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Federal Hall NM

JOHN PETER ZENGER
A Historical Study by:
IRVING G. CHESLAW
Dec. 1949

"John Peter Zenger -- A Historical Study"

By: Irving Cheslaw
(December 1949)

(History)

*page proof
forwarded to
Richard Koke
30 Jan. 1951
RCC*

File in: Zenger Memorial

reply refer to:
D66 FEHA

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

February 6, 1950

Memorandum

To: Superintendent, Morristown National Historical Park
From: Regional Director
Subject: Zenger Memorial Research

There is attached a copy of Acting Chief Historian Porter's memorandum of January 31. You will see that the principal point made is that Mr. Irving Cheslaw establish in his manuscript on Peter Zenger a definite tie-in and relationship of the site of the old City Hall to the present Federal Hall Memorial site.

I hope that you will be able to discuss this matter with Mr. Cheslaw, and possibly with Mr. James Wright Brown, before the Zenger study is published. I have a copy of Mr. Brown's letter to you of January 26, in which he quotes Dr. Frank L. Mott, Dean of School of Journalism, University of Missouri, with respect to the study. Mr. Brown states in that letter that he is having the manuscript put into a little booklet.

Regional Director

Attachment-1

Copy to: Director



UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
WASHINGTON 25, D. C.

In reply refer to:
DSC 521A

January 31, 1950

Memorandum

To: Regional Director, Region One

From: Acting Chief Historian

Subject: Zenger Memorial Research

We have read with interest your memorandum of January 17 forwarding galley proof of Mr. Irving Cheslaw's research on the story of J. P. Zenger which was undertaken as a preliminary to planning a Zenger Exhibit for the Federal Hall Memorial in New York City.

Mr. Cheslaw has produced an unusually readable and penetrating piece of historical research which is certainly valuable for its intended purpose. We are very glad also that he has suggested possible museum treatment of the subject but shall refrain from commenting on those proposals at this time because they affect other Divisions of the Washington Office, particularly the Museum Division.

As it is planned to publish Mr. Cheslaw's article, it is suggested that, if it is still possible at this late date, the connection between the old City Hall and the present Federal Hall Memorial location be made clear to the reader. It is our understanding that the Federal Hall Memorial occupies the site of the old City Hall. This is a fact which may not be generally known and it will be greatly advantageous to the Service if Mr. Cheslaw's article is definitely tied in with Federal Hall and the identity of the two sites established by reference to documentary sources.

(CCD) CHESTER W. FORNER III
Acting Chief Historian

In triplicate

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

February 8, 1950

Memorandum

To: Superintendent, Morristown National Historical Park
From: Regional Historian
Subject: Irving Cheslaw's "John Peter Zenger -- A Historical Study"

At last I have had an opportunity to read Irving Cheslaw's "John Peter Zenger -- A Historical Study," copies of which were forwarded with your memorandum of January 20.

On page 1, second paragraph from the bottom, next to the last line, I wonder if the word "confidentially" should not be "confidently."

In my opinion the study is well written, and will be very useful in preparing a museum exhibit plan. This phase of the work will require rather careful study of Cheslaw's manuscript for the purpose of selecting incidents which can be used for dramatic interest and graphically portrayed by museum techniques.

Of the seven diorama subjects suggested by Cheslaw in Appendix 1, I favor Nos. 2, 4, 5, and 6. I am doubtful if the others are of sufficient importance to receive expensive diorama treatment.

I think several of the quotations are excellent and can be used. I would be inclined to carry the search for suitable quotations much further than Cheslaw has done in his study. I think quotations on the freedom of the press can be very effective, even though they have no direct bearing on the Zenger case itself.

Regional Historian

Copy to: Director

Appelman

Dec. 1949

I-ZENGER

FIFTY PROOFS AS SOON AS POSSIBLE
9 ON 9 BY 24.3

JOHN PETER ZENGER—A HISTORICAL STUDY—BY
IRVING G. CHESLAW

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INTRODUCTION

The story of John Peter Zenger is not the account of a lone crusader or critic, a Don Quixote or a Thoreau; it is the story of a group of intelligent men working together to protest the abuses and caprices of an ignorant and arbitrary political leader. It is an episode which takes on historical proportions because it was not confined to irksome problems of economic self-interest. It would not be difficult to demonstrate that economic motivations were operative throughout the four-year struggle within the province of New York, from 1732 to 1736, but since materialistic considerations have a way of canceling themselves out in political disputes, it is justifiable to look for other sources of disagreement and political or social results of enduring significance. This party battle consistently moved on the lofty level of political principles: the purpose of social organization, the relationship between the populace and its leadership, the rights of the individual, the delicate balance between the legislature and the executive and the executive and the courts. Anyone who will take the time to read the yellowing pages of the New York Weekly Journal will rapidly recognize the formulation of ideas which have a familiar democratic ring, and he will be obliged to agree that men who articulated such notions were constructing a political theory from which they could not retreat without disgrace. Even if there had been no prosecution and trial, Zenger's paper would merit the attention of historians looking for democratic influences in the pre-Revolutionary period. That there was also a trial in which the defense made an eloquent plea for freedom of the press and anticipated the modern laws of libel by three-quarters of a century definitely establishes this localized incident as a milestone in American republican tradition.

THE NARRATIVE

New York City in the 1730's was not yet the busiest, richest, or largest city on the Atlantic Coast. Of the northern cities, it was smaller and less consequential than Boston or Philadelphia. The 1731 census announced that 8,622 people, whites and Negroes, were living here. Six years later the total was 10,664. Most of the residents were situated south of Wall Street, and the present site of City Hall Park was generally the northernmost part of the city. Northwards, and on Long Island, the nature lover found his fields and farms, rough roads and wild game.

John Peter Zenger, who had a little print shop on Smith Street and conducted a struggling business, had come to the colonies with the thousands of Palatine Germans whose migration was expedited by Queen Anne's project for promoting the naval stores industry in the colonies. It is impossible to determine the exact town or hamlet from which the Zenger family originated; by Zenger's own word he can be traced only to the "Upper Palatinate on the Rhine." This term would appear to be self-contradictory, and complicates any attempt to pin him down, because the Upper Palatinate was the province immediately to the east of a line drawn between Baireuth and Nuremberg and slightly south of the source of the Main River. A glance at a map reveals that this is more than a hundred miles from the Rhine which flows northwards from Basle to the Netherlands. Also it is impossible to learn anything about the Zenger family's voyage to America except by identifying them with the Palatinates as a whole and assuming that they followed the general course and endured the hardships described by Walter Knittle in his meticulous story of that movement.

The area of the Palatinate had been devastated by the wars of Louis XIV, which carried soldiers and equipment back and forth over the fertile area. On top of this, the petty princes, anxious to emulate the grandeur of Versailles, levied higher taxes on their subjects, and the winter of 1708-9, ravagingly cold, laid waste to the crops of Western Europe. At a time when the older folks were hungry for land, and the younger people were anxious for adventure, the agents of colonial American proprietors were zealously advertising the advantages of settlement in the New World.

Knittle states that the trip down the Rhine to Holland took four to six weeks, and that it was beset with delays and inconveniences. Rotterdam and Amsterdam were the main assembly points from which the Palatinates were carried to London. In the summer of 1709, approximately thirteen thousand arrived in England and encamped around London. Initially, they were made to feel very welcome, but when the novelty of their presence wore off, relations between them and the Londoners became strained. Their camps were improvised and deterioration was rapid; illness began to spread; crowding in the taverns and pressure for food inevitably made for friction. When it was decided to send the Germans to the colonies, they were loaded onto vessels, many of which simply floated up and down the channel for six months before moving out to high water and toward America. The conditions aboard the ship were unimaginably difficult, and undoubtedly similar to the infamous "middle passage"; people were closely packed, some below deck could not get fresh air or sunlight, the ships were ravaged by a fever which has been identified as typhus. When the vessels approached New York, their arrival was protested against by the City Council, and they were landed on Nutten's, now Governors, Island. Governor Hunter reported that 470 died en route and during the first month in the province.

Whether young Zenger's father was one of those who perished on the way over is impossible to state; the only related fact which is certain is that the contemporary documents all refer to his 33-year-old mother as a widow. John Peter was 13 years of age at this time; he had a sister, Anna Catherine, 10 years old, and a brother, Johannes, 7 years. It was reasonable that his mother should have seized the opportunity to indenture her older son; he would have the opportunity to learn a trade and she would lighten her burden. William Bradford was the only printer in the province of New York and enjoyed the monopoly of government printing. Probably the boy made a presentable and intelligent appearance or it is hardly likely that he would have been chosen to live and work with a man whose trade required considerably more ability than mere manual labor. Under the terms of the indenture, dated Oct. 26, 1710, Bradford agreed to keep the youth for eight years, until he was 21, and to provide him with food, clothes and lodging. Nothing is known about the way he was treated during his period of service, but since Zenger served his full term and later returned to work with Bradford for a short time, one might ~~confidentially~~ guess that they got along well together, that Zenger had been a dutiful servant and an apt assistant.

Making allowance for his indentured period, calculating that he left Bradford toward the end of 1718, Zenger drops out of historical record until the spring of 1720, when he successfully petitioned the Maryland Legislature for the right to print the laws of the counties, the assembly and the records of the provincial court. For this work he was to receive 700 pounds of tobacco per body. It is likely that he came to Maryland on the advice of Andrew Bradford, son of his former master and himself a printer in Philadelphia; for young Bradford knew that a printer was needed there. Zenger must have been pleased with his arrangement in Maryland, for about the time he was given the October laws for printing he applied for naturalization and the act was sealed Oct. 27, 1720. Just ten years and a day from the time he began his career, lower than a printer's devil, he found himself the accredited printer for an entire province and a free citizen with all the legal perquisites.

Confidentially

2-ZENGER

Zenger's career in Maryland is an enigma for anyone attempting to reconstruct his story. Since no one has been able to find any imprints bearing his name, it is impossible to guess what printing he was doing besides the official work, and how much of it.⁸ Also, the Naturalization Act lists him "of Kent County," which was an agricultural neighborhood, some distance from Annapolis, the provincial capital. Why did he settle in a spot so far removed from the logical center of business activity where one expects to find printers? To add to the confusion, there is no mention of Zenger in the Kent County court records, in the provincial Land Office, or in the books of St. Paul's Parish in Chestertown, the county seat.⁹ To complete the collection of negative facts, there is no record of a marriage during his Maryland days, though it would seem there must have been one because when he signed the rolls for his marriage to Anna Catherine Maulin, in New York, in August of 1722, he indicated that he was a widower.¹⁰

Zenger married Anna Maulin on September 11, 1722; he was twenty-five years old, and so was she. She had come to the province about the same time as Zenger, the daughter of a widow and one of four sisters.¹¹ How long they had known each other is impossible to say; since it appears that this was his second marriage, one dares not assume that they were childhood sweethearts. In the second year of their marriage, their first son, Johannes, was born.¹² Their next two boys, Peter and Nicholas, came at two year intervals, and in 1731 and 1733, they had two more, Evert and Frederick.¹³ Less than a year after this marriage, Zenger must have made up his mind to remain in New York, and on July 6, 1723, he was approved, along with twenty-seven others, by Governor William Burnet for naturalization.¹⁴

Nothing can be said about the way Zenger earned his living during the first three years of his marriage. In 1725, he reappears, apparently in partnership with his friend William Bradford, for together they published a lengthy tract in Dutch, dealing with an internal dispute in the New Jersey Dutch Reformed Congregation. Possibly this partnership was formed only for this particular job, since Zenger knew Dutch and Bradford had the press, and it does not appear that the relationship survived beyond this. The next year, 1726, Zenger was in business for himself, and he printed many of the tracts prepared by the various disputants in the drawn-out controversy provoked by Theodore Frelinghuysen.¹⁵ Zenger must have been noncommittal on the involved doctrinal questions, or on the side of the conservatives, for the next year, when Governor Burnet presented the Garden Street Church with an organ, Zenger was made the "blower." The Consistory also arranged that he should be taught to play the instrument in case the regular organist would be indisposed or impelled to resign. Five years later he appears to be the regular organist, enjoying token compensation for his services.¹⁶

The year before Cosby came to the province of New York and provoked the political quarrels which aided Zenger's business, the printer must have been in difficult financial straits. He had been chosen collector of sundry taxes in the city, but was prevented from carrying out his responsibility at the proper time. In an attempt to get out of a debt which resulted from this delinquency, he petitioned the Assembly for the opportunity to do some public printing, but with no results.¹⁷

Governor William Cosby's arrival in the province precipitated political agitation, the likes of which had not been experienced since Leisler's Rebellion. He was a strong-willed man and a marked contrast to his more moderate predecessor, Montgomerie. Cosby's reputation suffered, too, as a result of his arbitrary and dishonest attempt to build up a fortune while commander in chief of the garrison at Minorca.¹⁸ He had attempted to confiscate the property of a Catalan merchant, claiming that the latter possessed enemy supplies at a time when England was not yet at war with Spain, and it was learned that some of these supplies were shipped to Italy for resale as if they belonged to Cosby. Subsequent litigation forced Cosby to pay £10,000 damages for this misconduct, and Cadwallader Colden, the Surveyor-General of the Province and member of the Council at the time, stated flatly that Cosby was given the Governorship "to repair his fortunes."¹⁹ The appointment was expedited, beyond doubt, through family connections, for on his wife's side he was related to the Earl of Halifax and the Duke of Newcastle.

As soon as he stepped onto New York soil, landing August 1, 1732, Cosby commenced to antagonize the residents of all classes. The story is told that the day after he arrived he ordered his coachman to whip a planter driving a loaded wagon with his wife because that man would not get out of the way quickly enough.²⁰ Also, the gentry who came to pay their compliments were obliged to wait a long while before they could see him, and then he was very pompous, treating them as though they were conquered Minorcan Spaniards.²¹ He had not been in the province a month when the Assembly began to protest the Governor's sitting with the Council in a legislative capacity. It was maintained that this was an encroachment on the separate powers, and when bills were brought to the higher legislative body they were delivered to the lower end of the table, with the request for concurrence, rather than to the upper end where the Governor was seated.²² Actually, the practice of the Governor's presiding over the Legislative Council was a long-standing custom, but protests during Cosby's administration finally brought clear instructions from the Lords of Trade that this procedure was to cease.²³

Economically, the New Yorkers were expected to fit into the framework of the British mercantilist system which demanded that the colonies simultaneously provide raw materials and a market for British manufactures. The complications and ramifications need not be reviewed here; it suffices to point out that Cosby came to the colony determined it would fulfill its function in the mercantilist machinery.²⁴ He was bent on reviving the vigorous collection of quit-rents, an issue about which colonials were hypersensitive. Also his early observations to the Lords of Trade, testifying that the inhabitants of the province were lazy and inactive and only manufacturing what was necessary for their own consumption, did nothing to endear him to the populace.

Aside from these comparatively trivial stupidities, Cosby committed several serious blunders in his official capacity which contributed to the crystallization of an opposition party. First, he maintained that his arrival was actually delayed because he had been actively exerting his influence in London to defeat the Molasses Act which was being prepared for the benefit of the British West Indian sugar planters and the detriment of the northern mainland colonies. When the Assembly voted Cosby a gift of £750 in gratitude for this tenuous claim, he was infuriated by their frugality and let his feelings be known; they humbly voted him another £250.²⁵ His action was a bold violation of specific instructions which forbade the acceptance of such gifts from the Assembly; such prohibitions were part of the regular instructions to the governors on the theory that it made them susceptible to bribery. Three months after his arrival, when the secretary of the Jerseys died, Cosby leaped to the opportunity to nominate his son "Billy" to that £450 per year post. In addition to the assistance this would render to the family finances, Cosby wanted the appointment because it would give him the power which he felt was necessary "to check the spreading Bostonian spirit."²⁶

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The Bostonian spirit to which he was referring was evidenced in the broadsides which started to come off of the Zenger press about the time of Cosby's arrival; they indicate clearly that the air was charged with the electricity of reform. One does not find here the clamorings of class conflict, or agitation for widespread social equality; this is a latter-day jargon, and can be applied to early eighteenth century only by those attempting to wrap historical evidence around polemical poles. It is well known that since the Glorious Revolution of 1688 and the writings of John Locke in its defense, the philosophy of the social compact had made its way to the colonies at the same time that provincial governments were coming under more rigorous control of the Crown. The colonists were not particularly dissatisfied with their colonial status *per se*, but they were increasingly anxious to acquire more influence in the management of their own affairs; they wanted the Assembly to enjoy a relationship toward the Governor and his Council in some measure comparable to that of the House of Commons and the Crown. Understanding this, the pleas for frequent elections of the Assembly, preferably annually or at least triennially, do not come as a surprise.²⁷ Boasting of the freedoms which become Englishmen, and happy that they could "entertain what sentiments we please and express those sentiments we entertain," it was advocated that judges should be independent of the governor and the people, that courts of chancery should be under proper regulations, and that long parliaments and assemblies are dangerous to the good of the people.²⁸

Cosby's greed led him to make a move which set off a chain reaction which was heard in London and culminated in the Zenger trial where he met with unexpected defeat. Rip Van Dam, a prosperous merchant and eldest member of the Council, had been acting head of the New York government between the time of Montgomerie's death and Cosby's arrival, and the Council had voted that he should receive the full salary allotted to the Governor for this interim period.²⁹ When Cosby arrived, he presented the royal order that he was to receive half of the money Van Dam earned from the date of Cosby's commission to his landing. On the basis of the Council's vote, Van Dam refused to share the allowance, and finally indicated a willingness to do so if Cosby would divide the emoluments he had received while in England. As specious as this counter-claim was, it delayed Cosby's demand until April, 1733, when the Governor decided to force the issue by pressing suit for the recovery of the money. As if this demonstration so far had not been enough to damage his public relations in the province, he virtually defied public opinion by bringing the suit before the Supreme Court of the province and demanding that the judges sit on the equity side of the exchequer. The exchequer court, like chancery, was a sore issue among the colonists who claimed that it was set up without the consent of the Assembly and also because it circumvented trial-by-jury.³⁰ Van Dam had retained James Alexander and William Smith, two of the best lawyers in the province, to defend him, and they prepared to deny the jurisdiction of the Supreme Court in this case. The Chief Justice of the Supreme Court when the case came before it was Lewis Morris, who was also the senior member of the New Jersey Council and had presided over that government in the interim between Montgomerie's death and Cosby's installation. Morris agreed with Alexander and denied that his court could sit in equity cases; when the associate justices, De Lancey and Philipse, did not accept this argument, Morris left the bench and refused to participate with them in the hearings.³¹ Cosby demanded that Morris furnish him with a copy of the statement read by the Chief Justice in court on the invalidity of the court's jurisdiction. Rather than send it to him in writing, Morris asked Zenger to print it, probably so other copies could be distributed to interested parties. In substance, he argued that the King cannot erect a court of exchequer without Parliament's assent and thereby he, the King, can hardly give such power to a subordinate.³² Adding that one court cannot sit in King's Bench, Common Pleas, and Exchequer, that in England there are separate courts for each of these jurisdictions, he summarized Cosby's antipathy toward him and denied that he had been in the Governor's presence long enough to have been as rude as Cosby claimed. Within two weeks, Cosby wrote to Newcastle, describing his troubles and particularly Morris's obstructionist behavior.³³ He did not stop with accusations of partiality, but stated that Morris drank intemperately and kept irregular court hours which inconvenienced many people seeking litigation. The Governor had already decided to remove Morris and he hoped his action would be sustained.

In August, 1733, Morris found that he had been replaced as Chief Justice by the independent action of Cosby, and that young James De Lancey, barely thirty years of age, had been raised to his place. Incensed, Morris immediately wrote to the Lords of Trade protesting this arbitrary act, maintaining that the exercise of justice in the colony was jeopardized, and reviewing his long record of public service.³⁴ In this same letter he turned from a defense of his own activities to an attack on the Governor, even accusing him of granting large tracts of land to personal friends on the condition that one-third of these be turned over to him in personal title or gifts.³⁵

Cosby was not able to drive Morris out of provincial politics as easily as he would have liked. Two months later, October 29, 1733, an election was held to select the Westchester representative to the General Assembly; Morris was the candidate in opposition to William Forster, who held office in the county on appointment by William Cosby. The Eastchester village green was set up as the polling place, and before the counting began there were pompous demonstrations by the supporters of the two candidates. When the first tally was concluded and it was clear that Morris had a wide majority, someone demanded a re-polling by individuals. Sheriff Cooper, just appointed by Cosby, agreed. Since only freeholders could vote, a Quaker who stepped up to cast his preference was challenged to demonstrate proof that he had an estate or to take an oath to the same effect. The Quaker did not have documentary proof of his freehold in his possession at the time, and he refused, on religious grounds, to swear. Cooper refused to honor the man's offer to make affirmation, a gesture which had been acceptable in the past; by repeating the same process throughout the balance of the election, he denied the vote to thirty-seven Quakers who were going to cast for Morris.³⁶ Two Quakers who preferred Forster were not challenged and they were able to vote without presenting evidence of their freeholds, and without oaths or affirmations.³⁷ In spite of this incident, Morris carried the election, receiving 231 votes to the 151 for Forster.

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Seven days later, the first number of the *New York Weekly Journal* appeared, bearing the imprimatur of John Peter Zenger and carrying the story of the Eastchester election on pages three and four. William Bradford's *New York Gazette*, the first and up until this time the only newspaper in the city, said nothing about that episode. That there was a direct cause-and-effect relationship between the election and the inauguration of the paper is not borne out by the evidence. Considering that Morris won the election in spite of the sheriff's partisan behavior, it is not likely that he and his cohorts thought the Quaker issue to be of great significance in itself. It is much more reasonable to assume that all of the anti-Cosby grievances had accumulated to the point where these men thought that a regular publication would more effectively publicize their sentiments than the sporadic broadsides. Indirect contemporary evidence also relegates the Eastchester incident to a minor role. Cadwallader Colden, in the only contemporary account of the Cosby administration, does not mention the election at Eastchester; he gives top priority to the Van Dam episode when considering factors responsible for growth of the opposition party. And Lewis Morris himself, when writing to the Lords of Trade six weeks later, submitted a list of grievances, much like Van Dam's "Articles of Complaint" though containing some more eloquent flourishes, in which Eastchester only enjoyed passing mention.³⁸ Warning London that the Council's expression of confidence, which was about to be sent to Newcastle, was the result of "encouragement" by Cosby, Morris took considerable liberty and stated:

"... however lavish they (the Council) have been in their praises of him, 'tis their misfortune to be the only persons in this government that have a good opinion of him; for no man was ever so universally hated as he is. His new Exchequer Court, and a series of rash actions in every part of his conduct, have so far exasperated the people as gives room to suspect that he cannot long be very safe, without such an alteration in his conduct, as he seems altogether to be incapable of. . . . I believe upon enquiry your Lordships will find what I say of him to be most that go from these parts, and that his being recalled will be necessary for His Majesties (sic) service . . ."

The Council's letter did not stop with a defense of Cosby, but went on to demonstrate feverish concern about the six-week old newspaper campaign which was described as "the most base and unworthy means . . . to traduce . . . all who had the honor to bear commission here . . ."³⁹

From its first number, the *Weekly Journal* was busy educating the residents of the colony on political philosophy as well as particular issues. Zenger's paper must have been a treat to the New Yorkers; it is inevitable that vehement political quarrels will excite and interest the populace. It was designed to be much more than a newspaper. Until 1737, it was a journal of opinion actually, and the foreign and domestic news were only of secondary importance. When one realizes that the common law of libel was so rigorous that almost any remarks tending to bring the government into disfavor, whether deservedly or not, could be penalized, he is forced to admire the bold, possibly careless, courage of those who were responsible for the *Weekly Journal*. One even wonders if the aggressively defiant tone from the outset was not also an attempt by the writers and printer to steel their own spines for this extra-legal adventure.

It is impossible to read the pages of the paper without being impressed by the clear expression of faith in the free press. This issue was unequivocally articulated long before Zenger was taken to jail. The second and third numbers devoted the first two pages to a serial editorial on this subject, and its key sentence was "very few good ministers can be hurt by falsehood, but many wicked ones by seasonable truth . . ."⁴⁰ By February, almost every issue gave space to this principle. Chief Justice De Lancey's attempt on the fifteenth of January to convince the grand jury that it should bring an indictment of libel had proved abortive and actually provoked more criticism of the government. In an editorial directed against the common law rule that "libel is not less a libel for being true," the writer insisted that the doctrine may apply to private and personal questions, but not to public issues which have wider effects and interests.⁴¹ A week later, the *Weekly Journal* stressed the contagious quality of the free press issue by printing a letter to Zenger telling of a new weekly paper, *South Carolina Gazette*, which had just commenced publication and was dedicated to "that great branch of Liberty—Freedom of the Press."⁴²

Usually the first two pages of the four page paper carried a letter to Mr. Zenger which might be described as the "editorial." The third page bore foreign news, with a dateline that was around ten weeks old. On the back page were advertisements and also shipping arrivals and departures. As has been suggested, the "letter to the editor" represented the important part of each issue. Even a casual reading of the contents is sufficient to convince the reader that Zenger could hardly have written the philosophical treatises which appeared herein, and it is unlikely that his wife could have had much to do with them either. Most of them reflect a knowledge of history and philosophy, law and Latin. There can be little doubt that James Alexander, William Smith, and the Morrises, elder and younger, were the philosophers as well as the leaders of the opposition. All had enjoyed the appropriate education in the law and their careers had taught them to be articulate. And of this group, Alexander was undoubtedly the chief counselor. He was the foremost lawyer in New York during these years, possessing the largest law library in the colonies.⁴³ A collection of James Alexander papers in the New York Public Library contains drafts of letters to Zenger which clearly link Alexander to the *Weekly Journal*.⁴⁴ Also, the extent to which the learned lawyer was a thorn in Cosby's side is indicated in the latter's letters to London, recommending Alexander's removal from the Council and representing him as "obnoxious, dishonest, and unfit."⁴⁵ William Smith, who had been retained to defend Van Dam along with Alexander, possessed Bachelor's and Master's degrees from Yale, where he distinguished himself in the classical languages. He and Alexander were the only two New York lawyers who had been admitted to Grays Inn in London, and they often worked together in legal cases and political activities.

In the sixth number of the *Weekly Journal*, it was affirmed that

"... it is the great design of this paper to maintain and explain the glorious principles of Liberty, and to expose the acts of those who would darken or destroy them . . ."⁴⁶

The "glorious principles" enunciated in the issues of the paper from week to week were those of John Locke's social contract. That men voluntarily joined together to live and work for their greater benefit and set up leaders who would guide them in the proper directions was the underlying, and even explicit, message. These leaders owed it to the larger group to render satisfactory service, and one of the limitations placed over them was that they do not assume absolute powers.⁴⁷ A title only commanded that respect which derived from service in the welfare of society.⁴⁸ One of the great privileges of an Englishman is to judge, and arraign the conduct of the ministers chosen by the prince.⁴⁹ The Assembly was regarded as the bastion of good government and the preservation of liberty. Thus, the specific issue of frequent elections was a significant one;

"Then indeed the British Liberties will be founded on a Rock against which the Machinations of the Worst Ministers will be never able to prevail; and the crown will be frequently and faithfully informed of the sentiments of the people."⁵⁰

Zenger's paper by no means confined itself to general discussions; before it was seven weeks old it began to concentrate its attack and Cosby knew he was the target. The charges in the Van Dam and Morris letters were soon taken up individually or in groups. A certain amount of ironic humor was also used from time to time. One early article went into the cabalistic meanings of letters in the alphabet, and demonstrated historically that the letter "C" was a bad one for New York and England, using as illustrations Coot, the Earl of Bellomont, Lord Cornbury, Cromwell, and the two Charleses.⁵¹ It concluded that any future governor who was as bad as Cornbury might suffer the same fate of removal. The inference here was rather obvious. Several weeks later a notice appeared in the *Weekly Journal* announcing the preparation of an honor roll of those whose policy it was to keep with governors on any terms. Zenger asked for the voluntary submission of names to be included in the list; he also offered to scratch the names of those who were prepared to regret such behavior in the past and promised to forswear it.⁵²

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Before the paper was very old it hinted strongly that Cosby was guilty of treason; he was accused of permitting a French sloop, *Le Caesar*, to come into New York harbor for the announced purpose of purchasing provisions badly needed at Cape Breton, when actually it carried men who charted the approaches to the harbor for the French government.⁵³ The story contained a series of rhetorical questions which were sufficiently pointed to make Cosby appear stupid and negligent.

The enumeration of grievances appeared and reappeared; the court of equity issue, the arbitrary displacement of the Chief Justice, the question of an agent in London for the colony, all were brought before the readers time and time again. In September, 1734, when Cosby's group lost the city election, songs were printed and distributed by Zenger in which the lyrics told of "lawless power and might," "exchequer courts as void," "rights of Englishmen," and "judges they would chop and change for those that serve their turn."⁵⁴

From the viewpoint of general anti-Cosby publicity, the campaign was successful. Within three months, Zenger was able to tell his readers that he had received enough letters deserving publication to fill his next seven numbers. Another solution to the problem lay in printing a semi-weekly paper and he asked if the subscribers would be willing to support this.⁵⁵ This scheme never materialized, but three weeks later he did put out a four-page supplement. Equal satisfaction was derived from the information that the Governor's behavior had become common knowledge in the London coffee-houses and in Whitehall.⁵⁶ In addition to the casual letters containing this news, Colden was told by a friend on the Lords of Trade that he had seen the complaints against Cosby and that he regretted the Governor had not followed the advice he received before leaving London.⁵⁷

Bradford's *New York Gazette*, generally accepted as the journal of the Governor, slowly came around to attacking Zenger's paper and the men who wrote for it. Usually Bradford confined himself to the pedestrian formula of foreign and intercolonial news and advertisements. By February, Bradford was carrying numerous letters critical of the *Journal*, accusing it of libels and lies, and very much concerned about their effects on the multitudes. Cosby's supporters considered his leniency toward the Zenger paper to be a reflection of free government in New York; they went on to point out that opposition is not always patriotic and at this time it was exposing to the enemy the weaknesses of the New York fortifications.⁵⁸ In February, when considerable tumult was raised over the extortion note threatening the lives of the Alexander family, and Alexander was certain it was written by Francis Harison, a member of Cosby's inner circle, the *Gazette* defended Harison while Zenger reported Alexander's side of the story.⁵⁹

In May, 1734, he moved to Broad Street near the Long Bridge.

The summer was quiet on both sides of the political tug-of-war. The Assembly was not in session; probably the principals were in the country to avoid the summer's heat. The Assembly had adjourned on June 22, until the latter part of July, but by several proclamations it was further adjourned until the second of October. Just before the local election on September 30, the *Weekly Journal* ran serially a very technical letter on the legalities of calling, proroguing, and dissolving of assemblies.⁶⁰ This revival of the feud annoyed Cosby and in exasperation it was decided to take action. Addressing the Corporation of the City when he swore Mayor Lurting into office for another year, Cosby denied that he had taken an active interest in the recent election, insisted that his interests were non-partisan, and decried the abuse of liberty by those who were provoking uneasiness in the minds of the people.⁶¹ He trusted that the proper means would be exerted to bring the offenders to punishment.

On the fifteenth of October, Chief Justice De Lancey addressed the Grand Jury for the City and County of New York and for the second time indicated that the time had come to punish those who were responsible for the libels against the government.⁶² He added that the publisher of these materials was just as guilty as those who had composed them; this point was necessary since there was no direct evidence of authorship. But the Council was not optimistic that the Grand Jury would be any more cooperative now than it was in January, and it initiated action on its own. A committee of seven was set up to meet with a committee of fourteen assemblymen and study the Zenger papers. As a joint committee it was hoped they could ask the Governor to offer a reward for the discovery of the authors and to issue an order for the prosecution of the printer.⁶³ However, the Assembly tabled the Council's request and took no action on it for ten days, by which time the Council was anxious to move independently. Nine members of the Council including the Chief Justice met on the second of November with Governor Cosby, and decided that four members of the *Weekly Journal*, 7, 47, 48, 49, were to be burned by the common hangman on Wednesday, the sixth of November.⁶⁴ The last three numbers so condemned contained references to the rights of the Governor with regard to the Assembly, and the first of the four alluded to Cosby's connection with the sloop *Le Caesar*. One can legitimately question the wisdom of this selection, since there were many numbers containing sentiments of a much more inflammatory nature. It was also ordered by the Council that the Mayor and the magistrates of the city were to attend the burning. However the Magistrates of the Court of Quarter Sessions refused to comply on the grounds that since the Assembly and the Grand Jury had refused to act, it would not be in the interests of the Corporation and liberty of the press for them to do otherwise.⁶⁵ The same court refused to order the whipper to execute the Council's order, and finally it had to be accomplished by the Sheriff's Negro slave in the lonely presence of the recorder and several officers of the garrison.⁶⁶

On the same day that the Council ordered the four numbers of the *Journal* to be burned, they ordered the Sheriff to arrest Zenger, but this was not accomplished until Sunday, the seventeenth of November, when he was locked in the common jail on the third floor of the city hall.⁶⁷ Zenger must have known about the Council's order, and in the absence of any evidence to the contrary, it appears that he calmly bided his time and waited for the Sheriff.

As would be expected, Alexander and Smith took it upon themselves to act as Zenger's attorneys. Alexander got a writ of *habeas corpus*, by which Zenger was brought before the court on the twentieth. During his first three days in jail he had virtually been held *incommunicado*, being unable to see, speak with or write anyone.⁶⁸ De Lancey had postponed discussion on Zenger's writ until Saturday, the twenty-third of November. At this time, Alexander pleaded that Zenger be admitted to bail. He cited the legal justification for a moderate bail, and Zenger presented a statement testifying that, except for his tools and the family clothes, he was not worth more than £40.⁶⁹ But De Lancey resolutely ignored Alexander's argument and Zenger's affidavit and admitted the printer to bail providing he could provide £400 himself plus two sureties of £200 each.⁷⁰ Unable to pay, Zenger was remanded to jail. There is little doubt that De Lancey demonstrated harsh partiality in his demand for such a bail; he did not deny the validity of Alexander's citations regarding the application of the Habeas Corpus Act and the Bill of Rights to the colony, but he baldly ignored it.⁷¹

Was this
Nov 2 or
Nov 6 - ✓
the day the
order given,
or day the
journal to be
burned.
Chronology
p. 13, says
Nov 6 - which
refers to
day the journal
to be burned.
I would read this to
mean the day the order given, Nov. 2.

6-ZENGER

In his printed version of the trial, Zenger states that he "could not ask any to become my bail on these terms." This raises an interesting question about which one may speculate. Could not men of property like Alexander, Morris, and Van Dam furnish sufficient funds to cover Zenger's bail; did they not trust him enough to be sure that he would not flee the province? On the other hand, did they prefer to make the most of this opportunity; by making it appear that Zenger was enduring the privations of incarceration, their anti-Cosby propaganda campaign was just that much more effective. In an article that was simultaneously ingratiating and insulting, Bradford's *Gazette* suggested that Zenger's friends were neglecting his safety for their own and that Zenger ought to be aware of this.⁷² Was this a hint that it would be worth his while to turn state's evidence, to tell who wrote most of his copy; was Cosby throwing out a feeler in his anxiety to find grounds for action against Alexander?⁷³ The same writer asserted that since Zenger had come to the province in charity and learned a trade, his gratitude should have discouraged seditious behavior. Zenger's reply was a courageous one; he doubted that his paper led to sedition, he trusted his friends not to forsake him, and he announced that Queen Anne's charity was nobody's business.⁷⁴

The *New York Weekly Journal* continued to appear while Zenger was in jail; an issue did not come out the day after his arrest, but except for this there was not a single interruption. He had a journeyman and two older sons who were probably able to put out the paper. Possibly Mrs. Zenger could help around the shop. Also, there was no ostensible change in the content of the paper; Cosby continued to be criticized, and the foreign news, ads, and custom house entries were included. Cosby apparently was unwilling to force the closing of the shop, even though Alexander and the others defied the law and the Chief Executive by continuing their contributions of "seditious materials."

By Tuesday, January 28, 1734/5, the last day of the Supreme Court's term, the Grand Jury had not brought an indictment against Zenger and he expected to be released. However, on that day, Attorney General Richard Bradley took advantage of his right to file an information against Zenger, charging him with printing false, scandalous, malicious, and seditious materials. But the Attorney General's information did cite the same issues of the *Weekly Journal* which were branded libelous by the Council in November. He selected numbers thirteen and twenty-three as the particularly inflammatory issues. In this instance again, Cosby was flying in the face of public opinion by encouraging the use of extreme legal methods. Bradley had made a reputation for himself as a zealous utilizer of the indictment-by-information procedure during the past decade when the Grand Jury tended to demonstrate local sympathies and refused to bring indictments.⁷⁵ Thus Zenger's hopes of release were smashed and he had to go back to his cell, hopeful that the new term of the court, three months hence, would bring his freedom.

The new term opened on Tuesday, the fifteenth of April; Alexander and Smith were on hand to contest the proceedings. On the last day of the previous session they had been ready to offer exceptions to the commissions of De Lancey and Philipse, but since they had not incorporated the texts of these commissions into their briefs they were not accepted. Now they were ready and the exceptions were presented.⁷⁶ It was pointed out that their commissions were granted "during pleasure," instead of "during good behavior," that as Justices of the Kings Bench they could not be granted the authority of the Court of Common Pleas, that the form of the commissions was wrong, and finally that their commissions were not granted by and with the necessary advice and consent of the Council.

The court reconvened the next day and everyone anxiously awaited De Lancey's opinion regarding the exceptions. Smith also requested the privilege of speaking on the right of a subject to take exception in general and on the validity of these commissions in particular. De Lancey's statement was unequivocal. He refused to hear or allow the exceptions, he accused Zenger's lawyers of being primarily interested in their effect on popular opinion. The Chief Justice concluded that this appeared to be a personal struggle between the bench and the bar, and he ordered the names of James Alexander and William Smith struck from the attorneys' roll for that court.⁷⁷ The lawyers insisted that they were only objecting to the legality of the judges' commissions and not to the authority of the court, but De Lancey refused to recognize this distinction. When the pleading was resumed two days later, the Chief Justice denied the right of Alexander or Smith to speak to the point of rejecting or overruling Zenger's exceptions and pushed the definition of disbarment further by announcing that the lawyers had also lost their right to act as counselors.⁷⁸

Zenger's situation was going from bad to worse. Now he was without counsel; he petitioned the court to assign a lawyer for the defense. Here again one is forced to question the tactics; Lewis Morris, Jr. was a lawyer; why was he not called? The court appointed John Chambers, apparently a competent man; he was a member of Middle Temple and enjoyed a good practice in the province.⁷⁹ He later held some municipal legal positions and toward the end of his career was an Associate Justice of the Supreme Court. However, now Chambers pleaded not guilty for Zenger and refused to have anything to do with the exceptions dispute. He needed time to prepare his brief for the trial, so he requested a date in the next term of the court and also a struck jury.⁸⁰ The trial was set for the fourth of August next, the court adjourned until the twenty-ninth of July, and Zenger continued to pass the days in his cell.

During the summer of 1735, while Zenger was in jail, the *New York Weekly Journal* conducted the same enthusiastic campaign; its pages were filled with editorials on law and behavior, the magistrate and the people and justice. William Smith, the son of Zenger's former attorney, writing the history of the Province of New York, maintained rightly, though unsympathetically, that the point of this was to influence the freeholders who were likely to be on the jury when Zenger's trial came up.⁸¹

On Monday, August 4, the Zenger case was brought before the Supreme Court. Several days before, on the twenty-ninth of July, Chambers had run into difficulty with the Clerk of the Court, who had attempted to present a list of forty-eight persons for a struck jury which was clearly not taken from the freeholders' book, and which apparently included many persons holding offices "at the Governor's pleasure." Finally, after protesting this list, Chambers obtained a court order for a new one and a satisfactory jury was selected.⁸²

To begin the trial, Attorney General Bradley read the information which contained the quotations from the two numbers of *Weekly Journal* considered libelous. In the first, number thirteen, the remarks were directed against a comment in Bradford's *Gazette* which attacked the recent satires in the *Journal*.⁸³ Rebutting Bradford, Zenger's article maintained that when the liberty of the press is in danger one does not stop to worry about laws of libel. This, of course, was actually a barb directed against De Lancey's recent message to the Grand Jury requesting an indictment against the *Journal*. The same letter went on to say that " * * * the people of the city and the province * * * think * * * that their Liberties and Properties are precarious, and that slavery is like to be intailed on them and their posterity."⁸⁴

The other number, twenty-three, cited by Bradley, contained a letter from a man in New Jersey declaring that he was leaving the province for Pennsylvania because of the administration in New York and New Jersey; listing his grievances, he enumerated the destruction of deeds, arbitrary displacement of judges, erection of courts without consent of the legislature, and depriving freeholders of their votes.⁸⁵ Throughout the information, Bradley reiterated that these sentiments were "false, malicious, seditious, and scandalous."

7-ZENGER

There is no evidence from the printed version of the trial that Zenger made a plea in his defense in open court, or that he was heard from at all during the entire proceedings. But several manuscripts exist which indicate that he was prepared to make a statement at the opening and at the close of the trial. It appears that he was prepared to take exception to the right of De Lancey and Phillipse to participate in the case, though not on the same grounds offered by Alexander and Smith. Zenger was ready to protest that they were not impartial judges, that they had declared their prejudices on several earlier occasions. De Lancey had been one of the members of the Council which ordered the papers burned, and when Zenger came before him on *habeas corpus* the Chief Justice declared that a jury would expose itself to perjury if it acquitted him.⁸⁶ But this statement was not read and nothing was said about this situation.

When Bradley had concluded, Chambers discussed the nature of a libel and doubted if the prosecution could prove that a single person had been libeled. Apparently Chambers was not prepared to conduct a strong case in behalf of his client; it seems that he planned to let the Attorney General take the offensive. But at this point an elderly gentleman arose and notified the court that he spoke in behalf of the defendant. This writer is inclined to believe that Chambers did not know Andrew Hamilton had been called into the case, because the latter's strategy in the pleading was so markedly different from what Chambers started out to be. This suggests also that Hamilton must have brought himself before the bench from a seat among the spectators. There is little doubt that once again James Alexander's influence was used to good advantage; Hamilton was a co-member with Alexander and Smith in Gray's Inn, and it is also known that he was a frequent borrower from Alexander's law library.⁸⁷ Hamilton had a long record of participation in Pennsylvania politics as well as an excellent reputation as a lawyer, and was known as an "independent" in politics and religion. Somewhere it has been said that the expression "call a Philadelphia lawyer," when one is in particularly difficult straits, derives from this episode.

Hamilton wasted no time in changing the whole direction and pace of the trial. Maintaining that the publication of a truthful complaint is the right of every freeborn subject, he asserted that Zenger was guilty of printing the newspapers but that no crime had been committed in the process. The venerable octogenarian was building his case around several vital points: first, that the material in Zenger's publications was true and that the truth in the discussion of public matters cannot be libelous; secondly, that just complaints are the right of free men; thirdly, that the fact and the law of libel can be decided by the jury which is the real protector of men's liberties. Actually this whole brief, with the arguments and authorities, was prepared by Alexander before he was disbarred and sent to Hamilton when he agreed to take the case.⁸⁸ Hamilton's great contribution to the trial was his prestige, experience and rhetorical ability.

Once Hamilton announced that Zenger had printed the papers, the Attorney General assumed that a verdict of guilty was a foregone conclusion and he released Zenger's journeyman, sons and several other witnesses who had been subpoenaed to quickly establish the obvious fact of the printing. Thus this case is unique in that the bulk of the time was devoted to lengthy perorations by the lawyers, rather than to tedious examination and cross-examination of witnesses. Bradley cited the law and the Bible against remarks libeling the ruler or the chief authority. He insisted that the executive and legislative branches of the government had been scandalized, and that the Governor had patiently tolerated Zenger's abuse for a long time before taking judicial recourse.

In the course of his argument, and to fill in the outline of his case, Hamilton criticized the citing of infamous Star Chamber cases by the prosecution and he disparaged Governors who attempt to assume the prerogatives of Kings. Before the Philadelphian had progressed very far the prosecution must have regretted that the word "false" had been included in the information when describing the contents of the Journal. According to the law the quality of falsehood was not strictly relevant, but Hamilton was not arguing within the law altogether; he was mixing logic with rhetoric to make a very persuasive argument against the common law of libel. The older lawyer neatly forced the comparatively inexperienced De Lancey to agree that "words are libelous or not, as they are understood and that those who are to judge them must determine whether they are scandalous."⁸⁹ This slip occurred right after the Chief Justice told Hamilton that he would not admit evidence of the truth of Zenger's statements. Immediately Hamilton turned his eloquence on the jury and proceeded to convince them that they could decide how they understood the information. Since the question of the rights of the jury was so basic in this trial, it was particularly interesting to find that the issue of the *Weekly Journal* which appeared two days before the trial contained an editorial directed precisely to this controversial point of the jury's right to decide both the fact and the law.⁹⁰ This was much too clever to be coincidental and the obvious conclusion must be drawn that Alexander, knowing the part this line of reasoning would play several days later, took measures to partially convince the jurors before they heard Hamilton develop this theory.

Departing from a strictly legal plea, Hamilton reverted to the expounding of political theory. He drew the distinction between the exposure of private and public errors; he defended the right to complain against the abuse of power; he stressed the difficulty of obtaining judicial remedies via the King's Courts at Westminster. To rebut Bradley's citations from the Bible, Hamilton found his quotation in Isaiah which insinuated that the leaders of the people may cause them to err. In the rhetorical climax of his summary he compared power to a great river which occasionally runs loose bringing destruction; liberty was asserted to be the only bulwark against power, and the Zenger case was made the cause of all free men.⁹¹

When Hamilton concluded, Bradley made his closing comments for the prosecution. He brushed aside his opponent's citations and insisted that since the printing and the publishing of the paper had been admitted the jury could do nothing but convict. Bradley was standing firmly on the strict interpretation of the common law; it must have been a great satisfaction to hear the Chief Justice's charge to the jury and note that he preferred the prosecution's argument.⁹² De Lancey told the jurors that they were to disregard Hamilton's suggestion that they disregard his instructions; they were simply to determine if the words in the information are libelous; the law was to be left to the court.

8-ZENGER

As has been indicated earlier, Zenger was prepared to make a closing plea to the court as well as an opening statement, but there is no evidence that he read either one. The "epilogue" is of interest for its simplicity and sentimentality; also the language strongly hints that Zenger might have written it himself.

"May it please your Honors and you Gentlemen of the Jury, I have now made the Best Defense I can against the heavy charge of his Majesties Attorney General that I am a seditious person. You gentlemen of the Jury know me, that I have lived very Peaceably [sic] in this province. That I have in this case followed my Trade for the Support of my family and think they have not proved proof that the papers I am prosecuted for are Either false scandalous fictitious or seditious, but have proved strong proof to the contrary.

Gentlemen, hard is my case. Here I have lain almost twelve month in gaol and my family has been supported by the charity of good honest people which other ways must have starved, thus I have been deprived by this Long and Tediuous confinement from following my Business and paying my Just Debts. My Parents and Self fled from a country where oppression Tyranny and arbitrary power had ruined almost all the people and by the Generous bounty of her most gracious majestic Queen Ann of pious memory we were provided for in this Province where I have since lived and to you gentlemen I appeal for my Just Character. Tis you that are this Day To pronounce me guilty of innocent and if for Declaring the Truth I am to suffer still greater punishment than almost a years Imprisonment, let it be such a punishment as will make an end of my Life, for I can't Bear the thought of having my family starve and my poor little babes crying for Bread and I not in a capacity to Relieve them. To punish a man, Gentlemen, for telling the truth no Human Law can Exact because it opposes the Divine Laws of God set forth in his holy Scripture. I shall take up no more of your time gentlemen, only I beg that the Golden Rule of Doing as you be doing [sic] by will have its due weight on your consideration upon my affair and to you Gentlemen I submit myself and from you expect the Justice due to me."⁹³ This document, with its emphasis on "truth," suggests that Zenger might have known that Hamilton was coming and was going to build his argument around that very theme. However, it is impossible to speculate on this riddle with any satisfaction.

The jury was only out of the courtroom for ten minutes. The verdict of "not guilty," following Hamilton's recommendation, indicated that the members had gone beyond their charged duty of only determining the fact of the printing; a modern legal historian has stated that this was clearly an encroachment on their judicial function.⁹⁴ This decision provoked a loud demonstration on the part of the numerous spectators; whether one approved or disapproved of the outburst in court depended on the political bias of the commentator. The conservative historian William Smith regretted the incident, maintaining that the two justices on the bench were terrified by the clamor; Cadwallader Colden regarded the acclamation as genuine evidence of the popular feeling at the time.⁹⁵ Zenger felt that it was sufficient merely to record that there were cheers and huzzas.⁹⁶ However, the acquitted printer did not immediately walk out of the city hall a free man. Ironically, he was obliged to return to his cell and remain there until noon the next day when his friends brought the necessary funds to pay for his keep during the eight and a half months he was in custody.⁹⁷

The evening of the victory was celebrated with a dinner at the Black Horse Tavern on Smith Street. The absence of Zenger from this gala affair is conspicuous to the modern student of this episode, but previous commentators have either overlooked or ignored this sentimental fact. The next day Hamilton left the city to return to Philadelphia, and as he departed he was saluted by the guns of several ships in the harbor "as a public testimony of the glorious defense he made in the cause of liberty in the province."⁹⁸

About five weeks after the trial, on Tuesday, the sixteenth of September, the Common Council of the City of New York voted to present Hamilton with the freedom of the Corporation in honor of his "learned and generous defense of the Rights of Mankind, and the Liberty of the Press."⁹⁹ As an additional memento, Hamilton was given a gold box inscribed with the city's coat of arms, the funds for which were voluntarily contributed by members of the Corporation and gentlemen of the city.

Considering the persons involved and directly interested in the Zenger trial, one is disposed to assume that, within the limits of colonial transportation and communication facilities, the story of the whole episode would have spread quickly through the provinces. But when one goes to the contemporary newspapers to find the exciting account of a colonial governor being frustrated by a jury of twelve freeholders, he meets with disappointment. Scrutinizing the various papers around the dates of the arrest and the trial obtained only negative results. The Boston Weekly News Letter, the Boston Gazette and Benjamin Franklin's Pennsylvania Gazette carried nothing about the trial.¹⁰⁰ Actually it was not necessary to go beyond the New York City limits to find evidence of contrived silence on the subject. While Bradford lost no time in reporting Zenger's arrest for the benefit of his readers, they found nothing in any of the issues appearing within a month after the trial to tell them how it concluded.

In all probability the fame of the trial was spread with the printing and reprinting of the text in the ensuing years. A year after he regained his freedom Zenger received from Hamilton, through Alexander, the notes of the argument; Alexander prepared the final version of the text on the advice of Hamilton, who was too busy to bother with it.¹⁰¹ Since neither Attorney General Bradley nor John Chambers contributed to the preparation of the narrative, one can dwell momentarily on the historical question of the reliability of that version which came off of Zenger's press and which is the basic single source on the trial as well as the master copy for the sixteen reprintings during the next century.¹⁰² The first printing after Zenger's, in June of 1736, was done two years later by Thomas Fleet of Boston, whose Evening Post was addicted to polemics. That same year, in London, J. Wilford found that he could print and sell four editions of the trial's text. In the first half of the nineteenth century the Zenger affair was brought to the attention of the legal profession on both sides of the Atlantic when it was included in T. B. Howell's State Trials, published in London in 1816, and Peleg W. Chandler's American Criminal Trials, which appeared in Boston in 1841.¹⁰³

The publication of the "Brief Narrative" did not meet with the unanimous approval which historians like to suggest but seldom find. A year after Zenger's copy came off the press, two lawyers in the Barbados launched heavy attacks on Alexander Hamilton, and judging from the fact that their comments went through three reprintings, they must have found many sympathizers in England and America.¹⁰⁴ These letters, appearing over the pen names "Anglo-Americanus" and "Indo-Britannicus," accused Hamilton and his friends of setting up an organization for the distribution of the trial's story. The colonial victory was regarded as a travesty on law; the right of free complaint, they asserted, would give every demagogue free rein. After lengthy criticism of the Philadelphia lawyers' historical and legal references, they insisted that Hamilton shared Zenger's guilt by claiming that the contents of the papers were true. The academic paper debate continued through the end of the year with replies by James Alexander appearing in the Pennsylvania Gazette and reprinted in Zenger's Weekly Journal shortly afterwards.¹⁰⁵

When Zenger returned to his family and shop, he also stepped back into the political quarrels and excitement he had known prior to his confinement. The struggle against Cosby was still raging. Alexander and Smith were agitating to be readmitted to the bar and the Assembly was listening to speeches which defined its powers as distinct from those of the Governor and the Council.¹⁰⁶ From way off in London, where he had gone to plead his case and his party's, Lewis Morris wrote to Alexander and suggested that Zenger might be moved to the border of Connecticut or Pennsylvania.¹⁰⁷ Thus he would be outside the jurisdiction of the New York authorities, but close enough to continue his valuable work for the critics of the authorities.

9--ZENGER

The death of Cosby on the tenth of March, 1735/6, did nothing to restore political peace in the province. To the contrary, it opened the way to a new issue and kept the old alignment alive. George Clarke, as the oldest Council member, prepared to assume the presidency of the government. Rip Van Dam, older than Clarke and insisting that Cosby had not suspended him from the Council by the proper means, also had his eye on the chief executive's chair. The case became very involved and will not be reviewed here.¹⁰⁸ It suffices to say that Clarke was recognized by the Council, and Van Dam once again became the symbol of the opposition party.

At the outset Clarke seemed willing to profit from Cosby's mistakes; he complied with instructions and did not sit with the Council in a legislative capacity. Also, when adjourning the Assembly, he used his name rather than the King's.¹⁰⁹ But he would not let the Assembly convene during the tense days while he waited for his commission designating him chief executive of the province.¹¹⁰ Distressed that his pleas were unanswered and anxious to convince Whitehall "to what a height of villainy they [his opposition] had arrived," he sent samples of Zenger's paper to Newcastle.¹¹¹ Soon Clarke was much more frantic about the opposition than Cosby ever was; probably because his position was still precarious. He warned the Lords of Trade that the malcontents were deterred from taking arms only by the presence of the troops in the local garrison, and he regretted that his instructions prevented him from sending Alexander, Smith, Morris, Jr., and Zenger to stand trial in England.¹¹²

Throughout 1736 the Zenger press was busy. In addition to the attacks on Clarke, the *Weekly Journal* reviewed and reviled the Cosby administration, and much of the political theory which had been articulated through 1734 was rephrased. The journalistic climax was reached with the city election in October when Zenger devoted four full pages, printed without columns and across the width of the double sheets, to a discussion of election results and the arguments of the various parties.¹¹³

Clarke's commission as Lieutenant Governor reached him several weeks later, thus settling the question of provincial leadership. With this, vehement public debate suddenly came to a halt. Clarke still had more than his share of trouble with the Assembly, but the *New York Weekly Journal* abruptly became a mild and uncontroversial publication. There were occasional bursts of enthusiasm, as in the summer of 1737, when it was suggested that good men and supporters of paper money should be chosen, but by and large the discussion was pedestrian. Daniel Horsemanden, one of Cadwallader Colden's conservative friends, noticed this marked change in the printer's tone and wrote:

"Zenger is perfectly quiet as to politics, his correspondents I believe heartily crop sick, and old Morris retired to Hell Gate to eat his own Sapan and milk, and says the Devil may take 'em all" * * *¹¹⁴

In the summer of 1737, Zenger's friendship with Lewis Morris, Jr., now Speaker in the Assembly, gained him the exclusive appointment for the printing of that body's votes.¹¹⁵ This privilege did not pass without criticism; he was immediately accused of having become "the court printer."¹¹⁶ This was only a half-truth; he did not turn against his friends in the Assembly, but rather they were now the strong influences there and were forcing Clarke to make concessions for which they had long been agitating.¹¹⁷ James Alexander, now a member of the lower house, was usually voting on the side of the Governor, and contributors to the *Weekly Journal* commented on the harmony between the Assembly and the chief executive.¹¹⁸

The next year, after New Jersey was completely separated from New York administratively, and the elder Lewis Morris was made the first governor, Zenger received a number of printing contracts from the offices of that province.¹¹⁹ For one year he published the votes of the New Jersey General Assembly and also the speeches and addresses of Morris and the Council. In addition to these and the regular *Weekly Journal*, he was busy running off religious tracts dealing with the current doctrinal controversies among those of Presbyterian and Pietist persuasion.

For the remaining eight years of his life, Zenger's activities were routine and uneventful. Death came to him on Monday, July 28, 1746, at the age of forty-nine.¹²⁰ The print shop remained open; his wife and oldest son, John, continued to publish the *Weekly Journal* and accept any calls for work that came their way. In 1749, Zenger's son began to operate the shop alone, but two years later he died, and with him the *New York Weekly Journal* ended its eighteen-year career.

CONCLUSION

During the eighteenth century, the Zenger story spread with the publication of the trial's text; the numerous reprintings are indisputable testimony to the ready contemporary interest. Interesting narratives of the Cosby administration, with contrasting points of view, were written by Cadwallader Colden and William Smith, the son of Zenger's disbarred attorney, and both devoted considerable space to the trial, its antecedents and aftermath. But neither published that part of his work during his lifetime.

When Americans began to write more serious histories of the colonies and the country in the nineteenth century, the Zenger episode generally appeared in the larger and more enduring works. Abiel Holmes, John Hinton, George Bancroft, and Richard Hildreth all told the story in varying amounts of space and with a new nationalism that inclined to exaggerate its immediate significance. The inclusion of the lengthy Zenger text in Howell's *State Trials* (vol. 17), and in Chandler's *American Criminal Trials* (vol. 2), was also instrumental in the popularization of that incident. By the end of the century, when historical studies were given a new impetus under the influence of German scholarship, and collections of historical documents were being prepared, Albert B. Hart and Justin Winsor helped perpetuate Zenger's memory. Appleton's *Encyclopaedia of Biography*, which appeared in 1889, included a biographical sketch of the printer.

By the turn of the century, the story of Zenger's paper, arrest, and trial was an ineradicable part of American history. In addition to the general history books, it has come up also through the specialized histories of printing and journalism from Isaiah Thomas, through Frederic Hudson, to Frank Luther Mott. The latter-day student can read of Zenger in the multi-volume works of John Fiske, Woodrow Wilson, J. A. Doyle, Edward Channing, and H. L. Osgood, as well as in the textbooks written by Beard, Morison and Commager. Most recently, a popular omnibus of "great reporting" has brought the episode back to the general reader whose memory may have faded since his school days.

The general tendency on the part of these political historians, and others not cited, has been to refer to the Zenger case as a great precedent in the history of the free press in America. Unfortunately, if the definition of the legal dictionary is applied, "a case of decision * * * furnishing an example or authority for an identical case afterwards," it does not fit the facts as most would like. This case did not sweep out the rigors of the common law and permit every printer to say what he liked about the government. Even the New York General Assembly proved hypersensitive when it was the victim of criticism instead of the Governor, and numerous printers had their knuckles rapped right up to the Revolution.¹²¹ In England and America the common law of libel was given a new boost by Blackstone, and was not changed in any substantive sense by the Fox Bill, the new state constitutions, or the First Amendment.¹²²

10--ZENGER

Procedural modifications in the common law of libel began in the United States with, ironically enough, the much maligned Sedition Act of 1798. These changes mutely honored Andrew Hamilton and James Alexander, for they provided that truth could be admitted in evidence and the jury could bring general verdicts. This logic survived the Sedition Act and was applied when state statutes and constitutions were being liberalized in the democratic resurgence of the early Jacksonian period. But there is no evidence that in this process inspiration was drawn from the Zenger case. The more famous Hamilton, Alexander, drew heavily on the reasoning of the older Hamilton when serving as defense counsel in *People v. Croswell*, but when he mentioned the Zenger trial he did so with a half-hearted tone and indicated its inadequacy as authority.¹²³ Furthermore, the learned jurists, Chancellor Kent and Mr. Justice Story, in their respective commentaries on American law, devoted attention to the late recognition of truth in libel causes without mentioning the colonial trial at all.¹²⁴

Professor Edward S. Corwin, one of the outstanding present-day constitutional historians, has pointed out that the Zenger case has left a widespread and badly confused tradition as to its importance.¹²⁵ It should be possible to resolve this confusion without relegating Zenger to obscurity; one has only to de-emphasize the "precedent" feature of the case. The political significance of Cosby's defeat and the dissemination of a more political theory were certainly important to their day. From the longer point of view, there is the simple and inescapable fact that the procedure and argument of Andrew Hamilton, which then bordered on contempt of court, is admissible practice today in most of the states. Finally, the 200-year-old popularity of the episode carries within itself the seed of its own perpetuation. While the legal implications have not been clear, the historical interest dates from the trial. Using the important historical adage, that what people have thought was true in their times was just as important as what actually was true, one has only to recall that Zenger's contemporaries felt sufficiently inspired by the incident to pay their highest tribute to Hamilton, and in granting him the freedom of the city they acknowledged

"... A Grateful sense of the Remarkable service done to the Inhabitants of this City and County by Andrew Hamilton Esqr. of Pensilvania [sic] Barrister at Law by his learned and Generous Defence of the Rights of Mankind and the Liberty of the Press in the Case of John Peter Zenger. . . ." ¹²⁶

word omitted

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FOOTNOTES—7 PT x 24.3

1. "An Act for the naturalization of John Peter Zenger . . ." *Archives of Maryland* (Maryland Historical Society, Baltimore, 1883—), XXXVIII, 277. Hereafter cited as *A/M*.
2. Cf. Walter A. Knittle, *The Early Eighteenth Century Palatine Emigration* (Philadelphia, 1936), *passim*.
3. *Ibid.*, pp. 1-31.
4. *Ibid.*, pp. 148-8.
5. "List of Palatins [sic] Remaining at New York, 1710," in E. B. O'Callaghan, ed., *Documentary History of the State of New York* (Weed, Parsons, and Co., Albany, 1849-51), III, 564, hereafter cited as *DHNY*; "The New York Subsistence List," in Knittle, *op. cit.*, p. 291; "Indenture of John Peter Zenger," in *The Historical Magazine* (C. E. Richardson, Boston, 1857-75), VIII, 35. The New York Subsistence List, as consolidated by Knittle, suggests that Zenger's father may have landed in New York for herein the family numbers five. But this is not clear since Knittle claims to have listed children over ten as adults and young Zenger was thirteen at the time. If he was listed as an adult, who was the third child?
6. *A/M*, XXXIII, 501-2, 588.
7. *Ibid.*, XXXIV, 56; XXXVIII, 277.
8. Lawrence C. Wroth, *A History of Printing in Colonial Maryland, 1688-1776* (Typothetae of Baltimore, Baltimore, 1922), pp. 49-53, contains a chapter on Zenger in Maryland which reflects careful research and speculation.
9. *Ibid.*, pp. 50-51; Bernard C. Steiner, "Andrew Hamilton and John Peter Zenger," *Pennsylvania Magazine of History and Biography*, (Historical Society of Pennsylvania, 1896), XX, 405-8, hereafter cited as *PMHB*.
10. "Records of Marriages in the Reformed Dutch Church in Amsterdam and New York," in *Collections of the New York Genealogical and Biographical Society*, (New York, 1890), I, 137. These collections hereafter cited as *NYGBS*.
11. *DHNY*, III, 564.
12. "Baptisms in Reformed Dutch Church, New York," *NYGBS*, II, 445, (November 1, 1723).
13. *Ibid.*, II, 460, 478; III, 11, 24. There is no evidence to support Livingston Rutherford's statement that Zenger had two daughters; no baptisms are recorded while all those of his sons are.
14. *Journal of the Votes and Proceedings of the General Assembly of the Colony of New York* (H. Gains, New York, 1764-6), I, 500. Hereafter cited as *JGANY*.
15. Charles E. Corwin, *Manual of the Reformed Church in America, 1628-1922*, 5th ed. rev. (New York, 1922), p. 57; *Ecclesiastical Records of the State of New York* (J. B. Lyon, Albany, 1901-2), IV, 2310-2664, contains the documents on this involved story. Latter hereafter cited as *ERNY*.
16. *ERNY*, IV, 2393-9, 2345-8, 2579.
17. *JGANY*, I, 627, 638.
18. Capedevilla (Bonaventura), *Complainant against . . . Colonel Cosby late Commander-in-Chief of Minorca*.
19. Cadwallader Colden, "History of Cosby's Administration," in *Collections of New York Historical Society*, (New York, 1868), LXVIII, 283-8. These collections hereafter cited as *NYHS*.
20. *Ibid.*, LXVIII, 286.
21. *Ibid.*
22. Morris to Colden, Sept. 24, 1732, *NYHS*, LI, 81.
23. Poppel to Cosby, Jan. 23, 1733, in E. B. O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York* (Weed, Parsons, and Co., Albany, 1853-87), VI, 39-40. Hereafter cited as *DECHNY*.
24. Cosby to Lords of Trade, Dec. 18, 1732, *Ibid.*, V, 938.
25. Anon., *Letter from a Gentleman in New York to his Friend in London* (J. P. Zenger, 1733); Colden, *NYHS*, LXVIII, 288.
26. Cosby to Newcastle, Oct. 28, 1732, *DECHNY*, V, 936-7.
27. B. M., pseud. of Alexander Campbell, (Necessity of frequent elections), (J. P. Zenger, 1732).
28. Sydney, (John), pseud., (On necessity of Amendment and Revision of the Government), (J. P. Zenger, 1732); Dissolution, Robert, pseud., *A Letter from a Gentleman in the Country to his Friend in Town*, (J. P. Zenger, 1732).
29. Colden, *NYHS*, LXVIII, 289, 299-300; Rip Van Dam, *Arguments of the Council for the Defendant in Support of a Plea to the Jurisdiction of the Supreme Court of the Province of New York*, (J. P. Zenger, 1733); Alexander to Colden, Feb. 21, 1732/3, *NYHS*, LI, 50; Cosby to Newcastle, May 3, 1733, *DECHNY*, V, 943-5, 949.
30. Julius Goebel, Jr., "The Courts and the Law in Colonial New York," in A. C. Flick, ed., *History of the State of New York* (Columbia University Press, New York, 1933), III, 30-1; cf. also Julius Goebel, Jr., *Law Enforcement in Colonial New York* (Commonwealth Fund, New York, 1944), *passim*.
31. *Minute Book of the Supreme Court of Judicature*, March 13, 1732, Oct. 23, 1739, pp. 23, 26; Cosby to Newcastle, May 3, 1733, *DECHNY*, V, 942-50; Cosby to Lords of Trade, June 19, 1734, *Ibid.*, VI, 4-7.
32. L. Morris, *The Opinion and Argument of the Chief Justice of the Province of New York, Concerning the Jurisdiction of the Supreme Court of the Said Province, to determine Causes in a Court of Equity* (J. P. Zenger, 1733).
33. Cosby to Newcastle, May 3, 1733, *DECHNY*, V, 942-50.
34. Morris to Lords of Trade, Aug. 27, 1733, *Ibid.*, V, 951-5.
35. Cf. letters from Daniel Horsemanden to C. Colden for substantiating evidence, *NYHS*, LI, 107-8, 110.
36. The only complete account of this election is in *New York Weekly Journal*, No. 1, Nov. 5, 1733; hereafter cited as *NYWJ*.
37. "Complaint Against the Sheriff of Westchester for Refusing the Votes of Certain Quakers at the Election," *ERNY*, IV, 2636-7.
38. Morris to Lords of Trade, Dec. 15, 1733, *DECHNY*, V, 957-9; Rip Van Dam, "Articles of Complaint against Governor Cosby," Dec. 17, 1733, *Ibid.*, V, 975-8.
39. Council of New York to Newcastle, Dec. 17, 1733, *Ibid.*, V, 979-985.
40. *NYWJ*, No's. 2, 3, Nov. 12, 19, 1733.
41. *Ibid.*, No. 17, Feb. 25, 1733/4.
42. *Ibid.*, No. 18, March 4, 1733/4.
43. Paul M. Hamlin, *Legal Education in Colonial New York* (New York University, New York, 1939), pp. 76-7.
44. *James Alexander Papers*, File No's. 2, 4, 6.
45. Cosby to Chas. de la Farge, Dec. 18, 1732, *DECHNY*, V, 942; Cosby to Lords of Trade, Dec. 18, 1732, *Ibid.*, V, 939.
46. *NYWJ*, No. 6, Dec. 10, 1733.
47. *Ibid.*, No's. 19, 29, March 11, 20, 1734.
48. *Ibid.*, No. 9, Dec. 31, 1733.
49. *Ibid.*, No. 10, Jan. 7, 1733/4.
50. *Ibid.*, No. 43, Aug. 26, 1734.
51. *Ibid.*, No. 8, Dec. 24, 1733.
52. *Ibid.*, No. 12, Jan. 21, 1733/4.
53. *Ibid.*, No's. 6, 7, Dec. 10, 17, 1733.
54. "A Song Made upon the Election of Magistrates for this City," (J. P. Zenger, 1734).
55. *NYWJ*, No. 12, Jan. 21, 1733/4.
56. Morris to Colden, Jan. 17, 1733/4, *NYHS*, LI, 100; Perry to Colden, March 19, 1734, *Ibid.*, LI, 106; Perry to Colden, Aug. 30, 1734, *Ibid.*, LI, 112.
57. Poppel to Colden, Nov. 1, 1734, *Ibid.*, LI, 114.
58. *New York Gazette*, No. 438, March 11-18, 1734; hereafter cited as *NYG*.
59. Contemporary relevant material can be found in *NYWJ*, No. 14, Supplement, Feb. 4, 1733/4; *Ibid.*, No. 15, Supplement, Feb. 11-12, 1733/4; *NYG*, No. 436, Feb. 25-March 4, 1733/4; Francis Harrison, "To the Right Worshipful . . ." (W. Bradford, 1734); *The Vindication of James Alexander and William Smith*, (J. P. Zenger, 1734).
60. *NYWJ*, No's. 46-48, Sept. 16-30, 1734.
61. *NYG*, No. 489, Oct. 14-21, 1734.
62. "The Charge of the Honorable James De Lancey, Esq., to the Grand Jury . . . the fifteenth of October, 1734," (W. Bradford, 1734).
63. *JGANY*, I, 671-2; "A Brief Narrative of the Case and Tryal of John Peter Zenger, Printer of the New York Weekly Journal," in Livingston Rutherford, *John Peter Zenger* (Dodd, Mead, and Co., New York, 1904), pp. 175-6. All references to the "Brief Narrative" which was published by Zenger and which is the only single complete account of the trial, will be to the copy of the 1733 edition found in verbatim transcription in Rutherford. Rutherford's pagination will be used also, since this volume is obviously so much more readily available than the original tract. The original used by Rutherford is in the Rare Book Room of the New York Public Library. The latter will hereafter be cited as "C&T/JPZ."
64. *Journal of the Legislative Council of the Colony of New York* (Weed, Parsons, and Co., Albany, 1861), I, 642.
65. "C&T/JPZ," pp. 179-181; Colden *NYHS*, LXVIII, 322-3.
66. "C&T/JPZ," p. 181.
67. "Return of Habeas Corpus—John Peter Zenger ads Domo Regis," *James Alexander Papers*, File No. 24.
68. "C&T/JPZ," p. 182.
69. *Ibid.*, p. 183; the original affidavit bearing Zenger's signature is in the *James Alexander Papers*, File No. 26.
70. "C&T/JPZ," p. 183.
71. Goebel, *Law Enforcement* . . . , p. 504.
72. *NYG*, No. 476, Dec. 2-9, 1734.
73. Cosby to Lords of Trade, Dec. 6, 1734, *DECHNY*, VI, 21-2. Cosby told of frequent meetings of anti-government cabals which continued after Zenger's arrest.
74. *NYWJ*, No. 59, Dec. 23, 1734.
75. Goebel, *Law Enforcement* . . . , p. 372.
76. "C&T/JPZ," pp. 184-7; *Minutes of the Supreme Court of Judicature*, April 15, 1735, p. 155. Latter hereafter cited as *MSCJ*.
77. "C&T/JPZ," p. 188; *MSCJ*, April 16, 1735, p. 156.

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78. "C&T/IPZ," p. 190; *MSCJ*, April 18, 1735, p. 163.
79. Hamlin, *op. cit.*, pp. 3, 19, 148.
80. *MSCJ*, April 22, 1735, p. 163.
81. William Smith, *History of the Province of New York from Its Discovery to the Appointment of Governor Colden in 1762* (New York Historical Society, New York, 1830), II, 21.
82. "C&T/IPZ," pp. 191-3, for details of this story; *MSCJ*, July 29, 30, 1735, pp. 168-9.
83. *NYG*, No. 481, Jan. 21-3, 1733/4.
84. *NYWJ*, No. 13, Jan. 28, 1733/4.
85. *Ibid.*, No. 23, April 3, 1734.
86. "Zenger's Prologue," in *James Alexander Papers*, File No. 22; see the brief prepared by Alexander which indicates that he was thinking about presenting an exception incorporating these same complaints, in Goebel, *Law Enforcement*, . . . p. 782ff.
87. Having failed to find a shred of evidence telling exactly how Hamilton became involved in the Zenger case, this writer is inclined to accept Rutherford's account as reasonable: Rutherford, *op. cit.*, pp. 57-9; Rutherford, *Family Records and Events* (De Vinne Press, New York, 1894), pp. 14-15. The attempt to connect Hamilton with Zenger through the fact that both lived in Kent County, Maryland, though the lawyer left two years before the printer arrived, is feeble and unconvincing: Steiner, *op. cit.*, Hamlin, *op. cit.*, pp. 77, 147-8, supports the Rutherford theory.
88. "Brief, King v. John Peter Zenger," in Goebel, *Law Enforcement*, pp. 782-8.
89. "C&T/IPZ," p. 216.
90. *NYWJ*, No. 91, Aug. 2, 1735.
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92. *Ibid.*, pp. 240-1.
93. "Zenger's Epilogue," in *James Alexander Papers*, File No. 23.
94. Goebel, *Law Enforcement*, . . . p. 665.
95. Smith, *op. cit.*, II, 22; Colden, *NYHS*, LXVIII, 330.
96. *NYWJ*, No. 93, Aug. 18, 1735.
97. *Ibid.*; *MSCJ*, Aug. 3, 1735, p. 183.
98. *NYWJ*, No. 93, Aug. 18, 1735.
99. *Minutes of the Common Council of the City of New York* (Dodd, Mead, and Co., New York, 1905), IV, 273, 277, 278.
100. Search was confined to files of colonial papers available in NYPL.
101. Rutherford, *John Peter Zenger*, pp. 127-8; note facsimile of Hamilton's letter regarding same, *Ibid.*, facing p. 128.
102. *Cf. Ibid.*, pp. 249-53, for bibliography of the trial, indicating all editions, printers, and places.
103. T. B. Howell, ed., *A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors from the Earliest Period to the Year 1783* (T. C. Hansard, London, 1816), XVII, 676-763; Peleg W. Chandler, ed., *American Criminal Trials* (Charles C. Little and James Brown, Boston, 1841), I, 151-209.
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105. *Pennsylvania Gazette*, No's. 498-9, Nov. 17-Dec. 3, 1737; *NYWJ*, No's. 216-218, Dec. 19, 1737-Jan. 9, 1737/8.
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107. Morris to Alexander, Oct. 24, 1735, quoted in Rutherford, *Family Records and Events*, p. 23.
108. An adequate and authoritative account of Clarke's administration is in Herbert L. Osgood, *The American Colonies in the Eighteenth Century* (Columbia University Press, New York, 1924), II, 465-482.
109. Clarke to Popple, May 28, 1735, *DROENY*, VI, 59-7.
110. Clarke to Newcastle, et. al., *Ibid.*, VI, 46, 48, 49, 52-3, 53-5, 52-3.
111. *Ibid.*, VI, 74.
112. *Ibid.*, VI, 76-7.
113. *NYWJ*, No. 152, Oct. 4, 1733.
114. Colden, *NYHS*, LI, 164.
115. Rutherford, *John Peter Zenger*, p. 157.
116. *NYWJ*, No. 190, June 27, 1737.
117. Osgood, *op. cit.*, II, 477.
118. *NYWJ*, No. 200, Sept. 3, 1737.
119. Rutherford, *John Peter Zenger*, pp. 160-2.
120. *New York Evening Post*, No. 89, Aug. 4, 1743, carries a short obituary of Zenger.
121. Livingston R. Schuyler, *Liberty of the Press in the Colonies before the Revolutionary War* (T. Whittaker, New York, 1905), pp. 54-67. An article by Richard B. Morris on freedom of the press in the colonies after the Zenger case is forthcoming in an early issue of *New York History*.
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123. *People v. Crosswell* (1804), 3 Johnson (N.Y.) 343, 352-65.
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125. Corwin, *op. cit.*, II, 1064.
126. *Minutes of the Common Council of the City of New York*, IV (1730-40), 277.

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CHRONOLOGY

- 1697--Birth of John Peter Zenger, in the Upper Palatinate.
1710--Zenger arrived in the Province of New York.
" , Oct. 26--Indentured to William Bradford, printer.
1720, April 12--Authorized to print official documents of the Province of Maryland.
" , Oct. 27--Naturalized in the Province of Maryland.
1722, Sept. 11--Married to Anna Catherine Maulin.
1723, July 6--Naturalized in the Province of New York.
" , Nov. 1--Son, Johannes, baptized.
1725--Temporary partnership with William Bradford.
" , Sept. 22--Son, Peter, baptized.
1727, Sept. 24--Son, Nicholas, baptized.
" --Blower and organist in Church on Garden St.
1731, March 14--Son, Evart, baptized.
1732, Aug. 1--Governor Cosby arrived in New York.
" Zenger began to print political tracts for the anti-Cosby party.
1732/3, Jan. 7--Son, Frederick, baptized.
1733, Nov. 5--Commencement of *New York Weekly Journal*, printed by John Peter Zenger.
1733/4, Jan. 15--Chief Justice De Lancey first called attention of Grand Jury to seditious materials being published and distributed in the city.
1734, Oct. 15--De Lancey again asked for indictment.
" , Nov. 6--Numbers 7, 47, 48, 49 of *New York Weekly Journal* and two songs printed by Zenger were burned publicly by the Sheriff near the city pillory.
" , " --Order issued for Zenger's arrest.
" , Nov. 17--Zenger arrested; placed in common jail in New York City Hall.
1734/5, Jan. 28--Attorney-General filed bill of information charging Zenger with printing false, scandalous, malicious, and seditious libel.
1735, April 16--James Alexander and William Smith, Zenger's lawyers, disbarred.
" , April 18--Court appointed John Chambers as attorney for Zenger.
" , August 4--Trial of John Peter Zenger, "not guilty."
" , " --Dinner honoring Andrew Hamilton.
" , Sept. 16--Common Council votes to present Andrew Hamilton the Freedom of the City, and a gift of a gold box.
1735/6, March 10--Death of Governor William Cosby.
1736, June--Zenger published "Brief Narrative of the Case and Tryal of John Peter Zenger . . ."
1737--*New York Weekly Journal* reflected restoration of political peace in the province.
" , --Zenger printed the votes and proceedings of the New York General Assembly.
1738, --Zenger printed votes and proceedings of New Jersey General Assembly, speeches and addresses of Governor Lewis Morris and the Council.
1746, July 28--Death of John Peter Zenger.
1751, --Cessation of *New York Weekly Journal*.

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I thought meant

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(A rare old journalistic antique from the collection of James Wright Brown.)
That jury of Free-men which acquitted John Peter Zenger in the Tryal of August 4, 1735.
In the City Hall on the corner of Nassau and Wall Streets in New York, the twelve Jurors whose Names are imprinted below did find the Printer of the New-York weekly Journal innocent of Libel against Agents of His Majesty's Government, and proclaim'd TRUTH to be a just Defense against charges of criminal Libel.

- Thomas Hunt
- Samuel Weaver
- Harmanns Rutgers
- Stanly Holmes
- John Bell
- Egbert Van Borsom
- John Goelet
- Hercules Wendover
- Benjamin Hildreth
- Edward Man
- Andries Masschalk
- Abraham Keteltas

Printed and are to be distributed by D. Jackson at The typographic Laboratory of the State University of Iowa in Iowa City, 1945.
THE ZENGER MEMORIAL FUND
INCORPORATED, NEW YORK STATE
November 12, 1942.

To keep alive in Historic Saint Paul's Church, Eastchester, N. Y., the memory of John Peter Zenger and to honor his great contributions to the free press in this country.
Directors
ARTHUR HAYS SULZBERGER
HOWARD DAVIS
EDWIN S. FRIENDLY
JAMES WRIGHT BROWN
The Rev. W. HAROLD WHIGLE, D. D.

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APPENDIX NO. 1 Suggestions for Diaramas

1. *Zenger's Print Shop*
 - a. Scene: two or three men working in the shop. It is known from Zenger's account of the trial that he had a journeyman and assistance from his young sons, around ten to twelve years of age.
 - b. Sources of information for illustrations:
 - 1) Lawrence C. Wroth, *The Colonial Printer*, for descriptions and illustrations of contemporary printing equipment. Cannot hope to do more than to represent the typical print shop of the period.
 - 2) Franklin Institute, Philadelphia, and American Antiquarian Society, Worcester, probably have illustrative material on equipment used by Benjamin Franklin and Isaiah Thomas.
 - 3) E. McClellan, *Historic Dress in America*, has illustration of workman's dress, ca. 1750, p. 323.
2. *Eastchester Election*
 - a. Scene: two large groups of men facing each other on the village green, led by their respective candidates, and standard bearers. Sheriff, mounted and elaborately dressed, in the center.
 - b. Sources of information for illustration:
 - 1) *New York Weekly Journal*, No. 1, Nov. 5, 1733, has the only and an excellent account of this episode.
 - 2) McClellan, *op. cit.*, describes contemporary dress, and also that of Quakers who must be included in this scene. Esther Singleton, *Social New York Under the Georges, 1714-1776*, also has good chapters on contemporary dress.
3. *Planning the Publication of the New York Weekly Journal*
 - a. Scene: James Alexander, William Smith, Lewis Morris, Rip Van Dam, and Zenger meeting in the home of James Alexander and discussing this project.
 - b. Sources of information for illustrations:
 - 1) Pictures of Persons to be represented:
 - a) James Alexander, in Rutherford, *John Peter Zenger*.
 - b) Rip Van Dam, in *Ibid.*
 - c) Lewis Morris, in *Ibid.*
 - d) William Smith, in *Magazine of American History*, VI (1881), 264.
 - e) Zenger must be constructed from imagination; he was 36 years of age at the time and his dress would be plainer than that of the others since he was poorer.
 - 2) Dress illustrations in McClellan, *op. cit.*, Singleton, *op. cit.*, and E. Warwick and H. C. Pitz, *Early American Costume*.
 - 3) An inventory of Alexander's household furnishings can be found in Singleton, *op. cit.*, pp. 73-76, and could be used for reconstructing a sitting room.
4. *Burning the Seditious Copies of the New York Weekly Journal*
 - a. Scene: the papers being burned in front of the City Hall, near the pillory.
 - b. Sources of information for illustration: the sketch of this scene can be found in the office of Mr. G. Osborn, Federal Hall Museum, New York City. This seems accurate as to location and number of persons present. The major error in this sketch is in the size of the paper; the *Weekly Journal* was not as large as present day papers, as would seem from the sketch. Its dimensions were 7½" x 11", approximately, with wide margins; originals can be seen in Rare Book Room of New York Public Library.
5. *Zenger in Jail*
 - a. Scene: Zenger could be shown in his cell, sunlight coming through the window; he might be talking to his wife through the hole in the door.
 - b. Sources of information for illustration:
 - 1) Floor Plans of City Hall, including the third floor jail, are in Mr. Osborn's office, Federal Hall Museum, New York City. From these the cell can be visualized easily. Dr. Francis Ronalds, of Morristown, N. J., has a door from a contemporary English prison which would be adequately illustrative.
6. *Zenger's Trial*
 - a. Scene: Andrew Hamilton pleading his case, directing his arguments to the jury. The courtroom is crowded; two justices are on the bench.
 - b. Sources of information for illustration:
 - 1) Pictures of Principals:
 - a) Warwick and Pitz, *op. cit.*, has a picture of James De Lancey, painted 1728, when he was about twenty-five and seven years before this incident in which he was the Chief Justice.
 - b) Same book has a picture of Frederick Philipse, who might have been the grandfather of the Frederick Philipse who was Assistant Justice to De Lancey in the trial.
 - c) Andrew Hamilton's picture is in Konkle's *Life of Hamilton* and Rutherford's *John Peter Zenger*.
 - 2) An interesting painting of this scene was done by J. Hintermeister and is reproduced in Konkle's biography of Hamilton. This painting shows a balcony for spectators in the courtroom which the above-mentioned plans do not show.
 - 3) Several reliable sources of information suggest that at the time of the Zenger trial the lawyers and judges did not wear professional wigs, bands, and robes:
 - a) Wm. Smith, *History of the Province of New York to 1762*, I, 316, states that they were not worn.
 - b) Stokes, *Iconography*, IV, 977, quotes the *Minutes of the Supreme Court of Judicature* for January 26, 1764, to the effect that henceforth that court will emulate the bar at Westminster and that lawyers and judges will appear in appropriate costume.
7. *Andrew Hamilton Being Honored at Dinner the Evening of the Trial*
 - a. Scene: approximately forty persons present at Black Horse Tavern. Hamilton probably flanked by J. Alexander, William Smith, and Rip Van Dam. Lewis Morris in England at the time, and Zenger still in jail.
 - b. E. Singleton, *op. cit.*, pp. 365-372, has general description of contemporary taverns.

APPENDIX NO. 2

Significant quotations

1. From Andrew Fletcher (pseud.), *Vincit Amor Patriae*, a broadside printed by Zenger, 1732.

"The best way to preserve a Constitution is to endeavor to inculcate such notions as tend to persuade every man, That he is but a Member of Society, that he can no more subsist alone, than a limb when it is torn from the body, that our Good is inseparably connected and complicated with that of others.

"We want nothing to make this Constitution complete than the reducing of it to its first vigor and glory, by annual elections of its representatives. If these elections were made by the ballot, 'twere much more preferable, because the people would then vote for the deserving man they love and not the haughty Tyrant they fear. . . . The British Monarch has all the Prerogative that is necessary to make the people happy but is under a happy and glorious inability to do any mischief to his people. . . ."
2. *New York Weekly Journal*, Nos. 2-3, Nov. 12, 19, 1733:

"The Liberty of the Press is a Subject of the greatest Importance, and in which every Individual is as much concerned as he is in any other Part of Liberty. . . .

"The Loss of Liberty in general would soon follow the suppression of the Liberty of the Press; for as it is an essential Branch of Liberty, so perhaps it is the best preservative of the whole. . . . I believe every honest Britton, of whatever Denomination, who loves his Country, if left to his own free and unbiassed Judgment, is a Friend to the Liberty of the Press, and an Enemy to any Restraint upon it. . . ."

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3. *New York Weekly Journal*, No. 9, Dec. 31, 1733:

"... I have all possible esteem for Quality; but if a man of Quality acts like an ape, or a clown, or a pick-pocket, or a profligate, I shall heartily hate and despise his Lordship, notwithstanding my great reverence for Lords.

"... A right honorable or a right reverend Rogue is the most dangerous Rogue and consequently the most detestable."

4. *New York Weekly Journal*, No. 10, Jan. 7, 1733/4:

"A True English Man in a civil and political sense is the greatest character in Life. . . . an English man may speak his opinion without doors as well as within Doors. . . . He may and he ought to alarm his fellow subjects when he sees any apparent danger, either from enemies abroad, or from factions at home. . . .

"It is the prerogative of our Prince to choose his ministers, but it is the privilege of the people by their Representatives, to judge of, and even to arraign the conduct of those Ministers. . . ."

5. A Letter to Zenger in James Alexander's handwriting, in *James Alexander Papers*, File No. 6, n. d.:

"... an unrestrained power of one man . . . is so monstrous that it turns men that have it into monsters. . . .

"Those who are in the possession of power, as all magistrates are, ought above all other men to be narrowly watched, and checked with restraints stronger than their temptations to break them. . . ."

6. James Alexander's Observations . . . , in *James Alexander Papers*, File No. 2, n. d.:

"When the liberties and properties of a people are at the will of one man, are they not precarious, and if they remain so will not that entail slavery on such people.

"If judges and magistrates are absolutely at the will of one man to make and unmake at pleasure, cannot that man have what judgment he pleases, for if those in being will not judge as he will, he can put on others who will, unless it can be said which its not believed to be true that none will accept of a great office on those terms. . . .

"Should a people be reduced to those circumstances by wicked men, sit still and shut their eyes . . . ears . . . mouths. . . . God forbid that free britons ever should be reduced to such circumstances for before they can Liberty must be entirely gone and they reduced by fears and threats to absolute slavery."

7. *New York Weekly Journal*, No. 54, Nov. 11, 1734, last issue before Zenger's arrest:

"Without Freedom of Thought there can be no such Thing as Wisdom, and no such Thing as public Liberty; without Freedom of Speech, which is the right of every Man, as far as by it he does not hurt or controul the Right of another: and this is the only check it ought to suffer, and the only bounds it ought to know. . . .

"That Men ought to speak well of their Governors, is true, while their Governors deserve to be well spoken of; but to do public Mischief without Hearing of it, is only the prerogative and Felicity of Tyranny: A free People will be Shewing that they are so, by their Freedom of Speech.

"... it is the Interest, and ought to be the Ambition of all honest Magistrates, to have their Deeds openly examined and publicly scanned. Only the wicked Governors of Men dread what is said against them. . . .

"Freedom of Speech therefore being of such infinite importance to the Preservation of Liberty, everyone who loves Liberty ought to encourage Freedom of Speech. The Defence of Liberty is a noble and heavenly Office, which can only be performed where Liberty is."

8. Letter from London, reprinted in *Pennsylvania Gazette*, No. 492, May 11-18, 1738:

"We have been lately amused with Zenger's trial which has become the common topic of conversation in all the Coffee Houses both at the Court End of the Town and in the City. The greatest men at the Bar have openly declared that the subject of Libels was never so well treated in Westminster Hall, as at New York. Our political writers of different factions, who never agreed in anything else, have mentioned the trial in their public writings with an air of Rapture and Triumph. A Goliath in Learning and politics gave his opinion of Mr. Hamilton's argument in these terms, 'If it is not law it is better than law, it ought to be law, and will always be law wherever justice prevails.' The trial has been reprinted four times in three months, and there has been a greater demand for it, by all ranks and degrees of people than there has been known for any of the most celebrated performances of our greater Geniuses. We look upon Zenger's advocate as a glorious asserter of public liberty and of the rights and privileges of Britons. . . ."

9. Gouverneur Morris to John W. Francis, quoted in John Howard Hinton, *History and Topography of the US*, II, 400n.:

"The trial of Zenger, in 1735, was the germ of American freedom—the morning star of that liberty which subsequently revolutionized America."

10. Herbert L. Osgood, *American Colonies in the Eighteenth Century*, II, 460.:

"Hamilton's plea [was] . . . the greatest oratorical triumph won in the colonies prior to the speech of John Otis against the writs of assistance."

APPENDIX NO. 3

A recently published book, Michael Kraus, *The Atlantic Civilization: Eighteenth-Century Origins* (Cornell University Press, Ithaca, N. Y., 1949), pp. 226-229, describes English interest in the Zenger trial. Prof. Kraus seems to have gone through English newspapers and magazines, and his comments throw light on the popularity of the case:

"The English followed the case closely after Zenger's arrest had been chronicled in the London papers. Pamphlets and newspaper extracts emphasized the meaning of the trial and its outcome as a check against despotic power. It was no mere coincidence that a new edition of Milton's *Areopagitica* appeared in 1738 while the Zenger case was in the front pages of the press.

"The Zenger precedent was seized upon by British and American writers to protect defendants in similar cases. A British bookseller, William Owen, was prosecuted in 1752 for publishing a libel charged as libelous. The jury, in opposition to the judge, determined the matter of law as well as the matter of fact and voted not guilty. . . . In reviewing the history of the Owen case, the *Monthly Review* spoke of the frequent republication of the Zenger trial, which, it said, was well known to require any extended comment. . . . In presenting to the public a narrative of both Zenger's and Owen's trials, a foreward said, 'In an age of persecution, when few people dare to write and fewer still to print, these Trials ought to be universally read by every True Friend to English Liberty, who will here see two of the most noble stands which have been made since the Revolution 1689, in Defense of Constitutional Freedom.'

"The Irish press, too, followed closely the events in America in the Revolutionary era, scrutinized all threats to liberty. The *Freeman's Journal* printed a 'Letter . . . to be read by all Jurymen' on the subject of libel, and the action of the American jury in declaring Zenger not guilty was held up as a noble example. A vigorous campaign in favor of freedom of the press was carried on in succeeding issues of the paper, which published a long story of the Zenger case, including the celebrated speech of Hamilton. British writers, looking back over the sequence of events which culminated in the Revolution, pointed to the Zenger case to show that long before 1775 Americans were bent on opposing the will of the British government and had been striving continuously to be ruled by their own laws. Early in 1770 in New York, in the midst of political turmoil in which Captain Alexander MacDougall, the 'Wilkes of America,' was charged with authorship of libelous material, the booksellers reprinted the proceedings of Zenger's trial. . . ."

John Peter Zenger

by
Arms
Chesapeake

Dec. 1949