

RICHARD KLUGER, *INDELIBLE INK: THE TRIALS OF JOHN PETER ZENGER AND THE BIRTH OF AMERICA'S FREE PRESS* (1st ed. 2016).

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Freedom of the Press, Fake News, and the Security of a Nation

“A student of history, Jefferson knew that oppressive governments habitually obscured their iniquities from those who most needed to know of them – and how else but from the press could the people determine whether to retain their government or replace it, rudely if necessary?”¹

Richard Kluger’s *Indelible Ink: The Trials of John Peter Zenger and the Birth of America’s Free Press* is a significant literary achievement detailing how a single court case established the foundations for freedom of the press as we know it today. Kluger’s excellent retelling of John Peter Zenger’s New York Weekly Journal and its culmination in the trial of August 1735 could not be more crucial in the age of the President who regularly cries “fake news!”.

The novel is driven by the themes of resistance to censorship and protest of oppressive government. Many questions posed by Kluger throughout the novel are the same ones that were

¹ See RICHARD KLUGER, *INDELIBLE INK: THE TRIALS OF JOHN PETER ZENGER AND THE BIRTH OF AMERICA'S FREE PRESS* (1st ed. 2016).

asked prior to the implementation of the First Amendment: Which opinions, if any, are to be protected? Is it a punishable crime to publicly undermine the authority of the government? Are governments responsible for controlling what news, information, facts, and truths are made available to the public through the press? Is a statement libel if it's based in truth and fact? These very questions have eerily resurfaced today as our culture of WikiLeaks, fact checking, and instantaneous access to various news sources has the President of the United States rebuking storied news media outlets as “dishonest” and “out of control.” In reading Kluger’s tale, it seems even clearer that history really does repeat itself.

Richard Kluger grew up on the West Side of New York with his mother Ida and brother Alan. How he came to love words and writing has always been somewhat of a mystery to Kluger, as no one in the family showed any interest in literature or had any talent for writing. The only books on his shelves as a boy were adventure novels and Albert Payson Terhune’s anthropomorphic books about dogs. However, at an early age, Kluger consumed any and all print materials he could get his hands on – most notably newspapers, of which New York had eight of them, easily accessible, and cheaply priced. He went on to attend Princeton University, achieving honors as an English major, but most of his time was spent at *The Daily Princetonian*, where he served as a reporter, and later chief editor. After Princeton, Kluger forayed into New York’s world of journalism writing for *The Wall Street Journal*, the *New York Post*, the *New York Herald*, and magazines including *Forbes*. He left journalism to serve as an executive editor at Simon & Schuster and editor-in-chief at Atheneum. Kluger is also an accomplished author of six novels, all whose themes center around politics, history, and social justice. *Simple Justice* (the history of Brown v. Board of Education) and *The Paper* (the history of the Herald Tribune) were National Book Award Finalists. Kluger’s historical examination of the American cigarette

business *Ashes to Ashes: America's Hundred-Year Cigarette War, the Public Health, and the Unabashed Triumph of Philip Morris* won the Pulitzer Prize in 1997.

Kluger's context for *Indelible Ink* is set in colonial America where crown-appointed governors abused their power in the service of greedy wealth and colossal estates. The novel takes on a chronological narrative approach as Lewis Morris and James Alexander, two lawyers and power brokers are able to persuade Zenger to print essays that severely questioned government authority in a newspaper of their own creation, *The New York Weekly Journal*. Peter Zenger the German-American printer, is hardly the central figure of the book, but without him the cause for free expression would have stagnated as very few cared to speak up for the right.² For a couple of years, Zenger continued to publish the lawyers' satirical criticisms of William Cosby, New York's governor, and he did so ever-so-bravely under his own name.

In colonial America, it was illegal under British law to call into question and criticize any government official, action, or policy regardless of its truth in fact. Printers, such as Zenger, were required by law to sign their work, while writers were able to hide behind pen names.³ Morris and Alexander, both superior litterateurs and fierce challengers of Cosby, chose to publish under pseudonyms, leaving Zenger to endure the consequences when the infuriated governor came after the paper.

It is not known how Morris and Alexander were able to convince Zenger to risk everything in publishing what today would be deemed as satirical essays. However, Kluger speculates that there was an understanding between the men that if Zenger continued to publish

² See Kluger, *supra* note 1, at 4 (illustrating that Zenger is central in a more figurative rather than literal sense in the fight for free expression).

³ See RICHARD KLUGER, *INDELIBLE INK: THE TRIALS OF JOHN PETER ZENGER AND THE BIRTH OF AMERICA'S FREE PRESS* (1st ed. 2016).

the lawyers' rebellious writings, he would be compensated with financial security for him and his family, expert legal counsel if ever needed, and celebrity status within the colony.

The New York Weekly Journal first circulated on November 5, 1733. To any consumer, the journal stood out as different from anything that came before it. The journal contained little eyewitness reporting, the pages instead filled with daring political mockery clearly aimed at Governor Cosby. The newspaper's commentary on the corrupt state of government was often generalized, though specific enough that any informed reader would be able to identify the individual to which the author was satirizing. It was enjoyed by readers as mostly humorous, going so far in one issue as to praise Cosby as "but one degree removed from an idiot."⁴

Peter Zenger is not surprisingly arrested, but Morris and Alexander use this to their advantage with the mindset that the longer he stays in jail, the more sympathetic the people will be towards him. In the end, they were right. Cosby's entourage of lawyers and powerful politicians continually failed to indict the printer and found a way to bring him before a court led by Cosby's accomplices. The judge shows his bias early on by disbaring Morris and Alexander and appointing a far less experienced lawyer to represent Zenger. This tactic quickly comes back to haunt the judge as the Zenger team acquires a secret weapon in the name of Andrew Hamilton. What ensues is a trial comparable to a Muhammad Ali v. Sonny Liston match won by a technical knockout. Zenger's trial did not change the law, but Kluger's argument that the jurors responsible for acquitting Zenger, foreshadowed the pedestal on which we now place the right to freedom of expression by "heralding it as the indispensable catalyst for the creation and

⁴ See Kluger, *supra* note 1, at 175 (offering excerpts from Morris's essays to rally readers to stand up against power-hungry governors).

sustenance of a democratic society empowered to criticize its rulers when they strayed from rectitude”⁵ is convincing.

What Kluger does exceptionally well is promote the importance of the Zenger Trial by placing it in both its pre-trial and post-trial context. Admittedly, the dense history sections were at times difficult to push through, though Kluger’s ability to dramatize and make relevant the people and the events is a testament to the author’s formidable understanding of the topic on which he writes.

Some have argued that Kluger’s novel suffers from being published a year too soon. However, the current political climate in Washington continues to attack the press for biased coverage and alleged falsehoods. The way in which the public consumes its news has changed as technology has evolved from the printing press to the Internet, allowing news to reach its constituents faster and providing a platform for many different source options. This past election was one in which many credible publications endorsed one candidate over another – something that is not very common to witness. It is true that we are influenced by the news we receive, however, in a world with accessibility to many different news providers, we are in a place where we choose who and how informs us and our ideas. Arguably, freedom of expression is more alive than ever before as the public has control over everything they read. For these reasons, Kluger’s novel is an incredulous contribution to the story – putting the long-fought battle towards free press center-stage.

It’s no coincidence that in the face of much criticism, resistance, outrage, and protest, the current administration points fingers at the news media as undermining their authority and engaging in libelous slander. Similar to Zenger’s time, a regression toward silencing free

⁵ See Kluger, *supra* note 1, at 296 (detailing both the praise and criticisms of the Zenger case as forwarding freedom of the press).

expression and opening up “those libel laws” is currently looming over America. However, what differentiates colonial America from present day, is that technology has enabled everyone to become a news reporter and contribute to the flow of information constituents consume in forming opinions about government, enforcing the law, and promoting fact and truth over lies.

Education is a lifeline, and Kluger provides an in-depth, objective account of one of the most important rights afforded to citizens of the United States. Given the current state of affairs, Kluger’s book should be required reading for all of us. Yes Mr. President, you too should get off of Twitter and crack it open. The security of our nation is at stake...