



1736
EXCERPTS

No event is more associated with the colonists' struggle for citizen rights (before the Stamp Act of 1765) as the trial of John Peter Zenger, editor of the *New York Weekly Journal*, for "seditious libel" after he printed an article critical of the governor. His attorney was Alexander Hamilton, who successfully argued that publishing the truth could not be deemed libel or sedition. His skilled rationale is included in Zenger's *Brief Narrative*, published soon after his acquittal.

Mr. Chief Justice. *Well Mr. Attorney, will you proceed?*

Mr. Attorney, Indeed Sir, as *Mr. Hamilton* has confessed the Printing and Publishing these Libels, I think the Jury must find a Verdict for the King; for supposing they were true, the Law says that they are not the less libellous for that; nay indeed the Law says, their being true is an Aggravation of the Crime.

Mr. Hamilton. Not so neither, *Mr. Attorney*, there are two Words to that Bargain. I hope it is not our bare Printing and Publishing a Paper, that will make it a Libel: You will have something more to do, before you make my Client a Libeller; for the Words themselves must be libellous, that is, *false, scandalous, and seditious* or else we are not guilty. . . .

Mr. Hamilton. It is agreed upon by all Men that this is a Reign of Liberty, and while Men keep within the Bounds of Truth, I hope they may with Safety both speak and write their Sentiments of the Conduct of Men in Power, I mean of that Part of their Conduct only, which affects the Liberty or Property of the People under their Administration; were this to be denied, then the next Step may make them Slaves: For what Notions can be entertained of Slavery, beyond that of suffering the greatest Injuries and Oppressions without the Liberty of complaining; or if they do, to be destroyed, Body and Estate, for so doing?

It is said and insisted on by *Mr. Attorney*, *That Government is a sacred Thing; That it is to be supported and revered; It is Government that protects our Persons and Estates; That prevents Treasons, Murders, Robberies, Riots, and all the Train of Evils that overturns Kingdoms and States, and ruins particular Persons; and if those in the Administration, especially the Supream Magistrate, must have all their Conduct censured by private Men, Government cannot subsist. This is called a Licentiousness not to be tollerated. It is said, That it brings the Rulers of the People into Contempt, and their Authority not be regarded, and so in the End the Laws cannot be put in Execution.* These I say, and such as these, are the general Topicks insisted upon by Men in Power, and their Advocates. But I wish it might be considered at the same Time, How often it has happened that the Abuse of Power has been the primary Cause of these Evils, and that it was the Injustice and Oppression of these great Men, which has commonly brought them into Contempt with the People. The Craft and Art of

such Men is great and who, that is the least acquainted with History or Law, can be ignorant of the specious Pretenses, which have often been made use of by Men in Power, to introduce arbitrary Rule, and destroy the Liberties of a free People. . . .

This is the second Information for Libelling of a Governour, that I have known in *America*. And the first, tho' it may look like a Romance, yet as it is true, I will beg Leave to mention it. Governour *Nicholson*, who happened to be offended with one of his Clergy, met him one Day upon the Road, and as was usual with him (under the Protection of his Commission) used the poor Parson with the worst of Language, threatened to cut off his Ears, slit his Nose, and at last to shoot him through the Head. The Parson being a reverend Man, continued all this Time uncovered in the Heat of the Sun, until he found an Opportunity to fly for it; and coming to a Neighbour's House felt himself very ill of a Fever, and immediately writes for a Doctor, and that his Physician might the better judge of his Distemper, he acquainted him with the Usage he had received; concluding, that the Governour was certainly mad, for that no Man in his Senses would have behaved in that manner. The Doctor unhappily shews the Parsons Letter; the Governour came to hear of it; and so an Information was preferred against the poor Man for saying *he believed the Governour was mad*; and it was laid in the Information to be *false, scandalous and wicked, and wrote with Intent to move Sedition among the People, and bring His Excellency into Contempt*. But by an Order from the late Queen *Anne*, there was a Stop put to that Prosecution, with sundry others set on foot by the same Governour, against Gentlemen of the greatest Worth and Honour in that Government. . . .

I hope to be pardon'd, 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 tho', blessed be God, I live in a Government where Liberty is well understood, and freely enjoy'd; yet Experience has shewn us all (I'm 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, wherever we apprehend that it may 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 born down with great Infirmities of Body; yet Old and Weak as I am, I should think it my Duty, if required, to go the utmost Part of the Land, where my Service cou'd 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 too) 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 nor 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 a Life of Slavery, will bless and honour You, as Men who have baffled the Attempt of Tyranny; and by an impartial and uncorrupt Verdict, have laid a noble Foundation for securing to ourselves, our Posterity, and our Neighbours, 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. . . .

The Jury withdrew, and in a small Time returned, and being asked by the Clerk whether they were agreed of their Verdict, and whether John Peter Zenger was guilty of Printing and Publishing the Libels in the Information mentioned? They answered by Thomas Hunt, their Foreman, Not Guilty. Upon which there were three Huzzas in the Hall which was crowded with People, and the next Day I was discharged from my Imprisonment.