

# United States v. Aaron Burr

Should the President of the United States have to appear in court when a judge requires him to be a witness? Is an accused traitor entitled to all fair trial rights guaranteed by the Constitution? These were the controversial issues in the dramatic trial of Aaron Burr.

United States v. Burr was not a Supreme Court case. In 1807, Aaron Burr was tried for treason in the Federal Circuit Court in Richmond, Virginia. Although the actual evidence against Burr was tenuous, in an address to Congress Jefferson declared Burr guilty. In a dramatic maneuver during the grand jury hearings, over which Chief Justice John Marshall and District Judge Cyrus Griffin presided. Burr requested the court to subpoena President Jefferson so that Burr could view the evidence that would be used against him. Because Chief Justice Marshall insisted on satisfying due process requirements throughout the proceedings, he once again found himself in opposition to President Jefferson who insisted both on the conviction of Burr and protection of presidential privilege. The confrontation produced dramatic results: a precedent for limiting executive privilege was set; the right of unpopular defendants to a fair trial was established; the constitutional definition of treason was upheld; and Chief Justice Marshall was hanged in effigy.

## STUDENT OBJECTIVES:

1. To gain awareness of due process of law—the procedural safeguards for a fair trial guaranteed by the United States Constitution.
2. To understand the precedents set by Chief Justice John Marshall for applying due process requirements even in highly controversial political trials.
3. To understand that every citizen is bound by the law of the land, whatever his social or political position.
4. To gain awareness of the uses and limits of executive privilege.
5. To understand the concept of treason and the reasons why the English and American definitions differ.
6. To better understand the philosophies, motives and values of Marshall, Jefferson and Burr.

## BEFORE VIEWING

### Discussion Questions

#### The Legal Issues

(See Vocabulary List)

1. What is due process of law? What articles in the United States Constitution refer to due process? What procedural safeguards for a fair trial does the Constitution guarantee? What do the 5th, 6th and 14th Amendments mean?
2. What is a grand jury? What is its purpose? How does it foster due process? What is the difference between a grand jury and a petit jury?

3. What is a subpoena? Who can issue one? What is its purpose? Who must comply with subpoenas? What is the penalty for not complying?

4. Should due process guarantees apply to cases of treason or other crimes against the government? Is it possible to distinguish between cases requiring due process and those not requiring it? Should a person's assumed guilt, a revolution, war, or danger of war make a difference? Have wars or threats of war, such as those which arose during the Presidency of John Adams, the cold war in the 1950s or the Vietnam conflict in the 1960s, affected the treatment of people who disagreed with the government?

5. What is the purpose of bail? Are there cases in which bail should not be granted? Does the Constitution consider bail? What does the 8th Amendment say about bail?

6. How can individuals who oppose government policies protect themselves? How were the Alien and Sedition Acts of Adams' Presidency and of the World War I era applied?

7. Trace Burr's career through his various attempts for power. How did Burr almost become President in 1800? In what ways did he contribute to Jefferson's presidential campaign in 1800? What reasons did Burr have for believing that Jefferson had cheated him out of the presidency? Did Burr allow the lame-duck Federalist Congress to manipulate him? Why did Jefferson not want Burr as his vice-presidential candidate in the 1804 election?

## AFTER VIEWING

### Discussion Questions\*

#### The Conflicting Evidence

1. What stories about Burr's military and political ambitions led to his arrest for treason in 1807? How credible were the sources of these stories? According to Jefferson and Hay, what was Burr plotting? What evidence was General Wilkinson's letter said to contain? Is a copy of a letter convincing evidence? What did some of the men who met on Blennerhasset's Island think they were going to do? What was Burr's defense? What were some of Burr's other possible plans?
2. What did Chief Justice Marshall seem to believe about this evidence?
3. If President Jefferson had solid evidence against Burr, why did he never produce the original of Wilkinson's letter? Why is Eaton's testimony suspect? The records indicate that Burr knew that Wilkinson was in the pay of the Spanish government. Do you think Jefferson knew of

this? If he did, would he have used Wilkinson's testimony anyway? There is evidence that the government granted Eaton immunity. Is this an ethical procedure? Are grants of immunity in exchange for testimony against former accomplices unusual?

### **The Legal Issues**

1. What is treason? How does English law define treason? American law? How does Article III, Section 3 of the Constitution define treason? Why were the framers of the Constitution careful to change the British definition of treason? How was the British common-law definition of treason used against Americans? Against dissidents in England? How had "letters de cachet" been used in France to silence opposition to the government? How did Chief Justice Marshall define treason in the *Bollman* case? What precedent did he cite? How did he rule in the Burr trial? Why did he change his mind? What legal principles did he intend to uphold? Who did he feel the courts are required to protect? If Washington had been President, would Marshall have changed his ruling? Would he have ruled differently if the country had been at war?

2. What were some of Jefferson's political reasons for opposing Burr? What was the major national security problem in the United States? What was the European political situation? Was war with England or Spain likely? How should this possibility have affected Jefferson's treatment of Burr? Should these national security concerns have affected Marshall's rulings?

3. To what extent did Marshall's and Jefferson's personal feelings influence their decisions during the Burr trial? How did they differ politically? What were some of their previous confrontations? (the 1800 and 1804 elections, *Marbury v. Madison*, the *Mazzei* letter.) Are there indications that their feelings were intense? Did Marshall need to speak of "the hand of malignity"? Was it necessary for Jefferson to publicly declare Burr guilty before the trial? Was it ethical for Jefferson to offer money to those who would testify against Burr?

4. What were Chief Justice Marshall's intentions? Considering Burr's unpopularity with Congress and the President, and the expected negative public reaction to his release, could Chief Justice Marshall expect to gain anything by insisting on due process? What did Marshall and the federal courts stand to lose by protecting Burr? Considering Marshall's carefully planned strategy in *Marbury v. Madison* for strengthening the Supreme Court while apparently giving in to the ruling Democratic-Republicans, was it politically wise to protect Burr?

### **The Consequences**

1. What were some of the consequences of the Burr trial? What would have happened to the prestige, legitimacy and effectiveness of the Supreme Court if Marshall had insisted on Jefferson's appearance and been ignored? What would have happened to the prestige, legitimacy and effectiveness of the Presidency if Marshall had insisted on the exact terms of the subpoena and Jefferson had been arrested? Who gained by the compromise? How did the compromise reinforce the balance of power? What constitutional principle was asserted regarding the rights of an individual, even one who is generally believed to be guilty? What does the Burr trial demonstrate about the role of American courts in protecting the individual against a powerful central government?

2. How does the Burr trial demonstrate "equal justice under law"—that no man or woman is above the law? Why did Jefferson feel that he had laid a trap for Marshall? How does Article III, Section 3 apply to the Burr trial? What two points must the prosecution have proven to convict Burr? Are there circumstances, such as times of war, when these two points should not apply?

3. What is a grand jury? What is the purpose of the grand jury? Who sits on a grand jury? How does it operate? What decisions can it make? What are the consequences of those decisions? In what way does the grand jury protect the individual's right to due process? What might happen without a grand jury? The American grand jury was based on the English model, but in 1933, England eliminated the grand jury. What is the future of the grand jury in the United States? What should it be?

4. What is the difference between treason and the high misdemeanor for which Burr was indicted? What was the specific charge in each indictment?

### **Other Activities**

1. Set up a debate in which one side argues for the American Constitution's definition of treason and the other for the common-law definition.

2. Develop a poll concerning presidential privilege. Administer it to another class, the school or community members. Analyze the results in terms of how well the respondents understand the law on these issues. People may be asked: Does the President of the United States have to go to court if he is subpoenaed? If the President of the United States does not go to court when subpoenaed, should he be put in jail?

3. Draw a map of the United States using a color or pattern code to indicate how territories were added: by purchase, annexation, war, negotiations, etc.

4. Research the Burr trial. Write the letter which General Wilkinson might have sent to Jefferson. Consider what the letter might have said that made Jefferson reluctant to produce it. Review the requirements for due process in a criminal proceeding. Hold a mock trial or mock grand jury hearing using the new letter as evidence. The instructor or a resource person such as a lawyer or judge could take the role of Chief Justice Marshall. Students can take the roles of defendant, the several attorneys and witnesses. To create more interest, someone taking the role of President Jefferson might also take the stand. The rest of the class could be the jury.

5. Groups of students can research famous English treason trials, such as those of Sir Thomas More; Anne Boleyn; Lady Jane Grey; Mary, Queen of Scots; Sir Walter Raleigh; and the American trials of Cramer and Haupt in 1945 and 1947. In a panel discussion, students can report on each of the trials and compare them with the precedents for due process that John Marshall set in Burr's trial. Students not on the panel can ask questions about due process: grand jury procedure, grand and petit jury selection, presence of attorneys, rules of evidence, right against self-incrimination and use of witnesses.

6. Research the uses and misuses of presidential privilege. Study the ways in which Presidents Washington, Adams, Jefferson, Lincoln, the two Roosevelts, Kennedy and Nixon used executive privilege.

7. Research the grand jury in the United States. What are its legal and political functions? Analyze the procedures used and their purposes. Pay particular attention to jury selection, the use of evidence and the presence of attorneys. How has the grand jury evolved since the early years of the Republic? Do all states have grand juries? Is the grand jury an institution which still fosters due process? What reforms have been suggested?

8. Research bail in the United States. Analyze the use of bail in terms of how it is actually used and how it should be used. Review recent reforms and suggestions for reform.

9. Research the ethical dilemma of treason. Study the political and ethical concept of treason. For example, if revolutionaries win, then "loyalists" are traitors; but if a revolution fails, the revolutionaries are traitors. Can such political problems of power be partially resolved by legal means such as insistence on due process? How did Lincoln intend to resolve similar problems after the Civil War?

10. Research the legal problem of treason. Study English treason law, bills of attainder and French "lettres de cachet", and their political uses. Compare these practices with Marshall's interpretation of the intent of the framers of the United States Constitution.

11. Research separatism. Study separatist movements in such countries as Canada (Quebec), Belgium (Walloons), Ireland (Northern Ireland), Britain (Wales, Scotland), Spain (Basques), Italy (South IVrol), France (Brittany), the United States and other countries. Compare the motives and interests, and results of these movements.

12. Research United States expansion. Trace the ways the United States acquired territory from native American Indians and from foreign powers.

## **SUPPLEMENTAL AIDS\***

### **A. Characters**

- Thomas Jefferson: third President, Democratic-Republican
- John Adams: second President, Federalist
- John Marshall: fourth Chief Justice (1801-1835) appointed by John Adams, presides in Burr trial
- Cyrus Griffin: Judge, district court in Richmond, Virginia, presides in Burr trial
- Aaron Burr: former Vice President under Jefferson
- William Branch Giles: Democratic-Republican Congressman from Virginia
- George Hays: District Attorney, prosecutor
- John Wickham: defense attorney for Burr
- General Eaton: witness for the prosecution
- Blennerhasset: owner of island in Virginia on the Ohio River
- Bushrod Washington: Supreme Court Justice, a Virginian, nephew of George Washington and a friend of Marshall's

### **B. Vocabulary (see Glossary):**

- The Supreme Court
- Federal Circuit Court
- Chief Justice
- common law
- constitutional
- unconstitutional
- due process
- expansionism
- separatism
- Democratic-Republican
- Federalist
- district attorney
- defense attorney
- prosecuting attorney
- grand jury

- jurisdiction
- Attorney General
- indictment
- precedent
- principal (in a crime)
- accessory (in a crime)
- subpoena
- •high misdemeanor
- treason
- overt fact
- levying war
- sedition

### C. Stop-Film Technique

- Useful places to stop the film and clarify vocabulary, issues, and events include: after each narrative section by E.G. Marshall; and before the Court's decision.

## BACKGROUND

The Judiciary Act of 1802 required Supreme Court Justices to serve on circuit courts, so Chief Justice Marshall and Judge Cyrus Griffin presided over the Federal Circuit Court in which Aaron Burr was tried for treason (levying war against the United States) and high misdemeanor (planning a military campaign against a country with which the United States is not at war) in 1807. These circumstances created a three-way struggle between Marshall, Jefferson and Burr that was rooted in their philosophical differences and personal animosities.

### Burr

Burr's differences with Jefferson began in the 1800 presidential election. Burr led the New York Democratic-Republican party, and even though the party intended that he be Vice President, he was chosen as a presidential candidate. Before the 12th Amendment electors voted for two presidential candidates, and whoever came in second became Vice President. Burr's success exceeded expectations and he and Jefferson received an equal number of votes. The election was thrown into the House of Representatives, presided over by Jefferson, Adams' vice president. The lame-duck Federalist members tried to maneuver Burr, who they thought more pliable than Jefferson, into the Presidency. Other Federalists, Hamilton among them, helped to abort the attempt, and Jefferson acquired an antagonistic Vice President and a daring political foe.

Burr's loss of the Presidency appears to have shaped his ambitions the rest of his life; his career became a series of imaginative grasps for glory. Burr's dominant fantasy seemed to be that if he could not rule all the United States he would rule a part of it. When Jefferson rejected him for the Vice Presidency in 1804, Burr decided to run

for governor of New York, aiming ultimately to be the military leader of the Northeast. Burr conspired with senators from New York and New England to secede from the union. Hamilton's opposition to Burr's scheme led to the duel that ended Hamilton's life and Burr's political career in the East.

Burr gave up hope of capturing the Northeast and fled west to conquer new lands. As a skilled opportunist, Burr exploited two strains of thought in American culture that have existed in some form throughout the country's history: expansionism and separatism. Separatist threats of secession were used by states' rights and regional advocates since the Constitutional Convention, and generally met heavy opposition. Expansionist proposals encountered less resistance; and arguably, Burr's ingenious defense that he was settling new territories, anticipated the exploits of Andrew Jackson in Florida and Sam Houston in Texas. While some sober Americans may have agreed with Burr's separatist or expansionist plans, his conspiracy or attempted conspiracy with the Spanish and English governments verges on treason.

Today, Burr's real intentions seem vague and contradictory; perhaps even Burr himself was unsure of them. Letters written by Burr and the English and Spanish ambassadors suggest that he expected to be offered the presidency of New Orleans when it declared its independence. Then Burr would either invade Mexico under some pretext, or await what he thought was imminent war with Spain, or even create a pretext for such a war. Burr might have ultimately planned to lead a revolution in Mexico and have himself declared emperor. When these ambitious schemes failed to materialize, he might have clutched at the legitimate possibility that became his defense at trial: leading a great colonizing expedition.

### Jefferson

Political considerations predominantly motivated Jefferson's conduct before and during the trial. Jefferson felt that as President he carried the burden of national security. He believed that a show of strength was required to confront internal enemies like Burr, as well as external enemies. In both of his terms, Jefferson was engaged in keeping America free from entanglement in the Napoleonic wars. He was acutely fearful that Britain might consider America weak, and might direct all of the British naval power to attack the new Republic and regain her lost colony. Spain was apparently prepared to extend her New World territories northward at any time.

Napoleon, also imperialistically ambitious, was not to be trusted. In the confrontation between the Presidency and the courts, Jefferson feared the loss of executive power

which might result by either yielding to a subpoena or being arrested. The compromise he suggested was to the advantage of both the judicial and executive branches. But, Jefferson was well aware of the dilemma in which he had placed the Chief Justice: if Burr were acquitted, Marshall would be vilified; if Burr were convicted, Jefferson's improper pretrial declaration of Burr's guilt would be vindicated.

### **Marshall**

Marshall and Jefferson had deep-rooted philosophical differences. They were members of opposing political parties with often irreconcilable positions, and in the first decades of the Republic the two men disagreed over several presidential elections and the Mazzei letter, in which Jefferson had maligned George Washington. Furthermore, the naturally opposing constitutional roles of the two men required them to act as checks upon each other, creating repeated confrontations that could only reinforce any mutual antagonisms. Nevertheless, Marshall had no reason to favor Burr, since Burr had killed Hamilton, a Federalist Marshall liked and respected.

Neither the judiciary nor Marshall could gain by defending an unpopular person.

In addition, by reversing his previous position on treason in the Swartwout-Bollman case, Marshall made himself vulnerable to the criticism of inconsistency.

Marshall's insistence upon the subpoena of Jefferson, combined with his willingness to compromise, displays his reliance on the Constitution as well as his understanding of political realities and of the negative consequences that inflexibility could have on the Supreme Court. Marshall's other decisions indicate that he carefully avoided jeopardizing the independence of the judiciary. Marshall seemed to perceive the role of the judiciary as one of elevating Burr's trial from a personal and political struggle to the legal problem of interpreting the Constitution.

### **Legal Issues**

The problem of constitutional interpretation encompassed several issues. The first issue arose when Burr sought to subpoena the President during the grand jury proceedings. Marshall's significant ruling established that no man, even the President, is above the law. This precedent was cited repeatedly in *United States v. Nixon* in 1974.

The arguments Jefferson offered for not fully complying with the subpoena have been used by other presidents, including George Washington and Richard Nixon. These arguments included the President's executive privilege and his duty to preserve national security by maintaining

the confidentiality of certain negotiations. Jefferson seriously feared arrest, however, and assumed that he would be subject to arrest if he did not comply with the subpoena. Jefferson's partial compliance with the subpoena resulted in a compromise that dramatizes the political realities of the time and the constitutional basis for checks and balances.

The second major legal issue was whether England's common-law or America's constitutional definition of treason would be applied in the case. The defense cited Marshall's previous decision in *Swartwout-Bollman*, which accepted the common-law definition of treason used by Britain and the original colonies: In treason all are principals, what one does through another he does himself.

The United States Constitution, however, was developed by men who, because of their knowledge of the arbitrary and bloody British abuse of the common-law definition of treason, distrusted and feared a tyrannical government. They wrote:

Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. (Art. III, Sect. 3)

Chief Justice Marshall's decision in *United States v. Burr* suggests that he accepted the defense's contention that strict application of the United States Constitution's definition of treason is the only one that can legally and ethically be used in American courts.

The third issue, which has possibly the most important ramifications, is the interpretation of due process as it applies to every step in the criminal justice process; from bail, jury selection, and rules of evidence to the final charge to the jury. The political context of the Burr trial amplified this issue. Ostensibly, the case precipitated conflicts between Jefferson and Marshall. But the two actual confrontations were between the President and the law, and between the national government and a citizen accused of betraying his nation. As judge interpreting the law, Chief Justice Marshall was thrust into the uncomfortable position of arbiter of these disputes. The decision was intended to guarantee due process to all citizens even if the government views them as traitors. In the Burr trial, Chief Justice Marshall applied the spirit of equal and orderly government that is embodied in the 5th and 6th Amendments to the United States Constitution.

## ACTIVITIES TO CONCLUDE THE FILM SERIES

1. Discuss John Marshall's career as Chief Justice, including the major cases (Marbury v. Madison, United States v. Burr, McCulloch v. Maryland, Dartmouth College v. Woodward, and G/6- 60715 v. Ogden). Consider how Marshall influenced the function, prestige and authority of the Supreme Court.

2. Discuss how the Supreme Court shaped the Constitution during Marshall's tenure as Chief Justice. How did these major decisions influence the quality of American life over the long run (the nature of the federal government and its impact on citizens, the criminal justice process, the economy, presidential power)?

3. Consider the role of the Supreme Court in American society. (Consider the same aspects of society as in #2.)

4. Simulate a Constitutional Convention focusing on the issues of judicial review of federal statutes, judicial review of state statutes, the definition of treason, due process, the implied powers of Congress, a federal bank, the division of state and federal powers, individual rights and commerce. The roles of delegates to the Convention may be simulated, or students may determine their own position on these issues and argue for them in committees. A plenary session may be held to vote on those articles passed in committee. A two-thirds vote will make it part of a new simulated constitution.

5. Value strategy: Opinion Poll Rank from 1 (most important) to 10 (least important) those constitutional goals you feel are most essential to a democratic society.

- \_\_\_ judicial review
- \_\_\_ fair trial
- \_\_\_ a strong federal government
- \_\_\_ strong state governments
- \_\_\_ individual rights
- \_\_\_ the right to vote
- \_\_\_ the right to bear arms
- \_\_\_ a vigorous economy
- \_\_\_ an independent judiciary
- \_\_\_ The right to property

Another class, the school or community may be polled. Analyze results in class.

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## EDUCATION PROJECTS WITH LAW-RELATED CURRICULUM

American Bar Association  
ABA Special Committee on Youth Education for  
Citizenship  
1155 East 60th St.  
Chicago, Illinois 60637

Association of American Law Schools  
Committee on Civic Education  
Cornell Law School  
Ithaca, New York 14850

Constitutional Rights Foundation  
6310 San Vicente Blvd.

Los Angeles, California 90048

Institute for Political and Legal Education  
New Jersey Dept. of Education  
Educational Improvement Center-South  
P.O. Box 426  
Pitman, New Jersey 08071

Law In American Society Foundation  
33 N. LaSalle St. Suite 1700  
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Law In A Free Society  
606 Wilshire Blvd.  
Suite 600  
Santa Monica, California 90401

Mershon Center  
The Ohio State University  
199 West 10th Avenue  
Columbus, Ohio 43201

National Street Law Institute  
Georgetown University Law Center  
605 G. Street, N.W.  
Washington, D.C. 20001

## GLOSSARY FOR STUDENTS

Note: Terms are very simply defined as used in the context of the films (rather than providing a complete definition)

- accessory (to a crime): someone who knowingly participates in a crime.
- appeal: review by a higher court.
- cashier (of a bank in the early 18th century: an officer of a bank.
- charter (of a bank): allows a bank to legally conduct business.
- coasting trade: shipping along the coast of an ocean.
- commerce: exchange of goods or products.
- commission: a document granting an office in government.
- common law: law based on English and American custom or tradition.
- constitutional: in accordance with the United States Constitution.
- defense attorney: lawyer who defends the person accused.
- Democratic-Republicans (Jeffersonian-Republicans): advocates of states' rights who believe in limiting the power of central government.
- district attorney: lawyer for the government or the people in a certain area.
- due process: fundamental protections guaranteed by the U.S. Constitution to a person accused of a crime.

- enumerated power (of Congress): power listed in Article I of the Constitution.
- expansionism: policy of extending United States territories.
- Federal Circuit Court: federal' court above Federal District Court, but below the Supreme Court (established by the Judiciary Act of 1789).
- Federalists: advocates of strong central government.
- grand jury: a body of citizens who decide if there is enough evidence to prosecute.
- high misdemeanor: the crime of attacking a foreign country not at war with the United States.
- implied power (of Congress): power of Congress suggested by those specifically listed in the Constitution; power necessary to carry out a specific power listed in the Constitution.
- indictment: a formal accusation of a crime as required for a trial.
- interstate (commerce): between states.
- intrastate (commerce): within states.
- judicial review: the power to decide if a law accords with the Constitution.
- jurisdiction: a court's right or authority to hear a case.
- justice of the peace: a local public officer who has very limited authority as a judge.
- levying war: carrying out a war.
- market: the whole area for buying or selling.
- midnight judges: appointed in the last hours of John Adam's presidency.
- monopoly: total control of a product or service.
- overt act (of war): an actual open act of war.
- precedent: a legal decision forming the rule for similar cases that follow.
- principal (of a crime): person directly responsible in a crime.
- prosecuting attorney: lawyer representing the government in accusing a person in a trial.
- repeal: to recall a law and make it not legally binding.
- sedition: inciting rebellion against the United States.
- separatism: policy of separating or seceding from the United States.
- sovereignty: independent authority and power.
- states' rights: the policy of giving states power and authority.
- subpoena: an order from a court to be a witness or to produce evidence.
- Supreme Court Justice: a judge on the Supreme Court.
- Supreme Court of the United States: the highest court that hears appeals and determines whether a law is constitutional.
- Secretary of State: cabinet officer, head of Department of State.

- treason: the United States Constitution states: levying war against the United States; an overt act is required, not merely planning an attack.
- tyranny: a government's abuse of power.
- unconstitutional: in conflict with the United States Constitution, and therefore void.

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- American Association of Community and Junior Colleges
- American Library Association
- American Political Science Association
- National Council for Social Studies
- National Diffusion Network, U.S, Office of Education
- National Education Association
- Prime Time School Television
- Public Broadcasting Service
- Supreme Court Historical Society
- WQED/Pittsburgh

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Any opinions that may be expressed in this teaching guide are those of the authors and not necessarily those of the Judicial Conference of the United States or of Metropolitan Pittsburgh Public Broadcasting, Inc.

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