

Historical Society of New York Courts Proposal  
For “Citizenship and Enlightenment” Unit  
Global History, Bard High School Early College Queens  
Prof. Jess McIntosh  
2013 - 2014

### **Materials and Lesson Plans for *People v. Croswell* (1804), New York**

Even though the case itself ended with a whimper, the concepts with which *People v. Croswell* engaged would make it a wonderful complement to the course’s unit on the Enlightenment. In 1803, New York’s Attorney General had Harry Croswell, a young journalist and fervent Federalist, arrested and charged with criminal libel and sedition, alleging that Croswell had published “defamatory” statements about President Thomas Jefferson. Croswell’s defense team—which eventually included Alexander Hamilton—claimed that these charges were relics of an unenlightened era, one in which power and politics trumped reason and truth. Croswell should be proclaimed innocent, Hamilton would argue, because defamatory speech, *if true*, should be lauded for its veracity rather than condemned for its criminality. Over the next two years Croswell’s case would become a *cause célèbre*, with debates raging both within the courtroom and without over the merits of the accusations. Both in legal opinion and in the popular press, these disputes exposed fascinatingly different perspectives on the relationships between truth and calumny, evidence and opinion, and national security and First Amendment rights.

#### **Contents**

##### **1. Lesson Plans**

##### **2. Primary Sources:**

- Harry Croswell’s “seditious” article from *The Wasp*, Vol. 1, No. 6.
- David Hume, “Liberty of the Press” (1742)
- Thomas Jefferson, Letter to Edward Carrington (1787)
- Prosecution’s argument (1804)
- Defense’s argument (1804)
- Alexander Hamilton’s argument (1804)
- Indictment (1804)

##### **3. Secondary Sources:**

- Walter Berns, “Freedom of the Press and the Alien and Sedition Laws: A Reappraisal,” *The Supreme Court Review*, Vol. 1970 (1970), pp. 150 – 159.
- Jeffrey L. Pasley, *Tyranny of Printers* (Charlottesville, 2002), pp. 33 – 47.

### **Assignment 1:** Background and Context

•**Homework:** Read the selections from the Berns’ “Freedom of the Press” and Pasley’s *Tyranny of Printers* for homework, in order to familiarize yourself with the issues we will be studying.

•**Come to class prepared to discuss the following:** Pasley’s text is a broad overview of the rise of the “party press” in America in the 1790s, just after the American Revolution. The selection from Berns’ article deals specifically with the *People v. Croswell* case of 1804. How, if at all, does the general story that Pasley tells connect to the specific story that Berns tells?

•**In Class:** Discussion of the above, plus a diagramming of the people, charges, and arguments in the *Croswell* case, as described by Berns.

### **Assignment 2:** Context and Causation

•**Homework:** Imagine you are an editor in charge of creating one text out of the Pasley and Berns pieces. Write one or two paragraphs that would serve as a “bridge” or transition from Pasley’s story to Berns’ story.

### **Assignment 3:** Intellectual History

•**Homework:** Read David Hume’s “Of the Liberty of the Press” and Thomas Jefferson’s “Letter to Edward Carrington.”

•**In Class:** (1) Discuss the Hume and Jefferson pieces. What were their thoughts about the relationship between a free press and government? (2) Recalling our study of ancient republicanism from the previous semester, discuss whether these texts display any classically republican ideas. How might Hume and Jefferson’s ideas be similar to those of a Roman republican like Cicero, and how might they be different? What historical changes since Cicero’s time might account for any differences you perceive in these more modern texts?

•**In Class:** Divide the class into four groups. One group has “freedom of the press,” another “freedom of religion,” another “rule of law,” another “freedom of assembly.” Ask the members of each group to come up with an argument for why their particular

issue was important to “Enlightenment” thinkers. How did each issue relate to the search for reason and fairness that often characterized the project of “Enlightenment”?

**Assignment 4:** General Intellectual History Meets the Particular Pettiness of Party Politics – Which “Really” Causes the Crosswell Case?

•**Homework:** Read Harry Crosswell’s “article” from *The Wasp*, the argument from the defense, the argument from Alexander Hamilton, and the argument from the prosecution.

•**In Class:** Discuss the relationship, or lack thereof, between the practical matters at play in the case—Crosswell’s personal hatred of Holt, the party affiliations of Crosswell, the judge, and the jury, a newspaper’s need for readers and funding, for example—and the lofty rhetoric of the prosecution’s and defense’s arguments. Was this case really a debate over Enlightenment ideas? Was it really about very practical and often very petty issues regarding reputation, ego, financial gain and political power? Was it both? How, as historians, do we decide?

**Assignment 5:** The Judge’s Verdict, and Yours

•**Homework:** Attempting to emphasize his disinterestedness before giving his final verdict, Justice Lewis supposedly claimed that he, like all judges, “left party spirit at the foot-stool of the judgment seat.” Read Justice Lewis’ indictment of Crosswell, then write a response to the following questions: (1) Do you think that Justice Lewis’ verdict was truly an impartial one? (2) Do you think that judges and juries can be completely unbiased in their assessment of a case?