

FIAT LUX

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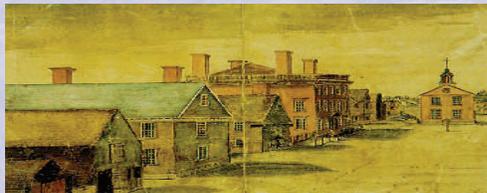
S T T H O M A S U N I V E R S I T Y L A W L I B R A R Y

ANATOMY OF A WITCH TRIAL BY KELLY MILAM

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September 22, 2008 marked the 316th anniversary of the last execution in the witchcraft trials of Salem, Massachusetts. From April to September 1692, over 200 people were imprisoned throughout the Commonwealth of Massachusetts for practicing witchcraft; of them: 50 confessed, 1 was pressed to death for refusing to cooperate, 4 died in prison awaiting their trials, and 19 were hung (along with 2 canine accomplices). Even though the accusations and imprisonments eventually spread across the Commonwealth, they began in (and the trials and hangings were limited to) one town: Salem.



Salem

How did this happen? In the beginning of February 1692, Betty, the nine year old daughter of Salem's new (and unpopular) minister, Samuel Parris, began acting strangely. Her symptoms included fever, "dashing about," and contorting in pain. When Betty's condition did not improve, she was sent to Boston. Soon after, Betty's eleven year old cousin, Abigail (who was living in the Parris household at the time) and her twelve year old neighbor, Ann Putnam, Jr., began acting strangely as well. The number of afflicted then quickly swelled to seven, including: nineteen year old Mercy Lewis (a servant in the Putnam household), seventeen year old Mary Warren (a servant in the Proctor household), and Ann Putnam's mother (who was also named Ann). Unable to cure the girls, or otherwise explain their afflictions, the town doctor suggested

that perhaps their symptoms were supernatural in origin. By the end of the month, the adults were demanding to know who was afflicting them, and the girls readily complied by naming witches in the town's midst.

Assuming that their symptoms were not caused by witchcraft, what did cause them? Many theories have been posited over the intervening 300 years, including: boredom, guilt, stress, child abuse, asthma, epilepsy, delusional psychosis, consumption of hallucinogenic mushrooms, and convulsive ergotism (which is caused by eating rye bread contaminated with mold). However, with the exception of Betty, who appears to have been truly ill (and who did not participate in the accusations and trials), there is little evidence to indicate that the others' "symptoms" were the result of anything more than overactive imaginations and spite.

There is evidence that the girls' stories were coached into "proper" witchcraft accusations by parents, ministers, and government officials; and many non-partisan, eye-witnesses of their courtroom antics concluded they were faking. Perhaps most damning, the girls were clearly able to control their behavior to suit what was occurring in the court room: when young Ann Putnam rashly accused a respected minister from Boston, who had spoken out against the trials, her parents rushed her out of the court room and told her she must be mistaken, at which point she returned to the court room, said that she was mistaken, and recanted her accusation against the minister.

Even though New England had only been settled 60 years before the trials began, a long-standing, divisive, bitter rivalry had taken root between Salem's two most prominent families, the Porters

ANATOMY OF A WITCH TRIAL CONT.

and the Putnams (and their various supporters). The schism was worsened in 1689 by the addition of the town's new, vain, spiteful, Putnam-backed minister, Samuel Parris. Once begun, the accusations followed a predictable pattern of singling-out outcasts, Quakers, anyone who dared voice opposition to the trials, and, most notably, the enemies of the Putnams and the detractors of Rev. Parris (in other words, the relatives and supporters of the Porter family).

People often feel uncomfortable with the idea that neighbors would condemn one another to death simply over greed, jealousy, prejudice, and long standing resentments, but that appears to be exactly what happened in Salem.

While speculating on the underlying sociological and biological factors is fascinating, the greatest value in studying the Salem Witch Trials comes not from these theories but from the lessons memorialized in the court documents. The most crucial element about the trials, which is often overlooked in trying to rationalize irrational behavior, is that they were official legal proceedings, conducted, sanctioned, and made possible solely by the government of the Commonwealth of Massachusetts (and by extension, the English government). They were not hysterical mob lynchings, and without the help of the judicial system, no one in Salem would have lost their life.

What stands out in these documents, and is so unsettling to the modern reviewer, is just how similar the proceedings in Salem were to criminal proceedings in courtrooms across America today: each case began with a formal accusation (a complaint) made under oath and recorded by the court's clerk. The Magistrate would only issue an arrest warrant after a sufficient number of depositions against the accused had been collected. The accused was then arrested by a court appointed official, usually the Sheriff, and brought before the court for questioning to determine the probability of his or her guilt. If the court deemed that the accused was likely to be guilty, he or she was sent to jail to await trial. At this point the case was referred to a Grand Jury where depositions relating to the guilt and innocence of the accused were presented. If the evidence appeared sufficient to uphold a conviction, the Grand Jury issued an indictment, formally charging the accused with the crime of witchcraft. The indictments cited the name of the crime allegedly committed, the date it was committed, where it was committed, and the names of the alleged victims.

After being indicted, the accused was then tried through a combination of verbal and physical examinations. In the verbal phase, the accused was asked questions about the charges, and allowed to ask questions in turn. Witnesses and evidence were presented by both sides. In the physical examination, the accused body was inspected for the Devil's Mark or witch's teat (the belief being that every witch was provided by the Devil with a demonic imp or "familiar" that sucked the witch's blood from the teat). Upon conviction, a death warrant was issued by the Chief Justice to be carried out by the High Sheriff. Each death warrant explained the indictment, conviction, where the condemned was imprisoned, and how, when, and where he or she was to be executed.

In our legal system there is a long-standing debate as to whether

our Constitution guarantees us full substantive due process or simply procedural due process. We might be instructed by the fact that the accused in Salem were afforded procedural due process, and yet were completely denied anything approaching justice: their trials were heard by juries of their peers. Their alleged witchcraft had to have been witnessed by at least two people. They were allowed to speak in their own defense, call witnesses, and produce evidence on their own behalf. They were allowed to cross-examine their accusers and the prosecution's witnesses. They could (and did in at least two cases) request changes of venue to seek a less biased jury pool (the juries were almost entirely composed of Putnams and their supporters). They had the right to object to jurors, as well as to those selected to inspect their bodies for witch marks. They could challenge physical evidence. They were guaranteed a speedy trial. Finally, they could petition the Governor to set aside their verdict.

What they could not do is formally appeal their verdicts; there were no higher courts. Nor were they represented by defense counsel. Massachusetts did not permit lawyers to practice for a fee until 1705, and accused felons, such as witches, were not permitted counsel under English law, regardless (four years later, in 1696, those accused of treason would be the first accused felons to be allowed counsel in the English legal system). The incarcerated were required to pay for their room and board (which was particularly harsh on the poor). Finally, there were no formal rules of evidence. Evidence was allowed if it was "convincing and sufficient." Hearsay was acceptable, as were assertions and surmises. The judge could instruct the jury as to how to weigh each piece of evidence (but not how to ultimately rule).

But would it have changed the outcome to have allowed lawyers, disallowed hearsay evidence, and permitted appeals? The indictments exclusively relied on the girls' testimony of being attacked in court before everyone's eyes by the "spectors" of the various accused (which only the girls could see). The girls' testimony was direct evidence, not hearsay. It was reinforced by the voluntary confessions of other accused witches (every confession included accusations about others). All who spoke up for one of the accused, found themselves accused soon after, and it is likely their lawyers would have been similarly accused had they been permitted them. Although many appeals to the Governor were submitted, not one was granted. In Rebecca Nurse's case the jury found her not guilty only to have the High Judge instruct them to reconsider (they got the hint, convicted her, and she was hung on June 29, 1692). Perhaps procedural due process is not enough?

It is easy to dismiss the outcome of the trials as just the tragic but inevitable result of a Puritanical world view that accepted the existence of witches, just as we accept the existence of germs. But it was not inevitable. Accusations of witchcraft were common at that time in Massachusetts, but the cases were usually dismissed or the accused acquitted. Many spoke out about the miscarriage of justice occurring in Salem. Ministers from all over Massachusetts were voicing their objections: "Reason tells us that the more horrid the crime, the more cautious we ought to be in making any guilty of it." And one judge who participated in the first trial was so appalled by it, he resigned.

The lesson from Salem is lost if we focus on its uniqueness. History is littered with stories of "witch hunts;" and we in the modern

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world are no more immune to them than were 17th Century Puritans. Little “witch hunts” occur in schools, offices, and condominium associations every day—devastating those involved, and acclimating the rest of us to “witch hunt” mentality and tactics. Teaching us not to speak out; teaching us that it is best to keep our noses down and mind our own business; making it harder for us to recognize and fight the next big witch hunt to effect the whole society.

Salem provides us with three red flags if we are willing to learn them:

Pictures, court documents and biographies from the Salem Witch trials are on display in the law library’s foyer display case.

Be wary of all prosecutions (big or small, formal or informal):

Where the offense is based on an abstract noun (such as evil, witchcraft, loyalty, communism, and terrorism) and not an active verb (such as lying, stealing, cheating, shooting, and bombing).

That target those who dissent against the proceedings or defend the accused

Where no matter what evidence is presented, the accused can never prove his or her innocence.

**P R I N T R E S O U R C E S I N T H E S T U L A W L I B R A R Y :
I N T E R N A T I O N A L L E G A L R E S E A R C H T O O L S**

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Law Library Mission Statement

To provide access to the legal information necessary to support the mission of St. Thomas University School of Law by acquiring assets providing comprehensive citation retrieval and the ability to deliver the full text of the documents cited; to support the teaching and research programs of the school of law through direct, continuing and informed relationships with faculty and through programs that educate students about the use and cost of all formats of legal information; to provide access to legal information and publications for St. Thomas University, as a whole.

L A W L I B R A R Y S P O T L I G H T

Our newest library intern, Kelly Milam, graduated magna cum laude from the University of Houston, where she studied Anthropology and Philosophy. Kelly went on to study law at Washington and Lee University in Virginia, and was awarded her JD in 2003. While still in law school, Kelly decided to pursue a career as a law librarian and was all set to begin library school in the fall of 2003, when fate stepped in the way and she was offered the chance to be part of a start-up book store that summer; the opportunity was too good to pass up, so she put library school on hold temporarily.

Four years later, in January 2007, Kelly enrolled in the Master's of Library and Information Science program at Florida State University. She graduated Phi Kappa Phi last December, in the top 10% of all graduate students at FSU. Even though she interned at another law library in the fall of 2007, she realized that she still has much to learn, and so she decided to pursue a second internship here at St. Thomas, while she looks for a permanent position.

Kelly looks forward to starting her career as a law librarian. Her dream job is to work for the Law Library of Congress, but as long as she is able to help people access legal information, she will

be very happy.



Kelly Milam Law
Library Intern

Having graduated from law school only a few years ago, Kelly is very aware of, and sensitive to, the unique stresses law students experience. Her positive experience with the kind and helpful law librarians at Washington and Lee inspired her to become a law librarian and she hopes to be able to provide a kind and helpful face here at St. Thomas. She has been with us for over a month and is really enjoying her experience.

Recognizing that this is a very exciting time in terms of access to information, Kelly believes that librarians will play a big part in the information revolution we are currently experiencing and she is excited to be a part of it.

Kelly's Five favorites:

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|-------------------|----------------------------------|
| Favorite Car: | Yellow Mini Coopers |
| Favorite Movie: | Wall-E |
| Favorite TV Show: | HBO's True Blood |
| Favorite Song: | Very Loud by the Shout Out Louds |