

The Seditio Act Trials

by

Bruce A. Ragsdale

*Director, Federal Judicial History Office
Federal Judicial Center*

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The Sedition Act Trials: A Short Narrative

Between 1798 and 1801, in the midst of the threat of war with France, at least twenty-six individuals were prosecuted in U.S. federal courts on charges of publishing false information or speaking in public with the intent to undermine support for the federal government. The accused ranged from the editor of the most influential opposition newspaper in the nation to a New Jersey resident who drunkenly jeered President John Adams. All of the defendants were political opponents of the Adams administration. These prosecutions under the Sedition Act of 1798 provoked debates on the meaning of a free press and the rights of the political opposition. As the first federal trials to attract widespread public attention, the Sedition Act trials also prompted discussions of the political influence of life-tenured judges and of the proper relationship between the judiciary and the elected branches of the federal government.

Federalists and Republicans

The public excitement surrounding the Sedition Act trials reflected the intense animosity between the recently formed Federalist and Republican political parties. Soon after the inauguration of the federal government in 1789, two political coalitions formed amid debates on the balance of federal and state authority and on the nation's ties to Great Britain and France. Federalists supported the administrations of George Washington and John Adams and were committed to a strong central government. Federalists believed a close alliance with Great Britain would ensure access to financial credit for American trade and manufacturing. Republicans united around Thomas Jefferson as Secretary of State and later Vice President, wanted to rely more on state governments, and encouraged greater popular participation in politics. Republicans supported closer ties with France and feared that the pro-British Federalists intended to establish an elitist or even monarchical form of government. Although these groups lacked the formal organization of later political parties, the contest between them was as fierce as any partisan conflict in the nation's history. Much of that political contest played out in a new kind of newspaper, which was sponsored by party supporters and designed to sway public opinion.

Foreign threats and domestic security

Partisan conflict escalated in 1798 as the recurring hostilities between France and Great Britain threatened to pull the United States into war. After France threatened to intercept any American ships carrying British goods, the Adams administration asked Congress for a dramatic expansion of the army and navy and for new taxes to pay for this national defense. Many Federalists feared that the French posed an additional threat of domestic subversion through their Republican supporters in the United

States. To restrain the political activity of the many immigrants who supported the French and the Republicans, the Federalists in Congress won approval for the Alien Acts, which extended the period of residency required for citizenship from five to fourteen years and authorized the President to expel any noncitizen he determined to be a threat to the “safety and peace” of the nation. The Federalists then narrowly won support for an act that provided criminal penalties for public statements critical of the federal government and for conspiracies to oppose federal authority.

The Sedition Act

The Sedition Act of July 1798 provided for the punishment of anyone who made false statements with the intent to “defame” the federal government or “to stir up sedition within the United States.” For many years, English and American courts had prosecuted individuals for this kind of seditious libel using the common law—a collection of court precedents and traditions—rather than acts of a legislature. Some doubted that the federal courts had jurisdiction over common-law crimes, so the Sedition Act provided the statutory authority for federal prosecution of seditious libel. Although early drafts included drastic penalties for even general criticisms of the government, the act incorporated recent liberalizations in American and English practice, such as permitting the truth as a defense and allowing juries to determine whether the law properly applied to the case. Federalist supporters argued that the act embodied a broadly accepted understanding of the freedom of speech, which was necessarily balanced by individual responsibility for false statements. At the same time, Federalists acknowledged that the act was aimed at the Republican printers who had been most critical of the Adams administration.

Free speech or licentious speech?

Republicans in Congress responded to the proposed Sedition Act with the most sweeping defense of free speech yet articulated in the United States. They argued that in a representative government, citizens needed to have unrestricted access to a full range of political opinions if they were to make knowledgeable choices in elections. Federalists cited Republican newspapers and the published statements of members of Congress supporting the French as an apparent conspiracy to thwart the President’s national defense. It would be an “absurdity,” said Representative Robert Goodloe Harper of South Carolina, to suggest that governments did not have the authority to protect themselves against seditious publications. Harper and his allies in Congress insisted that the act would limit only licentious speech—speech or writing that was false and intended to subvert the government.

Although the Constitution said Congress could enact “no law . . . abridging the freedom . . . of the press,” many Federalists argued that this freedom, like the similar

freedom recognized by British and colonial law, only protected writers from the government's restraint of publication. In fact, political and legal practice in the United States in the 1790s reflected a broader understanding of freedom of the press. As the first opposition to emerge under the new form of government, the Republicans, in particular, recognized that the traditional freedom from "prior restraint"—censorship before the fact of publication—was insufficient to protect political dialogue in an elective system. For Republicans, the Sedition Act appeared to be a direct challenge to their ability to build public support. The three most widely publicized trials of seditious libel demonstrated the hazards awaiting opponents of the administration.

The trial of Matthew Lyon

One of the first persons to be indicted and tried under the Sedition Act was a Republican member of Congress. Representative Matthew Lyon of Vermont was campaigning for reelection when a grand jury in October 1798 indicted him for publishing letters with the "intent and design" to defame the government and President Adams. The Irish-born Lyon was one of the most provocative Republicans in the Congress, and his brawl with the Federalist Roger Griswold on the floor of the House chamber came to symbolize a collapse of civility in public affairs.

Justice William Paterson, presiding in the U.S. Circuit Court for the District of Vermont, explained to the grand jury that seditious libel was a crime against the people who had elected government officials. The grand jury publicly thanked Paterson for his remarks and agreed that domestic "licentiousness" was a greater threat than "hosts of invading foes."

The first count of the indictment cited a published letter that Lyon wrote before passage of the Sedition Act. In this critique of the Adams administration, Lyon asserted that he had seen "every consideration of public welfare swallowed up in a continual grasp for power, in an unbounded thirst for ridiculous pomp, foolish adulation, or selfish avarice." Two other counts accused Lyon of further promoting sedition through his role in publicizing a letter in which the poet Joel Barlow blamed Adams and the Senate for the diplomatic crisis with France.

Charles Marsh, the federal district attorney representing the government, called witnesses to establish that Lyon had written the letter and that it had been published after passage of the Sedition Act. Other witnesses testified that Lyon read the Barlow letter at several campaign rallies.

Lyon presented his own defense, arguing that the Sedition Act was unconstitutional and that he had demonstrated no intent to undermine the government. Lyon, in an attempt to prove the truth of his published statements, asked Justice Paterson if he had observed "ridiculous pomp and parade" when he dined at President Adams's residence in Philadelphia. Paterson answered no but refused to respond when Lyon

asked if the President's house displayed more pomp and servants than at the neighboring tavern in Rutland, Vermont.

Paterson instructed the jury that its deliberations had "nothing whatever to do with the constitutionality or unconstitutionality of the sedition law," and could only consider whether Lyon published the letters and whether his intent was to stir up sedition. Paterson announced that the fact of publication was certain, so the jury had only to decide if the language could be interpreted as anything other than seditious. Within an hour, the jury returned a verdict of guilty. Paterson thought a member of Congress convicted of seditious libel deserved severe punishment, and he sentenced Lyon to four months in prison and a \$1,000 fine.

After initially being denied pen and paper in jail, Lyon wrote a widely publicized account of the trial. While still in jail, Lyon won reelection to the U.S. House of Representatives, and after taking his seat in Philadelphia he survived a Federalist attempt to expel him from the House.

Lyon's trial was the first of seven seditious libel proceedings in the circuit court of Vermont. Each of these related to Lyon's publications or to published defenses of the Republican congressman. At its October 1799 term, the court again ordered Lyon's arrest to answer the district attorney's charge that Lyon attempted to bring the federal courts into disrepute through his jailhouse writings, which sharply criticized the heavy fine, the jury selection process, and the marshal's abusive treatment of Lyon in jail. After attempting to carry out the arrest warrant, the deputy marshal reported in May 1800 that Lyon was not to be found in the district of Vermont. Lyon had left Vermont and did not return. Following adjournment of the Sixth Congress in March 1801, Lyon moved to Kentucky, where he won election to Congress in 1802.

The trial of Thomas Cooper

Members of Congress and leading officials of the Adams administration crowded a Philadelphia courtroom for the trial of Thomas Cooper in April 1800. The trial in the nation's capital arose out of Cooper's criticism of the President and his suggestion that Adams had assisted in a published attack on Cooper's character. Cooper's attempts to call the President as a witness heightened the drama.

Cooper drew the attention of Federalists in the spring of 1799 when he briefly edited a newspaper in central Pennsylvania and joined the growing public criticism of the Adams administration. Federalists were particularly suspicious of the English-born Cooper, who had emigrated in 1794 to avoid the British government's persecution of supporters of the French Revolution. President Adams informed Secretary of State Timothy Pickering that Cooper's writings deserved prosecution for sedition.

An anonymous Federalist writer dismissed Cooper as merely a disappointed office seeker who had once applied to Adams for a government position. Yes, Cooper acknowledged in a printed handbill that became the subject of his indictment, he had

applied for an appointment from Adams, but he submitted the application when the President was “in the infancy of political mistake.” Cooper’s handbill then outlined the President’s subsequent offenses, including the abolition of the trial by jury in the Alien Act, the imposition of a standing army and a permanent navy, and interference with decisions of the federal courts.

When the U.S. Circuit Court for the District of Pennsylvania convened in Philadelphia in April 1800, a grand jury returned an indictment that cited the handbill as evidence of Cooper’s intent to bring the President “into contempt and disrepute and to excite against him the hatred of the good people of the United States.” Cooper served as his own counsel and challenged the premise of the Sedition Act, asserting that citizens could not rationally carry out the vote “if perfect freedom of discussion of public characters be not allowed.” Cooper offered a detailed review of public documents in an attempt to prove the truth of his statements about Adams. U.S. District Attorney William Rawle argued that “all civilized nations have thought it right at all times to punish with severity” a seditious libel. Rawle found Cooper’s “partial extracts” from the public documents and “misrepresentations” to be further evidence of his intent to defame the President.

Justice Samuel Chase, who presided along with District Judge Richard Peters, repeatedly challenged Cooper’s defense. Chase refused to allow a subpoena of the President, even though Cooper insisted that only the President could have known of his application for appointment and thus must have assisted in the publication that prompted the handbill. Chase’s charge to the jury included a strident defense of the Sedition Act, and he characterized one part of Cooper’s defense as “the boldest attempt I have known to poison the minds of the people.” The justice even offered the jury arguments that he thought should have been presented by the prosecutor.

The jury returned a guilty verdict after deliberating for less than an hour at a neighboring tavern. Before sentencing, Chase asked Cooper if other Republicans had agreed in advance to pay any fine. Cooper denied he was a paid party writer, and Judge Peters interjected that “we have nothing to do with parties.” Chase sentenced Cooper to six months’ imprisonment and a fine of \$400. Chase’s conduct during the trial, according to a Republican observer, had demonstrated “all the zeal and vehemence that might have been expected from a well fee’d lawyer,” and the justice’s undisguised contempt for the defendant magnified Republican mistrust of the judiciary.

The trial of James Callender

Justice Samuel Chase proceeded on his circuit from Philadelphia to the circuit court in Maryland and then to Virginia, a bastion of Republican power, where he presided over the sedition trial of James Callender. Like so many of those indicted, Callender was foreign born, and he had left his native Scotland to avoid prosecution for his radical political writings. In this country, Callender worked as a new type of political

writer, dependent for his livelihood on the publication of partisan commentary. The Federalists considered “the vagrant Callender” as a “miserable, ragged vagabond” and a prime target for prosecution under the Sedition Act.

After gaining notoriety for his scathing and personally abusive political writings in Philadelphia’s Republican newspapers, Callender moved to Virginia where he enjoyed the patronage of Republican leaders, including Thomas Jefferson. He wrote for the Richmond *Examiner*, which Secretary of State Timothy Pickering ordered Virginia’s federal district attorney to inspect for any writings that could be prosecuted under the Sedition Act. Callender also prepared a pamphlet, *The Prospect Before Us*, in support of Jefferson’s presidential campaign.

The U.S. Circuit Court for the District of Virginia convened in Richmond in May 1800 with Chase sitting alongside the virtually silent district judge, Cyrus Griffin. U.S. District Attorney Thomas Nelson presented a grand jury with an indictment citing twenty passages from *The Prospect Before Us*, all critical of John Adams and illustrative of Callender’s exaggerated language. The grand jury approved the indictment that accused Callender of “false, scandalous, and malicious writing, against the said President of the United States.”

At trial, Callender’s prominent lawyers included Virginia attorney general Philip Nicholas and other Republicans who volunteered their services. The lawyers defending Callender repeatedly clashed with Chase over rules and procedures, raising fundamental questions about the authority of the federal courts and the degree to which practices in the state courts governed proceedings in federal courts within that state. In disputes over the role of the jury and presentation of evidence, the Republican lawyers sought to limit the discretion of federal judges, whom they increasingly saw as partisan.

Justice Chase proved a formidable and often high-handed opponent to the Republican defense. When attorney William Wirt asserted that juries in Virginia had authority to rule on law and therefore could rule on the constitutionality of the Sedition Act, Chase dismissed the argument as illogical. Chase imposed a nearly impossible standard for submitting evidence to prove the truth of Callender’s statements and refused to allow the lead witness to appear. Chase frequently interrupted the defense lawyers, announcing that they relied on weak authorities or misunderstood the intentions of the court. Callender’s frustrated lawyers eventually walked away from the case, as had the lawyers in another politically charged case that Chase had recently presided over in Philadelphia.

What the jury heard about Callender came almost exclusively from the government’s attorney, Thomas Nelson, who reviewed each statement cited in the indictment and explained why he thought it met the criteria for conviction under the Sedition Act. Chase devoted most of his lengthy instructions to the jury to a sweeping rejection of the argument that a jury might consider the constitutionality of a law. The jury returned a guilty verdict, and Chase sentenced Callender to nine months’

imprisonment and a \$400 fine. While in the Richmond jail, Callender continued to write newspaper editorials supporting the election of Jefferson.

Prosecutions and the role of the federal courts

The Lyon, Cooper, and Callender trials were the most publicized of the Sedition Act proceedings, all of which heightened Republican distrust of the federal judiciary. Many Republicans were convinced that the federal courts were dominated by Federalist partisans. Federal judges, particularly the Supreme Court justices serving in the circuit courts, had ardently defended the constitutionality of the Sedition Act and had urged grand juries to dismiss Republican arguments for a broader definition of freedom of speech. Justice William Cushing warned one grand jury that if “licentiousness” went unpunished it would enable “the worst men in a community, to overturn the freest government in the world.” Justice James Iredell told another grand jury that the First Amendment was not intended to protect seditious libel from punishment.

The judges’ support of the Sedition Act helped to win convictions of some of the most outspoken Republicans, but the Federalists soon paid a heavy price. The number of Republican newspapers grew sharply during the time the Sedition Act was in effect, and these newspapers helped to mobilize support for Jefferson’s election as President. The sedition trials fed Republican suspicion of the judiciary, and when the Republicans came to power, they repealed the Federalist expansion of the federal courts. Chase’s conduct in the Callender trial became one of the foundations of the articles of impeachment voted against him by the House of Representatives in 1804. Although the Senate acquitted Chase, his impeachment marked the end of the kind of broad-ranging jury instructions that had occasionally politicized the courts in the late 1790s.

Freedom of speech and political opposition in the early republic

The expiration of the Sedition Act on March 3, 1801, failed to settle questions about the legal limits of political speech and the right of the political opposition to criticize officeholders and the government. When Republicans became the object of strident newspaper attacks during the following decade, some of them were willing to prosecute Federalist editors for seditious libel. President Thomas Jefferson, stung by relentless personal criticism, suggested that selected prosecutions in the state courts would help to temper the partisan press. The state prosecutions, however, remained relatively infrequent and largely ineffective in slowing the development of a partisan press. Although seditious libel prosecutions of partisan newspapers would not entirely disappear until the 1830s, more and more Americans accepted the right of the political opposition to criticize the government. A new political culture based on

widening suffrage, broader citizen participation, and greater competition for votes made older notions of seditious libel unworkable and irrelevant.

The Courts and Their Jurisdiction

The U.S. circuit courts had jurisdiction over all prosecutions under the Sedition Act. The circuit courts were established by the Judiciary Act of 1789 to serve as the most important trial courts in the federal judiciary. These courts, which operated until 1911, had jurisdiction over most federal crimes, over suits between citizens from different states (known as diversity jurisdiction), and over most cases in which the federal government was a party. The circuit courts also heard some appeals from the district courts. Since the Sedition Act authorized criminal penalties of greater than six months' imprisonment or \$100 fine, the circuit courts had jurisdiction rather than the district courts.

Except for a brief period from 1801–1802, the circuit courts before 1869 had no judges of their own. Each justice of the Supreme Court was assigned to a regional circuit and, along with the local district judge, presided over the circuit court that met in each district within the circuit.

U.S. Circuit Court for the District of Vermont

When Vermont joined the Union in 1791, Congress established the state as a single judicial district and assigned it to the Eastern Circuit, which consisted of the other New England states and New York. The U.S. Circuit Court for the District of Vermont convened in Windsor, Vermont, each May and in Rutland, Vermont, each October. Justice William Paterson served as the circuit justice in 1798. The district judge who sat with Paterson in 1798 was Samuel Hitchcock, who was appointed to the court by George Washington in 1793. Hitchcock served on the district court until 1801, when President Adams appointed him to the new (and short-lived) judgeship of the U.S. Circuit Court for the Second Circuit.

U.S. Circuit Court for the District of Pennsylvania

Congress established the U.S. Circuit Court for the District of Pennsylvania in the Judiciary Act of 1789 and assigned the district to the Middle Circuit, which also included Delaware, Maryland, New Jersey, and Virginia. The court convened in Philadelphia each April and October. Justice Samuel Chase served as the circuit justice in 1800. The district judge who sat with Chase in 1800 was Richard Peters, who was appointed by George Washington in 1792. Peters served as a district judge until his death in 1828.

U.S. Circuit Court for the District of Virginia

Congress established the U.S. Circuit Court for the District of Virginia in the Judiciary Act of 1789 and assigned the district to the Middle Circuit, which also included Delaware, Maryland, New Jersey, and Pennsylvania. The court convened in Richmond each May and November. Justice Samuel Chase served as the circuit justice in 1800. The district judge who sat with Chase in 1800 was Cyrus Griffin, who was appointed by George Washington in 1789. Griffin served as a district judge until his death in 1810.

The Judicial Process: A Chronology

July 14, 1798

President John Adams signed the Sedition Act into law.

The trial of Matthew Lyon

U.S. Circuit Court for the District of Vermont

October 5, 1798

A grand jury in the U.S. Circuit Court for the District of Vermont returned an indictment of Matthew Lyon on three charges of violating the Sedition Act.

The court issued a warrant for Lyon's arrest.

October 6, 1798

The deputy marshal of the district arrested Lyon in Fairhaven, Vermont.

October 7, 1798

Lyon appeared before the U.S. circuit court in Rutland, Vermont, and pleaded not guilty to all of the charges.

October 9, 1798

The trial of Lyon opened with Justice William Paterson presiding and District Judge Samuel Hitchcock sitting with him in the circuit court. Charles Marsh, the U.S. district attorney for Vermont, presented the government's case against Lyon. Lyon served as his own lawyer, although Vermont state Supreme Court Judge Israel Smith assisted him.

On the same day, the jury returned a verdict of guilty. Justice Paterson sentenced Lyon to four months in prison, a \$1,000 fine, and the costs of the prosecution, which were \$60.96.

February 9, 1799

Lyon was released from the jail in Vergennes, Vermont. During his incarceration, he was reelected to the U.S. House of Representatives, and he immediately left to take his seat in Philadelphia.

October 11, 1799

The federal district attorney, Charles Marsh, presented the U.S. Circuit Court for the District of Vermont with an information alleging that Lyon had libeled the federal government and the courts of justice in his published account of his trial and imprisonment.

November 7, 1799

The U.S. Circuit Court for the District of Vermont issued an arrest warrant for Matthew Lyon to answer the charges in the information of the district attorney.

April 21, 1800

The deputy marshal for the district reported that he had sought Lyon for arrest, but that he could not find Lyon in the district.

The trial of Thomas Cooper

U.S. Circuit Court for the District of Pennsylvania

April 8, 1800

Judge Richard Peters, district judge for the District of Pennsylvania, ordered the arrest of Thomas Cooper to answer the charges in an indictment drafted by William Rawle, the federal district attorney for the District of Pennsylvania. The draft indictment charged Thomas Cooper with seditious libel against the President of the United States in connection with a handbill that Cooper published in November 1799.

April 11, 1800

Thomas Cooper was arrested to answer questions related to the district attorney's indictment.

April 14, 1800

A grand jury in the U.S. Circuit Court for the District of Pennsylvania returned a true bill of indictment against Cooper for his seditious libel against the President of the United States.

April 15, 1800

Cooper pleaded not guilty and presented the court with twelve facts of evidence that he planned to present in defense of his statements in the handbill.

April 19, 1800

The trial of Thomas Cooper began, with Justice Samuel Chase presiding and District Judge Richard Peters sitting with him. William Rawle presented the government's case. Cooper served as his own counsel. The jury returned a verdict of guilty.

April 24, 1800

Justice Chase sentenced Cooper to six months' imprisonment and imposed a fine of \$500 as well as the costs of prosecution.

October 8, 1800

Judge Richard Peters authorized the release of Thomas Cooper from jail.

The trial of James Callender

U.S. Circuit Court for the District of Virginia

May 24, 1800

A grand jury in the U.S. Circuit Court for the District of Virginia returned a true bill of indictment against Callender for publishing *The Prospect Before Us*, a pamphlet with words defaming the President of the United States, in violation of the Sedition Act of 1798. Justice Samuel Chase ordered the marshal to arrest Callender to answer the charges in the indictment.

May 27, 1800

Callender, along with Meriwether Jones and William Branch Giles, posted security for the defendant's appearance to answer the charges in the indictment.

May 28, 1800

Callender appeared before the U.S. Circuit Court meeting at the State Capitol in Richmond and pleaded not guilty. Justice Chase denied the defense attorneys' motion for a postponement until the November session to allow the defense to gather evidence and to subpoena witnesses, but Chase granted a postponement until the following week.

June 2, 1800

Justice Chase granted a postponement of one day.

The Sedition Act Trials

June 3, 1800

The jury was sworn in, and the trial began. On the same day, the jury returned a verdict of guilty.

June 4, 1800

Justice Samuel Chase sentenced Callender to nine months' imprisonment and imposed a fine of \$200. The court also ordered Callender to post security for his good behavior for two years.

March 3, 1801

The Sedition Act expired according to the original terms of the statute.

Legal Questions Before the Federal Courts

What was required for conviction under the Sedition Act?

Under the terms of the Sedition Act, conviction on charges of seditious libel required that the statements made by or published by the defendant were false, that the defendant intended to defame the government or incite opposition, and that the effect of the statements was malicious. Under earlier English and American practice, conviction for seditious libel required only evidence that the publication or utterance had a tendency to incite opposition to the government.

The act's grounds for conviction reflected recent changes in American thought and practice. A defense based on the truth of an allegedly seditious statement had been offered in the famous trial of John Peter Zenger in 1735, and following the American Revolution this defense was recognized by some state constitutions and accepted by many commentators on the law, including John Adams. In the 1780s, state courts, which heard only occasional cases of seditious libel, placed greater emphasis on evidence of malicious intent.

In practice, the Sedition Act's supposed liberalizations in the law of seditious libel provided little support for the defendants prosecuted under the act. Most judges followed traditional rules that made defense difficult or impossible, and the judges' instructions to the juries weighed heavily in favor of conviction.

What was the jury's role in trials under the Sedition Act?

The Sedition Act granted juries the "right to determine the law and the fact, under the direction of the court, as in other cases," which meant that the jury could decide if the provisions of the Sedition Act applied to the case. Traditionally, juries in libel cases only determined the fact that the defendant was responsible for the publication, and the judge determined if the published statement constituted seditious libel. In the early years of American independence, many citizens came to expect that the jury would exercise a broader authority, and this expectation was affirmed in state law and practice. For example, the Pennsylvania Constitution of 1790 guaranteed juries in a libel case the right to consider the applicability of the law as well as the facts. In 1792, the British Parliament passed a libel law that gave the jury the right to consider the law, and this law was widely reported and discussed in the United States.

James Bayard, a congressman from Delaware, warned his colleagues in the House of Representatives that granting juries the right to consider whether the law applied to a specific libel case would enable juries to rule on the law's constitutionality, but such a provision was nonetheless accepted in the final version of the Sedition Act. In the James Callender trial, the defense attorneys argued that the Sedition Act, as well as

Virginia state practice, granted the jury authority to consider constitutionality. Justice Samuel Chase dismissed this claim and asserted that only the federal judiciary had authority to rule on the constitutionality of a law. During the prosecutions under the Sedition Act, judges often claimed that the act's use of the phrase "under the direction of the court" gave them broad authority to instruct the jury on interpretation of the statute.

How did the federal courts select juries at the time of the Sedition Act trials?

The Judiciary Act of 1789 provided that juries in federal courts would be selected by lot or by other procedures "now practised" in the state in which the federal court met. It also directed federal courts to summon juries from geographical areas so as to encourage an impartial trial. The call for a jury was to be issued by the clerk of court and carried out by the marshal of the district. Marshals, as presidential appointees, were sometimes accused of partisanship, and several of the defendants in the Sedition Act trials, including Matthew Lyon and James Callender, alleged that the marshals had deliberately selected Federalist juries.

In 1800, in an effort to prevent partisan manipulation of jury selection, Senator Charles Pinckney of South Carolina proposed a bill that would have required all federal courts to select juries by lot from a list of all qualified jurors in a federal judicial district. The Senate postponed consideration of the bill, but the Congress did pass an act in 1800 specifying that federal courts that follow state practice in jury selection must do so according to the procedures used by the highest court of the state.

What sort of statements constituted an intent to defame the government or "to stir up sedition"?

Indictments under the Sedition Act most frequently related to perceived attacks on the reputation of the President or other federal officeholders rather than to alleged incitements to rebellion. The presiding judges frequently urged juries to convict any defendant whose language might damage public opinion of federal officeholders. Justice William Paterson instructed the jury in the Lyon trial to find the defendant guilty if the language quoted in the indictment was intended to make the President "odious or contemptible," and Paterson strongly implied that the language met that test. Justice Samuel Chase told the jury in the Thomas Cooper trial that Cooper's statements were "directly calculated to bring him [John Adams] into contempt with the people" and "to arouse the people against the President so as to influence their minds against him on the next election."

Federalist defenders of the Sedition Act maintained that it punished "licentious"

speech but did not restrict liberty of speech. The distinction between licentious speech and liberty of speech was a familiar part of British and colonial libel law through much of the eighteenth century. “Licentious” referred to any speech that was false and undermined support for governmental authority, but the legal application of the term was always imprecise and contested. The Sedition Act offered no more exact definition of seditious speech. During congressional debates, Federalists maintained that the Sedition Act would apply only to “malicious falsehoods,” but Republicans, like John Nicholas of Virginia, warned that the definition of “licentious” was so subjective that anyone in authority might use the law to suppress the opposition.

How could defendants establish the truth of a published statement?

In newspaper editorials and in courtrooms, Republicans argued that the truth defense provided by the Sedition Act was ineffective, since most of the statements cited in the indictments were opinions. As Albert Gallatin had asked during the House of Representatives’ debate on the proposed act, “How could the truth of opinions be proven by evidence?”

In most of the Sedition Act trials, the defendants attempted to acquit themselves by establishing the truth of their allegedly seditious statements. None was successful. Matthew Lyon’s interrogation of Justice William Paterson regarding the pomp displayed at President Adams’ house was largely rhetorical, but Lyon demonstrated the difficulty or even absurdity of proving the truth of an opinion. Thomas Cooper rooted his defense in an objective review of the government’s actions, but the repetition of his published statements brought further accusations of seditious libel. Callender’s attorneys never presented their witnesses because Chase rejected the attorneys’ proposed questions. In the Callender and Cooper trials, Chase demanded that any evidence speak to the entire libel, even if, as in the indictment of Callender, the charge cited twenty distinct statements. Chase’s ruling was based on long-established procedures governing libel cases in Great Britain, but it provoked enormous anger from the many Americans who had come to expect the truth of a statement to acquit a defendant in a seditious libel case.

Did the Sedition Act violate the First Amendment's protection against any law "abridging the freedom of speech, or of the press"? What limits or restrictions could the Congress or the federal courts impose on the Constitution's protection of free speech and a free press?

Several defendants argued that the Sedition Act was unconstitutional, but no judge allowed the jury to rule on this question. Neither did any court issue a decision regarding the constitutionality of the Sedition Act. The constitutionality of the act, however, was an important subject of public debate. Republicans, including Thomas Jefferson, insisted that it was unconstitutional, and several newspapers printed the Bill of Rights alongside drafts of the bill.

The congressional debates on the Sedition Act and the arguments presented during the Sedition Act trials revealed very different interpretations of the protections offered by the First Amendment. Most accepted the idea that certain limits on speech and the press were acceptable under the Constitution, but there was sharp disagreement on what the acceptable limits were and whether federal or state courts should enforce those limits. Federalists claimed that the First Amendment only codified the standard common-law protection from "prior restraint" (censorship before publication) and that the amendment did not prevent the government from prosecuting publications that were false or that deliberately incited opposition to the government.

James Madison, who drafted the Bill of Rights in 1789, denied that the First Amendment was just a restatement of common-law rules. The amendment, rather, was intended to protect the people from legislative acts that punished speech as well as executive actions that prevented publication. The Constitution, according to Madison, neither granted Congress authority to pass such an act nor justified it as necessary and proper. In the few instances when licentious speech required regulation, Madison asserted, it was under the jurisdiction of the states.

In 1964, in *New York Times v. Sullivan*, the Supreme Court referred to the broad consensus that the Sedition Act was "inconsistent with the First Amendment."

What was the common law of seditious libel? Did the federal courts have jurisdiction over crimes defined by the common law?

For many years in Great Britain and in the American colonies, the crime of seditious libel was defined by the common law—the court rulings and traditional procedures based on a supposed ancient, natural law of England. In the last quarter of the eighteenth century, most Americans knew of the common law of seditious libel as

it was described by Sir William Blackstone in his *Commentaries*, published between 1765 and 1769 and widely used in legal education in the United States. According to Blackstone, the common law defined seditious libel as any public statement tending to expose the government or government officials “to public hatred, contempt, and ridicule,” and freedom of the press under the common law was limited to the protection from any prior restraint on publication.

Opinions varied widely on whether this definition of the common law of seditious libel applied in either state or federal courts. Seditious libel trials were quite rare in state courts at this time, and when they occurred judges sometimes modified Blackstone to allow the truth of the statement to be offered as a defense, to require demonstration of malicious intent, or to grant the jury a role in determining if the law applied to the facts of the case. These modifications in the common law were familiar enough to convince the Federalist authors of the Sedition Act to incorporate the new provisions into the act in 1798.

Neither the Constitution nor any laws of the early Congress granted the federal courts jurisdiction over crimes defined by the common law. Several justices of the Supreme Court were willing to exercise that jurisdiction, but one, Justice Samuel Chase, questioned the federal courts’ authority to do so. Only a few seditious libel prosecutions in federal courts were brought under the common law, and none resulted in conviction. In 1812, the Supreme Court declared that the federal courts had no jurisdiction over any crimes defined solely by the common law.

What did the federal courts decide in related cases?

A grand jury presentment against Representative Samuel Cabell

In May 1797, a federal grand jury in Richmond, Virginia, accused Representative Samuel Cabell of inciting popular opposition to the federal government and encouraging foreign threats to American independence. The accusation came in a presentment, the form by which a jury recommends an indictment, and followed a grand jury charge from Justice James Iredell, who was presiding in the U.S. Circuit Court for the District of Virginia. Iredell never mentioned Cabell in his charge and later denied any role in the presentment, but the charge warned that certain individuals were provoking political divisions that would invite foreign interference and ultimately subjugation of the new nation. The grand jury referred to the “real evil” of letters that Cabell and other members of the House of Representatives circulated to their constituents. Only Cabell was cited by name, surely for a recent letter that condemned the talk of war with France and stated that the election of Adams would “sicken” the “patriotism of 76.”

No indictment of Cabell followed, but the presentment provoked a national outcry from Republicans. Newspaper articles and private correspondence about

the presentment revealed Republicans' deep distrust of the federal courts and their belief that federal judges used grand jury charges to advance the political goals of the Federalists. Cabell publicly described the jury as "a band of political preachers." Jefferson petitioned the Virginia House of Delegates with recommendations for official action against the members of the grand jury. The grand jury was led by retired Supreme Court Justice James Blair and it included prominent Federalists whom Justice Iredell considered the "most respectable Men in the State." For Republicans, the attack of these influential individuals on a member of the House of Representatives was proof that the Federalists were determined to use the courts to silence political opposition. Senator Henry Tazewell of Virginia concluded that "Thus have a Court and Jury erected themselves into a tribunal of political Censors."

Common-law indictments for seditious libel

Just before the Congress passed the Sedition Act in July 1798, two controversial Republican printers were indicted in federal courts on charges of seditious libel. Both were indicted under the authority of the common law, even though Justice Samuel Chase had suggested that the federal courts had no jurisdiction over common-law crimes. The prosecution of these harsh critics of the Adams administration indicated the sense of urgency among Federalists. Neither printer was brought to trial, and subsequent prosecutions for seditious libel were brought under the authority of the congressional statute.

Benjamin Franklin Bache

In late June 1798, as the Senate began consideration of a sedition bill, Benjamin Franklin Bache was arrested and indicted in the U.S. Circuit Court for the District of Pennsylvania. Bache, grandson of Benjamin Franklin, was the editor of the nation's leading Republican newspaper, the *Aurora*. His publication of an intercepted letter from the French foreign minister brought charges that Bache was acting as an agent of the French government. Bache was able to defend himself before the federal government formally charged him with treason, but his defense included published statements highly critical of President John Adams and Secretary of State Timothy Pickering. The indictment cited these statements as "tending to excite sedition, and opposition to the laws." With a trial scheduled for the October term of the circuit court, Bache was released on bail and continued to publish in the *Aurora* his criticisms of the administration. Bache remained at work in Philadelphia during the yellow fever epidemic that claimed his life that September. Although Bache's case never went to trial, his successor at the *Aurora*, William Duane, was indicted under the Sedition Act.

John Daly Burk

In early July 1798, John Daly Burk was indicted for suggesting that President Adams had falsified the text of a published letter describing the government's negotiations with France. Three weeks earlier, Burk had become editor of the New York newspaper, the *Time Piece*, and announced that he planned daily editions as well as a national weekly to carry his staunchly Republican editorials. Secretary of State Pickering debated whether to deport the Irish-born Burk under one of the alien acts or to seek an indictment for seditious libel. The federal attorney in New York, meanwhile, secured a warrant for Burk's arrest, and the printer was indicted in the U.S. Circuit Court for the District of New York on charges of "seditious and libellous" statements about the President. His business partner, James Smith, was also indicted for a personal libel of Pickering. Leading New York Republicans, including Aaron Burr, posted bail for both of them. Although Burk continued to criticize the government through the *Time Piece*, he and Smith quarreled and dissolved their partnership in August. With the newspaper out of business, Burk offered to leave the country in return for an end to the prosecution. The Adams administration agreed, and Burk ostensibly left for Louisiana. In fact he moved to Virginia, where he lived under an assumed name until the election of Jefferson.

United States v. Hudson & Goodwin

In 1812, the Supreme Court decided that the federal courts did not have any jurisdiction over crimes defined by the common law, as opposed to those defined by the Constitution or by acts of Congress. During the first decade of the federal government, federal judges expressed varying notions about criminal common law jurisdiction. In *United States v. Worrall*, a circuit court case of 1798, Justice Samuel Chase ruled that the federal courts did not have criminal common-law jurisdiction, but the question did not go to the Supreme Court. The Sedition Act had been passed in part to accommodate the doubts raised by Justice Chase.

The already infrequent number of common-law criminal prosecutions in the federal courts declined after 1798, although in 1806 Pierpont Edwards, a judge appointed to the U.S. District Court of Connecticut by President Jefferson, encouraged a grand jury to bring an indictment under the common law for seditious libel against two Federalist printers. Barzillai Hudson and George Goodwin, publishers of the *Connecticut Courant*, republished a report that President Jefferson and the Congress had secretly bribed Napoleon. When Judge Edwards and Circuit Justice Brockholst Livingston differed on the circuit court's jurisdiction over a common-law crime, the judges, following a procedure set out in statute, certified the case for consideration by the Supreme Court. Justice William Johnson, in the Supreme Court's unanimous opinion, declared that the federal courts had no criminal common-law jurisdiction

and that the justices considered the question “as having been long since settled in public opinion.”

Legal Arguments in Court

The trial of Matthew Lyon

The arguments of the federal district attorney against Matthew Lyon were as follows:

1. Lyon, as charged in the indictment, wrote the letter published in Spooner's *Vermont Journal*, and he repeatedly read a letter written by Joel Barlow at public gatherings.
2. The offensive passages cited in the indictment clearly fit within the definition of libel set out in the Sedition Act.
3. Lyon declared his intention to undermine support and respect for the federal government.

Charles Marsh, the federal attorney for the District of Vermont, called several witnesses to establish that Lyon's letter to Spooner had arrived in Vermont and was set in type after the passage of the Sedition Act. Other prosecution witnesses testified that Lyon had read the letter "from a diplomatic character in France" at several public events, and that at one of the events a listener responded with a call for revolution. Marsh also produced evidence that Lyon's wife had delivered to the printer a copy of the Barlow letter in Lyon's handwriting.

Marsh addressed the jury with a lengthy argument that Lyon's published writings demonstrated an intent to defame the government.

Lyon's defense consisted of the following:

1. The court had no jurisdiction because the Sedition Act was unconstitutional. Even if the act were constitutional, it would be unconstitutional for the court to apply the act to writings composed before the passage of the act.
2. Lyon did not intend to defame the President or the government.
3. The contents of the publications were true, and thus did not violate the Sedition Act.

Lyon, who had no legal training, served as his own counsel at the trial. He called as his only witness the presiding justice, William Paterson, in a not-too-serious attempt to prove the truth of his allegedly libelous writings about President Adams' taste for pomp. When prosecution witnesses testified that Lyon had read the Barlow letter to public gatherings and produced a "tumult," Lyon elicited their admission that the "tumult" would not have occurred without the provocation of two Federalists in the crowd.

Lyon presented his defense in a two-hour address to the jury. He argued that none of his actions amounted to “anything more than a legitimate opposition.”

The trial of Thomas Cooper

The arguments of the federal district attorney against Thomas Cooper were as follows:

1. Cooper clearly and repeatedly demonstrated “a malicious and deliberate intention to injure the character of the President.”
2. Cooper took advantage of his legal training and his writing skills to disseminate seditious principles in a remote area where the people were more easily deceived.

William Rawle, the federal attorney for the District of Pennsylvania, emphasized Cooper’s intent to defame President Adams. Despite Cooper’s insistence that he was only criticizing the public conduct of Adams, Rawle argued that “the whole tenor” of Cooper’s remarks was an assault on the character of the President. Cooper had furthermore compounded his original libel by repeating his criticism of Adams in court and distorting the government’s policies through a highly selective reading of public documents.

All civilized nations, Rawle asserted, punished seditious libel and recognized the danger presented by unchecked criticism of legitimately elected governments. The publication of seditious writings challenged the will of the people by undermining public confidence in elected leaders. Rawle argued that Cooper’s behavior was particularly dangerous because he was a gifted writer who wrote for a poorly informed audience. Rawle told the jury “it was necessary that an example should be made to deter others from misleading the people by such false and defamatory publications.”

Cooper’s defense consisted of the following:

1. The statements in the handbill were true and accurate descriptions of the actions of President Adams, and thus by the terms of the Sedition Act could not be considered seditious libel.
2. An objective examination of the public conduct of the President could not in itself be seditious libel.

Cooper, who was trained as a lawyer, served as his own counsel. The greatest part of his defense was based on a detailed review of President Adams’ conduct in an effort to prove the truth of the statements made in the handbill. Cooper relied on numerous public documents to establish the policies carried out or supported by Adams. Cooper also hoped to subpoena the President and various members of Congress to testify, but Justice Samuel Chase refused the subpoena of the President

and ruled that the subpoena of members of Congress would require a delay of the trial until the adjournment of Congress.

Although Cooper did not directly challenge the constitutionality of the Sedition Act, he argued that the act's restrictions on public debate and its intimidation of any political opposition undermined citizens' ability to make informed decisions in elections. Acknowledging that a genuine libel on the President should be punished, Cooper insisted that his published handbill was an objective criticism of the policies of Adams, not an attack on the President's character.

The trial of James Callender

The arguments of the federal district attorney against James Callender were as follows:

1. Callender wrote and published the passages cited in the indictment.
2. The cited passages were clearly malicious, and the malicious tone was sufficient to establish Callender's intent to defame the President.
3. The constitutional right to participate in elections, to withdraw support for an incumbent officeholder, and to speak out in favor of a new candidate did not include a right to "vilify, revile, and defame" the opposing candidate.

Thomas Nelson, the federal attorney for the District of Virginia, devoted most of his attention to establishing Callender's role in writing and publishing *The Prospect Before Us*, which was the basis of the indictment. The succession of witnesses involved in the publication and dissemination of the pamphlet described an almost conspiratorial collaboration between Republican printers and political leaders.

Nelson also offered the jury a defense of the Sedition Act based on a widely held Federalist definition of legitimate political speech. Once citizens elected an official, public criticism of that officeholder threatened to silence the voice of the people.

Callender's defense consisted of the following:

1. Juries in Virginia had the power to consider and decide questions of law as well as the facts of the case, and since the Constitution was the supreme law of the land, the jury had the power to declare the Sedition Act unconstitutional.
2. The Sedition Act made falsehood an essential component of seditious libel, but the indictment cited statements of opinion that could not be proved true or false.
3. A defendant tried under the Sedition Act could present evidence and call witnesses to establish the truth of one portion of the publication cited in the indictment, rather than address the truth of the entire publication.

The prominent attorneys who defended Callender emphasized broad legal challenges to the Sedition Act rather than a focused defense of their client. William Wirt, who later became the longest-serving U.S. attorney general, asserted that juries had the power to consider the constitutionality of the statute under which a defendant was charged. Many Republicans supported this argument, and Justice Chase was determined to prevent its application in a federal court. Philip Nicholas, who was attorney general of Virginia, emphasized the absurdity of trying to prove the truth of a political opinion. The confrontation with Justice Chase over the presentation of evidence and the subpoena of witnesses was part of an effort to establish the authority of state procedures in federal court proceedings. The lawyers withdrew from the case in protest of Justice Chase's interference with their defense.

Biographies

John Adams (1735–1826)

President of the United States during passage of the Sedition Act and the trials under it

The role of John Adams in the passage of the Sedition Act and in the subsequent prosecutions in the federal courts has been the subject of controversy since his presidency. Adams never directly advocated a sedition law nor played any role in its consideration by the Congress, but in public addresses in the spring and early summer of 1798 he stated that the domestic opposition presented a danger to the security of the nation and that “the spirit of libelling and sedition” might require regulation by law. Adams may have assumed that any prosecutions would be in state courts, as had been the practice in the past. (His wife, Abigail Adams, privately indicated her strong support for federal sedition legislation.) After signing the Sedition Act into law, Adams specifically recommended the prosecution of Thomas Cooper and endorsed the case against William Duane of the *Aurora*, but otherwise the President was removed from the prosecutions. Adams’ secretary of state, Timothy Pickering, was the only member of the administration to play an active role in coordinating the prosecutions.

To contemporary observers, however, President Adams seemed to be at the center of many of the trials because they revolved around allegedly seditious statements about him: Matthew Lyon accused Adams of “ridiculous pomp”; Thomas Cooper alleged that Adams meddled with the independent judgment of the federal courts; and the hapless Luther Baldwin of New Jersey was indicted for drunkenly making a vulgar remark about Adams as he passed by in a parade. To skeptics and critics of the Sedition Act, the trials all too often appeared to be attempts to bolster the honor and reputation of the President, and as such Adams became the further object of their partisan opposition.



John Adams

Published by Pendleton’s Lithography. From the original series painted by Gilbert Stuart for the Messrs. Doggett of Boston. Prints and Photographs Division, Library of Congress [reproduction number LC-USZ62-13002].

Adams surely was unused to being cast as an opponent of free speech. During and immediately after the American Revolution, Adams was often at the forefront in advocating American notions of freedom of speech and a free press. He supported changes in the common law to permit the truth as a defense in libel cases and to expand the jury's role in determining questions about the law as well as the facts of a libel. By 1788 he proudly declared the nation's press "the most free in the world." Adams, however, continued to accept traditional distinctions between free speech and licentious speech, and he believed that government needed to protect itself against the latter. Faced with the rise of the partisan press in the 1790s, and particularly with the French war crisis of 1798, he supported the Sedition Act and the subsequent prosecutions.

During his long retirement after leaving the presidency in 1801, Adams distanced himself from the Alien and Sedition Acts and recognized the damage they had done to his historical reputation. He never accepted the more libertarian definitions of a completely unfettered press, however, and he worried that the rise of strictly partisan newspapers deprived most of the reading public of the dialogue and exchange of ideas that he believed were so important to the functioning of a republican government.

James Thomson Callender (1758–1803)

Pamphleteer and defendant in a sedition trial

On both sides of the Atlantic, James Callender tested and often exceeded the boundaries of acceptable political behavior. In his extensive political writings, he delighted in provocative language and exaggerated accusations. With no attachment to place or loyalty to former allies, Callender appeared to be a kind of political mercenary who was as likely to launch a personal attack as to advocate a political viewpoint. Callender presented the most extreme example of what Federalists hoped to curb with a seditious libel law.

Callender was born in Scotland and became involved in radical politics by the time he was thirty. Like many ambitious men of his generation, he was attracted to the ideas of the French Revolution and hoped for significant reform in the British political system. His publication of the *Political Progress of Britain* in 1792 brought an indictment for seditious libel, and he left for Philadelphia, then capital of the United States. There he was quickly indoctrinated into the politics of the new nation as he worked as a newspaper recorder of debates in the House of Representatives. He lost that job when his editor discovered that he was writing anonymously for the leading Republican paper. Callender became a full-time partisan writer and developed close ties with the most influential Republicans, including Thomas Jefferson. In 1797, Callender gained public attention when he exposed Alexander Hamilton's affair with a married woman and forced the former secretary of the treasury to acknowledge the relationship.

Passage of the Sedition Act was a warning to leave the nation's capital, and Callender moved to Virginia. There he wrote regularly for the Republican *Examiner* of Richmond and maintained regular contact with Jefferson, who contributed occasional financial support. In 1800, Callender published a pamphlet, *The Prospect Before Us*, in support of Jefferson's election as President and sent President Adams a copy. In May, Callender was indicted in the U.S. Circuit Court in Richmond on the basis of a selection of passages from this lengthy pamphlet.

At the June trial, Callender was represented by Philip Nicholas, the attorney general of Virginia; William Wirt, clerk of the Virginia House of Delegates and future U.S. attorney general; and George Hay, author of an important pamphlet on free speech. The clashes between these leading Republican lawyers and Justice Samuel Chase dominated the trial and overshadowed Callender, although the U.S. attorney offered a lengthy discussion of the seditious nature of *The Prospect Before Us*. Callender was convicted and sentenced by Chase to nine months' imprisonment and a \$400 fine.

Jefferson privately contributed \$50 to the refund of the fine and as President pardoned Callender. Jefferson, however, refused Callender's request for a presidential appointment as postmaster of Richmond. Callender soon went to work for a Federalist newspaper and criticized the newly empowered Republicans. Callender achieved a different kind of notoriety in 1802 when he became the first person to publish a report that Jefferson kept an enslaved woman as his mistress at Monticello. Callender identified a slave named Sally as the mother of two children by the President.

Increasingly plagued by alcoholism, Callender drowned in the James River in Richmond in 1803.

Samuel Chase (1741–1811)

Supreme Court justice and presiding judge in the Cooper and Callender trials

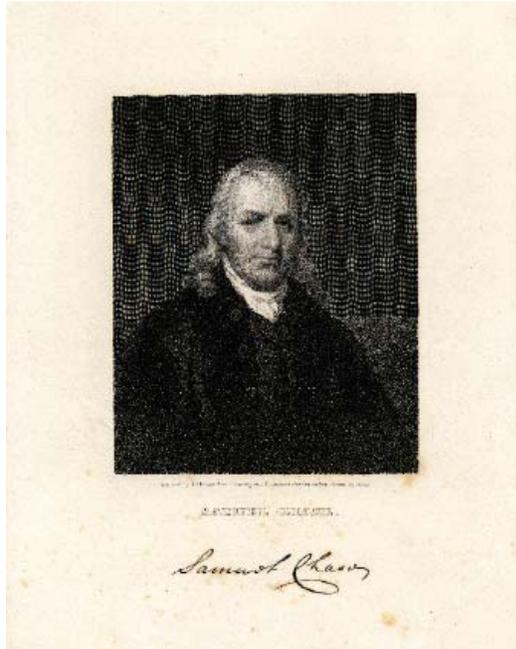
Justice Samuel Chase was the most controversial judge in the Sedition Act trials and became the target of Republican accusations about the politicization of the federal bench. Chase's domineering and even arrogant manner provoked conflicts throughout his career and often overshadowed his formidable and original legal mind. His impeachment in 1804 marked the high point in partisan conflicts over the judiciary in the early years of the nation.

Chase was born in Somerset County, Maryland, and studied law in Annapolis. He became a strong defender of colonial rights in the years leading up to the Revolution, and as a delegate to the Continental Congress, Chase signed the Declaration of Independence. At the Maryland ratification convention in 1788, Chase voted against acceptance of the proposed Federal Constitution, but by the mid-1790s he was a committed Federalist. In 1795, after several years as chief judge on the Maryland General Court, Chase was appointed justice of the Supreme Court of the United States by George Washington.

Chase was one of the most influential justices on the early Supreme Court and helped to define the scope of federal judicial authority. His circuit court ruling that the federal courts had no jurisdiction over common-law crimes was not affirmed by the Supreme Court until 1812, but it convinced members of Congress to introduce a sedition bill to establish federal jurisdiction over the traditional common-law crime of seditious libel.

In the spring of 1800, when the judiciary was at the center of partisan conflicts, Chase inflamed Republicans with his abrasive personality and his aggressive intervention in trials. As circuit justice presiding in the trial of Thomas Cooper, Justice Chase offered the jury arguments in favor of Cooper's conviction. A month later he presided over the retrial of John Fries, leader of an anti-tax insurrection, and so restricted the conduct of the defense attorneys that they quit the case. In the circuit court for Delaware, Chase coerced the district attorney and the grand jury into considering an indictment of a Republican printer he suspected of seditious libel. During the Callender trial, Chase barred the key defense witness and made it virtually impossible for the defense lawyers to establish the truth of Callender's writings.

Chase openly campaigned for the reelection of John Adams in 1800, and when the presidential election was thrown into the House of Representatives, he prevailed upon members of Congress to vote against Jefferson. After Chase used a grand jury charge to denounce Republicans for the repeal of the Judiciary Act of 1801, Jefferson suggested that Congress consider impeachment. The House of Representatives impeached Chase in March 1804, citing the partisan grand jury charge, Chase's conduct in the trials of Fries and Callender, and his actions in Delaware when he "did descend from the dignity of a judge and stoop to the level of an informer." The only Supreme Court justice to be impeached, Chase was acquitted in the Senate trial. The closely watched proceedings, however, marked the end of such openly partisan behavior on the part of federal judges as well as the end of the brief Republican effort to remove unsympathetic judges.



Samuel Chase

Engraving by J.B. Forrest after drawing by J.B. Longacre after original portrait by John Wesley Jarvis. Reproduced from the Collections of the Supreme Court of the United States.

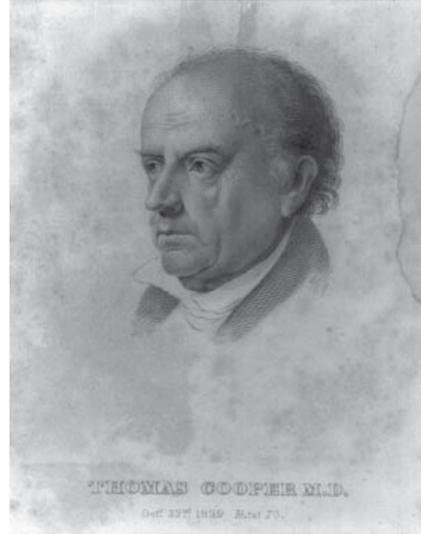
Thomas Cooper (1759–1839)

Republican pamphleteer and defendant in sedition trial

A lifetime of principled public stands placed Thomas Cooper at the center of some of the great political conflicts of his era. At Oxford University he was denied a degree because he refused to take an oath supporting the doctrines of the Church of England. His speech before the radical Jacobin Society in France in 1792 made him the object of an attack in Parliament by Edmund Burke and exposed him to prosecution for sedition. After emigrating in 1794 to the United States and settling in Pennsylvania with other English political dissenters, Cooper joined with the Republican critics of John Adams and a presidential administration that seemed to endorse all that he had opposed in British politics. In old age, as a professor in South Carolina, Cooper emerged as one of the intellectual founders of the doctrine of nullification and extreme state rights in defense of the interests of slaveholding states. The political activities of Cooper paralleled a remarkably varied career that included work in the law, manufacturing, scientific experimentation, and university teaching in the sciences, political economy, and the law.

In the spring of 1799, Cooper served briefly as editor of the *Sunbury and Northumberland Gazette*, through which he published political essays that attracted the admiration of Republicans and provoked the ire of Federalists. Federalists were further angered in March 1800 when Cooper challenged the Senate's attempt to bring its own charges of contempt against a prominent Republican printer. In April 1800, Cooper was indicted in the U.S. Circuit Court in Philadelphia for his November 1799 publication criticizing the policies of President Adams.

Cooper's high-profile trial in the capital of the new nation was one of the few sedition prosecutions specifically endorsed by President John Adams. Cooper's dramatic attempt to subpoena members of Congress, cabinet officers, and the President himself attracted even more attention from the leading figures in the government. Cooper defended himself with a detailed review of the statements cited in the indictment, seeking to establish that the statements were true representations of Adams' policies and that Cooper's intentions were not malicious. Justice Samuel Chase narrowly restricted Cooper's ability to prove the truth of the statements, and then presented



Thomas Cooper

Engraving by A.B. Durand after C. Ingham, n.d., Prints and Photographs Division, Library of Congress [reproduction number LC-USZ62-50257].

the jury with a charge that essentially asserted Cooper's guilt. After the jury declared Cooper guilty, Chase sentenced him to six months' imprisonment and a \$400 fine.

Cooper spent his time in jail writing political letters and a treatise on bankruptcy law. He was released in October 1800, several days following the death of his wife. Cooper immediately rejoined the political battle in the approaching presidential election. He also traveled to New York, where he called for the prosecution of Alexander Hamilton, a leading Federalist, on charges of sedition for a published letter in which Hamilton sharply criticized President Adams.

After serving as a state judge in Pennsylvania and teaching at universities in Pennsylvania and New York, Cooper spent many years as a professor and then president at the University of South Carolina. In 1850, Congress agreed to refund Cooper's heirs for the fine, with interest.

Matthew Lyon (1749–1822)

Member of Congress and defendant in sedition trial

One of the earliest prosecutions under the Sedition Act centered on an Irish-born member of Congress who had come to represent much of what Federalists feared about the potential excesses of popular government. In the early stages of party conflict, the Republican Matthew Lyon established a newspaper devoted exclusively to his political writings. As a new member of the U.S. House of Representatives, Lyon in 1797 immediately challenged the customary procession by which House members paid their respects to the President. In one of the era's most notorious episodes of partisan rancor, an exchange of insults between Lyon and Connecticut Representative Roger Griswold led to Lyon spitting in his colleague's face. When Federalists failed to win the vote to expel Lyon from the House, Griswold attacked Lyon with a cane in the House chamber. Lyon defended himself with a pair of fireplace tongs in a struggle that was soon satirized in a print distributed throughout the nation. By the time he began campaigning for reelection, Lyon was known to Federalists as the "Beast of Vermont."

Lyon had emigrated to Connecticut as an indentured servant at age fifteen. Within a few years he moved to the region that would become Vermont and joined the militia group known as the Green Mountain Boys. He participated in the capture of Fort Ticonderoga and served in the Continental Army, although he was discharged from the service because of a mutiny of troops under his command. After the Revolution Lyon established several successful manufacturing enterprises, and by the 1790s he was actively involved in Vermont politics. After three attempts, he was elected to the House of Representatives for the term beginning in March 1797.

During debates on the Sedition Act, Lyon predicted he would be among its first targets. He was indicted for writing and publishing a letter allegedly defaming the President and for publishing and publicly reading from a letter written by a promi-

ment Republican who was critical of the administration's policy toward France. Lyon pleaded not guilty and submitted a second plea stating that the Sedition Act was unconstitutional. When his lawyers failed to arrive in time for the trial, Lyon defended himself in his own provocative style and called as his only witness the presiding justice, William Paterson. Paterson guardedly agreed to comment on President Adams' style of entertaining but then rebuffed Lyon's obviously facetious line of questioning. Lyon was convicted and sentenced by Paterson to four months' imprisonment and a \$1,000 fine. While in jail he wrote letters seeking support for his reelection to Congress and published an account of the trial.

After Lyon won reelection from jail, Federalists tried and failed to expel him from the House of Representatives. Meanwhile the federal district attorney in Vermont sought to arrest him on new charges of seditious libel. At the end of his congressional term in 1801, Lyon moved to Kentucky where he was twice elected to the House of Representatives. He later moved to the Arkansas territory and ran for election as a delegate to Congress. In 1840, Congress granted Lyon's heirs reimbursement for his fine, with interest.



“Congressional Pugilists”

This satirical print offered a view of the notorious brawl between Representatives Matthew Lyon and Roger Griswold on the floor of the House of Representatives chamber in Congress Hall in Philadelphia. [Philadelphia], 1798. Prints and Photographs Division, Library of Congress [reproduction number LC-USZ62-1551].

William Paterson (1745–1806)

Supreme Court justice and presiding judge in the Lyon trial

At the trial of Matthew Lyon, Justice William Paterson served as the presiding judge in the U.S. Circuit Court for the District of Vermont. Paterson also held the distinction of being the only federal judge interrogated by a defendant in a sedition trial. His conduct during the Lyon trial convinced many Republicans that the federal judiciary was firmly on the side of the Federalists in the worsening partisan conflicts of the late 1790s.

Paterson was born in Ireland and as a young child moved with his parents to New Jersey. He held several public offices in New Jersey during the Revolutionary War and served as the state's first attorney general. As a delegate to the Federal Convention, Paterson presented what was known as the New Jersey Plan, which provided for equal representation of states in a unicameral Congress, and contributed to the compromise that resulted in the establishment of the Senate and House of Representatives. As a senator from New Jersey in the First Congress, Paterson worked with Oliver Ellsworth of Connecticut to draft the Judiciary Act of 1789 that established the federal court system. Paterson resigned from Congress to serve as governor of New Jersey in 1790, and in 1793 George Washington appointed him as an associate justice of the Supreme Court.

Paterson, like all of the justices of the Supreme Court in the early years of the nation, was assigned to a judicial circuit in which he traveled several times a year to preside in each district of the circuit with the local district judge at sessions of the federal circuit courts. In October 1798, he convened the circuit court in Rutland, Vermont, and offered the grand jury a lengthy charge describing the dangers of licentious speech and the urgent need to pay attention to the crimes of sedition codified in the recent act of Congress.

The indictment of Lyon cited his allegedly seditious description of President Adams' "unbounded thirst for ridiculous pomp." Ostensibly to prove the truth of the statement, Lyon asked Justice Paterson if he had observed unusual pomp when he attended dinner parties at the President's house. Paterson replied that he had not and refused to answer further questions from Lyon.

Paterson warned the jury members that they were not authorized to judge the constitutionality of the Sedition Act. The only proper questions for the jury, according



Justice William Paterson

By James Sharples. Reproduced from the Collections of the Supreme Court of the United States.

to Paterson, were whether Lyon published the cited publications and whether he did so seditiously. Paterson left the jurors with little flexibility on either question: Lyon admitted to the publication; and Paterson asked the jurors if the language cited in the indictment “could have been uttered with any other intent than that of making odious or contemptible the President and the government.” After the jury returned a guilty verdict, Paterson preceded his sentencing of Lyon with a stern lecture on the special responsibilities of a member of the House of Representatives.

Paterson continued to serve on the Supreme Court until his death.

The district judges

The Judiciary Act of 1789 provided that district judges would sit with a justice from the Supreme Court of the United States to form the U.S. Circuit Court for each judicial district. The circuit courts were the most important trial courts in the federal system and heard cases involving all major federal crimes, including those prosecuted under the authority of the Sedition Act.

Samuel Hitchcock (1755–1813)

U.S. district judge for the District of Vermont

Samuel Hitchcock was a Federalist political opponent of Matthew Lyon in several elections for the House of Representatives before serving as the district judge in Lyon’s trial for seditious libel. Hitchcock was born in Hampshire County, Massachusetts. He attended Harvard College and read law before establishing a legal practice in Vermont. Hitchcock served in the Vermont legislature from 1789 to 1793 and was a delegate to the state constitutional convention in 1791. He also served as the state’s attorney general until George Washington appointed him to be district judge in 1793.

Hitchcock resigned as district judge in 1801 when John Adams appointed him to serve in the newly created position of judge for the U.S. Circuit Court for the Second Circuit. Hitchcock’s judgeship, along with those of the other so-called “midnight judges,” was abolished in 1802 when the Republican-dominated Congress repealed the Judiciary Act of 1801. He returned to the practice of law in Vermont until his death.

Richard Peters (1744–1828)

U.S. district judge for the District of Pennsylvania

Richard Peters’ role as judge in several highly politicized trials made him a target of Republican critics of the judiciary and nearly led to his impeachment when the House of Representatives impeached his colleague, Justice Samuel Chase. Born to

an influential Philadelphia family, Peters attended the College of Philadelphia, studied law, and held several posts under the colonial government. During the Revolutionary War he served on the Board of War of the Continental Congress. Peters later was elected to the Continental Congress and also served in the state legislature.

In January 1792, Peters was appointed as district judge for Pennsylvania by George Washington, with whom he maintained an active correspondence regarding their mutual interest in agriculture. On the district court, Peters became one of the most important judges in developing admiralty law for the new nation, and on the district's circuit court he sat on several controversial trials arising out of the state's fractious politics. In 1795, he and Justice Paterson presided over the treason trials of participants in the anti-tax Whiskey Rebellion. In 1799, Peters sat with Justice James Iredell in the first trial of John Fries, who was accused of treason after leading an insurrection to prevent the collection of federal taxes. At the retrial of Fries in 1800, Peters sat with Justice Chase, who assumed the role of Fries' defender after Fries' attorneys quit in exasperation with Chase's arbitrary rulings. In the trial of Thomas Cooper a month before, Peters had attempted to restrain the excesses of Chase, and he recognized that his service with the domineering and abrasive Chase exposed him to guilt by association. "I never sat with him without pain," Peters later wrote of Chase. In 1804, the House of Representatives appointed a committee to inquire into the possible impeachment of Chase and Peters for their conduct during the Fries trial. The committee recommended the impeachment of Chase but concluded that there were no grounds for impeaching Peters.

In 1818, Congress divided Pennsylvania into two judicial districts and assigned Peters to the Eastern District, where he served until his death.



Richard Peters

Artist unknown, n.d., Simon Gratz Collection, The Historical Society of Pennsylvania.

Cyrus Griffin (1748–1810)

U.S. district judge for the District of Virginia

Cyrus Griffin's long career in public service brought him into contact with the leading figures of the day, but he impressed few and earned the harsh criticism of Thomas Jefferson. He played almost no recorded role in the sedition trial of James Callender or the treason trial of Aaron Burr, being completely overshadowed by Justice Samuel Chase in the former and by Chief Justice John Marshall in the latter.

Griffin was born in Virginia and studied law in Edinburgh and London. He re-

turned to Virginia on the eve of Independence and served first in the Virginia state assembly and then in the Continental Congress. In 1780, the Congress appointed him to the only continental judicial body, the Court of Appeals in Cases of Capture, and he served on the court until it was abolished in 1787. Griffin was reelected to the Continental Congress in 1787 and served as its last president before the new Federal Constitution went into effect.

George Washington appointed Griffin in 1789 as the first U.S. district judge for Virginia after the state's leading jurist, Edmund Pendleton, declined the nomination. Griffin later appealed to Washington for an appointment to the Supreme Court, but he failed to win any other positions. Although Griffin assured President Thomas Jefferson that he supported the Republicans, he did nothing to aid the government's case in the Burr trial. Soon after Griffin died, Jefferson advised President James Madison to appoint a judge who would make up for the years that the Virginia court suffered under a "cipher" and a "wretched fool."

The attorneys for the United States

In each of the sedition trials of 1798–1800, the prosecutor was a federal attorney who had been appointed by the President. The Judiciary Act of 1789 provided that a lawyer would be appointed in each judicial district to prosecute all federal crimes and to represent the federal government in all civil cases in which it had an interest. Generally referred to as district attorneys (a statute of 1948 changed the title to U.S. attorneys), these government lawyers were until 1820 appointed by the President for indefinite terms. In 1820, Congress stipulated that the attorneys would be appointed for four-year terms, and the President had the authority to remove them from office before that time. In the early years of the federal government, the secretary of state served as the principal liaison between the executive branch and the district attorneys.

Charles Marsh

District of Vermont

Charles Marsh initiated seven prosecutions of seditious libel in the U.S. Circuit Court for Vermont, all related to the original prosecution of Matthew Lyon. At the trial of Lyon in October 1798, Marsh called witnesses to establish that Lyon wrote the letter critical of President Adams and repeatedly used another letter for "political purposes" and in ways that were "highly disrespectful to the administration." Nine months after Lyon was freed from jail, Marsh filed an information charging Lyon with seditious libel in connection with a published letter in which Lyon criticized his treatment by the federal marshal. Marsh secured a warrant for Lyon's arrest, but the deputy marshal could not locate Lyon, who had left Vermont, anywhere in the district. Marsh also

prosecuted the publishers of Lyon's letters and those who defended Lyon in print.

Marsh was born in Connecticut in 1765 and moved to what became Vermont when he was young. He attended Dartmouth College and studied law at the famous school of Tapping Reeves in Litchfield, Connecticut. President George Washington appointed Marsh as district attorney for the district of Vermont on December 30, 1796. President Thomas Jefferson removed Marsh from office and appointed David Faye as his successor on January 6, 1802. Marsh was elected to the U.S. House of Representatives for the term of 1815–1817. He was one of the early members of the American Colonization Society, which sought to settle freed American slaves in West Africa. Marsh died in 1849.

William Rawle

District of Pennsylvania

As the federal district attorney for Pennsylvania from 1791 to 1800, William Rawle served as the U.S. government's prosecutor in some of the most controversial cases of the early republic. He brought the case against the Whiskey Rebels in 1795. He argued the case against John Fries in both trials of the leader of the anti-tax insurrection of Northampton County. Even before passage of the Sedition Act, Rawle secured a common-law indictment against Republican printer Benjamin Franklin Bache for seditious libel (Bache died before his trial began). Rawle then served as the prosecutor of Thomas Cooper on charges of seditious libel as defined by the Sedition Act.

Rawle was born in 1759 to a prominent Quaker family in Philadelphia. During the Revolutionary War, he traveled with his Loyalist family to British-occupied New York City and there began the study of law. He went to London in 1781 to study at the Inns of Court, and then returned to Philadelphia in 1783 to begin the practice of law. Despite his Loyalist ties, he became a well-respected lawyer in Philadelphia, and when the federal government moved there in 1790, Rawle became a close associate of many officials and was appointed as district attorney by George Washington.

Rawle resigned in early May 1800, soon after President Adams pardoned John Fries, who had been sentenced to hang. Rawle was succeeded by Jared Ingersoll, who



William Rawle

Lithograph by Albert Newsam, based on portrait by Henry Inman. National Portrait Gallery, Washington, D.C.

directed the sedition prosecution against William Duane. Rawle died in 1836 after many years of involvement in anti-slavery activities and civic organizations.

Thomas Nelson

District of Virginia

On April 28, 1796, George Washington nominated Thomas Nelson to be district attorney for Virginia, and the following day the Senate confirmed his appointment. Nelson served as the district attorney in one of the most pro-Republican states at a time when the federal courts became increasingly involved in partisan controversy.

Nelson was born in 1764. His father, also named Thomas Nelson, signed the Declaration of Independence and served as governor of Virginia. The younger Nelson served as attorney general for Virginia.

Soon after James Callender began to write for the Richmond *Examiner*, Secretary of State Timothy Pickering ordered Nelson to examine each issue to look for libelous matter. When Nelson drafted an indictment of Callender in the spring of 1800, it was not based on the newspaper writings but the far more detailed and inflammatory pamphlet, *The Prospect Before Us*. In the trial of Callender, Nelson was one of the few participants who focused on the defendant and his publication. He presented a detailed review of excerpts from the pamphlets and explained to the jury why he thought each met the standard for conviction for seditious libel.

Nelson served until his death in 1803. Upon Nelson's death, President Thomas Jefferson appointed George Hay, one of Callender's defense attorneys, to serve as the new district attorney for Virginia.

Federalists and Republicans

The nation's first political parties developed gradually and to the surprise of almost everyone in public life in the 1790s. Within a few years of the inauguration of the federal government in 1789, officeholders faced persistent divisions over questions about the proper extent of the new government's authority. The debates over the establishment of the Bank of the United States in 1791 revealed sharply different ideas about the balance of state and national power. The recurring diplomatic crises associated with European wars emphasized the divisive political implications of alliances with European powers.

By the time the nation debated the proposed Jay Treaty with Great Britain in 1795–1796, two well-defined political coalitions articulated starkly different visions for the nation's government. The emerging parties established rival newspapers to advocate policies and to mobilize public opinion. During the Adams administration, partisanship reached new extremes as Federalists and Republicans responded to the French war crisis and prepared for the presidential election of 1800.

These first political parties had no formal national organizations like later parties, and many people expected that parties would recede once the direction of the national government became more clearly defined. The intense partisan conflict, however, raised concerns about the ultimate success of the experiment in representative government.

Federalists

The Federalists emerged in the 1790s as a coalition of individuals who supported a strong national government, diplomatic ties with Great Britain, and the political leadership of men of property and experience. The term “Federalist” originally applied to those who supported the ratification of the Federal Constitution. By the mid-1790s, “Federalist” defined a group aligned with the administration of President George Washington. (Although Washington supported most Federalist policies, he steadfastly avoided partisan activity.)

The early Federalists were closely associated with the policies of Secretary of the Treasury Alexander Hamilton. Hamilton’s visionary fiscal programs were based on the British model of a strong central bank and government encouragement of wealthy investors who would promote commerce and manufactures. Hamilton and his Federalist supporters believed that only the federal government could inspire confidence among people of wealth and thereby create the strong national economy needed to secure a republican form of government over an extended geographical area. Federalists favored an alliance with Great Britain as the nation that was most likely to promote commerce and investment in the United States. Federalists also believed that the government of Great Britain stood as a strong model of constitutional order, as opposed to what they saw as the radicalism of the French Revolution.

Most Federalists believed that representative governments were easily undermined by an excess of democracy. The stability of the new national government thus depended on the establishment of a certain distance from the direct voice of the people. Once elected, officeholders should be free from popular pressures. Federalists also believed that government was safest in the hands of what they called “independent” individuals, which usually meant people of wealth and social standing. In the opinion of the Federalists, state governments in the 1780s presented a threat to republican government precisely because they were too beholden to an electorate that made frequent changes in officeholders and demanded that government serve narrow, local interests. In any number of policies, from the funding of the national debt to the organization of the federal courts, Federalists hoped to expand the authority of the national government at the expense of the states.

By the war crisis of 1798, the growth of an opposition party and fears about foreign intrigue combined to convince many Federalists that the survival of the federal government required restrictions on new types of political behavior and controls on

the many immigrants who filled port cities and generally supported Republicans. The Alien and Sedition Acts represented the Federalists' effort to curb the new kind of opposition and to enforce an older style of politics that rested on a deference toward officeholders.

Federalist support was strongest in New England, but some centers of support existed even in the South, such as in South Carolina. After the defeat of John Adams in 1800, the Federalists never again held the presidency, and their membership in Congress declined. By the close of the War of 1812, the party virtually ceased to exist.

Republicans

The Republicans of the 1790s coalesced around the broad issues of limiting federal power, defending state authority, and expanding popular participation in politics. Republicans also opposed any sort of alliance with Great Britain, which they believed would always attempt to keep the United States in a kind of colonial dependence.

Republicans first appeared as a coalition of opponents of Alexander Hamilton's policies, which they feared would concentrate too much power in the national government and would create a small elite of merchants and financiers. Republicans believed that state governments were much more likely to protect popular liberties than was the more distant and less-accountable federal government. They also feared that the rise of an urban aristocracy was a serious risk in an extended republic like the United States. An economy based on agriculture and independent artisans would be a more secure foundation for representative government.

In the recurring debates on European alliances, the Republicans were sympathetic to France because of ties dating from the American Revolution and the liberal, republican politics of French reformers. Even as many in the United States became disenchanted with the course of the French Revolution and French restrictions on American commerce, the Republicans adamantly opposed closer ties to Great Britain. Great Britain's mercantile and commercial strength, they feared, would restrict the economic growth of the United States. Furthermore, Great Britain's monarchy and hierarchical society were fundamentally at odds with the republican principles of the United States government.

Initially the Republicans were led by James Madison in the House of Representatives. Thomas Jefferson, as secretary of state in the Washington administration, became the most important rallying point for Republicans, and as vice president under John Adams, Jefferson became the recognized leader of the party.

Throughout the 1790s, new forms of popular political organizations and broad-based participation in political debates expanded the support for Republicans. Republicans were strongest in the South, especially in Virginia, where they enjoyed support among many wealthy slaveholders. In the cities of the Middle Atlantic, and

even in New England, many immigrants and independent tradesmen supported the Republicans.

During the Sedition Act prosecutions, many Republicans argued for a new understanding of free speech that emphasized the necessity for an unfettered exchange of ideas under a government based on popular participation in elections. As the first opposition party under the new Constitution and as the direct target of the Sedition Act, many Republicans felt compelled to defend the need for some sort of political organization outside the formal institutions of government. The election in 1800 of Jefferson as President and a Republican majority in Congress helped to legitimize political parties and to ease fears about the transition of power under the Constitution. The election of 1800 also marked the beginning of a steady ascendancy of the Republicans. With the decline of partisan conflict after the War of 1812, the label of Republican became so widely used as to lose much of its meaning. (In 1819, a leading national political newspaper stopped denoting government officials by party.)

The Republicans of the early United States have no connection with the modern Republican Party, which traces its roots to the 1850s.

Media Coverage and Public Debates

The Sedition Act trials were thoroughly rooted in the newspaper culture of the new nation. Among those indicted under the act were the leading Republican newspaper editors and others who used the press to promote Republican politics. In an age before formal case reports, newspapers were the most important source of information about the trial proceedings, and these accounts themselves occasionally became the subject of sedition prosecutions. The press had been instrumental in the formation of the Federalist and Republican parties, and in many ways the debates surrounding the passage of the Sedition Act and the federal prosecutions concerned the legitimacy of newspapers as a forum for political organization and public debate.

The newspaper coverage reflected public interest in the sedition trials, many of which became public events that attracted large and often prominent audiences. Representative John Allen of Connecticut, an ardent Federalist who insisted on the need for a sedition law, attended the Matthew Lyon trial in Vermont. Secretary of State Timothy Pickering actually sat on the bench near the judges during the trial of Thomas Cooper, while a number of other government officials attended that trial, which was held in the nation's capital of Philadelphia. John Marshall, who succeeded Pickering as secretary of state, attended James Callender's trial in Richmond, where state government officials helped to defend the accused.

Republican opposition to the Alien and Sedition Acts was so intense that it prompted debates on the nature of constitutional government itself. In the most famous statements of opposition, resolutions of the Virginia and Kentucky legislatures declared the acts unconstitutional and called on other state legislatures to follow with similar resolutions. Secretly written by James Madison and then-Vice President Thomas Jefferson, the Virginia and Kentucky Resolutions created their own backlash from ten state legislatures that explicitly rejected these assertions of states' authority to decide the constitutionality of a federal law. Madison, as a member of the Virginia legislature, wrote a report explaining the reasons for the Virginia Resolution and argued that the Sedition Act and the subsequent prosecutions violated the First Amendment protecting free speech.

As the trials progressed, Republican supporters offered a bolder assertion of the rights of free speech. One of the most widely read Republican pamphlets was a collection of letters by "Hortensius," actually written by George Hay of Virginia. Federalists replied with their own defenses of the Sedition Act. Alexander Addison, a Federalist state judge in Pennsylvania, delivered a grand jury charge in defense of the Sedition Act, and this was subsequently published in several editions in 1798 and 1799. George Washington thought highly enough of it to forward a copy to John Marshall, then a candidate for the U.S. House of Representatives, and to Supreme Court Justice Bushrod Washington, a nephew of Washington's.

The partisan character of the prosecutions under the Sedition Act inevitably made

the trials and the role of the judiciary controversial issues in the presidential election of 1800. Senator Charles Pinckney of South Carolina, in an article promoting the election of Thomas Jefferson, argued that the sedition prosecutions were a threat to the public's right to free discussion of public affairs.

Historical Documents

The Sedition Act

The Sedition Act of 1798, the last of the acts passed in response to the French war crisis, served as the authority for the prosecution of Republican opponents of the Federalist administration. The approved act was in several ways less severe than early proposals or the version approved by the U.S. Senate. Senator James Lloyd of Maryland offered a draft that would have created the crime of peacetime treason, punishable by death. The Senate version of the bill eliminated this harsh penalty, but retained the provisions for punishing any speech, true or false, that defamed the President, federal judges, or the motivations of the Congress.

The approved act, as revised by the House of Representatives, established a crime of sedition against the federal government; it provided a statutory base for the prosecution of seditious libel of the President, Congress, or the government in general, but omitted reference to federal judges; and it incorporated recent liberalizations in the trial of seditious libel cases. Under English common law and colonial American practice, conviction for seditious libel depended solely on the defamatory nature of the words. Under the Sedition Act and in accordance with recent changes in state practice, the prosecution needed to prove both falsehood and an intent to defame the government. Defendants were allowed to demonstrate the proof of their statements as grounds for acquittal. Juries had the authority to decide if the law properly applied to a case, and judges were limited in the punishments they could impose. In practice, however, these liberalizations in the seditious libel law proved of little assistance to defendants.

Although the government relied on section one of the act and its definition of seditious conspiracy to prosecute some of the participants in Pennsylvania's anti-tax rebellion, most public attention and debate focused on section two and the related prosecutions of seditious libel. The act's expiration date of March 3, 1801, marked the end of the presidential term.

[Document Source: *Statutes at Large of the United States of America, 1789–1873* 1 (1845), 596–97.]

Chap. LXXIV. An Act in addition to the act, entitled “An Act for the punishment of certain crimes against the United States.”

1 Stat. 596

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That if any persons shall unlawfully combine or conspire together, with intent to oppose any measure or measures of the government of the United States, which are or shall be directed by proper authority, or to

impede the operation of any law of the United States, or to intimidate or prevent any person holding a place or office in or under the government of the United States, from undertaking, performing or executing his trust or duty; and if any person or persons, with intent as aforesaid, shall counsel, advise or attempt to procure any insurrection, riot, unlawful assembly, or combination, whether such conspiracy, threatening, counsel, advice, or attempt shall have the proposed effect or not, he or they shall be deemed guilty of a high misdemeanor, and on conviction, before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment during a term not less than six months nor exceeding five years; and further, at the discretion of the court may be holden to find sureties for his good behaviour in such sum, and for such time, as the said court may direct.

SEC. 2. *And be it further enacted*, That if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of any such law, or of the powers in him vested by the constitution of the United States, or to resist, oppose, or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nation against the United States, their people or government, then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.

SEC. 3. *And be it further enacted and declared*, That if any person shall be prosecuted under this act, for the writing or publishing any libel aforesaid, it shall be lawful for the defendant, upon the trial of the cause, to give in evidence in his defence, the truth of the matter contained in the publication charged as a libel. And the jury who shall try the cause, shall have a right to determine the law and the fact, under the direction of the court, as in other cases.

SEC. 4. *And be it further enacted*, That this act shall continue and be in force until the third day of March, one thousand eight hundred and one, and no longer: *Provided*, that the expiration of the act shall not prevent or defeat a prosecution and punishment of any offence against the law, during the time it shall be in force.

APPROVED, July 14, 1798.

Debate on the sedition bill in the U.S. House of Representatives, July 1798

The House of Representatives' debate on the sedition bill displayed the sharp divisions between Federalists and Republicans. The debate centered on the need for a sedition act and on the constitutionality of the version offered by Representative Robert Goodloe Harper of South Carolina. Harper's revision of the Senate bill incorporated several recent liberalizations in the law of seditious libel, such as allowing the truth of a statement to be used as a defense against the criminal charges. Harper also removed the federal courts as a protected target of seditious libel. Harper's revisions, however, did nothing to temper Republican opposition to the bill.

Republicans insisted that no recent developments justified such a drastic law, which they argued was motivated by a partisan desire to silence the opposition. Federalists recounted examples of the inflammatory language filling Republican newspapers and pointed to recent outbreaks of violence as evidence of the impact of an unchecked press. The threat of war added to the need for a sedition act.

At the opening of the House debate on the sedition bill, a Republican representative asked for a reading of the Bill of Rights, just as Republican newspapers had printed the constitutional amendments alongside the first drafts of the bill. Federalists asserted that the prosecution of seditious libel was well within the accepted understanding of the First Amendment and that every government had a right to defend itself against malicious criticism. Republicans replied that the act would clearly violate the language of the First Amendment and that of the Tenth Amendment, which reserved for the states all powers not expressly delegated to the federal government. The House approved the Sedition Act by a vote of 44 to 41.

John Allen

Federalist of Connecticut—remarks of July 5, 1798

John Allen, a one-term congressman from Connecticut, offered a strident defense of the proposed sedition bill. At the opening of debate on a motion to reject the Senate version, Allen insisted that the bill was desperately needed to defend the new nation against the same kind of violent rebellion that had overtaken revolutionary France. He was convinced that a conspiracy of Republican printers was intent on undermining public support for the federal government. Allen's exaggerated language indicates the depth of alarm among many Federalists.

[Document Source: *Annals of Congress*, 5th Congress, 2d sess., 2098.]

While this bill was under consideration in the Senate, an attempt is made to render it odious among the people. "Is there any alternative," says this printer, "between an abandonment of the Constitution and resistance?" He declares what is

unconstitutional, and then invites the people to “resistance.” This is an awful, horrible example of “the liberty of opinion and freedom of the press.” Can gentlemen hear these things and lie quietly on their pillows? Are we to see all these acts practised against the repose of our country, and remain passive? Are we bound hand and foot that we must be witnesses of these deadly thrusts at our liberty? Are we to be the unresisting spectators of these exertions to destroy all that we hold dear? Are these approaches to revolution and Jacobinic domination, to be observed with the eye of meek submission? No, sir, they are indeed terrible; they are calculated to freeze the very blood in our veins. Such liberty of the press and of opinion is calculated to destroy all confidence between man and man; it leads to a dissolution of every bond of union; it cuts asunder every ligament that unites man to his family, man to his neighbor, man to society, and to Government. God deliver us from such liberty, the liberty of vomiting on the public floods of falsehood and hatred to everything sacred, human and divine! If any gentleman doubts the effects of such a liberty, let me direct his attention across the water; it has there made slaves of thirty millions of men.

At the commencement of the Revolution in France those loud and enthusiastic advocates for liberty and equality took special care to occupy and command all the presses in the nation; they well knew the powerful influence to be obtained on the public mind by that engine; its operations are on the poor, the ignorant, the passionate, and the vicious; over all these classes of men the freedom of the press shed its baneful effects, and they all became the tools of faction and ambition, and the virtuous, the pacific, and the rich, were their victims. The Jacobins of our country, too, sir, are determined to preserve in their hands, the same weapon; it is our business to wrest it from them.

Robert Goodloe Harper

Federalist of South Carolina—remarks of July 5, 1798

Harper offered a more reasoned defense of the sedition bill, which he thought was well within accepted definitions of freedom of the press. He decried the claims for an unrestrained freedom of the press that challenged traditions rooted in the common law of England and most famously articulated in Blackstone’s Commentaries. That traditional understanding of freedom of the press protected writers and printers from any prior restraint of publications, but the government still held the authors and printers responsible for any violations of law contained in the publication. Many would have challenged Harper’s reliance on the authority of Benjamin Franklin, who made these remarks in regard to personal, not seditious, libel.

[Document Source: *Annals of Congress*, 5th Congress, 2d sess., 2102.]

He had often heard in this place, and elsewhere, harangues on the liberty of the press, as if it were to swallow up all other liberties; as if all law and reason and every right, human and divine, was to fall prostrate before the liberty of the Press; whereas, the true meaning of it is no more than that a man shall be at liberty to print what he pleases, provided he does not offend against the laws, and not that no law shall be passed to regulate this liberty of the press. He admitted that a law which should say a man shall not slander his neighbor would be unnecessary; but it is perfectly within the Constitution to say, that a man shall not do this, or the other, which shall be injurious to the well being of society; in the same way that Congress had a right to make laws to restrain the personal liberty of man, when that liberty is abused by acts of violence on his neighbor.

He remembered a very respectable authority in this country (Dr. FRANKLIN) had said, in an essay of his, called “the Court of the Press,” that the liberty of the press could never be suffered to exist without the liberty of the cudgel; meaning no doubt to say, that as the use of the latter must be restrained, so must also the former, or else human life would be deplorable. Nor would the rational liberty of the press be restricted by a well defined law, provided persons have a fair trial by jury; but that liberty of the press which those who desire, who wish to overturn society, and trample upon everything not their own, ought not to be allowed, either in speaking or writing, in any country.

John Nicholas

Republican of Virginia—remarks of July 10, 1798

Nicholas argued that the Constitution prohibited any federal law for the prosecution of seditious libel. The Bill of Rights expressly forbids any laws restricting freedom of speech or of the press, and it prohibits the federal government from exercising powers reserved for the states. Nicholas also denied that any law could effectively distinguish between free speech and licentious speech. The effect of the act, despite the supposed safeguards added by Representative Harper, would be to intimidate all forms of speech, and especially speech made opposing the government. The President’s influence over the officers of the judiciary added further concern about the partisan enforcement of a seditious libel law.

[Document Source: *Annals of Congress*, 5th Congress, 2d sess., 2139–41.]

Mr. Nicholas rose, he said, to ask an explanation of the principles upon which this bill is founded. He confessed it was strongly impressed upon his mind, that it was not within the powers of the House to act upon this subject. He looked in vain amongst the enumerated powers given to Congress in the Constitution, for an authority to pass a law like the present; but he found what he considered as an

express prohibition against passing it. He found that, in order to quiet the alarms of the people of the United States with respect to the silence of the Constitution as to the liberty of the press, not being perfectly satisfied that the powers not vested in Congress remained with the people, that one of the first acts of this Government was to propose certain amendments to the Constitution, to put this matter beyond doubt, which amendments are now become a part of the Constitution. It is now expressly declared by that instrument, "that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States respectively, or to the people;" and, also, "that Congress shall make no law abridging the freedom of speech, or of the press."

Mr. N. asked whether this bill did not go to the abridgment of the freedom of speech and of the press? If it did not, he would be glad if gentlemen would define wherein the freedom of speech and of the press consists.

Gentlemen have said that this bill is not to restrict the liberty of the press but its licentiousness. He wished gentlemen to inform him where they drew the line between this liberty and licentiousness of which they speak; he wished to know where the one commenced and the other ended? Will they say the one is truth, and the other falsehood! Gentlemen cannot believe for a moment that such a definition will satisfy the inquiry. The great difficulty, which has existed in all free Governments, would, long since, have been done away, if it could have been effected by a simple declaration of this kind. It has been the object of all regulations with respect to the press, to destroy the only means by which the people can examine and become acquainted with the conduct of persons employed in their Government. If there could be safety in adopting the principle, that no man should publish what is false, there certainly could be no objection to it. But it was not the intention of the people of this country to place any power of this kind in the hands of the General Government—for this plain reason, the persons who would have to preside in trials of this sort, would themselves be parties, or at least they would be so far interested in the issue, that the trial of the truth or falsehood of a matter would not be safe in their hands. On this account, the General Government has been forbidden to touch the press. Gentlemen exclaim, what! can anyone be found to advocate the publication of lies and calumny? He would make no answer to inquiries of this sort, because he did not believe he could be suspected of being an advocate for either. But, in his opinion, this was a most serious subject; it is not lying that will be suppressed, but the truth. If this bill be passed into a law, the people will be deprived of that information on public measures, which they have a right to receive, and which is the life and support of a free Government; for, if printers are to be subject to prosecution for every paragraph which appears in their papers, that the eye of a jealous Government can torture into an offence against this law, and to the heavy penalties here provided, it cannot be expected that they will exercise that freedom and spirit which it is desirable should actuate them; especially when they would have to be tried by judges

appointed by the President, and by juries selected by the Marshal, who also receives his appointment from the President, all whose feelings would, of course, be inclined to commit the offender if possible. Under such circumstances, it must be seen that the printers of papers would be deterred from printing anything which should be in the least offensive to a power which might so greatly harass them. They would not only refrain from publishing anything of the least questionable nature, but they would be afraid of publishing the truth, as, though true, it might not always be in their power to establish the truth to the satisfaction of a court of justice. This bill would, therefore, go to the suppression of every printing press in the country, which is not obsequious to the will of Government.

Albert Gallatin

Republican of Pennsylvania—remarks of July 10, 1798

The Swiss-born Gallatin emerged as one of the Republicans' most articulate advocates of unfettered freedom of speech. Gallatin, who would serve as Treasury secretary under Presidents Jefferson and Madison, dismissed Robert Goodloe Harper's attempts to make a sedition bill more palatable by liberalizing the procedures of common-law prosecutions. For Gallatin, the provision for demonstrating the truth of statements as a defense was meaningless when the object of the Sedition Act was to punish political opinions that were not susceptible to factual proof. Far from advancing liberties, the entire effort to enact the sedition law, Gallatin charged, put the Federalists in a class with tyrants of the past.

[Document Source: *Annals of Congress*, 5th Congress, 2d sess., 2162, 2164.]

It was true that, so far as related merely to facts, a man would be acquitted by proving that what he asserted was true. But the bill was intended to punish solely writings of a political nature, libels against the Government, the President, or either branch of the Legislature; and it was well known that writings, containing animadversions on public measures, almost always contained not only facts but opinions. And how could the truth of opinions be proven by evidence? If an individual thinking, as he himself did, that the present bill was unconstitutional, and that it had been intended, not for the public good, but solely for party purposes, should avow and publish his opinion, and if the Administration thought fit to prosecute him for that supposed individual offence, would a jury, composed of the friends of that Administration, hesitate much in declaring the opinion ungrounded, or, in other words, false and scandalous, and its publication malicious? And by what kind of argument or evidence, in the present temper of parties, could the accused convince them that his opinion was true?

... He would only observe that laws against writings of this kind had uniformly been one of the most powerful engines used by tyrants to prevent the diffusion of

knowledge, to throw a veil on their folly or their crimes, to satisfy those mean passions which always denote little minds, and to perpetuate their own tyranny. The principles of the law of political libels were to be found in the rescripts of the worst Emperors of Rome, in the decisions of the Star Chamber. Princes of elevated minds, Governments actuated by pure motives, had ever despised the slanders of malice, and listened to the animadversions made on their conduct. They knew that the proper weapon to combat error was truth, and that to resort to coercion and punishments in order to suppress writings attacking their measures, was to confess that these could not be defended by any other means.

Justice William Paterson's charge to the Lyon grand jury

U.S. Circuit Court for the District of Vermont, October 3, 1798

In the 1790s, the presiding judge in a U.S. Circuit Court often delivered a broad-ranging instruction to a grand jury once it was impaneled to consider criminal indictments. In the style of English and American courts of the eighteenth century, these charges often included discussions of civic principles and were intended to educate the jury as well as the public about the functions of the court and the proper role of the government. Judges frequently offered comments on political issues as well, and as partisan conflict intensified in the late 1790s, the grand jury charges of openly Federalist judges became increasingly controversial.

Paterson told the Vermont grand jury that seditious libel was a grave threat to the federal government, and he lamented that many citizens of the young republic “delight in irregularity, sedition, and licentiousness as symptoms of freedom.” Paterson, like many Federalists, distrusted all organized political opposition and believed that citizens had a duty to support officials who were chosen by the people.

Paterson introduced the charge with general comments on the responsibilities of grand juries and then called attention to two types of crime. One was the forgery of bills from the Bank of the United States; the other category included the crimes of sedition and seditious libel as set out in the recent act of Congress. In a statement published in a local newspaper, the grand jury thanked Paterson for his remarks and asked him to publish the charge for “the general good of this District.” Although other justices frequently allowed publication of such charges, Paterson replied that he directed his solely at the jury and declined publication.

[Document Source: *Documentary History of the Supreme Court of the United States, 1789–1800*, vol. 3: *The Justices on Circuit, 1795–1800*, Eds. Maeva Marcus, et al. (New York: Columbia University Press, 1990), 292–94.]

The other class of offences, worthy of your notice, is unlawful combinations and conspiracies, seditious practices, and false, scandalous, and malicious writings, publications, and libels against the government of the United States. Transgressions of

this description became so frequent, dangerous, and alarming, as at length to attract the attention of Congress, who, at a late session, passed an act relative to them. The law is entitled, "An act in addition to the act, intituled, An act for the punishment of certain crimes against the United States," and runs in the following words. Here read the act . . .

[text of act omitted]

Gentlemen,

The offences specified in this act are of a serious nature, and, when perpetrated, demand instant and full investigation. Unlawful combinations, conspiracies, riots, and insurrections strike at the being of our political establishment. They need no comment. Written or printed detraction, calumny, and lies are odious and destructive vices in private, and still more so, in public life. They are deliberate acts, perpetrated with a view to wound and do injury; and besides, their duration is longer, and their circulation more extensive than verbal obloquy and scandal. The man, who is guilty of publishing false, defamatory, and malicious writings or libels against the government of his country, its measures, and its constituted authorities, must, if not callous to the dictates of the moral sense, stand self-condemned. He sins against light; for he must be sensible, that such publications are contrary to clear and known duty. In such case, nothing short of idiocy can operate as an excuse. They destroy confidence, excite distrust, disseminate discord and the elements of disorganization, alienate the affections of the people from their government, disturb the peace of society, and endanger our political union and existence. No government, indeed, can long subsist, where offenders of this kind are suffered to spread their poison with impunity. An aggravating ingredient in the composition of the crimes described in this act is, that they are levelled against the people themselves. For the constitution, government, and constituted authorities of the United States are emphatically the creation and work of the people, emanating from their authority, and declarative of their will. To support them is our primary duty – to attempt their destruction is an offence of deep malignity. Observance of the laws and obedience to legal authority are the great bulwark of public liberty, which, however, free states find difficult to maintain; because their salutary restraint sits uneasy on turbulent spirits, and is mistaken for slavish subjection by the rude and ill informed part of the community, who delight in irregularity, sedition, and licentiousness as symptoms of freedom, and indications of republican spirit. Ah licentiousness! thou bane of republics, and more to be dreaded than hosts of external foes. The truth is, that libellous publications and seditious practices are inconsistent with genuine freedom, and subversive of good government. They tend to anarchy, and anarchy always terminates in despotism. May we avoid these evils by a cheerful and constant observance of the laws, and obedience to legal authority, in which civil liberty consists. The result will be order, union, peace, and happiness among ourselves, and the transmission of our constitution, government, and rights, pure and entire, to our posterity.

May the God of Heaven enable us all to discharge our official, relative, and social duties, with diligence, fidelity, and honest zeal!

Indictment of Matthew Lyon (excerpt)

U.S. Circuit Court for the District of Vermont, October 5, 1798

The indictment of Matthew Lyon was one of the first presented under the Sedition Act, and it drew on a distinctive and seemingly exaggerated language that was rooted in libel prosecutions under English common law. Like the Sedition Act itself, the indictment referred to statements that were “false, scandalous, and malicious,” the longstanding terminology for establishing the crime of seditious libel. This and the subsequent indictments under the Sedition Act were full of references to “depraved minds,” “diabolical persons,” and “evil and pernicious example.” The United States district attorneys, who generally wrote the texts, often described the indicted publication or speech as “wickedly,” “deceitfully,” and “knowingly” carried out by the accused. The repetition of this language with the presentation of each allegedly seditious statement heightened the impact when the indictments were read aloud to the courtroom.

Following the presiding judge’s general charge to a grand jury, the government’s attorney for the district informed the jurors about specific criminal charges for them to consider. The attorney for the federal government then gave the grand jury the text of an indictment, which, if the jurors agreed, was returned as a “true bill” of indictment authorizing the trial of the defendant. Each indictment under the Sedition Act sought to establish that the publication or speech of the defendant met the act’s requirements for conviction. The act required that the statements be false, malicious in intent, and aimed at inciting popular opposition to the government. This indictment, like all others under the Sedition Act, also included the text that was alleged to be seditious.

[Document Source: *United States v. Matthew Lyon*, Case files, U.S. Circuit Court, District of Vermont, RG 21, National Archives and Records Administration – Northeast Region (Boston).]

To the Circuit Court of the United States now sitting at Rutland within and for the District of Vermont, the Grand [Inquest] within and for the body of the district of Vermont now here in court impannelled and Sworn on their oaths present that Matthew Lyon of Fairhaven in the said District of Vermont, being a malicious and seditious person and of a depraved mind and wicked and diabolical disposition and deceitfully wickedly & maliciously contriving to defame the government of the United States and with intent and design to defame the sd government of the United States and John Adams the President of the United States and to bring the said government and President into contempt and disrepute and with intent and

design to excite against the said Government and President the hatred of the good people of the United States and to stir up sedition in the United States - at Windsor in the said District of Vermont on the thirty first day of July last, did with force and arms wickedly knowingly maliciously write print utter and publish and did then and there cause and procure to be written uttered and published a certain scandalous and seditious writing or libel in form of a letter directed to Mr Spooner (meaning Alden Spooner printer and publisher of a certain weekly newspaper in Windsor aforesaid commonly called Spooner's Vermont Journal) - signed by the said Matthew Lyon, and dated at Philadelphia on the twentieth day of June last - in which said libel of and concerning the sd John Adams President of the United States and the executive government of the United States are contained, among other things, divers scurrilous, feigned false, scandalous, seditious and malicious matters according to the tenor following to wit -
[text of Lyon's letters omitted]

And so the Jurors aforesaid upon their oaths aforesaid do say that the said Matthew Lyon at Windsor aforesaid on the thirty first day of July aforesaid did knowingly wickedly deceitfully and maliciously with intent and design to defame the said government of the United States, and to bring the said government of the United States and the said John Adams president of the United States into contempt & disrepute with the good people of the United States and to excite against the sd government and President of the United States the hatred of the good people of the United States and with intent and design to stir up sedition with the United States against the government thereof did write print utter and publish, and cause and procure to be written, printed, uttered and published for the purpose aforesaid the said false feigned scandalous seditious and malicious matter aforesaid, in contempt of the good and wholesome laws of the United States - to the evil and pernicious example of others in like case offending against the Statute of the United States in such case made and provided and against the peace and dignity of the United States.

Matthew Lyon statements cited in the indictment for seditious libel

Lyon's indictment for seditious libel cited one example of his own writings and two excerpts from a letter by Joel Barlow that Lyon recited at political rallies and allegedly helped to publish.

The first excerpt was from a letter that Lyon sent to Alden Spooner, publisher of Spooner's Vermont Journal, on June 20, 1798, in response to a bitter personal attack on Lyon that had been published in Spooner's newspaper. Lyon's defense of his own character included an explanation of why he opposed President Adams and his administration. Spooner published the letter on July 31, 1798, less than three weeks after passage of the Sedition Act.

The two following passages were from the letter that Joel Barlow, a prominent poet and ardent Republican, sent from France to his brother-in-law, Representative Abraham Baldwin of Georgia. Baldwin shared the letter with Lyon, who read from it as a regular part of his campaign appearances in Vermont during the summer and fall of 1798. Prosecution witnesses testified that Lyon's wife delivered a copy of the letter, in Lyon's handwriting, to the printer who published the letter in Fairhaven, Vermont, on September 1, 1798.

Lyon defended the passages as both true and innocent of any malicious intent. In his instructions to the jury, Justice Paterson asked the panel to decide if the language in the excerpts "could have been uttered with any other intent than that of making odious or contemptible the President and the government, and bringing them both into disrepute."

[Document Sources: 1. *Spooner's Vermont Journal*, vol. 16, n. 784, July 31, 1798; 2. James Lyon, *A Republican Magazine: or, Repository of Political Truths* (Fairhaven, Vt.: 1798), 79–80.]

1. As to the executive, when I shall see the efforts of that power bent on the promotion of the comfort, the happiness, and accommodation of the people, that executive shall have my zealous and uniform support: but whenever I shall, on the part of the Executive, see every consideration of the public welfare swallowed up in a continual grasp for power, in an unbounded thirst for ridiculous pomp, foolish adulations, and selfish avarice; when I shall behold men of real merit daily turned out of office for no other cause but independency of sentiment; when I shall see men of firmness, merit, years, abilities, and experience, discarded in their applications for office, for fear they possess that independence, and men of meanness preferred, for the ease with which they take up and advocate opinions, the consequence of which they know little of: when I shall see the sacred name of religion employed as a state engine, to make mankind hate and persecute one another, I shall not be their humble advocate.

2. "The misunderstanding between the two Governments," (France and the United States,) "has become extremely alarming; confidence is completely destroyed, mistrusts, jealousy, and a disposition to a wrong attribution of motives are so apparent, as to require the utmost caution in every word and action that are to come from your Executive; I mean, if your object is to avoid hostilities. Had this truth been understood with you, before the recall of *Munroe*, before the coming and the second coming of *Pinckney*; had it guided the pens that wrote the bullying speech of your President, and stupid answer of your Senate, at the opening of Congress in November last, I should probably have had no occasion to address you this letter.

. . . But when we found him borrowing the language of Edmund Burke, and telling the world, that although he should succeed in treating with the French, there

was no dependence to be placed on any of their engagements: that their religion and morality were at an end, that they had turned pirates and plunderers, and it would be necessary to be perpetually armed against them, though you were at peace: we wondered that the answer of both Houses had not been an order to send him to a mad house. Indeed of this, the Senate have echoed the speech with more servility than ever George the third experienced from either House of Parliament.”

“To the Public,” by Thomas Cooper

A newspaper broadside printed at Northumberland, Pa., in November 1799, and submitted in *United States v. Thomas Cooper*

Cooper’s indictment for seditious libel was based on a handbill that he wrote and printed in response to several newspaper articles attacking his character. Cooper acknowledged that his Federalist critics were correct in asserting that he had unsuccessfully applied to President Adams for an executive appointment. He insisted that his subsequent criticism of the President was neither hypocritical nor vengeful. As he explained in the passage below, which was the full text cited in the indictment, Cooper had applied for the position before Adams embarked on the preparations for war against France.

The expansion of the military and the associated borrowing by the federal government were among the most frequent Republican criticisms of the Adams administration. The reference to Adams’ interference in the courts of justice concerned the case of a sailor, Jonathan Robbins, whom the British claimed was a mutinous British sailor named Thomas Nash. When the British demanded his extradition in 1799, the federal judge in South Carolina, Thomas Bee, rejected Robbins’ claim of United States citizenship and agreed with Secretary of State Timothy Pickering’s request to transfer the sailor to British authorities. To the Republican press, Bee’s decision and the absence of any jury in the proceedings were alarming evidence of the administration’s overriding support for the British and their disregard for the Bill of Rights. During the trial of Thomas Cooper, Justice Chase told the jury that Cooper’s remark about the future notoriety of the Robbins incident was evidence of an intent to arouse seditious sentiment.

[Document Source: *United States v. Thomas Cooper*, #21 April Session 1800, U.S. Circuit Court for the District of Pennsylvania, Record Group 21, National Archives and Records Administration, Mid Atlantic Region (Philadelphia).]

Nor do I see any impropriety in making this request of Mr. Adams: *at that time* he had just entered into office: he was hardly in the infancy of political mistake: even those who doubted his capacity, thought well of his intentions.

... Nor were we yet saddled with the expense of a permanent navy, or threatened under his auspices with the existence of a standing army. Our credit was not yet

reduced so low as to borrow money at 8 per cent. in time of peace while the unnecessary violence of official expressions might justly have provoked a war.

. . . Mr. Adams had not yet projected his Embassies to Prussia, Russia and the Sublime Porte; nor had he yet interferred as President of the United States to influence the decisions of a Court of Justice. A stretch of authority which the Monarch of Great Britain would have shrunk from; an interference without Precedent, against Law and against Mercy! This melancholy case of *Jonathan Robbins*, a native citizen of America, forcibly impressed by the British, and delivered up with the advice of Mr. Adams to the mock trial of a British Court Martial, had not yet astonished the republican citizens of this free country. A case too little known, but of which the people ought to be fully apprized before the election; and they SHALL be.

Thomas Cooper's plea

Submitted to the U.S. Circuit Court for the District of Pennsylvania

Cooper, who served as his own counsel, submitted to the court a plea of not guilty with an attached list of twelve statements that he intended to demonstrate were true. Cooper's twelve statements, however, went beyond the text cited in the indictment to repeat the full censure of the Adams administration that appeared in the publication that formed the basis of the indictment.

Cooper accompanied his plea with requests for subpoenas of the President, the secretary of state, a State Department clerk, and several members of Congress, all of whom he claimed were material witnesses who could prove the truth of the twelve statements in the plea. Justice Chase refused a subpoena of the President as improper and "very indecent," and the State Department insisted that it had none of the documents Cooper wanted to introduce in his defense. After failing to win a longer postponement of the trial, Cooper relied on what public documents he could obtain to prove the truth of the statements cited in the indictment. Although the jury convicted him, Cooper enjoyed the political success of reiterating his criticisms of the Adams administration and establishing what he considered the reasonableness of his statements.

[Document Source: *United States v. Thomas Cooper*, #21 April Session 1800, U.S. Circuit Court for the District of Pennsylvania, Record Group 21, National Archives and Records Administration, Mid Atlantic Region (Philadelphia).]

Circuit Court of the United States for the district of Pennsylvania

Term of April 1800

The United States v. Thomas Cooper} Indictment for Libel under the Sedition Law.

The above named Defendant (protesting against the Insinuations and constructions in the said Indictment alleged against him) pleads not guilty; & by this he puts himself on his country and will give the following facts in evidence on the Trial in justification of the supposed Libel stated in the aforesaid Indictment.

- I. That Mr. Adams either by himself or by the Officers of State acting under his authority has given the Public to understand that he wd bestow no Office but on persons who conformed to his political Opinions.
- II. Mr. Adams has declared that a Republican Governmt may mean anything.
- III. Mr. Adams did sanction the Alien Law, and thereby the abolition of the Trial by Jury in the Cases that fall under that Law.
- IV. Mr. Adams did sanction the Sedition Law & thereby entrenched his public character behind the legal provisions of that Law.
- V. Under the auspices of Mr. Adams the expense of a permanent Navy is saddled on the People
- VI. Under the auspices of Mr. Adams we are threatened with the existence of a Standing Army.
- VII. The Government of the United States has borrowed Money at 8 percent in time of Peace.
- VIII. The unnecessary Violence of official Expressions used by Mr. Adams, and those in authority under him, & his adherents, might justly have provoked a War.
- IX. Political Acrimony has been fostered by those who call themselves his friends and adherents.
- X. Mr. Humphries after being convicted of an assault and Battery on Benjamin Franklin Bache the printer of the Aurora merely from political motives, was before his Sentence was expired, promoted by Mr. Adams to a public Office viz. to carry dispatches to France
- XI. Mr. Adams did project and put in execution embassies to Prussia Russia and the Sublime Porte.
- XII. Mr. Adams in the case of Jonathan Robbins alias Nash did interfere to influence the decision of a Court of Justice.

Thomas Cooper

[Docketed: Circ. Ct Apl 1800
United States v. Thomas Cooper} Plea.
15 April 1800]

Opening arguments of the U.S. district attorney, William Rawle, in the trial of Thomas Cooper

U.S. Circuit Court for the District of Pennsylvania, April 19, 1800

William Rawle argued that Thomas Cooper's great offense was to draw on his legal experience and superior education to mislead less sophisticated citizens in a remote part of the country. The opening statement of the government's attorney reflected widespread Federalist fears about the volatility of public opinion and the consequent dangers to elective government. The allegedly false and defamatory statements cited in the indictment undermined public confidence in duly elected officers of the government and thus threatened to reverse popular will or even to foster "insurrection." Rawle argued that the Sedition Act, like similar laws in "all civilized nations," was intended to protect the will of the people by punishing those who would seek to undermine public confidence in elected leaders.

Rawle, like many Federalists, believed that educated and privileged citizens had a special responsibility to respect public officials. If men of Cooper's position and background violated those civic duties by disseminating seditious ideas, the government needed to make an example of them.

[Document Source: Francis Wharton, *State trials of the United States during the administrations of Washington and Adams, with references, historical and professional, and preliminary notes on the politics of the times* (New York: B. Franklin, 1849), 662–63.]

The defendant stands charged with attempts which the practice and policy of all civilized nations have thought it right at all times to punish with severity, with having published a false, scandalous and malicious attack on the character of the President of the United States, with an intent to excite the hatred and contempt of the people of this country against the man of their choice.

It was much to be lamented that every person who had a tolerable facility at writing should think he had a right to attack and overset those authorities and officers whom the people of this country had thought fit to appoint. Nor was it to be endured that foul and infamous falsehoods should be uttered and published with impunity against the President of the United States, whom the people themselves had placed in that high office, and in which he has acted with so much credit to himself and benefit to them. Thomas Cooper stands charged in the indictment as follows – (here Mr. R. read the indictment:) – It was a sense of public duty that called for this prosecution. It was necessary that an example should be made to deter others from misleading the people by such false and defamatory publications. There was a peculiarity in the manner also of this publication: we generally observe that persons who take these liberties endeavour to avoid punishment by sheltering themselves under fictitious signatures, or by concealing their names; but the defendant acted very

differently. Being of the profession of the law, a man of education and literature, he availed himself of those advantages for the purpose of disseminating his dangerous productions in a remote part of the country where he had gained influence. Such conduct must have arisen from the basest motives. It would be proved to the jury that, at the time of this publication, the defendant went to a magistrate and acknowledged it to be his production, in the same normal manner as if it had been a deed.

A conduct so grossly improper had occurred in no instance within his recollection, and the manner constituted no slight aggravation of the offence. Indeed, it was high time for the law to interfere and restrain the libellous spirit which had been so long permitted to extend itself against the highest and most deserving characters.

To abuse the men with whom the public has entrusted the management of their national concerns, to withdraw from them the confidence of the people, so necessary for conducting the public business, was in direct opposition to the duties of a good citizen. Mischiefs of this kind were to be dreaded in proportion as the country around is less informed, and a man of sense and education has it more in his power to extend the mischief which he is inclined to propagate. Government should not encourage the idea, that they would not prosecute such atrocious conduct; for if this conduct was allowed to pass over, the peace of the country would be endangered.

Error leads to discontent, discontent to a fancied idea of oppression, and that to insurrection, of which the two instances which had already happened were alarming proofs, and well known to the jury.

That the jury, as citizens, must determine whether, from publications of this kind, the prosperity of the country was not endangered; and whether it was not their duty, when a case of this nature was laid before them and the law was applicable, to bring in such a verdict as the law and the evidence would warrant; and show, that these kinds of attacks on the government of the country were not to be suffered with impunity.

James Callender's The Prospect Before Us (excerpts from the indictment)

James Callender was the author of some of the most extreme and provocative language penned by any of the Republican newspaper writers during the Adams administration. After gaining notoriety for newspaper editorials in Philadelphia and Richmond, Callender was indicted in the U.S. Circuit Court for the District of Virginia for writing a lengthy pamphlet in favor of Thomas Jefferson's election as President. The Prospect Before Us took the form of a political history of the 1790s, with special emphasis on the supposed corruption and monarchical principles of John Adams and his administration. Jefferson reviewed a draft of the pamphlet and predicted, in an intentionally unsigned letter to Callender, that "such papers cannot fail to produce the best effect." Callender made sure that his pamphlet was reprinted in several cities, and he brazenly sent a copy to President Adams.

Justice Chase received a copy of the pamphlet while presiding in the circuit court in Maryland and read it before he arrived to convene the circuit court in Richmond, Virginia, on May 22, 1800. The following day the grand jury returned an indictment of Callender. The pamphlet's 187 pages offered plenty to offend the Federalists, and the indictment cited 20 separate passages that were alleged to be libelous.

[Document Source: *The Prospect Before Us* (Richmond, Va.: M. Jones, S. Pleasants, jun. and J. Lyon, 1800).]

[T]he reign of Mr. Adams has, hitherto, been one continued tempest of *malignant* passions. As president, he has never opened his lips, or lifted his pen, without threatening and scolding. The grand object of his administration has been to exasperate the rage of contending parties, to calumniate and destroy every man who differs from his opinions. Mr. Adams has laboured, and with melancholy success, to break up the bonds of social affection, and, under the ruins of confidence and friendship, to extinguish the only beam of happiness that glimmers through the dark and despicable farce of life. (p. 30–31)

The following passage concluded a lengthy discussion of a federal officeholder who allegedly lost his position when he refused to sign a public address in support of the president's preparations for war with France.

The same system of persecution has been extended all over the continent. Every person holding an office must either quit it, or think and vote exactly with Mr. Adams. (p. 32)

Callender was one of the few Republican writers willing to criticize George Washington in the same kind of language as that directed toward Adams. "Paper jobber" was a derisive eighteenth century term for someone who offered political support in return for a government job.

Adams and Washington have since been shaping a series of these paper-jobbers into Judges and Ambassadors. As their whole courage lies in want of shame, these poltroons, without risking a manly and intelligible defence of their own measures, raise an affected yelp against the corruption of the French directory; as if any corruption could be more venal, more notorious, more execrated than their own. (p. 72)

The object with Mr. Adams was to recommend a French war, professedly for the sake of supporting American commerce, but, in reality, for the sake of yoking us into an alliance with the British tyrant. (p. 73)

Here Callender offered his readers a list of what was at stake when voters chose between Jefferson and Adams in the presidential election. The indented and italicized passage is a quotation from Alexander Pope's "An Essay on Criticism." "Connecticut sailor" was a reference to Jonathan Robbins, the British sailor who claimed United States citizenship but was extradited to Great Britain for trial as a mutineer.

You will then take your choice between innocence and guilt, between freedom and slavery, between paradise and perdition. You will choose between the man who has deserted and reversed ALL his principles, and that man,

Whose own example strengthens all his laws,

that man, whose predictions, like those of Henry, have been converted into history. You will choose between that man whose life is unspotted by a crime, and *that* man whose hands are reeking with the blood of the poor friendless Connecticut sailor! I see the tear of indignation starting on our cheeks! You anticipate the name of JOHN ADAMS. (p. 84)

Every feature in the conduct of Mr. Adams forms a distinct and additional evidence that he was determined, at all events, to embroil this country with France. (p. 85)

He was a professed aristocrat. He had proved faithful and serviceable to the British interest. (p. 124)

Trial arguments of Thomas Nelson

District attorney for the District of Virginia

Thomas Nelson, the federal government's attorney for the district of Virginia, reviewed each of the twenty passages cited in the indictment of Callender and explained to the jury why he believed they met the criteria for conviction under the Sedition Act. The records of the Callender trial offer the most complete surviving account of the arguments used by a district attorney to establish that specific language published by the defendant constituted seditious libel. Nelson was primarily concerned with the intent of the language. He repeatedly asserted that Callender's language was so abusive, or as he phrased it "explicitly malignant," as to admit to no other interpretation but the author's intent to foment popular opposition to the government. Nelson acknowledged that citizens enjoyed the privilege of discussing the conduct of the government, but in practical terms he conceded little more than the right to announce plans to vote against incumbent officeholders.

Although the Sedition Act provided for the truth of a statement as a defense against conviction, Nelson initially argued that the truth was irrelevant if the statements clearly indicated a "malicious intention to defame." In other arguments excerpted

here, he asserted that the burden of proving the truth fell on the defendant. As in other Sedition Act trials, the judges and the United States attorney in the Callender trial set a nearly impossible standard for proving the truth of political opinions.

[Document Source: [David Robertson, comp.], *Trial of James Thompson Callender, For Sedition On Tuesday, the third day of June, 1800, in the middle Circuit Court at Richmond, in the District of Virginia* (Richmond, 1804).]

“The contriver of this piece had been suddenly converted, as he said to the presidential system, that is, a French war, and American navy, a large standing army, an additional load of taxes and all the other symptoms and consequences of debt and despotism.”

In a political point of view every person has a right to discuss, fully and fairly, the conduct of the government, and to state candidly, supposed grievances. If in this part of the paper, the terms were used, for these constitutional and just purposes, they could not be libellous. These terms admit of different constructions—they may or may not be libellous, but there is not [a] single sentence which is not libellous, as used here. Here the system of the president is represented to consist of the most odious and detestable measures, “*a French war, an American navy, a load of grievous taxes, and a large standing army.*” It is unnecessary to enquire into the general propriety or impropriety of such measures, because the book is evidently emitted with a malicious intention. If you were to think his words were true, but published with malicious intention to defame, you could not exculpate him; the conclusion of his climax renders a misconception of his meaning impossible: “*and all other consequences of debt and despotism.*” After such explicitly malignant terms, you cannot hesitate to say, that he is guilty—it is represented to you, that he will tax and oppress you, and exercise despotic, tyrannical powers over you.

Are these terms used with any other intention than what is stated in the indictment? (pp. 35–36)

... “*The object with Mr. Adams was, to recommend a French war professedly for the sake of supporting American Commerce; but in reality, for the sake of yoking us into an alliance with the British Tyrant.*” There is not a single charge that is not false. This twofold charge is doubly malicious. This is certainly a libel, unless he can prove the truth thereof. Can it be believed that your chief magistrate can act in a manner so hostile to his own country? It is not necessary for me to *disprove*, they must *prove* the fact: were it incumbent on me, to adduce proof I should tell you of the exertions of the president to make peace with France—I should tell you, —that he attempted negotiation after negotiation. For what purpose did he repeatedly endeavor to effect a reconciliation? Do acts like those mark an intention and design to make war with France? Can you believe that he was going to make war, not for the professed purpose, but for another? that your president says one thing and does another? that he would betray the interests of his own country, to promote those of another? Your

own minds must tell you, gentlemen, that this charge is false and malicious. (pp. 37–38)

... Here again is the height of defamation. *“That foremost in whatever is detestable, Mr. Adams feels anxiety to curb the frontier population. He was a professed aristocrat. He had proved faithful and serviceable to the British interest.”* The words “professed aristocrat” were mentioned and observed upon by the defendant’s counsel; but it is an expression which admits of nothing, being proved “aristocrat” is a term extremely vague, and as indefinite as any language can be. (pp. 40–41)

... To ascertain whether it be libellous or not, you must inquire into the intention of the author—if you could believe that it was used fairly as a mere term of candid description, you would say that he is not guilty of a libel; but when you see that it is here used with wicked intention, though vague in its meaning, you must think it false, scandalous and malicious, for as it is with a view to excite the contempt and hatred of the people towards the President, it must be libellous. If the truth were attempted to be proved that he was really an *aristocrat*, you might entertain a different opinion from him, and draw a different conclusion, when you come to read the following words, they shew his intention to be, to excite the contempt and hatred of the people: *“That he proved serviceable to the British interest,”* meaning that he had done every thing he could to injure the interest of his own country, to promote that of a foreign nation. His repetition of the charge shews malice: several charges go to his private character, but this goes to his public character only. Gentlemen may well say, that a difference of opinion exists among all the citizens of the United States; if they were fair arguments, deduction necessarily following just premises a candid discussion of principles, they could not be the subject of this indictment; but when it is not even attempted to shew any necessary deduction, any fair and candid conclusion from premises clearly established, can these terms be used with any other intent than to excite the indignation of the people towards the supreme magistrate, and to withdraw their confidence from him? It is therefore false and malicious. (pp. 41–42)

... *“For although Mr. Adams were to make a treaty with France, yet such is the grossness of his prejudice, and so great is the violence of his passion, that under his administration, America would be in constant danger of a second quarrel.”*

I confess, that when the period of a new election arrives, every citizen has a right to withdraw his vote from the existing chief magistrate, and to tell the world, *“I will give my confidence to another.”* But this right does not warrant him to traduce and defame the person now in office. Here the traverser by representing the President as a man of such gross prejudices, and violent passions, says to the citizens of the United States, *“do not re-elect the present president, for he will involve you in war.”* You cannot say that this is true, therefore it must be false, scandalous, and malicious. (p. 46)

Justice Samuel Chase's charge to the petit jury, *United States v. Callender*, June 3, 1800

In his instructions to the jury in the Callender trial, Justice Chase addressed two of the most contested issues of the time about the federal courts: the role of the jury, and the authority to rule on the constitutionality of congressional statutes. Chase, who said little about the specifics of the charges against Callender, presented the jury with his forceful rejection of the defense attorneys' claim that juries had a right to consider the constitutionality of a law involved in the case before them. The Sedition Act provided that juries were to determine the law as well as the facts in cases brought under the statute, but Chase said that provision was strictly limited to the jury's responsibility to determine if the acts of the defendant met the statute's definition of criminal activity. Chase then announced that only the judicial branch of government had authority to determine the constitutionality of a federal or state law. Chase's statement came three years before the Supreme Court, in *Marbury v. Madison*, first declared an act of Congress to be unconstitutional.

In the years since Independence, many states had expanded the rights of the jury at the expense of judges' authority, and no state had expanded the rights of the jury as much as Virginia had. Republicans in the state saw the Sedition Act trials as an opportunity to claim greater authority for juries in the federal courts, which they feared were dominated by Federalist judges. The attorneys for Callender recognized that their arguments on the rights of a jury would reach a national audience, and Chase, despite his disclaimer of any partisan interests, was equally concerned to establish the federal courts' authority in this and other cases.

[Document Source: [David Robertson, comp.], *Trial of James Thompson Callender, For Sedition On Tuesday, the third day of June, 1800, in the middle Circuit Court at Richmond, in the District of Virginia* (Richmond, 1804), 62–72.]

The petit jury to discharge their duty must first enquire, whether the traverser committed *all* or *any* of the facts alledged in the indictment to have been done by him, some time *before* the indictment. If they find that he did commit all or any of the said facts, their next enquiry is, whether the doing such facts have been made *criminal* and punishable by the *statute* of the United States, on which the traverser is indicted. For this purpose, they must pursue [peruse] the statute and carefully examine, whether the facts *charged and proved* are within the provisions of it. If the words that create the offence are plain and intelligible, they must then determine, whether the offence proved is of the species of criminality charged in the indictment; but if the words are ambiguous or doubtful, all construction should be rejected. The statute on which the traverser is indicted enacts "that the jury who shall try the cause shall have a right to determine *the law and the fact*, under the direction of the court, as in other cases." By this provision I understand, that a right is given to the jury to determine

what *the law is* in the case before them; and not to decide whether a statute of the United States produced to them, is a *law or not*, or whether it is *void*, under an opinion that it is unconstitutional – that is, *contrary to the constitution* of the United States. I admit that the jury are to compare the statute with the facts proved, and then to decide whether the acts done, are prohibited by the law; and whether they amount to the offence described in the indictment. This power the jury necessarily possess, in order to enable them to decide on the *guilt* or *innocence* of the person accused. It is one thing to decide *what the law is* on the facts, proved, and another, and a very different thing, to determine, that the statute produced *is no law*. To decide what the law is on the facts, is an admission that the law exists. If there be no law in the case, there can be no comparison between it and the facts; and it is unnecessary to establish facts, before it is ascertained that there is a law to punish the commission of them. . . .

. . . Was it ever intended, by the framers of the constitution, or by the people of America, that it should ever be submitted to the examination of a jury, to decide what restrictions are *expressly* or *impliedly* imposed by it on the national legislature? I cannot possibly believe, that congress intended by the statute to grant a right to a petit jury to declare a statute void. The man who maintains this position, must have a most contemptible opinion of the understanding of that body, but I believe the defect lies with himself.

If anyone can be so weak in intellect, as to entertain this opinion of congress, he must give up the exercise of the power, when he is informed *that congress had no authority* to vest it in any body whatsoever; because, by the constitution, (as I will hereafter show,) this right is expressly granted to the *judicial power* of the United States, and is recognized by congress by a perpetual statute. If the statute should be held void by a jury, it would seem that they could not claim a right to such decision under an act that they themselves consider as *mere waste paper*. Their right must, therefore, be derived from some other source.

It appears to me, that all the rights, powers, and duties of the petit jury, sworn in this cause, can only be derived from the Constitution, or statutes of the United States made agreeable to it; or from some statute of this commonwealth not contrary to the federal constitution or statutes of congress; or from the common law, which was adopted by the federal constitution in the case of trials by jury in *criminal* cases.

. . . From these considerations I draw this conclusion, that the judicial power of the United States is the only *proper and competent authority* to decide whether any statute made by congress (or any of the state legislatures) is contrary to, or in violation of, the federal constitution.

. . . I have consulted with my brother, judge Griffin, and I now deliver the opinion of the court, “That the petit jury have no right to decide on the constitutionality of

the statute on which the traverser is indicted; and that if the jury should exercise that power, they would thereby usurp the authority entrusted by the constitution of the United States to this court.” . . .

. . . Judge Chase concluded with observing, that, if he knew himself, the opinion he had delivered and the reasons offered in its support, flowed not from *political motives, or reasons of state*, with which he had no concern, and which he conceived never ought to enter courts of justice; but from a deliberate conviction of what the constitution and the law of the land required. “I hold myself equally bound,” said he, “to support the rights of the jury, as the rights of the court.” I consider it of the greatest consequence to the administration of justice, that the powers of the court, and the powers of the petit Jury, should be kept distinct and separate. I have uniformly delivered the opinion, “*that the petit jury have a right to decide the law as well as the fact, in criminal cases;*” but it never entered in my mind, that they, therefore, had a right to determine the constitutionality of any statute of the United States. It is my duty to execute the laws of the United States, with justice and impartiality - with firmness and decision - and I will endeavor to discharge this duty with the assistance of the fountain of wisdom, and the giver of all human reason and understanding.

James Madison’s report

In this excerpt from a commentary on the Alien and Sedition Acts, James Madison asserted that the First Amendment prohibited the Congress from making any law that restricted freedom of speech or freedom of the press. Defenders of the Sedition Act maintained that the law simply codified what had always been accepted in the common law of seditious libel, and that the First Amendment protection of a free press extended only to the traditional, common-law prohibition on laws that restrained the press prior to publication. Madison, who was a primary drafter of both the Constitution and the Bill of Rights, explained that the common law of seditious libel was peculiar to the British system of government and had no applicability under the U.S. Constitution. In Great Britain the law served as the legislature’s check on the potential tyranny of the monarch. In the United States, sovereignty rested with the people, who were protected by the Constitution against both abusive laws of the legislature and arbitrary power of the executive. The First Amendment was therefore intended to restrain any legislative restrictions on the press as well as any executive restraints. Madison recalled how important freedom of speech had been in recent history; without it U.S. citizens might be “languishing” under the Articles of Confederation or living as dependent colonials.

As a member of the Virginia House of Delegates, James Madison prepared a report defending the Virginia Assembly’s 1798 resolution protesting the Alien and Sedition Acts. The Virginia Resolution, also authored by Madison, and the Kentucky Resolutions written by Jefferson, declared that states had a right and a duty to withdraw the authority they granted to the federal government if that national government

violated the constitutional limits on its powers. When several state legislatures passed resolutions decrying the potential dangers of this position, Madison responded with this detailed explanation of the assembly's opposition to the congressional acts.

[Document Source: *The Papers of James Madison*, v. 17, David B. Mattern, et al., eds. (Charlottesville: University Press of Virginia, 1991), 307–50.]

II. The next point which the resolution requires to be proved, is, that the power over the press exercised by the sedition act, is positively forbidden by one of the amendments to the constitution.

. . . In the attempts to vindicate the “Sedition act,” it has been contended, 1. That the “freedom of the press” is to be determined by the meaning of these terms in the common law. 2. That the article supposes the power over the press to be in Congress, and prohibits them only from *abridging* the freedom allowed to it by the common law.

. . . The freedom of the press under the common law, is, in the defences of the sedition act, made to consist in an exemption from all *previous* restraint on printed publications, by persons authorized to inspect and prohibit them. It appears to the committee, that this idea of the freedom of the press, can never be admitted to be the American idea of it: since a law inflicting penalties on printed publications, would have a similar effect with a law authorizing a previous restraint on them. It would seem a mockery to say, that no law should be passed, preventing publications from being made, but that laws might be passed for punishing them in case they should be made.

The essential difference between the British government, and the American constitutions, will place this subject in the clearest light.

In the British government, the danger of encroachments on the rights of the people, is understood to be confined to the executive magistrate. The representatives of the people in the legislature, are not only exempt themselves, from distrust, but are considered as sufficient guardians of the rights of their constituents against the danger from the executive. Hence it is a principle, that the parliament is unlimited in its power; or, in their own language, is omnipotent. Hence, too, all the ramparts for protecting the rights of the people, such as their magna charta, their bill of rights, &c., are not reared against the parliament, but against the royal prerogative. They are merely legislative precautions against executive usurpations. Under such a government as this, an exemption of the press from previous restraint by licensers appointed by the king, is all the freedom that can be secured to it.

In the United States, the case is altogether different. The people, not the government, possess the absolute sovereignty. The legislature, no less than the executive, is under limitations of power. Encroachments are regarded as possible from the one, as well as from the other. Hence in the United States, the great and essential rights of

the people are secured against legislative, as well as against executive ambition. They are secured, not by laws paramount to prerogative; but by constitutions paramount to laws. This security of the freedom of the press, requires that it should be exempt, not only from previous restraint by the executive, as in Great Britain; but from legislative restraint also; and this exemption, to be effectual, must be an exemption not only from the previous inspection of licensers, but from the subsequent penalty of laws.

The state of the press, therefore, under the common law, cannot, in this point of view, be the standard of its freedom in the United States.

... Some degree of abuse is inseparable from the proper use of every thing; and in no instance is this more true, than in that of the press. It has accordingly been decided by the practice of the states, that it is better to leave a few of its noxious branches, to their luxuriant growth, than by pruning them away, to injure the vigour of those yielding the proper fruits. And can the wisdom of this policy be doubted by any who reflect, that to the press alone, chequered as it is with abuses, the world is indebted for all the triumphs which have been gained by reason and humanity, over error and oppression; who reflect that to the same beneficent source, the United States owe much of the lights which conducted them to the rank of a free and independent nation; and which have improved their political system, into a shape so auspicious to their happiness. Had "Sedition acts," forbidding every publication that might bring the constituted agents into contempt or disrepute, or that might excite the hatred of the people against the authors of unjust or pernicious measures, been uniformly enforced against the press; might not the United States have been languishing at this day, under the infirmities of a sickly confederation? Might they not possibly be miserable colonies, groaning under a foreign yoke?

... Is then the federal government, it will be asked, destitute of every authority for restraining the licentiousness of the press, and for shielding itself against the libellous attacks which may be made on those who administer it?

The constitution alone can answer this question. If no such power be expressly delegated, and it be not both necessary and proper to carry into execution an express power; above all, if it be expressly forbidden by a declaratory amendment to the constitution, the answer must be, that the federal government is destitute of all such authority.

And might it not be asked in turn, whether it is not more probable, under all the circumstances which have been reviewed, that the authority should be withheld by the constitution, than that it should be left to a vague and violent construction; whilst so much pains were bestowed in enumerating other powers, and so many less important powers are included in the enumeration?

...

But the question does not turn either on the wisdom of the constitution, or on the policy which gave rise to its particular organization. It turns on the actual meaning

of the instrument; by which it has appeared, that a power over the press is clearly excluded, from the number of powers delegated to the federal government.

Alexander Addison, Liberty of Speech and of the Press

One of the most widely circulated defenses of the Sedition Act came from the pen of a state judge who had been commenting on the laws of seditious libel through much of the 1790s. Alexander Addison was president judge of the courts of common pleas of Pennsylvania's Fifth Circuit from 1791 to 1803. As a delegate to the state constitutional convention of 1790, he helped write the provision that guaranteed the truth as a defense in libel trials and granted juries in such trials the right to rule on the law as well as the facts. Once these reforms were in place, Addison supported frequent prosecutions for seditious libel. In his several published jury charges, he was especially critical of the new type of political newspaper printers and of new styles of electioneering.

Addison used this grand jury charge to answer critics of the Sedition Act who asserted that it was unconstitutional and unnecessary. He declared that the First Amendment, in accord with traditions of Anglo-American law, only prohibited prior restraints on publications. The Sedition Act did not interfere with publications or free thought; it only punished the public dissemination of statements that would undermine public confidence in the government. Furthermore, the Sedition Act was justified under the "necessary and proper" clause of the Constitution, since to allow seditious publications and the "corruption of public opinion" would be to threaten the government's ability to carry out its constitutional responsibilities.

In the following excerpts, Addison discussed the significance of public opinion as a foundation for all governments and warned that laws of seditious libel were necessary to protect public opinion from the French and their American supporters, who, he believed, were using the press to subvert the government.

[Document Source: Alexander Addison, *Liberty of Speech and of the Press: A Charge to the Grand Juries of the County Courts of the Fifth Circuit of the State of Pennsylvania* (Albany: Loring Andrews, 1798).]

Speech, writing, and printing are the great direction of public opinion, and the public opinion is the great director of human action. Of such force is public opinion, that, with it on its side, the worst government will support itself; and, with it, against it, the best government will fall. . . . Give to any set of men the command of the press, and you give them the command of the country; for you give them the command of public opinion, which commands every thing. . . .

One would have thought, that the United States of America, blest with the best practicable model of republican liberty, which human wisdom hath yet been able to suggest, would have escaped this greatest of all plagues, the corruption of public opinion; and that all men would have united in approbation of a system of govern-

ment, which must be acknowledged excellent, and of an administration, which must be acknowledged to have been wise, enlightened and honest. Yet, unfortunately, this plague hath reached us also; and our government has been assailed with the grossest slanders, by many who perhaps believed, and by many who surely could not believe, the slanders which they uttered. The tongue, the pen and the press; conversations, letters, essays, and pamphlets, have represented our truly republican and balanced constitution as a system of tyranny; and our upright and wise administration, as mischievous and corrupt. Our wisest and best public officers have had their lives embittered, and have been driven from their stations by unceasing and malignant slander. And thus has it been attempted to withdraw, from our excellent government, the only effectual support of any government, public opinion – and thus to withdraw all reverence from station and authority, deprive the constitution, the laws and the administration, of all respect and efficacy, and surrender the nation a prey to any invader.

France saw our condition, and attacked us: for France attacks a nation only when she has rendered it defenceless, by dividing the people from the government, and withdrawing from the government the support of public opinion. . . . Many of our citizens, and of our men in public stations, seem to have favored those measures, on which France must have depended for success against us. And our government was threatened with the loss of its best support, the hearts of its citizens, by means of falsehood, misrepresentation, and the vile acts of foreign enemies, and discontented, factious and seditious men. . . .

On these grounds, it appears evident to me, that this law [the Sedition Act] is not only expedient, but necessary. And it may be laid down as a general rule, that it will be impossible to prevent the corruption of the public opinion, or to preserve any government against it; unless there be laws to correct the licentiousness of speech and of the press. True liberty of speech and of the press consists in being free to speak, write and print, but being, as in the exercise of all other liberties, responsible for the abuse of this liberty. And whether we have abused this liberty or not, must, like all other questions of right, be left to the decision of a court and jury.

George Hay, “Hortensius” essay on freedom of speech

George Hay of Virginia was one of the Republican writers who responded to the Sedition Act by articulating a broad definition of the freedoms of speech and press. In this widely distributed pamphlet of 1799, Hay, writing as “Hortensius,” asserted that the First Amendment prohibited any laws restricting the freedom of the press. Federalists defended the Sedition Act by citing the common law of Great Britain, which defined freedom of the press as a freedom from prior restraint. Hay insisted that the British attempt to distinguish between free speech and licentious speech had no meaning or authority under the U.S. Constitution. Nor could Congress attempt to distinguish between true and false speech. Hay, like Albert Gallatin in the House of Representatives debate on the Sedition Act, said the greatest danger to the health

of a republican society was not the publication of false statements about the government but the restraint of any speech. It was the free exchange of ideas and opinions that guaranteed citizens access to the truth. Hay believed this interpretation of the First Amendment could be discerned from the state conventions calling for a Bill of Rights, but he was among the first to state in such unqualified language that the Constitution prohibited Congress from regulating public speech.

In 1800 Hay served as one of three lawyers defending James Callender in his trial for seditious libel. As President, Thomas Jefferson appointed Hay the U.S. district attorney for Virginia in 1803, and Hay led the government's prosecution of Aaron Burr on charges of treason in 1807. Hay was appointed judge of the U.S. District Court for the Eastern District of Virginia in 1826 and served until his death in 1830.

[Document Source: Hortensius, *An Essay on the Liberty of the Press. Respectfully inscribed to the Republican Printers Throughout the United States* (Philadelphia, 1799), Reprint, 1803.]

This uncertainty in the law is well adapted to the situation of the British government. It enables the minister to act and punish as times and circumstances require; without subjecting himself to the odium of having transgressed the law. But, however important this uncertainty may be in a country, where privilege and monopoly form the basis of the government, in the United States it is disgraceful. In a republican government the people ought to know, the people have a right to know, the exact, the precise extent of every law, by which any individual may be called before a court of justice.

Fortunately for the people of the United States, the question which has perplexed the politicians and lawyers of England, does not exist here. The Constitution having declared, that the freedom of the press shall not be abridged, has, in fact, pronounced that no line of discrimination shall be drawn. For, if the freedom of the press is not to be abridged, and if no man can tell where freedom stops, and licentiousness begins, it is obvious that no man can say, to what extent a law against licentiousness shall be carried. It follows, then, that *no law can* be made to restrain the licentiousness of the press.

The words, "freedom of the press," like most other words, have a meaning, a clear, precise, and definite meaning, which the times require, should be unequivocally ascertained. That this has not been done before, is a wonderful and melancholy evidence of the imbecility of the human mind, and of the slow progress which it makes, in acquiring knowledge even on subjects the most useful and interesting.

...

I contend therefore, that if the words freedom of the press, have any meaning at all, they mean a total exemption from any law making any publication whatever criminal. Whether the unequivocal avowal of this doctrine in the United States would produce mischief or not, is a question which perhaps I may have leisure to discuss.

I must be content here to observe, that the mischief if any, which might arise from this doctrine could not be remedied or prevented, but by means of a power fatal to the liberty of the people.

That the real meaning of the words “freedom of the press,” has been ascertained by the foregoing remarks, will appear still more clearly, if possible, from the absurdity of those constructions, which have been given by the advocates of the Sedition Bill.

The construction clearly held out in the bill itself, is, that it does not extend to the privilege of printing facts, that are false. This construction cannot be correct. It plainly supposes that “freedom,” extends only as far as the power of doing what is morally right. If, then, the freedom of the press can be restrained to the publication of facts that are true, it follows inevitably, that it may also be restrained to the publication of opinions which are correct. There is truth in opinion, as well as in fact. Error in opinion may do as much harm, as falsity in fact: it may be as morally wrong, and it may be propagated from motives as malicious. It may do more harm, because the refutation of an opinion which is erroneous, is more difficult than the contradiction of a fact which is false. But the power of controuling opinions has never yet been claimed; yet it is manifest that the same construction, which warrants a controul in matters of fact, does the same as to matters of opinion. In addition to this, it ought to be remarked, that the difficulty of distinguishing in many cases between fact and opinion, is extremely great, and that no kind of criterion is furnished by the law under consideration. Of this more, perhaps will be said hereafter.

Again, if the congressional construction be right, if the freedom of the press consists in the full enjoyment of the privilege of printing facts that are true, it will be fair to read the amendment, without the words really used, after substituting those said by Congress to have the same import. The clause will then stand thus: “Congress shall make no law abridging the right of the press, to publish facts that are true!” If this was the real meaning of Congress, and the several States, when they spoke in the state constitutions, and in the amendment of the “freedom of the press,” the very great solicitude on this subject displayed throughout the continent, was most irrational and absurd. If this was their meaning, the “palladium” of liberty is indeed a “wooden statue,” and the bulwark of freedom is indeed a despicable fortification of paper. The officers of the government would have a right to invade this fortification, and to make prisoners of the garrison, whenever they thought there was a failure in the duty of publishing only the truth, of which failure persons chosen by the government are to judge. This is too absurd even for ridicule. . . .

They knew that the licentiousness of the press, though an evil, was a less evil than that resulting from any law to restrain it, upon the same principle, that the most enlightened part of the world is at length convinced, that the evils arising from the toleration of heresy and atheism, are less, infinitely less, than the evils of persecution.

That the spirit of inquiry and discussion, was of the utmost importance in every free country, and could be preserved only by giving it absolute protection, even in its excesses.

That truth was always equal to the task of combating falsehood without the aid of government; because in most instances it has defeated falsehood, backed by all the power of government.

That truth cannot be impressed upon the human mind by power, with which therefore, it disdains an alliance, but by reason and evidence only.

They knew the sublime precept inculcated by the act establishing religious freedom, that “where discussion is free, error ceases to be dangerous:” and, therefore, they wisely aimed at the total exclusion of all congressional jurisdiction. . . .

The freedom of the press, therefore, means the total exemption of the press from any kind of legislative controul, and consequently the sedition bill, which is an act of legislative controul, is an abridgement of its liberty, and expressly forbidden by the constitution.

Charles Pinckney, “On the Election of the President of the United States”

The Sedition Act became an important issue in the presidential contest between John Adams and Thomas Jefferson in 1800. As South Carolina legislators prepared to choose the state’s presidential electors, one of the state’s United States senators, Charles Pinckney, published a series of editorials in favor of Jefferson’s election. Pinckney’s editorial on the Sedition Act offered an articulate summary of Republican opposition to the act and the prosecutions in the federal courts. The act, he alleged, was a partisan effort to prevent public examination of the policies of the Adams administration and to extend the reach of the federal courts at the expense of state courts. To Pinckney and many Republicans, the federal judiciary was a pliant arm of the Federalist President Adams, who appointed the judges who presided over the cases, the marshals who selected juries, and the district attorneys who brought the indictments before the juries.

When prosecutions for libel were justified, they were the exclusive jurisdiction of state courts, according to Pinckney and many other Republicans. Pinckney was convinced that state courts, with their greater accountability to the public, were less likely to compromise the rights of citizens. He dismissed the supposed benefits of the liberalizations in the libel law, such as the truth as defense. As many of the defense lawyers had said in the sedition trials, it was impossible to prove the truth of what were essentially political opinions, particularly before a partisan jury.

[Document Source: *The Carolina Gazette*, Charleston, September 11, 1800.]

To make, therefore, their favorite object sure, and prevent an enquiry into the president's administration as it progressed, and to prohibit that investigation of its measures; that appeal to the wisdom and republicanism of the people on the approaching election, from which they were afraid Mr. Adams, or the supporters of his measures, had every thing to dread, and nothing to hope; for these reasons they determined to create a new crime, and to give to their courts a new jurisdiction; to take from the state courts and juries their undoubted right to decide every question of libels, and give it to courts formed by judges appointed by the president, whose administration this act is intended to screen; and what, if possible, is still more intolerable, to juries packed by marshals who have received and hold their offices at the will of the same president. These, my countrymen, are the true objects of the sedition law. They know your state judges are impartial and independent men; that they neither fear the frown of power, nor court the smile of office; that your juries are either impartially drawn by lot, or selected by sheriffs elected by the people, and that they would be likely, upon every occasion, to discountenance any attempt to enslave the press; that these state juries, so far from considering as a crime, would view as a duty the investigation of public measures; . . .

It has been said, in extenuation of this law, that the parties accused are allowed to plead the truth of their charge in their defence, in extenuation of their punishment. Holding, as I do, the fixed and unalterable opinion that congress have no right to legislate at all upon the subject; that they possess the same right to tell me what God I shall worship, or in what manner adore him, as to say under what limitations I shall be permitted to investigate the conduct of our public servants; it is with difficulty I can bring myself to condescend to examine any part of the law; . . . I will, however, for a moment consider the nature of the defence, which is, that a person accused may plead the truth of what is charged as a libel; and I will ask, what safety or success he can promise himself by such a defence, and before a court constituted as I have mentioned, that is composed of judges chosen by the President, and juries packed by marshals appointed by and dependent on the President? . . .

I think you will confess, that men of such opposite opinions as I have stated, could never easily be brought to agree upon any public measure, where there was room for difference in opinion; and that to commit a man who is known to be in what is called the *republican interest*, to be tried for any political writing, by a jury of men known to be in the federal interest, and packed by a federal marshal, is allowing him that sort of defence which may be considered as something very like a solemn mockery of justice.

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