



TO THE BAG

ANDREW HAMILTON,
“PHILADELPHIA LAWYER”

To the *Bag*:

You highlight, in *Ex Ante*, 13 GREEN BAG 2D 1, some “Timely Definitions” you found in Bryan A. Garner’s new edition of *Black’s Law Dictionary* (West, 9th Edition, 2009), notably “waterboarding. . . . See TORTURE.”

Thumbing through *Black’s 9th*, I encountered an “Untimely Definition” – not to say, one made out of whole cloth – of an older term, “Philadelphia lawyer.” Here it is:

“Philadelphia lawyer (1788) A shrewd and learned lawyer. This term can have positive and negative connotations today, but when it first appeared (in colonial times), it carried only a positive sense deriving from Philadelphia’s position as America’s center of learning and culture.” [My emphasis]

No source is given for this definition; I have found none.

If Bryan Garner had asked me (and there is no reason why he should have done so), this is what I would have told him:

“Philadelphia lawyer,” in its original and best usage, was a term of honor. The lawyer in question: Andrew Hamilton (1676-1744), born in Scotland, who first practiced law in Maryland, then moved to Pennsylvania, where he served as Attorney General and later in the General Assembly. A man of many talents, Hamilton helped design Philadelphia’s Independence Hall.

In 1734, the British Crown charged (John) Peter Zenger (1697-1746) with seditious libel. Zenger, a German émigré, was a printer

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“Power may justly be compar’d to a great River, while kept within it’s [sic] due Bounds, is both Beautiful and Useful; but when it overflows, it’s [sic] Banks, it is then too impetuous to be stemm’d, it bears down all before it, and brings Destruction and Desolation wherever it comes.”

— Andrew Hamilton

and journalist. He was also publisher of the *New-York Weekly Journal*. His newspaper repeatedly criticized the actions of William Cosby, colonial Governor of New York, a bold action that led to Zenger’s imprisonment. Zenger asked members of the New York bar to act as his counsel, but only a few would consider taking the case – and the governing party disbarred them.

Desperate, Zenger beseeched Andrew Hamilton of Philadelphia to represent him in what would become a celebrated trial (1735). Admitted *pro hac vice*, Hamilton combined legal technicalities and eloquence, citing both English and Roman authorities on freedom of speech and the press. For the first time in American courts, Hamilton urged that *truth be recognized as a defense to a claim of libel, civil or criminal*. The jury found Zenger “not guilty.” Thus, “Philadelphia lawyer”: a term of honor for a brave lawyer who won a landmark case in the history of free speech. (The date (1735) was 53 years before the date *Black’s 9th* arbitrarily assigns as the first use of the term.)*

* Sources for the foregoing: *The Cambridge Dictionary of American Biography* 305, 823 (Cambridge University Press, 1996); *New Columbia Encyclopedia* 1182, 3043 (Columbia University Press, Harris & Levy, ed., 1975); *The Trial of Peter Zenger* (New York University Press, Vincent Buranelli, ed., 1957).

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Over the years, the original definition of “Philadelphia lawyer” has eroded to a less noble meaning. Lost are both Hamilton’s bravery and his eloquence; only his mastery of legal technicalities has been preserved.

“*Philadelphia lawyer*. A lawyer of great ingenuity in the discovery and manipulation of subtle legalisms.”[†]

“*Philadelphia lawyer*. A lawyer of outstanding ability at exploiting legal fine points and technicalities.”[‡]

Nothing to do with “Philadelphia’s position as America’s center of learning and culture,” as *Black’s 9th* would have it.

Allan B. Ecker
New York, NY

WHITE ON VASSILIEV AND HISS: A REJOINDER

To the Bag:

Discussions of the guilt or innocence of Alger Hiss elicit impassioned advocacy, and in the heat of the fray reputations are apt to be unjustly besmirched. I write in support of my late brother, John Lowenthal, Hiss’s friend and lawyer for 55 years, who has, in my view, been gratuitously vilified in this journal. In 2000 Lowenthal published an essay critical of Allen Weinstein and Alexander Vassiliev’s *The Haunted Wood: Soviet Espionage in America* (1999).^{*} Vassiliev sued the journal’s publisher for defamation in Britain’s High Court. In June 2003 the jury ruled against the plaintiff. Vassiliev’s reputation had indeed suffered, but the critical allegations were “fair comment.”

G. Edward White contends that Vassiliev lost *despite* the fact that Lowenthal’s statements were shown to be untrue: “The defendants

[†] *The American Heritage Dictionary of the English Language* 984 (American Heritage Publishing Co., Inc., 1969).

[‡] *The Random House Dictionary of the English Language* 1453 (Random House Inc., 2d Edition, 1987).

^{*} John Lowenthal, “Venona and Alger Hiss,” 15:3 *Intelligence and National Security*, 98-130 (2000).