

The Trial of John Peter Zenger

Should someone be prosecuted for criticizing a government official even if the words are true? Should a judge or a jury decide the case? These were the key issues in the trial of John Peter Zenger.

English kings had long controlled the press. King Henry VIII required all writing be licensed before it could be printed. The king prosecuted authors and printers who published unlicensed writing. A powerful royal council known as the Star Chamber controlled the licensing of printed works.

The Star Chamber also created a crime called libel. “Seditious libel” was the most serious kind of libel. This outlawed insulting the government, its laws, and officials. Kings and parliaments wanted people to respect them.

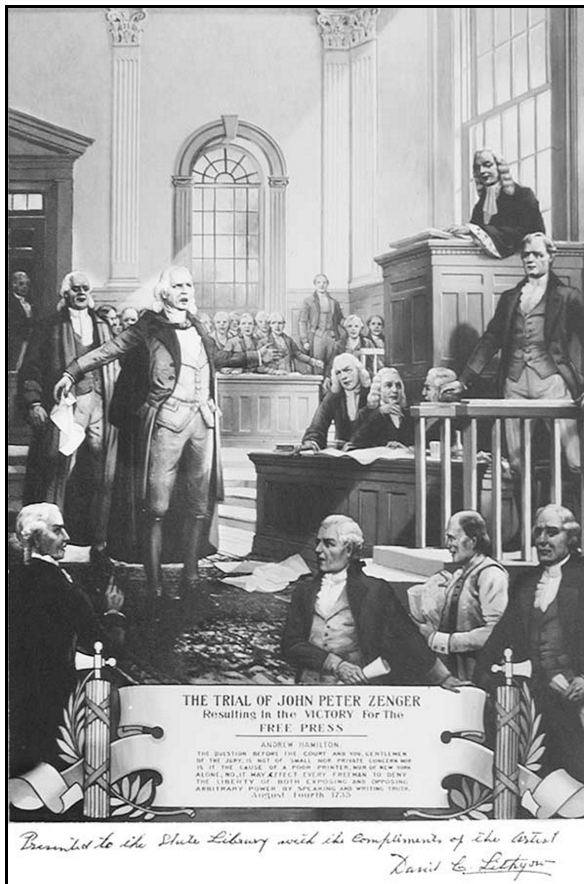
The Star Chamber ruled that the truth of printed words did not matter. Truth was not a defense in libel cases. In fact, the Star Chamber saw true statements that libeled the government as more dangerous than false ones. People would more easily dismiss false statements.

Parliament got rid of the Star Chamber in 1642, and the last licensing laws expired by 1695. But courts continued to enforce the Star Chamber libel laws. Judges decided whether printed words were libelous. Juries decided only if a defendant had published the words in question.

By 1700, “freedom of the press” in England only meant no government licensing. Once authors and printers had published their writing, English officials could still charge them with seditious libel.

War of Words Against the Governor

The American colonies followed English law on seditious libel. Royal governors were always on guard against insults in newspapers.



The most famous trial lawyer in the American colonies, Andrew Hamilton addressed the court. He was defending publisher Peter Zenger against the criminal charge of seditious libel. (New York State Library)

In 1732, William Cosby was appointed the royal governor of New York. He was quick-tempered, arrogant, and greedy.

In one of his first acts, he demanded half the salary paid to Rip Van Dam. Van Dam had acted as governor when the previous one suddenly died.

When Van Dam refused to pay, Cosby decided to sue him. But he was afraid that jurors would find against him. So Cosby appointed a special court of three justices to hear the case without a jury.

In April 1733, Van Dam's lawyer argued that the special court was illegal. The chief justice, Lewis Morris, agreed. But the other two justices sided with Governor Cosby.

Cosby dismissed Morris. He appointed James DeLancey to replace him. Morris along with Van Dam began a drive to get the governor removed.

Among other things, Morris and his friends started a newspaper, *The New York Weekly Journal*. They hired a print shop owner, John Peter Zenger, to publish their writing. For several months, *The New York Weekly Journal* criticized and made fun of Governor Cosby.

The newspaper also printed songs attacking Cosby. The songs accused the governor of taking away New Yorkers' freedom. The newspaper also ran phony ads making fun of the governor. One described him as a monkey.

Cosby fought back and tried to silence Zenger's press. He tried to get a grand jury to indict him for seditious libel. The grand jury refused.

Cosby asked the New York colonial assembly to prosecute him. It refused.

In November 1734, Cosby got his own council to issue an arrest warrant against Zenger. Zenger was arrested and put in jail. But his wife took over the job of printing the *Weekly Journal*.

Zenger on Trial

The only court that would try the case against Zenger was the one created by Governor Cosby. Chief Justice DeLancey headed it. Two lawyers appeared to defend Zenger. They claimed that the court was illegal and biased. DeLancey disbarred both lawyers and appointed an inexperienced young lawyer to defend Zenger.

When Zenger's trial began in August 1735, he had been in jail nine months. In his opening statement, the prosecutor accused Zenger of being "a seditious person." He said Zenger had printed "a certain false, malicious, seditious, scandalous libel entitled *The New York Weekly Journal*." He had done this, said the prosecutor, "to the great disturbance of the peace." The prosecutor presented issues of the newspaper as evidence of seditious libel.

Under English law, the prosecutor just had to prove to the jury that Zenger had printed the newspaper. Chief Justice DeLancey would then decide if it was libelous.

Then, the unexpected happened. From the audience rose Andrew Hamilton, the most famous trial lawyer in the American colonies. The disbarred defense lawyers had arranged for him to take over the case. Zenger's young appointed attorney withdrew.

Hamilton admitted that Zenger had printed *The New York Weekly Journal*. But Hamilton argued that Zenger had the right to do this as long as what he printed was true.

Hamilton pointed to the charges against Zenger. They accused him of printing things that were "false." Hamilton said that if the prosecutor could prove the words were false, Hamilton would agree they were libelous.

Shocked at this "truth defense," Chief Justice DeLancey said Hamilton could not continue with it. Under English law, said DeLancey, the truth did not matter in libel cases.

"No, Mr. Hamilton," DeLancey ruled, "the jury may find that Zenger printed and published these papers, and leave it to the court to judge whether they are libelous."

But Hamilton ignored the chief justice. He boldly made his arguments directly to the jury. He asked, "Are we to believe that truth is a greater sin than falsehood?" If we leave the matter of libelous words up to judges, he continued, this would make "juries useless."

Hamilton told the jurors, "it is you that we must now appeal for witness to the truth." Hamilton argued that telling the truth did not cause governments to fall. Rather, he argued, "abuse of power" caused governments to fall.

Hamilton concluded by telling the jurors that if Zenger printed the truth, no libel had taken place, and they should find him not guilty. "Truth ought to govern the whole affair of libels," he said.

But Chief Justice DeLancey instructed the jury only to decide if Zenger printed the newspaper. Whether it contained libels, he told the jurors, would be a matter for the judges to decide.

The jury deliberated a short time and then announced Zenger was not guilty of printing and publishing libels. Thus, they went over the head of DeLancey and decided for themselves that what Zenger had printed was true. The crowd in the courtroom cheered as Chief Justice DeLancey left in disgust.

Freedom of the Press in the U.S.

On both sides of the Atlantic, the trial sparked debates about the meaning of freedom of the press. After the trial, royal officials in the colonies brought few seditious libel prosecutions. They were afraid that juries would refuse to convict. Colonial assemblies, however, continued with prosecutions.

After the American Revolution and the writing of the Constitution, the Bill of Rights was adopted. The First Amendment to the Constitution guaranteed that "Congress shall make no law . . . abridging the freedom of speech, or of the press . . ." Yet Congress in 1798 passed the Sedition Act, which prohibited printing most criticism of the U.S.

government or its elected leaders. This law expired in 1801, and its constitutionality was never tested in court.

But even the Sedition Act bowed to the Zenger decision. The law let juries decide in favor of the defendant if the printed words were true.

Prosecutions for seditious libel died out in the United States. Today, Americans consider it a basic right to be able to criticize government officials without fear of punishment. The U.S. Supreme Court cited the Zenger case in its landmark 1964 free-press decision of *New York Times v. Sullivan*. The court said that the Zenger case showed that Americans valued the right to complain about the government and their leaders.

For Discussion

1. What was seditious libel? What was its purpose? Why did English law say that the truth did not matter in trials for seditious libel?
2. What did “freedom of the press” mean under English law in 1700? Do you think English law protected freedom of the press? Why or why not?
3. What did the Zenger case decide? Why was the case important?

A C T I V I T Y

Rights, Rights, Rights

The Bill of Rights is the first 10 amendments to the U.S. Constitution. Below is a list of all the rights in the Bill of Rights. Imagine that these rights existed at the time of the Zenger trial.

In small groups, do the following:

1. Go through the List of Rights in the Bill of Rights.
2. Discuss and decide which of these rights would have applied to Zenger’s case.
3. Discuss and decide on the three most important of these rights.
4. Be prepared to report your findings and the reasons for your decisions.

List of Rights in the Bill of Rights

First Amendment

Freedom of speech
Freedom of religion
Freedom of the press
Freedom to assemble
Freedom to petition the government

Second Amendment

Right to bear arms

Third Amendment

Right not to have a soldier live in your house

Fourth Amendment

Protection from unreasonable searches or arrests

Fifth Amendment

Right to only be brought to trial by an indictment
Protection from being tried twice for the same crime
Protection from being a witness against yourself
Right to due process of law
Protection from having your property taken without just compensation

Sixth Amendment

Right to a speedy and public trial
Right to an impartial jury
Right to be informed of the charges against you
Right to ask questions of the witnesses against you.
Right to force witnesses to appear at your trial
Right to have an attorney defend you

Seventh Amendment

Right to a jury trial in civil cases

Eighth Amendment

Protection against too much bail
Protection against too heavy a fine
Protection from cruel and unusual punishments

Ninth Amendment

You have more rights than are listed here.

Tenth Amendment

All powers not given to the federal government are reserved for the states and the people.