

Chapter 10

The Zenger Trial

The Jury Returns a Verdict in the Seditious Libel Trial of John Peter Zenger August 4, 1735

In 1732 the English king appointed William Cosby governor of the colony of New York. A man destined to make enemies, Cosby was arrogant, arbitrary, avaricious, autocratic, and abusive of his authority, to exhaust only the first letter of the alphabet. His opponents had comparable lists for the other 25. Within months of his arrival in New York, the colony was divided between Cosby supporters and those of Lewis Morris, a powerful New York City figure whom Cosby had removed from the colony's supreme court.

The *New York Gazette*, long the colony's only newspaper, chose to support the governor and his policies. Cosby's opposition responded by creating the *New York Weekly Journal* in November 1733, published by John Peter Zenger. With articles critical of arbitrary political power in general and of Cosby in particular, along with satirical advertisements, the *Journal* carried on a vigorous campaign against the governor. Bent on silencing Zenger, Cosby made his first attempt in January 1734—a suit against Zenger for publishing “scandalous” songs—which failed when the jury refused to indict. Frustrated, Cosby next ordered four issues of the *Journal* “burnt by the hands of the Common Hangman” of New York. When this, too, failed to deter the *Journal's* criticism, he determined to move against Zenger himself.

First Impressions

Factions and Tumults

William Cosby faced a dilemma. He could ignore Zenger or he could silence him. With either choice he risked inciting his opponents to new heights. But could he afford to tolerate libelous attacks that undermined his ability to govern? His own responsibilities and the law argued that he could not, and should not, permit his efforts to administer the colony to be subverted by a vocal opposition. To silence Zenger, the governor decided to rely on the English legal opinions stated in Sources 1 and 2 and the “libelous” material in Sources 3, 4, and 5.

Source 1 Sir John Holt, lord chief justice, King's Bench, 1704

To say that corrupt officers are appointed to administer affairs is certainly a reflection on the government. If people should not be called to account for possessing the people with an ill opinion of the government, no government can subsist, for it is necessary for all governments that the people should have a good opinion of it. And nothing can be worse to any government than to endeavor to procure animosities; as to the management of it, this has been always looked upon as a crime and no government can be safe without it be punished.

Source 2 Legal scholar William Hawkins, *A Treatise of the Pleas of the Crown*, 1721

Nor can there be any doubt but that a writing which defames a private person only is as much a libel as that which defames persons entrusted in a public capacity, in as much as it manifestly tends to create ill blood, and to cause a disturbance of the public peace; however, it is certain that it is a very high aggravation of a libel that it tends to scandalize the government, by reflecting on those who are entrusted with the administration of public affairs, which does not only endanger the public peace, as all other libels do, by stirring up the parties immediately concerned in it to acts of revenge, but also has a direct tendency to breed in the people a dislike of their governors, and to incline them to faction and sedition.

Source 3 *The New York Weekly Journal*

Numb. 2. Monday, November 12, 1733

There are two sorts of monarchies, an absolute and a limited one. In the first, the liberty of the press can never be maintained, it is inconsistent with it; for what absolute monarch would suffer any subject to *animadvert* on his actions when it is in his power to declare the crime and to nominate the punishment? This would make it very dangerous to exercise such a liberty. Besides the object against which the pens must be directed is their sovereign, the sole supreme magistrate; for there being no law in those monarchies but the will of the prince, . . . what the minister there acts being in obedience to the prince, he ought not to incur the hatred of the people. . . . Besides, in an absolute monarchy, the will of the prince being the law, a liberty of the press to complain of grievances would be complaining against the law and the constitution, . . . so that under an absolute monarchy, I say, such a liberty is inconsistent with the constitution, having no proper subject to politics . . . and if exercised would incur a certain penalty.

But in a limited monarchy, as England is, our laws are known, fixed, and established. They are the straight rule and sure guide to direct the king, the ministers, and . . . his subjects: And therefore an offense against the laws is such an offense against the constitution as ought to receive a proper adequate

punishment; the several constituents of the government, the ministry, and all subordinate magistrates, having their certain, known, and limited sphere in which they move; one part may certainly err, misbehave, and become criminal, without involving the rest or any of them in the crime or punishment.

But some of these may be criminal, yet above punishment . . . since most reigns have furnished us with too many instances of powerful and wicked ministers, some of whom by their power have absolutely escaped punishment. . . .

That *might overcomes right*, or which is the same thing, that might preserves and defends men from punishment, is a proverb established and confirmed by time and experience. . . . It is this therefore which makes the liberty of the press in a limited monarchy and in all its colonies . . . proper, convenient, and necessary. . . .

It is indeed urged that the liberty of the press ought to be restrained because not only the actions of evil ministers may be exposed, but the character of good ones traduced. . . . But when did calumnies and lies ever destroy the character of one good minister? Their benign influences are known, tasted, and felt by everybody: Or if their characters have been clouded for a time, yet they have generally shined forth in greater luster: Truth will always prevail over falsehood.

The facts exposed are not to be believed because said or published; but it draws people's attention, directs their view, and fixes the eye in a proper position that everyone may judge for himself whether the facts are true or not.

Source 4 *The New York Weekly Journal*

Numb. 13. Monday, January 28, 1734

THE PEOPLE of this city and province think, . . . as matters now stand, that their LIBERTIES and PROPERTIES are precarious, and that SLAVERY is like to be entailed on them and their posterity, if some past things be not amended.

Source 5 *The New York Weekly Journal*

Numb. 23. Monday, April 8th, 1734.

To the Editor:

I was at a public house some days since in company with some persons that came from New York: Most of them complained of the deadness of trade: Some of them laid it to the account of the repeal of the Tonnage Act . . . which has been almost the ruin of that town, by paying the Bermudians about 12,000 [pounds sterling] a year to export those commodities which might be carried in their own bottoms. They said the Bermudians were an industrious frugal people who bought no one thing in New York, but lodged the whole freight money in their own island, by which means, since the repeal of that Act, there has been taken from New York above 90,000 [pounds

sterling]. . . . But this is not all; this money being carried away which would otherwise have circulated in this province and city, and have been paid to the baker, the brewer, the smith, the carpenter, the shipwright, the boatman, the farmer, the shopkeeper, etc., has deadened our trade in all its branches, and forced our industrious poor to seek other habitations; so that within these three years there has been above 300 persons have left New York; the houses stand empty, and there is as many houses as would make one whole street with bills upon their doors: And this has been as great a hurt as the carrying away the money. . . .

Another replies, it is the excessive high wages you tradesmen take prevents your being employed: Learn to be contented with less wages, we shall be able to build, and then no need to employ Bermudians. Very fine, replied the first, now the money is gone you bid us take less wages, when you have nothing to give us, and there is nothing to do.

Says another, I know nobody gets estates with us but the lawyers; we are almost come to the pass that an acre of land can't be conveyed under half an acre of parchment. The fees are not settled by our legislature, and everybody takes what they please; and we find it better to bear the disease than to apply for a remedy that's worse. . . .

One of our neighbors being in company, observing the strangers full of complaints, endeavored to persuade them to move into Jersey. To which it was replied, that would be leaping out of the frying pan-into the fire; for, says he, we both are under the same Governor. . . .

One that was then moving to Pennsylvania (to which place it is reported several considerable men are moving) expressed in terms very moving much concern for the circumstances of New York, seemed to think them very much owing to the influence that some men had in the administration; said he was now going from them, and was not to be hurt by any measures they would take; but could not help saving some concern for the welfare of his countrymen, and should be glad to hear that the Assembly would exert themselves as became them, by showing that they have the interest of their country more at heart than the gratification of . . . their members, or being at all affected by the smiles or frowns of a governor. . . .

You, says he, complain of the lawyers, but I think the law itself is at an end: We see men's deeds destroyed, judges arbitrarily displaced, new courts erected without consent of the legislature, by which it seems to me trials by juries are taken away when a governor pleases; men of known estates denied their votes contrary to the received practice, the best expositor of any law: Who is then in that province that call anything his own, or enjoy any liberty longer than those in the administration will condescend to let him do it?

One of our company replied; if these are illegal impositions, why don't your Assembly impeach the authors of them. *Impeach!* says a Gentleman (once an officer of the Customs) would you have the mob and *canaille* impeach gentlemen? American assemblies, that have only the power to make little paltry by-laws, pretend to the power of a British Parliament! . . .

Give me leave to tell you, Sir, you talk indecently of those that differ from you: There are many among them of equal if not superior knowledge to any of your party, and more of superior estates; and our assemblies are very far from deserving the name of *canaille* or dregs of the people. . . .

The Gentleman was going on upon the duty of an Assembly: But one of the company desired him to leave his politics to another time; which makes me unable to say more, but that I am,

Sir, etc.
No Courtier

The Zenger Trial

In November 1734 Cosby ordered the sheriff of New York to arrest Zenger for libels "tending to raise factions and tumults among the people . . . , inflaming their minds with contempt of His Majesty's government, and greatly disturbing the peace thereof." In the first two months of Zenger's imprisonment, Cosby delayed formal charges and ordered the chief justice to disbar two prominent attorneys from the Morris faction who were preparing his defense. The court then appointed a Cosby supporter, attorney John Chambers, to defend Zenger, whose trial began on August 4, 1735. Chambers's opening remarks were bland, and the judges seemed confident of convicting the publisher. But Chambers then startled the court by introducing as his cocounsel Philadelphia lawyer Andrew James Hamilton, considered the most skilled and eloquent attorney in the New World.

Source 6 Transcript of the trial of John Peter Zenger



10.1 Links to Sites concerning the John Peter Zenger Trial

Mr. Attorney. May it please Your Honors, and you, gentlemen of the jury; the information now before the Court, and to which the Defendant Zenger has pleaded not guilty, is an information for printing and publishing a false, scandalous, and seditious libel, in which his Excellency the Governor of this Province, who is the King's immediate representative here, is greatly and unjustly scandalized as a person that has no regard to law nor justice. . . . This . . . libeling is what has always been discouraged as a thing that tends to create differences among men, ill blood among the people, and oftentimes great bloodshed between the party libeling and the party libeled. There can be no doubt but that you gentlemen of the jury will have the same ill opinion of such practices as the judges have always shown on such occasions. . . .

Mr. Hamilton. May it please Your Honor: I am concerned in this cause on the part of Mr. Zenger the Defendant. . . . I cannot think it proper for me (without doing violence to my own principles) to deny the publication of a complaint which I think is the right of every free-born subject to make when the matters so published can be supported with truth; and therefore I'll save Mr. Attorney the trouble of examining his witnesses to that point; and I do (for my client) confess that he both printed and published the two newspapers set forth in the information, and I hope in so doing he has committed no crime.

Mr. Chief Justice. Well Mr. Attorney, will you proceed?

Mr. Attorney. Indeed sir, as Mr. Hamilton has confessed the printing and publishing these libels, I think the jury must find a verdict for the King; for supposing they were true, the law says that they are not the less libelous for that; nay indeed the law says their being true is an aggravation of the crime.

Mr. Hamilton. Not so neither, Mr. Attorney, there are two words to that bargain. I hope it is not our bare printing and publishing a paper that will make it a libel: You will have something more to do before you make my client a libeler; for the words themselves must be libelous, that is, false, scandalous, and seditious or else we are not guilty. . . .

I agree with Mr. Attorney that government is a sacred thing, but I differ very widely from him when he insinuates that the just complaints of a number of men who suffer under a bad administration is libeling that administration. . . .

Mr. Chief Justice. You cannot be admitted, Mr. Hamilton, to give the truth of a libel as evidence. A libel is not to be justified; for it is a nevertheless a libel that it is true.

Mr. Hamilton. I am sorry the Court has so soon resolved upon that piece of law; I expected first to have been heard to that point. . . .

Mr. Chief Justice. The law is clear, that you cannot justify a libel.

Mr. Hamilton. . . . [I]s it not against common sense that a man should be punished in the same degree for a true libel (if any such thing could be) as for a false one? I know it is said that truth makes a libel the more provoking, and therefore the offense is the greater, and consequently the judgment should be the heavier. Well, suppose it were so, and let us agree for once that truth is a greater sin than falsehood: Yet as the offenses are not equal, and as the punishments are arbitrary, that is, according as the judges in their discretion shall direct to be inflicted; . . . is it not absolutely necessary that they should know whether the libel is true or false, that they may by that means be able to proportion the punishment? For would it not be a sad case if the judges, for want of a due information, should chance to give as severe a judgment against a man for writing or publishing a lie as for writing or publishing a truth? And yet this, as monstrous and ridiculous as it may seem to be, is the natural consequence of Mr. Attorney's doctrine that truth makes a worse libel than falsehood. . . .

Mr. Chief Justice. Mr. Hamilton, the Court is of the opinion, you ought not to be permitted to prove the facts in the papers: These are the words of the book, "It is far from being a justification of a libel, that the contents thereof are true, or that the person upon whom it is made had a bad reputation, since the greater appearance there is of truth in any malicious invective, so much the more provoking it is."

Mr. Hamilton. These are Star Chamber cases, and I was in hopes that practice had been dead with the Court.

Mr. Chief Justice. Mr. Hamilton, the Court have delivered their opinion, and we expect you will use us with good manners; you are not permitted to argue against the opinion of the Court.

Mr. Hamilton. With submission, I have seen the practice in very great courts, and never heard it deemed unmannerly to—

Mr. Chief Justice. After the Court have declared their opinion, it is not good manners to insist upon a point in which you are overruled.

Mr. Hamilton. I will say no more at this time; the Court I see is against us in this point; and that I hope I may be allowed to say.

Mr. Chief Justice. Use the Court with good manners, and you shall be allowed all the liberty you can reasonably desire.

Mr. Hamilton. I thank Your Honor. Then, gentlemen of the jury, it is to you we must now appeal for witnesses to the truth of the facts we have offered

and are denied the liberty to prove; and let it not seem strange. that I apply myself to you in this manner, I am warranted so to do both by law and reason. The law supposes you to be summoned out of the neighborhood where the fact is alleged to be committed; and the reason of your being taken out of the neighborhood is because you are supposed to have the best knowledge of the fact that is to be tried. And were you to find a verdict against my client, you must take upon you to say the papers referred to in the information, and which we acknowledge we printed and published, are false, scandalous, and seditious; but of this I can have no apprehension. You are citizens of New York; you are really what the law supposes you to be, honest and lawful men; and, according to my brief, 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 suppression of evidence ought always to be taken for the strongest evidence; and I hope it will have that weight with you. . . .

For though I own it to be base and unworthy to scandalize any man, yet I think it is even more villainous to scandalize a person of public character, and I will go so far into Mr. Attorney's doctrine as to agree that if the faults, mistakes, nay even the vices of such a person be private and personal, and don't affect the peace of the public, or the liberty or property of our neighbor, it is unmanly and unmannerly to expose them either by word or writing. But when a ruler of a people brings his personal failings, but much more his vices, into his administration, and the people find themselves affected by them, either in their liberties or properties, that will alter the case mightily, and all the high things that are said in favor of rulers, and of dignities, and upon the side of power, will not be able to stop people's mouths when they feel oppressed. . . . It is true that in times past it was a crime to speak truth, and . . . many worthy and brave men suffered for so doing; and yet even . . . in those bad times, a great and good man durst say, what I hope will not be taken amiss of me to say in this place; to wit, "The practice of informations for libel is a sword in the hands of a wicked king and an arrant coward to cut down and destroy the innocent; the one cannot because of his high station, and the other dares not because of his want of courage, revenge himself in another manner."

Mr. Attorney. Pray Mr. Hamilton, have a care what you say, don't go too far neither, I don't like those liberties.

Mr. Hamilton. Sure, Mr. Attorney, you won't make any applications; all men agree that we are governed by the best of kings. . . .

But to proceed; I beg leave to insist that the right of complaining or remonstrating is natural; and the restraint upon this natural right is the law only, and those restraints can only extend to what is false: For it is truth alone which can excuse or justify any man for complaining of bad administration. . . .

It is agreed upon by all men that this is a reign of liberty, and while men keep within the bounds of truth, I hope they may with safety both speak and write their sentiments of the conduct of men in power. I mean of that part of their conduct only which affects the liberty or property of the people under their administration; were this to be denied, then the next step may make them slaves: For what notions can be entertained of slavery beyond that of suffering

the greatest injuries and oppressions without the liberty of complaining; or if they do, to be destroyed, body and estate, for so doing? . . .

If a libel is understood in the large and unlimited sense urged by Mr. Attorney, there is scarce a writing known that may not be called a libel, or scarce a person safe from being called to an account as a libeler: For Moses, meek as he was, libeled Cain; and who is it that has not libeled the Devil? For according to Mr. Attorney, it is no justification to say one has a bad name. . . . How must a man speak or write, or what must he hear, read, or sing? Or when must he laugh, so as to be secure from being taken as a libeler? . . .

I hope to be pardoned, sir, for my zeal upon this occasion. . . . And you see I labor under the weight of many years, and am borne down with great infirmities of body; yet old and weak as I am, I should think it my duty . . . to go to the utmost part of the land where my service could be of any use in assisting to quench the flame of prosecutions upon informations set on foot by the government to deprive people of the right of remonstrating of the arbitrary attempts of men in power. Men who injure and oppress the people under their administration provoke them to cry out and complain; and then make that very complaint the foundation for new oppressions and prosecutions. . . .

But to conclude; the 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 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. . . . [E]very man who prefers freedom to a life of slavery will bless you and honor you as men who 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 by speaking and writing truth.

Mr. Chief Justice. Gentlemen of the jury. The great pains Mr. Hamilton has taken to show how little regard juries are to pay to the opinion of the judges . . . is done no doubt with a design that you should take very little notice of what I might say upon this occasion. I shall therefore only observe to you that as the facts or words in the information are confessed: The only thing that can come in question before you is whether the words as set forth in the information make a libel.

Source 7 John Peter Zenger's description of the verdict

The jury withdrew and in a small time returned and being asked by the Clerk whether they were agreed of their verdict, and whether John Peter Zenger was guilty of printing and publishing the libels in the information mentioned? They answered by Thomas Hunt, their foreman, "Not Guilty," upon which there were three huzzas in the hall which was crowded with people and the next day I was discharged from my imprisonment.

Source 8 Attorney Andrew James Hamilton, 1735

Power may justly be compared to a great river, while kept within its due bounds, is both beautiful and useful: but when it overflows its banks, it is then too

impetuous to be stemmed, it bears down all before it and brings destruction and desolation wherever it comes. If then this is the nature of power, let us at least do our duty, and like wise men (who value freedom) use our utmost care to support liberty, the only bulwark against lawless power, which in all ages has sacrificed to its wild lust and boundless ambition the blood of the best men that ever lived.

Second Thoughts

“A Principal Pillar in a Free Government”



10.2 Considering
Zenger

Many American historians have seen the Zenger trial as a landmark case, establishing truth as a defense and setting a precedent for the freedom of the press. Andrew James Hamilton is said to have conducted his defense according to the law of the future, which he thereby helped to create.

Source 9 Attorney “Anglo-Americanus,” *Barbados Gazette*, July 1737

The right of remonstrating or publishing just complaints the barrister [Hamilton] thinks the right of all freemen: and so think I, provided such remonstrances are made in a lawful way. . . . I know the law books assert the right of complaining to the magistrates and courts of justice, to the Parliament, to the King himself; but the right of complaining to the neighbors is what has not occurred to me. After all, I would not be thought to derogate . . . from that noble privilege of a free people, the liberty of the press. I think it the bulwark of all other liberty, and the surest defense against tyranny and oppression. But still it is a two-edged weapon, capable of cutting both ways, and is not therefore to be trusted in the hands of every discontented fool or designing knave. Men of sense and address (who alone deserve public attention) will ever be able to convey proper ideas to the people, in a time of danger, without running counter to all order and decency. . . .

Now I would be very glad to know what the neighbors can do towards effecting the desired reformation that will be attended with so good success and so few ill consequences as a regular application to His Majesty would be. . . . I confess it surpasses my comprehension to conceive what the neighbors inspired with weekly revelations from the city journalist can do with their governor and Assembly. . . .

In a word; I shall agree with the barrister that the liberty of exposing and opposing arbitrary power is the right of a free people; and he ought at the same time to admit that the order of things and the peace of society require that extraordinary means should not be used for this purpose till the ordinary have failed.

Source 10 James Alexander’s response to “Anglo-Americanus,” *Pennsylvania Gazette*, November 10, 1737

THE FREEDOM OF SPEECH is a principal pillar in a free government: when this support is taken away the constitution is dissolved, and tyranny is erected on

its ruins. Republics and limited monarchies derive their strength and vigor from a popular examination into the actions of the magistrates. This privilege in all ages has been and always will be abused. The best of princes could not escape the censure and envy of the times they lived in. But the evil is not so great as it may appear at first sight. A magistrate who sincerely aims at the good of the society will always have the inclinations of a great majority on his side; and impartial posterity will not fail to render him justice.

These abuses of the freedom of speech are the excrescences of liberty. They ought to be suppressed; but to whom dare we commit the care of doing it? An evil magistrate entrusted with a POWER to punish words is armed with a WEAPON the most destructive and terrible. Under pretense of pruning off the exuberant branches, he frequently destroys the tree.

Source 11 John Oldmixon, *The British Empire in America*, 1741

The information charges Zenger with printing and publishing a false, malicious, scandalous, and seditious Libel, called the *New-York Weekly Journal*. Thus the Attorney General inserted some Parcels of the Paper before-mentioned (in his argument to the Court). . . . It imply'd, that the Administration was so oppressive, that the People were leaving the Province to avoid it; that their Liberties and Properties are precarious, and Slavery is like to be intailed on them and their Posterity. . . . Now if all these things were true, could there be a greater Libel on Majesty itself, than to shew that a Man, guilty of such Oppression, had been kept in the Government so long as this Governor had been at New York? If all or any of these things were true, what Madness was it for him to expose, I will not say his own Dignity, but that of his Office, by staking it against a Croud of Witnesses, offering to prove he was unworthy of it by various Acts of Power?

I am sensible that this Attorney-General said no more than what the Judgments of the Courts . . . established for Law, That to speak evil of Dignities is never the less, nay, that it is the more criminal for being true; but . . . Common Sense is directly contrary in this to Common Law.

Source 12 Salma Hale, *History of the United States*, 1841

Zenger pleaded not guilty; and . . . on the day of the trial, Andrew Hamilton, an eloquent lawyer of Philadelphia, who had secretly been engaged appeared in court to speak in his defence. His friends anticipated that . . . all evidence offered to prove the truth of the publications would be rejected. . . . The evidence was offered and rejected; but the jury—after listening with delight to a bold and animated address from the eloquent advocate, in which he animadverted freely on the decision of the court, appealed to their own knowledge of the truth of the charges, and uttered, in fervid language, those cardinal principles of universal liberty and free discussion, which, though then heresies, are now acknowledged doctrines—gave a verdict of acquittal. Applause resounded through the hall. The court threatened to imprison the leader of the tumult; but from the same lips an applauding shout, longer and louder than before, again burst forth. Mr. Hamilton was conducted from the hall to a splendid entertainment. A salute of cannon was fired at his departure from the city.

Source 13 George Bancroft, *History of the United States of America*, 1856

A newspaper was established to defend the popular cause; and, in about a year after its establishment, its printer, John Peter Zenger, was imprisoned, on the charge of publishing false and seditious libels. . . . At the trial, the publishing was confessed; but the aged Andrew Hamilton . . . justified the publication by asserting its truth. . . .

A patriot of the revolution esteemed this trial to have been the morning star of the American revolution. But it was not one light alone that ushered in the dawn of our independence: the stars of a whole constellation sang together for joy.

Source 14 Carl Degler, *Out of Our Past*, 1970

The trial of John Peter Zenger in New York in 1735 is justly considered a landmark in the history of freedom. . . .

It is true that censorship of the press, particularly by the assemblies, and even trial for libel in which truth was not accepted as a defense, occurred after the Zenger case. But there were no more trials for seditious libel in New York for the rest of the colonial period. Moreover, the trial and its outcome produced repercussions in England. Radicals and Whigs, won over by the brilliant colonial innovation in behalf of a free press, began a campaign in support of American liberty which was to reach its full power at the time of the Revolution. . . .

The principle inherent in the Zenger decision was not quickly implemented in America. . . . It was not until 1798, during the Jeffersonians' powerful attacks upon the theory of the Sedition Act that the modern view of freedom of the press was worked out. Heretofore, all sides to the question, including the Jeffersonians themselves, had accepted the idea that a government had a right to suppress statements critical of its officials. The new view, going beyond that set forth in Zenger, asserted that if a society was to be considered free it could not suppress criticism under the old rubrics of "seditious libel" or "a licentious press." In fact, the crime of seditious libel, i.e., bringing government into disrepute by attacking its officials was abandoned. The concept that truth was a defense in a libel suit—the central principle in the Zenger case—was established in New York law in the case of Henry Coswell in 1804. . . . The doctrine was reinforced by legislative act in 1805 and inserted, for good measure, in the state constitutions of 1821 and 1846. It was not until 1791, however, with Fox's Act, that English juries were granted the right to determine whether the writing in question was libelous or not, and it was not until 1846 that truth was accepted as a defense in a libel suit under English law.



10.3 CNN Inter-
active: Speaking
Freely

Source 15 Stanley Nider Katz, editor of *A Brief Narrative of the Case and Trial of John Peter Zenger*, 1972

Modern textbooks of American history continue to describe the trial as one of the foundation stones of the freedom of the press, and as an important victory of the popular will over the tyrannical attitudes of aristocratic government.

But recent investigations of the trial and the surrounding circumstances bring all of this into question. Zenger and his associates, it becomes clear, were

neither political democrats nor radical legal reformers. They were, in fact, a somewhat narrow-minded political faction seeking immediate political gain rather than long-term governmental or legal reform. Nor was the case a landmark in the history of law or of the freedom of the press in the sense in which it has been discussed. The reformation of the law of libel and the associated unshackling of the press came about, when they did, as if Peter Zenger had never existed.

Questioning the Past

1. Defend Governor Cosby's decision to prosecute Zenger. What other course or courses of action might the governor have taken?
2. Why should an individual be permitted to criticize the actions of duly constituted authority? Do not such complaints, whether true or false, undermine the public welfare by weakening government?
3. James Alexander stated that the "freedom of speech is a principal pillar of free government." Defend this position. What are other "pillars" of free government? Are any of them as important as freedom of speech? Why or why not?
4. George Bancroft notes that the Zenger verdict has been hailed as "the morning star" of the American Revolution. What possible impact could this decision have had in either heralding or hastening the Revolution?
5. Was the Zenger case a "landmark in the history of freedom," as Degler asserts? Argue both sides of the question.