

# Lawyers of the Old Left

Morris Hillquit,  
Seymour Stedman  
& Charles Recht

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Series in Law



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# Introduction

This is the story of three lawyers who represented the radical left at the beginning of the twentieth century. They were arguably the most important lawyers of their respective movements, and they were involved in some of the most significant cases of the tumultuous era that surrounded World War I. While all three are relatively unknown today, they all commanded the respect of both their contemporary colleagues and their adversaries, inside and well beyond the courtroom.

Morris Hillquit was practically synonymous with the socialist movement that flourished on the East Coast, particularly New York City, at the end of the nineteenth and beginning of the twentieth century. Not only was he a prolific chronicler and theorist of the movement, but he also ran for political office several times under the Socialist Party banner. Hillquit took a leadership role in the defense of anti-war activists during wartime and the repression that followed, even while managing a thriving law practice. In time, he would become one of the nation's preeminent labor lawyers.

Seymour Stedman might be called the Morris Hillquit of the Midwest. Stedman was a leader, with Eugene Debs and Victor Berger, of the homegrown socialist movement that prevailed in Chicago, Milwaukee, and other midwestern cities. He rose to prominence at the national level, ultimately becoming the party's vice-presidential candidate in Debs's campaign for the presidency in 1920. An ill-advised business venture in the 1930s led to his conviction for violating banking laws; his conviction was reversed, but his career never fully recovered.

Charles Recht was unquestionably the most important American lawyer representing the Soviet Union, both before and after that country was recognized by the United States. Although he also participated in many important civil liberties cases that had little or nothing to do with communism, his advocacy on behalf of Soviet Russia and its U.S. interests formed the core of his legal career. Recht also pursued a second, wholly unrelated career as a novelist, poet, and theatrical translator.

I first encountered these three men while writing a biography of Gilbert E. Roe, a Progressive Republican lawyer who championed left-wing causes during the same period. Roe had represented the socialist magazine *The Masses* in the unsuccessful defense of its mailing privileges, which the government sought to withdraw under the Espionage Act for criticizing the war effort. Hillquit, Stedman, and Recht, along with Dudley Field Malone and Walter Nelles, represented *The*

*Masses* editors, staff, and contributors in the criminal prosecutions that followed Roe's case.

The "Old Left" in the title refers to the radical ideologies, movements and organizations that captured the attention of many Americans during the last years of the nineteenth century and the first quarter or so of the twentieth. Among them were anarchists, socialists, and communists, with multiple strains of each, as well as suffragists, unionists, pacifists, and others who challenged the establishment from the left. I use the term "Old" merely to distinguish these movements from the so-called "New Left" of the 1960s and 1970s, including Vietnam War protesters and civil rights activists.

Beyond simply reintroducing these lawyers to contemporary readers, this book asserts that the phenomenon of skilled and dedicated American lawyers representing radical causes neither began nor ended with these three and their World War I-era colleagues. Rather, I submit that these lawyers fit comfortably within a long-standing American tradition that has persisted from colonial times to the present day. Accordingly, I am book-ending these three professional profiles with a prologue and epilogue that illustrate this larger proposition.

A second point that I wish to make is that all of these men were lawyers' lawyers. All were leading advocates for their principal clients, all had extensive civil liberties practices, and all had successful commercial practices. The legal and historical literature concerning this period largely focuses on judicial opinions and ideological conflicts; the role of the lawyer is often underplayed. I've tried to remedy that oversight without neglecting the broader context.

For the body of the text, I initially wrote three biographical profiles of the three men, but a perceptive reader of the manuscript found that it obscured the issues these lawyers faced and suggested that a thematic approach would help draw the connections between individual cases and broader legal, political, and social trends. As one reader put it, "This would provide readers with a clearer understanding of how these lawyers' work intersected with the era's defining challenges." I am grateful for the suggestion, and I hope that this organization does its job.

I also wish to thank Jennifer Andruzzi, a marvelous copyeditor who saved me from countless errors of spelling, grammar, punctuation, and style. If any such errors remain, you can be sure they are because I overruled Jennifer's better judgment.



# Prologue

The radical impulse in America can be traced to the earliest colonial period. Religious radicals like Roger Williams and Anne Hutchison challenged the authoritarian church; political radicals like Nathaniel Bacon and Jacob Leisler challenged the authoritarian governments.<sup>1</sup> The emergence of lawyers to defend those who embraced radical ideas can also be traced to colonial times.

The most notable case of a practicing lawyer defending antiestablishment interests in those early days was surely that of Andrew Hamilton, who famously defended the printer John Peter Zenger in his 1735 seditious libel trial. Hamilton himself was no radical, though he may have been involved in the Jacobite movement in Scotland as a young man. Hamilton studied law in Virginia and was admitted to the bar there in 1703. He had moved to Maryland by 1708, establishing a thriving law practice, and was called to the English bar in 1714. On his return to America, he was appointed attorney general of Pennsylvania and was soon elected to the Pennsylvania Assembly.

Zenger was a German immigrant who came to America as a teenager. He was apprenticed to New York City's leading printer, William Bradford, then struck out on his own at age 21. After working in Maryland for about four years, he returned to New York as Bradford's partner. As it happened, the colony got a new governor, William Cosby, who could best be described as a political hack whose wife was well-connected and whose purpose in the colonies was to make his fortune.<sup>2</sup> Cosby sacked Lewis Morris Sr., chief justice of the colony, and appointed his own man, young James DeLancey, as chief justice.<sup>3</sup>

Morris did not take this lying down and, with his son Lewis Morris Jr. and a very bright lawyer named James Alexander, started his own political faction, virulently anti-Cosby. They wanted an outlet for their own political ideas, but Bradford was too afraid of losing his government contracts to print them. So they financed Zenger, who left Bradford and set up shop on his own. Zenger became the chief propagandist for a new anti-Cosby, Morrisite party. Alexander became the behind-the-scenes editor of Zenger's newspaper, the *Journal*, which competed with Bradford's pro-Cosby *Gazette*.

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<sup>1</sup> See SIDNEY LENS, *RADICALISM IN AMERICA* 11-18 (1969).

<sup>2</sup> Eban Moglen, *Considering Zenger: Partisan Politics and the Legal Profession in Provincial New York*, 94 COLUM. L. REV. 1495, 1503-04 (1994).

<sup>3</sup> *Id.* at 1506.

DeLancey tried and failed to get an indictment against Zenger, then offered rewards for proof that Alexander, Morris and the others (who wrote anonymously) were responsible for the attacks on Cosby in the *Journal*, all to no avail. Finally, the *Journal* went too far, publishing a thinly disguised attack on Cosby for jeopardizing the people's liberty and property by bringing cases against colonists in equity or chancery courts instead of common law courts whenever he could get away with it. Equity courts had no juries, only Cosby-appointed judges. In common law courts, juries were safeguards for colonial defendants with whom jurors often identified. Zenger was arrested and prosecuted on a criminal information.<sup>4</sup>

Zenger was prosecuted by Richard Bradley, attorney general of New York, and DeLancey, now Gov. Cosby's new chief judge, presided at the trial. When Zenger's lawyers, Alexander and William Smith, objected to DeLancey's trying the case, they were struck off for contempt<sup>5</sup> and, against their will, John Chambers was appointed to undertake the defense.<sup>6</sup> Chambers planned to argue that the *Journal's* satirical articles were too indefinite for a conviction and hoped for a favorable jury.<sup>7</sup> But when the trial began on August 4, 1735, it was Andrew Hamilton who took over the defense. Hamilton had been secretly engaged, presumably on the advice of Alexander's wife, Mary Spratt Alexander, a prominent merchant in her own right. She had traveled to Philadelphia to persuade Hamilton to take Zenger's case.<sup>8</sup>

Following the line of argument proposed by Alexander, Hamilton attempted to argue the truth of the *Journal* articles as a defense. English law at the time admitted no such evidence, so Hamilton resorted to jury nullification. He urged the sympathetic colonial jurors that "the facts which we offer to prove were not committed in a corner; they are notoriously known to be true; and therefore, in your justice lies our safety.

And as we are denied the liberty of giving evidence to prove the truth of what we have published, I will beg leave to lay it down as a standing rule in such cases, that the suppressing of evidence ought always to be taken for the strongest evidence ....

[T]he question before the Court and you gentlemen of the jury is not of small nor private concern, it is not the cause of a poor printer, nor of

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<sup>4</sup> *Id.* at 1507 (citing JAMES ALEXANDER, A BRIEF NARRATIVE OF THE CASE AND TRIAL OF JOHN PETER ZENGER, PRINTER OF THE NEW YORK WEEKLY JOURNAL (1736)). See also Moglen, *supra* note 2, at 1514.

<sup>5</sup> Moglen, *supra* note 2, at 1515.

<sup>6</sup> *Id.* at 1516.

<sup>7</sup> *Id.* at 1518.

<sup>8</sup> JOAN N. BURSTYN, PAST AND PROMISE: LIVES OF NEW JERSEY WOMEN 6 (1996).

New York alone, which you are now trying: No! It may in its consequence affect every freeman that lives under a British government on the main of America. It is the best cause. It is the cause of liberty; and I make no doubt but your upright conduct this day will not only entitle you to the love and esteem of your fellow citizens; but every man who prefers freedom to a life of slavery will bless and honor you as men who have baffled the attempt of tyranny; and by an impartial and uncorrupt verdict, have laid a noble foundation for securing to ourselves, our posterity, and our neighbors that to which nature and the laws of our country have given us a right, the liberty, both of exposing and opposing arbitrary power (in these parts of the world at least) by speaking and writing truth.<sup>9</sup>

The jury returned a verdict of not guilty. Zenger went free and lived another decade or so. Cosby died within months. DeLancey eventually grew to be a respected jurist and champion of political rights. Morris Senior became the royal governor of New Jersey, and Alexander Hamilton returned to Pennsylvania, where he later prosecuted a printer for seditious libel. But the law did not change. On the very eve of the American Revolution, the formal law of England and the colonies was still little different from that enforced by the Court of Star Chamber. It was not until 1792 that English law changed to allow juries to consider both fact and law in libel cases, and it was 1843, some 50 years later, that truth became a defense in a criminal libel case.

It would be quite a stretch to call the Morrisites “radicals.” These men were not revolutionaries, but loyal English subjects locked in a highly partisan political dispute with the royal governor. Still, Hamilton’s invocation of a right to speak and write the truth has resonated with succeeding generations down to the civil libertarians almost 200 years later. There is good reason for tracing the American tradition represented by the three subjects of this book to the Zenger trial. As Moglen puts it, with Zenger’s acquittal:

[The] lawyers of New York had reached an important stage in their political development. For all the agile cynicism of the Morrisite propaganda for law and liberty, the crowd was cheering something real. The willingness of lawyers to defend the subject’s liberty under law, if necessary, at the hazard of their lives, their fortunes, and their sacred honor, was now an important force in North America. William Cosby would not be the last Imperial Executive who would be able to read that message without his spectacles.<sup>10</sup>

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<sup>9</sup> ALEXANDER, *supra* note 4.

<sup>10</sup> Moglen, *supra* note 2, at 1521 (with a nod to King George III and John Hancock).

There was no shortage of radical thinking—and action—in the Revolutionary War period. Patrick Henry, Thomas Paine, and, perhaps most important, Samuel Adams are all well known to any school child today. After the revolution, radicals forced the addition of a Bill of Rights to the Constitution as a condition of ratification, only to see the civil liberties it guaranteed eroded by a Sedition Act enacted by the Federalists in anticipation of a war with France. While the Congress had adopted Andrew Hamilton's view of truth as a defense, that provided little comfort to the Democratic-Republican editors prosecuted under the act. At least 14 of them spent some time in jail.<sup>11</sup>

As in the Zenger case, most of the Republican editors caught up in Sedition Act prosecutions were defended by establishment lawyers of the same party. For example, Matthew Lyon and Anthony Haswell, two Republican editors from Vermont, were advised by attorney Israel Smith, who was serving in the Vermont legislature at the time. Notoriously anti-Jefferson journalist James Callender was represented by three prominent lawyers: William Wirt, who would serve as U.S. Attorney General under James Monroe; George Hay, who became a U.S. Attorney for Virginia and a member of the Virginia House of Delegates; and Philip Nicholas, who served as Virginia's attorney general. One of the editors, Charles Holt of the New Haven *Bee*, was even defended by prominent Federalist lawyers David Daggett and Stephen Hosmer, who were paid by the Republican party leadership.<sup>12</sup>

At least one of the Sedition Act defense lawyers, Thomas Cooper, can be said to have transcended mere partisanship to embrace the radical ideology of his client. No surprise there: Cooper represented himself in *United States v. Cooper*, in which he was charged under the act with libeling President John Adams and tried before Justice Samuel Chase, the act's most prolific enforcer. Simply put, Cooper had written that Adams, among other things, was raising a standing army at great expense to the nation during a time of peace. Chase instructed the jury that these allegations, and others, were false and defamatory: "the boldest attempt I have known to poison the minds of the people."<sup>13</sup> The jury agreed, and Cooper was sentenced to six months in jail, fined \$400, and forced to post a bond to ensure his good behavior after his sentence was served.

For our purposes in demonstrating the American tradition of lawyers defending radical causes, the most interesting part of the trial record involved Cooper's response to Chase's question as to whether he was supported in his writing and,

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<sup>11</sup> JEFFREY L. PASLEY, *THE TYRANNY OF PRINTERS: NEWSPAPER POLITICS IN THE EARLY AMERICAN REPUBLIC* 129 (2001).

<sup>12</sup> *Id.* at 142. Pasley notes that Holt's prosecutor was Republican District Attorney Pierpont Edwards.

<sup>13</sup> 25 F. Cas. 631, 642 (C.C.D. Pa. 1800).

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