

LAW DAY 2008: The Rule of Law

This year's theme for **Law Day**, selected by the American Bar Association is "The Rule of Law." To commemorate Law Day (May 1) this newspaper will run a 5-part educational series, beginning, Monday, April 28 and running through Friday, May 2, that will focus on key court cases throughout New York State history. These cases, among others, helped establish the rule of law.

The features will highlight the following cases:

The Crown v. John Peter Zenger

Gibbons v. Ogden

Lochner v. New York

Engel v. Vitale

New York Times v. United States

All but the first are cases that went up to the Supreme Court.

According to the U.S. Department of State, "In a democracy, the rule of law is manifested in an independent judiciary, a free press and a system of checks and balances on leaders through free elections and separation of powers among the branches of government....the rule of law is based primarily on the U.S. Constitution and on the assurance that U.S. laws are fair and are applied equally to all members of society."

Indeed, newspapers and other media not only act as government "watchdogs" but constantly reflect the "living constitution" in its coverage. Whether by formal Constitutional amendment or by legislation passed by Congress, executive agreements, and court decisions, our legal system is both consistent and ever changing.

We hope this series educates you to New York's role in our legal history. This series is intended to prompt discussion in the classroom and give a deeper understanding of the law, especially the U.S. Constitution.

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The Crown v. John Peter Zenger, 1735

In the early 1730s, John Peter Zenger, a German immigrant, started publishing *The New-York Weekly Journal*. In it, he printed articles by opponents of Governor William Cosby criticizing his removal of the colony's Chief Justice from office. These articles mocked Cosby while warning against leaders who put themselves above the law. Outraged, Governor Cosby ordered copies of select issues seized and burnt and Zenger was eventually indicted for seditious* libel. After months in jail, Zenger's trial began, but his lawyers were disbarred and prevented from defending their client. Andrew Hamilton, a Philadelphia lawyer, took over the case and offered a defense that went against traditional English law.

In England, proof of publication was all that was necessary to convict a publisher of libel. Whether the alleged libel was true or not didn't matter. Hamilton insisted that the truth should make a difference: if Zenger had published the truth, he couldn't be guilty of libel.

When the court rejected Hamilton's argument, the lawyer urged jurors to decide for themselves. They acquitted Zenger, setting a precedent in

favor of truth that was later affirmed by courts in England and the United States. Thus, a jury of regular men helped lay the foundation for one of the freedoms in the First Amendment of the U.S. Constitution.

*Sedition: word or action inciting rebellion against the authority of a state.

Key concepts:

- ◆ Independent juries
- ◆ Freedom of the Press

Classroom Newspaper Activity:

- ◆ Locate articles, editorials or political cartoons that report on the decisions of local, state or national government leaders. As a class, discuss how this information would be different without the protection of Freedom of the Press. Rewrite or redraw this coverage as it might be reported without the First Amendment.

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Key concepts:

- ◆ Interstate commerce
- ◆ Federal supremacy versus state rights

Gibbons v. Ogden, 1824

In 1808, Robert Fulton and Robert Livingston were granted an exclusive 20 year grant from the New York legislature to operate steamboats on the state's waterways. This monopoly was very important because steamboats carried both people and goods and was very profitable. Aaron Ogden was operating steamboats under a license from

the Fulton-Livingston Company and he had a route between New York and New Jersey. Thomas Gibbons, originally partners with Ogden, had a federal coasting license and competed with Ogden operating along the same route.

Ogden was upset by the competition and petitioned the New York court. He obtained an injunction ordering Gibbons to stop operating his boats in New York waters. Gibbons appealed to the Court of Errors of New York which agreed with the lower court decision. Thomas Gibbons finally appealed his case to the Supreme Court of the United States which ruled that the injunction against him was invalid.

The monopoly granted by the New York statute conflicted with the Constitution of the United States. The Court used *Gibbons v. Ogden* to establish the position that Congress can legislate and regulate all matters of interstate commerce as long as there is a commercial connection with another state. Power to regulate intrastate commerce (trade completely within the state) is reserved to the states.

Classroom Newspaper Activities:

- ◆ Look through the newspaper for articles or advertisements that show examples of interstate commerce. Imagine the troubles that would arise if each state had conflicting laws regarding these business practices. Write a brief report on the issues you imagined.
- ◆ Did you find examples of intrastate commerce in your newspaper? If so, share them with the class. If not, do a little research and find out what some local business trade exists for your area.

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Lochner v. New York, 1905

In the 1890s, New York enacted the Bakeshop Act which set minimum standards for sanitation and a maximum ten-hour work day and sixty-hour week for bakeshop employees. This was one of many laws passed during the turn of the century that regulated hours, wages, and conditions of work with the intent of protecting the public health and welfare of the individual.

In 1902, Joseph Lochner, a tiny bakery owner in Utica, was convicted and fined \$50 for permitting an employee to work more than the lawful number of hours. Lochner appealed his conviction up to the New York Court of Appeals which affirmed his sentence. Claiming the law was unconstitutional under the Fourteenth Amendment, depriving him of life, liberty, or property without due process of law, Lochner appealed to the U.S. Supreme Court.

In a controversial decision, the Court held that, "...There is no reasonable ground for interfering with the liberty of person or the right of free contract, by determining the hours of labor, in the occupation of a baker..."* The New York law in question was not within the limits of its "police powers." This ruling marked the beginning of a "substantive due process" era in the Court which it used to balance freedoms of the individual and the power of government. Eventually Lochner was overturned by another case 12 years later.

*Excerpt from the majority decision by Justice Peckham

Key concepts:

- ◆ Due process
- ◆ "Freedom of contract"
- ◆ State "police powers"

Newspaper Activity:

- ◆ Look through the newspaper for articles about something the government has done or proposes to do that will work for the greater good of the entire community. Compare these to your understanding of the Bakeshop Act..

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Key concepts:

- ◆ Establishment clause
- ◆ Government-directed prayer in public schools

Engel v. Vitale, 1962

In 1951 the New York State Board of Regents in an attempt to build character and instill good citizenship in students developed and approved a “nondenominational prayer.” It read, “Almighty God, we acknowledge our dependence upon Thee,

and we beg Thy blessings upon us, our parents, our teachers and our Country.” All school districts were encouraged to have students recite it at the start of each school day. Participation was not mandatory.

The parents of public school pupils in New Hyde Park schools objected that the prayer contradicted their religious beliefs. They filed suit in a New York State court seeking a ban on the prayer. The appeals court upheld the use of the prayer, “so long as the schools did not compel any pupil to join in the prayer over his or his parents’ objection.” And in 1961, citing the prayer as a violation of the Establishment Clause in the First Amendment, the parents brought their case to the Supreme Court.

The court decided that government-directed prayer in schools was unconstitutional and a violation of the Establishment Clause. This was the first of several cases in which the Court used the Establishment Clause limiting government-directed prayer. More than 45 years have passed since this decision and it remains extremely controversial.

Newspaper Activity:

- ◆ Look through editions of the newspaper for editorials. Note how these persuasive pieces use facts to support their opinion. Use these editorials as a model and write whether you agree with the *Engel v. Vitale* decision or disagree with it and why.

Extension activity: Have the class share its opinions verbally during a controlled debate.

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New York Times v. United States, 1971

In 1967 Secretary of Defense McNamara commissioned a study of the history of US decision-making of policies involving Indochina, specifically Vietnam. The resulting documents became known as the Pentagon Papers. In 1971, Daniel Ellsberg, a government researcher, gave copies of the documents to the press.

On June 13, 1971, the New York Times began publishing articles about the documents and the Washington Post published information later that same week. On June 15 the government went to a New York federal district court seeking an injunction prohibiting the Times from publishing articles about the Pentagon Papers. The government pursued similar action against the Post in the District of Columbia. Both federal district courts refused to issue a permanent injunction.

The Supreme Court heard arguments on June 26. The government argued that prior restraint (prohibiting information from being published) was necessary to protect national security. However, on June 30, a divided Court refused to stop publication of the Pentagon Papers because the government failed to meet the burden to justify prior restraint. This case became an important precedent in support of the First Amendment's freedom of the press.

Key concepts:

- ◆ Executive power
- ◆ Freedom of the Press

Newspaper Classroom Activity:

Our nation's founders realized someone needed to hold the government accountable for its actions. The First Amendment, freedom of the press, ensures that newspapers and other media continue to serve as the "public's watchdog." Publishing information and commentary on controversial topics are two ways newspapers exercise this responsibility.

- ◆ Look through editions of the newspaper for examples of the newspaper holding the government or elected officials responsible for their actions (or in some cases, inaction). Imagine you are an elected official; briefly write how you would work to resolve this issue.

If you've enjoyed this series and would like to learn more about civics and law related education visit the Law, Youth and Citizenship Program of the NYS Bar Association online at www.lycny.org.