

The Spaniards jailed Almeida deep inside the vaults of "El Morro," the menacing fortress that to this day dominates Puerto Rico's northwest coast at San Juan Bay. This stronghold had been the bane of pirates and privateers since 1595, when its cannons drove off an invasion by the British privateer Sir Francis Drake, sending a volley ripping through the cabin of Drake's flagship in the process. Two hundred and thirty years later, Almeida beseeched his captors not to deliver him to El Morro, but there was no deterring them. He languished there for over four years, shackled to its ancient sandstone walls.

*Jeffrey Orenstein practices maritime law at Troutman Sanders, LLP in Washington, DC.
Copyright © 2007 Jeffrey Orenstein.*

On the day of his execution, Almeida was escorted out to a field where he felt the sea breeze on his face and heard the Caribbean lapping at El Morro's feet. The soldiers of his Most Catholic Majesty, Ferdinand VII, stood shoulder to shoulder and lifted their muskets to greet Almeida. When they took aim, they saw a striking figure in their sights – a man with expressive blue eyes and long blond curls draped over broad shoulders.¹ His fine white linen shirt and trousers were soiled and tattered, and his tawny face had paled, but the charisma with which he led a thousand men still radiated. Almeida received “all the spiritual remedies required” by the Catholic Church, and then musket shots echoed in the field and filled it with smoke.²

In Baltimore, Maryland, Don Jose was better known as Joseph Almeida. He was a U.S. citizen, the father of ten children,³ the owner of a house on Duke Street, and a hero of the War of 1812.

The execution of an American by a foreign power might have sparked an international incident were it not for the fact that Almeida's crimes against Spain were notorious at the highest levels of U.S. government.⁴ John Quincy Adams and Martin Van Buren, each as Secretary of State, and James Monroe – both as Secretary of State and as President – were forced to address problems that followed in Almeida's wake. One such problem landed literally on Adams's doorstep when Almeida arrived unannounced at the Secretary of State's office to request dismissal of a legal action against his ship. Adams denied the request, but not before receiving a colorful first-hand account of Almeida's career. Adams wrote of the encoun-

¹ MANUEL A. ALONSO, *El Jíbaro* 202 (Colegio Hostos, 1949) (1845).

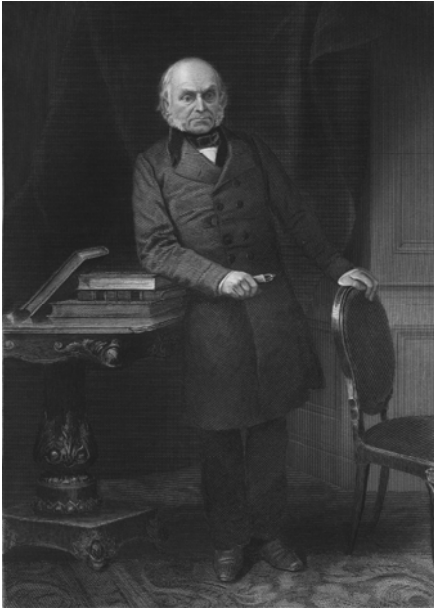
² 6 MEMORIAS, GEOGRÁFICAS, HISTÓRICAS, ECONÓMICAS Y ESTADÍSTICAS DE LA ISLA DE PUERTO RICO 280 (1833).

³ Elizabeth Rice Seim, *A History of Joseph Almeida and His Family* (unpublished genealogy by Almeida's great-great-granddaughter, 1991) (on file at the Maryland Historical Society).

⁴ U.S. policy was not to interfere or “screen from punishment” any U.S. citizen guilty of piracy when captured by a government wronged by the pirate's acts. 7 WRITINGS OF JOHN QUINCY ADAMS 248 (Worthington Chauncey Ford, ed., 1917).

Portrait of a Privateer, Pirate & Plaintiff

ter in his memoirs, fascinated – even charmed – by the “rough,” yet “open-looking, jovial Jack tar who can neither write nor read,” and who willingly told of his exploits without any sense of their impropriety.⁵



Secretary of State John Quincy Adams considered Baltimore's "piratical privateers" an "abomination." Yet, when he met Joseph Almeida in 1819, he was fascinated by the "open-looking, jovial Jack tar" and recounted their meeting at length in his memoirs.

The embarrassing extent to which Almeida flouted federal laws and treaties provoked President Monroe on one occasion to dispatch a navy gunboat and a detachment of U.S. artillerymen to rein him in. On most occasions, however, Almeida's transgressions were addressed in the usual way – through the legal system. The number of criminal and civil suits inspired or initiated by Joseph Almeida is remarkable. And between 1820 and 1825, no fewer than three of these cases reached the Supreme Court.⁶

⁵ 4 MEMOIRS OF JOHN QUINCY ADAMS 377 (Charles Francis Adams, ed., 1875) (hereinafter "MEMOIRS").

⁶ *U.S. v. Furlong*, 18 U.S. 184 (1820); *The Arrogante Barcelones*, 20 U.S. 496 (1822); *Manro v. Almeida*, 23 U.S. 473 (1825).

Many of the Almeida cases raised essential – and then-novel – federal questions. For example, when the United States seized Almeida’s brig, the *Wilson*, for bringing “persons of Color” ashore in contravention of a federal statute,⁷ Chief Justice John Marshall, riding circuit, addressed the statute’s validity under the commerce clause. This was Marshall’s first judicial opinion on the scope of the commerce clause, and it foreshadowed his opinion four years later in the famous steamship case, *Gibbons v. Ogden*.⁸ Other Almeida cases raised equally fundamental issues: whether state officials may execute federal laws; the extent to which foreign judgments must be enforced in U.S. courts; and whether slaves constituted “property” under federal statutes passed after the 1807 Act to Prohibit the Importation of Slaves.⁹

These cases show how Almeida (and others like him) helped to shape America’s infant federal jurisprudence. Of course, this should be no surprise. Flesh is put on the bone of the law by cases that test legal doctrines at the margins. And who was more likely to deliver such cases in the early Republic than the men who lived on the wild margins between civilization and the sea?

THE PRIVATEER

“War is declared!” announced the *National Intelligencer*, “and every patriot heart must unite in its support.”¹⁰ Indeed, when Congress declared war on Great Britain in 1812, the entrepreneurs of Baltimore were quite prepared to lend their support. Ever since the Embargo Act of 1807, the promise of profits from wartime privateering had created a buzz in the Merchants Coffee House and the salty shipyards of Fells Point. As expected, Congress authorized President Madison to issue “commissions or letters of marque and general reprisal” to “private armed vessels of the United

⁷ *The Wilson v. United States*, 30 F. Cas. 239 (C.C.D. Va. 1820).

⁸ 22 U.S. 1 (1824).

⁹ *State v. Rutter*, 12 NILES’ REGISTER 115 (Balt. Cty. Ct. 1817); *The Arrogante Barcelones*, 20 U.S. 496 (1822); *Almeida v. Certain Slaves*, 1 F. Cas. 538 (D.S.C. 1814).

¹⁰ DONALD R. HICKEY, *THE WAR OF 1812: A FORGOTTEN CONFLICT* 55 (1990).

Portrait of a Privateer, Pirate & Plaintiff

States.”¹¹ Within days, Baltimore was transformed into a “full-fledged privateering nest.”¹²

The great profits to be had from privateering were complemented by great risks. The \$25,000 investment required to launch a private armed vessel was in jeopardy every dicey day of the privateer’s cruise. First, there was the often violent task of intercepting British vessels and forcing their surrender. Next, the captain had to select a trustworthy prize master (essentially a temporary captain of the prize) and crew to safely sail the prize into the nearest port with a U.S. district court. At the same time, there was the delicate matter of distributing prisoners between the prize vessel and the privateer, the wrong ratio of prisoners-to-crew being a recipe for rebellion and loss of the prize. Finally, an admiralty lawyer, or “proctor,” had to claim, or “libel,” the prize successfully in district court. At every step, things could – and frequently did – go wrong. British men-of-war captured or destroyed privateers, crews mutinied, men were horribly wounded and killed in battle, prizes sank en route to port, and courts returned adverse judgments (normally meaning that the prize or its proceeds had to be restored to the original owners).

As a commander, Almeida faced these perils with intrepid enthusiasm, but as a businessman he was no fool. Beginning in 1796, when he immigrated from the Portuguese Azores to Baltimore, Almeida had labored to buy his own vessel. So before his schooner, the *Joseph & Mary*, was converted into a privateer, he hedged his bets. He brought in 16 other investors, selling the *Joseph & Mary* to them and retaining only one share for himself. The decision proved prescient. Within two months, under the command of Captain William Westcott, the *Joseph & Mary* suffered casualties from friendly fire, seized only two prize vessels (one of which bilged), and was captured by the British frigate *Narcissus*. The paltry proceeds were

¹¹ *An Act Declaring War Between the United Kingdom of Great Britain and Ireland and the Dependencies Thereof and the United States of America and Their Territories*, June 18, 1812.

¹² JEROME R. GARITEE, *THE REPUBLIC’S PRIVATE NAVY* 31 (1977).

hardly enough to cover the cost of rigging and provisions. However, the chance soon came for Captain Almeida to take the helm, and whatever losses he took with the *Joseph & Mary* would be offset a hundredfold.

As captain of the schooner *Caroline*, and subsequently of the schooner *Kemp*, Almeida captured no fewer than 35 British vessels and brought home almost \$300,000 in *net* prize proceeds.¹³ His brilliance as a sailor and tactician made him a “Golden Goose” to his financier-partners. It also made him a war hero. In the winter of 1814, the *Kemp*’s lookout spotted a convoy of nine British vessels through a thick fog. Though they were guarded by a massive British frigate, Almeida, in perhaps the boldest stroke delivered by a Baltimore privateersman, took on the convoy single-handedly. The engagement lasted through the night and well into the next day, and in the end, Almeida had masterfully outsailed and outfought seven of the vessels, and captured five. The press celebrated the remarkable feat, and published excerpts of the *Kemp*’s log describing the battle.¹⁴ Clearly pleased with himself, Almeida dictated one log entry that read, “Like the gallant Perry, we may say ‘we have met the enemy and they are ours.’”¹⁵ Naval historians have been equally impressed, ranking the *Kemp*’s exploit as one of the great privateer achievements of the War of 1812.¹⁶

THE PLAINTIFF

Not all of Almeida’s wartime endeavors ended in success. On one occasion, when the *Caroline* captured a British brig carrying hundreds of slaves, the subsequent libel raised more federal

¹³ *Id.* at 273-74; JOHN PHILIPS CRANWELL & WILLIAM BOWERS CRANE, *MEN OF MARQUE: A HISTORY OF PRIVATE ARMED VESSELS OUT OF BALTIMORE DURING THE WAR OF 1812* (1940).

¹⁴ *Brilliant Cruise!*, *THE TRUE AMERICAN*, January 4, 1815.

¹⁵ Log of the *Kemp* (on file at the Maryland Historical Society). Almeida was quoting Commodore Oliver Hazard Perry after the Battle of Lake Erie.

¹⁶ 2 WILLIAM ARMSTRONG FAIRBURN, *MERCHANT SAIL* 24 (1947) (citing ALDEN ET AL., *THE UNITED STATES NAVY: A HISTORY* (1943)).

Portrait of a Privateer, Pirate & Plaintiff

questions than it did prize money. The slaves were owned by British citizens and Almeida sought to claim them as prize goods like any other. But the federal district attorney in South Carolina, Thomas Parker, claimed the slaves on behalf of the United States as prisoners of war. When *Almeida v. Certain Slaves* came before District Judge John Drayton, the former Governor of South Carolina, it presented what he called “one of the new and important questions arising from the present war.”¹⁷

Almeida was represented by a young Robert Y. Hayne, Daniel Webster’s future nemesis in the celebrated Senate debates of 1830. Hayne argued that slaves came “within the meaning of the word property” in the Prize Act of 1812 which provided “all captures and prizes of vessels and *property* shall be forfeited and accrue to the owners, officers and crews of the vessels making such captures.”¹⁸ Hayne also made two policy arguments – that the United States should “encourage the exertions of our citizens to attack and injure the enemy” and that in the name of “retributive justice,” Americans should take British-owned slaves because “the enemy have taken so many slaves belonging to our citizens.” The district attorney countered that slaves could not be “property” within the meaning of the Prize Act because such a reading would be inconsistent with the 1807 Act to Prohibit the Importation of Slaves.

Drayton ruled that the slaves Almeida had captured were not property under the Prize Act. The “intention of Congress,” Drayton held, could not have been to “to consider [slaves] as prize” for at least two reasons. First, such an interpretation would imply a partial repeal of the 1807 prohibition on slave importation, and if Congress had intended that, it would have said so, as it did elsewhere in the Prize Act. Second, half the states represented in Congress were “free-states,” and the notion that Congress could enact a law that made slaves prize goods in those jurisdictions was absurd.

¹⁷ *Almeida v. Certain Slaves*, 1 F. Cas. 538, 538 (D.S.C. 1814).

¹⁸ *An Act concerning Letters of Marque, Prizes, and Prize Goods*, 2 Stat. 759, § 4 (1812) (emphasis added).



In 1814, South Carolina District Judge John Drayton (above) presided in Almeida v. Certain Slaves. Robert Hayne (right), representing Almeida, argued that the U.S. should “encourage the exertions of our citizens to attack and injure the enemy” and that in the name of “retributive justice,” Americans should take British-owned slaves because “the enemy have taken so many slaves belonging to our citizens.”

Although Almeida’s case involved a narrow question of statutory construction, it provided a valuable precedent for Richard Baldwin and John Quincy Adams when they argued the *Amistad* case 27 years later. The Spanish claimants and the district attorney in that case claimed that the United States was bound by the Treaty of San Lorenzo to “restore” the rebellious slaves of the *Amistad* to their “owners,” as “merchandise ... rescued out of the hands of pirates or robbers, on the high seas.” But at oral argument, Baldwin persuasively argued that “all men being presumptively free, when ‘merchandise’ is spoken of in the treaty of a free state, it cannot be presumed that human beings are intended to be included as such.” It “was on the same principle,” Baldwin contended, “that Judge Drayton, of South Carolina decided, in the case of Almeida ... that the word ‘property’ in the prize act did not include negros.”¹⁹

¹⁹ *The Amistad*, 40 U.S. 518, 592 (1841).

THE PATRIOT

The end of hostilities against Great Britain in 1815 should have been cause for celebration, but for Almeida it meant trading the thrill of his privateer for the monotony of a merchant ship. Boredom, however, was kept at bay by an unexpected turn of events. While running cargo to New Orleans in his new schooner, the *Friends Hope*, Almeida got word that Spanish troops in Colombia had just occupied Carthagena. The Latin American fight for liberation was raging, and at the behest of King Ferdinand VII, General Pablo Morillo was on a ruthless campaign to reclaim the territories lost to the great revolutionary, Simon Bolivar. Almeida immediately sailed for Carthagena. Trade with the city would be restricted, and if the Embargo Act of 1807 had taught Almeida anything, it was that the most lucrative cargo a merchant could carry was contraband.

On his approach to Carthagena, Almeida found, to his surprise, the Patriot flag of Bolivar's movement still flying and no blockade in sight. Sailing abreast of the city, he realized too late that General Morillo had kept the Patriot flag flying to decoy smugglers and sympathizers. Boatloads of armed Spaniards descended upon the *Friends Hope*. Almeida and his men were stripped naked, brutally beaten with the butt ends of Spanish muskets, and thrown into a dank prison. What came next, Almeida later told the press, was the "most painful march during which we suffered more than I shall attempt to describe."²⁰ The Spaniards forced the battered, barefoot crew of the *Friends Hope* and many other prisoners to march the 140 miles from Carthagena to St. Marta. Several men died, including one who, when he became too ill to march, was placed in a hammock and "dragged along the road jolting him so hard as to occasion his death."

The Spaniards eventually released Almeida, but they commandeered the *Friends Hope*, the fruit of his wartime earnings and the vehicle of his livelihood. He returned to Baltimore injured and distraught. Providentially, a man named Thomas Taylor, just arrived

²⁰ Extract of a letter from Capt. Almeida, NEW BEDFORD MERCURY, April 12, 1816.

from Buenos Aires, soon approached Almeida with a business proposition. The newly coined United Provinces of Rio de la Plata – a loose confederation of territories based in Buenos Aires – needed experienced privateers to assist in their struggle for liberation by preying on Spanish merchant ships wherever they sailed. For this service, privateer captains would receive a handsome share of the prize proceeds. Almeida could hardly conceive of an offer more apropos. He would replenish his estate, avenge the indignities he had suffered in Carthage, avoid the tedium of the merchant trade, and serve the cause of liberty – most likely in that order.

And so it was on May 14, 1816 that the *Orb*, a rakish War of 1812 privateer with a displacement of 165 tons and a copper-covered hull, cleared the port of Baltimore. Thirteen days out, off the Virginia Capes, the Star-Spangled Banner was lowered and the sky-blue-and-white ensign of Buenos Aires was hoisted to the mizzen top. The *Orb* was now the *Congreso*, and the crew cheered as their captain, “Don Jose Almeida,” ordered the cannon salute, and made sail for the coast of Spain.²¹

Near the Cape of St. Vincent, Portugal, the *Congreso* rendezvoused with some of Almeida’s old friends, five veteran privateersmen from Baltimore also commissioned by the United Provinces. In an awesome display of daring, they resolved to blockade the Bay of Cadiz, the nerve center of Spanish commerce and seat of His Catholic Majesty’s navy. One by one, they picked off gold-laden ships from Cadiz, as well as Spanish merchant vessels returning with valuable cargos from the West Indies and Philippines. Almeida alone was credited with 24 prizes worth between \$800,000 and \$3,000,000.²² When the Spanish navy proved incapable of catching the swift and nimble Baltimore clippers, King Ferdinand was compelled to order an embargo for the fleets on both sides of the Atlantic, at Cadiz and Havana. The Spanish colonial trade was paralyzed. As a result, royal forces in Latin America became increasingly iso-

²¹ BENJAMIN KEEN, DAVID CURTIS DEFOREST AND THE REVOLUTION OF BUENOS AIRES 105 (1947).

²² NILES’ WEEKLY REGISTER, September 14, 1816.

Portrait of a Privateer, Pirate & Plaintiff

lated as their supply lines were obstructed and their communiqués – typically carried by merchantmen – were intercepted. Among the many letters intercepted by Almeida, the one that must have given him the greatest satisfaction was a desperate plea for reinforcements from General Pablo Morillo, his captor in Cartagena. Morillo's letter warned, "if we lose Margarita, the insurgents will fortify it; and they will interrupt, by their pirates, our commerce in the Mexican Gulf."²³ That is exactly what happened, perhaps because the reinforcements never came.

THE PIRATE

During the winter of 1816-1817, having liquidated his prizes in Buenos Aires, Almeida enjoyed a successful second cruise in the West Indies, during which he captured 16 prizes in 10 days.²⁴ At the same time, complaints about his first cruise started pouring into the U.S. State Department – mainly from the Chevalier, Don Luis de Onís, the Spanish Foreign Minister. In one letter, Onís protested to Secretary of State James Monroe that "this pirate (for that is the name by which both nations have agreed to consider a privateer of this description) was armed at Baltimore, manned by subjects of this Republic and commanded by a Portuguese called Almeyda, an American citizen."²⁵ Onís implored Monroe to refer the matter to President Madison, but shortly thereafter Monroe took office as President and saw to the matter himself. When the *Congreso* returned to Baltimore from its second cruise in March 1817, District Attorney Elias Glenn was directed to libel the *Orb* (alias *Congreso*) seeking its forfeiture for violation of the neutrality laws.²⁶

²³ *Gen. Pablo Morillo to Minister of War in Spain* (March 7, 1816) in *OUTLINE OF THE REVOLUTION IN SPANISH AMERICA* 127-32 (1817).

²⁴ *MONITEUR*, July 15, 1817.

²⁵ *Don Luis de Onís to Mr. Monroe* (January 2, 1817), in 3 *THE CASE OF GREAT BRITAIN AS LAID BEFORE THE TRIBUNAL OF ARBITRATION CONVENED AT GENEVA* 167 (1872) (hereinafter "GENEVA ARBITRATION").

²⁶ *Libel, U.S. v. the Orb* (case file at National Archives, Philadelphia).

But Onís was not satisfied. The very next day he wrote to Richard Rush, then Acting Secretary of State, to question why nothing had been done to “secure” Almeida himself, a “notorious pirate,” who had the “audacity to return [to Baltimore] to deposit a part of his robberies.”²⁷ Rush “lost no time in writing to the proper officers both at Norfolk and Baltimore in order that full inquiry may be made into the allegations,”²⁸ but Onís was still discontented. He was “thankful that the President gave orders to the authorities at Baltimore to proceed against Almeida,” but was “outraged to find out” that the district attorney in Baltimore believed there was “no evidence upon which he [could] proceed against Captain Almeida.” “Good order” and “rules of court” were important, Onís conceded, “but when a crime is notorious to all and is doubted by none” he simply did not see the need.²⁹

Meanwhile, on March 28, 1817, Captain Almeida ambled into district court to reclaim his ship and answer the allegations. With him were his proctors in admiralty, William H. Winder, a brigadier general in the War of 1812, and Walter Dorsey, Chief Judge for the Baltimore County Court. Their defense was simple: The neutrality laws were not violated because the *Congreso* was a foreign vessel; she cruised under a valid commission from the United Provinces of Rio de la Plata, a sovereign nation at war with Spain; she was owned by a citizen of that country, one Don Juan Pedro Aguirre; and commanded by a citizen of that country, Don Jose Almeida; she was not fitted out in Baltimore; and furthermore, the only reason the *Congreso* called at Baltimore was because she was in distress due to severe weather.³⁰

It was all lies, save one half-truth: Joseph Almeida had become a citizen of the United Provinces. Still, he was also a citizen of the United States of America where the United Provinces were not yet recognized. Almeida’s citizenship, like everything else – the name

²⁷ *Don Luis de Onís to Mr. Rush* (March 26, 1817), in GENEVA ARBITRATION 178.

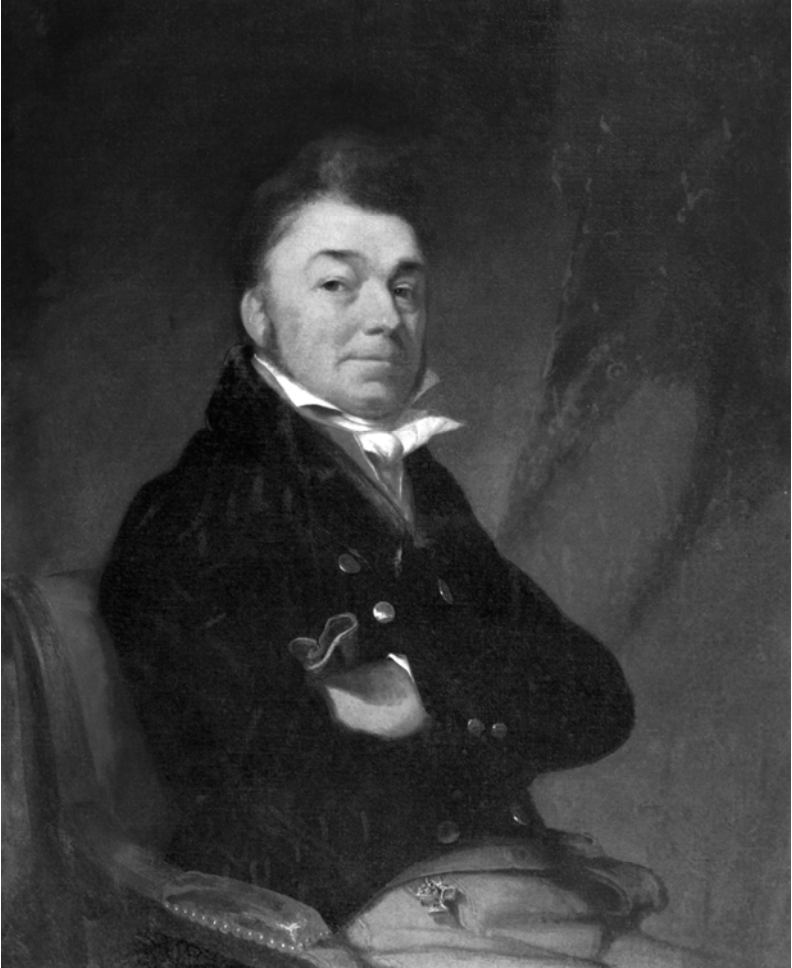
²⁸ *Mr. Rush to Don Luis de Onís* (March 28, 1817), in GENEVA ARBITRATION 179.

²⁹ *Don Luis de Onís to Mr. Rush* (March 29, 1817), in GENEVA ARBITRATION 180.

³⁰ Answer and Claim, *U.S. v. the Orb* (case file at National Archives, Philadelphia).

Portrait of a Privateer, Pirate & Plaintiff

of the vessel, the nationality of the crew, the identity of the owners, the amount of armament carried, the cargos declared, and the ship's articles – was a sham to evade the neutrality laws.



Yankee adventurer David Curtis DeForest (above), made a fortune in Buenos Aires as agent for the Congreso, commanded by Joseph Almeida, and other privateers secretly financed by the house of Darcy & Didier. He eventually returned to his native Connecticut wealthy enough to become “one of Yale’s most generous nineteenth-century donors.”

The truth, uncloaked, was this: Just before Thomas Taylor propositioned Almeida about privateering for Buenos Aires, he visited the counting rooms of D'arcy & Didier, one of Baltimore's biggest merchant houses. He carried with him six blank privateering licenses and an offer from David Curtis DeForest, an American entrepreneur living in Buenos Aires. If they would finance the outfitting of vessels to cruise against Spain, DeForest would provide the commissions, lend his name to the privateers (as David "Cortez" DeForest), and act as agent in Buenos Aires, overseeing the adjudication of prizes, remitting proceeds, and providing legal and political cover. The house would receive 50% of all prize sales and DeForest would receive 10%. The balance would cover expenses and compensation for the captain and crew. D'arcy & Didier knew the prospects of such a venture, having been a principal backer of private armed vessels during the War of 1812. In less than a month, the *Orb* was refitted and the veteran privateersman, Joseph Almeida, was recruited to be her captain.³¹

In the coming years, D'arcy & Didier and other Baltimore merchants would combine in myriad partnerships to launch additional privateers, forming an underground syndicate called "The American Concern."³² In time, the firm of Stevenson & Goodwin bought an interest in the *Congreso*, and Juan Pedro Aguirre replaced his associate, David DeForest, as the *Congreso*'s agent (at least nominally), but the basic business model remained, and the fortunes accumulated were enormous.³³ Just as an agent, DeForest made over \$100,000 his first year, and returned to the United States wealthy enough to become "one of Yale's most generous nineteenth-century donors."³⁴

³¹ KEEN, *supra* note 21, at 111, 113-15.

³² Charles C. Griffin, *Privateering from Baltimore During the Spanish American Wars of Independence*, 35 MD. HIST. MAG. 27 (1940); KEEN, *supra* note 21, at 107-08.

³³ See HORACIO RODRIGUEZ AND PABLO ARGUINDEGUY, *EL CORSO RIOPLATENSE* (1996).

³⁴ The Yale Endowment 2004, www.stat.wharton.upenn.edu/~steele/Courses/434/434Context/Edowments/Yale_Endowment_2004.pdf. The David C. DeForest Prize for oratory is still awarded every year.

Portrait of a Privateer, Pirate & Plaintiff

In court, Almeida supported his version of the facts with various official documents from Buenos Aires. The district attorney ultimately failed to provide adequate rebuttal evidence, so Judge James Houston restored the *Congreso* to her captain. Houston, however, was not blind to the intrigues of Baltimore privateering. In a note to Philp Moore, the clerk of the court, he observed the ever-changing names of the *Orb* crew and joked that the “Dons Dorsey and Winder” did not even know the name of their client’s supposed South American homeland.³⁵

THE PRISONER

Onis was outraged by Houston’s decision and set out to build a case against Almeida himself. With the help of Pablo Chacon, the Spanish Consul at Norfolk, Onis gathered sworn depositions from several of Almeida’s former prisoners and sent them to Secretary Rush. When the federal authorities did not react promptly, however, Onis grew impatient and turned to the Maryland state authorities. A justice of the peace executed a warrant, and soon Almeida was arrested on charges of piracy.

Almeida’s first stay in an American jail was very brief. Walter Dorsey represented him again, but this time Dorsey defended Almeida in the same Baltimore County Court where he normally presided as Chief Judge. Remarkably, Dorsey’s defense of Almeida was based on a narrow construction of his own court’s powers. He petitioned the court for a writ of habeas corpus on the basis that Almeida’s arrest by state authorities violated the U.S. Constitution. Piracy was a federal crime, and under the Constitution, Dorsey argued, a state could not execute federal criminal laws. The Judiciary Act of 1789, section 33, had authorized the states to do exactly that,³⁶ but Judges Theodorick Bland and John Hanson ruled that provision unconstitutional and ordered Almeida’s release.³⁷

³⁵ Judge Houston to Clerk Moore, *U.S. v. the Orb* (case file at National Archives, Philadelphia).

³⁶ *An Act to establish the Judicial Courts of the United States*, 1 Stat. 73, § 33 (1789).

³⁷ *State v. Rutter*, 12 NILES’ REGISTER, 115, 231 (Balt. Cty. Ct. 1817).

Maryland Judge Theodorick Bland (right) ordered Almeida's release from a state jail on the ground that state courts lacked jurisdiction over cases involving federal laws criminalizing piracy. Judge Bland was one of the many officials in Baltimore linked to the illicit privateering trade.



Dorsey's theory of the case was probably more than just a clever defense. If Congress could invest state officers with the judicial power of the United States, Congress might begin to rely on the state courts.³⁸ That would certainly affect the County Court's docket, and so Judge Dorsey's aim may have been to convince his colleagues on the bench to rewrite their job description. The legal historian Charles Warren once suggested that this decision was animated by opposition, prevalent among Marylanders of the period, to the federal government's self-aggrandizement³⁹ – an opposition most famously addressed in *McCulloch v. Maryland*.⁴⁰ However, if Bland and Hanson were predisposed to accept Almeida's defense, it is possible they were motivated by something less grand than fidelity to the Constitution or principles of federalism. They may have been personally entangled in Baltimore privateering.

The business of patriot privateering, as John Quincy Adams observed, had not only “spread over a large portion of the merchants”

³⁸ See *Highly Important Law Case*, NILES' WEEKLY REGISTER, April 19, 1817.

³⁹ *Federal Criminal Laws and the State Courts*, 38 HARV. L. REV. 578, 580 (1925).

⁴⁰ 17 U.S. 316 (1819).

Portrait of a Privateer, Pirate & Plaintiff

in Baltimore, but had also “infected almost every officer of the United States in the place.” According to Adams, the district attorney, Elias Glenn, in addition to being “a weak, incompetent man,” had “a son concerned in the privateers”; the postmaster, John Skinner, had been “indicted for being concerned in the piratical privateers”; the customs collector, James McCulloh, was “an enthusiast for the South Americans, and easily duped by knaves”; the “Inspectors of the Revenue were in the habit of receiving *presents* from the importing merchants”; and somehow, privateers were never caught smuggling their prize goods into Baltimore.⁴¹

Adams was equally frank about Baltimore’s jurists: Both District Judge James Houston and Supreme Court Justice Gabriel Duvall, who sat as circuit judge in Baltimore, were “feeble, inefficient men, over whom William Pinkney, employed by all the pirates as their counsel, domineers like a slave-driver over his negros.”⁴² As for Judge Theodorick Bland, several reports indicated that he invested in patriot privateering with his brother-in-law, Postmaster Skinner, and “narrowly escaped being indicted ... for privateering.”⁴³ Judges Dorsey and Hanson were not similarly implicated, but given the involvement of their peers, and the prevailing attitude in Baltimore, they too may have been entangled.

In any case, Almeida’s release left the Spanish consul dumbfounded. Writing to Richard Rush again, Onís griped, “it appears that the court of Baltimore County has declared its incompetency ... the result of which is the pirate Almeyda is at liberty; that his vessel, the *Congreso*, is released from attachment; and that he is free

⁴¹ MEMOIRS, at 318.

⁴² *Id.* at 319.

⁴³ *Id.* at 159, 182. Adams eventually satisfied himself that Bland was innocent of the most serious allegations. Nevertheless, he strenuously opposed Bland’s elevation to the federal bench in 1819 because “it was impossible that he should be impartial” with regard to “the most important cases pending before the Court” (i.e., privateering cases). *Id.* at 436.

Elias Glenn (right), the U.S. District Attorney in Maryland, was, according to John Quincy Adams, a “weak incompetent man” whose failures in prosecuting Almeida and other privateers were at least in part attributable to a family interest in privateering.



to land and place in safety the fruits of his piracies.”⁴⁴ For the second time, Onís beseeched Rush to refer the matter to the President, and again the Executive obliged. On April 21, 1817, only one week after his release, Almeida was arrested again, on the same charges, but this time by federal authorities under a warrant obtained directly from Justice Duvall. Almeida posted bail, and on May 8, Duvall presided over the grand jury of the Circuit Court of the United States in Baltimore. After a “full and elaborate investigation of the merits of the case, wherein the treaty between the United States and Spain was more particularly the subject of discussion, the Court directed the Jury to acquit.”⁴⁵ Duvall’s oral opinion reportedly “elucidated the points of the case in the most able, luminous and impressive manner.”⁴⁶ Unfortunately, it was never published, so the exact grounds for acquittal remain a mystery.

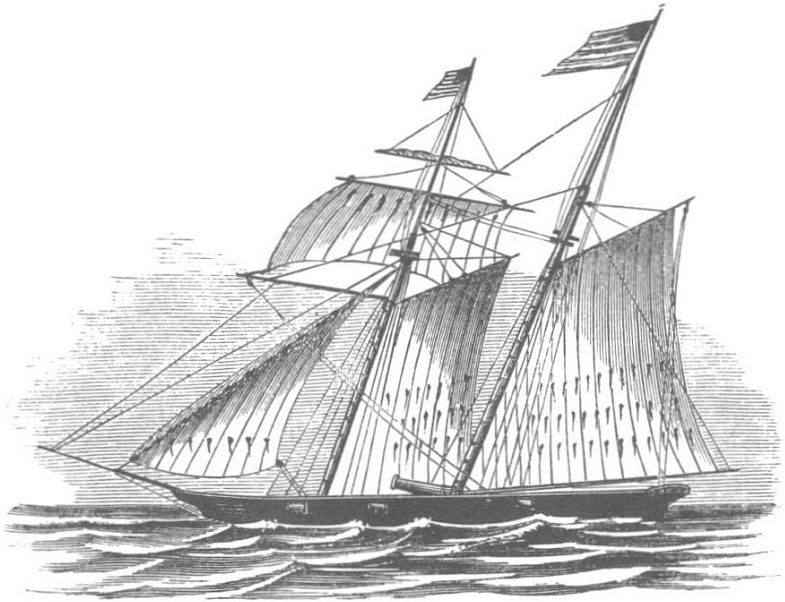
⁴⁴ *Don Luis de Onís to Mr. Rush* (April 18, 1817), in GENEVA ARBITRATION 185.

⁴⁵ THE COMMERCIAL ADVERTISER, May 12, 1817.

⁴⁶ THE ALEXANDRIA HERALD, May 14, 1817.

Portrait of a Privateer, Pirate & Plaintiff

What grounds, however, would have satisfied the Spaniards? They may not have appreciated the subtleties of the American legal system, but their frustration with regard to Almeida was justified nonetheless. The Spanish Consul at Norfolk broke the news to the Governor of Cuba, Eusebio Escudero, that Almeida had been released, “notwithstanding the endeavors I made ... for the seizure of that pirate.”⁴⁷ Tensions between Spain and the United States were building, largely over the status of the Spanish territory of Florida. And just as Adams sought to negotiate a settlement with Onís, Captain Almeida would complicate matters. With “thirty hands at work upon his vessel,” he would, as Onís rightly predicted, “profit by the first favorable wind to put to sea, and continue with greater fury his atrocities and piracies.”⁴⁸



To be continued ...

⁴⁷ Pablo Chacon to Don Eusebio Escudero (May 23, 1817), in *THE AMERICAN BEACON & COMMERCIAL DIARY*, September 5, 1817.

⁴⁸ Don Luis de Onís to Mr. Rush (April 18, 1817), in *GENEVA ARBITRATION* 185.