Litigating Witches

By Barbara Engstrom, Executive Director, King County Law Library

I find history fascinating. For historical scholarly research, JSTOR is absolutely my favorite database. While I don't get to dig into historical scholarship very often for my work now, I still get my fix through **JSTOR Daily,** a daily newsletter with "original, research-backed articles that help you understand the world." While the main JSTOR database is behind academic institution paywalls, JSTOR Daily articles allow free access to underlying scholarship. I frequently find my interest piqued by a newsletter article and dig deeper into the subject. Often, there's a clear through-line that runs from a historical narrative discussed in a JSTOR Daily article to what's currently happening. As Mark Twain said, "History doesn't repeat itself, but it often rhymes."

The Litigating Witches of Naverre

When you think of the phrase "witch hunt," it connotes a sense of helplessness on the part of the victim entailing a predetermined outcome with fabricated evidence and shoddy procedure. With that in mind, it was fascinating to read Matthew Wills's recent JSTOR Daily article **"Accused as a Witch? Sue 'em!"**[1] The article is based on a research paper by Professor Lu Ann Homza titled, "***When Witches Litigate: New Sources from Early Modern Naverre***."[2] Wills encapsulates the main thrust of Homza's scholarship as thus, beginning in 1610 and continuing on through the following year, a frenzy of witch accusations were leveled in the Kingdom of Navarre (Spain). A malignant social rift occurred as people accused thousands of their neighbors of devil worship. The accusatory fever didn't die down even after the initial trials were held and punishments meted out, resulting in at least eleven burned at the stake. To restore social order, the Spanish Inquisition sent Alfonso de Salazar Frias to investigate the claims. As Wills notes:

> On the road for eight months listening to the victims, Salazar came back with a damning report. Confessions of witchcraft had been extracted by force by local authorities—or vigilantes. With confession, "the Spanish Inquisition's favorite method of proof" undermined, the Inquisition ended up absolving those who had been executed or penanced. New guidelines for witchcraft investigations were instituted; as Homza writes, "for all intents and purposes, the Spanish Inquisition never prosecuted witches again."
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> "It was most unusual for the Spanish Inquisition to admit error or exonerate the dead," continues Homza. Historians have been "enthralled" by the way this played out, but they've also been stymied. The records of the tribunal in Logroño were destroyed during Napoleon's occupation of Spain in 1808. The only known documents about the events to survive were

[1] Matthew Wills, *Accused as a Witch? Sue 'em*, JSTOR Daily (March 9, 2025) https://daily.jstor.org/accused-as-a-witch-sue-em/

[2] Homza, Lu Ann. *When Witches Litigate: New Sources from Early Modern Navarre*. *The Journal of Modern History*, vol. 91, no. 2, 2019, pp. 245–75. *JSTOR*, https://www.jstor.org/stable/26848886

communications between Logroño and the Suprema. Historians could only see through the eyes of the Inquisitors themselves.[3]

At that time in Navarre, the three types of courts were inquisitorial, episcopal, and secular. What's fascinating about Professor Homza's research is that it is based on recently surfaced civil litigation records of victims pursuing defamation claims against their accusers and torturers. The trial manuscripts that she studied were from the secular courts and thus removed from the narrative controlled by the Inquisition. As Wills notes, Homza's study of the trial manuscripts "illuminate events and motives from the points of view of the men and women who suffered from, engaged in, and witnessed the miseries of the witch hunting on the village level."[4]

Homza focused her research on two cases. One case was brought by a husband in defense of his wife and the other she compares to a class action suit with "multiple plaintiffs testifying against an array of defendants." Unlike inquisitorial courts, the secular courts were not held in secret, so Professor Homza was able to discern detail which helped shed light on the litigation process. For example, she notes how the victims' accounts of torture and abuse (rendered immovable by a neck shackle) wildly differ from the defendants' testimony (likening the shackle to a necklace). She is also able to dig a bit deeper into some of the defendant's reasons for making the accusations (extracting money and exerting control) and the mechanics of claiming the enticement of children to devil worship as a pretext for the accusations. She also explored status issues both involving the social standing and agency of the accused as well as the social standing of the villagers (including plaintiffs, defendants and witnesses) who primarily spoke Basque compared with the elite representatives of the Inquisition and the courts.

Ultimately, in the two defamation cases that Homza followed, the plaintiffs prevailed. The defendants were sentenced to a period of years of exile but quickly returned in violation the terms of the exile. Another court proceeding ensued, and the convicted were allowed to remain under a type of restorative justice called a "peace contract" which created rules of social engagement and civility for those allowed back from exile. Professor Homza reflects on the more rounded picture the civil legal documents lent to the events of the Navarre witch trials, capturing the importance of "respectful speech, social and religious honor, and the weight of the family unit."[5] She notes the striking difference from previous histories through the narrow lens of the Inquisition's narrative of the prosecution which "reduced the victims and perpetrators of this witch hunt to helpless dupes of fantasy."[6]

The Absence of Defamation in Salem

As I read Homza's article I couldn't help thinking that if the Navarre defamation cases occurred around 1612 and spelled the functional end of the Inquisition prosecution of witches, why didn't the women accused of being witches in Salem in 1692 use defamation as a tool to fight back. Defamation appears to have been a commonly used tool by New Englanders. In the period between 1649 and 1699, 108 legal actions involving slander are found in court records of Middlesex County, Massachusetts alone[7] In

[3] Supra note 1
[4] Id
[5] Supra note 2
[6] Id
[7] Roger Thompson, *"Holy Watchfulness" and Communal Conformism: The Functions of Defamation in Early New England Communities*, 56 New England Quarterly 504 (Dec 1983)

New England, as in England, slander was commonly used to repel accusations of witchcraft, and was used with much success as the person accused of being a witch was more likely to win and the accuser had the potential of facing ruinous damages. As the article **Defamation Takes a Holiday: Slander and the Salem Witch Trials** notes, "But when the accusations of witchcraft began flying fast and furious in Salem village (now Danvers) in March 1692, something weird happened: nobody brought any defamation lawsuits at all, even when it was literally a matter of life or death." [8]

The article posits and refutes several theories as to why, at that time and in that place, people elected not to bring defamation suits. It was not that people weren't aware of the option or hadn't the means. At least forty slander cases were brought in Essex County, where Salem was located, between 1672 and 1692 and some of the Salem accused had been involved in defamation cases in the past. There were theories that the courts were more focused on cases involving property or money rather than reputational harm. It was also a time of great unrest as the Glorious Revolution in England enflamed uprisings in New England leading to political chaos and social upheaval, leaving Massachusetts without a charter.

> Against this hysteria-invoking backdrop, the previously cynical and skeptical New England magistrates became emotionally receptive to accusations of an imagined diabolical force. Kamensky explains: "[A]s their desire to hear an explanation for their ills overwhelmed their ability to articulate social and verbal order, members of the Court of Oyer and Terminer took the devil's word for what had gone wrong with Massachusetts."[9]
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> But that still doesn't completely explain why the accused didn't sue. Richard Weisman, in *Witchcraft, Magic and Religion in 17th Century Massachusetts*[10], perhaps completes the picture by noting that:
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> > In defamation suits prior to Salem, plaintiffs were frequently able to mobilize formidable support against their potential accusers in anticipation of a witchcraft accusation. Moreover, the accuser was often someone of low social standing in the community. In the Salem trials, however, accusations occurred so suddenly and unpredictably that suspects had little opportunity to avail themselves of these preventive measures. Furthermore, the accusers were supported by the highest civil authorities in the province. Even if potential suspects had somehow managed to file defamation suits, the probability of a favorable decision would have been extremely low.
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> Author Stacey Schiff, in *The Witches: Salem, 1692*[11], suggests one more depressing piece to this puzzle, by observing that some defendants who in another time may have sued for slander probably came to the realization that it was much safer in this anarchic environment simply to

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[8] See Foley Hoag, *Defamation Takes a Holiday: Slander and the Salem Witch Trials*, (Oct 26 2016) https://foleyhoag.com/news-and-insights/blogs/making-your-mark-blog/2016/october/defamation-takes-a-holiday-slander-and-the-salem-witch-trials/

[9] Jane Kamensky, *Governing the Tongue: The Politics of Speech in Early New England* (Oxford University Press 1997)

[10] Richard Weisman, *Witchcraft, Magic and Religion in 17th Century Massachusetts* (University of Massachusetts Press 1984)

[11] Stacey Schiff, *The Witches: Salem, 1692* (Little Brown 2015)

> admit to demonic influence and then join the accusers by pointing the finger at other innocents. They surrendered their reputation but saved their skin.[12]

In *Defamation Takes a Holiday*, the author posits a couple reasons why the witch accusation frenzy ended. First, was the restoration of competent governance. William Phips was installed as Governor of Massachusetts in 1692. Phips immediately left to provide fortifications to Maine to resist the French, leaving his Lieutenant Governor, William Stoughton, in charge. Stoughton oversaw executions of more than twenty people on "spectral evidence" and shoddy procedure. Upon Phips's return he came to understand what Stoughton had been up to in his absence and discovered that Stoughton had many more accusations under consideration including one involving Phip's wife. Phips reorganized the courts to conform with English norms. He disallowed spectral evidence and instituted other procedural standards. Unsurprisingly this led to the dismissal of a significant number of cases. Second, was the reintroduction of defamation actions.

> In October 1692, a "worthy gentleman of Boston" was accused of witchcraft by a resident of Andover (the actual location of many of the "Salem" proceedings). The accused gentleman immediately responded by lodging a "thousand-pound action for defamation" (a ruinous sum) and advising the accuser to get his evidence ready for trial. Not surprisingly, the gentleman's accuser changed his mind, and shortly thereafter the accusations of witchcraft dried up altogether.[13]

Knitting the Threads

Witch hunts in their historical forms tended to thrive in times of political and social upheaval. As Professor Homza notes, the Navarre witch prosecutions ended with emissary Salazar's damning report back to the Inquisition of specious accusations and egregious methods of extracting confessions. In both Naverre and Massachusetts, systemic procedural improvements were instituted in the courts, curtailing spectral evidence, forced confessions, and baseless accusations. Predictably after these safeguards were put in place and accusers were required to provide actual proof or face defamation claims, the witch hunt frenzy greatly diminished.

Both Phips and the Naverre jurists who brokered the peace contract understood that reinstituting respectful speech and the community values honoring social, religious and family importance was fundamental to reknitting the rent fabric of their respective societies.

In our current climate, conspiracy theories, misinformation, and the attempted erasure of history are the "spectral evidence" that cannot be tolerated. As in the earlier witch hunt frenzies, people who benefit from chaos understand that a society pitted against one another is easier to control. To paraphrase Kamensky, the desire to hear an explanation for society's ills overwhelms the ability to articulate social and verbal order, making it easier to take the devil's word for what has gone wrong.

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[12] Supra note 2

[13] Supra note 2

The two things that stopped the madness in both Naverre and Salem are what is needed now --good governance and respect for, and adherence to, the rule of law. While history may not be repeating itself exactly as before, I sure can hear the rhyme.

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If you find yourself in need of historical legal research resources, the **Hein Online** database available in-house at KCLL is a great starting point. You can find out more at https://kcll.org/databases/. I also highly recommend subscribing to the **JSTOR Daily** https://daily.jstor.org/ and to the free public access version of JSTOR https://about.jstor.org/oa-and-free/ which allows registered users to view 100 articles per month.