

## The First Challenge to the First Amendment: The Alien and Sedition Acts of 1798

### Purpose:

The new government of the United States was only in its infancy when it received its first challenge to the First Amendment rights of freedom of speech and freedom of the press: The Alien and Sedition Acts of 1798. This attempt to limit freedom of press and freedom of speech in a time of national crisis was only the first in a series of attempts throughout U. S. history. Because of their importance, the National Archives chose the Alien and Sedition Acts as one of the 100 milestone documents in United States history. In this lesson students will identify the circumstances that led to the Alien and Sedition Act, interpret primary documents, and examine and consider the results of the implementation of the Sedition Act. Finally, they will examine issues of free speech and free press in time of national emergency, not only in the past, but in the present.

### Procedure:

1. As a warm up activity, ask students to identify and briefly discuss the freedoms (speech, press, religion) protected in the First Amendment to the U. S. Constitution.

Explain that challenges to these rights have occurred throughout American history, even today. Then hand out the opinion poll (**Attachment 1**, also see **Human Opinion Continuum** in the **Strategy Section**), and have students record their positions on the questions. When students have finished, tally their responses on the board. Ask students to give reasons for their opinions. Encourage students, especially any immigrant students, to discuss their points of view. At the end of the discussion, tell students we are going to investigate the first challenge to freedom of speech and the press.

2. To place the Alien and Sedition Acts in their historical context, either give students the handout *Background Information - The Young Republic Faces International Problems* (**Attachment 2**), or alternately, summarize the information for them yourself. Lead a discussion, asking the following questions:

- A. What was the international problem the new nation faced? *Being caught between two major European powers, France and Great Britain, who were at war.*
- B. Who were the major US political leaders at this time? What groups did they represent? With which nation were they sympathetic? *Washington, Adams, and Hamilton were Federalists, sided with Britain, disliked the excesses of the French Revolution, and represented business and wealthy men of property. On the other side, Jefferson and Madison were Anti Federalists (soon to become Republican-Democrats), admired the French Revolution for its democratic ideals,*

*and tended to represent poor farmers, craftsmen, and recent immigrants.*

- C. What measures did Presidents Washington and Adams take to avoid involvement in a European war? How successful were these measures? *President Washington negotiated the Jay Treaty with Great Britain which settled some issues, but left many questions unanswered. However, it did buy time, and keep us out of war. Later, Adams sent emissaries to France to negotiate problems with France. France's efforts to demand bribes angered Americans and resulted in calls for war with France.*
- D. What precipitated the passage of the Alien and Sedition Acts? (*The possibility of war with France.*) Were there other motivations? *Yes, Federalists saw an opportunity to curb the influence of recent immigrants, who frequently sided with the Republican/Democrats.)*

3. Have students create a *Poem for Two Voices* comparing and contrasting the viewpoints of John Adams and James Madison in 1798. (See **Poem for Two Voices in the Strategy Section**)

4. Tell the students that they are going to analyze what the Sedition Act of 1798 says. (This lesson will only use the Sedition Act, since it is a First Amendment issue.) Remind students that this is a primary document, the actual law that was passed by Congress in 1798. Tell them that we will be using a transcript of the document because the original handwritten, 200-year-old document is difficult to read. Another problem for students is that Section I and Section 2 of the Sedition Act are one very long sentence, and therefore hard to understand. Therefore guide students through the document, highlighting key words with colored pencils in order to understand what the document says.

Hand out copies of the Sedition Act of 1798 (**Attachment 3**) and colored pencils to students. Project the transcript of the Sedition Act of 1798 (**Attachment 3**) on an overhead projector or a Smart Board.

- A. Ask students the following questions:
1. Who wrote this Act? (*The Fifth Congress of the United States at its second session*)
  2. Where was it written? Why was it written there? (*Philadelphia, Pennsylvania. The capital of the United States was there temporarily, waiting for the government buildings to be completed in the new capital, Washington, D. C.;*)
  3. What is the title of this Act? (*An Act for the Punishment of Certain Crimes Against The United States*)

4. Who signed this Act? (*Jonathan Dayton, Speaker of the House of Representatives; Theodore Sedgwick, President of the Senate pro tempore; Sam. A. Otis, Secretary; John Adams, President of the United States.*)
  5. When was it approved? (*July 14, 1798*)
- B. Tell students we are now going to find out what this law says is unlawful and what the punishment will be if a person is found guilty in a court of law.
- C. In Section I only, ask students to circle with their colored pencils the following words:  
 "Combine, conspire, to oppose or impede (obstruct) any law of the United States"  
 "Intimidate any person holding an office from performing his duty"  
 "Attempt to procure (bring about) any insurrection, riot, unlawful assembly"  
 Have students put the statements in their own words. Ask students to list the ways in which individuals might be involved in activities like those listed above.

Again, with their colored pencils, have students circle what the punishment will be if the accused is found guilty of Section I. (*A fine not exceeding \$5,000, imprisonment of not less than six months nor exceeding six years, and bonds for good behavior*)

- D. In Section 2 only, ask students to circle with their colored pencils the following words:  
 "Write, print, utter or publish"  
 "False, scandalous and malicious writing or writings against the government of the United States, either house of the Congress of the United States, the President of the United States"

Discuss which groups of people would most likely be targeted in this section. (*Newspaper writers, preachers, members of state and national legislatures.*)

Again with their colored pencils, have students circle what the punishment will be if the accused is found guilty of Section 2. (*A fine not exceeding \$2000, and imprisonment of not exceeding two years.*)

Ask the question: Why do you think the penalty for guilt in Section I is more harsh than the penalty in Section 2? (*Section I covers violent actions of insurrection, riot, and conspiracy which were considered to be more serious. Section 2 covers speech, writing, printing against the government of the United States.*)

5. Now we are going to find out how the Sedition Act was enforced. Ask students how they would go about finding who was disobeying this law 200 years ago in a time when there was no telephone, internet, telegraph, TV, etc., mail was very slow, and transportation was difficult.

Secretary of State Thomas Pickering was in charge of enforcing the Alien and Sedition Acts. He immediately began to read as many Republican newspapers as he could, looking for evidence of sedition against President Adams and Congress. Fifteen indictments were brought under the Sedition Act, mostly against editors and publishers of Republican newspapers. Some Republican newspapers were forced to close down, and many others were too intimidated to criticize the government. One Republican was convicted of sedition for publishing a pro-Jefferson campaign pamphlet that accused President Adams of appointing corrupt judges and ambassadors. Two men were found guilty of raising a "liberty pole" and putting a sign on it that said, "downfall to the Tyrants of America." A drunk was fined \$150 for insulting President Adams.

6. Tell students they are going to investigate three case studies of what happened to those who dared to criticize President John Adams and other members of the government: Matthew Lyon, William Duane, and Thomas Cooper. Divide the class into three groups; give each group one of the case studies (**Attachments 4, 5, 6**). Each group will select a recorder and reporter, answer the questions at the end of the case study, and report to the class. Debrief their findings by asking the following questions:

- A. What similarities were there in the different reports?
- B. What differences were there in each of the case studies?

7. How might government actions in the past affect today? Use current events to prompt student understanding about how government actions and/or events of the past affect students' lives today.

### **Enrichment/Extension:**

1. Have students research the consequences of the enforcement of the Sedition Act, some of which are:
  - A. Defeat of the Federalists in the election of 1800, and the election of Thomas Jefferson to the presidency.
  - B. The Kentucky and Virginia Resolutions of 1800 that called for the nullification of the Sedition Act. This was the first time that states asserted the doctrine of nullification which said that a state had the right to nullify (refuse to recognize or enforce a federal law within its boundaries) a federal law. Later, Northern states invoked it at the Hartford Convention which was a protest against the War of 1812., In the 1830's North Carolina invoked it in protest against what was called "The Tariff of Abominations. Nullification was a recurring issue until the Civil War, which finally solved the problem.

- C. During times of war and national crisis there have been other attempts to stifle dissent, including Ex parte Milligan during the Civil War, Schenck v. U.S. (1919) during World War I, the Red Scare in the early 1920's, the Smith Act in 1940, and the Patriot Act after September 11, 2001.

**Resources:**

Constitutional Rights Foundation: [www.crf-usa.org](http://www.crf-usa.org)

Library of Congress, American Memory Collection: [www.memory.loc.gov](http://www.memory.loc.gov)

The Avalon Project at Yale Law School:  
[www.yale.edu/lawweb/avalon/statutes/secact.htm](http://www.yale.edu/lawweb/avalon/statutes/secact.htm)

The National Archives: [www.archives.gov/education/lessons/sedition-case](http://www.archives.gov/education/lessons/sedition-case)

The History Net: [www.historynet.com](http://www.historynet.com)

The U. S. Supreme Court: [www.supremecourtus.gov](http://www.supremecourtus.gov)

Thomas Cooper: <http://chronicles.dickinson.edu>

**For Further Reading**

McCullough, David. *John Adams*. New York: Simon & Schuster, 2001.

**Attachment I****OPINION POLL****Questions:**

1. American citizens should have the right to criticize their government in time of war.
2. Foreign residents of the United States should have the right to criticize the American government at any time.
3. The American government should have the right to expel or jail foreign residents who criticize it during war time.

Place the number of the question under the position you wish to take on it.

**Agree**                      **Agree with Reservations**                      **Disagree**

What are your reasons for your choices?

## Attachment 2

### Background Information - The Young Republic Faces International Problems

The new government of the United States was only in its infancy when it received its first major foreign policy challenge. How should it view the clash between France and Britain in the wake of the French Revolution? George Washington, John Adams, and Alexander Hamilton, leaders of what would become the Federalist party, wanted to create a stable, secure country, safe for business and wealthy men of property. They wanted to stay out of any conflict, and disliked the mob rule and confiscation of property that resulted from the French Revolution. On the other hand, Anti Federalists Thomas Jefferson and James Madison, who tended to represent poor farmers, craftsmen, and recent immigrants, supported the French Revolution for its democratic ideals.

Both President George Washington and President John Adams made attempts to steer a neutral course between the two European superpowers, France and Great Britain. In 1794, President Washington negotiated the Jay Treaty with England to settle outstanding differences and improve relations. It was widely unpopular because it did not address all of the United States concerns, although it accomplished Washington's aim to buy time and stay out of the European conflict.

In the election of 1796, Federalist John Adams won the most electoral votes to become president. Republican Thomas Jefferson came in second, which made him vice-president. (The 12th amendment later changed this election method, requiring separate electoral ballots for president and vice-president.)

Shortly after becoming president, John Adams sent diplomats to France to smooth over bad feelings, but this overture turned out badly when three French representatives, known as x, y, and z demanded \$10 million in bribes. Although French Minister Talleyrand called it a "misunderstanding", he also expected the United States to drop its claims for damages to American shipping and make a large "loan" to France. As a result, American sympathies toward France began to wane.

Many Americans were now concerned with the rise of Napoleon, and French attempts to spread their revolution in Europe. Rumors of French invasion and enemy spies frightened many Americans. President Adams warned that foreign influence within the United States was dangerous and must be "exterminated."

The Federalist majority in Congress quickly passed four laws in 1798 to make the United States more secure from alien (foreign) spies and domestic traitors. Most of these laws, however, were also intended to weaken Jefferson's Democratic Party.

The first three laws, the Naturalization Act, and the Alien Enemies and Alien Friends Acts, were aimed at immigrants, male citizens of an enemy nation, and any non-citizen suspected of plotting against the government during either wartime or peacetime. By the terms of these laws, the time immigrants had to live in the United States to become citizens was increased from 5 to 14 years, male citizens of an enemy nation could be arrested, detained and deported, and any other non-citizen suspected of plotting against the government could be deported. Since most of these groups favored the Republicans, delaying their citizenship, and arresting, detaining, and deporting them would slow the growth of Jefferson's party. The Alien Enemies and Friends Acts expired after two years and were never used.

However, the fourth, The Sedition Act, (sedition means inciting others to resist or rebel against lawful authority) outlawed conspiracies "to oppose any measure or measures of the government," and made it illegal for anyone to express "any false, scandalous and malicious writing" against Congress or the president. (It did not protect Vice President Jefferson, who was an Anti Federalist.) It also punished any spoken or published words that had "bad intent" to "defame" the government or to cause the "hatred" of the people toward it. In short, it was broad enough to punish anyone who criticized the federal government, its laws, or its elected leaders. Penalties for different provisions of the law ranged from six months to five years in prison and a fine of up to \$5,000 (more than \$100,000 in today's dollars.)

The Federalist majority in Congress passed the Sedition Act, and President Adams signed it into law on July 14, 1798. It was set to expire on March 3, 1801, the last day of the first and, as it turned out, only presidential term of John Adams.

The Alien and Sedition Acts of 1798 challenged the Bill of Rights, but ultimately led to a new American definition of freedom of speech and the press. The Alien and Sedition Acts provoked a debate between Republican and Federalist state legislatures as well as the U.S. Congress over these issues. In the end, the people settled this debate in 1800 by electing Thomas Jefferson president and a Republican majority to Congress. In his inaugural address, Jefferson confirmed the new definition of free speech and press as the right of Americans "to think freely and to speak and write what they think."



### **Attachment 3**

#### **An Act in Addition to the Act, Entitled "An Act for the Punishment of Certain Crimes Against the United States."**

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 farther 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 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 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.

Jonathan Dayton, Speaker of the House of Representatives.

Theodore Sedgwick, President of the Senate pro tempore.

I Certify that this Act did originate in the Senate.

Attest, Sam. A. Otis, Secretary

APPROVED, July 14, 1798

John Adams

President of the United States.

*Transcription courtesy of [the Avalon Project](#) at Yale Law School.*

## Attachment 4

### Case Study I - Matthew Lyon

The first person to be tried under the Sedition Act was Matthew Lyon (1749-1822), a Vermont Republican congressman who opposed going to war with France, and objected to paying a land tax to pay for war preparations. He wrote a letter published in a Republican newspaper criticizing President Adams for "a continued grasp for power." He also read a letter by poet Joel Barlow, who jokingly wondered why Congress had not ordered Adams to a madhouse. Lyon was indicted and tried for intentionally stirring up hatred against Adams. He couldn't find a lawyer, and ended up defending himself, attempting to prove the truth of the words he wrote and spoke. This was permitted in the Sedition Act. He argued that he was only expressing his political opinions, which should not be subject to the truth test.

The jury found Lyon guilty of expressing seditious words with "bad intent." The judge, a Federalist, sentenced him to four months in jail, a \$1,000 fine, and court costs. He ran for re-election to Congress from his jail cell and won. Vermont supporters petitioned Adams to release and pardon him, but Adams refused. When he was released from jail, he was welcomed back as a hero. Efforts to expel him from Congress failed.

### Questions

1. Who was Matthew Lyon?
2. What was his political affiliation? What were his objections to war with France?
3. What did he do to express his objections?
4. What was Lyon indicted and tried for?
5. How did the trial go?
6. What was Lyon's sentence?
7. What is the rest of the story?
8. Do you think Lyon was treated fairly? Why or why not?

## Attachment 5

### Case Study 2 – William Duane

William Duane (1760-1835) was the Democratic-Republican editor of the Philadelphia newspaper, *Aurora*. In February 1800, Democratic-Republican senators in the United States Congress leaked information about a proposed Federalist bill that would change how disputed Presidential electoral votes would be counted. (Remember, this was before the disputed election of 1800 occurred.) Editor William Duane published the text of the proposed bill in the *Aurora*, along with several editorials attacking the Federalists.

In response, the Federalist-controlled Senate investigated, detained, and ordered Duane to appear before the Senate. On March 22, 1800, the Senate of the United States charged Duane with Contempt of Congress, specifically with making “false, scandalous, defamatory, and malicious assertions.” When summoned to the Senate to face the charges, Duane received permission from the President of the Senate, Democratic-Republican Thomas Jefferson (who was also Vice President of the United States), to leave and consult with his lawyer. Duane never returned. Instead he went into hiding, and secretly continued writing for his newspaper. The Senate held him in contempt, but never attempted further prosecution. The Sedition Act expired on March 3, 1801.

### Questions

1. Who was William Duane?
2. What did he do that got him into trouble with the Senate of the United States?
  1. What was the indictment (charge)?
  2. Why do you think Thomas Jefferson allowed Duane to leave?
5. What happened to William Duane?
6. Why do you think the Senate never attempted further prosecution?

## Attachment 6

### **Case Study 3 – Thomas Cooper**

Thomas Cooper (1759-1840), born in London, England and educated at Oxford, was a well known lawyer, political philosopher, and newspaper editor in Sunbury, Pennsylvania. Earlier threatened with prosecution in England because of his active sympathy with the French Revolution, he immigrated to the United States in 1794, and began the practice of law in Pennsylvania. An Anti-Federalist, he was friends with Thomas Jefferson and James Madison. He took part in agitation against the Sedition Act, and in 1799 he wrote a newspaper attack sharply critical of President John Adams. In part, Cooper was reacting to an article about himself that had appeared in the *Reading (Pennsylvania) Advertiser*. In Cooper's article he accused President Adams of "saddling the people with the expense of a permanent navy and a standing army." Further, he stated that President Adams actions had reduced U. S. credit "so low that we are obliged to borrow money at eight percent interest in a time of peace." He delivered a copy of his article to the U. S. Attorney in Philadelphia.

Cooper was brought to trial in Federal Court on charges of "having published a false, scandalous and malicious libel against the president of the United States." (U .S. v. Cooper, 1800). After a spirited defense by Cooper and an intense debate between him and Judge Chase, Cooper was found guilty of the charges, fined \$400, sentenced to 6 months in prison, and at the end of that period, to find bonds for his good behavior, a thousand from himself, and two bonds in five hundred dollars each from others. As soon as the trial was over, Cooper, who had taken careful notes throughout the trial, published all documents and transcripts, along with his commentary.

Most of the rest of his career was spent as college president and professor, at Dickinson College, The University of Pennsylvania, and the University of South Carolina.

### **Questions**

1. Who was Thomas Cooper? What was his political affiliation?
2. What did he do to express his objections to the Sedition Act?
3. What was Cooper indicted and tried for? How did the trial go?
4. What was Cooper's sentence?
5. What is the rest of the story?
6. Do you think Cooper was treated fairly? Why or why not?