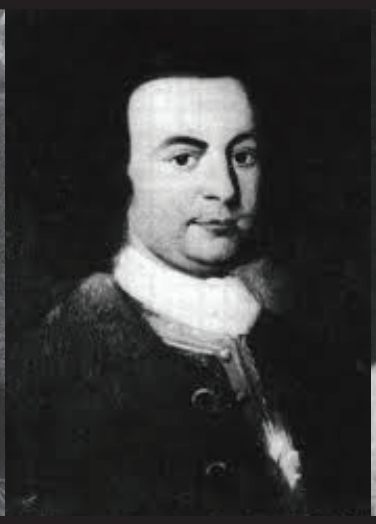
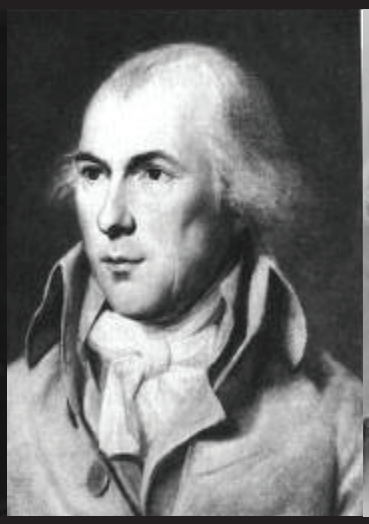
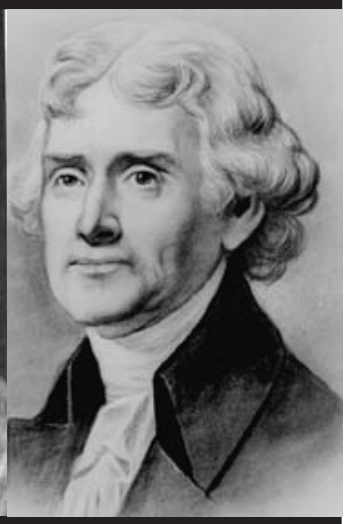

John Adams


George Mason


James Madison


Thomas Jefferson

Inherent and Invaluable

A History of Trial by Jury

By Beth A. White

In the United States, there are two places where every American is supposed to be equal—at the ballot box and in the courtroom. That equality is a powerful right that should be championed by every one of us regardless of political affiliation because it is the very definition of a free people. Indeed, John Adams wrote, "Representative government and trial by jury are the heart and lungs of liberty. Without them we have no other fortification against being ridden like horses, fleeces like sheep, worked like cattle, and fed and clothed like swine and hounds."

Unfortunately, equality at the ballot box is now in question. While we still adhere to "one person, one vote," our political process is teeming with money. It is now cost prohibitive for many people to run for office, and candidates receive big money contributions. The most recent election also showed the growing influence of million-dollar, independent ad campaigns on voters. After being elected to office, lawmakers come under the influence of special interest lobbyists.

That leaves our courtrooms, and the right to trial by jury, as the last citadel of equality. As U. S. Sen. Sheldon Whitehouse (D-RI) noted, "Corporations hate juries. It's the one part of government you can't buy." Thomas Jefferson wrote, "I consider [trial by jury] as the only anchor yet imagined by man, by which a government can be held to the principles of its constitution." It is a sentiment echoed by former U. S. Supreme Court Chief Justice William Rehnquist. "The right to trial by jury in civil cases at common law is fundamental to our history and jurisprudence. A right so fundamental and sacred to the citizens should be jealously guarded."

The Trial That Sparked the American Revolution

Most Americans don't realize that it was a trial that first ignited the fire that became the American Revolution. John Peter Zenger was the publisher of the New York Weekly Journal. In 1734, the newspaper published a column that criticized Royal Governor William Crosby for removing Justice Lewis Morris from the bench. Outraged, Crosby had Zenger arrested and imprisoned for seditious libel. In 1735, Zenger was tried before a jury of his peers. The jury found Zenger not guilty because he had printed the truth.

Zenger's case guaranteed freedom of the press—newspaper editors and publishers could no longer be found guilty for libel when they printed the truth. It is a landmark decision that is not only being studied in law schools, but also journalism schools to this very day. As a result of the decision, the colonial newspapers were free to openly criticize the British crown, and it was in the press that the revolutionary fervor grew in the decades following the Zenger decision. As Gouvernor Morris, who helped write the U. S. Constitution, noted, "The trial of Zenger in 1735 was the germ of American Freedom, the morning star of liberty that subsequently revolutionized America."

The Origins of Trial by Jury

But why, in a society as oppressive as Crosby's New York, did Zenger have an opportunity to present his case in

Zenger was found not guilty by a jury of his peers. The decision paved the way for colonial newspaper editors to criticize the British crown, stoking the fires of the American Revolution

court and be tried by a jury of his peers?

That answer goes back another 500 years to the signing of the Magna Carta in 1215 by King John I. The Magna Carta is the "great charter" that protected the civil liberties of English subjects and guaranteed the two great pillars of democratic society—representative government and trial by jury. Chapter 39 of the document reads, "No man shall be taken, outlawed, banished, or in any way destroyed, nor will we proceed against or prosecute him, except by the lawful judgment of his peers and by the law of the land."

There had been earlier forms of trial by jury for centuries. Beginning around 2000 B. C., ancient Egyptians adjudicated matters through Kenbet, which was comprised of eight jurors—four from each side of the Nile. In the 6th century B. C., Dikastes, in which designated citizens tried and passed judgment on questions of law, became the norm in Greece. The Greek system evolved into Rome's Judices by the 4th century B. C. It was this system that was most likely the first form of juries in England, with it arriving on English shores with the Roman Conquest. By the late 800s, under the leadership of Alfred the Great, trial by a jury of one's peers became the norm throughout England.

William Blackstone, the great historian of English common law, considered the Frankish Inquest, developed in 829 A. D. as the start of the modern jury system. Created by Louis the Pious, the son of Charlemagne, it was a "jury of administrative inquiry." Through it, royal rights were determined by a jury of 12 of the "best and most credible men" in the locality. The Frankish Inquest arrived in Britain with William the Conqueror in 1066. Less than two centuries later, the Magna Carta affirmed that trial by jury would be the standard for all subjects of the English—and later British—crown.

The British Bill of Rights

Unfortunately for the British people, their right to trial by jury began to break down in the 16th century. King Henry VIII declared himself supreme ruler of Great Britain, and part of his strategy to retain that ultimate power was the suppression and intimidation of the courts. He also used the Star Chamber, which had evolved from the King's Council during his father's reign. Initially instituted as a special court for those too powerful to be held accountable in the country's common civil and criminal courts, the Star Chamber became a political weapon to bring actions against those who challenged the crown. Its court sessions were held in secret, with no indictments, no juries, no witnesses and no appeals. In a 1975 decision, the U. S. Supreme Court wrote, "The Star Chamber has, for centuries, symbolized disregard of basic individual rights."

The Star Chamber continued under the Stuart kings into the 17th century. Although the English Civil War overthrew the monarchy in 1649, the abuses of both the Star Chamber and other limits on trial by jury continued under Oliver Cromwell. Following Cromwell's death in 1658, British Parliament restored the monarchy and Charles II was crowned king in 1660. The truce between the crown and Parliament was short lived, however, as Charles II began to suspend laws passed Parliament and continued to infringe on the liberties guaranteed to the British people in the Magna Carta. Charles II even went so far as to repeatedly dissolve Parliament when it convened.

When Charles II died in 1685 without producing an heir, the Catholic James II ascended to the throne. After his wife gave birth to a son, Protestant members of Parliament feared that Great Britain would again become a Catholic monarchy beholden to Rome. In the Glorious Revolution of 1688, the Protestants overthrew James II with the aid of the William of Orange, of the Netherlands, who was married to James II's Protestant daughter, Mary.

Parliament offered the British throne to William and Mary to rule jointly, but after nearly 200 years of abuses, the British people wanted the assurance that the rights guaranteed to them in the Magna Carta—including the right to trial by jury—would not be taken from them again. Before William and Mary could be crowned, they had to sign the British Bill of Rights. It was signed in 1689. William Blackstone later wrote, "The trial by jury ever has been, and I trust ever will be, looked upon as the glory of

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William Rehnquist
U. S. Supreme Court Chief Justice

English law.

In the early 1600s, British subjects, whose rights were threatened at home, began sailing for America. The rights that they had been guaranteed in the Magna Carta, including trial by jury, were reasserted in the colonial charters. The right to trial by jury was included in the First Charter of Virginia, which was drafted in Great Britain in 1606—and that right was guaranteed in all subsequent colonial charters.

The Period of Revolution

In the wake of John Peter Zenger's trial, the right to trial by jury came under attack in the colonies. The British rulers suppressed the right in order to limit challenges against British authority and quell calls for American independence. Almost immediately, efforts to limit trial by jury became a focal point for revolutionaries.

In 1751, the South Carolina General Assembly declared that "any person who shall endeavor to deprive us of so glorious a privilege of trial by jury" was an enemy to the people of the colony. The Stamp Act Congress of 1765 wrote that "trial by jury is the inherent and invaluable right of every British subject in these colonies." John Jay, who would later become the first chief justice of the United States Supreme Court, wrote, "Know then that we claim all the benefits secured to the subject by the English Constitution, and particularly the inestimable right of trial by jury."

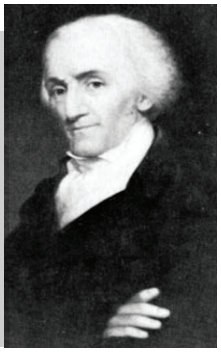
The fervor continued into 1774, when the First Continental Congress met in Philadelphia in 1774. That Congress resolved that the American colonists were entitled to "the great and estimable privilege of being tried by a jury of their peers in the vicinage." The following year, efforts by the British rulers to deprive the colonials of their right to jury trials was cited as one of the causes of the American Revolution. In the Declaration of Causes and Necessity of Taking Up Arms, the Continental Congress cited the denial of "the accustomed and inestimable privilege of trial by jury, in cases of both life and property." In 1776, in our Declaration of Independence, the charges against Britain's King George III included, "Depriving us in many cases, the benefits of trial by jury." With that document, America's founding fathers made trial by jury a right for which they pledged "[their] lives, [their] fortunes, and [their] sacred honor."

Following the Declaration of Independence, each colony had to write a new state constitution. These constitutions were based on the principles and rights outlined in the Magna Carta and the British Bill of Rights, as well as interpretation of British common law by men such as Thomas Coke and William Blackstone.

In his June 1776 Virginia Declaration of Rights, George Mason wrote that "The ancient trial by jury is preferable to any other and ought to be held sacred." He preserved that right in the Virginia constitution that he wrote later that year. The New York constitution states, "And this convention doth further ordain, determine and declare, in name and by authority of the people of this state, that trial by jury, in all cases in which it hath heretofore been used in the colony of New York, shall be established and remain inviolate forever." Similar language was found in all the other state constitutions as was as the charter for the Northwest Territories.

"The jury is adapted to the investigation of truth beyond any other system the world can produce. A tribunal without juries would be a Star Chamber in civil cases." **Elbridge Gerry**

Gerry signed the Declaration of Independence, was a delegate to the Constitutional Convention and later served as vice president.



The Constitution Controversy

After our victory in the American Revolution, the first United States' constitution, the Articles of Confederation, was deemed inadequate for the new nation. A convention was called in Philadelphia in 1787 to draft a new one.

After months of heated debate, a draft was presented to the convention on September 12, 1787. The draft allowed trial by jury in criminal cases, but not in civil cases. Elbridge Gerry of Massachusetts cited the omission. "The jury is adapted to the investigation of truth beyond any other system the world can produce. A tribunal without juries would be a Star Chamber in civil cases." Gerry's position was affirmed and seconded by George Mason, who argued that the document needed a Bill of Rights to guarantee both freedom of the press and trial by jury.

Delegates attempted to amend the constitution to include jury trials in civil cases. Opponents to the change argued that it was unnecessary since the right was preserved in the state constitutions. The amendment failed on September 15. The new United States Constitution was signed on September 17, but it still had to be ratified by the states. Many southern states refused to ratify the document because it did not include a Bill of Rights.

As the states debated ratification, the political leaders split into two groups—the Federalists and the Anti-Federalists. The Federalists, led by people like Alexander Hamilton and James Madison, championed a strong, centralized government. The Anti-Federalists, whose members included George Mason, Patrick Henry and Samuel Adams, feared that a strong national government would overpower the rights of the states and citizens and advocated for a Bill of Rights. Despite their philosophical differences on many issues, there was one area in which they agreed: the right to

"It is essential that the right of trial by jury be scrupulously safeguarded as the bulwark of civil liberty. Our duty to preserve the 7th Amendment is a matter of high constitutional importance."

Hugo Black
U. S. Supreme Court Justice

trial by jury.

Alexander Hamilton wrote, "The friends and adversaries of the plan of the Convention, if they agree in nothing else, concur at least in the value they set upon trial by jury; of if there is any difference between them it consists in this: the former regard it as a valuable safeguard to liberty; the latter represent it as the very palladium of free government."

Hamilton's sentiment was echoed by other Federalists like Pennsylvanian John Dickinson. "Trial by jury is the cornerstone of our liberty. It is our birthright; who is in opposition to the genius of America shall dare to attempt its subversion?" James Madison wrote, "Trial by jury is essential to secure the liberty of the people as any one of the pre-existent rights of nature."

The Anti-Federalists, likewise, supported Hamilton's position on trial by jury. Patrick Henry wrote, "Trial by jury is the best appendage of freedom. I hope that we shall never be induced to part with that excellent mode of trial." Fellow Virginian Richard Henry Lee stated, "The right to trial by jury is a fundamental right of free and enlightened people and an essential part of a free government."

The Bill of Rights

Led by Anti-Federalists, many states—including Massachusetts and Virginia—refused to ratify the United States Constitution unless the document was amended to include a Bill of Rights. Although five states had ratified the document, Massachusetts refused to do so until John Adams and John Hancock brokered the Massachusetts Compromise. The compromise allowed the state delegates to ratify the document with the provision the state would lobby the U. S. Congress to amend the document should enough states ratify it and it became law.

Many other states debating the issue followed the Massachusetts Compromise, and the United States Constitution went into effect on March 4, 1789. Once the First Congress was seated at Federal Hall in New York City, its members agreed that a Bill of Rights was needed. James Madison, who headed the Virginia delegation, drafted the legislation. Based largely on George Mason's Virginia Bill of Rights from 1776, it outlined the first ten amendments to the Constitution and was passed by Congress on September 25, 1789. On December 15, 1791, Virginia became the eleventh state to ratify the constitutional amendments, and the Bill of Rights became law.

In our Bill of Rights, the 1st Amendment guarantees, among other liberties, freedom of the press—the spark that had ignited the American Revolution with the trial of John Peter Zenger. The 6th Amendment outlines the rights to a speedy, impartial, jury trial in criminal cases—a right which had ensured that Zenger had a fair trial in front of a jury of his peers. The 7th Amendment preserves the right to jury trial in civil cases and reads:

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, according to the rules of common law."

Conclusion

In 1835 Alexis de Tocqueville, the great 19th century political scientist and author of Democracy in America, wrote, "The civil jury is the most effective form of sovereignty of the people. It defies the aggressions of time and man. During the 16th century, the civil jury did in reality save the liberties of England."

It should be the responsibility of every American to protect his or her 7th Amendment right to trial by jury. As U. S. Supreme Court Justice Hugo Black wrote in 1939, "It is essential that the right of trial by jury be scrupulously safeguarded as the bulwark of civil liberty. Our duty to preserve the 7th Amendment is a matter of high constitutional importance." ❖

Beth A. White is the executive director of the West Virginia Association for Justice. She has researched and lectured on the history of trial by jury since 2004.