

■ In Defense of John Peter Zenger and the Press

Date: August 4, 1735

Author: Hamilton, Andrew

Genre: speech; address

“The question before the Court and you, Gentlemen of the jury, is no of small or private concern. . . . It may in its consequence affect every free man that lives under a British government on the main of America.”

Summary Overview

On August 4, 1735, Philadelphia attorney Andrew Hamilton appeared in a New York court to defend John Peter Zenger, printer and publisher of the *New York Weekly Journal*, against charges of seditious libel brought against him by the colony’s governor, William Cosby. At the time, conviction for libel required the prosecution merely to show that a person had published material critical of the government. In an unusual trial in which no witnesses were called and the defense admitted Zenger had published the supposedly libelous material, Hamilton successfully convinced the jury to acquit his client by persuading them that, if criticism of those in office were suppressed, colonial governments could quickly become tyrannical. Hamilton’s summation provided a basis for subsequent arguments for the right of free speech and a framework for later arguments asserting the right of people in the colonies to claim liberty from the English crown.

Defining Moment

Zenger, on trial in August 1735 for seditious libel, was a pawn in a larger political battle that pitted the royally appointed colonial governor against a powerful faction of New York’s leading citizens. A German who immigrated to America in 1710, Zenger had apprenticed with the official printer of New York. In 1733, he was running his own business and struggling to make a living when he was approached by Lewis Morris, James Alexander, and William Smith Sr. to begin publishing a newspaper whose express purpose was to expose the

venality and rapaciousness of Governor William Cosby. Cosby had removed Morris from his position as chief justice of the colonial court for refusing to collude with the governor in an attempt to extract funds from former acting governor Rip van Dam. Attorneys Alexander and Smith, who had represented van Dam, joined with Morris in hiring Zenger as printer and publisher of the *New York Weekly Journal*. Alexander served as shadow editor, providing most of the original copy, but Zenger was a willing participant in this endeavor.

Because English law defined seditious libel loosely as any publication that painted the government in a bad light—even if charges were true—Cosby tried several times to have a grand jury indict Zenger. Local jurymen declined, and New York officials refused to take steps to suppress Zenger’s paper. On November 11, 1734, Cosby’s appointee Richard Bradley, the attorney general, had Zenger arrested on charges of “information,” and managed to hold him in jail for several months. Zenger was brought before the new chief justice James DeLancey, another Cosby appointee. When Zenger’s attorneys argued that DeLancey should not hear this case because his appointment was invalid, the judge responded by disbarring them and appointed John Chambers, a young attorney also beholden to Cosby, as Zenger’s lawyer.

Attorneys on both sides knew that the law favored conviction. Nevertheless, Alexander and Smith, believing the trial could serve as a means of exposing the evils of Cosby’s administration, secretly engaged Andrew Hamilton, a Philadelphia attorney known as the best

lawyer in the colonies, to represent Zenger. Hamilton appeared in court on the day of the trial and took over Zenger's defense from Chambers. His goal was to have the jury ignore both legal precedent and the judge's instructions, acquitting his client and thereby affirming that truth should be considered a defense in cases of libel.

Author Biography

Although details of Andrew Hamilton's early years are sketchy, scholars generally agree that he was born in Glasgow, Scotland, in 1676 and studied law at the University of Glasgow. In 1697, he sailed for America, settling on Virginia's Eastern Shore, where he enjoyed the patronage of the Presbyterian minister Francis Makemie. Sometime before 1703, Hamilton completed law studies and began appearing in court as attorney in civil cases.

An expanding law practice caused Hamilton to move to an estate in Maryland. In 1712, he represented the Penn family, proprietors of Pennsylvania, in a legal case that won him great acclaim. The following year, he sailed to London to further assist the Penns in a boundary dispute with Lord Baltimore, who controlled Maryland; while in London, he studied at the legal society Gray's Inn and was officially admitted to the English legal profession.

Hamilton's handling of the boundary dispute set him on a dual career as a celebrated attorney and political leader. He was elected to the Maryland House of Delegates but, in 1715, moved to Philadelphia. Shortly thereafter, he became Pennsylvania's attorney general, and during the next two decades, he held appointments in the assemblies of Delaware and Pennsylvania, rising to become Speaker of the Assembly in both houses. In 1729, Hamilton successfully convinced the Pennsylvania assembly to commit funds for a new province house. Appointed to the committee to manage the project, Hamilton submitted the successful design and supervised construction. The new province hall opened in 1733; four decades later, it would be the site of the Second Continental Congress and eventually be renamed Independence Hall.

In 1735, Hamilton received a request from New York lawyers William Smith and James Alexander to represent publisher John Peter Zenger, who was being tried for seditious libel. Hamilton traveled to New York and, using materials prepared by Alexander, successfully defended Zenger in a case that seemed all but hopeless. Cheered on by New Yorkers who acclaimed that "only a Philadelphia lawyer" could have won such a case, Hamilton returned to Pennsylvania and resumed his career as an attorney (and later a judge). In 1739, he retired from public life and died two years later.

HISTORICAL DOCUMENT

Hamilton's Summation for Zenger

"May it please Your Honor, I was saying that notwithstanding all the duty and reverence claimed by Mr. Attorney to men in authority, they are not exempt from observing the rules of common justice either in their private or public capacities. The laws of our mother country know no exemptions. It is true that men in power are harder to be come at for wrongs they do either to a private person or to the public, especially a governor in The Plantations, where they insist upon an exemption from answering complaints of any kind in their own government. We are indeed told, and it is true, that they are obliged to answer a suit in the king's courts at Westminster for a

wrong done to any person here. But do we not know how impracticable this is to most men among us, to leave their families, who depend upon their labor and care for their livelihood, and carry evidence to Britain, and at a great, nay, a far greater expense than almost any of us are able to bear, only to prosecute a governor for an injury done here?

"But when the oppression is general, there is no remedy even that way. No, our Constitution has—blessed be God—given us an opportunity, if not to have such wrongs redressed, yet by our prudence and resolution we may in a great measure prevent the committing of such wrongs by making a governor sensible that it is in his interest to be just to those under his care. For such is the sense

that men in general—I mean free men—have of common justice, that when they come to know that a chief magistrate abuses the power with which he is trusted for the good of the people, and is attempting to turn that very power against the innocent, whether of high or low degree, I say that mankind in general seldom fail to interpose, and, as far as they can, prevent the destruction of their fellow subjects.

“And has it not often been seen—I hope it will always be seen that when the representatives of a free people are by just representations or remonstrances made sensible of the sufferings of their fellow subjects, by the abuse of power in the hands of a governor, that they have declared (and loudly too) that they were not obliged by any law to support a governor who goes about to destroy a Province or Colony, or their privileges, which by His Majesty he was appointed, and by the law he is bound, to protect and encourage? But I pray that it may be considered—of what use is this mighty privilege if every man that suffers is silent? And if a man must be taken up as a libeler for telling his sufferings to his neighbor? . . .

“I make no doubt but there are those here who are zealously concerned for the success of this prosecution, and yet I hope they are not many; and even some of those, I am persuaded, when they consider to what lengths such prosecutions may be carried, and how deeply the liberties of the people may be affected by such means, will not all abide by their present sentiments. I say ‘not all,’ for the man who from an intimacy and acquaintance with a governor has conceived a personal regard for him, the man who has felt none of the strokes of his power, the man who believes that a governor has a regard for him and confides in him it is natural for such men to wish well to the affairs of such a governor. And as they may be men of honor and generosity, may, and no doubt will, wish him success so far as the rights and privileges of their fellow citizens are not affected. But as men of honor I can apprehend nothing from them. They will never exceed that point.

“There are others that are under stronger obligations, and those are such as are in some sort engaged in support of the governor’s cause by their own or their relations’ dependence on his favor for some post or preferment. Such men have what is commonly called duty and gratitude to influence their inclinations and oblige them to

go his lengths. I know men’s interests are very near to them, and they will do much rather than forgo the favor of a governor and a livelihood at the same time. But I can with very just grounds hope, even from those men, whom I will suppose to be men of honor and conscience too, that when they see the liberty of their country in danger, either by their concurrence or even by their silence, they will like Englishmen, and like themselves, freely make a sacrifice of any preferment or favor rather than be accessory to destroying the liberties of their country and entailing slavery upon their posterity.

“There are indeed another set of men, of whom I have no hopes. I mean such who lay aside all other considerations and are ready to join with power in any shape, and with any man or sort of men by whose means or interest they may be assisted to gratify their malice and envy against those whom they have been pleased to hate; and that for no other reason than because they are men of ability and integrity, or at least are possessed of some valuable qualities far superior to their own. But as envy is the sin of the Devil, and therefore very hard, if at all, to be repented of, I will believe there are but few of this detestable and worthless sort of men, nor will their opinions or inclinations have any influence upon this trial.

“But to proceed. I beg leave to insist that the right of complaining or remonstrating is natural; that the restraint upon this natural right is the law only; and that those restraints can only extend to what is false. For as it is truth alone that can excuse or justify any man for complaining of a bad administration, I as frankly agree that nothing ought to excuse a man who raises a false charge or accusation even against a private person, and that no manner of allowance ought to be made to him who does so against a public magistrate.

“Truth ought to govern the whole affair of libels. And yet the party accused runs risk enough even then; for if he fails in proving every title of what he has written, and to the satisfaction of the court and jury too, he may find to his cost that when the prosecution is set on foot by men in power it seldom wants friends to favor it.

“From thence (it is said) has arisen the great diversity of opinions among judges about what words were or were not scandalous or libelous. I believe it will be granted that there is not greater uncertainty in any part of the law

than about words of scandal. It would be misspending of the Court's time to mention the cases. They may be said to be numberless. Therefore the utmost care ought to be taken in following precedents; and the times when the judgments were given, which are quoted for authorities in the case of libels, are much to be regarded.

"I think it will be agreed that ever since the time of the Star Chamber, where the most arbitrary judgments and opinions were given that ever an Englishman heard of, at least in his own country; I say, prosecutions for libel since the time of that arbitrary Court, and until the Glorious Revolution, have generally been set on foot at the instance of the crown or its ministers. And it is no small reproach to the law that these prosecutions were too often and too much countenanced by the judges, who held their places 'at pleasure,' a disagreeable tenure to any officer, but a dangerous one in the case of a judge. Yet I cannot think it unwarrantable to show the unhappy influence that a sovereign has sometimes had, not only upon judges, but even upon parliaments themselves.

"It has already been shown how the judges differed in their opinions about the nature of a libel in the case of the Seven Bishops.

"There you see three judges of one opinion, that is, of a wrong opinion in the judgment of the best men in England, and one judge of a right opinion. How unhappy might it have been for all of us at this day if that jury had understood the words in that information as the Court did? Or if they had left it to the Court to judge whether the petition of the Bishops was or was not a libel? No, they took upon them[selves]—to their immortal honor—to determine both law and fact, and to understand the petition of the Bishops to be no libel, that is, to contain no falsehood or sedition; and therefore found them not guilty.

"If then upon the whole there is so great an uncertainty among judges—learned and great men—in matters of this kind, if power has had so great an influence on judges, how cautious ought we to be in determining by their judgments especially in *The Plantations*, and in the case of libels? . . .

"Power may justly be compared to a great river. While kept within its due bounds it 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 neighbor'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 shown 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 wherever we apprehend that it may affect ourselves or our fellow subjects.

"I am truly very unequal to such an undertaking on many accounts. You see that I labor under the weight of many years, and am bowed 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 services 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, 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 that 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 one poor printer, nor of New York alone, which you are now trying. No! It may in its consequence affect every free man 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 honor 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 neighbors, that to which nature and the

laws of our country have given us a right to liberty of both exposing and opposing arbitrary power (in these parts of the world at least) by speaking and writing truth.”

GLOSSARY

constitution: a set of laws and practices guiding the government’s actions and protecting ordinary citizens from arbitrary exercise of power

Glorious Revolution: military and political action in 1688 that led to the overthrow of King James II in England and restoration of a Protestant monarchy

information: here, a legal procedure in which a person is indicted and arrested on the authority of a prosecutor rather than a grand jury

libel: the act of defaming someone in writing or in print

plantations: colonies in which English settlers were sent abroad to establish permanent settlements

Star Chamber: English court established to supplement the regular court system, acting without juries or witnesses

Westminster: seat of the English government where the Houses of Parliament are located

Document Analysis

The lively give-and-take that characterized Zenger’s brief trial is reflected in Hamilton’s summation of the defense’s argument for acquittal. A number of his statements in the summation allude to matters discussed during the proceedings, and Hamilton uses his closing statement to emphasize important points about the nature of the trial and its significance to the jurors who are sitting in judgment of Zenger. His opening remarks are addressed to the presiding judge, but it is clear that he intends his principal audience to be the jury assembled to hear the facts and render a verdict in the case.

Hamilton begins by acknowledging a key point raised by the prosecutor: Those in authority are owed obedience and honor by common citizens. At the same time, however, he insists that they are not “exempt from observing the rules of common justice,” and that in fact, “the laws of our mother country know no exemptions.” By making this assertion, Hamilton sets up a hierarchy of duties in which justice trumps other rights. Of course, it may be harder to demand justice from a colonial official, far from the true seat of power in England,

since those wronged had to travel across the Atlantic to plead their case before Parliament. Nevertheless, no one appointed by the king can usurp the supreme authority of the sovereign. In making this case, Hamilton slyly suggests to the jury that Governor Cosby has done just that, thereby setting himself up as being above the law. The point would not have been lost on jurors that, despite being separated by an ocean from the mother country, they were still English citizens deserving of every right and protection guaranteed by the English Constitution.

Having cited legal precedents for his next point during the trial, Hamilton reminds jurors that people subjected to “abuse of power in the hands of a governor” have always had the right to refuse support for that official and to seek relief from a higher authority. Yet under the current libel laws, any person who speaks of “his sufferings to his neighbor” is now subject to prosecution—even when the complaints are true. Technically, one who speaks words that may harm another’s reputation may be accused of slander, while only written communications may result in charges of libel. Hamilton elides the two forms of defamation in order to make

a larger point: Those who are oppressed by government officials have a right to express their complaints—that is, they have the right to free speech.

Hamilton tries to divide the jurors ideologically from the court and the governor's administration and raise their status as independent, fair-minded citizens by explaining why some people would like to see Zenger convicted. He points out that there are three groups who have a vested interest in the case. In the first are those who are close friends of the governor and have "conceived a personal regard for him." For these people, "it is natural" that they should "wish well to the affairs of such a governor." Hamilton admits (although perhaps with a note of irony) that these may be "men of honor and generosity," but their close association with the governor may blind them to his faults.

In the second group are those who owe their appointments to the governor; they support his cause because their own livelihood derives from his remaining in power. Again suggesting that these can also be "men of honor and conscience," Hamilton expresses hope that, once they see that the governor is "destroying the liberties of their country and entailing slavery upon their posterity," they will "sacrifice any preferment" rather than be an "accessory" to such oppression. No doubt Hamilton was aware that both the presiding judge in the trial, James DeLancey, and the prosecutor, attorney general Richard Bradley, were both Cosby appointees, and his remarks may have been intended as a gentle nudge for them to renounce their support for the governor. By introducing the notion that government abuse leads to enslavement, Hamilton makes a strong emotional plea to jurors who are likely to value personal freedom, one of the great motivating factors that brought many from England and other European countries to the colonies. The third group—those who are "ready to join with power in any shape"—are beyond hope of redemption. No conscientious juror would want to be classed among such despicable people, Hamilton suggests.

Having made his case for the jury to act independently, Hamilton quickly moves on to discuss the principles that should govern the jurors' actions in Zenger's case. He launches this part of his argument by asserting that the "right of complaining or remonstrating is natural." The word "natural" carried special meaning for Hamilton and other eighteenth-century intellectuals. Influenced by the writings of Enlightenment philosophers and their classical sources, forward-thinking Englishmen were starting to develop new theories of

government based not on the divine right of kings but on the natural rights of all men. Hence, if it is part of human nature to complain when one is wronged, it is also against the laws of nature for governments to abridge that right. Hamilton suggests that "truth ought to govern the whole affair of libels," and that false accusations should be punished, whether raised against a public official or a private person. However, he continues, even in this circumstance, a person claiming to have written only the truth has a high threshold to cross, "for if he fails in proving every title of what he has written, and to the satisfaction of the court and the jury too," he may find that he will suffer for his actions. Behind the surface text is another unstated appeal to the jury. Hamilton is relying on the fact that jurors know of Governor Cosby's misdeeds and hence are already convinced that what Zenger has published is true. Hamilton has also slipped into his argument the idea that both judge and jury must be involved in determining the appropriateness of judging these written statements as libelous.

Hamilton's next claim emerges from the series of long arguments he waged with the prosecutor and the presiding judge over the precise determination of what constitutes libelous language. Both of these court officials had cited numerous precedents to uphold the right of the judge to determine if a text were libelous. Hamilton now reminds jurors that he disagrees—and believes they should as well. During the trial, Hamilton had shown that almost any statement, even a passage from the Bible, could be interpreted as scandalous depending on the context in which they were used and the intent of those employing it. Relying on the jury's memory of these examples, he again asserts that "there is not greater uncertainty in any part of the law than about words of scandal," and consequently, that "the utmost care ought to be taken in following precedents." Normally this statement would be a plea to the judge and jury to look to previous rulings to determine how to act in the present case. In this instance, however, Hamilton is employing a subtle double entendre, urging jurors to use "utmost care" to assure that precedents are applicable and appropriate; in a word, he is urging them to use their own judgment rather than relying on the presiding judge to tell them what verdict they should deliver against Zenger. To reinforce his point, he immediately reminds jurors that the harsh rules governing libel were developed by the infamous Star Chamber, the court initially established

in fifteenth-century England for prosecuting powerful people who might not be fairly judged in the normal court system. That court evolved into a corrupt political tool for punishing the king's enemies. In the Star Chamber, no jury was present and no witnesses called; a group of officials hand-picked by the sovereign rendered judgment on individuals who often had no recourse to appeal.

Hamilton uses words like "arbitrary" and "opinions" to suggest that the rule of law was violated in these cases. He points out that the judges in these cases served "at pleasure" of the king, who could remove them from their duties without cause. The introduction of this phrase is also intended to point out that the current presiding judge had been appointed by Governor Cosby "at pleasure" when Cosby removed his predecessor for opposing Cosby's wishes in a legal case, even though typically in the colonies, judges were removed only for some breach of conduct. Cosby's appointment of DeLancey, a political crony, was considered another example of his questionable management of affairs in New York.

Without belaboring his point, Hamilton moves on to cite other instances of judges differing in their opinion about libel cases. One particularly odious example that would have resonated with the largely Protestant population of New York was that of the Seven Bishops. In 1688, King James II, a Roman Catholic, had issued a proclamation allowing greater freedom of worship for all denominations in England. Seven Anglican bishops had opposed him publicly and were imprisoned and charged with seditious libel for their denunciation of the king's policy. Eventually James II was dethroned in favor of the Protestant ruler Prince William of Orange and his wife, Mary, James II's daughter. As Hamilton shrewdly points out, there are parallels between this case and Zenger's. Like the New York printer, the bishops had been arrested on an "information," an order from a prosecutor (no doubt under pressure from the king) and not from a grand jury. Additionally, what made the trial of the Seven Bishops particularly applicable to the proceedings against Zenger was that the four judges in the bishops' case could not determine among themselves if the bishops' written refusal to promulgate James II's policy was libelous. Eventually the jury took it upon themselves "to determine both law and fact" and ruled that the bishops were not guilty of libel. Hamilton wraps up this portion of his argument by asking the jurors, "if then upon the whole there is so great an uncertainty among judges" about what con-

stitutes libel, even in cases tried in England near the seat of royal power, "how cautious ought we to be in determining by their judgments especially in the Plantations, and in the case of libels?" The strong rhetorical question is intended as a further prompt for the jury to act independently in rendering its verdict.

At the end of his summation, Hamilton moves away from the specifics of the Zenger case to make a broad appeal for the jurors to recognize the import of their impending decision. In his view, the case is really about the power of government and the potential for its abuse. In a dramatic extended metaphor, he compares government power to "a great river," which, when "kept within its due bounds," is both "beautiful and useful." Only when it "overflows its banks" can it bring "destruction and desolation." The analogy would not have been lost on people who faced the ravages of nature every day. Hence, as an uncontrolled river could wipe away crops and livelihoods, so could an uncontrolled government trample on the rights of the governed. While citizens must submit to and respect authority, the need to guard against abuse of power is everyone's duty. To highlight his point, Hamilton casts himself as an old man "bowed down with great infirmities of body"; yet, frail as he is, he asserts that he is duty-bound to help those oppressed by "the arbitrary attempts of men in power" wherever they may be. Again, the use of the word "arbitrary" is intended to undermine any legitimacy Cosby might have in bringing charges against Zenger, even if the law is technically on the governor's side. Additionally, the references to Hamilton's age and infirmity are intended to provoke the jurors to act as defenders of their rights; if a man in Hamilton's condition can sacrifice himself to defend liberty, how much more should the hearty citizens of the jury act in this cause.

Before delivering his rousing conclusion, Hamilton makes one last reference to the unfairness of the charges against Zenger by reminding jurors of another odious flaw in the current libel law. Those who "injure and oppress the people under their administration" are likely to "provoke" remonstrances; sadly, the law permits those same officials to make the people's complaints "the foundation for new oppressions and prosecutions." Those who complained publicly about abuse could be brought to trial for libel, since truth could not be used as a defense. Hamilton makes the comment that he wishes he "could say that there were no instances of this kind." He does not follow up with examples because previously in his summation he had referred to

an incident involving former Virginia governor Francis Nicholson, who had beaten a clergyman for disagreeing with him. When Nicholson learned that the clergyman had explained the cause of his injuries to a physician in order to obtain treatment, the governor sued the clergyman for libel since his description of Nicholson's actions had painted the Virginia governor in an unfavorable light. Though Zenger had not suffered physical injury, his lengthy imprisonment, brought about because he could not pay the exorbitant bail set by the court, was a form of pre-trial punishment that seemed to go beyond the limits of what citizens in a free country should expect to suffer.

In his final remarks, Hamilton elevates the Zenger case to one of national importance. This is not simply a "small or private concern" of a single man or colony; rather, its consequences may "affect every free man that lives under a British government." While the jurors may not have been experts on the importance of precedents in determining English law, Hamilton wants them to realize that their verdict would do more than determine the fate of a single individual. This case, he insists, is not simply about a single person's right to complain; it is about "the cause of liberty." Hamilton immediately follows this hyperbolic proclamation with an assurance to the jurors that they will secure a place in history for themselves: Certainly, "every man who prefers freedom to a life of slavery will bless and honor you as men who have baffled the attempt of tyranny." By using such extreme terms as "freedom," "slavery," and "tyranny," Hamilton raises the stakes in this case. An "impartial and uncorrupt verdict"—one that acquits Zenger—will secure the colonists the freedoms promised to all Englishmen. Henceforth, Hamilton concludes, "exposing and opposing arbitrary power" by "speaking and writing truth" will be no crime, but the right of every citizen.

Although Hamilton's summation is filled with examples from the law intended to support his argument for Zenger's acquittal, his emotional appeal is intended to prompt the jury members to ignore the law and judge Zenger on common sense principles. The summation makes little attempt to prove that Zenger had not violated current laws governing seditious libel by printing articles critical of the government. Instead, Hamilton deftly and repeatedly demonstrates the inherent flaws in laws that, while intended to shore up government from attempts to undermine its legitimate authority, simultaneously provide corrupt officials a shield for their

activities. The overriding theme of the summation is that men who speak the truth about those in power should not be arrested, but instead should be celebrated for protecting the rights of their fellow citizens.

Essential Themes

The Zenger trial raised three issues that would become cornerstones in the constitution and legal system of the new United States of America less than sixty years later: the right of a citizen to assert truth as a defense in cases of libel, citizens' right to criticize the government freely, and the right of the press to print facts and opinions even when they might embarrass government officials. Despite instructions from the presiding judge that conviction was required based on the defendant's admission that he published materials judged libelous by the court, the jury ignored the court's directive and collectively engaged in the practice of "jury nullification." This is a rare action taken by juries when defendants are technically guilty but jurors believe they do not deserve punishment.

In subtly leading the jury to ignore the presiding judge and find his client not guilty, Hamilton stresses two of these important issues: that truth should be allowed as a defense and that citizens must have the right to criticize public officials. The idea that has come to be known in America as "freedom of the press" follows from this more basic right for individuals to speak or write without fear of recrimination as long as they do not spread lies about those in office. Curiously, the idea that truth could serve as a defense against charges of libel did not become accepted until much later in English law. Even in the newly formed United States, a sensitive young government, the administration of its second president, John Adams, took steps to prevent an unfriendly press from stirring up sentiment against government officials.

Nevertheless, the ideas that Hamilton presented in his summation had great political impact. Within a year, the record of the trial had been published and circulated throughout the colonies and in England. It became a topic of conversation among those who saw in Hamilton's argument seeds of truth about the basic rights of citizens in a nation moving toward democratic governance. The notion that oppressive governments lost their legitimacy to rule became a cornerstone in the 1770s, when colonial leaders declared independence from an English government that they saw as arbitrary and oppressive. Hamilton's argument that true liberty included citizens'

rights to free speech and freedom of the press directly informed the 1789 crafting of the Bill of Rights, the first ten amendments to the US Constitution.

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LESSON PLAN: Andrew Hamilton's Lasting Argument

Students analyze Andrew Hamilton's court argument and its implications and discuss whether or not the verdict was inevitable.

Learning Objectives

Reconstruct the events that led to John Peter Zenger's trial; appreciate the historical perspective of Hamilton's delivery in a live courtroom; analyze the influence of Hamilton's ideas; challenge the inevitability of the Zenger verdict.

Materials: Andrew Hamilton, "In Defense of John Peter Zenger and the Press" (1735); James Alexander, trial record from Zenger's *A Brief Narrative of the Case and Trial of John Peter Zenger* (1736).

Overview Questions

Why were the legal odds against Hamilton and Zenger? Why was Hamilton's argument effective? How can Hamilton's argument be read as more than a plea for an individual's innocence? What historical-context arguments can be made for Zenger's guilt?

Step 1: Comprehension Questions

In addition to the jury, who else was Hamilton addressing in court? Why was there little hope for Zenger being found not guilty?

- **Activity:** Choose students to provide background on the Zenger trial and to explain the challenges Hamilton faced. Instruct other students to explain what the judge's directions to the jurors were after Hamilton made his argument.

Step 2: Comprehension Questions

What was the structure of Hamilton's argument? How was his language tailored to the jury?

- **Activity:** Instruct students to outline Hamilton's argument. Discuss why he chose to describe the types of men who might hope for a successful prosecution. Have students read aloud passages that appealed emotionally to the jury.

Step 3: Context Questions

How did Hamilton's speech help lead to the First Amendment? What parts of his speech could be cited in an argument for freedom of speech and of the press?

- **Activity:** Instruct students to list points that Hamilton makes for Zenger that can also be made

for both freedoms. Discuss the analogy of the great river. Have students explain whether the text suggests that Hamilton was knowingly making an argument that transcended the case.

Step 4: Historical Connections Questions

Why was the jury's verdict in the Zenger case not a foregone conclusion? What reasons could jury members have cited to argue for a guilty verdict?

- **Activity:** Direct students to review the Zenger trial record; have them pay close attention to the opposing arguments and judge's direction to the jury. Discuss with students what precedent is suggested for a not guilty verdict. Have students suggest why a guilty verdict was possible.

Step 5: Response Paper

Word length and additional requirements set by Instructor. Students answer the research question in the Overview Questions. Students state a thesis and use as evidence passages from the primary source documents.