The Sedition Act Trials—Suggestions for Judges

Judges can make an important contribution to students' understanding of the cases included in the Federal Judicial Center's Teaching Judicial History project. When meeting with students who are studying the cases, judges may wish to draw on these suggested discussion topics.

Overview

Between 1798 and 1801, more than 25 people were prosecuted in federal courts on charges of seditious libel against the government. All of the defendants were critics of the administration of President John Adams, and they were prosecuted under the Sedition Act of 1798, which made it a crime to make false statements intended to defame the federal government or to promote subversion of the government. Congress approved the act in response to the threat of war with France and fears that many critics of the Adams administration shared the most radical political ideas of the French Revolution. The trials examined in this unit involved a Republican officeholder, Representative Matthew Lyon, and two political writers, Thomas Cooper and James Callender, who were actively involved in Thomas Jefferson's presidential campaign of 1800. Republicans argued that the Sedition Act was an unconstitutional infringement on free speech, while Federalists replied that the First Amendment protections were limited to the traditional prohibition of restraints on speech prior to publication. The supporters of the act emphasized that the Sedition Act embodied several recent liberalizations in the law of sedi-tious libel, including the admissibility of the truth as a defense, the requirement for a demonstration of malicious intent, and the right of a jury to determine issues of law as well as fact. The partisanship of the judges and their narrow reading of the rights of the defendants heightened Republican distrust of the federal judiciary.

Understanding the court procedures and legal questions

In studying historic cases, students find it helpful to understand the differences between historical and current procedures in the federal courts. Students also want to learn how the current courts handle similar cases. The questions below high-light features of the Sedition Act trials that can frame conversations between judges and students.

1. The Sedition Act trials prompted widespread debates on the First Amendment's protection of free speech. How does the First Amendment protect political speech today? What kind of First Amendment cases come before the federal courts today?
2. The defendants in several of the Sedition Act trials alleged that the marshals had deliberately selected partisan juries, and at least one Republican senator proposed that future juries in the federal courts be selected by lot. How are juries selected in the federal courts today? What other measures are taken to ensure an impartial jury?
3. Several of the judges in the Sedition Act trials offered the juries instructions that almost guaranteed conviction of the defendants. What is the purpose of jury instructions today?
4. The Sedition Act granted juries the right to determine the law as well as the facts of the case. What is the difference? Do modern juries have a role in the determination of the law in any federal trials?
5. In the trials of Thomas Cooper and James Callender, Justice Samuel Chase limited the presentation of evidence and the call of witnesses. What decisions do judges make regarding the presentation of the arguments of the defense or the prosecution?
6. The open partisanship of many of the Federalist judges in the Sedition Act trials undermined public confidence in the federal courts and prompted equally partisan reprisals against the judiciary once the Republicans gained control of the presidency and the Congress in 1801. How do the courts protect themselves from the appearance of political partisanship?

Focus on Documents

These excerpted documents can be the basis of a classroom discussion with students who have read about the Sedition Act trials and reviewed these excerpts in advance of a judge's visit.

1. Justice William Paterson's charge to the grand jury

Paterson offered the grand jury in the Vermont circuit court broad instructions that were meant to educate the jurors about public affairs as well as the criminal indictments they would consider. He not only informed the jury about the recent Sedition Act, but he also offered a strong defense of the law intended to restrict the more extreme examples of public criticism of elected officials. What impact

might this charge have had on a grand jury? What limits on political speech are accepted in the law or in the courts today?

> 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. . . . 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.

2. Senator Charles Pinckney on the Sedition Act

Senator Charles Pinckney of South Carolina criticized the Sedition Act as a violation of natural and constitutional rights of free speech. Pinckney dismissed the Sedition Act's supposed protections of civil liberties because these provisions were undermined by the partisanship of the federal courts. How might Pinckney have protected civil liberties? What would have been necessary to assure him of the impartiality of the federal courts? What threatens public confidence in the impartiality of courts today?

> 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 com-

posed of judges chosen by the President, and juries packed by marshals appointed by and dependent on the President? . . .

3. Alexander Addison and George Hay on the Sedition Act

Pennsylvania State Judge Alexander Addison, like many Federalists, spoke of the responsibilities associated with free speech and the civic duty to maintain public respect for the government. Republican George Hay of Virginia advocated an unfettered freedom of the press that would allow citizens to examine every aspect of government. How were these opposing views of the First Amendment rights reflected in the three trials examined in this unit? How might the standards of licentious speech described by Addison be enforced in the federal courts? Do current understandings of the First Amendment freedoms acknowledge citizen responsibilities?

Alexander Addison, from *Liberty of Speech and of the Press*

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, from *An Essay on the Liberty of the Press*

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.

4. U.S. attorneys on seditious libel and popular sovereignty

The government attorneys in the *Cooper* and *Callender* trials shared a common Federalist belief that public criticism of popularly elected officials threatened the constitutional system of government based on popular sovereignty. These arguments, as well as the Sedition Act, reflected a Federalist assumption that it was the government's duty to protect the public confidence in elected officials. How could such public confidence be enforced in a court of law? What forms of political opposition would be acceptable to Rawle and Nelson?

William Rawle, arguments in the trial of Thomas Cooper

> 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.

Thomas Nelson, arguments from the trial of James Callender

> 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.