

THE CASE OF JOHN PETER ZENGER (1735)

Governor William Cosby of New York was angry--very angry. How dare this newspaper make fun of him? How dare it say he had cheated people to get rich? Nobody could say that he had removed judges from office for no good reason and replaced them with his friends. He wouldn't stand for it. No, sir. He would stop it right away. He would order copies of that newspaper to be burned in the streets and the publisher thrown into jail.

What was all the fuss about? At this time, New York was an English colony. The colonists did not have the right to elect their own governor of New York. The people of New York knew very little about Cosby. At first he seemed all right. He gave parties with lots of good food and wine for everyone. Cosby must have plenty of money, people said. He wouldn't steal from them like some governors would.

However, the people of New York soon changed their minds about Cosby. He had been accused of taking money from some leading citizens and seemed to be involved in some shady deals. He just wasn't behaving as a governor should. Some people in New York wanted to fight against Cosby and what he was doing. Some felt that the best way to do it was to start a newspaper that would "show him up."

John Peter Zenger had come to the colonies from Germany when he was 13 years old. In 1734, Peter Zenger was furious over the way that Cosby was running the colonies. Zenger was the printer and publisher of the *New York Weekly Journal*. Zenger did not like Cosby and wasn't afraid to print the truth. Zenger printed articles in the newspaper attacking the governor and the things that he was doing. The paper charged that the Governor was denying people's rights and that the people would lose their liberties under Governor Cosby.

Other men who wrote for Zenger's newspaper did not sign their real names to their articles. It was too dangerous. The only one who used his real name was Zenger. He was listed as the printer.

Governor Cosby became very angry with the newspaper, and he ordered Zenger to be arrested. He couldn't arrest the other men because he didn't know their names. Zenger was thrown into jail, November 17, 1734. At first he was not allowed to see anyone. Later, the judge allowed Zenger to talk to his wife and others through a hole in the door. Zenger's wife printed the newspaper all the time Zenger was in jail. Zenger was questioned many times. Who wrote the other articles in his newspaper and who had paid to have it printed? Zenger was firm. He would not give the names of his friends.

Zenger was kept in jail for nearly nine months until his trial the following August. The charges against him were that he had printed lies about Governor Cosby and damaging articles about other government officials. Criticizing the government was against the law, even if what was printed was true. The judge in this case was a friend of Cosby. It was almost certain that Zenger would be found guilty.

Zenger's friends found a lawyer in Philadelphia to represent him. The lawyer was elderly and in bad health. He had not intended to take new cases, but he believed that this case was worth fighting for.

When the judge saw who was going to represent Zenger, he could hardly believe his eyes. This was Andrew Hamilton, one of the greatest lawyers in all the colonies. Was he really going to defend a poor printer against Governor Cosby?

That was what Hamilton intended to do. He began to speak, and his voice was strong. He did not deny that Zenger had printed the articles against Cosby. But, he said, the government's lawyer had to prove that the articles were not true. If the articles were true, Hamilton said, then Zenger wasn't guilty of anything.

The government's lawyer became angry. He shouted and got red in the face. But he knew that he couldn't prove that the articles weren't true.

Hamilton told the jury that it wasn't just Zenger, a poor printer, who was on trial. He said the "the cause of Liberty" was on trial. The case was really about "the liberty of speaking and writing truth." He asked the jury to find Zenger not guilty. He said, "Every man who prefers freedom to slavery will honor you." He told the jury that in this country, a man should be free to print the truth.

When Hamilton admitted that Zenger had published the articles, the judge and the prosecutor then said that there was little left for the jury to do. The judge told the jury that their job was to decide if Zenger had printed the articles and, if so, then to find him guilty. The judge would set the sentence.

Hamilton argued that the issue in this case was "truth." "If you think Mr. Zenger has told the truth in these articles, then find him not guilty." Hamilton was asking the jury to do something that the judge and governor did not want them to do. It was unheard of for a jury to defy a governor and a judge.

Assignment

1. Why would Governor Cosby feel that all criticism--both true and false--should be prohibited?
2. Do you think that a newspaper should have the right to criticize public officials? Why or why not?
3. What did the judge in this case tell the jury that their duty was?
4. What did Andrew Hamilton say was the issue in this case?
5. If you were a juror in this case, how would you vote?
6. How do you think that the jury decided the case of Peter Zenger?

DECISION IN ZENGER CASE

A courageous jury reached a verdict of “not guilty” and set Zenger free. Rather than accepting the judge’s interpretation of the law, they listened to defense attorney Hamilton. Hamilton had told the jury:

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 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.

The verdict in this case showed that (1) the truth of a printed statement is a complete defense in a libel case, and (2) a jury may decide on the truth of the statement.

The decision of the jury was unusual. It was many years before the idea of truth as a defense against libel became a valid principle in American law. But after the Zenger trial, lawmakers in the colonies had to think twice before trying to stop newspapers from printing the truth. The Zenger case was an early victory for freedom of the press in colonial America.