



# NEW YORK AMERICAN INN OF COURT



Thursday, May 29, 2014, 6:30-8:00 PM Host: Simpson Thacher & Bartlett LLP



Artist's sketch

## WHO HAS NOT LIBELED THE DEVIL? THE TRIAL OF JOHN PETER ZENGER



Andrew Hamilton

### Agenda

- Narrator's Introduction (5 min.)
- Scene I Patrons at a Tavern in New York City, 1734 (5 min.)
- Scene II Zenger's Print Shop (10 min.)
  - John Peter Zenger
  - Anna Zenger
  - James Alexander, Esq.
  - Former Chief Justice Morris
- Scene III Second Grand Jury (10 min.)
- Scene IV Courthouse: Disbarment of Zenger's counsel (10 min.)
  - Chief Justice James Delancey
  - Justice Frederick Philipse
  - Attorney General Richard Bradley
  - John Chambers, Esq.
  - John Peter Zenger
- Scene V Old City Hall: Trial (15 min.)
  - Chief Justice James Delancey
  - Justice Frederick Philipse
  - Attorney General Richard Bradley
  - Andrew Hamilton, Esq.
  - John Peter Zenger

- Panel Discussion with Professor Michael Tigar and Floyd Abrams, Esq. (30 min.)
- Q&A/Audience Discussion (5 min.)

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**Cast of Characters**

Narrator..... Mary Kay Vyskocil  
Bar patron #1.....Bruce Lederman  
Bar patron #2..... Matthew Tobias  
Bar patron #3..... Mark Pincus  
John Peter Zenger ..... Chris Fraser  
Anna Zenger..... Elena Slavin  
James Alexander ..... Hon. Helen Freedman  
Lewis Morris..... Chris Tumulty  
Grand juror #1..... Susan Meekins  
Grand juror #2..... Dawn Baker  
Grand juror #3..... Hon. Betty Weinberg Ellerin  
Grand juror #4..... Brooke Bowen  
Grand juror #5..... Vilia Hayes  
Bailiff ..... Bruce Lederman  
Chief Justice James Delancey ..... Ira Brad Matetsky  
Justice Frederick Philipse ..... Hon. Karla Moskowitz  
Attorney General Richard Bradley ..... Peter Hoenig  
John Chambers..... Peter Guirguis  
Andrew Hamilton..... Henry Freedman  
Jury Foreman ..... Mark Pincus

**Chronology of Events Surrounding the Trial**

**1697** John Peter Zenger is born in Germany.

**1710** Zenger emigrates to America and apprentices with the only printer in New York, William Bradford.

**1726** Zenger opens his own printing shop, becoming New York's second printer. For the next six years, he publishes mainly religious tracts and open letters.

**August 1, 1732** William Crosby arrives in New York and assumes his position as the new governor of New York.

**Fall 1732** Governor Cosby demands that Council president Rip Van Dam split his salary with him. When Van Dam refuses, Cosby sues. Cosby appoints Francis Harison to be censor (and effectively editor) of the *New York Gazette*.

**December 1732** Cosby creates a new court of equity, which he expects to favorably decide his suit against Van Dam.

**April 1733** The New York Supreme Court hears arguments on the issue of whether Cosby has the power to create a new court.

**August 1733** Gov. Cosby removes from the Supreme Court Chief Justice Lewis Morris who, alone among the three justices of the Court, voted against him in the Van Dam case. He replaces Morris with a loyal supporter, James Delancey.

**October 29, 1733** Gov. Cosby attempts (and fails) to rig an election for assemblyman of Westchester so as to defeat the Popular Party candidate.

**November 5, 1733** The first issue of Zenger's *New York Weekly Journal* is published. The *Journal* is believed to be founded and funded by James Alexander, an outspoken opponent of Cosby and his policies.

**January 28, 1734** The *Weekly Journal* accuses Cosby of threatening the "liberties and properties" of the people.

**February 4, 1734** An editorial in the Cosby controlled *Gazette* calls the statement in the January 28 *Journal* "an aggravated libel."

**September 1734** In two weekly issues, the *Journal* accuses Governor Cosby of violating the rules of his office.

**October 1734** At the instigation of Cosby, Chief Justice Delancey twice puts the issue of the "libels" before a grand jury. In both cases, the grand jury refuses to issue indictments, based on what the grand jury says is a lack of evidence concerning the identity of the author of the libels.

**October 22, 1734** Cosby orders that copies of Zenger's *Journal* be "burned by the hands of the common hangman or whipper near the pillory in this city." When magistrates refuse to help carry out the order, the burning is accomplished by Harison and a slave.

**November 2, 1734** Frustrated in his efforts to prosecute Alexander, the likely author of the "libels," Cosby orders that a bench warrant be issued for the printer of the *Journal*, John Peter Zenger.

**November 17, 1734** Zenger is arrested by the sheriff. He is placed in jail and a very high bail (at Cosby's request) is set. Zenger will spend the next nine months in jail.

**December 6, 1734** Cosby complains in a letter about "the most virulent libels" contained in the *Weekly Journal*. He blames Zenger, Alexander, and Van Dam for the libels.

**December 1734** Lewis Morris departs for London, carrying with him a long list of complaints about Cosby.

**April 15, 1735** Zenger's lawyers challenge the propriety of having two judges selected by Cosby, Delancey and Philipse, presiding over the Zenger case. For their challenge, Zenger's two lawyers are disbarred by Delancey.

**July 29, 1735** Jury selection begins in the Zenger trial. Harison attempts to rig the jury, but his efforts are defeated. Zenger is defended by Andrew Hamilton of Philadelphia, the best known (and perhaps best) colonial trial lawyer of the day.

**August 4, 1735** The Zenger trial opens with the reading of the information against Zenger by prosecutor Bradley, Attorney General of the king for the province of New York. The judges make clear that in order to prove the charge of "seditious libel," prosecutors need only prove that the statements in question were printed. The truth or falsity of the statements, rule the judges, is irrelevant. Hamilton presents a lengthy and eloquent summation to the jury. The summation is a plea for nullification: a plea that the jury return with a "Not Guilty" verdict despite instructions from the court that the sole issue for the jury to determine is whether the libels were in fact published in Zenger's *Journal*. The jury acquits Zenger after a short period of deliberation.

**August 5, 1735** On the start of his return trip to Philadelphia, a "grand salute of cannon" is fired in honor of Andrew Hamilton.

**September 16, 1735** The Common Council of New York grants Andrew Hamilton "the Freedom of the City" for his "learned and generous defense of the rights of mankind."

**1736** On March 10, Governor Cosby dies in New York. James Alexander publishes his *Brief Narrative of the Case and Tryal of John Peter Zenger*. Andrew Hamilton submits architectural plans for Independence Hall in Philadelphia. The building designed by Hamilton will be the site where, fifty-one years later, delegates meet to draft the Constitution of the United States of America.

**1738** Lewis Morris is appointed the first governor of New Jersey.

**August 4, 1741** Andrew Hamilton dies exactly six years after the Zenger trial that would become a landmark on America's path to protection for freedom of speech.

### **Biographies of Participants in the Zenger Prosecution and Trial**

#### **Governor William Cosby**



Governor William Cosby is generally portrayed as the villain of this story and, indeed, there is little to be said on his behalf. By all accounts, Cosby was spiteful, mean-spirited, quick-tempered, greedy, jealous, dull, and a petty tyrant. Too often, many of these traits seemed to turn up among colonial governors who, overall, were quite a bad lot. There is a reason for this, according to one historian, who observed that governors consisted "most often of members of aristocratic families whose personal morals, or whose incompetence, were such that it was impossible to employ then nearer home."

Cosby arrived in New York to assume the governorship in August of 1731. His previous post (also with its controversies) had been in the Leeward Islands.

Cosby's decision to "go ballistic" and fire the Chief Justice of New York for daring to decide against him in a lawsuit—and then justify his decision in the *New York Weekly Journal*—was the trigger that started the Zenger affair in motion. The removal of Morris as Chief Justice, attempted election rigging, and the accepting of questionable honorariums were only a few

of Cosby's actions that prompted condemnation in the *Journal*, and led to the eventual arrest and trial of the *Journal's* printer, John Peter Zenger. Cosby died in New York on March 10, 1736.

### **John Peter Zenger**

John Peter Zenger neither wrote nor solicited the controversial editorials and satirical advertisements that appeared in his *New York Weekly Journal*. He did not set out to become a champion of free speech, but was simply a printer trying to make a go of it.

In many ways, however, Zenger is the true hero of this story. His decision to print James Alexander's attacks on Governor Cosby's administration was done with full knowledge of the risks. Because of his decision, Zenger endured nine months of very difficult conditions in New York City's Old Jail. Moreover, Zenger refused to bow to pressure—to identify Alexander and others as the source of the offending articles, even though doing so might have helped his own cause considerably.

Zenger's wife, Anna Zenger, also deserves mention. With her husband in jail and young children in the house, Anna Zenger somehow managed to keep the *New York Weekly Journal* publishing, missing only one issue. The continued publication of the *Journal* helped build public support for Zenger's cause and may have been instrumental in his ultimate acquittal.

Thirteen-year-old Zenger and his family had made the arduous two-month crossing from their native Germany to America in 1710. His father died en route to America and his mother was left to raise him and his siblings. Zenger's mother signed John up as an indentured apprentice to New York's only printer, William Bradford. Zenger completed his indenture in 1718. He married the next year, but his wife soon died leaving him with an infant son. In 1722, Zenger married Anna Maulist, with whom he would share five more children.

Meanwhile, John Zenger continued to develop his skills as a printer. He entered into a partnership with Bradford in 1725, but left the next year to start his own print shop, only the second in the city of New

York. For several years, Zenger printed mostly religious tracts until, in 1733, he was approached by James Alexander with the opportunity to print America's first party newspaper, the *New York Weekly Journal*.

### **Richard Bradley**

Richard Bradley was by birth an Englishman. On March 11, 1722, he was appointed Attorney-General of the Province of New York, succeeding James Alexander. The duties were both those of the prosecuting officer and representative of the province in all legal matters, and the preparation of letters patent for corporations, grants of land, and other transfers involving the provincial government, for which the fees were very large.

The Attorney-General was appointed by the governor until 1702, after which date he was commissioned by the Crown and held office during the King's pleasure. The most famous cause with which Bradley's name is connected was the Zenger trial. Bradley continued in office until his death on August 28, 1752.

### **Andrew Hamilton**

If he had done nothing else, Andrew Hamilton deserves fame for two remarkable accomplishments. The first, of course, was his brilliant, eloquent, and successful defense of John Peter Zenger on the charge of seditious libel brought against him by Governor Cosby. The second was an outgrowth of Hamilton's other interest, architecture. Hamilton designed the building in Philadelphia that would come to be known as Independence Hall, the site of the 1787 Convention that led to the drafting of the United States Constitution. Independence Hall still stands as perhaps America's most important historic landmark, drawing millions of tourists annually.

Hamilton was a native of Scotland who emigrated to Pennsylvania, where he became attorney general (1717-1724), speaker of the colonial assembly, and the most famous trial lawyer in the colonies. According to one historian of the time, Hamilton had "art, eloquence, vivacity, and humor, was ambitious of

fame, negligent of nothing to ensure success, and possessed a confidence which no terrors could awe."

Hamilton was almost 60 when he accepted the request to take up Zenger's cause following the disbarment, for criticism of the court, of Zenger's first two attorneys. Hamilton won the Zenger case the only way that it could have been won, by convincing the jury to judge the law of the case, not just the facts. Legally, there is no question that Zenger committed seditious libel as it was defined in the law of the time; but the law itself was unpopular, and Hamilton gave the jury the push it needed to decide Zenger's case in a way consistent with their own sympathies. Andrew Hamilton died in 1741.

### James Alexander



James Alexander came to America from Scotland in 1715 at the age of 25, settled in New York, and married a wealthy widow, Mary Provoost. He worked as a surveyor and read law in New York. He was also admitted to practice in New Jersey in 1723. He served as Attorney General of New York from 1721 to 1723 and thereafter as New Jersey's Attorney General. He served many terms in the Colonial Assembly and was appointed to the governor's Council for several terms. Alexander was a strong opponent of Governor William Cosby who lobbied successfully to remove Alexander from the Council. In 1733, he started the *Weekly Journal* and authored pieces for it.

Alexander was readmitted to the bar and reappointed to the governor's Council after Cosby's death in 1736. He became a vocal proponent of Whig political views, and joined Benjamin Franklin in founding the American Philosophical Society. He also raised funds to establish Kings College in New York, now Columbia University. He died in 1756. Alexandria Township, New Jersey was named after him.

### Lewis Morris

Opponents of Governor Cosby's policies were often called "Morrisites," after the governor's most visible

critic, Lewis Morris. Morris was Chief Justice of New York when Cosby's suit against Rip Van Dam came before the court. Alone among the three justices, Morris voted against the legality of Cosby's attempt to do an end-run around the jury system and create a special court to hear the case. For this decision and his justification of the decision published in Zenger's *New York Weekly Journal*, Cosby removed Morris from office.

Following his removal, Morris ran as a popular party candidate for the post of assemblyman from Westchester. Cosby did what he could to rig the election against Morris, but his efforts fell short. The newly elected Morris was "saluted by a fire of general guns" and "conducted to the Black Horse Tavern, where a handsome entertainment was prepared for him."

Morris used his new position to continue criticism of the governor's often ham-handed efforts. In December 1733, Morris sailed to London where he presented officials with a laundry list of criticisms of Cosby. To his great disappointment, however, the criticisms fell largely on deaf ears.

In 1738, Morris was appointed governor of New Jersey. Lewis Morris died in 1746. His grandson, also named Lewis Morris, was one of the signers of the Declaration of Independence from New York. His great grandson, Gouverneur Morris, became a key figure in the Constitutional Convention of 1787. Gouverneur Morris wrote the familiar words of the Preamble of the Constitution: "We the People of the United States, in order to form a more perfect Union...."

### John Chambers

John Chambers was born in 1710, the son of William Chambers, a landowner in Newburgh, New York. He commenced the study of law when he was admitted to the Middle Temple in London, England on May 3, 1731. Chambers was admitted to the New York Bar in 1735. Shortly thereafter, he was appointed by Chief Justice Delancey to represent John Peter Zenger.

John Chambers married into the powerful Van Cortlandt family and became a prominent and wealthy New York City lawyer. He was a longtime alderman of New York City, and Chambers Street in Manhattan is said to be named for him. On July 30, 1751, he was appointed Second Justice of the New York Supreme Court of Judicature, a position he held until 1762. In 1752, he became a member of the Governor's Council and he was also a delegate to the Albany Congress of 1754. At the time of his death, April 19, 1764, John Chambers is said to have owned the largest law library in the Province, part of which he willed to his nephew, namesake and godson, John Jay.

### **Chief Justice James Delancey**

James Delancey was a staunch royalist appointed Chief Justice of New York by Governor Cosby in 1733, following Cosby's firing of Chief Justice Morris for his refusal to see things his way in his lawsuit against Van Dam.

Delancey was admitted to the New York bar in 1725, at age twenty-two and later became a judge. Delancey served as one of the two trial judges in the Zenger trial. Delancey did what he could do to secure Zenger's conviction. He disbarred Zenger's first two attorneys for daring to challenge the court that Cosby had appointed to try the Zenger case. He instructed the jury that its sole duty was to determine whether Zenger actually printed the allegedly libelous articles (a fact not disputed). He told the jury that the truth or falsity of the criticisms of Cosby was not relevant under the law—and that any such attacks on the governor's policies and competence were seditious libel as a matter of law.

After the Zenger trial, Delancey would serve for a period as acting governor of New York, and would continue to be well-connected with establishment figures. He died in 1760.

### **Justice Frederick Philipse II**

Frederick Philipse II was born in 1698 in Barbados but brought to New York in 1700, after his parents died, to live with his grandfather, the Lord of the

Manor of Philipsburg, the wealthiest man in the colony.

Philipse then became the second Lord of Philipsburg. Among his accomplishments were establishing the Albany Post Road that later became Broadway and designing New York's first public park, Bowling Green. Between 1721 and 1728, he was Speaker of the Assembly. He helped frame the Montgomerie charter of the City of New York in 1730 and was appointed Third Justice of the Supreme Court of Judicature in 1731. In 1733, he became Baron of the Exchequer and Second Justice of the Supreme Court, a position he held until his death in 1751 at the age of 56.

Other infamous trials over which Philipse presided as Second Justice were the 1741 New York Slave Conspiracy trials. Of the defendants at these trials, 34 were sentenced to death and 91 were banished from the colony.

### **Grand Jury Charge, October 1734**

“Things are now carried on, when all Order and Government is endeavoured to be trampled on; Reflections are cast upon Persons of all Degrees, must not these Things end in Sedition, if not timely prevented? Lenity, you have seen will not avail, it becomes you then to enquire after the Offenders, that we may in a due Course of Law be enabled to punish them. If you, Gentlemen, do not interpose, consider whether the ill Consequences that may arise from any Disturbances of the publick Peace, may not in part, lye at your Door?”

Source: Robert Marcus and Anthony Marcus, editors, *On Trial: American History Through Court Proceedings and Hearings (Volume One)* (1998), p. 23.

### **The Information against Zenger**

*In early 1735, Attorney General Bradley charged Zenger by Information after the Second Grand Jury failed to indict him:*

John Peter Zenger, late of the City of New-York, Printer, (being a seditious Person; and a frequent Printer and Publisher of false News and seditious Li-

bels, and wickedly and maliciously devising the Government of Our said Lord the King of this His Majesty's Province of New-York, under the Administration of His Excellency William Cosby, Esq; Captain General and Governour, in Chief of the said Province), the Twenty eighth Day of January, in the seventh Year of the Reign of Our Sovereign Lord George the second, by the Grace of God of Great-Britain, France and Ireland, King Defender of the Faith, &c. at the City of New-York, did falsly, seditiously and scandalously print and publish, and cause to be printed and published, a certain false, malicious, seditious scandalous Libel, entitled The New-York Weekly Journal, containing the freshest Advices, foreign and domestick; in which Libel among other Things therein contained, are these Words:

"One of our Neighbours (one of the Inhabitants of New Jersey meaning) being in Company, observing the Strangers (some of the Inhabitants of New York meaning) full of Complaints, endeavoured to persuade them to remove into Jersey; to which it was replied, that would be leaping out of the Frying Pan into the Fire; for, says he, we both are under the same Governour (His Excellency the said Governour meaning) and your Assembly have shewn with a Witness what is to be expected from them; one that was then moving to Pensilvania, (meaning one that was then removing from New-York, with intent to reside at Pensilvania) to which Place it is reported several considerable Men are removing (from New-York meaning) expressed in Terms very moving, much Concern for the Circumstances of New-York (the bad Circumstances of the Province and People of New-York meaning) seemed to think them very much owing to the Influence that some Men (whom he called Tools) had in the Administration (meaning the Administration of Government of the said Province of New-York) said he was now going from them, and was be hurt by any Measures they should take, but could not help having some Concern for the Welfare of his Country-Men, and should be glad to hear that the Assembly (meaning the General Assembly of the Province of New-York) would exert themselves as became them, by shewing that they have the Interest of their Country more at Heart, than the Gratification of any private View of any of their Members, or being at all affected, by the Smiles or Frowns of a Governour, (his Excellency the said Governour meaning) both

which ought equally to be despised, when the Interest of their Country is at stake. You says he, complain of the Lawyers, but I think the Law it self is at an End, (the People of the Province of New-York meaning) SEE MENS DEEDS DESTROYED, JUDGES ARBITRARILY DISPLACED, NEW COURTS ERECTED WITHOUT CONSENT OF THE LEGISLATURE (within the Province of New-York meaning) BY WHICH IT SEEMS TO ME, TRIALS BY JURIES ARE TAKEN AWAY WHEN A GOVERNOUR PLEASES (His Excellency the said Governour meaning) MEN OF KNOWN ESTATES DENYED THEIR VOTES, CONTRARY TO THE RECEIVED PRACTICE, THE BEST EXPOSITOR OF ANY LAW: Who is then in that Province meaning the Province of New-York,) that call (can call meaning) any Thing his own, or enjoy any Libery (Liberty meaning) longer than those in the Administration (meaning the Administration of Government of the said Province of New-York) will condescend to let them do it, for which Reason I have left it, (the Province of New-York meaning) as I believe more will."

To the great Disturbance of the Peace of the said Province of New-York, to the Great Scandal of Our said Lord the King, of His Excellency the said Governour, and of all others concerned in the Administration of the Government of the said Province, and against the Peace of Our Sovereign Lord the King His Crown and Dignity, &c. Whereupon the said Attorney General of Our said Lord the King, for Our said Lord the King, prays the Advisement of the Court here, in the Premises, and the due Process of the Law, against him the said John Peter Zenger, in this Part to be done, to answer to Our said Lord the King of and in the Premises, &c.

R. Bradley, Attorney General

Source: Robert Marcus and Anthony Marcus, editors, *On Trial: American History Through Court Proceedings and Hearings (Volume One)* (1998), p. 30-32.

## Cast and Guest Speaker Biographies

**Floyd Abrams** is a senior partner in the New York law firm of Cahill Gordon & Reindel LLP and the author of *Friend of the Court: On the Front Lines with the First Amendment* (2013) and *Speaking Freely: Trials of the First Amendment* (2005).

Mr. Abrams has argued frequently in the Supreme Court in a large number of its most significant First Amendment cases. He was co-counsel to *The New York Times* in the *Pentagon Papers* case; counsel to the Brooklyn Museum of Art in its legal battles with Mayor Rudolph Giuliani; counsel to Senator Mitch McConnell and the National Association of Broadcasters in a First Amendment-rooted challenge to the constitutionality of the McCain-Feingold campaign finance legislation; counsel to Senator McConnell in the *Citizens United* case; and counsel to many journalists, including Judith Miller and Myron Farber, who sought to protect the identity of their confidential sources. He has represented *The New York Times*, ABC, NBC, CBS, CNN, *Time Magazine*, *Business Week*, *The Nation*, *Reader's Digest*, The McGraw-Hill Companies, Inc. and numerous other clients in trials and appeals.

Mr. Abrams graduated from Cornell University in 1956 and the Yale Law School in 1960. He was a Visiting Lecturer at the Yale Law School from 1974 - 1980, 1986 - 1989, 2012 - 2013, and 2008 - 2009, at the Columbia Law School from 1981 - 1985, and served from 1994 to 2009 as the William J. Brennan, Jr. Visiting Professor of First Amendment Law at the Columbia Graduate School of Journalism.

Mr. Abrams has received many awards including the Lifetime Achievement Award of the CUNY School of Journalism, the Fred Friendly Lifetime Achievement Award of Quinnipiac University, the William J. Brennan, Jr. Award for outstanding contribution to public discourse; the Learned Hand Award of the American Jewish Committee; and the Thurgood Marshall Award of the Association of the Bar of the City of New York. Other awards include the William J. Brennan, Jr. Award of the Libel Defense Resource Center; the Milton S. Gould Award for outstanding appellate advocacy by the Office of the Appellate De-

fender in New York; the Ross Essay Prize of the American Bar Association; and awards from, among others, Catholic University, the American Jewish Congress, the New York and Philadelphia Chapters of the Society of Professional Journalists, Sigma Delta Chi, the New York Civil Liberties Union, the Association for Education in Journalism and Mass Communication, and the National Broadcast Editorial Association.

Mr. Abrams served on the Technology and Privacy Advisory Committee of the United States Department of Defense in 2003-2004 and as the chair of the New York State Commission on Public Access to Court Records in 2004. He also served as chairman of Mayor Edward Koch's Committee on Appointments, New York City and as the Chairman of the New York State Zenger Commemoration Planning Committee. Previously, he served as the Chairman of the Communications Committee of the Association of the Bar of the City of New York, as well as Chairman of the Committee on Freedom of Speech and of the Press of the Individual Rights Section of the American Bar Association and of the Committee on Freedom of Expression of the Litigation Section of the American Bar Association. He has appeared frequently on television on "Nightline," the "NewsHour with Jim Lehrer," "Charlie Rose" and other programs and has published numerous articles in *The New York Times* (one of which was awarded the Certificate of Merit of the American Bar Association), *The Washington Post*, and elsewhere.

Senator Daniel Patrick Moynihan characterized Mr. Abrams as "the most significant First Amendment lawyer of our age."

**Brooke Bowen** is an associate at Biedermann Hoenig Semprevivo PC, where her practice focuses on litigation and insurance and reinsurance matters. She received her A.B.J., *magna cum laude*, from the University of Georgia in 2007 and her J.D., *cum laude*, from the University of Georgia School of Law in 2010.

**Honorable Betty Weinberg Ellerin** has been Senior Counsel with the firm of Alston & Bird since her retirement from the bench in 2005. Elected to the bench



in 1976, Justice Ellerin was the first woman to serve as Deputy Chief Administrative Judge of the State of New York (1982-1985), Associate Justice of the Appellate Division, First Department (1985-2005), and Presiding Justice of the Appellate Division, First Department (1999). Prior to her election, Justice Ellerin served as a law clerk to various state court judges. Justice Ellerin has served in a wide range of leadership positions, including service on the Moreland Commission, President of the National Association of Women Judges, Chair of the New York State Judicial Committee on Women in the Courts, Chair of the New York State Bar Association's Committee on Courts of Appellate Jurisdiction, Co-Chair of the New York County Lawyers' Association's Task Force on Judicial Independence, Vice-Chair of the Office of Court Administration's Advisory Committee on Judicial Ethics, and Vice-Chair of the Committee on Character and Fitness of the Appellate Division, First Department. She is the recipient of innumerable awards including the ABA's Margaret Brent Women Lawyers of Achievement Award and the Lifetime Achievement Award from the NYLJ and she lectures frequently before bar associations and the New York State Judicial Institute. She is a past Vice-President and member of the Executive Committee of the City Bar Association, a past President of the New York Women's Bar Association and is a founder and Director of the Women's Bar of the State of New York, as well as a founding member and Director of JALBCA (Judges and Lawyers Breast Cancer Alert). She is also a Neutral with JAMS.

**Christopher Fraser** is a litigation associate at The Dweck Law Firm, LLP, where his practice ranges from commercial litigation and arbitration to employment and medical malpractice actions. Mr. Fraser graduated from Middlebury College in 2005 with a B.A. in American Literature and received his law degree in 2010 from St. John's University School of Law. This is his second year as a member of the New York American Inn of Court.

**Honorable Helen E. Freedman** was appointed to the Appellate Division of the New York State Supreme Court, First Department in 2008, having served as a Justice of the Supreme Court since 1984. She served on the Appellate Term of the Supreme Court from

1995-99. Prior to being elevated to the Appellate Division, she served in the Commercial Division of the New York County Supreme Court, for eight years. She has also served as Presiding Judge of the Litigation Coordinating Panel for multi-district litigation in New York State since 2002. Justice Freedman currently serves on the Pattern Jury Instructions Committee of the Association of Justices of the Supreme Court of the State of New York and is a member of the New York State and Federal Judicial Council. Justice Freedman is the author of *New York Objections*, a book on trial practice and the making of objections and, of a chapter in the treatise *Commercial Litigation in New York State Courts*. She is a graduate of Smith College and of the New York University School of Law.

**Henry A. Freedman** has served as Executive Director of the National Center for Law and Economic Justice since 1971. Before becoming Executive Director, he had been in private practice in New York City and taught at Catholic University Law School in Washington, DC. He has also taught at Columbia and New York University Law Schools, and Columbia and Fordham Schools of Social Work. He has chaired the Committee on Legal Assistance of the Association of the Bar of the City of New York, and was the only "welfare recipient advocate" on HEW Secretary Califano's 32-member group formed to study welfare reform alternatives in 1977. He successfully argued *Califano v. Westcott* before the United States Supreme Court in 1979. Mr. Freedman has received the National Legal Aid and Defender Association's Reginald Heber Smith Award for Dedicated Service (1981), the New York State Bar Association's Public Interest Law Award (1998), the William Nelson Cromwell Medal of the New York County Lawyers' Association (2001), and an honorary Doctor of Laws degree from Amherst College in 2008. He is a graduate of Amherst College and Yale Law School.

**Peter Guirguis** is a Senior Associate at Norton Rose Fulbright. Mr. Guirguis has broad experience handling complex commercial and international litigation matters involving corporate acquisitions, commercial contracts, intellectual property, bankruptcy, real estate, shareholder actions, computer fraud, executive compensation and restrictive covenants. He is a grad-

uate of New York University and he received his law degree in 2002 from the University of Pennsylvania Law School (*cum laude*), where he was awarded the James J. Manderino Award for outstanding trial advocacy from the Philadelphia Trial Lawyers Association. He has been listed as Super Lawyers Rising Star from 2011-2013 and was listed as a Rising Star by the New York Law Journal in its first listing of Rising Stars in 2013.

**Vilia B. Hayes** is a litigation partner at Hughes Hubbard & Reed LLP, where her practice concentrates on employment law, product liability, insurance and commercial litigation. She is also Co-Chair of the Pro Bono Committee. Ms. Hayes graduated from Marymount College with a B.A. degree (Psychology, with Honors) in 1972. She received her law degree in 1980 from Fordham University School of Law (*cum laude*), where she served as Associate Editor on the *Fordham Law Review*. Prior to joining Hughes Hubbard, Ms. Hayes served as Law Clerk to the Honorable Charles L. Brieant, United States District Judge for the Southern District of New York (1980-1981). She has been active in various professional associations, and is presently the President-Elect of the Federal Bar Council, President of the New York American Inn of Court, a member of the Board of New York County Lawyers Association, VOLS, and Legal Services - NYC and a Trustee of the Lawyers Committee for Civil Rights Under Law.

**Peter Hoenig** is a partner at Biedermann Hoenig Semprevivo PC. His practice is primarily devoted to counseling clients on and conducting litigations and arbitrations concerning product liability, maritime, aviation, insurance, and reinsurance matters. He has substantial experience in both trial and appellate practice in the New York and Federal Courts. He is listed in *Euromoney's Guide to the World's Leading Aviation Lawyers* (2004-2014) and *Euromoney's Guide to Insurance and Reinsurance Lawyers* (2004-2014). He is also listed in *New York Super Lawyers Law and Politics Magazine* (2010-2011) and *New York Super Lawyers Magazine* (2006-2011). He is a member of ARIAS, the Maritime Law Association of the United States, the American Bar Association and the Federal Bar Council.

**Bruce N. Lederman** has more than 30 years of complex commercial, real estate, and intellectual property litigation experience. He presently practices as a solo practitioner, and is also Counsel to London House Chambers, a Guyana-based law firm. An AV preeminent rated attorney, Bruce was a founding partner of Fischbein Badillo Wagner Harding. For more than 15 years, Bruce headed that firm's litigation department. Bruce has tried numerous civil matters in both bench and jury trials, and has handled appeals in the State and Federal Courts. He has appeared as trial counsel to other attorneys, and has often worked with local counsel throughout the United States. Bruce earned his BA from Colgate University in 1975 and his JD from the Benjamin N. Cardozo School of Law in 1979.

**Ira Brad Matetsky** is a partner at Ganfer & Shore, LLP, where he concentrates his practice in litigation and arbitration matters, including corporate, commercial, securities, and trust-and-estates litigation and appeals. Mr. Matetsky is a 1984 graduate of Princeton University and a 1987 graduate of the Fordham University School of Law, where he received awards in Contracts and Constitutional Law and served on the *Fordham Law Review*. Prior to joining Ganfer & Shore, Mr. Matetsky served as a litigation attorney at Skadden, Arps, Slate, Meagher & Flom LLP followed by five years as in-house counsel at Goya Foods, Inc. He has authored several published historical articles in legal periodicals, is a member of the Board of Advisors of *The Green Bag Almanac and Reader* (an annual collection of the year's best legal writing), and co-edits the annual supplements to *In Chambers Opinions by the Justices of the Supreme Court of the United States*. He is a New York Super Lawyer and a past recipient of the President's Pro Bono Service Award from the New York State Bar Association.

**Susan L. Meekins** is a sole practitioner whose practice is primarily devoted to commercial litigation in New York State and federal courts, arbitration and employment law matters. Ms. Meekins is a graduate of New York University School of Law (J.D. 1983), where she served as Articles Editor of the *Review of Law & Social Change*, and the University of Chicago (A.B. 1980 with Honors). Before she began practicing independently, Ms. Meekins was a member and co-

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founder of a commercial litigation boutique (Molton & Meekins) and a member of the litigation departments of the firms now known as Olshan Frome Wolosky LLP and Herrick, Feinstein LLP.

**Dawn Baker Miller** is a judicial hearing officer at the New York City Office of Administrative Trials and Hearings. She is also of counsel at the law firm of Clark Gagliardi & Miller. Prior to joining the firm, she was a Senior Counsel at the New York City Office of the Corporation Counsel, where she served in the General Litigation Division, the Labor and Employment Division, and the Special Litigation Unit. Her background includes general pretrial litigation experience as well as trial and appellate experience in both federal and state courts. Dawn is a member of the Federal Bar Council, the New York State Bar Association Committee on Lawyers in Transition, and the New York City Bar Association, where she served on the Litigation Committee from 2000 through 2009. She is admitted to practice in the Southern and Eastern Districts, the Second Circuit, and the Supreme Court of the United States. Ms. Miller is a graduate of the University of South Carolina School of Law, where she was Associate Editor-in-Chief of the *Law Review*.

**Honorable Karla Moskowitz** is a Justice of the Appellate Division, First Department, where she has served since January 2008. She received a Bachelor of Arts degree, cum laude, from Alfred University in 1963 and graduated from Columbia Law School in 1966. Justice Moskowitz has served as a judge since 1982. During that time, she served as a trial judge in Supreme Court Civil Branch sitting in a Medical Malpractice Part from 1992 until 2001 and in the Commercial Division from 2001 until her elevation to the Appellate Division. She is a Past President of the New York Women's Bar Association, the New York State Association of Women Judges and National Association of Women Judges. She is also a Founder and Past President of the Judges and Lawyers Breast Cancer Alert. She is a Charter Member of the American College of Business Court Judges and sits on the Executive Committee of the Commercial and Federal Litigation Section of the New York State Bar Association. Among Justice Moskowitz's honors are an Honorary Degree of Doctor of Laws, from Alfred

University in 2008; Induction in Phi Beta Kappa in 2006; the Abigail Allen award from Alfred University in 2004; the Edith I. Spivack Award of the Women's Rights Committee of the New York County Lawyers Association in 2003; the Founder's Award of the Women's Bar Association of the State of New York in 1999, and the Women of Valor Award of the Women's Medical Association of New York City in 1995.

**Mark S. Pincus** is the founder and Managing Member of Pincus Law LLC, a litigation boutique focused on commercial and employment litigation. Active in the legal community, Mark currently serves as Vice President of the New York American Inn of Court and the chair of the Federal Bar Council Public Service Committee's Small Firm Subcommittee. A graduate of Cornell University and the Fordham University School of Law, where he served as Notes & Articles Editor of the *Fordham Law Review*, Mark previously practiced at Cahill Gordon & Reindel LLP and Edward V. Sapone, LLC. This is Mark's sixth year on the historical trial team.

**Elina Slavin** is an associate in the Intellectual Property Group in the Newark office of McCarter & English, LLP. She devotes the majority of her practice to intellectual property litigation. She has worked on several complex patent cases in federal court. Technologies Ms. Slavin has litigated include medical devices, mechanical devices, pharmaceuticals, computer hardware and software, and others. Prior to attending law school, Ms. Slavin worked as a process engineer for Unilever Foods and an applications engineer/sales manager for Symrise. Ms. Slavin has also interned with Kraft Foods, now known as Mondelēz International. Ms. Slavin obtained a Bachelor of Science in chemical engineering from Cornell University in 2005 and her law degree from Seton Hall University School of Law in 2010.

**Edward G. Sponzilli**, a member of Norris McLaughlin & Marcus, P.A., is a New Jersey Supreme Court Certified Civil Trial Attorney with 38 years' experience in complex corporate and commercial litigation and education matters, as well as employment litigation relating to restrictive covenant, wrongful termination, CEPA, employment discrimination and sexual har-

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assessment. Ed is a Fellow of the American Bar Association and is a 2008 recipient of the Professionalism Award. In 1999 he was awarded the New Jersey Supreme Court's Fund for Client Protection's "Client Protection" Award for his outstanding service on behalf of the public and the Bar of New Jersey in his role as Chancery Court-appointed Receiver in the case of *Montano v. Cohen & Cohen*. Ed is a past president of the C. Willard Heckel Inn of Court and the Rutgers—Newark Law School Alumni Association. He is Trustee of the Trial Attorneys of New Jersey. He has been on the faculty of the National Institute for Trial Advocacy for over fifteen years and, for the past seven years, has been one of only two non-government faculty members in the New Jersey Attorney General's Trial Advocacy Institute. Ed is currently also a master of the Lifland (federal practice) American Inn of Court. He has served as a federal arbitrator and state court certified mediator. Ed was a Judicial Law Clerk for The Honorable James A. Coolahan, U.S. District Court for the District of New Jersey (D.N.J.) from 1975-77. During his two-year clerkship, Judge Coolahan held a temporary assignment to the Court of Appeals for the Third Circuit. Ed was a 1971 Phi Beta Kappa, magna cum laude graduate of Rutgers College. He received a masters in American History in 1972 from Columbia and his law degree from Rutgers, Newark in 1975. Ed has been selected for inclusion in *The Best Lawyers In America* and *New Jersey Super Lawyers*, as well as *Marquis' Who's Who In American Law* and *Who's Who in America*. He is a member of the New Jersey Supreme Court Committee, Bench, Bar and Media.

**Michael E. Tigar** is Emeritus Professor of Law at Duke University School of Law, and Professor Emeritus of Law at Washington College of Law, American University, Washington, D.C. He was Acting Professor of Law at UCLA and Joseph D. Jamail Chair in Law at The University of Texas. He has been a lecturer at dozens of law schools, judicial conferences and bar associations in the United States, Europe, Africa, and Latin America, including service as Professeur Invité at the faculty of law of Université Paul-Cezanne, Aix-en-Provence. He is a 1966 graduate of Boalt Hall, University of California, Berkeley, where he was first in his class, Editor-in-Chief of the law review and Order of the Coif.

He has authored or co-authored thirteen books, three plays, and scores of articles and essays. He has argued seven cases in the United States Supreme Court and about one hundred federal appeals, and has litigated cases in 22 states in state and federal courts. His latest books are *Trial Stories* (2008) (edited with Angela Jordan Davis), *Thinking About Terrorism: The Threat to Civil Liberties in Times of National Emergency* (2007), and *Nine Principles of Litigation and Life* (2009). His memoir is *Fighting Injustice* (2003).

His clients have included Isabel Letelier, the family of Ronni Moffitt, many victims of the Pinochet repression, Angela Davis, H. Rap Brown, John Connally, Kay Bailey Hutchison, the Washington Post, Fantasy Films, Terry Nichols, Allen Ginsberg, Leonard Peltier, the Charleston Five, the Service Employees International Union, Fernando Chavez, Karl Dietrich Wolff, and Lynne Stewart. He has been Chair of the 60,000-member Section of Litigation of the American Bar Association, and Chair of the Board of Directors of the Texas Resource Center for Capital Litigation.

In his teaching, he has worked with law students in clinical programs where students are counsel or law clerks in significant human rights litigation. He has made several trips to South Africa, working with organizations of African lawyers engaged in the struggle to end apartheid and, after the release of Nelson Mandela from prison, to lecture on human rights issues and to advise the African National Congress on issues in drafting a new Constitution for the Republic of South Africa. He has been actively involved in efforts to bring to justice members of the Chilean junta, including former President Pinochet. Of Mr. Tigar's career, Justice William J. Brennan has written that his "tireless striving for justice stretches his arms towards perfection."

Mr. Tigar is listed in Professor John Vile's book, *Great American Lawyers: An Encyclopedia* (2001), as one of 100 "great" lawyers in United States history. In 1999, the California Attorneys for Criminal Justice held a ballot to select the "Lawyer of the Century." Mr. Tigar was third in the balloting, behind only Clarence Darrow and Thurgood Marshall. In 2003, the Texas Civil Rights Project named its new building in Austin, Texas (purchased with a gift from attorney

Wayne Reaud) the "Michael Tigar Human Rights Center."

**Matthew N. Tobias** is a litigation associate at Ganfer & Shore, LLP, where he concentrates his practice on commercial litigation. Mr. Tobias received his B.S. from Cornell University in 1996, with a major in communications. While an undergraduate, he also studied geography and economics at University College London in London, England. Mr. Tobias received his J.D. from Fordham University School of Law in 2000, where he served as a member of the *Fordham Law Review* and was on the Dean's List. Prior to joining his current firm, Mr. Tobias was in private practice in trusts and estates and commercial litigation, including contract, real estate, securities, trademark, and general commercial disputes.

**Christopher Tumulty** is an associate at Tarter Krinsky & Drogin LLP, practicing complex commercial litigation. He handles litigation and arbitration involving businesses of all types, with a focus on the real estate and construction industries. Chris is a 2007 graduate, *cum laude*, of Pace University School of Law where he served as Articles Editor for the *Pace International Law Review*, and a 2004 graduate of Fordham University, Fordham College at Rose Hill.

**Mary Kay Vyskocil** is a Senior Litigation Partner at Simpson Thacher & Bartlett LLP, where she handles complex commercial litigation. She has a diverse practice and over the years has handled cases involving contract and tort issues, major insurance and reinsurance disputes, bankruptcy-related issues, antitrust and securities cases, and other cases involving the financial services industry. Ms. Vyskocil has handled numerous jury trials and appellate arguments throughout the United States, as well as arbitrations both domestically and in London. She has received numerous professional citations, including first tier rankings in *Chambers*, *Legal 500*, *America's Leading Business Lawyers* and *Benchmark Litigation*. She was selected by *Law360* as a top 15 female litigator and was recognized at *Law360's* 2012 MVP Awards. She was also recognized in *Euro money's* "Top 250 Women in Litigation in America" in 2012 and 2013, and in 2013 and 2014, *Euromoney* also named her among the Top Ten women litigators in the United States. In addition, she has consistently been listed as

one of the "Top 100 attorneys and the Top 50 Woman Lawyers in the New York metropolitan area Ms. Vyskocil is also co-author of the leading treatise, *Modern Reinsurance Law & Practice*, 2d ed. (GlasserLegalWorks 2000) and is frequent lecturer on insurance and reinsurance issues and on ethics, litigation and trial skills at continuing legal education seminars. She is also active in professional organizations and community affairs. She has numerous judicial appointments including Departmental Disciplinary Committee hearing referee, and service on the S.D.N.Y. Judicial Merits Selection Panel. In May 2013, Ms. Vyskocil was appointed to serve as a member of the Chief Judge's Advisory Council on the New York State Commercial Division.

**List of CLE materials available for download  
(Available on the Inn of Court's website)**

***Book excerpts and other materials relating to the Zenger trial:***

- Excerpts from John Peter Zenger, *A Brief Narrative of the Case and Tryal of John Peter Zenger* (edited by P. Finkelman) (1997)
- Michael E. Tigar, *The Trial of John Peter Zenger (A Play in Five Scenes)* (1986)
- Excerpt from Alan M. Dershowitz. *America on Trial, Inside the Legal Battles that Transformed Our Nation* (2005)
- Excerpt from Richard B. Morris, *Fair Trial* (1952)
- Transcript of Andrew Hamilton's Defense of John Peter Zenger on Charge of Seditious Libel, New York, 1735
- Trial Record from Zenger's *A Brief Narrative of the Case and Trial of John Peter Zenger* (1736)
- Excerpt from Robert Marcus and Anthony Marcus, editors, *On Trial: American History Through Court Proceedings and Hearings (Volume One)* (1998)
- Excerpt from Vincent Buranelli, *Trial of Peter Zenger* (1957)
- Livingston Rutherford, *John Peter Zenger, His Press, His Trial* (Dodd, Mead & Co. 1904)
- The Trial of John Peter Zenger: A Chronology
- Key Figures in the Trial of Peter Zenger

- *New York Law Journal* Article re 1991 Zenger Trial Re-enactment; and
- A Historical Perspective on the Zenger Case - Notes by Michael E. Tigar, Esq.

### ***Statutes***

- Transcript of The Alien and Sedition Acts (1798)
- Securing the Protection of Our Enduring and Established Constitutional Heritage (SPEECH) Act, Public Law 11-223 (2010)
- N.Y. Libel Terrorism Protection Act, S.6687/A.9652 (2008), codified as NY CPLR § 5304

### ***Cases***

- *New York Times v. Sullivan*, 376 US 254 (1964)
- *Air Wisconsin Airlines Corp. v. Hooper*, 134 S. Ct. 852 (2014)
- *Ehrenfeld v. Mahfouz*, 518 F.3d 102 (2d Cir. 2008) (leading case re libel tourism)
- *Ehrenfeld v. Mahfouz*, 9 N.Y.3d 501 (2007)
- *People v. Croswell*, 3 Johns Cas. 337 (1804)
- *Matter of Holmes v. Winter*, 22 N.Y.3d 300 (2014)

### ***Amicus Brief***

Brief *Amicus Curiae* of First Amendment Coalition in Support of Petitioner, dated March 10, 2014, submitted to United States Supreme Court in *Lane v. Franks*, No. 13-483

### ***Libel Tourism Articles***

- Article re President Obama signing the SPEECH Act into law 8-11-10
  - *Cardozo Law Review* article re Libel Tourism
  - *New York Times* Article re International Libel Law Reform 7-24-12
  - *NYU Journal of Law & Liberty* article on Libel Tourism Laws
  - Press Release regarding New York Libel Terrorism Protection Act
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