

The Trial of John Peter Zenger: Andrew Hamilton's Summation (1735)

In 1734, a relatively obscure trial involving an itinerant German working in New York as a printer's apprentice would result in a colossal precedent-setting decision for American judicial guardianship of free press. It all started when a local judge named Lewis Morris was suspended by the colony's royal governor, William Cosby, merely because Morris ruled against the governor in a recent salary dispute. Supporters of Morris, unhappy the existing newspaper, the *New York Gazette*, ignored the affair, convinced John Peter Zenger to publicize the circumstances of the abrupt dismissal.

For that purpose, Zenger founded the alternative New York *Weekly Journal*, wherein he boldly challenged Cosby's arbitrary extension of power. The articles were peppered with uncompromising attacks on Cosby. After first trying to stop Zenger by seizing and destroying copies of the *Weekly Journal*, the governor subsequently had Zenger arrested and charged with "seditious libel." Cosby also set a ridiculously high bail. While awaiting trial, Zenger remained in prison for ten months, during which time his wife, Anna, kept the *Weekly Journal* operating. Defense attorney Andrew Hamilton of Philadelphia maintained that since his client had printed nothing which could not be supported by fact, Cosby's charge was unfounded. The jury agreed.

The verdict established that truthful statements could not be defined as libel, and moreover, that the public's right to knowledge should not be limited by any authority (in other words, the determination of libel was a jury function). These interlocking principles virtually define the concept of freedom of the press. Zenger's persistence of forthright journalism in the face of serious personal penalty would have everlasting ramifications, for an outspoken press—including criticism of government agencies—was crucial to the development of democratic ideals within the American colonies.

The following passage is extracted from Hamilton's impassioned courtroom defense of Zenger on August 4, 1735. Although Cosby seemingly stacked the deck against Zenger by hand-picking the judges, the power of Hamilton's oration compelled the jury to acquit Zenger. The verdict did not change the libel law then, but it did pave the way for free press and place Hamilton's fingerprint on the United States Bill of Rights of 1791. Today, the First Amendment guarantee of expression is one of Americans' most valued civil liberties.



Gentlemen, the danger is great, in proportion to the mischief that may happen, through our too great credulity. A proper confidence in a court is commendable: but as the verdict (whatever it is) will be yours, you ought to refer no part of your duty to the discretion of other persons. If you should be of opinion, that there is no falsehood in Mr. Zenger's papers, you will, nay (pardon me for the expression) you ought to say so; because you do not know, whether others (I mean the court) may be of that opinion. It is your right to do so, and there is much depending upon your resolution, as well as upon your integrity.

The loss of liberty to a generous mind, is worse than death; and yet we know there have been those, in all ages, who, for the sake of preferment, or some imaginary honour, have freely lent a helping hand, to oppress, nay to destroy, their country. This brings to my mind that saying of the immortal Brutus, when he looked upon the creatures of Caesar, who were very great men, but by no means good men. "You, Romans," said Brutus, "if yet I may call you so, consider what you are doing; remember you are assisting Caesar to forge those very chains, which one day he will make yourselves wear." This is what every man

(who values freedom) ought to consider: he should act by judgment, and not by affection or self-interest; for, where these prevail, no ties of either country or kindred are regarded: as, on the other hand, the man, who loves his country, prefers its liberty to all other considerations; well knowing that, without liberty, life is a misery. . . .

Power may justly be compared to a great river, which, kept within due bounds, is both beautiful and useful; but when it overflows its banks, it is then too impetuous to be stemmed; it bears down all before it, and brings destruction and desolation wherever it comes. If then this is the nature of power, let us at least do our duty, and like wise men (who value freedom) use our utmost care to support liberty, the only bulwark against lawless power, which in all ages has sacrificed to its wild lust and boundless ambition, the blood of the best men that ever lived.

I hope to be pardoned, Sir, for my zeal upon this occasion: it is an old and wise caution, that when our neighbour's house is on fire, we ought to take care of our own. For though, blessed be God, I live in a government where liberty is well understood, and freely enjoyed; yet experience has shewn us all (I am sure it has to me) that a bad precedent in one government is soon set up for an authority in another; and therefore I cannot but think it mine, and every honest man's duty, that (while we pay all due obedience to men in authority) we ought at the same time to be upon our guard against power, whenever we apprehend it may injuriously affect ourselves or our fellow-subjects.

I am truly very unequal to such an undertaking, on many accounts. And you see I labour under the weight of many years, and am borne down with great infirmities of body; yet old and weak as I am, I should think it my duty, if required, to go to the utmost part of the land, where my service could be of any use in assisting to quench the flame of prosecutions upon informations, set on foot by the government, to deprive a people of the right of remonstrating, and complaining of, the arbitrary attempts of men in power. Men who injure and oppress the people under their administration, provoke them to cry out and complain; and then make that very complaint the foundation for new oppressions and prosecutions. I wish I could say there were no instances of this kind. But to conclude, the question before the court and you, gentlemen of the jury is not of small or private concern; it is not the cause of a poor printer, nor of New-York alone, which you are now trying: no! it may, in its consequence, affect every freeman that lives under a British government on the main of America. It is the best cause: it is the cause of liberty! and I make no doubt but your upright conduct, this day, will not only entitle you to the love and esteem of your fellow citizens; but every man who prefers freedom to the life of slavery, will bless and honour you, as men who have basseted the attempt of tyranny, and who, by an impartial and uncorrupt verdict, have laid a noble foundation for securing to ourselves, our posterity, and our neighbors, That, to which nature and the laws of our country have given us a right,—the liberty—both of exposing and opposing arbitrary power (in these parts of the world at least) by speaking and writing truth.