

Colonial Crimes and Punishments script

Setting the stage: Assign individuals their role, using the signs to hang around their necks. Then, when everything is ready, explain the following:

During Colonial times, crimes committed are either sent to a county court, or if punishable by death, to the capitol court. This is a trial for hog stealing and is held in the county Court. The defendant will be offered a choice of being heard by a commission of justices only or by a jury. If the defendant chooses a commission of justices there will be no jury, and a majority vote of the justices prevails. A jury trial (“upon the country”) requires a unanimous vote. Consequently, the defendant stands a better chance of not being convicted if he or she selects a jury trial.

In each trial, English common law requires two witnesses. The Deputy King’s Attorney (representing the law of England) is given the opportunity to question two witnesses and the defendant is given opportunity to cross-examine the witnesses for the Deputy King’s attorney. The defendant can try to disprove the charge against him/her, but he/she may not make statements on his/her own behalf. As in any court, the Deputy King’s attorney should be prepared to object if he/she feels the witness is being badgered. The defendant does NOT have a right to counsel supplied by the colony.

After the Deputy King’s attorney’s witnesses have given their sworn testimonies and been cross-examined, it is the defendant’s turn to supply witnesses for his/her defense. Cross-examination is permitted by the Deputy King’s attorney after each witness is questioned.

When both sides have had the opportunity to present their respective witnesses and to cross-examine those for the other side, the chief justice calls for summations- so that both sides may summarize their position before the justices or the jury.

After the jury reaches a decision, the foreman for the jury will let the justices know of their decision. If the defendant is found innocent, he/she is free to go. However, if the jury (or justices) find the defendant guilty as charged, the justices will confer to make the decision about the punishment.

*Of all of the crimes possible in colonial times, few were considered more severe than hog-stealing. While cursing God would result in three hours (or less) in the public stocks, and stealing required repayment double the values of what was stolen or be publicly whipped, the punishment of hog-stealers was far worse. If one were NOT a slave, the first offence resulted in **“bare back twenty five Lashes, well laid on, at the publick whipping post or pay ten pounds current money- as well as pay 400 pounds of tobacco for every hog, shoat, or pig- one/half to the owner and the other half to the informer. The guilty party’s thumb would also be branded with a large T to show a first offence has been committed.***

“If any person, other than a slave, shall offend a second time, and be thereof convicted, he or she shall stand two hours in the Pillory, on a Court Day, at the Courthouse of the County, and have both ears nailed thereto, and at the end of two hours shall have the Ears cut loose from the Nails . . . and moreover, every such Offender shall pay and satisfy four Hundred Pounds of Tobacco for every stolen Hog, Shoat, or Pig, to the Owner and Informer.

“If any Person whatsoever shall be the third time convicted of Hogstealing, every such Offender shall be adjudge a Felon”

We are here today because hogs are missing from our village- and the truth must come out!

(At this point, the moderator should introduce all of the “players” as they are asked to take their respective places in the tent.

Needed:

Chief Justice (Magistrate)

4 other justices

sheriff

clerk

Deputy King’s attorney

defendant (hog thief)

2 prosecution witnesses

2 defense witnesses

12 jurors

At this point, the Chief Justice will take over. As moderator, however, you should be prepared to “help” the proceedings along.

Script- Colonial Crimes and Punishments: an eighteenth century trial
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Chief Justice: Mister Sheriff, please call the court to order.

Sheriff: *(hits his tipstaff loudly on the floor three times)* Oyez, oyez, oyez *(pronounced “oy-ay”)* All rise! *(loudly)*. Silence is commanded in the court while His Majesty’s justices are sitting, upon pain of punishment!

All manner of persons that have anything to do at this court draw near and give your attendance, and if anyone have any plaint to enter or suit to prosecute, let them come forth, and they shall be heard. God save the King!

All: *(loudly)* God save the King!

Clerk: *(standing and reading the criminal complaint)* To your Honors, be it known on the second of last month, Robert Peyton did knowingly and evilly at the instigation of the devil steal a hog belonging to Jonathan Miller. A complaint was made by the owner, and the sheriff, believing the complaint to be true, has arrested the defendant and the defendant is now ready to stand trial.

Chief Justice: Bring the prisoner before the bar of His Majesty’s justice.

Sheriff brings in the defendant.

Chief Justice: *(to the defendant)* Do you understand the charges brought against you?

Defendant: Yes.

Chief Justice: Make your plea.

Defendant: I am innocent, Your Honors.

Chief Justice: Do you want to be tried by commission of justices or upon the country?

Defendant: Your Honors, I wish to be tried upon the country.

Chief Justice: Mister King’s Attorney, are you ready to make an opening statement?

Deputy King’s Attorney: Your Honor, I shall prove the charge against the prisoner out of the mouths of two credible witnesses.

Chief Justice: Mister Peyton, are you ready to make an opening statement?

Robert Peyton: Your Honors, Mary Hastings is a bitter old woman who is jealous of my holdings and is trying to damage my good name in this community. I am not a hog thief.

Deputy King’s Attorney: The Crown calls Mary Hastings

Sheriff: Mary Hastings *(Witness One)*, come forth and be heard.

(Clerk hands a bible to Witness One, who holds it in his/her right hand.)

Clerk: *(to Witness One)* Do you Mary Hastings, swear the evidence you shall give is the truth, the whole truth, and nothing but the truth?

Mary Hastings: I so swear. *(returns the Bible to the clerk)*

Deputy King's Attorney: Tell us what you know of the theft.

Mary Hastings: Your Honors, I had trouble sleeping, so I was quite wide awake. The moon was full, the sky clear, and I could see very well even though it was night. I saw Robert Peyton steal one of my pigs, but I was too afraid of him to stop him. He is a violent man who was convicted of hog stealing eight months ago. I clearly saw his face in the bright moonlight, and I likewise recognize the clothes he is wearing now as the same he wore that night.

Deputy King's Attorney: Thank you. No more questions.

Chief Justice: *(to the defendant)* Do you have any questions for this witness?

Robert Peyton: Yes/No, Your Honors. (Defendant can cross examine if he wishes.)

Chief Justice: *(to Witness One)* You are dismissed.

Deputy King's Attorney: The Crown calls Jonathan Miller (Witness Two.)

Sheriff: Jonathan Miller *(Witness Two)*, come forth and be heard.

(Clerk hands a bible to Witness Two, who holds it in her right hand.)

Clerk: Do you, Jonathan Miller, swear the evidence you shall give is the truth, the whole truth, and nothing but the truth?

Jonathan Miller: I so swear. *(returns the Bible to the clerk)*

Deputy King's Attorney: Tell us what you know of the theft.

Jonathan Miller: I am a carpenter, and I was repairing fences nearby. I saw Robert Peyton walking awkwardly as though pulling something very heavy on the other side of the field where I was working, and I heard a hog squealing. I too recognize the clothes he/she is wearing as the same being worn as I noted while repairing the fence.

Deputy King's Attorney: Thank you. No more questions.

Chief Justice: *(to the defendant)* Do you have any questions you would like to ask this witness?

Defendant: Yes/No, Your Honors. (Defendant can cross examine if he wishes.)

Chief Justice: *(to Jonathan Miller after any questions by defendant)* You are dismissed.

Deputy King's Attorney: Your Honors, having proven the Crown's case, the Crown rests.

Chief Justice: Robert Peyton, do you have any witnesses?

Defendant: I call Susanna Peyton to speak in my favor.

Sheriff: Susanna Peyton, come forth and be heard.

(Clerk hands a bible to Witness Three, who holds it in her right hand.)

Clerk: *(to Witness Three)* Do you, Susanna Peyton, swear the evidence you shall give is the truth, the whole truth, and nothing but the truth?

Witness Three: I so swear. *(returns the Bible to the clerk)*

Robert Peyton: Where were you on the night of the crime?

Susanna Peyton: I was at the home of Robert Peyton, my uncle. We had a fine evening playing cards and drinking cider. I don't see how Uncle Robert could possibly have stolen a hog, especially from that spinster Mary Hastings, whom everyone knows is a cranky old woman who is always dragging somebody into court over some little thing or other.

Chief Justice: *(to Deputy King's Attorney)* Do you have any questions of this witness?

Deputy King's Attorney: Yes/No, Your Honors. *(Deputy King's Attorney can cross examine if he wishes.)*

Chief Justice: Susanna Peyton, you are dismissed.

Robert Peyton: I call Frederick Winters to speak in my favor.

Sheriff: Frederick Winters, come forth and be heard.

(Clerk hands a bible to Witness Four, who holds it in his right hand.)

Clerk: Do you, Frederick Winters, swear the evidence you shall give is the truth, the whole truth, and nothing but the truth?

Frederick Winters: I so swear. *(returns the Bible to the clerk)*

Defendant: What do you know about me and the crime in question?

Frederick Winters: Well, I don't know anything about stealing a hog. On the night in question I was at my home when you came over to get a large round of cheese that my wife had promised your wife. I wrapped it up in a clean cloth and gave it to you. I saw you trot home so that your wife could have it in time. Maybe old Mary thought the cheese was a hog. *(laughs....)*

Chief Justice: *(to Deputy King's Attorney)* Do you have any questions?

Deputy King's Attorney: Yes/No, Your Honors. *(Deputy King's Attorney can cross examine if he wishes.)*

Chief Justice: Frederick Winters you are dismissed.

Chief Justice: *(to Deputy King's Attorney and Defendant- calling for summations)* Please summarize your case, and I remind you that we will entertain no new testimony.

Deputy King's Attorney: *(Summarizes the points made by his witnesses.)*

Defendant: *(Summarizes the points made by his witness.)*

Chief Justice: *(to the jury)* Gentlemen of the jury, you and only you will make the decision of whether or not the defendant is guilty or not guilty, and that is the only decision you will make. You will get no food, no drink, no water, no light, and no heat until you return with a unanimous vote.

(Jury is to leave the tent and confer. Designate one participant as foreman. After the jury reaches a decision, it returns.)

Chief Justice: *(to the jury)* Gentlemen of the jury, what is your verdict?

In the case of a verdict of "Not Guilty":

Jury Foreman: Your Honors, the verdict is not guilty.

Chief Justice: *(to the jury)* Thank you for your verdict. *(to the defendant)* You, Robert Peyton, are free to go and do not have to pay charges of any sort.

In the case of a verdict of "Guilty":

Jury Foreman: Your Honor, we find the defendant to be guilty as charged.

Chief Justice: *(to the jury)* Thank you for your verdict. *(to the other justices)* Well gentlemen, let us confer to make the decision about the punishment. (Go over the laws for hog stealing.)

The justices confer. Note: the justices may NOT invent punishments. Punishments vary for first and second offenses of hog stealing, but the trial proceeding would be the same.)

Chief Justice: *(Announce the justices' decision. To Sheriff-)* This session is over.

Sheriff: All rise! This court stands adjourned! God save the King!

All: God save the King!

Since this is a second offense, the sheriff should escort him to the stocks and place him in them.

Colonial Crimes and Punishments Background

Setting the stage: Assign individuals their role, using the cards with their speaking parts on them. Then, when everything is ready, explain the following:

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In each trial, English common law requires two witnesses. The Deputy King’s Attorney (representing the law of England) is given the opportunity to question two witnesses and the defendant is given opportunity to cross-examine the witnesses for the Deputy King’s attorney. The defendant can try to disprove the charge against him/her, but he/she may not make statements on his/her own behalf. The defendant does NOT have a right to counsel supplied by the colony.

Punishments fall into three categories:

Publick humiliation such as being put into the stocks.

Physical punishments such as being lashed

Death penalty cases which could only be heard at the state capitol court.

Talk to the person chosen to be the defendant:

*I would like to remind you that you have been accused of a very serious crime. While cursing God would result in three hours (or less) in the public stocks, and stealing required repayment double the values of what was stolen or be publicly whipped, the punishment of hog-stealers was far worse. If one were NOT a slave, the first offence will result in **“bare back twenty five Lashes, well laid on, at the publick whipping post or pay ten pounds current money- as well as pay 400 pounds of tobacco for every hog, shoat, or pig- one/half to the owner and the other half to the informer. The guilty party’s thumb would also be branded with a large T to show a first offence has been committed.***

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An Act Against Stealing Hogs

C H A P. XXXIII. His Majesty gave his Assent to this Act. Oct. 31, 1751. An Act against stealing Hogs.

The Punishment of Hog-stealers, not being Slaves.

First Offence. I. B E it enacted, by the Lieutenant Governour, Council, and Burgesses, of this present General Assembly, and it is hereby enacted, by the Authority of the same, that if any Person, not being a Slave, shall steal any Hog, Shoat, or Pig, he or she shall, for the first Offence, receive on his or her bare Back twenty five Lashes, well laid on, at the publick Whipping Post of the County where he or she shall be convicted, or pay down ten Pounds current Money, to the Use of the same County, towards lessening that County Levy, and shall moreover pay four Hundred Pounds of Tobacco for every such Hog, Shoat, or Pig, one Half to the Owner thereof, and the other Half to the Informer; to be recovered, with Costs, at the Suit of the Informer, by Action of Debt, in any County Court of this Dominion.

Second Offence. A. D. 1742. Where several Offenders in a Fact, each of them liable for the Punishment. II. A N D if any Person, other than a Slave, shall offend a second Time, and be thereof convicted, he or she shall stand two Hours in the Pillory, on a Court Day, at the Courthouse of the County where such Conviction shall be, and have both Ears nailed thereto, and at the End of two Hours have the Ears cut loose from the Nails, which Judgment the respective County Courts of this Dominion are hereby empowered to give, and to award Execution thereupon, saving always to the Party concerned Liberty of Appeal to the General Court, such Party giving Bond, with good Security, in the Sum of twenty Pounds Sterling, for his or her personal Appearance in the said Court, according to the Appeal, and to perform and abide their Award; and moreover, every such Offender shall pay and satisfy four Hundred Pounds of Tobacco for every stolen Hog, Shoat, or Pig, to the Owner and Informer, and to be recovered as aforesaid: And if there be several Offenders in one and the same Fact, although but one Hog, Shoat, or Pig, be stolen, each Person may be particularly prosecuted, and upon Conviction shall be adjudged to suffer the Punishment, and pay the whole Fine, as aforesaid.

How Servants shall pay for Hogstealing.

III. A N D be it further enacted, by the Authority aforesaid, that if any Servant shall be convicted of Hogstealing, his or her Master, or Owner, shall pay and satisfy four Hundred Pounds of

Tobacco, to be recovered, and divided, as aforesaid, whether it be for the first or second Offence, and shall be repaid for the same, and Costs of Suit, by further Service of such Offender, after his or her Time, due by Indenture, Contract, or former Judgment, shall be expired, at the Rate of one Hundred and fifty Pounds of Tobacco for one Month's Service, and Judgment shall be entered up accordingly.

How slaves shall be prosecuted, and punished, for Hogstealing.

First Offence. Second Offence. Punishment of false witnesses. IV. A N D be it further enacted, by the Authority aforesaid, that when any Slave, or Slaves, shall hereafter steal any Hog, Shoat, or Pig, it shall be lawful for any Justice of Peace of the County where such Offence shall be committed, upon Complaint or Information thereof to him made, to cause such Offender or Offenders, and the Witness or Witnesses, to come before him; and if, upon Examination, any Slave or Slaves appear to be guilty, to commit him, her, or them, to Prison, or bind every such Offender, with Security, to appear personally before the Court next thereafter to be held for his County, to answer such Complaint or Information, and to abide the Judgment of the said Court: And the Justices thereof are hereby required to direct the Person appointed to prosecute for the King in the same Court to exhibit a Charge or Complaint, in Writing, against such Slave or Slaves for such Offence, whereupon it shall be lawful for the said Court to hear and determine the Matter of such Charge or Complaint without any Jury, and to receive as Evidence against the Slave or Slaves so charged the Confession of the Offender, the Oath of one or more credible Witnesses, or such Testimony of Negroes, Mulattoes, or Indians, bond or free, as to them shall seem convincing; and if, in the Opinion of such Court, the Slave or Slaves so charged is or are guilty, every such Offender shall, for the first Offence, receive thirty nine Lashes on his or her bare Back, well laid on, at the publick Whipping Post, and upon a second Conviction shall stand two Hours in the Pillory, with both Ears nailed thereto, and then cut loose, as is herein before directed.

And if any Negro, Mulatto, or Indian (not being a Christian) shall, upon due Proof made, or pregnant Circumstances appearing to any County Court, be found to have given false Testimony on the Trial of any Slave, for the first or second Offence of Hogstealing, every such Offender, without further Trial, shall be by such Court ordered to receive the same corporal Punishment as the Slave tried for Hogstealing would receive upon Conviction; and the first Justice in Commission sitting at such Trial shall, before the Examination of such Negro, Mulatto, or Indian, charge such Evidence to speak the Truth, and shall also inform him or her of the Consequence of giving false Testimony.

Third Offence of Hogstealing, Felony, no clergy. V. A N D be it further enacted, by the Authority aforesaid, that if any Person whatsoever shall be the third Time convicted of Hogstealing, every such Offender shall be adjudged a Felon. . . .Order in the Court: An Eighteenth-Century Trial © 2011 The Colonial Foundation 10

Translation of “An Act Against Stealing Hogs”

Group 1

1. Any free person (someone who is not a slave or an indentured servant) who is convicted for the first time of stealing a hog will receive twenty-five lashes on his/her bare back or pay £10 to the county. The lashes will be given at the public whipping post. The thief will also have to pay four hundred pounds of tobacco for every hog stolen. Half of the tobacco will be given to the owner of the hog. The other half of the tobacco will be given to the person who identified the person who stole the hog. [Note: An indentured servant was someone who agreed to work for someone else--usually a person who had paid for the servant's passage to the New World--for a certain number of years. During this time, the master had to give the servant food, clothing, and a place to live. At the end of the period specified in the contract, the servant became a free person again.]

Group 2

2. Any free person who is convicted of hog stealing for a second time will be placed in the pillory for two hours. Both of the thief's ears will be nailed to the pillory. At the end of the two hours, the thief will be freed by cutting off the parts of his/her ears nailed to the pillory. The thief has the right to appeal his/her conviction to the General Court before he/she is punished. If the thief chooses to appeal to the General Court, he/she must promise to appear before the court and must pay a security bond of £20 to guarantee that he/she will keep his/her promise. The thief must also promise to abide by the General Court's decision. Every person not a slave who is convicted of hog stealing for a second time must pay a fine of four hundred pounds of tobacco for each hog stolen. The tobacco will be divided between the owner of the hog and the person who identified the thief. If more than one person is convicted of stealing the same hog, each thief will be punished as described above. Each thief must also pay four hundred pounds of tobacco, to be divided between the owner and the informant.

Group 3

3. If a first- or second-time hog thief is an indentured servant, his/her master must pay the fine of 400 pounds of tobacco and the costs of prosecuting the thief. The thief must serve an extra month for every 150 pounds of tobacco the master had to pay because of his/her crime. 5. Any person who is convicted of hog stealing for a third time will be judged a felon and put to death without benefit of clergy. [Note: Someone convicted of stealing hogs for the first or second time could ask for “benefits of clergy,” which technically forgave the crime. First-time offenders, however, were branded on the “broad” of the left thumb for future identification.]

Order in the Court: An Eighteenth-Century Trial © 2011 The Colonial Williamsburg foundation 11

Group 4

4. If a slave is accused of stealing a hog or a pig, the justice of the peace can demand that the slave and the witnesses against him/her appear before the justice. If, after questioning the slave and the witnesses, the justice thinks the slave is guilty, he can put the slave in prison or require that a bond be paid to guarantee that the slave will appear at the next court session and that the slave will abide by the court's decision. [Note: The next court session could be as soon as two days after the justice of the peace made his determination or up to two weeks later.] The justices must see that prosecutor accuses the slave in writing. The justices can try the slave without a jury. They can hear as evidence against the slave (1) the slave's confession; (2) sworn testimony of free persons; and (3) statements by free or slave Negroes, mulattoes, or Indians. If the justices decide that the slave is guilty, a first-time offender will receive thirty-nine lashes on his/her back. A slave convicted of hog stealing for a second time must stand for two hours with both ears nailed to the pillory, then will be cut loose. If the justices decide that any Negro, mulatto, or Indian who is not a Christian has lied to the court during the trial of a slave accused of stealing a hog for the first or second time, the justices will order that that person will receive the same punishment as the slave would if he or she were convicted. (In other words, depending on whether the slave is accused of stealing hogs for the first or second time, the person who lied will receive thirty-nine lashes at the public whipping post or will have to stand in

the pillory with his or her ears nailed to it, then be cut free after two hours.) No further trial will be held to hear evidence against the person who is accused of lying. When the court hears testimony from a Negro, mulatto, or Indian, the chief justice will instruct the witness to tell the truth and will warn him/her what the punishment for lying will be.