

Order in the Court: An Eighteenth-Century Trial



*Colonial
Williamsburg*

Department of Education Outreach

Order in the Court: An Eighteenth-Century Trial

Introduction

Students will investigate the role of law in eighteenth-century Virginia by translating and interpreting primary and secondary sources. Participants will recreate an eighteenth-century trial, and employ critical thinking skills to make and defend inferences about Virginia's court system.

Note: See also "Background Information: The Courthouse of Williamsburg" at the end of this packet.

Objectives

As a result of this lesson, students will be able to:

- Read and interpret primary source materials
- Use role-playing and interpretation to re-create an eighteenth-century trial
- Think critically, make inferences, and defend their inferences

Materials

Graphic Organizers 1–4
Primary and secondary documents
Trial script
Props (optional, not included)

Setting the Stage

1. Distribute copies of Graphic Organizer 1. As part of a class discussion, review the worksheet and assist students in defining laws.
2. Distribute Graphic Organizer 2. Have students write the definition of a law and fill in the columns with appropriate information.
3. Brainstorm some of the state and national laws that we must obey today. Distribute Graphic Organizer 3 for students to record their ideas. Now ask students to think about people in the eighteenth century. Would they have many of the same laws? Different ones?
4. Distribute Graphic Organizer 4. Have students brainstorm what laws people living in the eighteenth century might have needed.

Strategy

1. Divide students into five groups. Distribute “An Act against stealing Hogs” to groups 1, 2, 3, and 4. Distribute “The Penalties of Laws” (Hog Stealing) to group 5.
2. Direct groups 1–4 to read the translation of a section of the document, and Group 5 to read the translations of the penalties for hog stealing. Have students interpret the documents in their own words. Have one group of students report while the other groups take notes to help them answer questions after the trial.
3. Inform students they will recreate an eighteenth-century trial. Assign roles and distribute the script (see the script with casting notes). Inform the Defendant, Deputy King’s Attorney, and others that during the “play,” they will have to invent some of their dialogue. You may wish to allow time beforehand for them to read through the script and develop questions and testimony.
4. Tell students not playing a scripted role that they will be bystanders at the trial, and will later write to a friend describing their “character’s” feelings about the proceedings.
5. After the trial, summarize the activity. Have students make and defend inferences about the legal process they recreated, using pictures or written words. List “Possible Questions” on an overhead or blackboard. You may wish to assign one question to each of the original groups, and have each group report its inferences to the class.

Alternate Plan

Conduct a similar role play court trial for the civil case of Mary Whaley and Samuel Plantain.

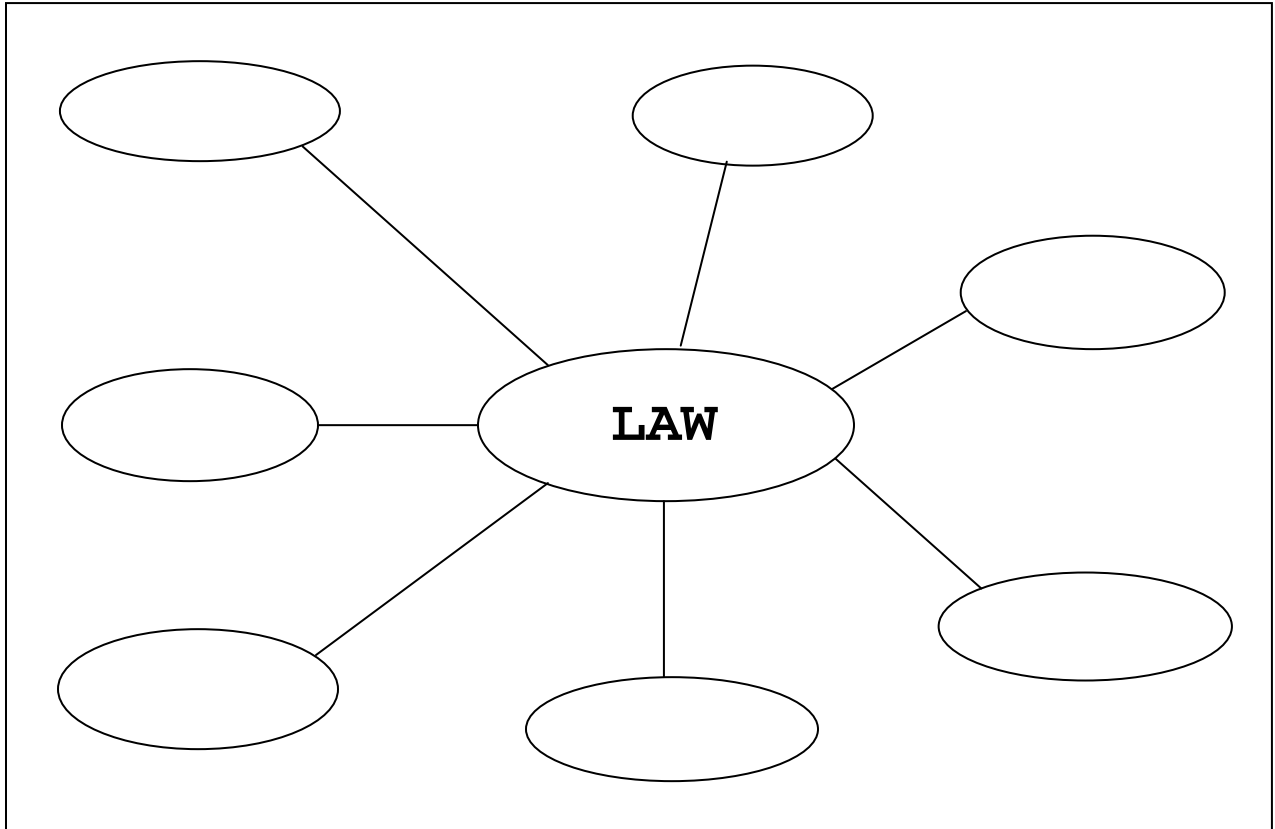
Evaluation/Assessment

Have students research comparable twenty-first-century court cases from the local newspapers. Tell students to create a trial based on a twenty-first-century crime, but using the eighteenth-century process modeled in the activity. Ask students to determine the differences and similarities between eighteenth-century and twenty-first-century court proceedings.

Extension

Distribute the laws about stealing horses or homicide. Assign new roles, and direct students to recreate a trial of an alleged horse thief or murderer. Compare the results with those of the trial for hog stealing.

Graphic Organizer 1



Graphic Organizer 2

Definitions							
Classroom	Who makes the law?	School	Who makes the law?	Home	Who makes the law?	Society	Who makes the law?

Graphic Organizer 3

National Laws	State Laws

Graphic Organizer 4

Eighteenth-century laws

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. . . .

TRANSLATION OF “AN ACT AGAINST STEALING HOGS”

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.]

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.

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.

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.

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.

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.]

THE PENALTIES AGAINST HOGSTEALING

H O G - S T E A L I N G .

Penalties,
Laws of
pg. 150.

F O R every Hog, Shoat, or Pig,

1st. Offence, 25 Lashes, or 10l. and 400lb. Tobacco, per Hog &c.

2d. Offence, 2 Hours Pillory, Loss of Ears, and 400lb. Tobacco.

If the Offender be a Negro, Mulatto, or Indian, Thirty Nine Lashes, and 400lb. Tobacco: If a Servant, the Master shall pay the Tobacco, and be repaid in Service, at 150lb. Tobacco per Month: If a Slave, his Owner shall pay 200lb. Tobacco, to the Owner of the Hog. 4 Anne, cap. 14.

Penalties of 10l. and 400lb. Tobacco, to be divided between the Owner of the Hog, &c. and the Informer.

If several Offenders, tho' but one Hog stol'n, each Person may be prosecuted, and liable for the whole Fine.

But Owners of Slaves shall pay only 200lb. Tobacco, for One Hog; and if Slaves of several Masters offend, each Master shall pay only a proportionable Part.

Prosecution may be in the County Court; but Defendant has Liberty of Appeal to the General Court, if he gives Bond and Security in 20l. Sterl.

3d. Offence, Felony.

Hog unmark'd.

Persons bringing Home, or receiving any Hog, &c. without Ears, and not giving immediate Notice to a Justice, shall be adjudged Hog-stealers, unless they prove their Property in such Hog.

Hogs belonging to Indians shall have the common Mark of their Town: Buying or receiving Pork of an Indian, without Proof that it was so mark'd, 1000lb. Tobacco Penalty to the King and Informer.

No Person shall hunt, shoot, or kill any Hog, Shoat, or Pig unmark'd, upon another Man's Land, on Forfeiture of 1000lb. Tobacco, to the Informer.

But any Person may, upon his own, or King's Land, kill Hogs unmark'd, but must give Account,

upon Oath before a Justice of Peace within 3 Months, of all Hogs so kill'd, and obtain his Certificate, otherwise may be prosecuted for Hog-stealing.

Prosecution for these Offences must be by Action, or Information, in the General Court, or County Court.

Certificate.

Certificate of killing unmark'd Hogs.

Middlesex sc. A. B. of &c. this Day made Oath before me, That on the _____ Day of last _____ past, he killed upon his own Land Two Hogs, and that the same were not marked. Certified under my Hand, this Day of _____

George Webb, *The Office and Authority of a Justice of Peace . . .* (Williamsburg, Va.: William Parks, 1736; reprinted in Holmes Beach, Fla.: Wm. W. Gaunt & Sons, 1969), pp. 174–175.

TRANSLATION OF PENALTIES FOR HOGSTEALING

The first time a free person is convicted of stealing a hog, shoat, or pig, the thief will receive 25 lashes or pay 10 pounds for each animal stolen and will pay 400 pounds of tobacco for each hog, shoat, or pig stolen.

The second time a free person is convicted of stealing a hog, shoat, or pig, the thief will stand for two hours in the pillory and lose his or her ears. He or she will also have to pay 400 pounds of tobacco for every animal stolen.

If the thief is a Negro, mulatto, or Indian, he or she will receive 39 lashes. If the thief is a servant, his or her master will pay 400 pounds of tobacco for each stolen animal. The servant will repay the master by working one extra month for every 150 pounds of tobacco the master had to pay. If the thief is a slave, his or her owner will pay 200 pounds of tobacco for the stolen animal.

The owner of the stolen hog and the informer will split the 10 pounds and 400 pounds of tobacco.

If several people are convicted of stealing only one hog, each thief will pay the entire fine.

Slave owners will pay only 200 pounds of tobacco for one hog. If the slaves of more than one master steal a hog, the masters will share the cost of the 200 pounds of tobacco.

Hog thieves can be prosecuted in the county court, but the accused thief can appeal to the General Court if he or she pays a bond and security of 20 pounds sterling.

The third time a person is convicted of stealing a hog, the crime is a felony.

ORDER IN THE COURT: A CRIMINAL CASE ROLE-PLAY SCRIPT

Cast of Characters

- 4-12 justices*
- chief justice (magistrate) *
- sheriff*
- clerk*
- deputy king's attorney*
- defendant (hog thief)
- 2 prosecution witnesses (Witness One and Witness Two)
- 2 defense witnesses (Witness Three and Witness Four)
- 12 jurors*

*In the eighteenth century, only men would have held these positions. The script has been written to reflect this fact. When girls are assigned these parts, the people speaking to them should pretend they are men.

CHIEF JUSTICE: Mister _____ (sheriff's last name), please call the court to order.

SHERIFF: (*hits his staff loudly on the floor three times*) All rise! (*loudly*) Oyez, oyez, oyez (*pronounced "oy-ay"*), 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, _____ (defendant's full name) did knowingly and evilly at the instigation of the devil steal a hog belonging to _____ (full name of Witness One). 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?

[Note: If the defendant chooses a commission of justices, there will be no jury, and a majority vote of the justices will prevail. 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.]

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.

[Note: English common law requires two witnesses.]

CHIEF JUSTICE: Mister (or Miss) _____ (defendant’s last name), are you ready to make an opening statement?

DEFENDANT: Your Honors, I do not wish to make a statement.

DEPUTY KING’S ATTORNEY: The Crown calls _____ (full name of Witness One).

SHERIFF: _____ (full name of 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, _____ (full name of Witness One), swear the evidence you shall give is the truth, the whole truth, and nothing but the truth, so help you God?

WITNESS ONE: I so swear. (returns the Bible to the clerk)

DEPUTY KING’S ATTORNEY: Tell us what you know of the theft.

WITNESS ONE: Your Honors, I had trouble sleeping the night of the theft, 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 _____ (defendant’s name) steal one of my pigs, but I was too afraid of him (or her) to stop him (or her). I clearly saw his (or her) face in the bright moonlight, and I likewise recognize the clothes he (or she) is wearing now as the same he (or she) wore that night.

DEPUTY KING’S ATTORNEY: Thank you. No more questions.

DEFENDANT: *[Have the defendant develop the questions for the cross-examination. The defendant can try to disprove the charge against him/her, but he/she may not make statements on his/her own behalf. 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.]*

CHIEF JUSTICE: *(to the defendant)* Do you have any more questions?

DEFENDANT: No, Your Honors.

CHIEF JUSTICE: *(to Witness One)* You are dismissed.

DEPUTY KING'S ATTORNEY: The Crown calls _____ *(full name of Witness Two)*.

SHERIFF: _____ *(full name of Witness Two)*, come forth and be heard.

Clerk hands Witness Two the Bible.

CLERK: *(to Witness Two)* Do you, _____ *(full name of Witness Two)*, swear the evidence you shall give is the truth, the whole truth, and nothing but the truth, so help you God?

WITNESS TWO: I so swear. *(returns the Bible to the clerk)*

DEPUTY KING'S ATTORNEY: Tell us what you know of the theft.

WITNESS TWO: *[Have Witness Two create his/her testimony. Suggested story lines: "I am a carpenter, and I was repairing fences nearby"; "I am a widow who earns a living by sewing, and I was at the house."]*

DEPUTY KING'S ATTORNEY: Thank you. No more questions.

DEFENDANT: *[The defendant should ask questions to try to disprove the testimony of Witness Two.]*

CHIEF JUSTICE: *(to the defendant)* Do you have any more questions?

DEFENDANT: No, Your Honors.

CHIEF JUSTICE: _____ *(name of Witness Two)*, you are dismissed.

DEPUTY KING'S ATTORNEY: Your Honors, having proven the Crown's case, the Crown rests.

CHIEF JUSTICE: _____ *(defendant's name)*, do you have any witnesses?

DEFENDANT: I call _____ *(full name of Witness Three)* to speak in my favor.

SHERIFF: _____ (*full name of Witness Three*), come forth and be heard.

Witness Three comes forward and is sworn in.

DEFENDANT: [*Asks Witness Three questions designed to construct an alibi, such as “Where were you on the night of the crime?” “Were we talking at the tavern?”*]

WITNESS THREE: [*Responds to the defendant’s questions, remembering that he/she is supporting the defendant’s case.*]

DEPUTY KING’S ATTORNEY: [*Cross-examines Witness Three based on all of the witnesses’ testimony.*]

CHIEF JUSTICE: (*to Deputy King’s Attorney*) Do you have any more questions?

DEPUTY KING’S ATTORNEY: No, Your Honors.

CHIEF JUSTICE: _____ (*name of Witness Three*), you are dismissed.

Repeat this process for Witness Four.

After Deputy King’s Attorney cross-examines Witness Four, the chief justice calls for summations:

CHIEF JUSTICE: (*to Deputy King’s Attorney and Defendant*) 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/her witnesses.*]

CHIEF JUSTICE: (*to the jury*) Gentlemen of the jury, you and only you will make the decision whether or not the defendant is innocent or 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.

[Have the jury gather and confer. Designate one student as the 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 “INNOCENT”:

JURY FOREMAN: Your Honors, the verdict is innocent.

CHIEF JUSTICE: *(to the jury)* Thank you for your verdict. *(to the defendant)* You, _____
(defendant's full name), 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.

The justices confer.

[Note: students may not invent punishments. Punishments vary for first, second, and third offenses of hog stealing, but the trial proceedings would be the same. See the sources on punishments.]

CHIEF JUSTICE: _____. *(announcing 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!

If the defendant is found guilty, he/she is taken by the sheriff for immediate punishment.

ORDER IN THE COURT: A CIVIL CASE ROLE-PLAY SCRIPT

Cast of Characters:

- **Justices** - (4 - 12) *
- **Chief Justice** *
- **Clerk** (*needs copy of complaint*) *
- **Sheriff** (*needs tipstaff*) *
- **Mary Whaley** (Plaintiff) (*needs copy of receipt*)
- **Samuel Plantain** (Defendant)
- **James Hassell** (Witness)

* In the eighteenth century, only men would have held these positions. The script has been written to reflect this fact. When girls are assigned these parts, the people speaking to them should pretend that they are men.

(Sheriff enters, takes his place in the bailiff's box, and hits his tipstaff loudly on the floor three times.)

Sheriff: All rise and be upstanding! Announcing His Majesty's Justices for the court of James City County!

(Everyone stands up as the justices enter. Continue standing after they are seated.)

Chief Justice: Thank you Mister Sheriff. Please call the court to order.

Sheriff: Oyez, Oyez, Oyez. Silence is commanded in this court while his Majesty's Justices are seated upon pain of imprisonment.

All manner of persons having anything to do with this court draw near and give your attendance. If anyone has any plaint to enter or suit to prosecute let them come forth and they shall be heard

God Save the King!

(Everyone responds "God Save The King!")

Sheriff: You may be seated.

(Note: In an 18th century courtroom, bystanders remain standing throughout the proceedings There were no benches!)

Chief Justice: Mister Clerk, What is the case before us?

Clerk: Your Honors, It is the case of Mary Whaley, Feme Sole Planter, against Samuel Plantain, Carter and Waterman, in an action upon the case for damages.

Chief Justice: Mister Clerk, Please read the complaint aloud.

Clerk: To the Honorable Justices of his Majesty's Court sitting in Common Law: A complaint of Mary Whaley, feme sole planter of James City County: to wit:

On the 10th day of January in the 14th year of the reign of George III, King of Great Britain, Ireland and France, and so on, in the year of our Lord 1774 that Samuel Plantain, carter and waterman, did negligently carry in a boat three hogs-heads of tobacco, spoiling and damnifying tobacco of a weight of 2,700 pounds, and of a value of 20 pounds sterling.

On that Morning, three hogs-heads of sweet scented stemmed tobacco were entrusted to Samuel Plantain which he rolled from my farm to the landing nearest it. Once there, he and the slave he had rented for that purpose, loaded the tobacco in so careless a manner as to overload the boat, causing it to swamp, casting the three hogs-heads into the creek. The whole crop was ruined by the muddy brackish water. The rescued tobacco is not fit for sale. I have sought satisfaction from Mister Plantain on many occasions, but to no avail. I therefore request a judgment for 20 Pounds Sterling and Court Costs.

Signed: Mary Whaley

Taken before me:
Benjamin Waller - Clerk of the Court

Chief Justice: Mister Sheriff, Please call the Plaintiff and the Defendant.

Sheriff: Mary Whaley, come forth and prosecute the action against Samuel Plantain or else there shall be non-suit.

Samuel Plantain, come forth and save thee and thy bails or thou will forfeit thy recognizance.

(Mary Whaley comes forward and stands to the right. Samuel Plantain comes forward and stands to the left.)

Chief Justice: Mary Whaley, please state your case.

Mary Whaley: Thank you, your Honor. The case is very simple. Eight months ago, In front of my neighbor, James Hassell, I hired Mr. Plantain to carry my crop of tobacco to the tobacco warehouse for 2 shillings 6 pence. Here is the receipt that he gave me.

Instead of delivering it safely to the warehouse, he dropped all of it into the water. Mr. Hassell will swear to this.

(She gives the receipt to the Clerk who shows it to the Justices.)

Your honors, My whole tobacco crop from last year was ruined, and I have nothing to live on! I cannot pay the debts that I owe. This man destroyed what he was paid to keep safe, and I am made to suffer as a result of his carelessness! He must pay me for my losses. Gentlemen, please see that I receive justice.

Chief Justice: Justice you shall have Mistress Whaley. Mister Plantain, You have the right to question your accusers to disprove the statements that they have made against you. Do you have anything to say at this time?

Samuel Plantain: Your Honors, Her claim is false! The water damage is not that bad. I was there when the mishap occurred. The barrels were only in the water for a few minutes before we got them out. She insisted that the barrels be returned to her farm to see what damage there was, but she ordered me off her land before I could survey the damage.

It simply is not possible that ALL the tobacco was damaged. Now, I admit that there might be a small amount of damage, but she wants me to pay even more than the tobacco was worth in the first place. That is not right! The truth is that she is trying to cheat me! In fact, your Honors, she has not proven exactly how much damage WAS done to the tobacco, and her case should be dismissed on that ground alone.

Chief Justice: *(To the other justices.)* Gentlemen, I believe that our next step should be to determine exactly how much damage was done to the tobacco. I think we should call Mistress Whaley's witness, James Hassell, to see if he can confirm the damage. Do you not agree?

(The justices confer and then agree to call James Hassell.)

Chief Justice: Very well then. Mister Sheriff, call the witness James Hassell.

Sheriff: James Hassell, come forth to the Bar of the King's Justice and ye shall be heard.

(James Hassell comes forward and stands next to Mary Whaley)

Chief Justice: Mister Hassell, Please tell the court precisely what you know of the occurrences of January 10, 1774.

James Hassell: Your Honors, I was indeed at Mary Whaley's farm when Plantain took her tobacco. He rolled the barrels down to the creek in a fine manner, but when he and his slave put the last hogs-head in the boat, it swamped with water. The boat was tied up against the bank, so it only sank in a few feet of water. They had to empty the boat before they could get it off the creek bed. By then, most everything was wet.

Mistress Whaley told Plantain to carry the tobacco back to her farm. Plantain wanted to take it on to the inspection warehouse, but she was afraid that it would be condemned and burned. Unfortunately, I was on my way to the city on urgent business and could not wait. Therefore, I did not see the amount of damage done to the tobacco. Nor did I see what became of it.

Chief Justice: Thank you Mr. Hassell. You are dismissed.

(James Hassell returns to his seat.)

Chief Justice: *(To the other justices.)* Gentlemen, Unfortunately Mr. Hassell's testimony did little to solve our dilemma. We still have no idea of the exact amount of damage done to Mistress Whaley's tobacco. Perhaps it would be prudent for us to impanel a Jury of Inquiry to go to the farm of Mary Whaley and examine the damaged tobacco in front of both the Plaintiff and the Defendant. Do you agree Gentlemen?

(The justices must confer again and agree on this course of action.)

Chief Justice: Mister Sheriff, please choose 5 tobacco planters from the bystanders to be impaneled to serve on a Jury of Inquiry.

(The Sheriff chooses 5 students at random. All 5 remain standing.)

Chief Justice: Mary Whaley, do you choose to challenge any of the members of

this jury?

(If any jurors are challenged, they are replaced with other students.)

Chief Justice: Samuel Plantain, do you choose to challenge any of the members of this jury?

(If any jurors are challenged, they are replaced with other students.)

Chief Justice: Members of the Jury, hear the orders of this court. You are hereby ordered to gather yourselves, the Plaintiff, and the Defendant at the farm of Mary Whaley before the next court session. Once there, you will examine the three hogs-heads of tobacco and determine the exact amount of damage done. After this has been done, you will return to the next session of this court and present your findings. In addition, you will all post a bond of 10 Pounds Sterling to ensure that you complete this task. If you do not appear next month to report your findings, you will forfeit the bond which you have posted.

Mistress Whaley, should you not appear next month, you will be non-suit. That is, it will be as though you never brought this matter before the court and you will be responsible for the court costs.

Mister Plantain, if you fail to appear, you will be responsible for the full amount of damages being sought by Mistress Whaley.

Do you all understand these instructions?

(Jurors, Plaintiff, and Defendant all express that they understand.)

Chief Justice: Very well then. Gentlemen, I thank you for your services here today. Mister Sheriff, dismiss the court.

Sheriff: This court stands adjourned. God Save The King!

(Everyone responds "God Save The King!")

*To the Honorable Justices of his Majesty's Court sitting in Common Law:
A complaint of Mary Whaley, feme sole planter of James City
County: to wit:*

*On the 10th day of January in the 14th year of the reign of
George III, King of Great Britain, Ireland, and France, and so on, in the
year of our Lord 1774 that Samuel Plantain, carter and waterman, did
negligently carry in a boat three hogs-heads of tobacco, spoiling and
damnifying tobacco of a weight of 2,700 pounds, and of a value of 20
Pounds Sterling.*

*On that Morning, three hogs-heads of sweet scented stemmed
tobacco were entrusted to Samuel Plantain which he rolled from my farm
to the landing nearest it. Once there, he and the slave he rented for
that purpose, loaded the tobacco in so careless a manner as to overload
the boat, causing it to swamp, casting the three hogs-heads into the
creek. The whole crop was ruined by the muddy brackish water. The
rescued tobacco is not fit for sale. I have sought satisfaction from Mister
Plantain on many occasions, but to no avail. I therefore request a judgment
for 20 Pounds Sterling and Court Costs.*

Signed: Mary Whaley

**Taken before me:
Benjamin Waller - Clerk of the Court**

*Received of Mary Whaley,
Tobacco in three hogs-heads
For carrying to the
College Creek warehouse
For 2/6d*

Samuel Plantain

Possible Questions

How did you feel about your role?

How was your role important to the trial?

What kinds of rights did the defendant have?

Would a defendant have the same rights today?

Why would a defendant have certain punishments?

Were there different types of punishments for the same crime?

H O R S E S .

pg. 294. 12 Anna, cap. 8.

NO Person who is not a Freeholder of Fifty Acres or occupies Lands of 20l. Value, or pays 50s. or 500lb. Tobacco Annual Rent, shall keep more than One Gelding, or spaid Mare, but no stoned Horse, or Mare unspaid.

Horses, &c. kept contrary to this Act, may be seized by any Person; the Seisor to give Notice in Writing, to the Owner of such Seisure, Three Days before Court Day of the County where the Owner lives, and if he does not then appear, and prove, that he is an Inhabitant of some other Dominion, or qualified by this Act, the Property of such Horse shall be vested in the Seisor: If Notice is not given Three Days before the Court next after Seisure, the Owner need not appear 'til the succeeding Court.

No Overseer, except he has Land of his own in the County where he lives, nor any Servant, shall keep Horse, Mare, or Colt, without the Master's License in Writing, nor more than One, tho' licensed: Horse, &c. otherwise kept, shall be forfeited to the Seisor, upon Information to a Justice of the same County, and recoverable before him.

Stoned Horses Two Years old, not 13 ½ Hands high, running at Large upon any uninclosed Grounds, may be seized, and brought before a Justice of the same County, and his Certificate thereof obtained, which shall invest the Property in the Seisor; but he shall give Notice of the Seisure, containing a Description of the Horse's Colour, Marks, and Brand, set up at the Doors of the Court-House, and Church, of the same County and Parish; if within Two Months after Notice, the Owner tenders the Seisor 400lb. Tobacco and Cask, or Security for the Paiment next Crop, he may redeem his Horse.

The Horse must be measured, from the lowest Part of the Hoof of the Forefoot, to the highest Part of his Withers.

Each Hand is Four Inches, Standard Measure.

Proof of Seisure must be upon Oath, by the Seisor, and One other credible Witness, at least.

Horses, &c. belonging to a Slave, may be seized by the Churchwardens. See Tit. Slaves. Certificate.

Certificate of a stoned Horse seized.

Richmond sc. A. B. of &c. this Day brought before me R. S. Gent. a Justice of Peace of the County aforesaid, One stoned Horse, above Two Years old, (Colour,) (Marks,) branded and duly proved before me, That he did find and take up the said Horse, running at large, upon his own Lands, not fenced or inclosed, in the Parish of E, within this County: Whereupon I caused the same Horse to be measured, pursuant to an Act of Assembly in that Case made and provided,

and it appeared to me, That the said Horse then was not of the Height of Thirteen Handful and a Half. Certified under my Hand, this &c.

Notice.

Notice of Seisure.

Richmond sc. ONE stoned Horse, above Two Years old, (Colour,) (Marks,) branded, was lately seised by me the Subscriber, running at Large upon my own Lands, not fenced nor inclosed, in the Parish of E, in this County, and brought before R. S. Gent. a Justice of Peace, and measured, and before the same Justice found to be under the Height of Thirteen Handful and a Half; whereof Certificate is granted me by the Justice aforesaid, August 20, 1735.

A. B.

Horse-stealing is Felony, in the Principal and all Accessories before or after the Fact; no Clergy.
31 Eliz. cap. 12.

George Webb, *The Office and Authority of a Justice of Peace . . .* (Williamsburg, Va.: William Parks, 1736; reprinted in Holmes Beach, Fla.: Wm. W. Gaunt & Sons, 1969), pp. 178–180.

HOMICIDE.

Signification.

In its proper Signification extends to all Acts whatsoever whereby the untimely Death of a Man ensues; but in a legal Sense it is applicable only to,

1. Manslaughter; the killing of a Man upon sudden Provocation, in Heat of Blood, without any Malice.
2. Chance-Medley; where a Man is by Misfortune casually kill'd by another, who is doing any Thing lawful, and without any Intent to hurt.
3. Necessity; where a Felon is executed by a lawful Officer, or kill'd in resisting such Officer; or where a Man kills another, in Defence of his Person, House, or Goods.
4. Casual Death; when a Man is slain otherwise than by his own Act, or the Hands of another; as by the Fall of a Horse, Cart, &c.

Manslaughter.

1. Manslaughter: This must be no deliberate Act, but the Provocation must be great and apparent, and the Falling out sudden and unexpected, and it must be without Intention of any personal Wrong, or to revenge any former Quarrel; for if the Intent is ill, or personal Malice appear, it's Murder.

The Act, occasioning the Death, must be unlawful; for if lawful, 'tis Chance-Medley. A sudden Provocation, and Death ensuing, so far extenuates the Crime, as to make it Manslaughter. 2 Cro. 296.

The Husband kills another, committing Adultery with his Wife, Manslaughter. Raymond. 212.

A Prisoner in Execution for Debt, escaping, and the Keeper coming to the Place where he is, kills him in Pursuit, or Resisting, 'tis Manslaughter. 1 Roll. Rep. 189.

Officer coming to serve an Execution, and the Debtor shuts his Door, which the Offer breaks open, and one is kill'd, 'tis Manslaughter, because the breaking of the Door was unlawful. Nels. 345.

Entering an House with Force, those turn'd out of Possession comes to set it on Fire, and one within shoots, and kills another without Doors, Manslaughter; because the Entry was unlawful. H. P. C. 56. . . .

George Webb, *The Office and Authority of a Justice of Peace . . .* (Williamsburg, Va.: William Parks, 1736; reprinted in Holmes Beach, Fla.: Wm. W. Gaunt & Sons, 1969), p. 175.

Background Materials for Teachers

General

The laws of the colony of Virginia reflected the harshness of the laws of Great Britain. According to English common law, the theft of any property valued at more than twelve pence, or one shilling, was a felony and theoretically punishable by death. Hog theft, however, was treated differently. A hog was valued at well over twelve pence, yet the first two times a person stole a hog, the crime was treated as a misdemeanor. A free person convicted of hog stealing for the first time was punished by (1) twenty-five lashes at the whipping post or a fine of £10 paid to the county court and (2) a fine of four hundred pounds of tobacco (worth £2). The tobacco was split between the informer and owner of the hog. (During the colonial period, informers were typically rewarded with half of any fine as a way of encouraging cheap law enforcement.) If the convicted thief was a slave, Native American, or mulatto, then the punishment was thirty-nine lashes. A slave or indentured servants's master paid the four hundred pounds of tobacco to the hog's owner and to the informer. A second conviction was punished by locking the thief (slave, indentured, or free) in the pillory and nailing his or her ears to the frame; at the end of two hours, the thief's ears were cut off and he or she was released. A third conviction for hog stealing was a felony and was punishable by death, whether the offender was free, slave, or indentured.

Free persons were tried at the county court for the first two offenses and at the General Court (the highest court in the colony) for subsequent offenses. Slaves were tried only at the county court. Slave or free, a defendant was presumed innocent, but slaves were not allowed a jury trial. Slaves, Native Americans, or mulattoes could testify against slaves, Native Americans, and mulattoes but not against whites. When convicted, a first- or second-time defendant could ask for "benefits of clergy," which technically forgave the crime, but first-time offenders were branded on the "broad" of the left thumb for future identification. A felony conviction resulted in a sentence of hanging. If a slave was executed, the market value of that slave was determined by the county court so that the owner could be reimbursed by the next session of the General Assembly.

**BACKGROUND INFORMATION:
THE COURTHOUSE OF WILLIAMSBURG**

WILLIAMSBURG, *March* 16, 1769.

THE COMMON HALL, having this day determined to build a commodious brick COURTHOUSE in this city, and having appointed us to agree with an undertaker to build the same, we do hereby give notice that we shall meet at Mr. *Hay's* on *Tuesday* the 4th of *April*, to let the building thereof. We are also appointed to dispose of the present courthouse, and the ground on which the same stands.

JAMES COCKE.
JAMES CARTER.
JOHN CARTER.
JOHN TAZEWELL.

N. B. The plan of the above courthouse may be seen at Mr. *Hay's*, at any time.

Virginia Gazette (Rind), 23 March 1769

Built in 1770, the brick Courthouse on Market Square in Williamsburg served as the meeting place for three institutions of local government for more than 150 years. The James City County Court, the Williamsburg borough court (called the “Hustings” Court), and the mayor and aldermen of the city council (called the “Common Hall”) met regularly in this building to resolve judicial disputes and administer the affairs of the city and county. Today, the quiet dignity of the Courthouse hardly suggests the business that took place here. Each month, court day brought scores of local inhabitants to the Courthouse to participate in the public affairs of the community. Crowding into the courtroom, residents witnessed and were drawn into matters that affected their daily lives. At each session, the prominent planters and merchants who filled the offices of county and city magistrates were confronted with a busy and extensive docket. They decided on the legal issues involved in business disputes, heard petitions of widows and orphans seeking to protect their property, regulated the price of food and lodging in taverns, tried to cope with hogs loose in the streets, and levied taxes to maintain local services.

Ordinary Virginians did more than watch others at court. To a remarkable degree, they took an active part in the process of government as well. More than any other institution in colonial Virginia, the city and county courts gave meaning to the idea of self-government. The courthouse was the place that common folk knew through active personal participation. For every justice of the peace, there were a dozen less distinguished men--friends, neighbors, relatives--who served the court as lower-level officials. Acting as unpaid public servants in an age before salaried public service, these ordinary freeholders actually made government work. Indeed, they defined what government was by the tasks they performed and the way they discharged their duties as constables, deputies, market clerks, road overseers, and watchmen. They were often called upon in particular cases to apply their knowledge or judgment. Grand jurors investigated and reported wrongdoings; petit jurors tried those accused. Arbitrators resolved heated disputes and untangled problems with which the court had no wish to meddle.

Neighbors agreed to record and appraise the estates of those who died and to take care of the young, infirm, and aged. It was at the local level that both great leaders such as Washington, Jefferson, and Henry and lesser folk were first instructed in dealing with the rights and obligations of citizenship.

Like many original buildings in the Historic Area, the Courthouse has suffered many changes during its 220 years of existence. Scarcely 12 years after it was completed in 1770, it served as a barracks for French troops fresh from the victory at Yorktown. What eighteenth-century fittings the French did not requisition to fuel their fires, the court itself replaced in the nineteenth century, when the courtroom and its four ancillary jury rooms were renovated to suit the legal needs and style preferences of the Victorian period. What fittings may have survived until the early twentieth century were certainly destroyed by a fire in April 1911. The fire left little standing except the exterior walls. After a debate over what to do about the burned-out shell, local authorities judiciously decided to retain the old walls and reconstruct the interior fittings to meet the needs of a modern court. In an agreement with the Colonial Williamsburg Foundation in 1932, the court vacated the building, moving into a new courthouse just south of Market Square. The old Courthouse was thoroughly renovated and opened to the public as an archaeology museum, a function that it served for more than 30 years. About 20 years ago, it was converted to accommodate the increasing number of ticket sales for special events in the Historic Area.

In the fall of 1989, the building was closed in order to prepare it for a thorough renovation of its interior fabric. While woodwork and furniture were fabricated, the tasks of laying new floors, repairing windows, and installing a modern heating and air conditioning system were undertaken by workmen in Colonial Williamsburg's Facilities and Property Maintenance Division. Their work prepared the building for the historic trades artisans. Using the tools and techniques of eighteenth-century joiners, the historic trades carpenters sawed, planed, and molded boards into the complicated woodwork that makes up the major courtroom furnishings. Working with the members of Hay's Cabinetmaking Shop, they turned the balusters for the lawyers' bar and magistrates' bench, assembled the raised paneling of the sheriff's boxes, magistrates' platform, and book presses, and constructed the doors for the jury room and courtroom. Elsewhere in the Historic Area, the bookbinders made many of the leather-covered books that line the ancillary room book presses, and the blacksmiths forged the nails, hinges, and locks that were used by the carpenters.

Now completed, the courtroom and its four jury rooms are restored to a late eighteenth-century appearance, complete with a full complement of court furnishings. Just as lawyers, litigants, and spectators did more than two hundred years ago, visitors once again step into the Courthouse to witness activities of the local court. They see benches, tables, and chairs set out in strict accordance with the parts played by the participants in the drama of the court. As modern viewers crowd into the back of the courtroom, character interpreters reenact real-life episodes from the annals of local government. Through court day sessions or in face-to-face conversations between lawyers and clients, judges and constables, the character interpreters demonstrate how local government operated through its officials and through the participation of ordinary citizens.
By

re-creating both dramatic and mundane events, they reveal how the uses of public power by competing groups and individuals ultimately defined the very nature of community government and gave rise to a distinctly American rule of law.

Carl Lounsbury
June 1, 1991

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