

Establishing Freedom of the Press: The Truth Matters

Before the United States separated from England, the colonies followed the British rule of law. In the early 1730s, John Peter Zenger, a German immigrant, started publishing *The New-York Weekly Journal*. In it, he printed articles by opponents of Governor William Cosby criticizing his removal of the colony's Chief Justice from office. These articles mocked Cosby while warning against leaders who put themselves above the law. Outraged, Governor Cosby ordered copies of select issues seized and burnt and Zenger was eventually indicted for seditious* libel.

After Zenger spent several months in jail, his trial began, but his lawyers were disbarred and prevented from defending their client. Andrew Hamilton, a Philadelphia lawyer, took over the case and offered a defense that went against traditional English law.

In England, proof of publication was all that was necessary to convict a publisher of libel. Whether the alleged libel was true or not didn't matter. Hamilton insisted that the truth should make a difference: if Zenger had published the truth, he couldn't be guilty of libel.

When the court rejected the argument, Hamilton urged jurors to decide for themselves. Believing the truth matters, the jury acquitted Zenger, refusing to find him guilty of violating a law they found unjust.

The truth as a defense of libel was brought up again in the 1804 state court case of *The People of the State of New York v. Harry Crosswell*.

Crosswell published a small paper called *The Wasp*, which aggressively criticized President Thomas Jefferson and other Republican public officials. He was tried and convicted on charges of libel and sedition by the State of New York. Alexander Hamilton represented Crosswell on his appeal. In a six-hour closing argument, Hamilton passionately advocated for freedom of the press, stating, "...the right of giving the truth in evidence, in cases of libels, is all-important to the liberties of the people. Truth is an ingredient in the eternal order of things, in judging of the quality of acts." The judges deadlocked and Crosswell's conviction stood, although he was never sentenced or retried.

Thus, a principle introduced by a jury of regular men in 1735 helped lay the foundation for one of the freedoms written into the First Amendment of the U.S. Constitution.

Locate articles, editorials or political cartoons that report on the decisions of local, state or national government leaders. As a class, discuss how this information would be different without the protection of Freedom of the Press. Rewrite or redraw this coverage as it might be reported without the First Amendment.

Next: Free Speech—Fighting Injustice

A Letter from a Birmingham Jail (1963)

* Inciting or causing people to rebel against government authority.