

Zenger's Trial

"Why Am I in Jail?"

January 1735

The jail door clangs shut once again. I am alone again in my cell. Weeks have dragged by since I last walked the streets as a free man.

My wife Anna came to visit me today. We talked over plans for next week's issue of the *Journal*. While I've been in jail, Anna has taken charge of my newspaper.

Neither she nor I decide which articles will appear in the *Journal*. That's the job of the editor. His name is a secret, known only to me. If the government ever learned his name, the editor would also be jailed.

Let me say a bit about myself. My name is John Peter Zenger. Twenty-four years ago, I came to America from Germany. I was only 13 years old. Soon I found a job as an apprentice to a printer named William Bradford. I worked under him for eight years, learning the printing trade. Soon after, I started my own business. Today Bradford and I are rival publishers. He publishes the *Gazette*. I publish the *Journal*. I have been printing it for a little over a year.

Politics is serious business in New York. The colony is split into two competing political groups. My group is out of power at the moment. We want to get rid of Governor William Cosby. People like to read the *Journal* to see what we say about the governor. The paper has been a great success.

We write about how Cosby uses the colonial government to help his friends and hurt his enemies. The governor often

"forgets" to inform officials who do not support him about local government meetings. My paper reported that people were leaving New York. Under Governor Cosby, there's a danger of people losing their rights. They could become nothing more than slaves. For printing these things, I ended up in jail.

Less than 40 years ago, no New York printer could have published such writings. They could publish nothing without prior consent from the government. Prior consent meant that printers had to show every book or pamphlet to the government for approval before printing it. Since then the law has changed. Now government officials cannot stop me from printing something. But they can punish me if what I print breaks any laws.

I'm in jail because the attorney general, the chief law officer in the colony, says I have broken the law. He says the *Journal's* attacks on the governor went too far. He claims that I have not given Cosby the respect that a governor deserves.

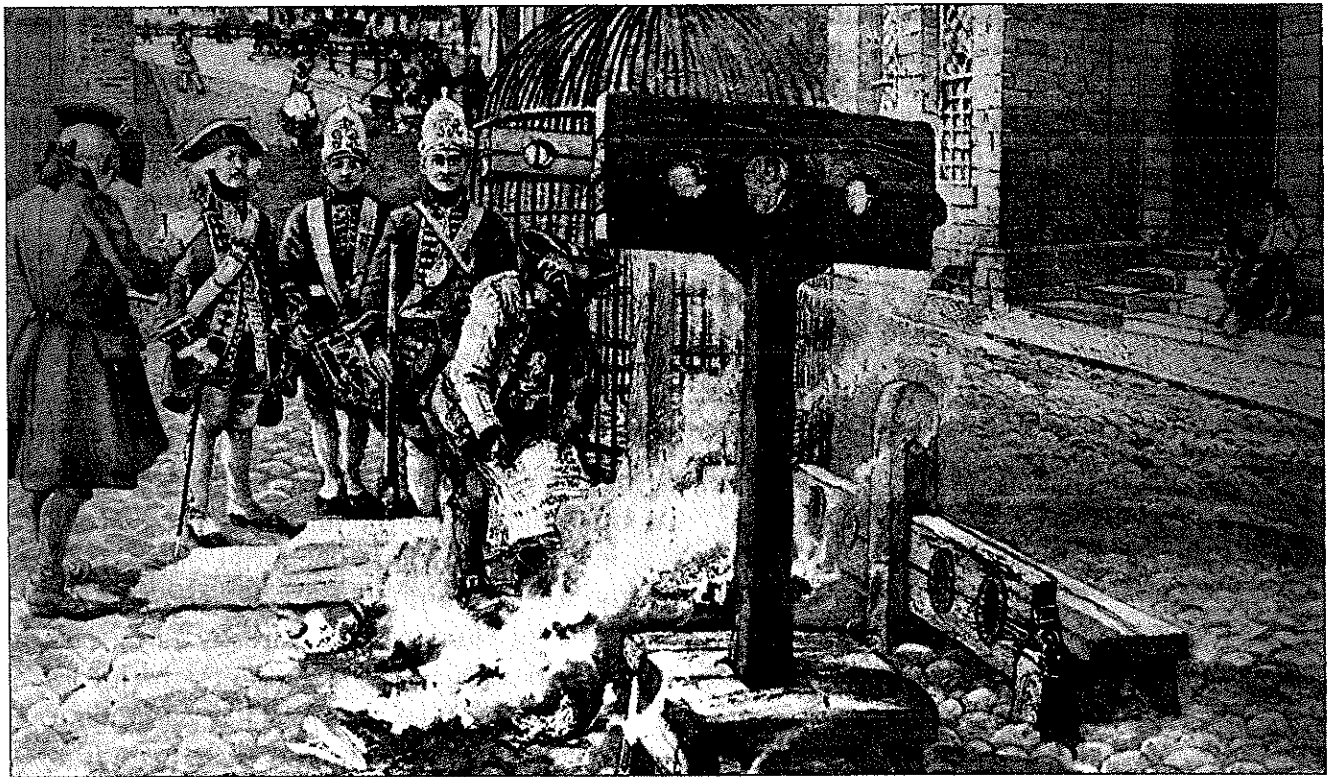
Under our British law, this offense is called seditious libel. Libel is a published statement that hurts someone's reputation. Sedition is trying to cause the overthrow of a government. So seditious libel is the crime of trying to overthrow a government by hurting its reputation. I have been charged with this crime.

Let the Trial Begin

August 4, 1735 (midday)

When I awoke this morning, I was very nervous. I didn't know what to expect at my trial. If I am convicted, I could stay in jail and lose my business. But when I entered the courtroom, I began to feel better. The room was packed. I could see that most of the people were on my side.

When a jury was chosen, I began to breathe easier. At least seven of the twelve men on the jury are of Dutch descent.



Americans feel the power of British rule. Angry at coverage, British soldiers burned John Peter Zenger's newspapers in New York in 1734.

The Dutch are no friends of the governor. They're still suspicious of our English rulers. Every Dutch person remembers that this was once a Dutch town called New Amsterdam. It has been just 70 years since the English seized control and renamed the town New York.

The two judges had a fearsome look. I could tell they were not on my side. James De Lancey, the Chief Justice, is a close friend of Governor Cosby.

Andrew Hamilton of Philadelphia is my attorney. Hamilton is a high official in Pennsylvania's government and one of the best lawyers in the colony. If anyone can win my freedom, he can.

First to speak was the attorney general, Richard Bradley. He presented the case against me. He began by reading the words I had printed. He said that the *Journal's* attacks on Cosby were harsh, especially passages about the governor having denied people a fair trial and having robbed some

men of their votes. The attorney general called the words "false, scandalous, and seditious libel."

He told the jurors about the law of libel. He said society would suffer if people were allowed to criticize the government too sharply. It would "create differences among men" and discontent among the people. It might also cause "great bloodshed between the party libeling and the party being libeled."

The attorney general expected to call my sons and my employee to prove that I had printed the "scandalous" newspapers. But my attorney, Mr. Hamilton, said not to bother. Hamilton freely admitted that I had published them.

The attorney general couldn't believe what he heard. He seemed to think the trial was over then and there. But Hamilton insisted that what I had printed was true and, therefore, was not libelous.

Well, that caused quite a scene. Both

Bradley and the two judges said that Hamilton didn't know what he was talking about. Truth had nothing to do with it! Even if my words were true, they were still libelous, said Bradley. "Indeed," he went on, "the law says their being true is an aggravation of the crime"—it makes the crime worse!

Hamilton was very polite, but disagreed. He said free men have a right "to complain when they are hurt." He also said that people must be allowed to warn others against abuses of power by those in authority.

The chief justice tried to stop Hamilton from talking about "truth." But Hamilton ignored him and spoke directly to the jury. He said that the jurors were New York men and knew as well as anyone that what I had printed was the truth. He told the jurors: "In your justice lies our safety."

Free At Last

August 4, 1735 (evening)

The trial is over. I have won! Even though I must spend one more night in jail, I am filled with happiness. Hamilton was brilliant. He managed to persuade the jury to ignore both the law and the judges!

My lawyer had to overcome two points of law. One was about "truth." Under our present laws, a statement can be true and still be libelous. The law is only concerned about the damage a statement can do, not whether it is true or false. The attorney general was right about that.

The other point of law is about the role of juries. In a trial for libel, there are two issues to be decided. First, what are the facts in the case? Did I print the newspapers or not? Second, what is the law controlling the case? Was what I printed really libel? Under our English law, the jury's job is to settle only the first point. The judge alone decides the second point.

Since Hamilton had already admitted that I published the statements, the jurors' job seemed to be simple. They had only to declare me guilty. The only way Hamilton could win my case was to make the jurors see that the law is not everything. There is also justice. Was it fair for me to be punished for printing the truth about the governor's bad deeds? If we New Yorkers cannot speak out against bad rulers, how can we preserve our freedoms?



Zenger's trial became a landmark for freedom of the press in America. Ably defended by Andrew Hamilton, Zenger was acquitted by a colonial jury.

Hamilton appealed to the jurors' sense of fairness. He said: "Jurymen are to see with their own eyes, to hear with their own ears." He said they should use their own consciences and understandings.

His closing speech was very powerful. He said that the issue was not just a case involving me, a poor printer. It was not just a case that would affect New York. The consequences of the jury's decision would affect every free man living in the British colonies. The issue was not of libel, but of liberty.

The jurors ignored the judges' instructions. Their verdict was: NOT GUILTY. What joy I felt! The courtroom crowd gave three loud cheers to show that they agreed with the jury's decision.

A Lasting Effect

After the trial, Zenger went back to publishing the *Journal*. Governor Cosby died the next year. The next governor was more popular, and the political battles cooled down. Before long, fewer people were reading the *Journal*. Without a governor like William Cosby to write about, many said the paper wasn't as interesting to read.

Zenger died in 1746, eleven years after his trial. First his wife and then one of his sons kept the paper going for several years. In 1751, his son finally shut it down.

It would be untrue to say that a new dawn of liberty followed Zenger's victory in court. The law of seditious libel remained in use. Other printers and editors were convicted and sent to jail. However, the authorities everywhere were more careful. They used the law against the press less often.

After the American Revolution of 1776, the press began to win new freedoms. In the 1790s, Congress passed a law that included the two points Andrew Hamilton made in Zenger's trial. First, a true statement could not be libel. Second, the jury in a libel case could decide both the facts and the law.

Oddly enough, the law that accepted those two points was a law to punish seditious libel. It was called the Sedition Act of 1798. The United States was close to war with France. The Act was used to fine or imprison anyone who openly opposed the war or the actions of the United States government.

The Sedition Act expired after three years, but it had caused quite a stir. Many people argued that democracy depended on the right to criticize the government. They claimed that the act was a violation of the freedoms of speech and press.

In the Late 20th Century

Over the years, the freedom of the press has grown stronger. If Zenger had the protections that Americans have today, he would never have gone to jail.

The most important protection that we have in this country is the First Amendment. It is part of the Bill of Rights, adopted in 1791. The First Amendment says, "Congress shall make no law ... abridging the freedom of speech, or of the press." This right means that Congress cannot pass any laws that would limit what a person could say, write, or record. Under the First Amendment, the government must respect these rights.

If Zenger were alive today, freedom of the press would protect his right to publish his opinions in a newspaper or other publication. As new types of media have developed, press freedom has been extended to cover them as well. Today Zenger might argue against the government by calling in to a radio talk show. He might record a song or make a film or video to express his views. He could also post his ideas on a computer bulletin board. There are many ways for people to exercise their freedoms of speech and press. The trial of John Peter Zenger played an early role in making these freedoms more widely available.