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The Great Trials of World History and the Lessons They Teach Us

Course Guidebook

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Douglas O. Linder is the Elmer Powell Peer Professor of Law at the University of Missouri–Kansas City School of Law. He graduated summa cum laude from Gustavus Adolphus College and from Stanford Law School. Professor Linder has taught as a visiting professor at the University of Iowa and Indiana University School of Law.

Professor Linder has published extensively in legal journals and books on such topics as great trials, legal history, constitutional law, and the legal profession. He has served as a consultant on numerous documentary film projects and theater projects involving historic trials. In addition, Professor

Linder has published reviews of movies and books focused on historic trials and has lectured or participated in panel discussions considering the significance of various historic trials across the country, both at university campuses and professional gatherings.

In addition to being named a UKC Trustees Fellow, Professor Linder has received his law school's highest teaching award (twice) and its highest publishing award (three times). For more than two decades, he has taught a seminar in famous trials using his own materials published on a website of his creation, the Famous Trials website. The website hosts the largest and most varied collection of original writings, images, and primary documents relating to 75 famous trials. It is the most-visited trial-related site on the Internet and has been the subject of a review in *The New York Times*.

Professor Linder is the coauthor of two books, *The Good Lawyer: Seeking Quality in the Practice of Law* and *The Happy Lawyer: Making a Good Life in the Law*. In addition, he has appeared in televised documentaries about great trials produced by HISTORY, AMC, PBS, Court TV, Discovery Networks, and A&E in addition to documentaries produced by Canadian and European production companies. He has appeared in televised interviews about great trials on CBS, CNN, Fox News, and other cable networks. ■

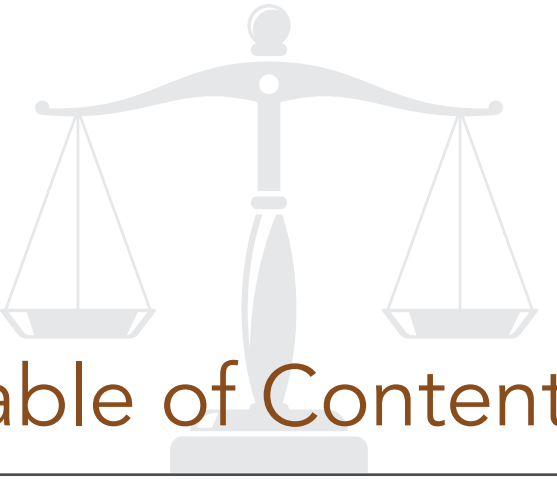


Table of Contents

SUPPLEMENTAL MATERIAL

SCOPE

The Great Trials of World History

And the Lessons They Teach Us

Great trials are windows into history. The multiple perspectives on events offered by witnesses and attorneys, the richness and specificity of testimony, and the central focus on truth-finding all combine to make trials unique and valuable tools for historical understanding.

In this course, we will examine 24 of the greatest trials in history, from Socrates to Simpson. We will travel to the People's Court in Athens, St. Peter's Square in Rome, a meetinghouse in Salem Village, the Old Bailey in London, and the Palace of Justice in Pretoria, South Africa. We will be introduced to famous lawyers such as Cicero, John Quincy Adams, Justice Robert Jackson, William Kuntsler, and Clarence Darrow.

Our explorations will be as diverse as our trials. We will examine the sources and patterns of moral hysteria as we consider how webs of circumstance could bring 19 convicted witches to the gallows in Salem or prompt prosecutors to file more than 200 charges of child abuse against seven teachers at a California day care center. We will consider the causes and nature of evil as we discuss the trial of major Nazi leaders in Nuremberg or Klan murders of civil rights workers in Mississippi. We will see how national leaders manage prosecutions of citizens who lead secessionist movements

or seek to carve out new empires—people such as Canada's Louis Riel or Aaron Burr in the United States. We will note how great trials can alter the course of history—how the trial of Alger Hiss could, years later, produce the presidencies of Richard Nixon and Ronald Reagan; how the trial of Sir Thomas More might change the religious and political life of Europe.

We will be witness to amazing spectacles in the courtroom. We will see Clarence Darrow examine William Jennings Bryan on the meaning of Genesis. We will listen to Oscar Wilde wax eloquent on the witness stand about "the love that dare not speak its name." We will behold the gruesome spectacle of a sitting pope putting a dead predecessor on trial. We will observe as alleged participants in John Wilkes Booth's assassination plot against President Lincoln are dragged into a military courtroom in canvas hoods and iron manacles, and as Bobby Seale is gagged and bound to a chair in the Chicago Eight trial. We will witness heroism as lawyers such as John Adams in the Boston Massacre trial and Judge James Horton in the Scottsboro Boys trial risk their careers to see justice done. We will watch defendants stand before the nine justices of the United States Supreme Court after being convicted in the only criminal trial in the Court's long history.

Throughout our tour, we will ask of these trials: "Was justice done?" Trials are designed to separate the innocent from the guilty, but they sometimes do both less and more than that. Fallible jurors might free the guilty or convict the innocent. Flawed procedures sometimes obscure the truth. Prosecutors might withhold exculpatory evidence or undervalue its significance. Things can go wrong in trials. We will try to understand why and imagine what can be done to improve trial results.

The course as a whole will be both far-reaching and kaleidoscopic, revealing how societies across the globe and throughout history have used trials to resolve key issues and decide the fates of evildoers, abusers of power, champions of free speech, and innocent people caught in the wrong place at the wrong time. We will end our tour of great trials with thoughts about how famous trials can educate, entertain, and still resolve important questions of guilt and innocence—and thus come to a better understanding of what makes a trial a great trial. ■

LECTURE 1

The Trial of Socrates

The year is 399 B.C. Here, in the Athenian Agora, the civic center of the great Greek city, 500 citizens—most of them probably farmers—sit on wooden benches. They are separated from the crowd of spectators by a barrier. One of those spectators is a 27-year-old named Plato. He has come to watch the trial of his 70-year-old teacher, Socrates. The 500 men inside the barrier are his jurors. Before the sun sets, they will sentence Socrates to death.

Background

- As a young boy, Socrates saw the rise of Pericles and the dawn of the Golden Age of Greece. Pericles—perhaps history's first liberal politician—helped bring about a fundamental power shift. For the first time, the masses, and not just the property-owning aristocrats, enjoyed liberty. Pericles created the people's courts, used the public treasury to promote the arts, and pushed ahead with an unprecedented building program designed not only to demonstrate the glory that was Greece, but also to ensure full employment.

- Despite growing to adulthood in this bastion of liberalism and democracy, Socrates developed a set of beliefs that put him at odds with most of his fellow Athenians. Socrates was not a democrat or an egalitarian. To him, the people should not be self-governing; they were like a herd of sheep that needed the direction of a wise shepherd. He told anyone who would listen that they were fuzzy thinkers, knew nothing, and worried about trivial things rather than what really mattered. Striking at the heart of Athenian democracy, he criticized the right of every citizen to speak in the Athenian assembly.

- Writing in the 3rd century A.D., historian Diogenes Laertius reported that Socrates "discussed moral questions in the workshops and the marketplace." His unpopular views, expressed with an air of condescension, often provoked his listeners to anger. Laertius wrote that "men set upon him with their fists or tore his hair out," but that Socrates "bore all this ill-usage patiently."

- The standing of Socrates among his fellow citizens undoubtedly fell further during two periods in which Athenian democracy was temporarily overthrown by the Spartans and their allies. The prime movers in both antidemocratic movements, the first in 411–410 B.C. and the second in 404–403 B.C., were former pupils of Socrates, Alcibiades and Critias.

- Athenians considered the teachings of Socrates—especially his disdain for the established constitution—partially responsible for the death and suffering during those two awful periods. Thugs with daggers and whips roamed the streets, murdering opponents. Many of Athens's leading citizens went into exile, where they organized a resistance movement. It is no coincidence that Anytus, the likely instigator of the prosecution of Socrates, was among the exiles.

- Socrates, unbowed by the revolts and their aftermaths, resumed his teachings. Once again, it appears, he began attracting a band of youthful followers. The final straw may well have been another antidemocratic uprising—this one unsuccessful—in 401. Athenians finally had had enough of their know-it-all busybody. It was time to send a message that the city would do whatever it took to defend its precious democracy.

The Trial Preliminaries

- In ancient Athens, any citizen could initiate criminal proceedings against anyone else. There was no public prosecutor. Accusers were not required to pay any court costs. To discourage frivolous suits, Athenian law imposed heavy fines on any citizen accusers who were unable to win the votes of one-fifth of jurors.

- The first accuser of Socrates was a poet named Meletus, who most likely had been offended by Socrates's attacks on poets such as himself. Meletus was also very religious, and he likely had a gripe with Socrates's irreverence.

- The plea that Meletus handed over to the magistrate charged Socrates with impiety and corrupting the youth. The impiety charge stemmed from Socrates's repeated suggestion that the gods of the Athenians were not his gods. Socrates had said that he could not imagine gods doing the quarrelsome and vindictive things that the poets claimed they did.

- It's possible that Anytus and Lycon, the second and third accusers of Socrates, were also present and added their voices to the charges. Lycon was an orator, but we know little about his motivation for accusing Socrates. Anytus, on the other hand, was a well-known politician, highly influential, and the driving force behind the prosecution. Anytus had a number of reasons to be upset with Socrates, including Socrates's (likely sexual) relationship with Anytus's son and the philosopher's antidemocratic political message.

- The formal document charging Socrates survived until at least the 3rd century A.D. Diogenes Laertius, writing at that time, offered a verbatim report of the now-lost document:

> This indictment and affidavit is sworn by Meletus … against Socrates … : Socrates is guilty of refusing to recognize the gods recognized by the state, and of introducing new divinities. He is also guilty of corrupting the youth. The penalty demanded is death.

The Trial

- Most of what we know about the trial of Socrates comes from Plato's writings. Plato was hardly an unbiased observer, however. The same can be said about Xenophon, author of the only other surviving account of the trial and also a disciple of Socrates.

- A month or two after Meletus delivered his summons, the day of the trial arrived. It would take place over a nine- to ten-hour period. There were 500 jurors—501 by some accounts—all over the minimum age of 30. With a jury that size, Athenians knew any attempt to fix a jury was doomed. Each juror was paid three obols for his service—a sum so meager that volunteers for the jury skewed disproportionately old and poor.

- The trial began with a herald reading the formal charges against Socrates. Then Meletus, Anytus, and Lycon were given a total of three

Plato

hours to address the jury. No record of their arguments against Socrates survives, but we can make educated guesses about what was said based on accounts of what Socrates said in his defense.

- It's safe to assume that Socrates was not a model of piety. He failed to attend state-sponsored religious festivals, such as those honoring Athena or Dionysus. He stirred resentment by arguing against the ritualistic view of religion shared by most Athenians. And he criticized the commonly held belief that the gods sometimes behave immorally or whimsically. Nevertheless, historian I. F. Stone contends that most Athenians would have shrugged off the impiety charge. Stone writes, "Athenians were accustomed to hearing the gods treated disrespectfully in both the comic and tragic theatre."

- Supporting this conclusion is the earliest surviving reference to the trial of Socrates that does not come from one of his disciples. In 345 B.C., the orator Aechines told a jury: "Men of Athens, you executed Socrates, the sophist, because he was clearly responsible for the education of Critias, one of the thirty anti-democratic leaders."

The Apology

- After the prosecution rested, Socrates rose to deliver his "apology"—a word that comes from the Greek *apologia*, meaning "defense." Plato's account, the *Apology*, is far from a word-for-word record of what Socrates said. For all we know, the defense case might even have included speeches by Socrates's supporters, not just Socrates.

- The accounts of Plato and Xenophon agree on a key point: In both accounts, Socrates gives a defiant, decidedly unapologetic speech. A speech so defiant he has to silence a jeering crowd several times to continue. Socrates all but invites condemnation and death. He insists that by asking his awkward questions, he has performed a valuable service—and that he has no intention of stopping.

- Athenian law allowed the defendant to cross-examine his accuser, and Plato has Socrates using his trademark Socratic method to make Meletus look like a fool. Meletus says that Socrates corrupts the young, but he has a hard time explaining why Socrates would want to do this. Socrates argues that if he did in fact corrupt the young, it was done out of ignorance. No man of any intelligence would intentionally choose to corrupt the people he has to live with.

- Plato's Socrates provocatively tells his jury that he is a hero. He reminds them of his exemplary service in three battles and tells them that, as a philosopher, he has fought for decades to save the souls of Athenians. If Plato's account is accurate, the jury knew that the only way to stop Socrates from lecturing about the moral weaknesses of Athenians was to kill him.

- In Plato's account, Socrates also addresses the question of his association with Critias, suggesting that if Critias really understood his words, really grasped what he said about virtue, he never would have gone on the bloody rampage that he did.

- After perhaps a three-hour defense, Socrates finally sat down. It was time for the jurors to render their decision: 280 jurors found Socrates guilty and 220 jurors voted for acquittal. A close vote, but enough for conviction under Athenian law.

The Penalty Phase of the Trial

- After the conviction was announced, the trial entered its penalty phase. Each side, the accusers and the defendant, had to propose a punishment. After listening to arguments, the jurors would choose which of the two punishments to adopt.

- The accusers of Socrates proposed death. Socrates could have countered with a proposal for exile—a punishment that probably would have satisfied both the accusers and the jury. He could have made the sort

of plea for mercy that was typically made to Athenian juries. Socrates, however, merely reminded the jury that he had a family. He contended that the unmanly practice of pleading for clemency disgraced the justice system of Athens.

- Even more surprising, perhaps, Socrates audaciously proposed to the jury that he be rewarded, not punished. According to Plato, Socrates asks the jury for free meals for life in a public dining hall in the center of Athens, an honor given to Olympic victors. Surely, Socrates says, he has performed a service greater than that of any Olympic athlete.

- Faced with a demand to come up with a genuine punishment, Socrates suggested a fine of one mina of silver—about one-fifth of his modest net worth, according to Xenophon. Plato and other supporters of Socrates upped the offer to 30 minae by agreeing to come up with silver of their own—too little, too late.

- In the final vote, a larger majority of jurors favored a punishment of death than had voted for conviction in the first place: 360 jurors voted for death, 140 for the fine. Under Athenian law, execution would be accomplished by drinking a cup of poisoned hemlock. As court officials finished their work, Socrates offered a few memorable words, including the prediction that history would come to see his conviction as "shameful for Athens."

Death and Aftermath

- Socrates spent his final days in a cell. According to Plato, a man named Crito bribed a juror and made plans to smuggle Socrates out of prison, but Socrates refused to participate in an escape plan. When the time of execution arrived, Socrates bathed to spare his survivors the trouble of washing his body and said goodbye to his wife and three children.

- Near sunset, Socrates took the cup of hemlock from the executioner and drank it in one gulp. He walked for a bit before lying down on a

Socrates drinking the cup of hemlock

bed as the paralysis set in. As the paralysis moved toward his heart, he told his friends in the cell not to weep. His last words were: "I owe a cock to Asclepius, don't forget to pay it."

- The conviction and execution of Socrates is best seen as a deliberate choice made by the famous philosopher himself. If the accounts of Plato and Xenophon are accurate, Socrates sought not to persuade jurors, but rather to lecture them. The trial of Socrates thus became the most interesting suicide the world has ever seen.

- Had he wanted to, Socrates could have won an acquittal. The closeness of the vote shows that there was nothing inevitable about his sentence. But Socrates was uncompromising. He showed no hint of respect for Athens or her institutions in his defense. For Socrates, being a good person came first; being a good citizen was a poor second.

- Socrates knew how to die. The manner in which he chose to die enhanced his reputation among his associates and made him the first great martyr for the cause of free speech, a sort of secular saint. As I. F. Stone observed, just as Jesus needed the cross to fulfill his mission, Socrates needed hemlock to fulfill his.

Suggested Reading

Brickhouse and Smith, *Socrates on Trial*.

Colaiaco, *Socrates against Athens*.

Stone, *The Trial of Socrates*.

Questions to Consider

1. Why did the accusers of Socrates step forward when they did, when Socrates was nearing the end of his life?
2. If the Athenian jury had acquitted Socrates, how might that have changed what we know about Socrates and how we remember him?
3. Did Socrates want the jury to convict him so that he might be remembered as a martyr?

LECTURE 2

The Trial of Gaius Verres

It's the last day of January, 70 B.C. Sailing into a port on the western edge of Sicily is a ship carrying a young Roman prosecutor, Marcus Tullius Cicero. For the next 50 days, Cicero will travel the width and breadth of the island, gathering a mountain of incriminating evidence against Sicily's former provincial governor, Gaius Verres. He will then return to Rome to build his case.

Background

- What we know about the Gaius Verres trial comes to us exclusively from Cicero's seven trial orations. No records of the speeches by Verres's defense attorney survive. Nor do we have from Verres himself any explanation for his behavior. It's altogether possible that Cicero exaggerated the extent of Verres's abuses. Nevertheless, the evidence presented leaves little doubt that Verres was a despised and unscrupulous official.

- Gaius Verres was born around 114 B.C. to a father of senatorial rank. We have hints from Cicero that Verres, like most young aristocrats of his time, led the easy life of a voluptuary. By his twenties, Verres had developed a lust for women and fine art that would remain an obsession during his governing years.

- For the next decade or so, Verres moved from one official post to another. Each promotion, it seems, offered a greater opportunity to embezzle, ravish, plunder, or collect bribes. At age 41, Verres became provincial governor of Sicily, the most important province in the Roman Republic. Sicily housed a key naval base, produced abundant crops, and held vast riches, including thousands of valuable statues and other artistic treasures.

- Over the next three years, Verres violated the public trust in almost every way imaginable. He brought ruin to Sicily's farmers, heartache to its priests, devastation to its navy, humiliation to the many women he violated, and death to those who stood in his way. When his term as provincial governor finally came to an end, the victims of Sicily demanded justice.

Pretrial Proceedings

- Roman law allowed citizens of the provinces to bring an action against officials for extortion. Convicted officials could be banished and ordered to pay up to 250 percent of the amount proven to have been extorted.

Marcus Tullius Cicero

Wronged citizens, however, faced an obstacle—namely, that the courts were controlled by Rome's corrupt senatorial oligarchy. Juries were drawn exclusively from the same rank as provincial governors, and anyone who wanted a favorable verdict was expected to pay a bribe to get it.

- None of this boded well for the Sicilians. But they knew who they wanted to prosecute Verres. They wanted Cicero, who had earned a reputation for fairness when he served as quaestor in Sicily's western district five years earlier.

- The case intrigued the 36-year-old Cicero for two reasons. First, it would allow him to match his oratorical skills against Verres's defense attorney, Quintus Hortensius Hortalus, who was the acknowledged "king of the courts." Second, the case would give Cicero, a product of the Roman middle class, a chance to attack the corruption of a tottering aristocratic oligarchy. Cicero was an honorable man—honest, incorruptible, a man whose greatest desire was to save the republic.

- Hortensius attempted to block Cicero's appointment and to arrange for a straw-man prosecutor named Quintus Caecilius, a corrupt former associate of Verres. If Hortensius could get Caecilius appointed, he'd have the case in the bag. The prosecutor would simply throw the case.

- Cicero made a powerful case as to why he, and not Caecilius, should be chosen. Cicero's argument is recorded in the first of the seven *Verrine Orations*, titled *Divinatio in Caecilium*. In this speech, Cicero argues that the vast majority of Sicilians prefer him to Caecilius. He points out that many Sicilians have made it clear that if Cicero is not their prosecutor, they will not bother to appear as witnesses. Besides, Cicero points out, his opponent for the job has a conflict of interest, lacks the skills to be an effective prosecutor, and doesn't understand the case as well as he does.

- Cicero's most compelling argument is that it is in the jurors' own interest to appoint him as prosecutor. The Roman public is fed up with corruption and abuse of office. Senatorial power is now hanging by a thread. If Verres is acquitted with the help of a straw-man prosecutor,

Cicero argues, all hell might break loose. It is time for senators to show that they can police the worst of their own. The jury does the right thing, and Cicero is appointed prosecutor.

- The 25-man jury of senators chosen by lot was a good one, frustrating another defense strategy: bribing Verres's way to an acquittal. In his orations, Cicero wryly notes that Verres's victims in Sicily might have been better off if Verres didn't foresee the need to plunder vast sums for his jury-bribing fund.

The Trial

- In August, the case of Gaius Verres was called. Cicero abandoned the usual course of a long opening argument, instead delivered a short but damning speech against Verres, which in the *Verrine Orations* is called the *Actio Prima*. Cicero tells the jury: "We will make Verres's guilt so

plain to you by witnesses, by private documents, and by public records" that no long speeches on my part will be necessary.

- In his *Actio Prima*, Cicero reminds the senatorial jurors that the Roman Republic is facing a crisis in public confidence, a crisis that threatens their prerogatives as senators. Only by doing the right thing in this case can public confidence in the Senate be restored. Cicero also complains about the defense's strategy of delay, which he says will force him to let the victims speak for themselves; there won't be time for Cicero to add his own explanations to prove Verres's guilt. The jurors will hear the facts, and nothing but the facts.

- Cicero ends his oration with a formal statement of the indictment: "I declare that Gaius Verres has not only committed many arbitrary acts, many cruel ones against Roman citizens and the provincials, many wicked acts against gods and men, but in particular he has taken away forty million sesterces out of Sicily contrary to the laws." Cicero demands that Verres, if convicted, pay a fine of 100 million sesterces, the maximum allowed by law.

- Over the next nine days, Sicilian after Sicilian takes the stand. Collectively, they leave little doubt about the extent of the Verres's corruption. We don't know the exact words any witness spoke, but we do have Cicero's five carefully edited orations. Called the *Actio Secunda*, they lay out the evidence Cicero has amassed against Verres. Intended less for the Verres jury than for the Roman public, these orations send a message that Rome will no longer tolerate men who govern through extortion and corruption.

- Cicero's orations do not lay out the crimes of Verres in chronological order. Rather, the evidence is grouped by subject matter. Each oration, or book, addresses a specific set of crimes. Book 1 describes the alleged crimes of Verres before he took office in Sicily. Book 2 speaks to his abuse of his judicial prerogatives. In Book 3, Cicero tells the story of Verres's plunder of Sicilian farmers. Book 4 describes his illegal seizure of private and public works of art. Finally, in Book 5, Cicero addresses

Verres's use of unauthorized punishments and his mismanagement of Sicily's naval forces.

Trial Conclusion

- As the witness's stories mounted, Hortensius began to realize that the evidence against his client was so damning that nothing could be done to save him. His objections to testimony became less and less frequent.

- Verres himself could only endure three days of the spectacle. He first claimed illness and stopped attending court. Then he accepted the inevitable and fled Rome before a verdict was reached.

- The jury found Verres guilty in absentia and ordered him to pay a fine—probably a substantial one, but there exists no record of the exact amount.

- Verres remained in exile in Massilia (modern-day Marseilles) for the last 27 years of his life. In 43 B.C., Mark Antony demanded that Verres return a set of plundered Corinthian vases that he had managed to take with him. When Verres refused to comply, Antony had him summarily executed.

- As for Cicero, with the jury verdict, he claimed victory over the great Hortensius. In the eyes of many Romans, he became a hero, a rising star. His final five orations stand as the most important source for our understanding of the abuse of provincials in the dying days of the Roman Republic. Not only are the orations the largest single publication of Cicero's illustrious career, they might be the largest single publication of the 1st century B.C.

- Publication of Cicero's orations was an enormous undertaking, with each copy having to be laboriously copied by hand. The fact that the immense effort of publication was undertaken tells us that Cicero believed the Verres trial to be vitally important. First, he saw the trial

as a means of educating the Roman public about the corruption and rot in the system. Second, he sought to capitalize on the success he achieved in the trial. The trial cemented Cicero's reputation as the best advocate of his time, and he went on to play increasingly important roles in Roman politics.

- The Verres trial, ultimately, was not just about Verres. As historian Frank H. Cowles observed, "Verres had been only a type. He had stood for the whole corrupt system. It was for more than the condemnation of one man that the orator had striven." The outcome of the great trial was the death knell of the power of the senatorial oligarchy.

Suggested Reading

Cowles, "Gaius Verres."

Everitt, *Cicero*.

Greenwood, *Cicero*.

Questions to Consider

1. When so many corrupt government officials escaped punishment, why did the Verres trial turn out differently?
2. What qualities did Cicero demonstrate in his prosecution of Verres that made him effective and helped propel him into increasingly important roles in Roman political life?
3. Verres's catalogue of crimes is a long one, and includes massive theft of art, manipulation of Sicily's justice system, and taxing farmers into ruin. Of all his crimes, which was most likely to be seen as the most serious by Sicilians and by the senators who made up his jury?

LECTURE 3

Three Medieval Trials

Medieval trials seem very curious to the modern mind. Covering a period of roughly 500 years, this lecture will examine three of these great and gruesome proceedings. The goal is to make sense—if sense can be made—of the unusual means for resolving conflicts and punishing bad actors in the Middle Ages.

The Cadaver Synod of 897

- The mid to late 800s was a bad time for popes. Because of Rome's weakened condition, popes in the late 800s depended on the support of secular leaders to hold office and to achieve goals. It was a time of political factions; a pope had to be aligned with the right faction to accomplish much of anything.

- In this turbulent time, Bishop Formosus of Portus, a western suburb of Rome, was making a name for himself in Catholic circles. In the 860s, the Pope called on Formosus to manage important Church matters in Bulgaria, France, and Trent. Each time, he received high marks for his work, so much so that people began mentioning Formosus as a candidate for pope when the next vacancy opened up.

- But when an opening occurred in 872, the papacy went to a rival, Pope John VIII. When Formosus found himself on the wrong side of the issue of who should be crowned the new emperor, he fled Rome. Pope John VIII convened a synod and charged Formosus with a laundry list of crimes under Church law. Among the charges were deserting his diocese without permission, opposing the crowning of the emperor, and "conspiring with certain iniquitous men and women for the destruction of the papal see." Formosus was convicted, defrocked, and excommunicated.

- Surprisingly, this was not the end of Formosus's papal ambitions. Six years later, the excommunication was lifted. In return, Formosus promised never to return to Rome or execute priestly duties. In 882, however, Pope John VIII was clobbered over the head with a hammer, becoming the first pope to be assassinated. Newly installed Pope Marinus released Formosus from his oath and restored him to his old diocese. Three more popes came and went until at last, in 891, Formosus became the first former excommunicant to be elected Pope.

- Pope Formosus was soon faced with a host of thorny problems. The most important concerned the messy politics of the Church and the

Holy Roman Empire. The previous pope had made a commitment to crown as emperor the very young Guy Spoleto III. But Formosus had his own idea as to who should be emperor.

- Formosus persuaded one Arnulf of Carinthia to invade Italy and liberate it from the control of Emperor Spoleto. Arnulf crossed the Aps and seized the city of Rome by force in February 896. A day later, in St. Peter's Basilica, Pope Formosus crowned Arnulf as the new emperor. Although Spoleto died suddenly and was no longer in the picture, nothing about what the Pope had done sat well with his influential relatives.

- Two months later, Pope Formosus died of a stroke, and for eight months his corpse rested peacefully in its vault at St. Peter's. The following year, Arnulf suffered a stroke and left Rome. Spoleto's relatives were once again riding high, and they hadn't forgotten what Formosus had done

St. Peter's Basilica

to them. They didn't intend to let a little thing like his death get in the way of revenge. They put pressure on the new Pope, Stephen VI, to put Formosus on trial for a list of alleged crimes.

- Pope Stephen VI called a meeting of bishops and cardinals, the notorious Cadaver Synod. At this meeting, it was decided to remove the rotting corpse of Pope Formosus from its vault. Church aides removed the shroud from the corpse, dressed it in pontifical vestments, put a crown on its skull, and propped what was left of Formosus up on a throne in the Basilica of St. John Lateran.

- The Pope himself acted as prosecutor. He appointed an 18-year-old deacon to serve as counsel for Formosus. What happened next is described by E. R. Chamberlain in his entertaining book *The Bad Popes*: "The council wisely kept silent while Stephen raved and screamed his insults" at the corpse.

- The charges against Formosus included performing the functions of a bishop after he promised not to, assuming the papacy, and conspiring against a previous pope. Apparently, dead Pope Formosus had no good answers for these charges. The Pope proposed that Formosus be found guilty, and the bishops present didn't see any reason to disagree.

- As punishment, the three fingers of the corpse that Formosus once used for blessings were hacked off. The papal crown was removed, the papal garments stripped off, and the body unceremoniously tossed into the Tiber River.

- The aftermath of the trial had many twists and turns. Monks sympathetic to Formosus fetched the corpse from the river, and rumors began to circulate that the corpse was performing miracles on the banks of the Tiber. Moreover, bishops appointed by Formosus and still loyal to him staged a Vatican coup. A mob tossed Stephen VI into a dungeon, where he was strangled.

- The decrees of the Cadaver Synod were first annulled and then reinstated by different popes. Formosus's corpse was returned to its vault and then exhumed and tossed into the Tiber again. Eventually, however, Formosus's bones found their way back to St. Peter's, where he was laid to rest for a third time.

- The Cadaver Synod succeeded in dampening enthusiasm for trying corpses. In 898, in fact, Pope John IX issued a decree prohibiting future trials of the dead. Even so, Pope Formosus was not the last person to show up dead for his trial. Over the next 500 years, scores of other cadavers had their unwanted days in court.

- Trials of the dead can be explained in part by the medieval belief that death is not the end, that people move on to their rewards and punishments in the next world. Trials of the dead can also be attributed to laws that allowed the confiscation of property of persons convicted—dead or alive—of serious crimes.

The Trial of Emma

- During the Middle Ages, there were two techniques, each semi-rational at best, that came into use to determine guilt or innocence. The earliest to develop was trial by oath, in which a person accused of a crime attempted to round up people willing to swear to his or her innocence. The number of oath-takers required to prove innocence varied with the seriousness of the charge and one's place in society. These trials were not fact-based inquiries; the oaths were the evidence.

- Objections to trials by oath eventually led to another form of trial process: trial by ordeal. Bearing almost no resemblance to modern trials, trials by ordeal were proceedings designed to attract God's attention and have Him make the call. If a defendant was truly innocent, the thinking went, God would step in and perform a miracle to save the defendant from a grievous wrong.

- In a trial by ordeal, the defendant was subjected to a challenge, usually an unpleasant one causing serious injury. A typical ordeal might involve walking over hot irons or retrieving a stone from boiling water. The defendant was found innocent if the injury sufficiently healed within a specific time—3 days was typical—and guilty if the injury still festered.

- No contemporaneous records exist for the trial by ordeal of Emma of Normandy. The earliest surviving record comes from the *Annals of Winchester*, written in about 1200. As with any account written more than a century after the fact, it is best to assume the story as we have it contains a mixture of fact and fiction.

- According to the *Annals*, the Archbishop of Canterbury persuaded King Edward the Confessor to charge his own mother, Emma of Normandy, with adultery. The charge claimed that Emma had engaged in sexual relations with Bishop Elfwine of Winchester. Emma insisted she was innocent, and she was willing undergo the ordeal of hot iron to prove it.

- On the day of the trial, nine red-hot ploughshares were laid across the pavement in a church. Emma entered and entreated God to save her. Led by the hand by bishops, she began to walk. Miraculously, according to chroniclers, Emma passed the test with flying colors. Her feet were examined, or so the report goes, and they were found to be uninjured. The onlookers proclaimed a miracle. Emma was innocent of the charge and free to go, with all her confiscated property restored.

- There is reason to take this account with a grain of salt. Perhaps the ploughshares were not as hot as the archbishop ordered. Perhaps Emma's feet were toasted, but less so than expected. Perhaps the ordeal never even occurred at all. Separating fact from fiction can be difficult in a period without much record keeping. It is beyond question, however, that the ordeal of the hot iron was one of the more common forms of ordeal during this time period.

Trial by Combat

- Trial by combat is a variation of trial by ordeal that still captures our imagination today. The last great example of trial by combat took place in 1386 at an abbey north of Paris, where royalty, dukes, and thousands of ordinary Parisians gathered to watch the bloody spectacle. The two combatants: Jean de Carrouges and Jacques Le Gris. Once close friends, the two had become bitter rivals after a series of land disputes. This time, however, there was much more than land at stake.

- In 1384, Carrouges and Le Gris had agreed to bury the hatchet. Carrouges even introduced Le Gris to his beautiful wife Marguerite—a big mistake. Two years later, while Carrouges was on the road, Le Gris visited Carrouges's chateau. According to one version of the story, Le Gris propositioned Marguerite, offering her a large sum of money if she would have sex with him and keep mum about it. When Marguerite refused, Le Gris raped her.

- When Carrouges returned, he decided to press charges of rape against Le Gris. But he faced two major problems: First, Marguerite was the only witness, and Le Gris would surely deny the rape. Second, the judge for the case would be Count Pierre, a friend and supporter of Le Gris. Carrouges and Marguerite didn't even bother to attend the proceeding. The Count acquitted Le Gris of all charges and accused Marguerite of "dreaming" the attack.

- Guessing that a traditional appeal would fail, Carrouges proposed that the rape charge be settled through trial by combat. Trials by combat had once been a common means of resolving disputes in France. By 1386, however, they had become very rare. Carrouges probably expected his idea to be rejected, but the French court approved.

- In a judicial duel, it was assumed that God would watch over the combatants and direct the outcome. Whichever man survived would be vindicated in the eyes of God and the law. And it wasn't just the lives of the two men that hung in the balance. If Carrouges died, that could

only mean that Marguerite's rape accusation was baseless and that she had committed perjury, a capital offense. If her husband lost the duel, Marguerite would be immediately burned at the stake.

- Let's set the scene on the day of the duel: Thousands of spectators gather at dawn, flocking to a jousting arena at an abbey in the north Paris suburbs. The King is there, accompanied by an impressive collection of dukes. Marguerite, dressed in black, sits in a carriage overlooking the field. After a brief ceremony, it is time for the duel to begin.

- The horses square up at the proper distance. The marshal signals. The two men charge at each other. On the first pass, their lances strike, but no harm is done. On the second pass, they strike each other on their armored headpieces. They wheel around and charge at each other a third time, striking each other's shields and shattering both lances. In round four, they slash at each other with axes until Le Gris manages to drive his through the neck of Carrouges's horse, beheading it. Carrouges jumps off his horse, charges at Le Gris, and disembowels Le Gris's horse.

- Unhorsed, the two combatants pull out their swords and begin to battle on foot. Le Gris gains the advantage after he manages to stab his rival in his right thigh. But Carrouges isn't finished yet. He wrestles Le Gris to the ground and tries to stab him, but the armor is too tough for Carrouges's sword. So he tears Le Gris's faceplate off, takes out his dagger, and drives it through Le Gris's neck, killing him.

- His victory secured, Carrouges is bandaged up by his pages and walks over to the King, where he kneels and accepts his prize of 1,000 francs. Carrouges and Marguerite then ride from the jousting field to Notre-Dame Cathedral to thank God for securing them justice.

Suggested Reading

Bartlett, *Trial by Fire and Water*.

Jager, *The Last Duel*.

Llewellyn, *Rome in the Dark Ages*.

Questions to Consider

1. Medieval trials were a step backward in fairness and rationality from those seen in ancient Greece and ancient Rome. Why this regression?
2. As strange as trials by ordeal seem to the modern mind, what advantages might they have had over other forms of dispensing justice?
3. What advantages did high status have for persons accused of crimes in the Middle Ages?

LECTURE 4

The Trial of Sir Thomas More

It's July 1, 1535. Sir Thomas More, weakened by more than a year spent as a prisoner in the Tower of London, is about to go on trial. A former friend and trusted advisor of King Henry VIII, Sir Thomas is charged with treason, a capital offense. Few people in history have faced their trials and deaths as squarely, calmly, and with as much integrity as More, and his story is both important and instructive.

Background: Henry Finds Leviticus

- In 1509, the new 18-year-old King of England, Henry VIII, married a young Spanish princess, Catherine of Aragon. The marriage came with the blessing of Pope Julius II, in the form of a dispensation from an injunction found in the Bible. The dispensation was deemed necessary because Catherine had been briefly married to Henry's older brother, Arthur. This raised the question of whether Henry's marriage violated Leviticus 20:21: "If a man shall take his brother's wife, it is an unclean thing." In granting the dispensation, the Pope noted that Arthur was ill throughout the six-month-long marriage until his death, and that the marriage—according to Catherine—was never consummated.

- Seventeen years passed with no questions raised about the Pope's dispensation. In 1526, however, King Henry's affection turned from Catherine to the beautiful Anne Boleyn. And suddenly, reviewing Leviticus, Henry began to question the lawfulness of his marriage to Catherine. The King was also disappointed that his marriage to Catherine had failed to produce a healthy son. It was Henry's twin concerns for his sex life and his bloodline—and not any genuine spiritual zeal—that set in motion a religious conflict that would change the face of England.

- By June 1527, Henry was sufficiently convinced that his 1509 marriage violated the command of Leviticus that he informed his wife that they had been unlawfully married for 18 years. Faced with having her dignity as a married woman stripped and her daughter labeled illegitimate, Catherine did not take the news well.

- The King raised the issue of his marriage with his lord councilor, Thomas More, at Hampton Court. More suggested to Henry a different interpretation of Leviticus. Displeased, the King ordered More to "commune further" with royal advisers and to read a report that made the case for annulment. But their differences remained.

Sir Thomas More

- Ultimately, the disagreement was over the matter of papal supremacy. The King argued that Leviticus made his marriage a crime in God's eyes, and that no pope had the power to waive the Biblical injunction. More, on the other hand, accepted papal supremacy as a matter of faith and viewed the Pope's 1509 dispensation as conclusive.

The King Takes On the Church

- In 1530, Henry VIII mounted a full-court press to get his marriage annulled. He recruited a scholar to write a treatise demonstrating the unlawfulness of his marriage. He pressured the faculties of England's universities to issue declarations supporting annulment. He gathered lords and prelates to write letters to Pope Clement pushing his cause. He then issued a proclamation that prevented enforcement of any papal ruling inconsistent with his own view of his marriage's lawfulness.

- This was a direct attack on Vatican authority, and it did not sit well with Thomas More, who expressed his disagreement with his King's proclamation. Thomas Cromwell, a member of the King's inner circle, pushed the King's view that the law of the realm should trump ecclesiastical law. Cromwell was cunning, cynical, intelligent, ambitious, and resourceful—a worthy nemesis for More.

- In 1531, an impatient King Henry summoned the clergy of England to Westminster. He demanded that the convocation issue a statement recognizing him as "the sole protector and supreme head of the English Church and clergy." After a heated debate—and insertion of the phrase "so far as the law of Christ allows" into the draft—the bishops agreed to issue the statement.

- Catherine refused to drop her opposition to annulment, and Henry and Catherine separated. By late the following year, Anne Boleyn was pregnant. In early 1533, Henry and Anne Boleyn secretly married.

- While the King and Anne Boleyn shared a bed, Henry's advisers stepped up pressure on Rome and domestic opponents of his annulment. Thomas Cromwell presented a bill to Parliament that denied payments to Rome, transferred powers of the Church to Parliament, and limited the authority of the Church—and Thomas More, who had since been named Lord Chancellor—to arrest and punish heretics.

- More could not stomach the assault on his authority to pursue heretics. But the last straw was the decision of the English clergy to submit to Henry's demand and accept that all ecclesiastical law required royal consent. In effect, the clergy agreed to make Henry the head of the Church of England. On May 16, 1532, the day after the clergy's action, More submitted his resignation.

- The following year, Parliament officially declared Henry's marriage to Catherine to have been invalid, and proclaimed Anne Boleyn "Queene at Greenewych." Thomas More, still serving as a king's councilor, did not attend Anne's coronation. It was at this moment, says biographer Peter Ackroyd, "that Henry hardened his heart" against More. The King decided to remove More's stubborn opposition one way or another.

The Arrest and Imprisonment of Thomas More

- Thomas Cromwell began an investigation into More's activities, meeting informally with More in February 1534. More denied participation in any conspiracy against the King. A month later, in letters to both Henry VIII and Cromwell, he reaffirmed his loyalty to the King and expressed his desire to further Henry's interests. On the matter of Henry's marriage, however, More adhered to a policy of silence.

- Meanwhile, Parliament enacted numerous bills proposed by Cromwell on the King's behalf. One such bill, the Act of Succession, declared Henry's marriage to Catherine void and established a line of succession through the children of Queen Anne. The Act also specified various new offenses to be treasonous, such as "derogating" the royal family.

Most significantly for More, the Act required all of the King's subjects to take an oath promising to maintain "the whole effects and contents of the present Act."

- On April 12, 1534, More was handed a summons to appear at Lambeth Palace to take the oath of succession. When he arrived the following day, More asked to see the texts of both the oath and the Act of Succession. After reading the documents, he told the commissioners that while he would deny nothing contained in the oath, his conscience would not allow him to take it.

- Indecisive as to how to handle More's refusal, the commissioners sent More out of the room to wait while they discussed the matter. Summoned back, More again refused to take the oath—even after much cajoling and threats of imprisonment. He also refused to elaborate on his reasons. The frustrated commissioners turned More over to the custody of the Abbot of Westminster, and More spent the remainder of year imprisoned in the Tower of London.

The Trial and Execution of Thomas More

- In November 1534, new bills that spelled trouble for More were introduced in Parliament. The Act of Supremacy declared Henry to be the supreme head of the Church of England. The Treason Act made it a capital offense to "maliciously wish, will, or desire, by words or writing" to deny to members of the royal family their "dignity, title, or name of their royal estates."

- After enactment of the new laws, Thomas Cromwell and four other advisers to the King interviewed Thomas More at the Tower of London. The men told More that Henry demanded to know his opinion of the Act of Supremacy. More balked, saying that he didn't like to "meddle" in such affairs. "The King might yet be merciful," More was told, if he would just acknowledge his consent to the Act. But More was

King Henry VIII

unmoved. His whole concern now, he said, was to live the best possible Christian life.

- In May 1535, King Henry's determination to crush his remaining opposition hardened. More faced intense questioning in a third interrogation before Cromwell and other councilors. Asked once again to give an oath—this time affirming Henry's supremacy as the head of the Church of England—More maintained his resolute silence.

- Trying a new tack, Cromwell sent Solicitor-General Richard Rich to More's cell with instructions to remove his books and writing materials. While Rich and More visited briefly in the Tower, a discussion about the King's role might—or more likely might not—have taken place. The question of what really happened would become a key focus in More's later trial.

- Shortly after Rich's visit, More faced official investigators again in what amounted to a preliminary hearing to determine whether he violated the Treason Act. Two days later, the commission approved a four-count indictment. More would go on trial for his life.

- On July 1, 1535, Sir Thomas More makes his way slowly into Westminster Hall for his trial. Although a jury of 12 men will have the final say, More understands that a verdict of guilty is inevitable. Were the jury to declare More innocent, they might face imprisonment themselves.

- The attorney general opens the proceedings by reading the indictment, which consists of four charges. The Duke of Norfolk offers More a final chance to escape with his life. More replies that he appreciates the offer, but "I beseech Almighty God that I may continue in the mind I am in, through his grace, unto death."

- On the charge of opposing Henry's marriage, More freely admits that he had, "according to the dictates of my conscience," told the King his true opinion. To do otherwise, he says, would have "basely flattered"

his Majesty and made him "a wicked subject" and "a traitor to God." Giving the King an honest answer when asked for it can hardly be treasonous, More contends.

- The second charge against More is that he did not recognize the King as the supreme head of the Church when questioned on the matter. More argues that "no law in the world can punish any man for his silence." When told that his silence was "an evident sign of the malice of his heart," More quotes a legal maxim that held that "he that holds his peace, gives consent." In response to a question from the King's attorney, More says: "I assure you that I have not hitherto disclosed and opened my conscience and mind to any person living in all the world."

- The third charge against More is that, while in the Tower, he wrote letters to a Bishop Fisher inciting him to violate the Treason Act. The letters in question, which officials claim Fisher burned, cannot be produced. More insists that the letters counseled no violations of law. The letters, he says, merely told Fisher that he had followed his conscience when questioned on the matter of Henry's supremacy of the Church. More says he advised Fisher to "satisfy his own mind"—whatever position that took him to.

- The fourth charge, which More calls "the principal crime objected against me," concerns his conversation with Richard Rich a few days earlier. The indictment alleges that More, responding to a hypothetical question posed by Rich, told his visitor that the Parliament had no more power to enact the Act of Supremacy than it did to pass a law declaring God not to be God.

- The court calls Solicitor General Rich to testify. Rich gives his account of the conversation, confirming the charge laid out in the indictment. More emphatically rejects Rich's testimony. More says that if Rich's version were in fact true "then I pray I may never see God's face." More's striking statement, given his intense and sincere religiosity, leaves little room to doubt that Rich was flat-out lying.

- The 12-man jury deliberates for "scarcely a quarter of an hour" before returning with its verdict: guilty. More, finally with nothing more to lose and free to speak his mind, tells the court his indictment is grounded on a law "repugnant to God." At last, the sentence is pronounced: More is to be drawn and quartered. In recognition of More's years of service, the King commutes his sentence from disembowelment to simple beheading.

- More was executed by beheading on July 6, 1535. Lest anyone suppose that traitors would be tolerated by English courts, More's head was boiled, impaled on a pole, and positioned on London Bridge.

Suggested Reading

Ackroyd, *The Life of Thomas More*.

Monti, *The King's Good Servant but God's First*.

Wegemer and Smith, *A Thomas More Source Book*.

Questions to Consider

1. No one can deny that Sir Thomas More was a man of principle. Is that quality something we should unreservedly admire?
2. The validity of Henry VIII's marriage to Anne Boleyn was widely accepted by the time of More's trial. Why did Henry find it necessary to prosecute his once trusted friend?
3. How might the history of Europe have been different if Henry had accepted More's advice and remained married to Catherine?

LECTURE 5

The Trial of Giordano Bruno

The year is 1600. Giordano Bruno, one of the most original minds of the 16th century, rides into Rome's Campo de' Fiori on a mule. Gagged with a leather bridle to prevent him from shouting heresies, Bruno is stripped naked and tied to a stake atop a pile of firewood. A priest holds a crucifix up to Bruno's face. Bruno turns his head away. The pyre is lit by an official, and the flames soon rise to consume the heretic.

The Life and Thought of Giordano Bruno

- In 1562, at the age of 14, Giordano Bruno left his childhood home near Nola, Italy. His destination was Naples, 30 miles to the west. Bruno was a precocious boy, and it is easy to imagine the attraction that Naples, then the fifth-largest city in the world, would have held for him. Little is known about his first few years in Naples, but Bruno spent a great deal of time reading, studying, training his memory, and thinking.

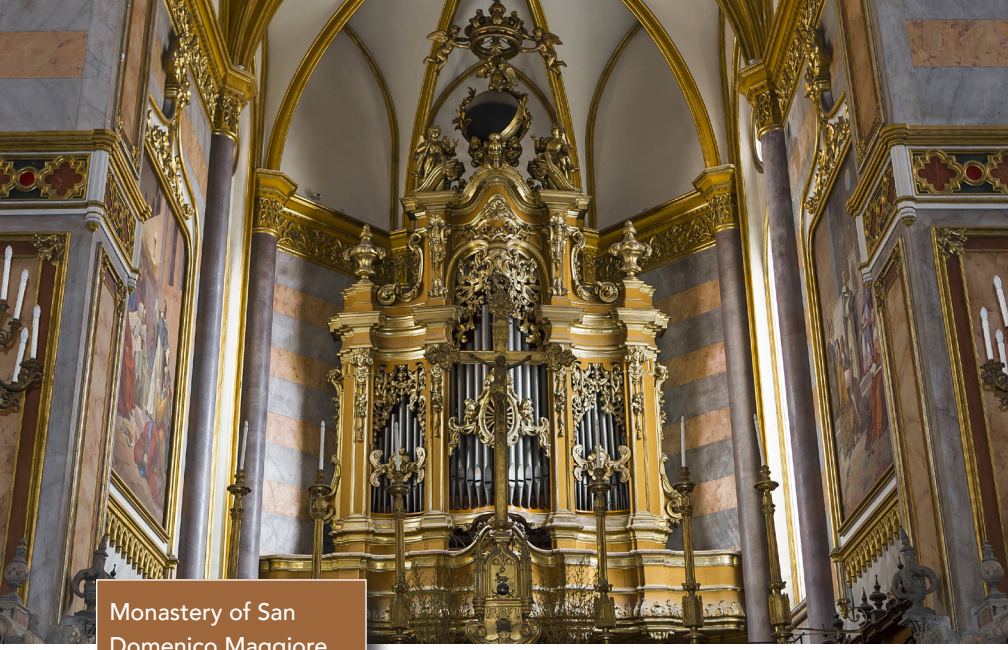
- At 17, Bruno entered the monastery of San Domenico Maggiore. It was here that Bruno delved into the philosophies of Scholasticism and Neoplatonism. Scholastic philosophy was still popular at the time, having dominated teaching for almost 500 years. The philosophy built on the ideas of Aristotle as reconsidered by St. Thomas Aquinas. A contending philosophy, Neoplatonism, was entering a period of revival. Bruno took pieces of each of the two traditions and wove his own philosophy.

- Bruno's nonconformist thinking concerned officials at the monastery. He removed from his room pictures of the Virgin Mary and all other religious decorations, save for a single crucifix. He also read and made margin notes in a book banned at the monastery, Erasmus's "Paraphrases of the New Testament."

- In the privacy of his own head, Bruno was having even more scandalous thoughts: He was experiencing doubts that Jesus was the Son of God incarnate in human flesh, a central teaching of the Catholic Church.

- Nonetheless, it was clear to all at the monastery that Bruno was a brilliant student, and his indiscretions and idiosyncrasies were tolerated. Bruno experimented with "artificial memory" techniques first developed in Ancient Greece and Rome, earning a reputation as a man who possessed an unbelievable memory. In 1569, monastery officials sent him to Rome to perform feats of memory before Pope Pius V.

- By age 24, Bruno had become a priest and gained admission as a formal student in theology at the college attached to San Domenico Maggiore.



Monastery of San Domenico Maggiore

Once again, Bruno couldn't help but get into trouble. Three years into his training, Bruno was informed that he was under investigation by the Inquisition. According to biographer Ingrid Rowland, the primary charge was likely Bruno's defense of certain early Christian heretics who had questioned Christ's divinity.

- After learning of the proceedings against him, Bruno headed to a convent in Rome. After a brief stay there, he shed the garments of a friar and hit the road. He trekked north to Genoa, then on to the seaside village of Noli, where he landed a job teaching grammar to children. For the next 15 years, Bruno traveled throughout Europe, never staying more than three years in any one city. Wherever he went, he wrote and sought jobs teaching philosophy.

- One of the cities he visited was Geneva, the intellectual and spiritual center of Calvinism. Here Bruno converted to Protestantism and enrolled at the University of Geneva as "Phillipus Brunus Nolanus,

professor of sacred theology." But Bruno was Bruno, and he had a knack for getting into trouble. While at the university, he couldn't resist publishing a broadsheet attacking the philosophical ideas of a senior professor. For this he was arrested, spent more than two weeks in jail, and was released only when he agreed to apologize on his knees to the senior professor.

- Bruno's future in Geneva seemed bleak, so he hit the road once more. In Paris, he published a book about memorization techniques called *On the Shadows of Ideas*. Intrigued by the techniques, King Henri III made Bruno his private tutor, as well as professor and royal reader. His job was to instruct the King and members of his court in the art of memorization, logic, and metaphysics. Bruno might have happily spent the rest of his days in Paris, but he heard rumors that the Inquisition was coming to France and knew it was time to move on.

- Bruno moved to England. At Oxford, he developed ideas about the universe that marked him as an original thinker of the first order. For example, he married the controversial Copernican model of the solar system with a version of Platonic theology to produce a view of the universe that was entirely new.

- After leaving Oxford for London, Bruno expanded on his original views. He published a dialogue, *The Ash Wednesday Supper*, which suggests that the universe is far larger than Copernicus imagined. Bruno saw a universe with millions of inhabited planets circling millions of suns. In subsequent dialogues, he argued that once people become aware of the fact that they live in a vast, inhabited, and infinitely old universe, their lives would be transformed for the better.

- It is almost impossible to overstate how mind-blowing these ideas must have seemed at the time. And Bruno's wild thoughts were not confined to the vastness of the universe. He was also thinking and writing about things almost infinitely small. Bruno promoted an atomic theory which posited that every physical thing is made up of

identical particles (in Bruno's terminology, "seeds") in which God, and his informing love, reside.

- By the late 16th century, Bruno had developed a new philosophy and a new set of religious beliefs outside the scope of previous Western thought. It was a philosophy that brought together ideas about the unimaginably large and the unimaginably small, unified by a belief in an omnipresent, loving God. Even though his ideas owed relatively little to empirical observation or mathematics, Bruno's natural philosophy comes closer to our modern understanding of the cosmos than any other thinker of the 16th or 17th centuries.

- In 1585, Bruno's patron, the French ambassador, was recalled to Paris. Bruno had no choice but to follow. But Paris was not the Paris that Bruno used to know—the city was on the verge of a religious war. After just a year, Bruno fled to Germany. In Frankfurt, he published his last two works developing his unique philosophy. The works marked the end of a prolific publishing career—30 books over two decades.

A Bad Move

- While Bruno was still in Frankfurt, a wealthy Venetian gentleman, Giovanni Mocenigo, invited him to come to Venice. Mocenigo had read several of Bruno's writings and was so intrigued that he asked the philosopher to stay in his residence and tutor him. In what ultimately proved to be a fatal decision, Bruno accepted the offer.

- In 1592, Bruno moved to Venice and took up residence in Mocenigo's home. Things went well at first, but soon Mocenigo began to suspect Bruno of holding heretical beliefs. He also suspected that Bruno was withholding some of his most effective memory tricks and becoming a bit too friendly with his wife. Mocenigo disclosed his concerns about Bruno to his father confessor, who urged Mocenigo to denounce Bruno to The Holy Office.

- Bruno sensed that all was not well between him and his host and announced that he had decided to leave Venice and return to Germany. That swung Mocenigo into action. Bruno later described what happened next: Mocenigo ordered "five or six" servants to "lift me out of my bed and carry me to the attic" of his palazzo. Locked in the attic, Bruno was told by Mocenigo that unless he revealed his best secrets for memorizing words, "something unpleasant would happen." Bruno replied, "I have taught you enough and more than I was obliged to, and I do not deserve to be treated like this."

- The next day, Mocenigo reported Bruno to civil authorities. The authorities, in turn, delivered him to the Inquisition.

- Bruno was interrogated in jail and deposed six times by three judges. He admitted to having doubts about some tenets of Catholicism, but denied holding or advocating heretical positions. He made one unwise admission, however, telling his inquisitors that he had always "harbored doubts" about whether Jesus was the Son of God. This was likely the inquisitors' excuse for keeping him in jail even after he retracted and renounced all the beliefs attributed to him by Mocenigo.

- While in his cell in Venice, awaiting a decision by Venetian authorities on a request by Rome for his extradition to that city, Bruno got into a heated religious argument with fellow prisoners, both of whom were friars. The argument concerned a statement that the Bible reports Jesus made on the cross: "Father, let this cup pass me by." Bruno argued that the statement proved that Jesus was mortal. The friars begged to differ.

Bruno's Trial in Rome

- It took months for a decision to be made regarding Bruno's extradition to Rome. In February 1593, Venetian authorities loaded Bruno on a ship bound for the prisons of the Roman Inquisition. For the final seven years of his life, Bruno lived in a private cell located just south of St. Peter's Square.

- During this time, a former cellmate of Bruno's in Venice, Friar Celestino, came forward with a list of 13 of Bruno's statements and actions in prison which the friar believed were heretical. One of the friar's charges concerned Bruno's cosmology. The friar reported that Bruno believed "that there are many worlds, and all the stars are worlds, and he thinks that anyone who believes that this is the only world is extremely ignorant." He also charged Bruno with making light of Biblical stories. The friar said Bruno claimed that "Moses only pretended to talk to God on Mount Sinai, and that the law he gave to the Hebrew people was made up by himself." He also reported Bruno's future and disreputable intentions. According to the friar, "Bruno wanted to return to Germany or England among the heretics where he could live in his own way … and plant his new and infinite heresies."

- The friar's shocking charges prompted Church officials in Rome to launch a search for all of Bruno's former cellmates. Their interrogations, for the most part, confirmed the friar's allegations.

- Roman inquisitors examined the transcripts from the proceeding against Bruno in Venice. They noted in the transcripts the large number of references to Bruno's early writings. Over a strikingly long period of time, roughly the next six years, officials struggled to prepare a complete list of Bruno's writings and to track down surviving copies in whatever parts of Europe they might be found.

Moses

- It took some time for the Inquisition to decide to burn Bruno at the stake. Church officials had to weigh the

political risk of offending some of Bruno's powerful friends around Europe. Bruno had shared his knowledge and ideas for years, sometimes with kings, ambassadors, and dukes, so Rome had reason to worry that his execution might have political repercussions. Execution also represented a failure of sorts. The Roman Inquisition set as its goal serving Christ through admonition and persuasion, not through punishment.

- On February 8, 1600, Church officials performed "a solemn degradation," a ceremony in which Bruno was stripped of his symbols of the priesthood, shaved, dressed in the clothes of a layman, and turned over to a bailiff for imprisonment. For the next eight days, various friars made appeals to Bruno to repent, before the end came in Campo de' Fiori on February 17, 1600.

Suggested Reading

Bruno, *The Expulsion of the Triumphant Beast*.

Gatti, *Essays on Giordano Bruno*.

Rowland, *Giordano Bruno*.

Questions to Consider

1. Bruno was a man who held many unconventional ideas. Which of his ideas seemed most repugnant and dangerous to his prosecutors?
2. Why was the Catholic Church of the 15th century so anxious to root out heresies that seem harmless today?
3. Were Bruno's ideas or his personality more responsible for his fate?

LECTURE 6

The Salem Witchcraft Trials

It's the brutally cold January of 1692 in Salem Village, Massachusetts, and things are not well in the home of Reverend Samuel Parris. Parris's nine-year-old daughter, Betty, and her 11-year-old cousin, Abigail Williams, are diving under furniture, barking like dogs, contorting in pain, and babbling nonsensically. Other girls soon begin acting in strange but similar ways, leading to accusations of witchcraft. Before long, more than 140 people stand accused. Dozens will languish in jail for months, and some will die there. Many others will be executed.

Early Accusations

- When his daughter and niece began acting strangely, Reverend Samuel Parris turned to William Griggs, a local physician, and John Hale, another minister. Hale and Griggs agreed on the source of the problem: witchcraft. The widespread belief that witches targeted children made the diagnosis easy. Hale, Griggs, and almost everyone else in Salem believed not only that Satan was real, but that he acted in the world, sowing disease and bad fortune.

- Twelve-year-old Ann Putnam and Elizabeth Hubbard, the 16-year-old niece of Dr. Griggs, were also choking, shuddering, and contorting. Thomas Putnam pressed his daughter, asking her who was to blame for her behavior. She supplied three names. And then it began. With the prominent Putnam family supporting the hunt for witches, officials had to pay attention.

- On February 29, Thomas Putnam and three friends rode from Salem Village to Salem Town to formally charge three women with witchcraft. Acting on the complaint, the constable arrested Sarah Good, Sarah Osborne, and Tituba, an Indian slave working in Reverend Parris's parsonage. All three were ordered to appear the next morning before two justices of the peace.

- The pews of the village meetinghouse were crowded with curious farmers. Two justices of the peace sat at a table in front of the pulpit. Justice of the Peace John Hathorne wasted no time getting down to business. "Sarah Good," he asked, "what evil spirit do you have familiarity with?" "None," she answered. But Hathorne had already made up his mind about her guilt. He asked her young accusers to rise. When Good denied attacking the girls, each began twisting and contorting as if electricity were pulsing through their bodies. Hathorne drew what seemed to be the obvious conclusion. "Sarah Good, do you not see what you have done? Tell us the truth! Why do you torment these children?" This became the pattern for many of the examinations to follow.

- The day after their examinations, both Good and Osborne were undressed and closely inspected all over by the wife of a Salem innkeeper. Moles and birth marks were considered witch-marks—signs from the Devil that the marked person was now under his command.

Tituba Confesses

- It's possible the whole matter might have ended with admonishments were it not for the performance of Tituba, the accused Indian slave. At first, Tituba denied any guilt. But then, sensing that she might become a scapegoat, Tituba confessed, but deflected most of the blame to others. She claimed that she was approached by a tall man from Boston—Satan—who asked her to sign his book and do his work.

- Yes, Tituba declared, she was a witch. In fact, she and four other witches, including Good and Osborne, had flown through the air on their poles. But she was a reluctant witch. When Good and Osborne ordered her to kill Thomas Putnam's son, she tried to run to Reverend Parris for counsel, but the Devil blocked her path. And when Tituba resisted Sarah Good's demand that she torture girls in the Parris home, she was struck deaf.

- You can imagine how jaw-dropping these revelations must have seemed. Tituba's confession transformed her into a central figure in the expanding prosecutions. Her confession also served to silence most skeptics. The authorities were on the right track. Witch-hunting became an obsession.

The Expanding Circle of Accusations

- The afflicted girls soon made new accusations, reporting that the spectral forms of four additional women had attacked them. During a March church service, Ann Putnam shouted, "Look where Goodwife Cloyce sits on the beam suckling her yellow bird between her fingers!" Ann's mother joined the chorus of accusers.

- Dorothy Good, the four-year-old daughter of accused witch Sarah Good, became the first child to be accused of witchcraft. Three girls claimed to have been bitten by Dorothy's specter. The little girl was arrested and kept in jail for eight months. She watched her mother get carried off to the gallows, cried her heart out, and went insane.

- Meanwhile, the number of girls afflicted continued to grow, rising to seven. Historian Peter Hoffer sees the girls as a band of attention-seekers. In his words, the girls "turned themselves from a circle of friends into a gang of juvenile delinquents." The accusing girls developed increasingly polished performances for ever larger audiences, and their damning testimony was widely accepted.

- Stuck in jail, suspects learned that confessions could be a way to avoid the gallows. Confessing witches became witnesses, not defendants. Women like Deliverance Hobbs stepped forward to tell magistrates that

she pinched girls at the Devil's command, went joyriding on poles, and attended a gathering of witches in an open field near Salem.

- The hysteria soon spread beyond Salem Village to dozens of nearby Massachusetts towns and villages. In all, more than 140 people were accused. The colony was teetering on the brink of chaos. Governor William Phips, returning from England, knew that fast action was needed. He created a special, nine-judge court to take up the witchcraft cases. A quorum of five judges sat for each trial session.

- Chief Justice William Stoughton and his fellow judges agreed to accept confessions as credible. On other questions, the court looked to ministers for guidance. They decided to permit as evidence something called the "touching test," in which an accused witch was asked to touch the afflicted person. If her touch caused the afflicted person's contortions to stop, she must be a witch. The judges also green-lighted physical examinations to search for witch-marks. Most importantly, they accepted—even encouraged—spectral evidence, testimony that the defendant's specter had attacked or threatened someone even while the defendant maintained a physical presence elsewhere.

- Evidence that would be excluded from modern courtrooms—hearsay, gossip, stories, unsupported assertions, and surmises—was admitted. Accused witches had no legal counsel, could not call witnesses to testify on their behalf, and had no formal avenues of appeal. Defendants could, however, speak for themselves. They could produce evidence, and they could cross-examine their accusers.

The Trials

- The court convened for the first time on June 2, 1692, in Salem Town. The first accused witch to come to trial was a woman named Bridget Bishop. Bishop was 60 years old and owned a tavern where patrons drank cider ale and played shuffleboard, even on the Sabbath. She feuded with her neighbors and paid her bills slowly, if at all. In

other words, Bishop was a societal outlier—a prime candidate for an accusation of witchcraft.

- Thomas Newton, the special prosecutor, likely selected Bishop for his first prosecution because he believed a stronger case could be made against her than any of the other accused witches. During the trial, a field hand testified that he saw Bishop's specter steal eggs and then transform into a cat. Confessed witch Deliverance Hobbs testified that Bishop was one of them. And a villager named Samuel Grey told the court that Bishop visited his bed at night and tormented him.

- Meanwhile, a jury of matrons assigned to examine Bishop's body reported that they found an "excrescence of flesh"—a place where her familiar might have sucked. Several girls testified that Bishop's specter afflicted them. Other villagers claimed that Bishop was responsible for various miseries they had suffered.

- By modern standards, much of the evidence brought against Bishop was laughable. In 1692, however, it was taken quite seriously. It is no surprise that Bishop's jury returned a verdict of guilty. But not everyone who participated in the trial was satisfied. One of the judges was so aghast at the conduct of the trial that he resigned from the court. Chief Justice Stoughton had no such reservations. On June 10, 1692, Bishop was carted to Gallows Hill and hanged—the first victim of the Salem witchcraft trials.

- Not all defendants were as disreputable as Bridget Bishop. Rebecca Nurse was a pious, respected woman. Yet Nurse's specter, according to Ann Putnam and Abigail Williams, had attacked them in March. Ann Putnam's mother testified that Nurse demanded she sign the Devil's book, an action widely believed to be a necessary first step in joining the Devil's forces.

- Nurse was one of three Towne sisters, all of whom were accused by the Putnams of witchcraft. It is probably not a coincidence that the Towne

family had a long-standing quarrel with the Putnam family. The Nurse trial shows how the trials increasingly became a way to settle old scores.

- The Nurse jury, for the first time in the Salem trials, returned a verdict of not guilty. This verdict greatly displeased Chief Justice Stoughton. He told the jury to go back and consider again a statement of Nurse's that might be considered an admission of guilt—but was more likely the result of confusion about the question. The jury did as it was told and, after two more sets of deliberations, came back with a verdict of guilty. On July 19, 1692, Nurse rode with four other convicted witches in a cart to Gallows Hill.

- Persons who scoffed at accusations of witchcraft risked becoming targets of accusations themselves. The most notable witchcraft skeptic to face charges was John Proctor, who some might know as a central figure in Arthur Miller's *The Crucible*. Proctor was an opinionated tavern owner who openly denounced the witch hunt. His denunciation led to an accusation of witchcraft against him by Ann Putnam and others.

- Proctor fought back as best he could. He accused confessed witches of lying and demanded that his trial be moved to Boston. The effort proved futile, and Proctor was hanged. His pregnant wife, also convicted of witchcraft, was spared, as it was believed that an innocent unborn child should not be killed for the sins of its mother.

The End of the Hysteria

- By early autumn, Salem's lust for blood had ebbed. When accusations of witchcraft were made against the powerful and connected—people like the wife of Governor Phips—they pushed back. Reverend John Hale became a skeptic: "It cannot be imagined that in a place of so much knowledge, so many in so small compass of land should abominably leap into the Devil's lap at once."

- The educated elite of the colony began working to end the witch-hunting. Increase Mather published *Cases of Conscience*, which has been called "America's first tract on evidence." In the work, Mather argued that it "were better that ten suspected witches should escape than one innocent person should be condemned."

- Samuel Willard, a highly regarded Boston minister, circulated a piece called *Some Miscellany Observations on Our Present Debates Respecting Witchcrafts*. Willard suggested that the Devil might create the specter of an innocent person. In fact, wasn't that just the sort of devious trick the Devil might try? Mather's and Willard's works caught the attention of Governor Phips, who ordered the Salem court to exclude spectral evidence and touching tests and insisted on proof of guilt by clear and convincing evidence in future cases.

- With spectral evidence excluded, almost all subsequent witchcraft trials ended in acquittals. In May of 1693, Governor Phips released from prison all remaining accused or convicted witches. Salem's nightmare was over.

- A period of atonement followed the release of the surviving accused witches. Samuel Sewall, one of the judges, issued a public confession of guilt and an apology. Jurors came forward to say that they were "sadly deluded and mistaken" in their judgments. Even Reverend Samuel Parris conceded errors of judgment.

- Governor Phips blamed the entire affair on Chief Justice William Stoughton. Stoughton, for his part, refused to apologize or explain himself. He attacked Phips for interfering just when he was about to "clear the land" of witches.

Suggested Reading

Boyer and Nissenbaum, *Salem Possessed*.

Hoffer, *The Salem Witchcraft Cases*.

Mather, *Memorable Providences Relating to Witchcraft and Possessions*.

Norton, *In the Devil's Snare: The Salem Witchcraft Crisis of 1692*.

Schiff, *The Witches*.

Questions to Consider

1. For there to be witchcraft trials, there first has to be a belief that witches are real and acting in the world. Why was belief in witches so widespread in Salem in 1692?
2. If the rules of criminal procedure that are in use today were in use in Salem, would there have been any convictions for witchcraft?
3. What do the Salem trials tell us about the causes and life cycle of mass hysteria?

LECTURE 7

The Boston Massacre Trials

It's a cold March morning in 1770, and the city of Boston is on edge. The night before, five Bostonians were shot to death by British soldiers in a massacre near the Customs House. A 34-year-old Boston attorney agrees to defend the soldiers and their captain, a decision that he knows will put his reputation, his practice, and his family at risk. The young lawyer is John Adams, future drafter of the Declaration of Independence and second president of the United States.

The Massacre

- In the snowy winter of 1770, many residents of Boston had a gripe. They were deeply resentful of the presence of British military in their city. Regiments of regulars had been quartered in Boston for nearly a year and a half after responding to a call by the governor to restore order and respect for British law. Trouble had arisen in 1768 when Boston importers refused to pay the custom duties required under British law.

- Bostonians had a variety of complaints about the British soldiers. Some resented the fact that the soldiers competed for jobs, often taking part-time work during their off-duty hours for lower wages than natives were willing to accept. Seamen in Boston saw the soldiers as enforcers of the detested impressment laws that authorized soldiers to seize men and force them to serve in the British navy.

- Clashes between soldiers and civilians were on the rise in 1770. On March 2, a fistfight broke out between soldiers and employees of John Gray's Ropewalk, a cable-making company. Tempers flared when one of the employees insulted a soldier, and the encounter ended in a brawl.

- Three days later, on March 5, things turned from bad to worse. The problems began in the evening with a simple dispute over whether a British officer paid a bill to a local wigmaker. The officer was walking down King Street when Edward Garrick, the wigmaker's apprentice, called out to him: "There goes the fellow who hath not paid my master for dressing his hair." The officer with the new hair, Captain John Goldfinch, passed on without acknowledging Garrick. But Garrick persisted. He told three passersby that Goldfinch owed him money. A British soldier named Hugh White, who was standing sentry that night outside the Customs House, overheard Garrick's remarks. White told the apprentice, "He is a gentleman, and if he owes you anything he will pay for it." Garrick answered, "There is no such thing as a gentleman in the regiment." The remark got the sentry's hackles up. He left his post and confronted Garrick. There was a brief, heated exchange of words before White struck Garrick with his musket, knocking him down.

- A small crowd was attracted by the ruckus. People gathered around the lone guard and began to taunt him. “Bloody lobster back! Lousy rascal! Lobster son of a bitch!” The crowd grew to about 50. Some young men threw pieces of ice at White, causing him to retreat from his sentry box to the Customs House steps and load his gun. He waved the gun around and frantically knocked on the Customs House door. Desperate and fearful, White yelled, “Turn out, Main Guard!”

- Meanwhile, a few blocks north, another confrontation between civilians and redcoats broke out. Under a barrage of snowballs, a group of soldiers hustled into its barracks. A third mob, this one about 200 strong and carrying clubs, gathered in Dock Square. A tall man with a white wig and a red coat did his best to rile up the crowd. Trouble was erupting all over the city. “Let’s away to the Main Guard!” someone

shouted. The crowd streamed down an alley toward King Street. Someone pulled the fire bell rope at the Brick Meeting House, bringing dozens more residents out into the streets.

- In front of the Main Guard, the officer for the day, Captain Thomas Preston, paced back and forth for nearly 30 minutes. He couldn't decide what to do. If he did nothing, White might be killed by the mob. But trying to rescue White carried its own risks, as the soldiers were vastly outnumbered. Moreover, Preston knew that the law forbade the military from firing on civilians without the order of a magistrate. Finally, Preston made his decision. "Turn out, damn your bloods, turn out!" he barked.

- Seven soldiers hurried out, some without even putting on coats. Preston and the other men, in columns of two, moved across King Street with muskets and fixed bayonets. They pushed on through the crowd of 50 to 100 civilians near the Customs House, finally reaching the beleaguered sentry. Preston ordered White to fall into line and started to march the men back to the Main Guard. But the mob blocked them. Hemmed in, the soldiers lined up in a semicircle facing the crowd, facing flying chunks of coal, snowballs, and oyster shells.

- Captain Preston shouted for the crowd to disperse, but it continued to press in. A large mixed-race man named Crispus Attucks stepped forward, wielding a club. Attucks grabbed a soldier's bayonet and knocked him to the ground. The soldier, named Hugh Montgomery, rose and shouted, "Damn you, fire!" In spurts, not in volleys, soldiers fired six leaden balls into the crowd.

- As several soldiers loaded their weapons and prepared to fire again, Captain Preston yelled, "Stop firing! Do not fire!" The Boston Massacre was over. Four men had been killed, including Crispus Attucks; another victim would die 10 days later from his injuries.

Arrests and Imprisonment

- When word of the shootings reached Acting Governor Thomas Hutchinson, he rushed to King Street. There he found an angry crowd and a shaken Captain Preston. After speaking with Preston and several members of the Council at the Town House, Hutchinson stepped out onto a balcony overlooking the scene of the massacre. He called on the crowd to be calm. "Let the law have its course. I will live and die by the law."

- After midnight, the sheriff obtained a warrant for the arrest of Captain Preston. Preston was taken to the Town House and interrogated by two justices. At three o'clock in the morning, the justices concluded they had "evidence sufficient to commit him." Preston was escorted to a jail, where he would remain for the next seven months.

- A few hours later, Boston merchant James Forrest secured John Adams to represent the British captain and his soldiers. Forrest assured Adams, "As God almighty is my judge, I believe him an innocent man." Adams replied as a good lawyer might: "That must be ascertained by his trial. And if he thinks he cannot have a fair trial of that issue without my assistance, without hesitation he shall have it."

- One week after the massacre, at the request of the attorney general, a grand jury handed down murder indictments against Captain Preston and eight soldiers. Around the same time, Preston gave a deposition offering his version of the events of March 5th. Preston also pleaded his case in the press; his writings appeared in the *Boston Gazette*.

- Unfortunately for Preston, a letter sent to London and intended solely for a British audience also found its way into Boston papers. In his London letter, Preston complained about Bostonians who "have ever used all means in their power to weaken the regiments and to bring them into contempt, by promoting and aiding desertions, and by grossly and falsely promulgating untruths concerning them." He wrote that "malcontents" were maliciously "using every method to fish out

evidence to prove [the March 5 shooting] was a concerted scheme to murder the inhabitants."

- As Preston and the indicted soldiers languished in jail, Boston residents—including such notable figures as Samuel Adams and John Hancock—pressed demands on Acting Governor Hutchinson for the "instant removal" of all British troops from Boston. Hutchinson initially balked at the demand, but finally gave in to overwhelming public pressure. Boston's two regiments left the city and moved to Castle William in Boston Harbor.

The Trials

- Authorities decided to try Captain Preston separately from the eight soldiers. The soldiers objected to this arrangement, fearing that Preston would deny that he had ordered them to fire. If Preston was tried first, the soldiers' best defense—that they were only following orders—might be compromised. The soldiers' request for a joint trial was denied by the court without explanation.

- Captain Preston came to trial first. Adams chose to keep the trial focused on King Street, believing that the evidence concerning the events of March 5 would be sufficient to acquit. Adams worried that a political attack on citizen efforts to expel British troops might spark a public reaction that could hurt his case. Even worse, radicals might lynch Preston or terrorize jurors into voting for conviction.

- The central issue in Preston's trial was whether he gave the order to fire on the civilians. Preston's steadfast denial was supported by three defense witnesses. Four witnesses for the prosecution, however, swore to the contrary.

- The 12-man jury was sequestered throughout the six-day trial. When it came time to deliberate, the jurors concluded that the testimony of Captain Preston and other defense witnesses was enough to raise

John Adams

reasonable doubts as to whether Preston had given the order to fire. After a few hours' deliberation, they acquitted Preston on all charges.

- Given the loyalist leanings of one or more of the jurors, conviction—requiring a unanimous verdict—was never a real possibility. One juror reportedly confided before the trial that he would never convict Preston "if he sat to all eternity." The captain was, the juror said, "as innocent as the Child unborn."

- In the soldiers' trial, several witnesses testified about the events leading up to the massacre. Witnesses described the military-civilian confrontation at Gray's Ropewalk on March 2, as well as the other events of March 5.

- The prosecution's most damning testimony came from Samuel Hemmingway, who told jurors about a conversation involving Private Matthew Killroy. Killroy was the soldier identified by another prosecution witness as the shooter of John Gray, one of the five men killed in the massacre. Hemmingway testified that Killroy said he "would never miss an opportunity, when he had one, to fire on the inhabitants, and that he had wanted to have an opportunity ever since he landed."

- John Adams presented testimony to support the theory that the soldiers fired in self-defense. One defense witness, James Bailey, testified that the soldiers were being pelted by large chunks of ice and other dangerous objects. He also told jurors that he saw Crispus Attucks knock down Private Montgomery with "a large cord-wood stick." Adams asked the jury to put themselves in the soldiers' shoes. Would "it have been a prudent resolution in them, or in any body in their situation, to have stood still, to see if the [the mob] would knock their brains out?"

- After presenting more than 40 witnesses, John Adams summed up for the defense. His eloquent speech blended law and politics. He told the jury that this was a case of self-defense, and he asked them to consider what any soldier would do under confusing and life-threatening

conditions: "Do you expect that he should act like a stoic philosopher, lost in apathy?"

- After deliberating for less than three hours, the jury acquitted six of the soldiers on all charges. Hugh Montgomery and Matthew Killroy—the only two soldiers proven to have fired—were found guilty of manslaughter.

- On December 14, Montgomery and Killroy returned to court for sentencing. The court asked if there was any reason why the sentence should not be passed. The two men responded by invoking "the benefit of clergy." This was a plea available in this type of case that shifted their punishment from imprisonment to the branding of their thumbs. As John Adams looked on, the two soldiers held out their right thumbs for the sheriff to brand.

- Captain Preston returned to England, receiving modest compensation and a 200-pound annual pension for his troubles. He gloated over what he called "the complete victory obtained over the knaves and foolish villains of Boston."

- The initial reaction of most Bostonians to John Adams's defense of the soldiers was hostile. In the year following the trials, Adams's law practice suffered financially. Adams, however, found the verdicts deeply satisfying.

- Given the conflicting evidence presented to the jury, the verdict reached was the correct one. That is not to say, however, that the soldiers acted appropriately. The 96 depositions taken in the Preston trial clearly show that before the massacre, many British soldiers were acting like bullies and looking for trouble.

- After the trials, a veneer of normalcy returned to Boston. But beneath the surface, in the hearts and minds of many citizens, resentment ran deep. The Revolution was coming.

Suggested Reading

Allison, *The Boston Massacre*.

Emmons, *Transcript of the Trial of the Soldiers*.

Zobel, *The Boston Massacre*.

Questions to Consider

1. Who bore more responsibility for the Boston Massacre, the mob that surrounded the British soldiers or the soldiers themselves?
2. When key events happen quickly and eyewitnesses offer conflicting accounts, will the presumption of innocence always save a defendant? Why did it here?
3. How have interpretations of the Boston Massacre changed over time? What interpretation seems to prevail today?

LECTURE 8

The Aaron Burr Conspiracy Trial

On December 10, 1806, confederates of Aaron Burr gathered on Blennerhassett Island in West Virginia. Four boats loaded with guns, ammunition, meat, and other provisions bob just offshore. Eleven additional boats are expected to arrive, whereupon the flotilla will set off down the Ohio River to establish a new empire in the Southwest. Unbeknownst to Burr's confederates, however, their plot has already been uncovered, and the events of December 10 will soon become the central focus in Burr's trial for treason.

The Burr Conspiracy

- The early 19th century was an unstable time, both in Europe and in America. Spain and France were allied in a war against Great Britain, and President Thomas Jefferson was determined to maintain a policy of neutrality. Jefferson fully intended to enforce the Neutrality Act of 1794, which made it a crime for any citizen to undertake a military expedition against any country with which the United States was at peace.

- In 1804, Aaron Burr, still the sitting vice president of the United States, ran for governor of New York—and lost. During the campaign, Alexander Hamilton called Burr "despicable" and "dangerous," someone who would "dismember the Union" if given the chance. Outraged, Burr challenged Hamilton to a duel that resulted in Hamilton's death and the end of Burr's political aspirations in the East.

- Burr began to imagine a new empire in the Southwest, with himself as emperor. He would lead a military expedition into Texas and Mexico, where the local population, resentful of Spanish rule, would welcome him with open arms. Inspired, Burr began reaching out to people who could help his military adventure succeed, including General James Wilkinson, the top general in the United States Army, and Anthony Merry, the British Minister to the United States.

- By the spring of 1805, Burr had resigned the vice presidency. He traveled to Pittsburgh, where he hoped to find General Wilkinson, who by then had become governor of the just-organized Louisiana Territory. Wilkinson wasn't in Pittsburgh, however, so Burr left a letter for him and set off down the Ohio River. Burr traveled in a specially prepared boat, complete with a dining room, kitchen, fireplace, and two bedrooms. He called it his ark.

- In early May, Burr's ark reached Blennerhassett Island, where the island's owner invited him to dinner. The conversation between the two men lasted long into the evening—and forever linked Harman Blennerhassett and his island with the Burr conspiracy.

Thomas Jefferson

- Continuing down the Ohio River, Burr caught up with General Wilkinson at Fort Massac in what would become Illinois. The two discussed strategy for possible military action in Louisiana. Wilkinson provided Burr with a letter of introduction to his friends in New Orleans, Burr's ultimate destination.

- When he arrived in New Orleans, Burr set out to gauge public opinion concerning Mexico. He also spoke with people about business opportunities that a Mexican insurrection might open up. Burr's principal contact in New Orleans was a wealthy merchant and political leader named Daniel Clark. Clark promised $50,000 in support of Burr's projects and agreed to travel to Mexico to gather information on the strength of Spanish fortresses and the attitudes of the people toward Spanish control.

- Burr left New Orleans in July on a four-month tour that included a meeting with General Wilkinson in St. Louis. According to Wilkinson, it was during this meeting that he first began to suspect that Burr had treasonous intentions. Burr's plan, he concluded, was not only to spark an insurrection in Mexico, but also to create a new western empire extending from the Alleghenies to Mexico. Wilkinson later wrote that Burr complained about "the imbecility of the Government" and said that "the people of the western country were ready for revolt."

- In the winter of 1805–1806, Burr met with various disaffected military leaders and urged them to join in his western adventure. In Pennsylvania, hoping to enlist the support of Colonel George Morgan, Burr made the serious mistake of misgauging Morgan's interest in his plans. Morgan found Burr's notion of using military force to carve out a new western nation shocking—so shocking, in fact, that he wrote a letter to President Jefferson summarizing his conversation with Burr. The letter roused Jefferson into action.

- By the end of August, Burr was back on Blennerhassett Island busying himself with final preparations. He contracted to purchase 15 boats capable of carrying 500 men. He ordered huge quantities of pork, corn meal, flour, and whiskey. And he bought a 300,000-acre tract of land on the Washita River, which he planned to use as a recruiting tool. Volunteers for the expedition, Burr promised, would each get a share of his Washita tract.

- In the fall, Burr wrote a letter in cipher to General Wilkinson. "I have at length obtained funds," the coded letter began, "and have actually commenced." Burr revealed that he had secured naval protection from England and was heading west, "never to return." He assured Wilkinson of success: "I guarantee the result with my life and honor, the honor and fortune of hundreds, the best blood of our country. …The gods invite us to glory and fortune."

The Conspiracy Foiled

- An agent was appointed by President Jefferson to investigate the Burr plot. In the Ohio capital of Chillicothe, the agent convinced the governor to seize the boats Burr had ordered for his expedition. The state militia then descended upon Blennerhassett Island on December 10, 1806.

- In Tennessee, Burr learned that his boats had been seized and that Jefferson was onto his plot. Addressing some of his volunteers, Burr said that he had hoped to describe their specific objective, but because of changed circumstances, he would have to postpone doing so. Instead, he said, the flotilla would head down the Mississippi, where Burr expected military backing.

- The military support Burr expected was to come from General Wilkinson. Wilkinson, however, had become Burr's hunter rather than his supporter. After receiving the ciphered letter from Burr advising of his plans, Wilkinson rushed troops into the Mississippi Valley and ordered soldiers in New Orleans to be on alert for an attack from Burr's forces.

- President Jefferson, meanwhile, signed a proclamation stating that "sundry persons … are conspiring … to … set on foot … a military expedition … against the dominions of Spain." Jefferson ordered all officials to assist in "searching out and bringing to … punishment all persons engaged or concerned in such enterprise."

- When Burr learned that Wilkinson had abandoned the conspiracy, he was beside himself. He denounced Wilkinson, complaining that the general's "perfidious conduct" had "completely frustrated" his "projects." Burr also recognized that it was time to begin putting an innocent spin on his actions. He wrote a public letter declaring his intentions to be honorable: "If the alarm which has been excited … should not be appeased by this declaration, I invite my fellow citizens to visit me at this place, and to receive from me, in person, such further explanations as may be necessary to their satisfaction."

- A detachment of 30 men caught up with Burr on the west bank of the Mississippi, across the river from Natchez. Burr was handed a letter from the governor of the Mississippi Territory demanding his surrender.

Arrest and Arraignment

- Two different western grand juries refused to indict Burr. One went so far as to condemn his arrest, saying that it had given cause to "the enemies of our glorious Constitution to rejoice." Burr jumped bail, disguised himself as a boatman, and disappeared into wild pine forests east of the Mississippi.

- Federal marshals finally captured Burr on the Tombigbee River, in present-day Alabama. Burr was then brought to the Republican stronghold of Virginia, where the Jefferson administration knew their best shot at an indictment lay.

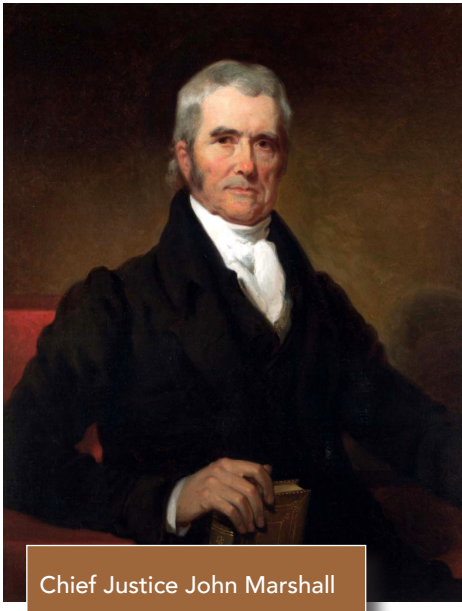
- On March 30, 1807, in a small room in the Eagle Tavern in Richmond, Virginia, Chief Justice John Marshall prepared to hear arguments on whether to commit Burr for trial on a charge of treason. The penalty for treason was death. Representing the United States was District Attorney George Hay, the son-in-law of future president James Monroe. The real force behind the prosecution, however, was President Thomas Jefferson.

- To be charged with treason under the United States Constitution, a defendant must have committed an overt act of war. It was on this issue—whether Burr had committed an overt act—that the prosecution would rise or fall. Could it be proven that Burr took actions that amounted to levying war?

- Chief Justice Marshall was not convinced that there was sufficient evidence of an overt act, and he dismissed the treason charge. Marshall wrote, "War can only be levied by the employment of actual force. … An invisible army is not an instrument of war." Marshall concluded,

however, that there was probable cause to commit Burr for trial for violating the Neutrality Act.

- Marshall's refusal to allow prosecution on the treason charge enraged President Jefferson, who took it as a personal mission to secure Burr's conviction. Jefferson ordered circulars to be distributed asking "every good citizen to step forward, and communicate to the government any information he may possess." He dispatched a deputy marshal to take depositions near Blennerhassett Island. Never before or since has a president of the United States taken such a personal interest in a criminal case.



Chief Justice John Marshall

- Despite Marshall's ruling, Jefferson and the prosecution hoped that a grand jury indictment for treason might put the charge back on the table. The prosecution presented the grand jury with a parade of witnesses against Burr, including Andrew Jackson, whom Burr once counted as a supporter. But the witness everyone was waiting to hear, General James Wilkinson, was still making his way from New Orleans to Virginia, his exact whereabouts unknown.

- On June 15, General Wilkinson, whom the defense described as "the alpha and omega of the present prosecution," finally arrived in Richmond to appear before the grand jury. Wilkinson's dramatic testimony convinced the grand jury to report an indictment against Burr for treason and high misdemeanor. Burr pleaded not guilty.

Trial and Aftermath

- The prosecution's case against Burr opened on August 3, 1807. Burr had certain advantages from the outset, including good legal representation. An accomplished lawyer himself, Burr led his own defense. The case had been assigned to a judge favorable to Burr. Burr also had the constitutional protections afforded to a criminal defendant, including the presumption of innocence and the requirement of guilt beyond a reasonable doubt.

- In his opening statement, District Attorney Hay told the jury that the evidence would show that Burr had a "treasonable design" and that he assembled men for the purpose of furthering his treasonous aim. Hay argued that what happened at Blennerhassett Island amounted to an overt act. "Men were actually enlisted, boats were built on the waters of the Ohio, provisions purchased to an enormous amount, and ammunition provided … as if some hostile expedition were afoot."

- Prosecutors laid out what they saw as Burr's grand scheme of conquest through their first few witnesses. General William Easton testified that Burr revealed to him his plan to create a western empire, with New Orleans as its capital and Burr as "its chief." Prosecutors then turned their attention to what happened on Blennerhassett Island.

- On August 20, Burr interrupted the prosecution's case. He asked the court to halt the testimony, arguing that the evidence "utterly failed to prove any overt act of war had been committed." Moreover, he said, he was shown to have been more than 100 miles away when the alleged overt act took place.

- Eleven days of argument on Burr's motion followed. For the prosecution, William Wirt argued that Burr was to everyone else in the conspiracy "as the sun to the planets that surround it. Did he not bind them in their respective orbits and give them their light, their heat, and their motion?" Wirt described Burr as holding a match, ready to

"produce an explosion to shake the continent." It all was to begin on idyllic Blennerhassett Island.

- Chief Justice Marshall's opinion punched a huge hole in the prosecution's case. Marshall ruled that as a matter of law, Burr could not be found to have committed treason based on the events at Blennerhassett Island. A verdict of guilty, Marshall wrote, would have required an "actual use of force." Moreover, Burr would have to have been "connected to that use of force."

- With those words, the game was effectively won for Burr. John Marshall had demanded that the prosecution show what they could not show. The government had little choice but to rest its case.

- On September 1, 1807, the case went to the jury. Predictably, Burr was acquitted; Marshall's narrow view of what constituted an overt act had left the jury no choice. A few weeks later, the jury found Burr not guilty of violating the Neutrality Act. Burr was a free man—almost. Marshall ordered Burr to appear in Chillicothe, Ohio, to defend himself against another charge of violating the Neutrality Act. Burr posted bail, but skipped town before the trial.

- President Jefferson fumed over Marshall's ruling: "It now appears we have no law but the will of the judge." He considered proposing a constitutional amendment limiting the power of the judiciary. He even considered asking Congress to impeach Marshall.

- Despite his acquittal, Burr was disgraced. He lived another 29 years, but was never again a significant player in American public life. Even today, it is hard to say whether Burr should have been found guilty of treason. As biographer Buckner Melton notes, "Too many people told too many different stories, and too many people had things to hide."

Suggested Reading

Burr, *Reports of the Trials of Colonel Aaron Burr*.

Melton, *Aaron Burr*.

Stewart, *American Emperor*.

Questions to Consider

1. The Constitution spells out the requirements for a treason conviction, requiring testimony from two witnesses to the same overt act of levying war or giving aid to enemies. How did that high prosecution burden save Burr from conviction on the treason charge?
2. It is possible to see Burr's plans as either patriotic or treasonous, depending on whose account you believe and how you weigh the facts. How do you see it?
3. John Marshall and Thomas Jefferson had very different visions of America's future. Can those differences completely account for their hatred of each other?

LECTURE 9

The *Amistad* Trials

The year is 1839. Just off the north coast of Cuba, a schooner called the *Amistad* sails in the early morning darkness. On board are the ship's crew, two Cuban plantation owners, and 53 Africans bound for the slave markets of Havana. Remarkably, a would-be slaved named Cinque manages to free himself and his fellow captives, sparking a mutiny that leaves the ship's captain, three crew members, and one African dead. Six weeks later, the *Amistad* will be seized and brought to Connecticut, where the mutineers will face criminal charges in a controversial trial that will command the attention of presidents, monarchs, ambassadors, and the Supreme Court of the United States.

The Criminal Trial

- The Cuban plantation owners onboard the *Amistad* considered themselves victims of a crime. Three days after the *Amistad*'s discovery, they filed criminal charges of murder and piracy against the Africans.

- A hearing on the criminal charges was held in Connecticut before Judge Andrew Judson. The purpose of the hearing was to determine if there was a basis for going forward with a criminal trial. Three witnesses testified, including the *Amistad*'s first mate and one of the Cuban plantation owners. None of them had sympathy for the Africans. After hearing their testimony, Judge Judson ordered the Africans to stand trial for the crimes of murder and piracy. Until then, they were to be housed in the county jail in New Haven.

- The arrival of the Africans in New Haven sparked excitement. Thousands of curious people visited the jail each day and paid one shilling (about 12 cents) to take a look at them.

- New England abolitionists saw the arrival of the Africans more as an opportunity than a curiosity. Abolitionist leader Lewis Tappan, a key figure in the *Amistad* trial, described the capture of the Africans as "a providential occurrence" that could touch "the heart of the nation through the power of sympathy." Here was a chance to expose the inhumanity of slavery—and abolitionists meant to take advantage of it.

- Tappan and other abolitionists formed a defense committee and hired Roger Baldwin to represent the Africans. Although the Africans understood scarcely a word of English—and Baldwin knew not a word of Mende, the language spoken by many of the slaves—Baldwin was able to communicate with his clients with the help of a Yale professor of linguistics and an African interpreter.

- Through his interpreters, Baldwin learned that the Africans had come from six different tribes and spoke several different languages. They had only been in Cuba a short time before their sale in a Havana slave

market. They, along with more than 300 other Africans, made the two-month Middle Passage to Cuba on a slave ship.

- The fact that the slaves had only recently come from Africa was hugely important to the case. An 1817 treaty between Great Britain and Spain prohibited new African slave traffic, declaring free all Africans newly imported into Spanish ports, including those in Spanish possessions such as Cuba. Only slaves imported before 1817 or born to slaves in Spanish possessions could be bought and sold.

- The documents that were issued in the Havana slave market declared that all the *Amistad* slaves either were born in Cuba or were longtime residents of Cuba. If true, that made them lawful slaves. But the documents were patently fraudulent; the simple fact that the slaves could barely understand a word of Spanish made the fraud plain. Emphasizing the reality of this fraud became the core of Baldwin's defense strategy.

- The Cubans, the Spanish, and the U.S. government took a different position. Their argument, stripped down, was that the judiciary had no business examining the question of fraud. They argued that courts should not look any further than the documents themselves. The documents indicated that each African was a legal slave and listed Spanish names for each of them, and that should be good enough.

- The United States, through its attorneys, argued that the court had to accept the documents at face value as a way of showing respect to a foreign government—or at least as a way of showing respect for the President of the United States, who was concerned about keeping good relations with Spain and other countries.

- In September, the Africans were taken to Hartford, where two federal judges and a grand jury were waiting for them. Lawyers, reporters, and interested visitors filled every hotel room in town. People picnicked in the courthouse yard, and vendors hawked engravings of the *Amistad*.

- Inside the courthouse, the grand jury had the job of considering whether or not to indict the Africans. If they did, a criminal trial would follow. A civil proceeding considering whether the Africans were property proceeded simultaneously in a different room.

- The grand jury found that the killings and the mutiny did not take place within the territorial waters of the United States. The circuit court thus lacked jurisdiction to hear any criminal charges. The crimes, if there were any, were committed against Spanish citizens on a Spanish boat in Spanish waters, and jurisdiction to hear a criminal case could only rest in Spain or her possessions.

The Civil Trial

- Despite ruling that the Africans could not be charged criminally in the United States, the circuit court judge refused to order their immediate release. He was convinced that the district court had the right to keep the Africans in custody until it could decide whether anyone held a property right in them as slaves.

- In the civil trial, committee lawyers argued before Judge Judson that the Africans were no one's property and were therefore entitled to their freedom. In support of this argument, a parade of abolitionist witnesses offered evidence of the Africans' non-Cuban origins. Cinque, testifying through an interpreter, described how he had been kidnapped in Africa five months earlier and manacled hand and foot during the long voyage across the Atlantic.

- Lawyers for the Cubans insisted that the Africans were slaves lawfully purchased in a nation where slaveholding was legal. The Africans, they said, should be returned to the Cubans as property.

- The lawyer for Lieutenant Gedney, the commander of the ship whose crew boarded and seized the *Amistad*, argued that his client was entitled to receive salvage—that is, a percentage of the value of the *Amistad* and its cargo, including the fair market value of the slaves.

- U.S. District Attorney William Holabird contended that the Africans should be placed under the control of President Martin Van Buren. Van Buren, anticipating a favorable ruling, issued a secret and controversial order to the U.S. marshal in Connecticut: The minute the judge announced a decision granting custody to the president, the marshal was to rush the Africans onto a waiting ship called the *Grampus*, which would set sail for Cuba before the Africans' lawyers could file an appeal. Returning the Africans to Cuba was a sacrifice Van Buren was willing to make to maintain good relations with Spain.

- Two days later, Judge Judson announced his decision. He began with the salvage claims, ruling that Lieutenant Gedney had rendered a valuable service in seizing the *Amistad* and preventing the likely loss of its remaining cargo. He awarded the lieutenant one-third of the value of the ship and its nonhuman cargo. The ship and its cargo—subject to the salvage lien—would be restored to the Spanish government.

- But Judson ruled that there could be no salvage right in the Africans. They were no one's property. The Africans "were born free" and by law were still free. They would not be returned to Cuba to stand trial as accused murderers and pirates. They had been kidnapped in violation of international law. They had every right to mutiny and attempt to win back their liberty. The judge ordered that they be transported back to Africa, not Cuba.

The Supreme Court

- The Van Buren administration appealed the ruling all the way to the United States Supreme Court, where five of the nine justices were

slaveholders or former slaveholders. On February 22, 1841, arguments began in the Supreme Court's crowded chamber in the U.S. Capitol.

- Attorney General Henry Gilpin, arguing for the government, told the Court that it should not "go behind" the *Amistad*'s papers and make inquiry as to their accuracy. They should instead accept them on their face in order to show proper respect for another sovereign nation. The Africans, Gilpin argued, should be returned to Cuba.

- Roger Baldwin argued next for the Africans, declaring that the Court could and should look to see if the Cuban paperwork was fraudulent. If the Court finds fraud, Baldwin argued, then treaties should govern. The Africans should be declared free—free to go home to Africa, if they preferred, or to stay in the United States. This was the argument that had persuaded the lower courts. Baldwin hoped it would convince the justices as well.

- The lawyer everyone was waiting to hear was John Quincy Adams, the 74-year-old former president, who had agreed to speak on behalf of the Africans. Justice Joseph Story later called Adams's argument "extraordinary for its power, for its bitter sarcasm, and for its dealing with topics far beyond the record and points of discussion." It was at times eloquent. It was at times a harangue. And at times it resembled a lecture on political science.

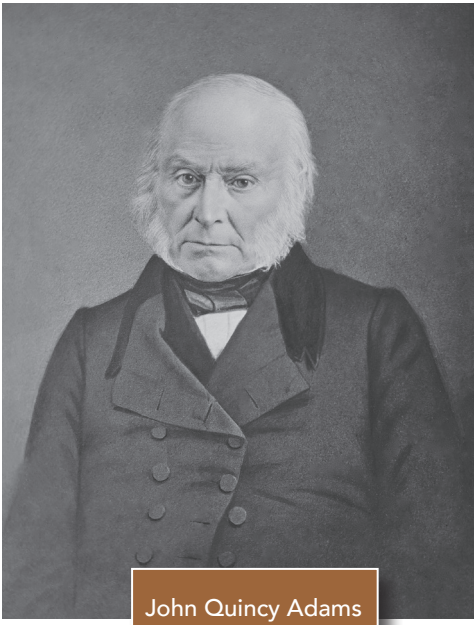
- Two weeks later, the Supreme Court announced its decision. The would-be slaves of the *Amistad* were "kidnapped Africans, who by the laws of Spain itself were entitled to their freedom." They were not criminals. The "ultimate right of human beings in extreme cases is … to apply force against ruinous injustice." The Africans could stay in the United States or they could return to Africa—it was up to them.

- For the most part, abolitionists hoped the Africans would choose to stay in the United States, where they would continue to remind people of the evil of slavery. Lewis Tappan initially moved the Africans to Farmington, Connecticut, where, for the next eight months, they

received six hours of instruction per day and tended a garden of corn, potatoes, beets and onions. They also traveled around New England as a sort of pro-abolition vaudeville team.

- Eventually, however, Tappan knew it was time to send the Africans home. He appealed for clergymen willing to accompany the Africans to their homeland and start a Christian mission there. Two months later, he had several volunteer missionaries and the money necessary to charter and provision a ship. On December 4, 1841, the Africans and missionaries set out from Staten Island on their journey across the Atlantic.

- Except for one justice on the Supreme Court, every judge who considered the *Amistad* case sided with the Africans. Many of these judges were supporters of slavery, but the fate of slavery in the United States was not at stake in this case. The lawyers for the Africans—with the exception of John Quincy Adams—avoided directly attacking the institution of slavery. And in fact, the importation of new slaves into the United States had been illegal for more than three decades when the *Amistad* arrived in Long Island. Justice, natural human sympathies, and the law all pushed in the same direction in the *Amistad* case, and that was enough for the justices.



John Quincy Adams

- Fifteen years after deciding the *Amistad* case, the Supreme Court announced its infamous Dred Scott decision, denying Congress the power to prohibit slavery in the territories and concluding

that slaves and former slaves could not even be "citizens" within the meaning of our Constitution. But the trials and the *Amistad* decision did serve to educate the public. In the end, the *Amistad* case helped turn public opinion, at least in the North, against slavery.

Suggested Reading

Jones, *The Mutiny on the Amistad*.

Owens, *Slave Mutiny*.

Rediker, *The Amistad Rebellion*.

Questions to Consider

1. Should the Africans of the *Amistad* bear any criminal responsibility for the mutiny or killings aboard the schooner?
2. Why was the Van Buren administration so inclined to side with Spain and the argument that the Africans should be returned to Cuba?
3. The Africans of the *Amistad* won a big victory in the Supreme Court. How much does that tell us about the attitudes of the justices toward the larger question of slavery?

LECTURE 10

The Dakota Conflict Trials

In the mid-18th century, the Sioux nation consisted of seven tribes, 25,000 strong, stretching from the Big Woods of Minnesota to the Rocky Mountains. On December 26, 1862, in Mankato, Minnesota, 38 Sioux were hanged, making it the largest mass execution in the history of the United States. This event marked the end of the Dakota Conflict of 1862. It also marked the end of a strange legal process, one unlike any used in the United States before or since.

A Brief History of the Dakota Conflict

- Unsurprisingly, many people have never heard of the Dakota Conflict. The conflict occurred in 1862—a year in which most of the nation had something else on its collective mind. Without the Civil War, the Dakota Conflict might not have happened—or, if it did, it might have ended quickly. The Dakota noted that many white men of fighting age had left nearby settlements to join the Union army. When fighting erupted in southwestern Minnesota, many of the soldiers that could have quickly ended the conflict were mostly off fighting another war.

- Treaties signed by the Dakota in 1851 and 1858 ceded most of present-day southern Minnesota and a small part of South Dakota to the United States. The Dakota, as you might expect, got the raw end of the deal. In exchange for their fertile and wooded land, the Dakota received the promise of annuity payments for 50 years plus reservations on land along the Minnesota River.

- The treaties created resentment in Dakota communities. First and foremost, they had been squeezed into a small fraction of their former lands. The settlers, with their agricultural practices, soon degraded habitats in traditional hunting grounds. In addition, the treaties undermined Dakota culture. Annuity payments reduced the once proud Indians to the status of dependents. They also diminished the power of chieftains, because payments went to individuals rather than through the tribal structure.

- The treaties led to a corrupt system of Indian agents and traders. Licensed traders sold goods to Indians with markups as high as 400 percent. Dakota cheated by traders could do nothing about it. Worse, some Dakota believed rumors that the federal government, facing the huge costs of the Civil War, was flat broke. They worried they wouldn't get their annuity payments at all.

- In August 1862, with annuity payments running late, representatives of the starving Dakota met with traders at an Indian agency along the

Minnesota River. The Dakota representatives pleaded with the traders to distribute provisions in agency warehouses on credit, but the traders resisted.

- On August 17, a keg containing $71,000 in gold coins arrived by stage at nearby Fort Ridgely. Officials planned to distribute the coins to the Dakota the next day. It turned out that they were one day too late.

- The day the coins reached Fort Ridgely, four young Dakota men, hungry and looking for food, were on a hunting excursion near a settler's homestead. The hunt took a sickening turn after the men decided to attack. When it was over, three white men, one white woman, and a 15-year-old white girl lay dead.

- The four men returned to camp that night. Their tale caused feverish debate. The book *Through Dakota Eyes* includes Chief Big Eagle's account of what happened when the men visited the home of Chief Little Crow: "[Little Crow] sat up in bed and listened to their story. He said war was now declared. Blood had been shed, the payment would be stopped, and whites would take dreadful vengeance because women had been killed."

- Big Eagle reported that he and others "talked for peace, but nobody would listen to us, and soon the cry was 'Kill the whites!' … A council was held and war was declared. Parties formed and dashed away in the darkness to kill settlers."

- In the first bloody phase of the conflict, under the loose direction of Little Crow, the Dakota massacred farm families. At Milford, Dakota

warriors killed 53 settlers, including 20 children. Similar indiscriminate killing of whites occurred elsewhere. In all, an estimated 250 whites—the majority of whom were women and children—died in the first three days of fighting.

- By any measure, these killings by Dakota warriors can correctly be called massacres. Nevertheless, what the Dakota did to white Minnesota settlers was no different from what they had often done to their hated enemies, the Ojibwa, who occupied the forested lands to their north and east. When Dakota went to war, they considered anyone on the other side fair game. Some Dakota chose to take women and children captive, rather than killing them, but such decisions turned on the whims of individual warriors.

- The attacks sent panicked settlers fleeing eastward. Whole counties on the frontier depopulated. Whites held on only in the barricaded fortifications of Fort Ridgely and in the town of New Ulm, and both the fort and the town were under siege. The Dakota attack on New Ulm left most of the town's buildings in ashes. Refugees numbering 1,200—mostly women, children, and wounded men—set off for Mankato, 30 miles away.

- Governor Alexander Ramsey appointed Colonel Henry Sibley to lead the state militia into battle. Squads of mounted and armed men streamed toward the scene of the conflict. More tragedy ensued. Dakota warriors attacked a group of volunteers gathering up the bodies of murdered settlers along roadsides and in homes. Twenty men from the burial party died in the attack.

- In the next phase of the conflict, President Lincoln federalized the state militia and put the troops under the command of General John Pope. Pope, fresh from his crushing defeat in the Second Battle of Bull Run, never got closer to the fighting than St. Paul's International Hotel. There he busied himself sending telegrams to Washington. He asked for additional troops and urged the extermination of what he called "wild beasts" and "maniacs" 100 miles to his west.

- Divisions among the Dakota increased, with chiefs in the northern region opposing the fighting. Chiefs Red Iron and Standing Buffalo even threatened to fire upon any of Little Crow's warriors who entered their territory. Most of the 7,000 Dakota in Minnesota opposed the war from the beginning and took no part in it.

- On September 23, the Dakota suffered heavy casualties in the Battle of Wood Lake. Dakota opposed to the war seized control of whites held captive by the warring Indians. The friendlies, as whites called them, released 269 prisoners to the control of Colonel Sibley. Penned in to the north and south, facing severe food shortages and declining morale, most Dakota warriors chose to surrender. The six-week conflict was over, having cost the lives of between 450 and 800 whites and an undetermined number of Dakota.

The Trials

- After the conflict was over, there was debate about what to do with the Dakota prisoners. Most settlers and soldiers urged annihilation. Colonel Sibley, however, had another idea. On September 28, 1862, he appointed a five-member military commission to "try summarily" Dakota and mixed-bloods for "murder and other outrages." Whether Sibley had authority to appoint such a commission is questionable, but he seems to have acted with good intentions. Without quick trials by a commission, the prisoners would almost certainly have been victims of vigilante justice.

- To understand the final outcome of the trials, we need to distinguish between two types of violence. Some Dakota participated in massacres (and, in some instances, rapes). Other Dakota participated only in battles, such as the siege of Fort Ridgely or the two assaults on New Ulm. Generally, we do not think of warriors or soldiers who participate only in battlefield actions as murderers. The indiscriminate killing of civilians, however, is considered a war crime and is punishable under the law.

- The trials—392 in all—came in three batches. In the first batch of 29 trials, most prisoners received death sentences, but six received acquittals. The commission was not simply a conviction mill; it insisted on at least some credible evidence of guilt before convicting. Nevertheless, the bar for conviction was low. The last batch of 253 trials took place over 10 days, which amounts to more than 25 trials per day. Soldiers escorted the defendants into court in manacled pairs, eight at a time.

- The trials moved so quickly because, for the commission, mere participation in a battle justified a death sentence. In approximately two-thirds of the cases, prisoners admitted firing shots, most likely not understanding that their admissions could cost them their lives. In all such cases, the commission proceeded to a guilty verdict in a matter of minutes.

- In the end, the commission sentenced 303 defendants "to be hanged by the neck until dead." Twenty defendants received prison terms of one to five years. The remainder were found not guilty.

Were the Trials Fair?

- The trials following the Dakota Conflict were one of a kind. The usual protections of criminal procedure that defendants in civilian courts enjoy did not apply here. The Dakota had no defense lawyers, no one in their corner who could cross-examine prosecution witnesses, and no one to track down alibi witnesses. The commission could convict defendants even when a member or two entertained reasonable doubts. Convictions sometimes turned on the testimony of a single witness—a witness who might not even have been present when the alleged crime occurred.

- The commission, moreover, was not the most impartial of juries. The military members of the commission might have been men of integrity, but they were still military men. Some of the defendants had recently attacked troops under their supervision—troops whose lives they had sought to protect.

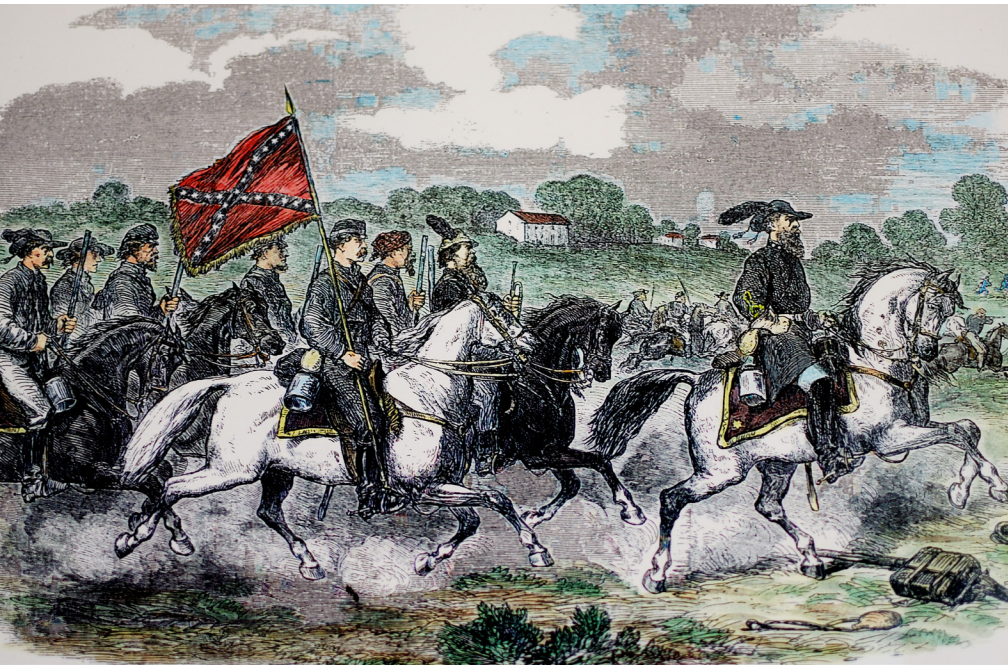
- It is also questionable whether the commission should have treated the defendants as common criminals. Numerous historians have argued that military officials should have instead treated the Dakota as the legitimate belligerents of a sovereign power. Of course, only a minority of Dakota fought in the conflict, and some of what the belligerent Dakota did was a far cry from normal warfare.

- The defendants were not the only people for whom the trials were unfair. These were homicide trials without sheriffs, detectives, or coroners. Trials in which witnesses rarely mentioned the names, ages and apparent causes of death of victims. One could argue that the Dakota trials were unfair to the victims, who were not identified and were not even enumerated.

Lincoln's Decision and the Execution

- When the trial record arrived, General Pope wasted no time approving all sentences. Ultimately, the decision as to which of the condemned prisoners would live and which would die rested with one man: Abraham Lincoln, the President of the United States. General Pope told anyone who would listen that he was sure the president would swiftly approve all sentences.

- Lincoln, however, had other ideas. The president sent a telegram to General Pope asking that he "forward as soon as possible the full and complete record of their convictions." As the Civil War raged, Lincoln pondered the fate of the 303 Dakota.



- Aware of rumors that many of the convicted men had raped white women, Lincoln ordered two White House lawyers, George Whiting and Francis Ruggles, to make "a careful examination" of the transcripts and identify those "proved guilty of violating females." The aides found exactly two convicted rapists among the 303 condemned defendants.

- Knowing that a decision to permit the execution of only two men would almost certainly lead to a mass lynching of the prisoners, Lincoln gave his lawyers a second order. This time, Lincoln said, screen for those "convicted of rape or murder"—as distinguished from those convicted only for participation in battles. This second review produced 40 names. Two men were later reprieved, and the number of men condemned fell to 38.

- On a sunny December morning in Mankato, the 38 condemned were hanged in front of an estimated 5,000 spectators. Chief Little Crow was not among those executed, having fled to present-day North Dakota. The following year, however, Little Crow returned to Minnesota and was killed by a settler.

- The execution marked the end of a chapter, not the end of the story. In April of 1863, Congress enacted a law providing for the forcible removal of all Sioux from Minnesota. A military expedition took fighting into the Dakota Territory. It wasn't until 1890, at Wounded Knee, South Dakota, that a generation of warfare finally came to an end.

Suggested Reading

Anderson and Woolworth, *Through Dakota Eyes*.

Carley, *The Sioux Uprising of 1862*.

Folwell, *A History of Minnesota*.

Questions to Consider

1. The Dakota Conflict trials were speedy affairs, without the usual protections afforded in criminal trials, with a jury of military officers. Was there a better way to handle these prosecutions?
2. Should the Dakota warriors who participated in battles have faced trial at all? Would it have been better to consider them enemy combatants and release them after the hostilities ended?
3. What does President Lincoln's decision to overrule over 260 death sentences imposed by the military commission say about his character?

LECTURE 11

The Lincoln Assassination Conspiracy Trial

It's April 14, 1865. At Ford's Theatre in Washington DC, President Abraham Lincoln and his wife are taking in a performance of *Our American Cousin*. At 10:15 pm, John Wilkes Booth enters the presidential box and fires a bullet into Lincoln's brain. His task accomplished, Booth leaps from the mezzanine, lands on the stage, and rushes toward the theater's back door. Stagehand Edman Spangler opens the door for the Booth, who mounts a waiting horse and disappears into the darkness.

The Conspirators

- Most students of American history are familiar with the assassination of President Lincoln by John Wilkes Booth. What many people do not know is that Booth wasn't the only one with assassination on his mind that evening. The same night, a man named Lewis Powell entered the home of Secretary of State William Seward and stabbed the secretary several times. A fellow conspirator, David Herold, had already fled the scene.

- Another conspirator, George Atzerodt, was assigned the task of assassinating Vice President Andrew Johnson. Atzerodt rented a room at the Kirkwood House, where the Vice President was staying, and asked a desk clerk about Johnson's whereabouts. In his possession were a loaded revolver, a bowie knife, and three handkerchiefs. To Booth's dismay, however, Atzerodt couldn't bring himself to do the job.

- Conspirator Michael O'Loughlen was also a disappointment to Booth. O'Loughlen's mission, government prosecutors later alleged, was to assassinate General Ulysses Grant. But the evidence suggests at most that O'Loughlen had scouted out the home of Secretary of War Edwin Stanton.

- Mary Surratt, the owner of a boarding house in Washington, was also busy on April 14. In a buggy rented for her by Booth, Surratt traveled to a Maryland tavern to deliver a package for Booth to retrieve after shooting the president.

- At midnight, John Wilkes Booth and David Herold arrived at the tavern visited hours before by Mary Surratt. They then head toward the farm of Dr. Samuel Mudd. At some point during the night—whether in leaping from Lincoln's box or in a fall from his horse—Booth fractured his leg. Mudd treats the leg and constructs for Booth a pair of crude crutches.

Investigation and Arrests

- Hours after the president was shot, investigators began to focus on Mary Surratt's boarding house, where Booth was known to have stayed during his visits to Washington. The investigators roused Surratt from her bed around 4:00 am on April 15 and questioned her regarding Booth's whereabouts. After the investigators left, Surratt reportedly said to her daughter, "Anna, come what will, I am resigned. I think J. Wilkes Booth was only an instrument in the hands of the Almighty to punish this proud and licentious people."

- Two days later, a team of investigators returned to the Surratt home around 11:00 pm. While they interviewed Mary Surratt, a man knocked at the door. It was Lewis Powell, the man who had assaulted Secretary of State Seward with a knife. Powell was carrying a pick-axe. Asked by investigators what he was doing there, Powell claimed that he had been hired to dig a gutter.

- Mary Surratt refused to back up Powell's story. She told investigators, "Before God, sir, I do not know this man, and have never seen him, and I did not hire him to dig a gutter for me." While in the Surratt home, investigators uncovered various pieces of incriminating evidence. They found, for example, a picture of John Wilkes Booth hidden behind another picture on a mantelpiece.

- Surratt and Powell were taken into custody. William Bell, a servant of Secretary's Seward, identified Powell as the man who had stabbed the secretary. The same day, stagehand Edman Spangler was arrested following reports to investigators that Spangler had aided Booth's escape from Ford's Theatre.

- Samuel Arnold was arrested in Virginia after he was determined to have been the author of an incriminating letter found inside a trunk in Booth's hotel room. In his letter to Booth, Arnold wrote, "You know full well that the [government] suspicions something is going on there; therefore the undertaking is becoming more complicated."

Ford's Theatre

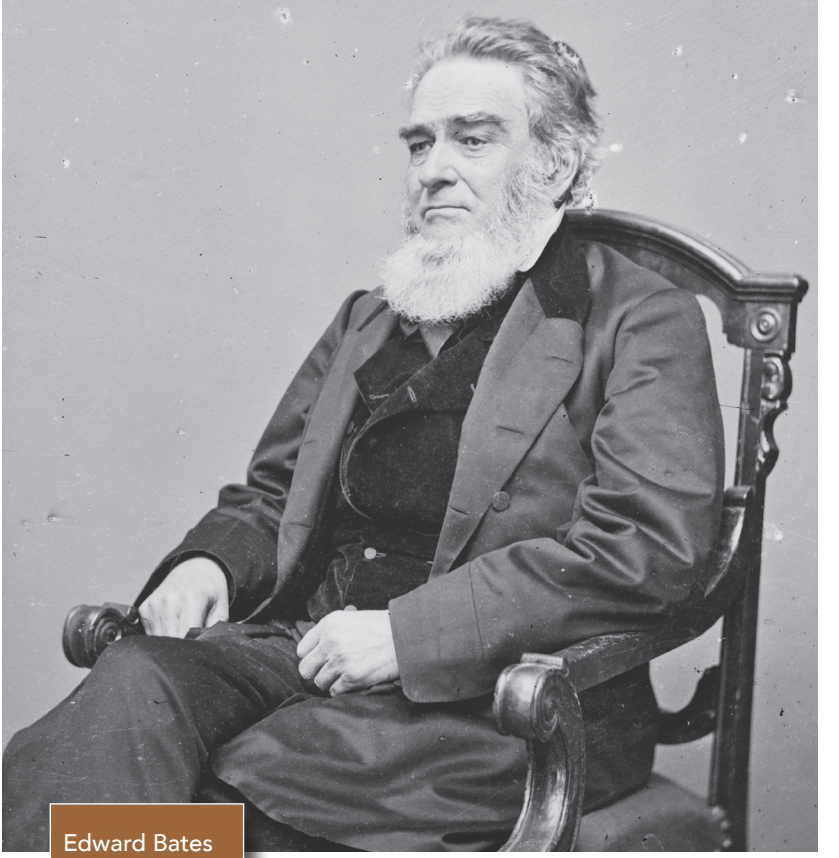
- In custody, Arnold identified seven individuals he met the previous month when the plan was to kidnap the president, not to kill him. This original plan, likely backed by the Confederate government in Richmond, was to kidnap Lincoln and take him behind Confederate lines to Richmond. The idea was to release Lincoln only when the Union agreed to release captured Confederate soldiers. The plan fell through, however, when Lincoln changed plans on the day the plot was to be executed. Arnold's tip led to the arrest of O'Laughlen and Atzerodt.

- When first interviewed by investigators, Dr. Samuel Mudd said that the man whose leg he had fixed "was a stranger to him." When a search of Mudd's home revealed a riding boot with Booth's name on it, the doctor claimed not to have noticed the writing. He also claimed not to recognize a photo of Booth. But investigators knew from talking to Mudd's neighbors that Mudd and Booth had been seen together the previous November, and they arrested Mudd.

- On April 26, 12 days after the assassination, investigators closed in on their main prey. Booth and Herold were hiding in a barn in Virginia. The suspects were told that the barn would be set on fire if they didn't come out. Booth tried to bargain, but failed. Pine boughs were placed against the barn. David Herold stepped out of the barn and was apprehended. With the fire raging around him, Booth appeared at the door of the barn carrying a carbine. A shot rang out, and Booth fell. He died two hours later.

The Military Commission

- Secretary of War Edwin Stanton favored a quick military trial for the eight alleged conspirators. Edward Bates, Lincoln's former Attorney General, disagreed. He favored trial in a civilian court. Bates argued that the use of a military trial would be unconstitutional. Bates said, "If the offenders are done to death by that tribunal, however truly guilty, they will pass for martyrs with half the world."



Edward Bates

- President Johnson asked his own Attorney General, James Speed, to prepare an opinion on the legality of a military trial. Speed concluded that use of a military court was lawful and proper. He reasoned that the attack on the commander in chief came before the full cessation of the Confederate rebellion and that the assassination should therefore be considered a war crime. As an act of war, Speed said, the conspiracy should be tried before the Department of War. Johnson agreed.

- Testimony before a nine-person military commission began on May 12, just three days after the prisoners were first informed of the charges against them and asked if they would like to have legal counsel. Apart

from the distressingly short time to prepare for trial, the defendants had other things stacked against them. Under the rules of the commission, they could be convicted by a simple majority vote, and a two-thirds majority could impose the death sentence. And while their lawyers could call witnesses on their behalf, the defendants themselves were not allowed to testify.

- The trial took seven weeks, during which time the commission heard from 371 witnesses. Over the course of it all, spectators lucky enough to get admission passes moved freely in and out of the courtroom—a surprisingly nonchalant atmosphere for such an important trial.

Prosecution and Defense

- The prosecution presented evidence of not just one plot against Lincoln and other leaders, but two. The first plot was the abandoned plot to kidnap Lincoln. By April of 1865, the prosecution alleged, Booth had given up on kidnapping Lincoln and had begun planning to kill him.

- The primary argument of defendants Arnold and O'Laughlen was that while they were on board for a while with the kidnapping plot, they did nothing to further the assassination plot. The problem with this argument was that the military tribunal did not look kindly on people who had supported—even for a while—a plot to kidnap the president. In addition, a prosecution witness placed O'Laughlen at Secretary Stanton's home the night before the assassination.

- The eight defendants played different roles in the assassination conspiracy, and the evidence of guilt was different for each of them. The guilt of Lewis Powell, David Herold, and George Atzerodt was clear almost beyond question. There was no conceivable way any of the three could be acquitted. The death sentence was a foregone conclusion.

- Ford's Theatre stagehand Edman Spangler played only a bit part in the plot. Unfortunately for him, the prosecutors had several witnesses who

made his willing participation seem likely. Spangler's defense attorney, Thomas Ewing, argued that while the prosecution evidence might suggest that Spangler agreed to assist Booth, it failed to prove that Spangler was aware of Booth's guilty purposes.

- The case against Dr. Samuel Mudd was circumstantial and highly controversial. The prosecution showed through the testimony of several witnesses that Mudd and Booth enjoyed a much closer relationship than the doctor would admit. Then, of course, there were Mudd's denials and lies to investigators. And three witnesses, including two of Mudd's own slaves, testified that Mudd was a hard-core racist who wished the president dead.

- Defense attorney Thomas Ewing argued that Mudd had only one prior encounter with Booth, and that all other alleged meetings were fabrications of prosecution witnesses. Ewing contended that it was no crime to fix a broken leg, even if it was the leg of a presidential assassin. The prosecution, Ewing argued, had failed to prove that Mudd actually furthered the conspiracy in any way. Prosecutors responded by noting that Mudd had pointed out to Herold and Booth the route they should take upon leaving his farm. That, said prosecutors, furthered the conspiracy.

- No defendant's case was more contested and debated than that of Mary Surratt. President Johnson called her the keeper of "the nest that hatched the egg." Without question, Booth and other conspirators had been frequent visitors at Surratt's boarding house. But evidence of association with conspirators is not by itself enough to sustain a conviction. Prosecutors needed to show that Surratt took specific actions that furthered the conspiracy. It is clear that she lied to investigators, but lying is not enough for a conviction.

- The most incriminating evidence against Surratt came from two witnesses, Louis Weichmann and John Lloyd. Weichmann, a boarder in Surratt's home, described a buggy trip with Surratt on the afternoon of the assassination to Surratt's tavern in Maryland. The tavern was part of a farmhouse where Mary had previously lived with her husband John.

John died in 1862, and Mary rented out the tavern when she opened her boarding house in 1864.

- The most damning evidence against Surratt came from John Lloyd himself. He testified that Herold, Atzerodt, and Mary's son, John Surratt, Jr., had dropped off two carbines and ammunition at his tavern weeks before the assassination. Lloyd testified that three days before the assassination, Mary Surratt told him that "the shooting irons" left by the men would be needed soon. On the day of the assassination, Surratt again brought up the subject, according to Lloyd:

  > When I got home … I found Mrs. Surratt there. … She told me to have those shooting-irons ready that night. There would be some parties who would call for them. She gave me something wrapped in a piece of paper, which I took upstairs, and found to be a field-glass. She told me to get two bottles of whisky ready, and that these things were to be called for that night.

- Surratt's attorney, Frederick Aiken, argued that Lloyd's evidence should be disbelieved because Lloyd admitted to drinking heavily on the afternoon of the assassination. Moreover, said Aiken, Lloyd was motivated to "exculpate himself by placing blame" on Mary Surratt. Finally, Aiken argued, there was no direct evidence that Surratt knew that Booth planned to assassinate the president. Aiken suggested that Surratt may have unintentionally aided Booth's escape, but that nothing she did showed an intent to further a murder.

Sentences and Executions

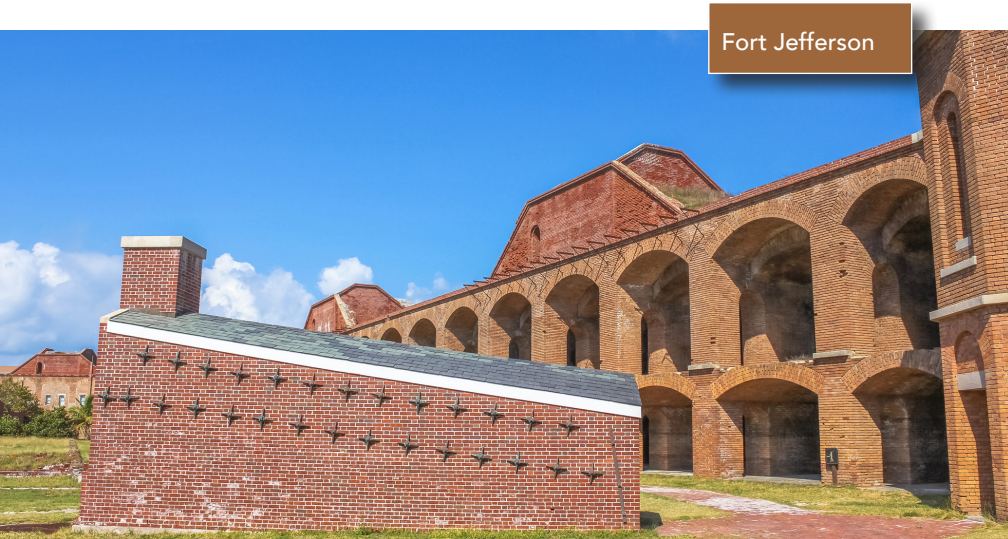
- After a day of deliberations, the commission reached its verdict. Seven of the prisoners were found guilty of at least one of the conspiracy charges. Ned Spangler was guilty only of aiding and abetting Booth's escape. He was sentenced to six years in prison. Arnold, Mudd, and O'Laughlen were sentenced to "hard labor for life." Powell, Atzerodt, Herold, and Surratt were sentenced "to be hanged by the neck until dead."

- The commission sent its recommendations to President Johnson for his review. Five of the nine commission members recommended that the president reduce Mary Surratt's punishment to life in prison because of "her sex and age." Johnson approved all of the sentences, including the death sentence for Surratt. On July 6, the four condemned prisoners were told they would hang the next day.

- Surratt's lawyers mounted a frantic effort to save their client's life. They hurriedly prepared a petition for habeas corpus arguing that the tribunal that tried Surratt was unconstitutional. The morning of the scheduled execution, Surratt's attorneys succeeded in convincing a federal district court judge to issue the requested writ. But the victory was short-lived. President Johnson quashed the effort to save Surratt, issuing an executive order suspending the writ of habeas corpus "in cases such as this."

- At 1:30 pm on July 7, the condemned prisoners were executed. Mary Surratt, whom no one had expected to be among the condemned, became the first woman ever executed by the United States.

- The surviving prisoners were taken to a prison at Fort Jefferson, in Florida's Dry Tortugas. Two years later, a yellow fever epidemic swept the prison and claimed the life of O'Laughlen. On March 1, 1869, the last full day of President Johnson's term, Mudd, Arnold, and Spangler received pardons.



Fort Jefferson

Suggested Reading

Chamlee, *Lincoln's Assassins*.

Kauffman, *American Brutus*.

Steers, *Blood on the Moon*.

Tidwell, *Come Retribution*.

Questions to Consider

1. Why did the United States choose to try the eight alleged conspirators before a military tribunal rather than in civilian courts?
2. Two of the eight defendants seem to have supported the initial plan to kidnap President Lincoln, but played no significant role in the April 14 conspiracy. Was it fair to try these two defendants together with other defendants for whom there was far more evidence of guilt?
3. How fair can one expect decisions to be when a case involving a Confederate conspiracy is tried before Union officers?

LECTURE 12

The Trial of Louis Riel

In the 1800s, Louis Riel became the charismatic leader of the Metis, the mixed-race descendants of unions between Europeans and Cree, Ojibwa, and other indigenous peoples. In the 1885 North-West Rebellion, Riel led Metis settlers along the South Saskatchewan River in an uprising against Canadian forces. The rebellion was quickly put down, but the conflict—and subsequent trial of Riel—revealed tensions that distinguish Canada to this day.

Louis Riel

- Riel was born in 1844 into a devout Catholic family in St. Boniface, a settlement on the Red River, in present-day Winnipeg. Although of seven-eighths white ancestry—his father was of Franco-Ojibwa descent and his mother was white—Riel considered himself a Metis. He left home at age 14 to travel to Montreal and study for the priesthood. A serious and gifted student, Riel struck his masters as deeply faithful and scholarly, but somber and a bit odd.

- Ten years later, when his widowed mother begged him to return home, Riel left Montreal. On his way back, Riel stayed for several months in St. Paul, where he heard stories from Metis traders of growing unrest in the settlements north of the border, along the Red River.

- At the time, the Hudson's Bay Company was preparing to sell a massive swath of its land to Canada, a swath that included present-day Manitoba and Saskatchewan. When a Canadian survey team arrived, local residents grew concerned about what the land transfer might mean for their independent lifestyle.

- Riel, now back at his mother's small cottage, took up the Metis cause and persuaded the surveyors to abandon their mission. He then rallied both French-speaking and English-speaking Metis, stressing their common grievances with the Canadian government, and urged the creation of a local army.

- Riel's ragtag army soon seized a fort on the Red River owned by the Hudson's Bay Company. The fort, named Fort Garry, fell without bloodshed. Next, Riel formed a provisional government with himself as the president. His efforts found support among the Metis in the region, but many white Canadians were outraged.

- A group of whites began plotting to retake Fort Garry, but were arrested by Riel's government before they could put their plan into action. One of those arrested was Thomas Scott, a hotheaded migrant from Ontario

and an unrepentant racist. After his arrest, Scott taunted his captors so relentlessly that the decision was made—and approved by Riel—to court-martial Scott. He was convicted and executed by firing squad.

- Scott's killing became the central and defining event of the Metis resistance along the Red River. All hope of compromise went out the window, and the Canadian prime minister sent forces west to regain control of the region.

- Riel's provisional army proved no match for the Canadian troops, and Riel fled just hours before the troops reached Fort Garry. In June of 1870, an agreement was reached. Under the agreement, a new province to be called Manitoba would be established and would have substantial local autonomy. The agreement guaranteed settlers the right to retain their land, and it set aside an additional 1.4 million acres within the province for future Metis possession. Notably, however, the agreement did not include amnesty for Riel.

- In 1873, despite an outstanding warrant for his arrest, Riel won election to the Parliament of Canada. When he showed up in Ottawa to claim his seat, his fellow members voted immediately to expel him. In 1874, while in hiding in Montreal, Riel again won the Manitoba seat in Parliament. After another expulsion, the voters of Manitoba elected Riel to Parliament a third time.

- Tired of dealing with the sticky political mess caused by Riel's popularity in Manitoba, legislators voted in 1875 to grant amnesty for all participants in the uprising. In Riel's case, however, the amnesty came with a condition: Riel had to agree to a five-year banishment from Canada.

Prophet of the New World

- Riel's banishment led to a turning point in his life. Shortly after visiting with President Grant in Washington DC, Riel experienced a vision. In

it, God anointed him as his "prophet of the new world." No longer did Riel see himself as an exiled and failed political leader. He was now the voice for a people favored by God, the Metis.

- Riel's vision raised questions about his mental health, and so did many of his actions. He told people that he was the biblical King David. He developed a propensity for ripping his clothes off. To those who asked about his nudism, Riel told them the body was beautiful, citing Adam's and Eve's nudity in the Garden of Eden. Friends observed Riel

King David

crying and shouting in public. He gave $1,000 to a blind beggar. He interrupted a mass to contradict a priest.

- Just one year into his five-year banishment, concerned friends secretly took Riel to Quebec, where his uncle placed him in a mental institution under an assumed name. His mental condition continued to deteriorate.

- Manitoba, meanwhile, was undergoing a rapid evolution. The province was becoming more English and less French. It was becoming increasingly dependent on rail and steamboats. And its hunting and fur-trading economy was giving way to farming. Metis intent upon preserving their traditional lifestyle looked west to Saskatchewan, and several thousand Metis migrated to lands along the Saskatchewan River.

- Eventually, Riel's health improved enough to allow his discharge from the asylum. After traveling throughout Manitoba and the northern United States, Riel settled in Montana in late 1879. By the spring of 1883, he was married with two children and had become an American citizen.

- Back in Saskatchewan, things were not going well for the Metis. Canadian government surveyors were redrawing plots on land the Metis had settled. In the summer of 1884, the Metis sent a delegation to Montana to convince Riel to return to Canada and take up their cause once more.

- Riel accepted the call, packed up, and headed north to the small river town of Batoche. There he busied himself drafting a petition of grievances for both white and Metis residents. He sent the petition to Ottawa, but the government made only minor concessions that did nothing to reduce the agitation. By March of 1885, Riel was convinced that the time had again come to take up arms against the Canadian government.

- Violence soon erupted in what would later be called the North-West Rebellion. When word of the rebellion reached Ottawa, the Canadian prime minister sent 2,000 troops west over the incomplete rail lines of

the Canadian Pacific. The troops traveled by foot and sleigh from one segment of the railroad to another.

- The climactic battle between the badly outnumbered rebels and Canadian troops occurred on May 9 near the rebel-held town of Batoche. Knowing the rebels were pinned down and low on ammunition, Major-General Frederick Middleton was content to let the fighting drag on for several days. When it became apparent that the rebels' ammunition was nearly gone, Middleton's troops charged.

- Many rebels, including Riel, fled into the woods north of Batoche. Three days later, however, Riel came to understand that his cause was hopeless. Believing that a public trial might draw attention to the struggle of the Metis people, he surrendered. In the eight weeks before his trial, Riel occupied himself by writing religious poetry, letters to relatives and friends, and notes about his religious and political movement.

The Trial

- Riel was charged with "wickedly, maliciously, and traitorously" making "war against our lady the Queen" and "maliciously and traitorously" attempting "by force and arms [to] subvert and destroy the constitution and government of this realm." He pleaded not guilty.

- Impressive teams of lawyers were assembled for both sides. A 60-year-old Toronto barrister named Christopher Robinson led the prosecution for the Crown. The defense was led by a 35-year-old Quebec criminal attorney, Francois-Xavier Lemieux, who later became chief justice of Quebec. Ably assisting Lemieux was Charles Fitzpatrick, who later in his career served as chief justice of Canada.

- Given their client's central role in the rebellion, defense lawyers had little choice but to argue that Riel was not guilty by reason of insanity. There was plenty of evidence showing Riel to be a psychologically troubled megalomaniac, but the defense also needed to prove that Riel's

condition was such that he could not appreciate the wrongfulness of his illegal conduct.

- On July 28, 1885, the trial opened in a makeshift courtroom created in the rented offices of a Regina land company. The prosecution put on the stand a series of government witnesses who described the leading role Riel had played in the rebellion. The defense did little to try contradict this testimony. Instead, defense lawyers limited cross-examination to questions designed to elicit admissions that Riel was behaving strangely.

- The prosecution's star witness was Charles Nolin, cousin of Riel and formerly one of his closest associates. Nolin testified that Riel hoped to sow the seeds that would eventually break Canada into a number of separate countries, each governed by a distinct ethnic group. During Nolin's testimony, Riel became agitated and leaped to his feet, demanding the opportunity to cross-examine Nolin himself.

- Riel's attorney, Charles Fitzpatrick, begged the court not to allow Riel to question the witness. Fitzpatrick feared that a skillful cross-examination by his client would undermine the insanity defense. An argument between Riel and Fitzpatrick ended only when the judge explained to Riel that asserting his right to cross-examine could mean the effective loss of his lawyers' services for all aspects of the case.

- For the defense, Father Alexis Andre and Father Vital Fourmond testified about Riel's peculiar visions and religious beliefs. Both men told the jury that they thought Riel was mad. Questions to the priests concerning the reasons for Metis dissatisfaction with Ottawa were met with objections from the government. The government successfully argued that Metis complaints, however justified, could not excuse armed action.

- The defense ended its case by calling two expert medical witnesses. One was Dr. Francois Roy, superintendent of the asylum where Riel had spent nearly two years as an inmate. Roy testified that Riel suffered from megalomania and was clearly of unsound mind. The second medical witness was Dr. Daniel Clarke, superintendent of a respected asylum

and future president of the American Psychiatric Association. Dr. Clarke told the jury that he believed Riel had been insane ever since 1865, when he wrote a letter suggesting that he was not really Louis Riel, but a Jew.

- Testimony ended with the calling of rebuttal witnesses by the prosecution, each of whom recounted conversations with Riel that convinced them that he was not insane. The prosecution and defense then delivered a series of eloquent closing arguments.

- The jury of six men deliberated Riel's fate for one hour before filing back into the courtroom. The foreman, Francis Cosgrove, was crying when he announced the verdict: "Guilty," Cosgrove said. He then added, "Your Honor, I have been asked by my brother jurors to recommend the prisoner to the mercy of the Crown."

- The judge, however, was not in a merciful mood. He declared that Riel had "let loose the floodgates of rapine and bloodshed." He found "no excuse whatever" for Riel's treason and sentenced him to "be hanged by the neck 'til you are dead." Defense lawyers appealed the case to the Manitoba Court of Queen's Bench, but the appeal was unanimously rejected on every ground.

- The execution of Louis Riel elevated him to the status of martyr in much of Quebec. Mass rallies took place in Montreal. Throughout the province, people hung black drapes and displayed other signs of mourning.

- Riel's execution was also a turning point in Canadian politics. Opposition to the execution helped break the Conservative hold on French Canada. Riel's concerns and his passions helped define the course of Canadian history.

- After his death, Riel remained a large figure in the Canadian imagination. For many decades, French Canadians largely saw him as a hero; English Canadians saw him as a villain. Over time, Riel's actual role in history gave way to a symbolic role that continues to this day. As Canadian

historian Shannon Bower notes, various groups in Canada now "seek to animate their struggles through the transcendent spirit of Louis Riel."

Suggested Reading

Brown, *Louis Riel*.

Flanagan, *Louis 'David' Riel*.

Howard, *Strange Empire*.

Questions to Consider

1. Is Louis Riel better viewed as a traitor or a freedom fighter?
2. Riel suffered from delusions and had serious psychological problems. Should the evidence of his insanity have been sufficient to justify an acquittal?
3. How did Riel's actions and passions help define the course of Canadian history and politics?

LECTURE 13

The Three Trials of Oscar Wilde

The year is 1891, and Oscar Wilde is at the height of his talents. Searching for "a new sensation," the 38-year-old Irish author spends his evenings chasing after men half his age. Ironically, it is a more respectable relationship—one with 22-year-old poet Lord Alfred Douglas—that will bring Wilde's illicit encounters to light in a series of trials that will captivate England and much of the literary world.

Douglas and Wilde

- Wilde's relationship with Douglas first caused him problems when Douglas gave an old suit to a down-and-out friend named Alfred Wood. Wood discovered in a pocket of the suit letters written by Wilde to Douglas—letters than could fairly be described as love letters. Wood extorted 35 pounds from Wilde for return of most of the compromising letters. Two other blackmailers were paid smaller amounts of money to return the remaining letters.

- Wilde's bigger problem was Alfred Douglas's father, John Douglas, Marquess of Queensberry. Queensberry was an arrogant, ill-tempered, eccentric, and perhaps even mentally unbalanced Scottish nobleman. His major claim to fame was his development and promotion of rules for amateur boxing called the Queensberry rules.

- Queensberry was suspicious and concerned about his son's relationship with Wilde. He became convinced that Wilde was a homosexual and demanded that his son stop seeing him. Said Queensberry in a letter to his son: "Your intimacy with this man Wilde must either cease or I will disown you and stop all money supplies. I am not going to try and analyze this intimacy, and I make no charge; but to my mind to pose as a thing is as bad as to be it." Douglas offered a tart reply to his father in a telegram: "What a funny little man you are."

- Queensberry took increasingly desperate measures to end the relationship. He threatened restaurant and hotel managers with beatings if they allowed Wilde and his son together on their premises. In June of 1894, he showed up without warning at Wilde's house in Chelsea, bringing a prizefighter with him. After an intense argument, Wilde ordered Queensberry to leave his house and never come back. Wilde quipped, "I do not know what the Queensberry rules are, but the Oscar Wilde rule is to shoot on sight."

- On February 14, 1895, Wilde's new play, *The Importance of Being Earnest*, opened at the St. James Theatre in London. Wilde learned

through the grapevine that Queensberry intended to disrupt the performance and harangue the audience about Wilde's decadent lifestyle. To thwart the plan, Wilde arranged to have the theater surrounded by police. Blocked from entering the theater, a frustrated Queensberry prowled about outside for three hours.

- Four days later, Queensberry paid a visit to the Albemarle Club, where both Wilde and his wife were members. He left a card with a porter, instructing him to give it to Wilde when he arrived. On the card, Queensberry had written the following: "To Oscar Wilde posing as a sodomite."

- When Wilde showed up at the club two weeks later, the porter handed him the card with Queensberry's offensive message. That night, Wilde scribbled a note to Douglas, asking that he come see him. "I don't see anything now but a criminal prosecution," Wilde wrote. "My whole life seems ruined by this man."

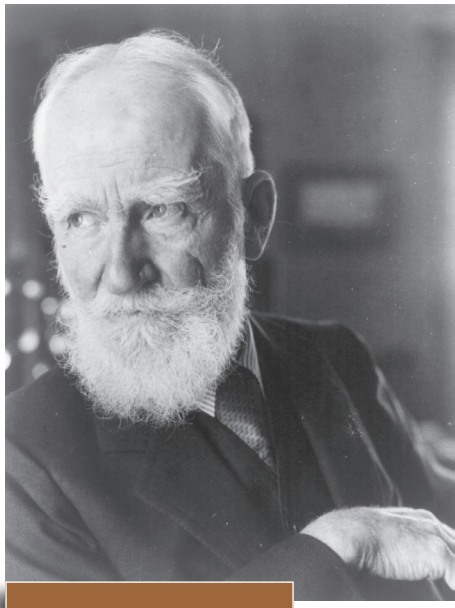
- The next day, Wilde and Douglas visited a solicitor, Travers Humphreys, to discuss the possibility of a prosecution for libel against Queensberry. Humphreys asked Wilde directly whether there was any truth to Queensberry's allegation that he was a sodomite. Wilde lied, claiming that the allegation was false.

- After Wilde's assurance that Queensberry's charge was baseless, Humphreys applied for a warrant for Queensberry's arrest. Police arrested Queensberry, and he was charged with criminal libel.

- Travers Humphreys asked Edward Clarke, a towering figure in the London bar, to prosecute Wilde's case. Before accepting the case, Clarke said to Wilde, "I can only accept this brief, Mr. Wilde, if you assure me on your honor as an English gentleman that there is not and never has been any foundation for the charges that are made against you." Wilde lied again, answering that the charges were "absolutely false and groundless."

Oscar Wilde

- A week before the trial, several close friends of Wilde advised him to drop his libel suit. George Bernard Shaw and Frank Harris, two well-known friends from the literary world, pleaded with Wilde over lunch. They suggested that he flee England and continue his writing abroad. Wilde rejected the idea and left the restaurant. His friends remained at the table, likely stunned by Wilde's poor judgment.



George Bernard Shaw

Queensberry on Trial

- In April 1895, the prosecution of Queensberry began. Sir Edward Clarke delivered the prosecution's opening statement. Attempting to take some of the sting out of a key piece of evidence Queensberry planned to introduce, Clarke read one of Wilde's letters to Douglas. Clarke admitted that the letter "might appear extravagant to those in the habit of writing commercial correspondence," but reminded the jury that Wilde was a poet. The letter, Clarke said, should therefore be read as "the expression of true poetic feeling, and with no relation whatever to the hateful and repulsive suggestions" of the defense.

- Soon it was time for Wilde to take the stand. He got off to a bad start, claiming to be 39 when he was actually 41. Under questioning by Clarke, Wilde, with easy assurance, described his previous encounters with Queensberry. Clarke concluded by asking Wilde whether there was any truth to Queensberry's accusations. Wilde answered, "There is no truth whatever in any of them."

- After lunch, Edward Carson skillfully cross-examined Wilde regarding his published works and the facts of his past relationships. In the literary portion of the examination, Carson asked Wilde about two of his works, *The Picture of Dorian Gray* and *Phrases and Philosophies for Use of the Young*. Wilde passionately defended both works against Carson's suggestion that they were immoral and touched upon homosexual themes.

- Wilde did his best to turn the proceedings into a joke, answering questions flippantly. Always the artist, he couldn't resist reaching for creative, witty answers, even if they contradicted earlier ones. Though immensely interesting reading, the literary portion of Carson's cross-examination was not nearly as incriminating as what came next.

- When Carson began asking about Wilde's prior relationships with young men, Wilde became noticeably uncomfortable. Carson produced items ranging from fine clothes to silver-mounted walking sticks that Wilde admitted he had given to his young companions as gifts. Suspiciously, the recipients of Wilde's generosity were not, in Carson's words, "intellectual treats." Rather, the gifts went to newspaper peddlers, valets, and unemployed young men. In some cases, the recipients were barely literate.

- Wilde tried to explain: "I recognize no social distinctions at all of any kind, and to me youth, the mere fact of youth, is so wonderful that I would sooner talk to a young man for half-an-hour than be—well—cross-examined in court."

- Soon after that confident response, Carson asked Wilde about a young man named Walter Grainger. "Did you kiss him?" Carson asked. "Oh, dear no!" Wilde replied. "He was a peculiarly plain boy." Carson zeroed in on his prey, asking whether Wilde hadn't kissed Grainger because of his appearance. "Why, why, why, did you add that?" Carson demanded to know. Wilde had no good answer to the question.

- In his opening speech in defense of Queensberry, Carson announced that he intended to call to the witness box a procession of young men

with whom Wilde had been sexually associated. The atmosphere in the courtroom became tense. Edward Clarke understood now that not only was his client's libel case lost, his client was at serious risk of being prosecuted himself. An 1885 law criminalized acts of "gross indecency," which had been interpreted to apply to any form of sexual activity between members of the same sex.

- Interestingly, the 1885 law was widely seen at the time of its passage as progressive legislation. Prior to 1885, sexual assaults on boys over the age of 13 that fell short of rape were not crimes at all. The law was passed to protect boys from preying adults, not to punish consenting adults.

- That evening, Clarke urged Wilde to let him to withdraw the prosecution. Wilde agreed. The next morning in court, Clarke rose to announce the withdrawal. Queensberry, however, was looking for more than just vindication. He directed his solicitor to send to the Director of Public Prosecutions copies of statements by the young men he had planned to produce as defense witnesses. Shortly after the trial concluded, Wilde was arrested.

- The damage to Wilde's reputation was substantial. When word of his arrest spread, Wilde's name was removed from the ads at the St. James Theatre, where *The Importance of Being Earnest* was still being performed.

Wilde on Trial

- The first criminal trial of Oscar Wilde began on April 26, 1895. Joining Wilde as a defendant was Alfred Taylor, whose job it was to procure young men for Wilde. Wilde faced 25 counts of gross indecency and conspiracy to commit gross indecencies. A parade of young male witnesses for the prosecution testified regarding their roles in helping Wilde act out his sexual fantasies. Most expressed shame and remorse over their actions.

- On the fourth day of the trial, Wilde took the stand. His arrogance, so prominent in the earlier trial, was gone. He answered questions quietly, denying all allegations of indecent behavior.

- Edward Clarke followed Wilde's testimony with a powerful summation on behalf of his client. Clarke closed by asking the jury to "gratify those thousands of hopes that are hanging on your decision" and "clear from this fearful imputation one of our most renowned and accomplished men of letters of today and, in clearing him, clear society from a stain."

- The jury deliberated for more than three hours before concluding that they could not reach a verdict on most of the charges. Wilde was released on bail. A hung jury, unlike an acquittal, gives the prosecution another bite at the apple. Wilde enjoyed three weeks of freedom before the start of his second criminal trial.

- Wilde's second prosecution was headed by England's top prosecutor, Solicitor General Frank Lockwood. Although the trial resembled the first in some ways, the prosecution dropped its weakest witnesses and focused more heavily on its strongest. The evidence that Wilde engaged in sexual acts with young men was compelling.

- In his closing speech for the defense, Clarke argued that Wilde's "brilliant promise had been clouded" by false accusations and his "bright reputation … nearly quenched in the torrent of prejudice sweeping through the press." Clarke urged the jury to acquit Wilde so that "he might … give in the maturity of his genius gifts to our literature."

- Lockwood, however, had the last word. He told the jury that the evidence showed just what sort of man Wilde was. "Wilde is a man of culture and literary tastes, and I submit that his associates should have been his equals." Instead, Lockwood said, Wilde chose to have relationships "with these illiterate boys you have heard in the witness box."

- The jury found Wilde guilty on all counts of gross indecency except for charges relating to one of the young men. When he heard the verdict

announced, Wilde swayed slightly and his face whitened. Some spectators shouted "Shame!" Others present in the courtroom cheered the verdict.

- Wilde served two years in prison. He came out chastened and bankrupt, but not bitter. He told a friend that he "had gained much" in prison and was "ashamed of having led a life unworthy of an artist." In a long prison letter Douglas—later published as *De Profundis*—Wilde wrote, "I became a spendthrift of my genius and to waste an eternal youth gave me a curious joy."

Broader Impact

- The Wilde trials caused public attitudes toward homosexuals to become harsher and less tolerant. In the years before the trials, there had been a certain sympathy for those who engaged in same-sex relationships. After the trials, the public began to see homosexuals as more of a threat—as predators.

- The Wilde trials also caused the public to associate art with homoeroticism and to see effeminacy as a signal for homosexuality. After the trials, every male-male relationship of any intensity was under a cloud, every effeminate gesture raised an eyebrow, and the arts and homosexuality became firmly linked in the public mind.

- Prior to Wilde's trials, prosecutions for consensual homosexuality in England were about as rare as they were in the United States at the end of the 20th century. What offended Victorian society about Wilde's conduct was not so much that it involved sex with other males, but that Wilde had sex with a large number of young male prostitutes. Wilde was not prosecuted because he was the lover of a social equal who happened to be male; he was prosecuted for his participation in a somewhat indiscreet prostitution ring.

- Gay men in England faced even darker days in the decades following the trials. But social attitudes kept changing, as they always do. In 1967,

some 70 years after the prosecution of Oscar Wilde, private consensual acts involving adults were decriminalized in England.

Suggested Reading

Foldy, *The Trials of Oscar Wilde*.

Holland, *The Real Trial of Oscar Wilde*.

Hyde, *The Trials of Oscar Wilde*.

Questions to Consider

1. Why would Wilde, knowing Queensberry's statement about his sexual practices to be true, choose to risk everything by bringing a defamation suit?
2. Would Wilde ever have been prosecuted if his past relationships didn't involve minors?
3. Did the Wilde trials lead to increased persecution and stereotyping of homosexuals?

LECTURE 14

The Trial of Sheriff Joseph Shipp

In March of 1909, the nine justices of the United States Supreme Court assembled in Washington DC to do something the Court had never done before and, to this day, has never done since: listen to closing arguments in a criminal case. What terrible crime might the defendants have committed to be brought before America's highest tribunal? The answer begins on a winter evening three years earlier.

The Rape of Nevada Taylor

- On January 23, 1906, a beautiful 21-year old named Nevada Taylor left her bookkeeping job in downtown Chattanooga around 6:00 p.m. Her home was a cottage in Forest Hills Cemetery, where her father was the groundskeeper. As Taylor approached the cemetery gate, a man grabbed her neck from behind, choking her. "If you scream, I will kill you," he said. The attack—which left Taylor raped and unconscious—lasted only 10 minutes.

- Sheriff Joseph Shipp led the investigation into the rape. He asked Taylor what she remembered of the attack. She couldn't recall much. Taylor described her attacker as muscular, wearing a black outfit and a hat, and having "a soft, kind voice." She told the sheriff she wasn't sure of her attacker's race, but thought he might have been an African American.

- An investigation of the crime scene turned up a black leather strap that matched the red streaks around Taylor's neck. Word of the find prompted Will Hixson, a man who worked nearby, to report that he had seen a black man "twirling a leather strap around his finger" on the evening of the rape. Later, Hixson called the sheriff and said that he had just seen the suspect walking north toward town with a tall black man. By the time Shipp arrived, the tall man was alone, but Shipp learned that his companion was a part-time carpenter named Ed Johnson.

- Within hours, Shipp spotted Johnson riding on the back of an ice wagon. Johnson was handcuffed and jailed. Hixson identified him as the man he had seen twirling the leather strap. Hixson also collected a $375 reward for identifying Nevada Taylor's attacker.

- Word of Johnson's arrest spread. That evening a large crowd—many carrying guns—gathered in front of the Hamilton County Jail. It took the National Guard to fend off the lynch mob. But Johnson was not in danger—at least not that night. Anticipating problems, authorities had moved him to a jail in Nashville.

- Nevada Taylor traveled to Nashville to identify her attacker. She hemmed and hawed, but in the end said she was fairly sure that Johnson was the man who raped her.

- Taylor's identification put the case on a fast track. A Chattanooga judge told grand jurors that outrages such as this "must have the immediate attention of the law." Two hours later, the grand jury indicted Johnson. The judge quickly appointed three local attorneys to represent Johnson and told them to get moving—the trial would begin in less than a week.

The Trial of Ed Johnson

- The first prosecution witness in the Johnson trial was Nevada Taylor. Taylor described the attack and identified the leather strap used by her assailant. The prosecutor asked Taylor if the man who attacked her was present in the courtroom. "I believe he is the man," Taylor answered, pointing to Ed Johnson.

- When Will Hixson was called to the stand, he told jurors that he "saw the defendant with a strap in his hand … near the scene of the crime." Hixson claimed that Johnson's face was illuminated by two electric cars passing by: "I saw his face well and could not be mistaken in it."

- Sheriff Shipp testified next, recounting his investigation and the events leading to Johnson's arrest. Shipp said that at the sheriff's office in Nashville, Johnson "raised his voice to a higher pitch" in an attempt to prevent Taylor from identifying his voice as that of the attacker. Two of Shipp's deputies offered brief testimony, and the state rested. It was a superficial case that relied exclusively on eyewitness testimony—the perfect recipe for a wrongful conviction.

- The first witness for the defense was Ed Johnson. Johnson spoke in what observers call "a strange voice" and grabbed the arms of his chair with both hands. He denied having attacked Nevada Taylor. Johnson testified that he spent the evening in question working as a poolroom

porter at the Last Chance Saloon. He said he had arrived around 4:30 pm and stayed until approximately 10:00 pm, which would have made it impossible for him to rape Nevada Taylor at 6:00 pm. Thirteen witnesses followed Johnson to the stand. Each one swore that he had seen Johnson at the saloon during the time Johnson claimed to be there.

- The defense moved on to attack the credibility of Will Hixson. One defense witness testified that two days after the rape, Will Hixson had asked him the name of a black man doing some roofing work at a church. When he told Hixson the roofer's name was Ed Johnson, Hixson asked him for a physical description—an odd thing to ask about someone Hixson would then identify as the suspect.

- The most dramatic event of the Johnson trial occurred on its third and final day. At the request of jurors, Nevada Taylor was recalled to the witness stand. During questioning, a juror rose and asked, "Miss Taylor, can you state positively that this Negro is the one who assaulted you?" Taylor answered, "I will not swear he is the man, but I believe he is the Negro who assaulted me."

- The juror was not satisfied. He asked again: "In God's name, Miss Taylor, tell us positively—is that the guilty Negro? Can you say it? Can you swear it?" Tears streamed down Taylor's face. She answered in a quivering voice: "Listen to me. I would not take the life of an innocent man. But before God, I believe this is the guilty Negro."

- Upon hearing Taylor's tearful response, a second juror rose from his seat and lunged in the direction of Ed Johnson. The would-be assault was thwarted by fellow jurors, who restrained him. The angry juror shouted, "If I could get at him, I'd tear his heart out right now."

- After six hours of deliberation, the jury was split, with eight jurors voting for conviction and four for acquittal. After a night home with their families, the minority caved. The following morning, the jury's foreman announced, "On the single count of rape, we, the jury, find the defendant, Ed Johnson, guilty." Shockingly, Johnson's defense attorney told the judge that the defense would "acquiesce in the action of the jury."

Johnson Appeals

- Why would defense attorneys counsel their client to accept a wrongful sentence of death? In Johnson's case, two of his attorneys believed an appeal to be futile. Moreover, they thought an appeal might lead to a raid on the jail that would result not only in Johnson's death, but in the death of other inmates.

- Johnson's attorneys told him that he had a choice: He could accept the verdict and die in an orderly way at an appointed time, or he could die

at the hands of a lynch mob. Johnson agreed with their assessment: "I will tell the judge I am ready to die. But I will also say that I am not the guilty man."

- Later, however, Johnson had second thoughts. Hours after Johnson's death sentence was pronounced, his father visited the law office of Chattanooga's most highly respected African American attorney, Noah Parden. Johnson's father told Parden that his son did not want to die; he wanted to appeal.

- In a decision that surprised no one, the Tennessee Supreme Court unanimously rejected Johnson's request for a new trial. Sheriff Shipp ordered his deputies to begin stretching the rope that would be used to hang Johnson in 10 days. But Noah Parden did not give up. He took the battle to save Ed Johnson to the federal courts.

- There was little reason to expect relief in the federal courts. Federal judges could not review the evidence presented in state trials; they could only act to remedy violations of federal constitutional rights. And because the Court had not yet broadened its interpretation of the Fourteenth Amendment's Due Process Clause, key safeguards identified in the Bill of Rights—such as the right to an impartial jury, the right to effective counsel, and the right against self-incrimination—did not yet apply to state trials.

- Parden argued before federal judge C. D. Clark that Johnson's trial was riddled with constitutional violations. He contended that the trial judge's refusal to delay or move the trial—in view of the attempted lynching and other threats—denied Johnson due process. He said the same thing about the juror's "tear his heart out" lunge at Johnson. He argued that the county's systematic exclusion of black jurors violated the Equal Protection Clause. Finally, Parden suggested that Johnson had been abandoned by his court-appointed attorneys after the trial.

- Judge Clark agreed that there were serious flaws in Johnson's trial, but ruled that the guarantee of a fair trial did not apply in state courts. In a small victory for the defense, however, Clark postponed Johnson's execution for one week to allow the decision to be appealed to the United States Supreme Court.

- On the morning of March 17, Parden and a Washington attorney named Emanuel Hewlett met with Justice John Marshall Harlan, who, in his famous dissent in *Plessy v. Ferguson*, asserted that the "Constitution is color-blind." Harlan asked why the Supreme Court should hear Johnson's case. As Parden and Hewlett answered, the justice nodded, but gave them no words of encouragement.

- After the meeting, Harlan read the transcript of the Knoxville hearing and became convinced Johnson's case raised serious constitutional issues. At Harlan's request, a majority of the justices gathered at the home of Chief Justice Melville Fuller to discuss the plea for intervention.

After debating the issue for an hour, the justices agreed to stay Johnson's execution and grant the appeal.

Johnson is Lynched

- The news that the Supreme Court had stayed Johnson's execution did not sit well with many in Chattanooga. Around 8:00 pm on March 19, a group of men carrying guns descended on the jail where Johnson was being held. Just one guard had been assigned to the jail that night; Sheriff Shipp had rejected a suggestion to post extra guards and had given all but one of his deputies the night off.

- The mob dragged Johnson to a bridge over the Tennessee River, tied a noose around his neck, and tossed him over the side. After a few minutes, Johnson's body was pulled back onto the bridge, where mob leaders were surprised to find his head still moving. A barrage of bullets ended Johnson's life once and for all.

- Johnson's last words were: "I am ready to die. But I never done it. I am going to tell the truth. I am not guilty. I have said all the time that I did not do it and it is true. I was not there … God bless you all. I am innocent." When Johnson was dead, a leader of the mob pinned a note to his body: "To Justice Harlan. Come and get your nigger now."

- When word of Johnson's lynching reached Washington, Justice Harlan, accompanied by Justice Oliver Wendell Holmes, asked for a meeting with Chief Justice Fuller. Afterward, each justice expressed his outrage to the press. President Theodore Roosevelt called the lynching "an affront to the highest tribunal in the land that cannot go by without the proper action being taken."

- After meeting with Attorney General William Moody, President Roosevelt ordered a federal investigation of the lynching that could be used by the Supreme Court should it choose to bring criminal contempt charges. The final report of the investigation detailed unusual activities at the jail prior to the lynching. It also described the actions of key players in the conspiracy, including Sheriff Shipp.

A Historic Trial

- After reviewing the final report of the investigation, Attorney General Moody met with Chief Justice Fuller and Justice Harlan. They reached a historic and unprecedented decision to try the conspirators in the Supreme Court for criminal contempt. Twenty-seven Chattanooga residents were charged with conspiring to murder Ed Johnson in violation of the Court's stay. Included among the 27 were Sheriff Joseph Shipp and eight of his deputies.

- Defense attorneys argued that the Supreme Court had no power to try a criminal case. The Court, in a unanimous decision written by Justice Holmes, ruled to the contrary. The justices announced, however, that they themselves would not be listening to any actual testimony. Instead, they appointed James Maher, the Court's deputy clerk, to preside over the trial and prepare an evidentiary record for the justices to review.

- In February of 1907, the trial began in Chattanooga. The courtroom was filled to capacity—mostly by African Americans—as Maher took his seat on the bench.

- The first prosecution witness was a reporter for the *Chattanooga Times* who had witnessed and written about Johnson's lynching. The reporter testified that "there were normally six or seven deputies on guard every night" at the jail—except on the night of Johnson's lynching. The testimony of jailed inmate Ellen Baker indicated that Johnson had been singled out by deputies before and during the mob's attack.

- A key witness for the prosecution was John Stonecipher, a Georgia man who had spoken with leaders of the mob at a saloon just hours before the lynching. Stonecipher testified that a man named Frank Ward had asked him to participate in the lynching. Stonecipher refused, adding, "I believe Sheriff Shipp would shoot the red-hot stuff out of you." "No," Ward answered, "It is all agreed. There won't be a sheriff or deputy there." Stonecipher also testified concerning his conversations with several of the defendants after the lynching.

- The defense based its case on friends, relatives, and coworkers, who offered alibis or attested to the high moral character of various defendants. Some of the defendants testified as well, including Sheriff Joseph Shipp.

- More than a year passed before the trial moved to the Supreme Court, where Shipp and five others were found guilty of criminal contempt. Shipp was sentenced to 90 days in prison. When he returned to Chattanooga, he was welcomed as a hero by a crowd of more than 10,000 people.

Suggested Reading

Curriden and Phillips, *Contempt of Court*.

Secret Service Investigative Reports.

Transcript of Record, United States v. Shipp.

Questions to Consider

1. Is it surprising that only one criminal case has been tried before the United States Supreme Court? What explains the fact that the Shipp trial is one of a kind?
2. Did the Supreme Court's decision to try the conspirators have anything to do with the near certainty that none would be tried in Tennessee state courts?
3. What should we make of the fact that Sheriff Shipp was greeted by a crowd of 10,000 when he returned to Chattanooga after serving his sentence?

LECTURE 15

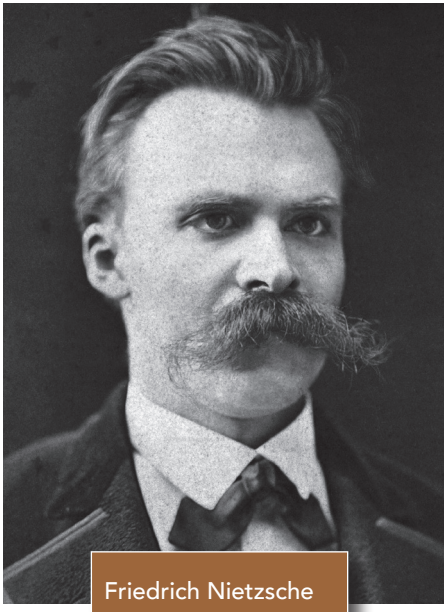
The Leopold and Loeb Trial

On May 21, 1924, in the well-to-do Chicago neighborhood of Kenwood, 14-year-old Bobby Franks was abducted and murdered by two young men in a rented green automobile. The killers, Nathan Leopold and Richard Loeb, had nothing against Bobby; he was simply in the wrong place at the wrong time. In a criminal prosecution billed as the "trial of the century," the task of trying to save Leopold and Loeb from the gallows fell to the nation's most famous defense lawyer, Clarence Darrow.

A Nearly Perfect Crime

- The crime that captured national attention in 1924 began as a fantasy in the mind of 18-year-old Richard Loeb. Loeb was the popular, handsome, and privileged son of a Sears executive. Loeb was obsessed with crime. Despite being bright enough to be the youngest graduate ever of the University of Michigan, Loeb read mostly detective stories. And he didn't just read about crimes; he also planned and even committed them. But Loeb's crimes all had been property crimes—theft and arson. None of them involved physical harm to another person. For Loeb, crime was a game and he was looking for a bigger thrill. He wanted to commit the perfect crime just to prove that it could be done.

- Loeb's somewhat reluctant partner in crime was Nathan Leopold—brilliant, introverted, and awkward Nathan Leopold. Though only 19 years old, Leopold already held an undergraduate degree from the University of Chicago, and in the spring of 1924 he was enrolled at the university's law school. He had also been accepted at Harvard Law School and was to begin studies there the following fall. Nathan's interests included ornithology, philosophy, and, especially, Richard Loeb. Leopold was gay. Loeb was not.



Friedrich Nietzsche

- Both Leopold and Loeb followed the philosophy of Friedrich Nietzsche. Nietzsche's ideas, contained in books like his *Beyond Good and Evil*, exerted a powerful influence on early 20th-century academia, where the merits of his philosophy were fiercely debated. Leopold and Loeb agreed with Nietzsche's criticism of

moral codes. To them, the legal obligations that applied to most people did not govern those who approached "the superman"—people like themselves.

- Motives are often unclear, and so they are in the murder of Bobby Franks. We can say, however, that Leopold's attraction to Loeb was his primary reason for participating in the crime. Leopold later wrote that "Loeb's friendship was necessary to me—terribly necessary." He explained that his motive, "to the extent that I had one, was to please Dick." For Loeb, on the other hand, crime was an escape from the ordinary, a thrill, an interesting intellectual exercise. In return for Leopold's participation in his crimes, Loeb submitted to his friend's desire for sex.

- In Loeb's mind, murder was a necessary element in the perfect crime. The two teenagers spent months discussing and refining a plan that included kidnapping the child of wealthy parents. Once the child was taken, they planned to demand a ransom. Neither Loeb nor Leopold relished the idea of murdering their kidnap victim, but they thought it critical to minimizing their likelihood of being identified as the kidnappers.

- Young Bobby Franks, an acquaintance of both Loeb and Leopold, was collateral damage. After murdering Franks, they drove their rented car to a marshland near the Indiana line. They pulled their victim's body from the backseat and carried it to a concrete drainage culvert. They stripped Franks, poured hydrochloric acid over his body to make identification more difficult, then stuffed it into the culvert.

- Returning to the Loeb home, they burned Franks's clothing in a basement fire. Leopold got on the phone and dialed the number for the Franks home. Bobby's mother answered. Leopold, identifying himself as "George Johnson," told Mrs. Franks that her son had been kidnapped, but was unharmed. She should expect a ransom note soon.

- The next morning, the Franks family received a special delivery letter. The letter instructed them to immediately secure $10,000 in old, unmarked bills and expect to be contacted again that afternoon. Around three o'clock, Leopold called Jacob Franks, Bobby's father. Leopold informed him that a taxi cab was about to arrive at his home. He should take the taxi and the ransom money to a specified drugstore in South Chicago.

- Franks did not get into the Yellow Cab that pulled up in front of his home minutes later. Seconds after Leopold had hung up, Franks received another call, this one from the police. The police broke the news that the body of his son had been found.

- Investigators at the site found a pair of horn-rimmed tortoise shell glasses, which—with the help of a Chicago optometrist—they were able to trace to Nathan Leopold. When they visited the Leopold home to question Nathan, investigators were unconvinced by his explanation that that the glasses must have slipped out of his pocket while birdwatching.

- Asked about his whereabouts on May 21, Leopold said he had spent the day near Lincoln Park picking up girls in his car with Richard Loeb. Loeb, questioned separately, confirmed Leopold's alibi. State's Attorney Robert Crowe was skeptical; among the items picked up in a police search of the Leopold home was a letter written by Nathan strongly suggesting that he and Loeb had a homosexual relationship.

- Still, prosecutors were on the verge of releasing the two suspects when two additional pieces of evidence surfaced. First, law school notes typed in the Leopold home were found to be a match with type on the ransom note, all the way down to a malformed lowercase *i*. Second, the Leopold family chauffeur, trying to exculpate Nathan, told police that the Leopold car—the same car the boys claimed to have spent the night driving around in with girls—never left the garage on the day of the murder.

- Loeb confessed first, then Leopold. Their confessions differed only on the point of who did the actual killing, with each pointing an accusing finger at the other.

Enter Clarence Darrow

- The Loeb and Leopold families hired Clarence Darrow to represent the two boys. Darrow took the case in large part because it offered him an opportunity to attack the death penalty, which he saw as "an abomination."

- The single biggest question Darrow faced was how to plead to the charges of murder and kidnapping. The confessions made an acquittal on evidentiary grounds impossible. He could encourage his clients to plead not guilty by reason of insanity, but insanity is tough to prove—especially with defendants as intelligent and accomplished as Leopold and Loeb. Plus, even if the insanity plea succeeded on the murder charge, the state could turn around and try them both again on the kidnapping charge. In Illinois, in 1924, kidnapping was also a capital offense.

- So Darrow surprised almost everyone. Leopold and Loeb pled guilty to both charges. Still, there was the matter of sentencing. With a guilty plea, the sentencing decision fell to the trial judge. If convicted by a jury, sentencing would have been a jury decision. That fact probably meant more to Darrow that any other. With the public almost unanimous in calling for death, Darrow did not want to face a jury. He much preferred aiming his arguments at the judge, John R. Caverly, whom Darrow believed to be both "kindly and discerning."

- Although it is popularly referred to as the "trial" of Leopold and Loeb, the proceeding before Judge Caverly was actually a hearing in mitigation of sentence—in this case, to determine whether the death penalty was called for in view of the circumstances surrounding the crime. It went on for several weeks.

- The defense hoped to build its case against death around the testimony of psychiatrists. The best psychiatric talent 1924 had to offer was sought out by both sides to examine the defendants. Even Sigmund Freud was asked about coming to Chicago, but his poor health ruled that out.

- Defense psychiatrist William White testified that Leopold's "pathology began in early childhood." Teased "relentlessly," Leopold became "estranged from his peers, a lonely, unhappy child … who retreated into an inner world where emotion counted for nothing and intellect was all … Nathan imagined himself a slave … who saved the life of his king [Richard Loeb] and had thereby earned the king's gratitude."

- Another defense psychiatrist, Bernard Gluek, testified that Nathan's "ambition has been to become a perfect Nietzschean and to follow Nietzsche's philosophy all the way through." According to Gluek, Leopold had told him that "he was jealous of the food and drink that Loeb took, because he could not come as close to him as did the food and drink." Gluek concluded that Leopold had a "definitely paranoid personality" and was given to a "delusional way of thinking."

- As for Richard Loeb, William White described his "main outstanding feature" as "infantilism. … He is still a little child emotionally, still talking to his teddy bear." Loeb, White said, "needed Nathan's applause and admiration in order to confirm his sense of his own self." White called the relationship between the two boys "a peculiarly bizarre confluence of two personalities, each of which satisfied the needs of the other."

- Not surprisingly, prosecution psychiatrists took a different view. William Krohn testified, "In my opinion, [Richard Loeb] was not suffering from any mental disease, either functional or structural, on May 21st, 1924. … There was abundant evidence that the man was perfectly oriented as to time, as to place, and as to his social relations." Leopold, too, he concluded, was free of any significant mental disease. "There was no evidence of any organic disease of the brain. He showed remarkably close attention, detailed attention."

Summation and Decision

- On August 22, 1924, Clarence Darrow began his epic summation for the defense. In a voice that rose and fell, Darrow argued that his clients—the victims of youthful fantasies, genetic inheritance, surging sexual impulses, lives of privilege, and Nietzsche's philosophy—should not bear responsibility for their crimes. Never before or since has the deterministic universe, this life of "a series of infinite chances," as Darrow called it, been so clearly made the basis of a criminal defense.

- Darrow also attacked the death penalty with every argument he could muster. He called it "atavistic," saying that it "roots back to the beast and the jungle." He repeatedly challenged the notion of "an eye for an eye": "If the state in which I live is not kinder, more humane, and more considerate than the mad act of these two boys, I am sorry I have lived so long."

- Ultimately, Darrow pleaded for the ascendancy of kindness over cruelty and love over hate. When he finally ended his appeal, tears were streaming down the face of Judge Caverly and many other courtroom spectators. According to a newspaper account, "There was scarcely any telling where his voice finished and where silence began. It lasted for a minute, two minutes."

- State's Attorney Robert Crowe closed for the prosecution. Crowe was a Yale-educated up-and-comer in Illinois politics and quite a speaker in his own right. He heaped ridicule on Darrow's attempt to blame the crime on anyone and anything but the defendants: "My God, if one of them had a harelip I suppose Darrow would want me to apologize for having them indicted." Crowe called the defense psychiatrists "The Three Wise Men from the East" and accused one of them of being "in his second childhood" and "prostituting his profession."

- But Crowe reserved his strongest language for the two defendants, whom he referred to as "cowardly perverts," "snakes," "atheists,"

"spoiled smart alecks," and "mad dogs." In Crowe's view, the murder was a premeditated crime committed by two remorseless defendants, and the appropriate punishment was obvious. The "real defense" in the case, according to Crowe, was "Clarence Darrow and his peculiar philosophy of life." It was a defense that proved too much; if Darrow was right, no one was guilty ever.

- Two weeks later, Caverly announced his decision. He explained that his judgment could not be affected by the causes of crime and that it was "beyond the province of this court" to "predicate ultimate responsibility for human acts." Nonetheless, Caverly concluded that "the consideration of the age of the defendants" and the possible benefits to criminology that might come from future study of the two teenagers persuaded him that life in prison, not death, was the better punishment.

- Richard Loeb and Nathan Leopold were taken to the penitentiary in Joliet, Illinois. In 1936, Loeb was slashed and killed with a razor in a fight with another inmate. Loeb's attacker claimed that he was resisting Loeb's sexual advances. Prison officials, however, called the killing an unprovoked attack and announced their intent to prosecute.

- Leopold kept intellectually active in prison. He taught in the prison school, mastered foreign languages, worked as an X-ray technician in the prison hospital, and reorganized the prison library. He volunteered to be tested with an experimental malaria vaccine, and designed a new system of prison education.

- In 1958, after 34 years of confinement, Leopold was released, his sentence commuted by Governor Adlai Stevenson. To escape the public eye, he immigrated to Puerto Rico, where he earned a master's degree, taught mathematics, worked in hospitals and church missions, and wrote a book entitled *The Birds of Puerto Rico*. He died of a heart attack in 1971. One could argue that the last years of Leopold's life, his efforts to make up for the crime of his youth, is the most eloquent argument of all against the death penalty.

Suggested Reading

Baatz, *For the Thrill of It*.

Higdon, *The Crime of the Century*.

Leopold, *Life plus 99 Years*.

Questions to Consider

1. What implications would accepting Clarence Darrow's deterministic views have for our criminal justice system?
2. Does the intelligence and the privileged backgrounds of Leopold and Loeb argue for or against a more lenient sentence?
3. Is the life lead by Nathan Leopold after sentencing a good argument against the death penalty?

LECTURE 16

The Scopes Monkey Trial

In Dayton, Tennessee, a plaque in front of the courthouse reads: "Here, from July 10 to 21, 1925, John Thomas Scopes, a County High School teacher, was tried for teaching that man descended from a lower order of animals, in violation of a lately passed state law." The Scopes trial—commonly known as the "Monkey Trial"—attracted to Dayton a three-time presidential candidate, the most famous defense attorney in America, and a flock of reporters looking for a showdown between Southern religious revivalism and the modernist social patterns of the 1920s.

Prelude to the Trial

William Jennings Bryan

- In the 1920s, populist William Jennings Bryan gave up running for president. Instead, he became a leader of a crusade to banish Darwin's theory of evolution from classrooms. The antievolution campaign kept Bryan in the spotlight, a place he always longed to be. For him, the cause was a perfect fit. He believed evolution contradicted the teachings of Genesis and undermined traditional values. He also cared deeply about equality. Bryan worried that Darwin's theories were being misused by supporters of a growing eugenics movement.

- By 1925, Bryan and his followers had succeeded in getting legislation introduced in 15 states to ban the teaching of evolution in public schools. In February, Tennessee enacted a bill introduced by state representative John Butler making it unlawful "to teach any theory that denies the story of divine creation as taught by the Bible and to teach instead that man was descended from a lower order of animals."

- When the Butler Act became law, the American Civil Liberties Union was itching for a fight. The ACLU published an ad in the Chattanooga paper offering its services to anyone willing to challenge the new statute.

- George Rappleyea, a coal company manager and town booster, saw the ACLU's ad and brought a copy of it to Fred Robinson's drugstore in Dayton. Rappleyea had nothing but contempt for the new law, but that

was not the point he argued to other town leaders at the drugstore. A trial over the new law, he argued, could put Dayton on the map, potentially igniting an economic boom in a town whose population had fallen from 3,000 to only 1,800. Rappleyea's audience, a group that included School Superintendent Walter White, agreed to put Rappleyea's plan into action.

- The conspirators summoned to the drugstore John Scopes, a 24-year old general science teacher and part-time football coach. Scopes later described how Rappleyea put the question to him: "John, we've been arguing and I said nobody could teach biology without teaching evolution." Scopes agreed.

- Scopes said that while filling in for the school's regular biology teacher during an illness, he had assigned readings on evolution from William Hunter's *Civic Biology*, the state-approved textbook. "Then you've been violating the law," Rappleyea said. "Would you be willing to stand for a test case?" Scopes said he'd be happy to.

- Two local attorneys, both friends of Scopes, agreed to prosecute. William Jennings Bryan offered to join the prosecution team, despite not having practiced law in over 30 years. When Bryan jumped in, Clarence Darrow volunteered to sign on for the defense. He relished the chance to battle the man he described as "the idol of all of Morondom."

The Trial

- Nearly 1,000 people jammed the Rhea County Courthouse for the first day of trial. Also in attendance were announcers ready to send to listeners the first ever live radio broadcast from a trial. Judge John Raulston, a conservative Christian who craved publicity, sat at the bench. The judge called the court to order. He then asked a local minister to open the proceedings with a prayer.

- Clarence Darrow usually picked his juries carefully. Jury selection in Darrow's cases often took days. But in Dayton, a jury of 12 men, including 10 farmers and 11 regular churchgoers, was quickly selected. Darrow cared little who the jurors were or what they believed. For Darrow and the defense, the Scopes case was all about getting a conviction and taking the case to a higher court, preferably the U.S. Supreme Court. The goal was a Supreme Court opinion declaring laws banning the teaching of evolution unconstitutional, a violation of the First Amendment.

- On the first business day of the trial, the defense submitted its motion to quash the indictment on constitutional grounds. The day of arguments over the law's constitutionality ended with a speech that is classic Darrow:

  > If today you can take a thing like evolution and make it a crime to teach it in the public school, tomorrow you can make it a crime to teach it in the private schools, and the next year you can make it a crime to teach it to the hustings or in the church. At the next session you may ban books and the newspapers. … Today it is the public school teachers, tomorrow the private. The next day the preachers and the lectures, the magazines, the books, the newspapers. After a while, your honor, it is the setting of man against man and creed against creed until with flying banners and beating drums we are marching backward to the glorious ages of the sixteenth century when bigots lighted fagots to burn the men who dared to bring any intelligence and enlightenment and culture to the human mind.

- As expected, Judge Raulston rejected the defense motion to quash the indictment. Then it was time for opening statements. Prosecution and defense attorneys described the trial as a titanic struggle between good and evil, between truth and ignorance. Bryan argued, "If evolution wins, Christianity goes." Darrow told jurors, "Scopes isn't on trial; civilization is on trial."

- The prosecution needed to prove only two things to win a conviction: that Scopes actually taught the theory of evolution in school, and that the theory he taught contradicted the story of creation as told

in Genesis. Superintendent White led off the prosecution's list of witnesses. White testified that John Scopes, in Robinson's drugstore, had admitted teaching evolution. Darrow, with no reason to dispute the assertion, did not cross-examine. Several of Scopes's students were then called by the prosecution to confirm that Scopes had taught them about evolution. After additional testimony by drugstore owner Fred Robinson, the prosecution rested.

- The first witness for the defense was Dr. Maynard Metcalf, a zoologist from the Johns Hopkins University and one of a team experts Darrow had enlisted to make the case for Darwin's theory. The prosecution objected. Prosecutors argued that the testimony was irrelevant to Scopes's guilt or innocence under the statue. All that mattered under the statute, they argued, was that Scopes taught the theory.

- Before ruling on the prosecution's objection, Judge Raulston excused the jury and listened to some of Dr. Metcalf's testimony. The scientist's testimony provoked Bryan's only extended speech of the trial. He mocked Metcalf's exposition of the theory of evolution. Bryan complained that Metcalf's testimony had man descending "not even from American monkeys, but Old World monkeys."

- Attorney Dudley Malone countered for the defense. In a thundering voice, Malone delivered an argument that even antievolution lawmaker John Butler called "the finest speech of the century":

> There is never a duel with the truth. The truth always wins and we are not afraid of it. The truth is no coward. The truth does not need the law. The truth does not need the force of government. The truth does not need Mr. Bryan. The truth is imperishable, eternal, and immortal and needs no human agency to support it. We are ready to tell the truth as we understand it, and we do not fear all the truth that they can present as facts. We are ready. We are ready. We feel we stand with progress. We feel we stand with science. We feel we stand with intelligence. We feel we stand with fundamental freedom in America. We are not afraid. … We ask your honor to admit the evidence as a matter of correct law, as a matter of sound procedure, and as a matter of justice to the defense in this case.

- Judge Raulston was unmoved. The next day, he ruled the defense's expert testimony inadmissible. Nevertheless, the defense was permitted to read into the record, for purpose of appellate review, excerpts from the prepared statements of eight scientists and four experts on religion who had been prepared to testify. The press widely reported the expert's statements. Darrow had succeeded in his efforts to turn the trial into a national biology lesson.

- On day seven of the trial, Judge Raulston asked the defense if it had any more evidence to present. What followed was what *The New York Times* described as "the most amazing court scene in Anglo-Saxon history." The defense called to the stand, to testify as an expert on the Bible, prosecutor William Jennings Bryan.

- The ostensible purpose of Bryan's testimony was to shed light on the question of whether the Bible might be reconciled with Darwin's theory. If what Scopes taught didn't contradict the Bible, the argument went, then he wasn't guilty of any crime. Darrow's real purpose, of course, was to humiliate his rival. He knew that a battle with Bryan on the truth of

the Bible would get the nation's attention, and he guessed that the ego-driven Bryan would find the challenge irresistible. He was right.

- Darrow began his interrogation of Bryan with a quiet question: "You have given considerable study to the Bible, haven't you, Mr. Bryan?" Bryan replied, "Yes, I have. I have studied the Bible for about fifty years." Thus began a series of questions designed to undermine a literalist interpretation of the Bible. Darrow asked Bryan about a whale swallowing Jonah, about Joshua making the sun stand still, about Noah and the great flood, and about the temptation of Adam in the Garden of Eden. He asked about the six-day creation story in chapter 1 of Genesis.

- Bryan insisted, in answer after answer, "Everything in the Bible should be accepted as it is given there." Eventually, however, the self-proclaimed Bible expert conceded that the words of the Bible should not always be taken literally. In response to Darrow's relentless questions as to whether the six days of creation as described in Genesis were 24-hour days, Bryan said "My impression is that they were periods."

- Both old warriors grew testy as the examination continued. Bryan accused Darrow of attempting to "slur at the Bible." He said that he would continue to answer Darrow's impertinent questions because "I want the world to know that this man, who does not believe in God, is trying to use a court in Tennessee—." Darrow interrupted his witness, saying that he objected to Bryan's "fool ideas that no intelligent Christian on earth believes." That was enough for Judge Raulston. He ordered the court adjourned. The next day, the judge ruled that Bryan could not return to the stand, and that his testimony of the previous day would be stricken.

- The jury found Scopes guilty. Judge Raulston fined him $100. Scopes, practically a forgotten man, rose to speak for the first and only time in his trial. "Your Honor," he said, "I feel that I have been convicted of violating an unjust statute. I will continue in the future, as I have in the past, to oppose this law in any way I can. Any other action would be in violation of my ideal of academic freedom—that is, to teach the truth

as guaranteed in our Constitution of personal and religious freedom. I think the fine is unjust."

- The trial ended in Hollywood fashion. Bryan, Darrow, and the judge each made crowd-pleasing statements. Raulston concluded with this thought: "I have had some difficult problems to decide in this lawsuit, and I only pray to God that I have decided them right. If I have not, the higher courts will find the mistake. But if I failed to decide them right, it was for the want of legal learning, and legal attainment, and not for the want of a disposition to do everybody justice. We are glad to have you with us."

Aftermath and Impact

- One year after the trial, the Tennessee Supreme Court reversed the decision of the Dayton court on a technicality—not on constitutional grounds, as Darrow had hoped. According to the court, Scopes's fine should have been set by the jury, not the judge. Rather than send the case back for further action, the court dismissed the case.

- Both evolutionists and antievolutionists felt that their own cause had been advanced in Dayton. Russel Owen, writing in *The New York Times*, reported, "Each side withdrew at the end of the struggle satisfied it had unmasked the absurd pretensions of the other."

- One way to evaluate the impact of the trial is by examining newspaper accounts of public reaction. By this measure, the evolutionists won. They won by another measure as well: Of the 15 states with anti-evolution legislation pending in 1925, only two states (Arkansas and Mississippi) enacted laws restricting the teaching of Darwin's theory.

- In some respects, however, the anti-evolutionists gained. The takeaway of textbook publishers was that the theory of evolution was controversial. Many chose to water down their textbooks' presentation of the theory; references to humans as a product of evolution were often the first to go.

Tennessee Supreme Court

- The U.S. Supreme Court didn't get around to ruling on anti-evolution laws until 1968. In *Epperson v. Arkansas*, the Court held that bans on the teaching of evolution violated the Establishment Clause of the First Amendment.

Suggested Reading

DeCamp, *The Great Monkey Trial*.

Larson, *Summer for the Gods*.

Mencken, *A Religious Orgy in Tennessee*.

Questions to Consider

1. In what ways were the social forces of the 1920s well aligned to produce a media spectacle like the Scopes trial?
2. Was it appropriate for Clarence Darrow and the defense to turn the Scopes trial into a larger contest featuring science versus religion?
3. In what ways can both sides of the evolution question claim some degree of victory in the Scopes trial?

LECTURE 17

The Trials of the "Scottsboro Boys"

On March 25, 1931, in Paint Rock, Alabama, a train bound for Memphis, Tennessee, is stopped by an armed posse. Nine passengers—young black men, many of whom have never met before—are removed from the train and taken to a jail in nearby Scottsboro. As the men are being rounded up, Ruby Bates and Victoria Price—white passengers with no actual connection to the events at hand—tell a posse member that the black teenagers gang-raped them. Bates and Price's story is completely bogus, but for the young men soon to become the "Scottsboro Boys," it will turn into a decades-long legal nightmare with national consequences.

The First Trial

- Why Ruby Bates told what everyone today understands to be a bald-faced lie will never be known for certain. We can only speculate. Perhaps she hoped to divert attention from her own behavior. Bates was traveling from Tennessee with her boyfriend—a potential violation of the Mann Act, which criminalizes the crossing of state lines for immoral purposes. Whatever the reason, Ruby's accusation put the black youths in a life-threatening position.

- In jail, the Scottsboro Boys were placed in a line up. Victoria Price pointed out six of the nine who she said raped her. One of the accused called Price a liar and was struck by a bayonet. A guard said, "If those six had Miss Price, it stands to reason that the others had Miss Bates."

- A crowd of several hundred men surrounded the Scottsboro jail that night. Their plans to lynch the nine youths were foiled by Alabama's governor, B. M. Miller, who sent dozens of National Guardsmen to protect the suspects.

- Twelve days later, the first set of trials opened. One of the defendants, Haywood Patterson, described the scene in the courtroom as "one big smiling white face." Few in the crowd doubted the defendant's guilt.

- Another big problem for the defendants was poor representation. One defense attorney was an unpaid and unprepared real estate attorney from Tennessee who showed up for the first day of trial "so stewed he [could] hardly walk straight." The other defense attorney was a forgetful and doddering lawyer who hadn't tried a case in decades.

- The Scottsboro Boys were tried rapidly over a three-day period, in groups of two or three. The trials were a total disaster for the defense. There was no probing cross-examination of Victoria Price or Ruby Bates, even though their stories contradicted one another. The doctors who examined the alleged victims were cross-examined not at all.

- The only witnesses called by the defense were the defendants themselves—and they ended up accusing each other. No closing argument was offered by defense attorneys. A local editorialist described the state's case as "so conclusive as to be almost perfect."

- To make matters worse, verdicts in one trial were announced to the crowd outside the courthouse while the next trial was underway inside. Defendants and jurors alike could hear the crowd's roar of approval when guilty verdicts were announced.

- When the trials were over, eight of the nine Scottsboro Boys were sentenced to death. For 12-year-old Roy Wright, 11 of the 12 jurors voted for death, but one juror held out for life imprisonment on account of his tender age.

- The Scottsboro trials got big play in the national press. Many people expressed shock at the swiftness of the trials and the severity of the sentences. Still, the NAACP, the organization you might expect would rush to the Scottsboro Boys' defense, hesitated. If the defendants really were guilty, the thinking went, it would be bad PR for the NAACP—at the time a young organization trying to build support for civil rights among moderate whites.

- Into this void stepped the Communist Party, a group hated by many Southerners, who saw the case as a great recruiting tool among Southern blacks and Northern liberals. Through its legal arm, the International Labor Defense (ILD), the party called the case against the young blacks "a murderous frame-up." With no other lifeline, each and every defendant agreed to be represented in their appeals and subsequent trials by the Communist Party.

- The Alabama Supreme Court affirmed the convictions and death sentences. But the United States Supreme Court, in a landmark decision, saw things differently. In *Powell v Alabama*, the Supreme Court ruled for the first time that the Fourteenth Amendment's Due Process Clause guaranteed defendants the right to competent counsel

in capital cases. Whatever counsel the Scottsboro Boys got, the Court said, it wasn't competent. There would be new trials.

The Second Trial

- The second set of trials featured a star-studded courtroom cast. The Scottsboro Boys were represented by Samuel Liebowitz, a flamboyant New York criminal lawyer with an astonishing record of success. Liebowitz worked on the Scottsboro case for four years without pay. Alabama's attorney general, Thomas Knight, Jr., headed the prosecution team. Judge James Horton presided.

- Leibowitz first sought to quash the indictments on the ground that African Americans had been systematically excluded from jury rolls. He raised eyebrows by questioning the veracity of local jury commissioners. Local people expressed shock when he insisted that prosecutor Knight stop his practice of referring to black witnesses by their first names. For many Alabamians, it was one thing to defend rapists—that, after all, is part of the American justice system—but it was another, unforgivable thing to attack their social order and way of life. Leibowitz's motion was denied.

- The star prosecution witness was Victoria Price. Direct examination was brief, lasting only 16 minutes. Price recounted her trip to Chattanooga, a fight that had broken out on the train between white and black youths (the reason the train was stopped in the first place), and the alleged gang rape. Prosecutor Knight's strategy was to cover the essential facts in a condensed, unadorned way. He wanted to minimize opportunities for defense attorneys to expose contradictions with the more detailed story Price had told in the first trials.

- Leibowitz's cross-examination of Price was merciless. His questions suggested his answers. She never, as she claimed, stayed at Callie Brochie's boardinghouse in Chattanooga. There was no boardinghouse, no Callie Brochie. Semen that had been found in Price's vagina came

not from rape on a train, but from an adulterous encounter with a man named Jack Tiller two days earlier.

- Dr. R. R. Bridges, the Scottsboro doctor who examined the girls less than two hours after the alleged rapes, was the next prosecution witness to take the stand. He turned out to be a better witness for the defense. He confirmed that semen was found in the vaginas of the two women, but observed that the semen contained no live sperm—even though sperm generally survive for 12 to 48 hours after intercourse. On cross-examination, Bridges admitted that the women were both calm, composed, and free of bleeding and vaginal damage when he had examined them two hours after the alleged rape.

- The prosecution's only eyewitness was Ory Dobbins, a farmer with land along the rail line. Dobbins testified that he had seen the defendants grab Price and Bates as they were about to leap from the train. On cross-examination, Liebowitz asked Dobbins how he could even be sure, given the speed of the train and his distance from it, that he had seen a woman, and not a man. Dobbins answered, "She was wearing women's clothes." It had already been admitted, however, that both Bates and Price wore overalls on the day in question. "Are you sure it wasn't overalls or a coat?" Judge Horton asked. "No sir, a dress," Dobbins replied.

- Lester Carter, a traveling companion of Bates and Price who had jumped from the train during the fight between blacks and whites, was one of the defense's most spectacular witnesses. In her testimony, Price had denied having met Carter before the day of the alleged rape. Carter testified to the contrary, saying that the night before he had begun traveling with the girls, he had sex with Ruby Bates. Price, he said, had done the same with her boyfriend.

- The defense's final witness was Ruby Bates, who said that she suffered from a troubled conscience after her testimony in the first trial and had returned to tell the truth about what happened. Bates testified that there was no rape, that none of the defendants touched her or even spoke to her. She said that her allegation had been made up after Price told her "to frame up a story" to avoid morals charges.

- After impassioned closing arguments from both sides, the jury left to deliberate the fate of Haywood Patterson, the first defendant to be tried. When they returned, the jurors pronounced Patterson guilty and sentenced him to death. The decision on guilt had taken just five minutes. Leibowitz was stunned.

- On June 22, 1933, Judge James Horton convened court to hear a defense motion for a new trial. Hardly anyone held out hope that the motion would be granted. But Horton had become convinced that Price was lying. Not only was her story full of inconsistencies, it was not corroborated by other witnesses or the medical evidence. Horton had also been approached privately by Dr. M. H. Lynch, who had been listed as a prosecution witness. Lynch, whom Knight never called to testify, told Horton that he was convinced the girls were lying, had told them so to their faces, and that they merely laughed at him.

- A well-connected politician from Montgomery visited Judge Horton to warn him that setting aside the jury's verdict would be political suicide. Horton made it clear to his visitor that his reelection prospects had nothing to do with the matter. He cited a motto that his mother had often repeated: "Let justice be done, though the heavens may fall."

Surprising everyone, Horton set aside the jury verdict and ordered a new trial. He lost his judgeship in the next election.

Subsequent Trials

- Judge Callahan, who presided at Haywood Patterson's next trial, acted more like a second prosecutor than a judge. He sustained virtually every prosecution objection and overruled virtually every defense objection; cut off all defense inquiry into Price's chastity, character, or reputation; and instructed the jury to presume that no white woman in Alabama would ever consent to sex with a black. At the close of his instructions, Callahan failed to provide the jury with the form for an acquittal until the prosecution, fearing reversible error, urged him to do so.

- Guilty verdicts were quickly returned by juries in the Patterson trial and in the subsequent trial of defendant Clarence Norris. Callahan sentenced each prisoner to death. Leibowitz promised to appeal the verdicts "to Hell and back."

- In 1935, the United States Supreme Court heard arguments in the Patterson and Norris cases. Leibowitz argued that the convictions should be overturned because Alabama's exclusion of blacks from its jury rolls violated the Equal Protection Clause of the Constitution. After six weeks of deliberation, the Supreme Court unanimously held that the Alabama system of jury selection was unconstitutional. Patterson's and Norris's convictions were reversed. Leibowitz hoped that the decision would convince Alabama that the Scottsboro cases were no longer worth their economic and political cost.

- But Alabama stubbornly refused to give in. Haywood Patterson was tried a fourth time. To the surprise of no one, a jury again convicted Patterson of rape. What was surprising, however, was that this jury sentenced Patterson to 75 years in prison instead of the death penalty—the first time in the history of Alabama that a black man convicted of raping a white woman had not been sentenced to death.

- In December of 1936, while Patterson's appeal was still pending and the other eight prisoners awaited their next trials, Thomas Knight met secretly with Samuel Leibowitz in New York. Knight told Leibowitz that the cases were draining Alabama financially and politically, and that he himself was sick of it all. He offered to drop prosecutions for three defendants if the others accepted sentences of no more than 10 years for either rape or assault.

- Leibowitz was reluctant to accept any deal that included jail time for any of his innocent clients, but Knight had a strong bargaining position. Guilty or not, any trial would almost certainly result in a conviction. Leibowitz agreed to the deal. Before the compromise could be implemented, however, Knight died suddenly. One week later, Judge Callahan announced that the next round of trials would soon begin.

- Seven of the nine Scottsboro Boys had been held in jail for over six years without trial by the time Clarence Norris was convicted in his third trial in July 1937. Convictions of three more Scottsboro Boys followed in quick succession, and each was sentenced to a lengthy prison term. Then came the big news: All charges were being dropped against the remaining four defendants.

- Leibowitz led the four freed Scottsboro Boys from the jail to an awaiting car, which quickly whisked them to the Tennessee border. Free of Alabama, but not of the label "Scottsboro Boy" or from the wounds inflicted by six years in prison, they went on with their separate lives—to marriage, to alcoholism, to jobs, to fatherhood, to hope, to disillusionment, to disease, to suicide.

- The five Scottsboro Boys left in Alabama dealt with the knowledge that their continued confinement bought the freedom of the others. They struggled with life in hellholes of prisons. By 1950, either through paroles or escapes, all of the Scottsboro Boys had found their way out of Alabama. In 1976, the last surviving Scottsboro Boy, Clarence Norris, received a full pardon from the state, signed by Governor George Wallace.

Suggested Reading

Carter, *Scottsboro*.

Goodman, *Stories of Scottsboro*.

Kinshasa, *The Scottsboro Boys in Their Own Words*.

Miller, *Remembering Scottsboro*.

Questions to Consider

1. Why did Victoria Price and Ruby Bates make false accusations of rape against the nine Scottsboro Boys?
2. In what ways were the trials of the Scottsboro Boys also trials of their defense attorneys?
3. What inner strength allowed Judge James Horton to set aside the jury's conviction of Haywood Patterson, knowing that it would likely be the end of his judicial career? What can we do to instill that inner strength in more people?

LECTURE 18

The Nuremberg Trials

No legal proceeding provides a better basis for understanding the nature and causes of evil than do the 12 sets of war-crime trials held in Nuremberg between 1945 and 1949. This lecture will focus on the first trial, which involved 22 major war criminals and established precedents for judges in the remaining trials.

Personnel and Preparations

- As World War II drew to a close, the question of what to do with captured Nazi leaders perplexed Allied leaders. Franklin Roosevelt and Joseph Stalin supported criminal prosecutions. Winston Churchill is reported to have favored summary execution at the beginning of the debate, but was eventually convinced that the Nazis should be given a trial first. In February 1945, the three Allied leaders issued a statement calling for some sort of judicial process.

- Harry Truman, who assumed the presidency after Roosevelt's sudden death, selected Justice Robert Jackson of the Supreme Court to be the chief prosecutor for the United States at a war-crimes trial to be held in Europe once the war was over. Truman wanted a respected figure, a man of unquestioned integrity, and a first-rate public speaker to represent the United States. Jackson was all of these things and more.

- In the last days of World War II in Europe, several Nazi leaders chose suicide over trial and punishment. Two days before Jackson's appointment as chief prosecutor, Adolf Hitler shot himself. Propaganda minister Joseph Goebbels did the same. Heinrich Himmler—perhaps the most terrifying figure in the Nazi regime—took a cyanide crystal shortly after his capture and died 15 minutes later.

- Not everyone committed suicide, however. Many important Axis leaders who fell into Allied hands, either through surrender or capture. Deputy Führer Rudolph Hess had been held in England since 1941, when he parachuted into the English sky in a solo effort to convince British leaders to make peace with the Nazi government. Reichsmarschall Hermann Goering surrendered to Americans on May 6, 1945, and spent his first evening in captivity happily drinking and singing with American officers.

- Hans Frank, called the Jew Butcher of Cracow, was captured and beaten by American soldiers. Karl Doenitz, Hitler's successor as Führer, was captured in Flensburg along with Field Marshal Wilhelm Keitel,

Nazi Party philosopher Alfred Rosenberg, General Alfred Jodl, and Armaments Minister Albert Speer.

- On June 26, Robert Jackson flew to London to meet with delegates from the other Allied powers. Jackson defended the notion of prosecuting the Nazis against objections that a tribunal would be applying ex post facto laws or that it lacked jurisdiction over German citizens. Jackson told negotiators from the other nations, "What we propose is to punish acts which have been regarded as criminal since the time of Cain and have been so written in every civilized code."

Justice Robert Jackson

- Negotiators in London agreed to call the trying court the International Military Tribunal (IMT). The IMT consisted of one primary and one alternate judge from each of four nations: Britain, the Soviet Union, France, and the United States. It used the adversarial system preferred by the Americans and British, rather than the inquisitorial model favored by the French. Defenses based on superior orders were prohibited.

- Jackson convinced negotiators that the war crimes trials should be held in Germany. One of the few cities with a large courthouse still standing was Nuremberg, site of some of Hitler's most spectacular rallies. It was also the place where Nazi leaders had enacted the infamous Nuremberg Laws, which stripped Jews of their property and basic rights. Jackson liked that connection.

- In August, representatives of the Allied nations signed the Charter of the International Military Tribunal, establishing the laws and procedures that would govern the Nuremberg trials. Six days later, a cargo plane carrying most of the initial defendants landed in Nuremberg. Allied military personnel took the prisoners to a secure cell block in the city's Palace of Justice.

- With the first trial set to begin on November 20, an Allied prosecution staff numbering in the hundreds assembled, began interviewing potential witnesses, and started to comb through the 100,000 documents gathered after the war to determine which they would introduce as evidence. German lawyers, some of whom were Nazis themselves, arrived to interview their clients and discuss defense strategies. Members of the world press filed background features on the upcoming trial. Nearly 1,000 workers rushed to complete restoration of the Palace of Justice.

The Trial Begins

- On the opening day of the trial, 21 defendants took their seats in the dock at the rear of the courtroom. Another defendant, Martin Bormann, was tried in absentia. Behind the defendants stood six American sentries with their backs against the wall. The trial's chief judge, Sir Geoffrey Lawrence of Britain, called the proceeding to order.

- The trial began with the reading of the indictments, which included four counts. Count 1, "conspiracy to wage aggressive war," addressed crimes committed before the war began. Count 2, "waging an aggressive war," addressed the undertaking of war in violation of international treaties and assurances. Count 3, "war crimes," addressed more traditional violations of the laws of war, such as the killing or mistreatment of prisoners of war. Count 4, "crimes against humanity," addressed crimes committed against Jews, ethnic minorities, the physically and mentally disabled, civilians in occupied countries, and others.

- Justice Jackson delivered an eloquent opening statement for the prosecution. Jackson told the court, "The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating that civilization cannot tolerate their being ignored because it cannot survive their being repeated. That four great nations, flushed with victory and stung with injury, stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes power has ever paid to reason."

- The prosecution began its case in chief with proof that the Nazis had waged an aggressive war. Over two weeks, the prosecution presented documentary evidence concerning the invasions of Austria, Czechoslovakia, Poland, Denmark, Norway, Belgium, Holland, Luxembourg, Greece, Yugoslavia, and the Soviet Union.

- Hour after hour passed as various letters and other communications were read into the record. The press left in droves. Worried that

excessive reliance on documentary evidence was undermining their goal of educating the public about the horrors inflicted by the Nazi regime, prosecutors began to rely more heavily on physical evidence and live witnesses.

- Another task of the prosecution was to prove the Nazis' use of slave labor and concentration camps. Some of the evidence introduced during this part of the prosecution is difficult to stomach. For example, prosecutors introduced samples of tanned human skin that had been removed from concentration camp victims and preserved for Ilse Koch, the wife of the commandant of Buchenwald, to be made into lampshades and other household objects for her home. Prosecutors also introduced into evidence the shrunken head of an executed Pole, used by Koch as a paperweight.

- By late December, the prosecution began to introduce evidence to establish the criminality of various Nazi organizations, including the SS and the Gestapo. A British prosecutor, seeking to establish the criminality of the SS, read an affidavit from Dr. Sigmund Rascher, a professor of medicine who had performed experiments on inmates at Dachau. In one such experiment, inmates were stripped naked and thrown into tanks of freezing water. The inmates were then pulled out of the tanks to see which of four methods of warming might work best. Most went into convulsions and died.

- As the trial progressed, a series of concentration camp victims testified about their experiences. Their testimony was heartbreaking. Marie Claude Vaillant-Couturier, a 33-year-old French woman, was taken from France by train to Auschwitz in 1942. She described how a Nazi orchestra played happy tunes as soldiers separated those destined for slave labor from those who would be gassed. She also described the horrible cries she heard one night when "the Nazis had run out of gas and children had been hurled into the furnaces alive."

- Near the end of the prosecution case, Soviet prosecutors introduced a film, *Documentary Evidence of the Atrocities of the German Fascist Invaders*, that featured Russian narration over footage of Nazi atrocities.

In one scene, a boy was shown being shot because he refused to give his pet dove to an SS man. In another scene, naked women were forced into a ditch, then made to lie down as German soldiers—smiling for the camera—shoot them.

- The most anticipated moment of the trial arrived when the defense called Hermann Goering to the witness stand. Goering was an unrepentant witness. He evaded no questions; he offered no apologies. He described the concentration camps as a necessary measure to preserve order, and suggested that the Nazi leadership principle, which concentrated all power in the führer, was the same principle on which the Catholic Church and the government of the Soviet Union were based.

- On cross-examination, Goering at first managed to deflect most of Jackson's intended blows. On the third day, however, Jackson asked about orders signed by Goering depriving Jews of the right to own businesses, requiring Jews to surrender their gold and jewelry to the government, and barring Jews from seeking compensation for property damage. Goering had few opportunities to do anything more than admit the truth of Jackson's assertions.

- It took four months for lawyers for each of the Nazi leaders to present their evidence. Most defendants took the stand themselves, trying to put their actions in as positive a light as possible. A number of the defendants claimed to know nothing of the existence of concentration camps or midnight killings. Others emphasized that they were merely following orders. Although the IMT's rules clearly disallowed defenses based on superior orders, defendants raised the issue anyway in the hope that it might affect the severity of their sentences.

- Some defense evidence boomeranged and actually strengthened the prosecution's case. One such mistake occurred when the defense attorney for Ernst Kaltenbrunner called Colonel Rudolf Hoess, the former commandant of Auschwitz, to the stand. Hoess's matter-of-fact account of mass executions using Zyklon B gas—sometimes killing as many as 10,000 inmates in a single day—left the courtroom stunned.

- A few of the defendants used their time on the witness stand to confess their mistakes and apologize for their actions. Wilhelm Keitel testified that he had come to regret the military orders he gave—orders he acknowledged were "contrary to accepted usages of war." Hans Frank, the Nazi governor of Poland, admitted to his role in the Holocaust. "A thousand years will pass," Frank said, "and still Germany's guilt will not have been erased." Albert Speer was the defendant most willing to admit fault. Speer said that it was "my unquestionable duty to assume my share of responsibility for the disaster of the German people."

Verdict and Aftermath

- On October 1, 1946, the 21 defendants filed into the courtroom for the last time. Sir Geoffrey Lawrence announced the verdicts. Eighteen defendants were convicted on one or more count—including Goering, who was found guilty on all four counts. Three defendants were found not guilty, but they would soon be tried in German courts for alleged violations of German law.

- Sentences were announced in the afternoon for the convicted defendants. Ten defendants, including Goering, Kaltenbrunner, and Joachim von Ribbentrop, were sentenced to death by hanging. Three defendants, including Rudolf Hess, received life sentences. Four others, including Albert Speer, received sentences ranging from 10 to 20 years. The trial had lasted 315 days.

- Over the next two weeks, the condemned men talked with their lawyers about their last-ditch appeals to the Allied Control Council, which had the power to reduce or commute sentences. The Allied Control Council, after three hours of debate, rejected all appeals.

- On October 15, the day before the scheduled executions, Goering committed suicide by ingesting a smuggled cyanide pill. Execution of the remaining Nazis sentenced to death commenced few hours later, at 1:11 am. By 2:45 a.m., it was all over.

- The first Nuremberg trial provided thorough documentation of Nazi atrocities. Even now, the images and testimony that came out of Nuremberg retain their capacity to shock. Perhaps more importantly, the trials exposed many of the defendants for the criminals they were. Nuremberg denied to Nazi leaders the martyrdom in the eyes of the German public that they might otherwise have achieved. There are no statues in Germany commemorating Nazi war heroes. Today, Germany is a democracy with an educational system that teaches the truth about the country's dark past.

- The trials also set a precedent for dealing with war crimes and crimes against humanity. The IMT became a model for other tribunals, including the Tokyo War Crimes Tribunal, which tried Japanese leaders for war crimes in the Pacific theatre. The International Court of Justice in The Hague is also modeled on the IMT. Finally, the trials inspired work to prevent future atrocities, leading to measures such as a 1948 United Nations convention on genocide.

The International Court of Justice

Suggested Reading

Gilbert, *Nuremberg Diary*.

Marrus, *The Nuremberg War Crimes Trial*.

Persico, *Nuremberg*.

Taylor, *The Anatomy of the Nuremberg Trials*.

Tusa and Tusa, *The Nuremberg Trial*.

Questions to Consider

1. Was it unfair for the Allies to charge and try Nazi leaders for crimes that were not crimes at the time their actions were taken?
2. What do the Nuremberg trials reveal about the nature of the evil on display in World War II?
3. Did the Nuremberg trials succeed in their goal of educating the world, including the German people, about the extent of Nazi atrocities?

LECTURE 19

The Alger Hiss Trial

On August 3, 1948, Whittaker Chambers testified before a congressional committee about his former role as a Communist agent. His testimony set in motion events that changed America, including the trial of Alger Hiss, a high-ranking former State Department official, for perjury. The Hiss trial catapulted an obscure California congressman named Richard Nixon to national fame, set the stage for Senator Joseph McCarthy's notorious Communist-hunting, and marked the beginning of a conservative intellectual and political movement that, decades later, would put Ronald Reagan in the White House.

The House Un-American Activities Committee

- In his 1948 testimony before the House Un-American Activities Committee (HUAC), Whittaker Chambers claimed to have left the Communist Party in 1938. The following year, Chambers went to Washington DC, where he "reported to authorities what [he] knew about the infiltration of the United States Government by Communists." In his 1948 testimony, Chambers said that he was surprised that his initial report failed to produce much follow-up from the administration.

- In response to questions from committee members, Chambers identified persons whom he had previously reported as being active in the Communist underground. One such person was Alger Hiss. Hiss played key roles while working in a high-level State Department post, including the lead role in organizing the American side of the Yalta Conference.

- The committee questioned Chambers about his association with Hiss, who by that time had left the State Department. Chambers described their relationship as very close. At a meeting in the Hiss home, Chambers said, he tried to convince Alger to leave the Communist party, but Hiss refused.

- Chambers's accusation against Hiss received significant play in the media. Hiss decided that he could not ignore the charges. In what proved to be a monumental mistake, he sent a telegram to HUAC's chairman, in which he categorically denied Chambers's charges. Hiss's telegram read:

> I DO NOT KNOW MR. CHAMBERS AND, SO FAR AS I AM AWARE, HAVE NEVER LAID EYES ON HIM. THERE IS NO BASIS FOR THE STATEMENTS ABOUT ME MADE TO YOUR COMMITTEE. … I WOULD FURTHER APPRECIATE THE OPPORTUNITY OF APPEARING BEFORE YOUR COMMITTEE.

- Chambers and Hiss could hardly have been more different, sharing only impressive intelligence. Alger Hiss was a tall, handsome, Harvard-trained lawyer with an impeccable pedigree. Whittaker Chambers was a short, stocky, and rumpled Columbia dropout and confessed former Communist from a poor and troubled Philadelphia family.

- In the summer of 1948, it was Chambers's story that rang true to Congressman Richard Nixon. Still in his first term as an elected official, Nixon had accepted a seat on the House Un-American Activities Committee in 1947. At the time, HUAC was an often-ridiculed political backwater. Soon, however, it became the most talked-about committee in Congress.

- Hiss's wish for an opportunity to appear before the committee was granted. Before a packed house, Hiss calmly and confidently told committee members, "I am not and never have been a member of the Communist Party." Hiss's performance impressed committee members enough that most concluded that the investigation should be dropped. President Truman went so far as to call the inquiry "a red herring."

- One member of the committee, however, wanted to press on with the investigation. Nixon found Hiss "condescending" and "insulting in the extreme." Hiss's style and Ivy League pedigree didn't sit well with Nixon, a Whittier College graduate and the product of working-class parents. With reluctance, the committee voted to make Nixon chair of a subcommittee tasked with determining who was lying, Hiss or Chambers.

- At a meeting in New York, Nixon asked Chambers a series of questions designed to determine if he actually knew Hiss as well as he claimed. Chambers had most of the answers. He told Nixon and his subcommittee about Hiss's nicknames, habits, pets, vacations, and mannerisms. He even gave the subcommittee a description of floor plans and furniture in the Hiss home. On the question of whether Hiss had any hobbies, Chambers said that both Hiss and his wife were

Richard Nixon

amateur ornithologists—birdwatchers—who had once been excited to spot a prothonotary warbler.

- After the Chambers interview, Hiss was asked to face questioning from HUAC in executive session. The committee chair, J. Parnell Thomas, pointedly told Hiss that either Chambers had "made a study of your life in great detail or he knows you." Hiss was shown two photographs of Chambers. Chairman Thomas asked Hiss whether he still maintained that he did not recognize the man who claimed to have spent a week in his house. Hiss answered, "I do not recognize him from that picture. … I want to hear the man's voice."

- A turning point in the investigation came when Richard Nixon asked, "What hobby, if any, do you have, Mr. Hiss?" Hiss answered that his hobbies were "tennis and amateur ornithology." Congressman John McDowell jumped in: "Did you ever see a prothonotary warbler?" Hiss fell into the trap. He answered enthusiastically, "I have—right here on the Potomac. Do you know that place?" This response convinced previously skeptical committee members that Chambers had been telling the truth.

- On August 25, for the first time in history, television cameras were present for a congressional hearing. The committee confronted Hiss with a host of questions about an alleged lease of his apartment to Chambers and the transfer to Chambers of his 1929 Ford. In the afternoon session, Chambers called Hiss a "devoted and at the time a rather romantic Communist" who now "represents the concealed enemy against which we are all fighting."

- The committee concluded its investigation with a report calling Hiss's testimony "vague and evasive." Chambers's testimony was described in the report as "forthright and emphatic." In response, Hiss published a 14-page letter attacking the committee for "using the great powers and prestige of the United States Congress to help sworn traitors to besmirch any American they may pick upon."

The Slander Suit

- On October 8, Hiss filed an ill-advised slander suit against Chambers based on the latter's accusation on *Meet the Press* that Hiss "was a Communist and may be now." Hiss's attorneys began a widespread investigation into Chambers's background, hoping to find something that would destroy Chambers's credibility. The investigation included exploration of whether Chambers had ever been treated for mental illness or involved in homosexual relationships.

- In the middle of a deposition for the slander suit, Hiss's attorney requested that Chambers produce "any correspondence, either typewritten or in handwriting from any member of the Hiss family." In response, Chambers retrieved an envelope containing four notes handwritten by Alger Hiss, 65 typewritten copies of State Department documents, and five strips of microfilm featuring photographs of State and Navy Department documents.

- With the production of this new evidence, the question of whether Hiss knew Chambers better than he admitted, or even whether he was a Communist, became inconsequential. The question instead became whether Alger Hiss, high-level State Department official, was a Soviet agent. Fortunately for Hiss, the statute of limitations for espionage at the time was five years, and the incriminating evidence all concerned documents passed over a decade earlier. The statute of limitations did not help Hiss, however, on the question of whether he had committed perjury.

The First Perjury Trial

- Hiss's trial in Manhattan for perjury began in May 1949. He faced two counts, both stemming from testimony before a federal grand jury. Hiss was charged with lying when he testified that he never gave any documents to Chambers and when he claimed never to have seen Chambers after January 1, 1937.

- Chambers was the prosecution's central witness. He testified that Hiss had begun passing him State Department documents in early 1937. Hiss, he said, followed the espionage procedures recommended by a Soviet agent. He brought home files nightly and retyped them.

- On cross-examination, Hiss's defense attorney tried to highlight defects in Chambers's character. He asked about a play, written by Chambers as a student at Columbia, which included what the lawyer called "an offensive treatment of Christ." He asked whether Chambers had ever lived in a "dive" in New Orleans with a prostitute named "One-Eyed Annie." Chambers denied the accusation. He then demanded to know whether Chambers had been "for some fourteen years an enemy and traitor of the United States of America?" Chambers confirmed that he had been.

- Chambers's wife, Esther, followed her husband on the stand. She told jurors of the close relationship that she and her husband had enjoyed for several years with Alger and Priscilla Hiss. And she described specific visits to Hiss's apartment in Baltimore.

- The prosecution next called a series of witnesses who tied Hiss to the typewritten State Department documents introduced by the government. One of these witnesses, a former secretary in Hiss's State Department office, testified that Hiss often took departmental documents home from work. An FBI laboratory expert testified that various letters known to have been typed by Hiss in 1936 and 1937 were typed on the same Woodstock typewriter as the papers retrieved by Chambers.

- The defense tried to persuade jurors that Hiss's reputation was so good that his alleged espionage activity was unthinkable, that Chambers was mentally unstable and should not be believed, and finally that Hiss's Woodstock typewriter had been given to Claudia Catlett, a former household employee, making it impossible for either Alger or Priscilla Hiss to have retyped the State Department documents.

- The defense team assembled an impressive roster of character witnesses to appear on Hiss's behalf. The list included two Supreme Court

justices, a former solicitor general, former presidential nominee John W. Davis, and future presidential nominee Adlai Stevenson.

- When Alger Hiss took the stand, he admitted writing the four handwritten notes produced by Chambers, but denied having any connection with the microfilm or any role in the typing of the 65 State Department documents. He also insisted—as he had told the grand jury—that he had not met Chambers on any occasion after January 1, 1937.

- On July 6, 1949, the case went to the jury. Late the next afternoon, the jury sent a note saying that they were unable to reach a verdict. The presiding judge urged the jury to make one final effort to reach a conclusion, but within hours the jury again reported themselves hopelessly deadlocked. A mistrial was declared.

The Second Perjury Trial

- The months between the first and second Hiss trials were eventful. The Soviet Union exploded an atomic bomb. The Red Army of Mao Tse-tung drove the forces of Chiang Kai-shek to the island of Formosa. And perhaps most ominously for Alger Hiss, polls showed public attitudes shifting toward harsher treatment of U.S. Communists.

- In the second trial, the defense relied heavily on the testimony of its expert psychiatrist, Dr. Carl A. Binger. On direct examination, Binger confidently offered his thoughts about the mental state of Chambers based almost solely on his reading of Chambers's writings and his observation of Chambers's trial testimony. Binger called Chambers a "psychopathic personality" and "a pathological liar."

- On cross-examination, prosecutors destroyed Binger's credibility. Skillful questioning by an attorney for the prosecution demonstrated the absurdity of the doctor's conclusions, which were based in large part on traits such as Chambers's "untidiness" and his tendency to glance at the ceiling.

- On January 20, 1950, the jury returned its verdict: guilty on both perjury counts. Five days later, the presiding judge imposed the maximum sentence of five years in prison. In a brief statement prior to sentencing, Hiss expressed confidence "that in the future the full facts of how Whittaker Chambers was able to carry out forgery by typewriter will be disclosed."

The Aftermath

- Despite a relatively light sentence, the trial set in a motion a chain of events that forever changed American politics. Joseph McCarthy, a little-known senator from Wisconsin, seized on the Hiss conviction to claim that the State Department was "thoroughly infested" with Communists. He opened divisive hearings that plagued American society in the 1950s. Chambers disassociated himself from McCarthy's crusade, describing the senator as "a raven of disaster."

- Richard Nixon's sudden fame from his role in the Hiss case attracted the attention of 1952 Republican presidential nominee Dwight Eisenhower. Eisenhower selected Nixon as his running mate, a position Nixon eventually used as a springboard to the presidency in 1968.

- Even more significantly, the Hiss case fanned the anticommunist embers that within a decade evolved into a grassroots conservative movement in the Republican Party. In 1964, the movement produced the nomination of Barry Goldwater. In 1980, it led to the election of Ronald Reagan.

- One of the books that influenced this political transformation was Whittaker Chambers's own 1952 autobiography, *Witness.* Ronald Reagan saw as the book as a political watershed. In fact, Reagan credited Chambers's autobiography with sparking his own transformation from a New Deal Democrat to a conservative Republican.

Dwight D. Eisenhower

- In the 46 years that Alger Hiss lived after his perjury conviction, he never departed from his claim of innocence. But he and his supporters found their case weakened in the mid-1990s with the release of the Venona cables, intercepted communications sent to Moscow by Soviet agents in the United States. The intercepted cables suggested that Hiss was a Soviet agent who had supported the Communist cause at the 1945 Yalta Conference.

- The confrontation between Chambers and Hiss initiated a polarization of the political left and the political right. Chambers saw the world as a battle between godless Communists and Christian anticommunists, between darkness and light. Liberals largely rejected this division as arrogant and overly simplistic.

Suggested Reading

Chambers, *Witness*.

Cooke, *A Generation on Trial*.

Nixon, *Six Crises*.

Swan, *Alger Hiss, Whittaker Chambers, and the Schism in the American Soul*.

Weinstein, *Perjury*.

Questions to Consider

1. How might the course of American history be different if Whittaker Chambers had never accused Alger Hiss of spying for the Soviets?
2. If Alger Hiss did spy for the Soviets, why did he continue to proclaim his innocence until his death?
3. Why did the second Hiss trial result in a guilty verdict, but not the first trial?

LECTURE 20

The Rivonia (Nelson Mandela) Trial

It's June of 1961, and high officials of the African National Congress (ANC) have gathered in Durban, South Africa to discuss whether the ANC should continue to follow its long-standing policy of nonviolence. Nelson Mandela is the leading voice for a change of strategy. He is opposed by ANC president Albert Luthuli, who sees nonviolence not only as a tactic, but as a moral principle. In the end, Mandela's position prevails. He is authorized to form a separate military wing outside of the ANC's direct control. The organization will be called Umkhonto we Sizwe ("Spear of the Nation"), and it will soon become central to the most celebrated trial in South Africa's history.

Background

- One of Mandela's first actions in his capacity as leader of the military wing of the ANC was to send a letter to South African newspapers. In the letter, he warned that a new campaign of sabotage would be launched unless the government agreed to call for a national constitutional convention. Mandela knew full well that no such call would be made. Spear of the Nation began planning its campaign.

- The first strike occurred in December 1961, when saboteurs lit explosives and blew up an electricity substation. Over the next 18 months, dozens more acts of sabotage followed, including attacks on government buildings. If one believes the government's count, militants committed 235 separate acts of sabotage.

- Mandela spent most of the early months of the campaign in an ANC safe house, where he went by an assumed name. When he left the safe house, he used a disguise. The road leading to the safe house began near a bend in the road marked by a sign bearing the name "Rivonia." For South Africans, Rivonia became the name for both the safe house and the trial of ANC militants that captured the world's attention.

- Mandela used his time at Rivonia to shape strategy and plan a potential guerrilla war against the South African government. His goal, he said, was not to establish a government ruled by blacks. Rather, it was to turn South Africa into a multiracial democracy that abolished the repressive laws of the apartheid regime—laws that separated black African families, restricted their travel, imposed curfews, and denied other basic human rights.

- In February 1962, Mandela left South Africa on a mission to build support from foreign governments. He spent six months in Addis Ababa, Ethiopia, where he received military training. After returning to South Africa in August, Mandela traveled to Durban to provide a briefing on his trip. On the drive back to Rivonia, his car was pulled over by police. Someone had tipped them off. Mandela was arrested

Nelson Mandela

and charged with inciting a strike and leaving the country without a passport. It would be more than 27 years before he would enjoy another day of freedom.

- Spear of the Nation's campaign of sabotage continued after Mandela's arrest, and South African law enforcement became desperate to find the rest of the organization's leadership. In July 1963, they found an informant to aid in their search. During a raid on Rivonia, eight suspects were taken into custody, including longtime ANC activist Walter Sisulu. The police also seized a radio transmitter, a duplicating machine, and dozens of documents—letters, pamphlets, Communist literature, maps, and one six-page document titled "Operation Mayibuye."

- Mandela and the other suspects captured by police became known as the Rivonia 11. The group included seven men captured at Rivonia, two men who were previously detained, and an attorney whose law firm had connections with the ANC. All except Mandela were held under a new law that allowed security officials to hold persons without charges for 90 days if they were suspected of political crimes.

- For the next three months, with no charges pending, the detainees were denied the opportunity to consult with lawyers or see their families. Most were held in solitary confinement. Some were tortured.

- The defendants' first opportunity to meet with defense attorneys did not come until the night before their trial was scheduled to begin. Nine of the defendants agreed to enter a joint defense. Attorney James Kantor found his own lawyer because he had no connection with the other defendants; he seemed to have been charged as a proxy for his brother-in-law and law partner, who did work for the ANC. The other member of the Rivonia 11 not participating in the joint defense was Bob Hepple. Hepple was in conversation with authorities to testify for the state in return for immunity from prosecution. Under the circumstances, of course, Hepple needed his own lawyer and could not be included in defense strategy sessions.

The Trial

- The Rivonia 11 were each charged with two counts of sabotage and two counts of conspiracy. Defense attorney Bram Fischer led off the proceedings with an attack on the sufficiency of the indictment. He argued that the charges were too vague, and failed to provide any indication as to which defendants carried out which alleged acts of sabotage. Justice de Wet, the presiding judge, found Fischer's arguments convincing and quashed the indictment.

- Every defendant except Bob Hepple was rearrested and indicted on more specific charges. The charges against Hepple were dropped, and it was announced that he would be the government's first witness. The remaining defendants were accused of sabotage, ordering munitions, recruiting young men for guerrilla warfare, encouraging invasion by foreign military units, and conspiring to obtain funds for revolution from foreign states.

- Nelson Mandela, the first defendant charged, pled not guilty: "My Lord, it is not I, but the government that should be in the dock. I plead not guilty." The other defendants pleaded not guilty as well. Many of them saw the trial as their first and last opportunity to explain to the nation why they felt compelled to do what they did for the sake of South Africa's oppressed people.

- The first prosecution witness was not Bob Hepple, as prosecutors had promised. Hepple had fled the country. From the safety of Kenya, he told reporters that he never had any intention of testifying against his fellow defendants and was just looking for an escape opportunity.

- The star witness for the prosecution was Bruno Mtolo, a former Spear of the Nation saboteur. Mtolo testified that, on orders from the organization's high command, he had blown up a municipal office, a power pylon, and an electricity line. He testified that Mandela gave comrades in his regional command a pep talk before they undertook their missions. Mtolo described the workings of bombs, grenades,

land mines, and other weapons used by Spear of the Nation saboteurs. Mtolo also testified that he believed the ANC and Spear of the Nation had become instruments of the Communist Party.

- The other critical piece in the prosecution case was the six-page document confiscated in the Rivonia raid—the one labeled "Operation Mayibuye." The document turned out to be a plan that called for guerrilla warfare and an invasion of South Africa by supporting foreign military units. The prosecution contended that the plan was the actual operating plan of Spear of the Nation. The defense, on the other hand, contended that the document was just a draft of one possible plan of action and had not been approved by either Spear of the Nation or the ANC. Mandela himself testified that he considered the document to be "entirely unrealistic in its goals and plans."

- The government produced other damning documents that were read into the record. A document marked "Top Secret," written in the handwriting of one of the defendants and found at Rivonia, mentioned possible support from the Soviet Union, China, Germany, and Yugoslavia, among other countries. Methods of obtaining weapons, including explosives, were outlined in detail. The defendants viewed the evidence with indifference. They readily admitted to talking openly about sabotage and the armed struggle for racial justice.

- Many of the prosecution witnesses in the Rivonia trial were recruits who testified only after enduring tough questioning while in detention, often in solitary confinement. Some were physically mistreated. Knowing that their release from detention and escape from future prosecution depended on providing trial testimony that satisfied the demands of police and prosecutors, the reliability of their testimony was suspect. Some witnesses shaded the truth or lied outright to strengthen the government's case.

- For some defendants, including Nelson Mandela, the prosecution's evidence of guilt was very strong. For other defendants, the evidence of guilt was less compelling, but likely to be sufficient given the political circumstances of the trial. And for yet other defendants, including

James Kantor, the prosecution's evidence ranged from weak to virtually nonexistent.

- In his opening statement for the defense, Bram Fischer admitted that seven of the defendants were members of Spear of the Nation, but denied that the organization's high command made a decision to embark on a course of guerrilla warfare. Operation Mayibuye, Fischer said, "had not been adopted, and would not have been adopted while there was some chance of having their objectives achieved by the combination of mass political struggle and sabotage." Fischer finished his address by announcing that the defense case would "commence with a statement from the dock by Nelson Mandela."

- Mandela's decision to deliver a statement to open the case is interesting. An opening statement is not subject to cross-examination, and it is given little weight by a judge. Mandela chose to deliver a statement rather than testify because, in his words, he "did not want to be limited" to the question-and-answer format. He explained, in his own way, why he and others found it necessary to undertake a campaign of sabotage against the South African government.

- The defense team agreed to the arrangement because they recognized that the usual form of testimony would have caused Mandela's arguments to lose power as they "came out in a jumble of bits and pieces." The defense team was worried, however, because the speech Mandela planned to deliver was unapologetic. His attorney thought the speech might earn him the death penalty.

- Mandela began his statement in a quiet, even voice. He spoke for four hours. "I am the first accused," Mandela said, and he proceeded to tell the story of his life. He explained why he joined the struggle for racial equality, and why he finally came to the conclusion that nonviolent protest must give way to more violent approaches. Without sabotage, Mandela said, the goal of a multiracial democracy in South Africa could never be achieved. Mandela concluded his speech by announcing that he was ready to make the ultimate sacrifice for his cause:

> During my lifetime I have dedicated myself to this struggle of the African people. I have fought against white domination, and I have fought against black domination. I have cherished the ideal of a democratic and free society in which all persons live together in harmony and with equal opportunities. It is an ideal which I hope to live for and to achieve. But if needs be, it is an ideal for which I am prepared to die.

- Walter Sisulu, former secretary-general of the ANC and a member of Spear of the Nation's high command, was the first witness for the defense. Sisulu testified that Operation Mayibuye was the brainchild of Arthur Goldreich, a member of the high command and a former member of the Israeli underground movement. Sisulu said that the plan had not been adopted, in part because more time was needed "to condition the masses." He testified that he agreed sabotage was necessary, but insisted that "the choice of targets makes the position perfectly clear that the intention was not to injure anybody at all."

- In five days of cross-examination, prosecutors tried to link the ANC and Spear of the Nation to the Communist Party and pushed Sisulu to identify others who played key roles in underground organizations. Despite warnings from the bench, Sisulu refused to name names.

- In all, seven defendants took the stand. For the several defendants for whom conviction was all but certain, their time on the stand was an opportunity to explain to the nation why they did what they did. For the defendants for whom conviction was in some doubt, their testimony gave them a chance to rebut whatever weak evidence the prosecution had presented that tied them either to the sabotage or conspiracy charges.

- Before closing arguments, Justice de Wet dismissed charges against James Kantor. He recognized that the case against Kantor was virtually nonexistent. In all likelihood, Kantor was charged as a means of intimidating progressive lawyers.

Verdict and Aftermath

- Three weeks later, Justice de Wet announced his verdict. Only Rusty Bernstein was acquitted. One defendant was found guilty on just one of the four counts. The other defendants were found guilty on all counts. Each of the convicted defendants was sentenced to life imprisonment.

- Nelson Mandela spent the next 18 years in a prison on Robben Island, just off Cape Town. He worked in a lime quarry and was allowed one letter and one visitor every six months. In 1982, authorities transferred Mandela and four other Rivonia defendants to a prison in suburban Cape Town.

- The winds of change began to sweep South Africa in 1985, and the first of the Rivonia defendants was released from prison. President P. W. Botha offered to free Mandela if he would renounce violence. Mandela refused: "Only free men can negotiate—a prisoner cannot enter into contracts."

Robben Island Prison

- By the late 1980s, only Mandela remained in prison, while secret negotiations for his release continued. In February 1990, President F. W. de Klerk made the announcement the world was waiting for: Nelson Mandela would be freed.

- The next year, Mandela was elected president of the ANC, which won 62 percent of the vote in the April 1994 election. In May 1994, Mandela was sworn in as the first black president of South Africa.

- We can wonder how the history of South Africa might have been different had Mandela been sentenced to death. It is hard to imagine any leader emerging in his place with half his grace, willingness to forgive, or power to inspire. The world would have been a poorer place without him.

Suggested Reading

Bernstein, *The World That Was Ours*.

Broun, *Saving Nelson Mandela*.

Joffe, *The State vs. Nelson Mandela*.

Mandela, *Long Walk to Freedom*.

Questions to Consider

1. Under the circumstances of the time, was Mandela right to propose a strategy of sabotage to advance the goals of the ANC? Should he have been able to argue in the trial that sabotage was morally justified, given the government's policy of oppression?
2. Had it not been for political pressure from outside South Africa, is it likely that many of the defendants in the Rivonia trial would have received death sentences?
3. How might the course of South African history have been different if Justice de Wet had imposed the death penalty on Mandela?

LECTURE 21

The Mississippi Burning Trial

In June 1964, a group of African American parishioners leaving Mount Zion Church in Longdale, Mississippi, are confronted by armed members of the Ku Klux Klan. The Klansmen announce that they are looking for Michael Schwerner, a white civil rights activist working for the Congress of Racial Equality (CORE) in Meridian, Mississippi. But Schwerner isn't there. Frustrated, the Klansmen beat the parishioners and set the church ablaze. Within 48 hours, Schwerner and two fellow activists have been murdered. The investigation and prosecution that follow will change the Klan, Mississippi, and the course of civil rights in America.

Background

- Michael Schwerner was attending a training program for civil rights volunteers in Ohio when he heard the news of the events at Mount Zion. Anxious to learn more about the attack, Schwerner and two fellow activists loaded into a blue Ford station wagon for the long trip south. With Schwerner was James Chaney, a 21-year-old African American and native Mississippian who served as Schwerner's chief aide, and Andrew Goodman, a Queens College student and civil rights volunteer.

- The three young men caught a few hours' sleep after arriving in Meridian, then drove northwest toward the scene of the church fire. Longdale is in Neshoba County, which at the time was known as a high-risk area for civil rights workers. Before leaving Meridian, Schwerner told a fellow CORE worker that he, Chaney, and Goodman should be back in the CORE office by 4:00. If they weren't back by 4:30, she should start making phone calls.

- Neshoba County sheriff Lawrence Rainey and his deputy, Cecil Price, were both members of the Klan. Rainey intended to thwart any outsiders who tried to mess with Mississippi's state-enforced policy of segregation.

- In Longdale, Schwerner, Chaney, and Goodman inspected the charred remains of Mount Zion Church. They then visited the homes of four members of the congregation to learn more about the incident. Their work completed, they started back toward Meridian around 3:00. They were driving on Highway 16, near the town of Philadelphia, when Deputy Sheriff Price pulled them over, ostensibly for speeding.

- Price arrested the three civil rights workers for suspicion of having been involved in the church arson and brought them to the Neshoba County jail in Philadelphia. Soon thereafter, Price met with a local Klan recruiter, Edgar Ray Killen, to tell him the exciting news of his catch.

- Little of what happened over the next seven hours is known. We know that Schwerner asked to make a phone call, but his request was denied. We also know that a call was made to the jail at 5:20 pm. The concerned caller was in Meridian, and asked whether anyone at the jail knew the whereabouts of three civil rights workers. The call was answered by Minnie Herring, the jailer's wife, who lied. No ma'am, no civil rights workers around here.

- Finally, we know that shortly after 10:00 pm, Deputy Sheriff Price showed up at the jail. He told the jailer, "Chaney wants to pay off—we'll let him pay off and release them all." Price led the three men to their car, and they drove out of town on Highway 19. Price got into his patrol car and began to tail them.

- Meanwhile, CORE staffers in Meridian were growing worried. Their calls regarding the whereabouts of Schwerner, Chaney, and Goodman had turned up nothing. At 12:30 am on June 22, a staffer called John Doar, the Justice Department's point man in Mississippi. Fearing the worst, Doar alerted the FBI.

Investigation and Arrests

- Shortly after receiving the call from Doar, Meridian-based FBI agent John Proctor was on his way to Neshoba County to conduct interviews. Proctor was an Alabama native who had cultivated relationships with local law enforcement officers.

- It was clear that the FBI could not count on any help from state officials. Mississippi governor Paul Johnson was on record speculating that the missing men "could be in Cuba." He said he looked forward to meeting with federal officials so he could show them that "there is complete tranquility between the races" in Mississippi.

- On the second day of the search, Proctor was joined by 10 more agents and his New Orleans–based supervisor. The first big break in the

investigation came when Proctor received a tip that a smoldering car had been spotted in northeast Neshoba County. The car turned out to be the burned-out blue station wagon the civil rights workers were driving the day they disappeared.

- Joseph Sullivan, the FBI's major case inspector, soon determined that the case "would ultimately be solved by conducting an investigation rather than a search." It became an extraordinarily difficult investigation. Neshoba County residents were tight-lipped and suspicious, and they delighted in sending agents off on wild goose chases. Some of the most useful information Agent Proctor gathered came from children; he stuffed candy in his pockets each day before setting out for interviews.

- On August 4, 1964, a Caterpillar bulldozer began excavating an earthen dam on a property known as the Old Jolly Farm. Deputy Sheriff Price was on-site at the invitation of Inspector Sullivan, who had become suspicious of the deputy. Before long, the heels of a pair of men's boots were spotted poking out of the clay. Proctor took photographs of the bodies as they were uncovered.

- The discovery of the bodies shook Klan members involved in the conspiracy, and informants within the Klan helped break the case. Information provided by a Klan member on the periphery of the conspiracy enabled the FBI to focus on the conspiracy's more central figures. James Jordan, a Klansman who owned a Meridian speakeasy, told investigators the whole story in exchange for $3,500 and assistance relocating his family. He later became the government's key witness.

- Jordan told investigators that after learning of the capture from Deputy Sheriff Price, Edgar Ray Killen began recruiting Klan members in the area for some "butt ripping," as he put it. Local Klan leaders met that afternoon at a drive-in in Meridian. A second meeting, held at a trailer park, was attended by the younger Klan members who would participate in the actual killings.

- When the civil rights workers left the jail in their station wagon, Deputy Sheriff Price and several young Klan members sped down the road behind them. Price caught up with the station wagon 10 miles from the county line. James Chaney, who was driving the station wagon, decided to make a run for it, and a high speed chase ensued. Chaney swerved quickly onto Highway 492, but Price made the turn as well. Seconds later, for reasons unknown, Chaney braked his car and the three surrendered.

- The three activists were put in Price's car and driven to an unmarked dirt turnoff called Rock Cut Road. It is not known whether they were beaten before they were killed. Klan informants denied that they were, but there was physical evidence to the contrary. What is known is that a 26-year-old ex-marine named Wayne Roberts was the triggerman. The bodies were then taken to the dam at the Old Jolly Farm, which was owned by local businessman Olen Burrage.

- After the bodies were buried, Price returned to his duties in Philadelphia. Around 12:30 am, he met with Sheriff Rainey. Given their Klan membership and the close relationship between the two, it is

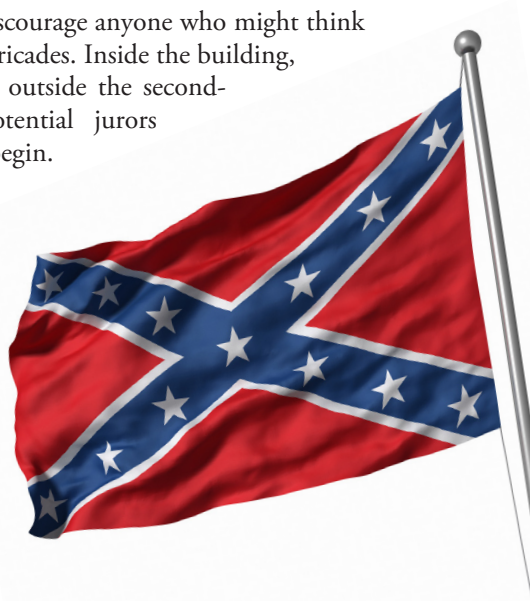
almost unimaginable that Price did not relate, in full detail, the events of that night.

- In December 1964, 19 men were arrested by federal agents and charged with conspiring to deprive Schwerner, Chaney, and Goodman of their civil rights under color of state law. After a long battle over indictments, a date for the trial was set.

The Trial

- By the time jury selection commenced on October 7, 1967, new indictments had been issued, and the list of defendants stood at 18. The trial took place in the Meridian courtroom of Judge William Cox.

- Across the street from the courthouse, Raymond Roberts, the brother of one of the defendants, planted a large Confederate flag. The flag brought cheers from onlookers. Federal marshals stood on the courthouse steps, hoping to discourage anyone who might think of climbing over the police barricades. Inside the building, a crowd of reporters gathered outside the second-floor courtroom as 200 potential jurors waited for the proceedings to begin.



- Seven white men and five white women were selected as jurors. But selection came only after the Justice Department made an extraordinary effort to ensure that no Klan member slipped onto the jury. Even one would doom the government's case. Prosecutors also wanted a smart, respectable jury. As

expected, defense attorneys exercised peremptory challenges against every potential black juror.

- The heart of the government's case was presented through the testimony of three Klan informants. Wallace Miller described the secret organization of the Meridian-area klavern and recounted his conversations with Edgar Ray Killen concerning the Rock Cut Road killings. Delmar Dennis incriminated Sam Bowers, the Mississippi KKK's founder and imperial wizard, who he said had ordered Schwerner's execution. James Jordan, the government's only witness to the actual killings, described the key events of the conspiracy, from the meetings of Klan members in Meridian to the burial of the bodies at the Old Jolly Farm.

- The defense case consisted mostly of a series of alibi and character witnesses. Various local residents testified as to the honesty of various defendants. Others testified that they saw this defendant or that defendant on the evening of June 21 at locations such as funeral homes and hospitals.

- In his closing statement, Doar told the jury that "this was a calculated, cold-blooded plot. Three men, hardly more than boys were its victims." Pointing at Price, Doar said that "Price used the machinery of law, his office, his power, his authority, his badge, his uniform, his jail, his police car, his police gun, he used them all to take, to hold, to capture and kill." Doar concluded by telling jurors that what he and the other lawyers said that day "will soon be forgotten, but what you twelve do here today will long be remembered."

- On the morning of October 20, 1967, the jury returned with its verdict. The verdict on its face appeared to be the result of a compromise. Seven defendants were convicted, including Deputy Sheriff Price, Imperial Wizard Sam Bowers, and triggerman Wayne Roberts. Another seven defendants were acquitted, including Sheriff Lawrence Rainey and Olen Burrage, the owner of the Old Jolly Farm. In the remaining three cases, including that of Edgar Ray Killen, the jury was unable to reach a verdict.

- The convictions were the first ever in Mississippi for the killing of a civil rights worker. *The New York Times* called the verdict "a measure of the quiet revolution that is taking place in southern attitudes." John Doar was satisfied with the outcome. His only regret was that the jury didn't reach a verdict on Edgar Ray Killen, who Doar said "was really central to the conspiracy."

- On December 29, Judge Cox announced the convicted defendants' sentences, which ranged from four to ten years. Judge Cox said of his sentences, "They killed one nigger, one Jew, and a white man—I gave them all what I thought they deserved."

- After serving four years of his six-year sentence, Cecil Price rejoined his family in Philadelphia, Mississippi. In a 1977 interview, Price revealed that he had recently watched and enjoyed the television show *Roots*. His

views on integration had changed, he said. "We've got to accept this is the way things are going to be and that's it."

- Mississippi changed, too. In 2005, the state charged Edgar Ray Killen, then 79 years old, with murder in connection with the slayings of Chaney, Goodman, and Schwerner. Killen was convicted of the lesser offense of manslaughter and sentenced to serve three 20-year terms, one for each conviction. In 2016, Mississippi attorney general Jim Hood announced that he was closing the books on the Mississippi Burning case. The few witnesses that remained alive were either unable or unwilling to testify.

Suggested Reading

Ball, *Murder in Mississippi*.

Cagin and Dray, *We Are Not Afraid*.

Huie, *Three Lives for Mississippi*.

Questions to Consider

1. What sort of person joins the KKK and participates in a murderous conspiracy against civil rights workers?
2. What does it say about Mississippi at the time that there was no prospect of a prosecution under state law?
3. What do the seven convictions and seven acquittals in the trial suggest about jury deliberations in the case? How were guilty defendants likely separated from those acquitted?

LECTURE 22

The Trial of the Chicago Eight

It's September 24, 1969, thirteen months after the bloody riots that marred the 1968 Democratic National Convention in Chicago. The trial of the so-called Chicago Eight—eight radicals accused of crossing state lines with the intent to start a riot—is set to begin. Variously described as a "travesty of justice," "a circus," "an important battle for the hearts and minds of the American people," and "a monumental non-event," the Chicago Eight trial is a window into the conflicting values of the late 1960s.

Background

- In 1968, the bloodiest year of the Vietnam War, 17,000 Americans died. As the death toll mounted, the war became increasingly unpopular with the public—as did its champion, President Lyndon Johnson. In March of 1968, however, it was still widely assumed that Democrats would renominate Johnson when they gathered in Chicago for their national convention.

- In late March, 200 activists met to discuss whether to call for protests at the August convention. Older, established peace groups had joined forces to create an organization called Mobilization to End the War in Vietnam (MOBE), which sponsored the conference. The conference revealed deep divisions among the activists. Many MOBE leaders, such as Tom Hayden, Rennie Davis, and David Dellinger, argued in favor of nonviolent protests at the convention. More radical factions argued for aggressive street action and civil disobedience.

- Leaders from a newly-formed organization calling itself the Youth International Party, or Yippies, were not impressed by what they saw at the conference. For several months, the Yippies had been promoting their own plan for the convention—an event they called the Festival of Life. Yippie founders Abbie Hoffman and Jerry Rubin called for youth to gather in Chicago.

- One week after the conference, President Johnson, facing strong opposition from within his own party, announced that he would not seek reelection. Johnson's decision prompted Robert Kennedy to enter the race as an antiwar candidate. But Kennedy was shot and killed on the night he won the California primary. The battle for the nomination thus came down to a fight between two Minnesotans, Senator Eugene McCarthy and Vice President Hubert Humphrey.

- Chicago Mayor Richard Daley saw the Democratic National Convention as a grand opportunity to promote his city to the world. He resolved not to have antiwar demonstrators spoil his plans. When

President Lyndon Johnson

Yippies filed a request to sleep in city parks, they were denied by the city administrator. Twelve thousand police officers were placed on 12-hour shifts to keep demonstrators in line, along with 7,500 army troops and 6,000 national guardsmen.

- Hoffman and Rubin did their best to make the mayor and city officials nervous by announcing ever wilder plans for the Festival of Life. Yippie ideas included placing LSD in the Chicago water supply, dressing Yippies as hotel bellboys and seducing the wives of convention delegates, releasing greased pigs throughout the city, and picking up delegates in fake taxis and driving them to Wisconsin. Dellinger, Hayden, Davis and other MOBE leaders had more serious plans for convention week. They proposed teach-ins, antiwar speeches, and antiwar protests.

Convention Week

- Antiwar protestors and counterculture activists began arriving in Chicago in August. Demonstration leaders had predicted that 100,000 protesters would show up. The actual number was closer to 10,000.

- Sunday, August 25, was the date for the much-heralded Festival of Life featuring rock music and revelry. Only one band showed up, however, and they were reluctant to perform. Young people handed out flowers, smoked pot, made out, and listened to poetry. Around 10:30 pm, a police officer with a bullhorn walked through the park to remind those gathered of the park's 11:00 pm curfew. Some young people responded by throwing objects at a police car. At 11:00 pm, police charged toward those still in the park, teargassing and clubbing them. Attendees angered by the police smashed car windows and vandalized buildings.

- The next night, police cracked more heads and fired more tear gas grenades, attacking 3,000 demonstrators shortly after the 11:00 pm curfew. Abbie Hoffman was among them. He urged demonstrators "to hold the park" and called for protesters to mess "up the pigs and the Convention." Tom Hayden was arrested after an officer spotted him

letting the air out of the tires of a police car. Sometime after midnight, Rennie Davis stood at the barricades in Lincoln Park with a megaphone and told people to "fight the pigs."

- Tuesday was a circus in Chicago. It began with a sunrise service of chants, prayers, and meditation in Lincoln Park, led by Allen Ginsberg. In the Chicago Coliseum, 4,000 gathered to hear David Dellinger, folk singer Phil Ochs, novelist William Burroughs, and a variety of other peace movement celebrities.

- Black Panther leader Bobby Seale spoke to a crowd of 2,000 in Lincoln Park. Seale told the crowd that police violence must be met with violence. Abbie Hoffman, having lost patience with MOBE's nonviolent stance, met with the Blackstone Rangers, a Chicago street gang, to discuss the possibility of their coming to the park that night with weapons. Shortly after 11:00 pm, the nightly police routine of clubbing and tear-gassing was repeated in Lincoln Park.

- The violence peaked on Wednesday, August 28, the day Hubert Humphrey received the Democratic Party's nomination for president. Abbie Hoffman was arrested and charged with public indecency for having written a four-letter obscenity on his forehead. Hoffman told police that he put the word on his forehead to discourage the press from photographing him.

- In the afternoon, Dellinger, Seale, Davis, and Hayden addressed a large crowd of demonstrators near the convention's headquarters. Around 3:00 pm, some people in the crowd lowered an American flag from a flagpole and attempted to raise a red flag in its place. Police moved in to retrieve the American flag. Jerry Rubin yelled, "Kill the pigs! Kill the cops!" In another incident, Rennie Davis was clubbed into unconsciousness and taken to a hospital.

- The clubbing and tear-gassing let up on Thursday, but protests continued. An undercover police officer targeted two antiwar activists, John Froines and Lee Weiner. According to the officer, Froines reported

that the demonstrators needed more ammunition to use against police. Weiner, meanwhile, told the undercover officer of a plan to use Molotov cocktails to create chaos in Chicago's downtown Loop. Weiner asked the undercover officer to get the bottles, sand, rags, and gasoline needed to make the Molotov cocktails.

The Indictments

- Prior to enactment of the 1968 Civil Rights Act, rioting and incitement to riot was strictly a local law enforcement issue. But in response to the increasing number of antiwar protests around the country, provisions were included in the Civil Rights Act that made it a federal crime to cross state lines with the intent to incite a riot.

- President Johnson's Justice Department was reluctant to use the new provisions for a prosecution in Chicago. Attorney General Ramsey Clark viewed what happened as primarily a police riot and was more interested in prosecuting police officers for brutality than in prosecuting demonstrators for rioting.

- The Justice Department's lack of interest in prosecuting protest leaders outraged Mayor Daley. Daley convinced a close friend and federal judge to summon a grand jury to consider possible federal charges. In March 1969, the jury returned indictments against eight demonstrators, balanced exactly by indictments against eight police officers.

- The eight indicted demonstrators were Abbie Hoffman, Jerry Rubin, David Dellinger, Tom Hayden, Rennie Davis, John Froines, Lee Weiner, and Bobby Seale. Though all were charged with conspiracy, some of the defendants had never even met each other. The defendants seemed to be chosen as representatives of various strands of the antiwar movement: Hoffman and Rubin from the culturally focused Yippies; Hayden, Davis, and Dellinger from MOBE; and Bobby Seale from the Black Panther Party, an organization focused on issues of racial justice.

- By the time the grand jury returned its indictments, Ramsey Clark was in no position to object. The Nixon administration was now in power. Nixon's new attorney general, John Mitchell, had none of his predecessor's reluctance about prosecuting demonstrators and gave the green light to prosecute.

The Trial

- The defense ranks were divided on trial strategy. Some of the defendants, such as Tom Hayden, wanted to play the trial straight and focus on

winning over jurors by exposing weaknesses in the prosecution's case. Others defendants, such as Jerry Rubin and Abbie Hoffman, wanted to turn the trial into a circus. One day, Rubin and Hoffman wore judicial robes into court. Another day, they brought a birthday cake.

- In his trial account *The Barnyard Epithet and Other Obscenities*, J. Anthony Lukas divided the Chicago Eight trial into five phases. The first phase Lukas called the "Jelly Bean Phase." This was a relatively uneventful period, during which the defendants took a "gently mocking" stance toward the trial.

- The second phase was the "Gags and Shackles Phase." Defendants, perhaps worried that the trial was being seen as a joke, emphasized political issues. Also during this phase, the plight of Black Panther defendant Bobby Seale drew front and center. Seale's chosen attorney was in the hospital for gallbladder surgery, and Seale wanted the trial delayed or, at least, wanted to be allowed to represent himself. When Judge Julius Hoffman denied his repeated requests, Seale hurled bitter attacks at him in increasingly angry tones. Judge Hoffman ordered Seale bound and gagged. A week later, Seale was severed from the case and sentenced to four years in prison for contempt. The Chicago Eight became the Chicago Seven.

- Lukas called the third phase "Government's Day in Court." It was a calmer period with only nine instances of contempt. The defendants realized that the prosecution's case was surprisingly weak. They sensed the opportunity for at least a hung jury and calmed down for a while to avoid turning jurors against them.

- This third phase was the heart of the government's case. The prosecution called to the stand three undercover agents, who described plots to disrupt traffic, take over hotels, "sabotage" restrooms, and engage in other "hit-and-run guerilla tactics." The defendants' efforts to show that they came to Chicago with peaceable intentions were excluded by Judge Hoffman.

- Phase four of the trial was the "Sing Along with Phil and Judy Phase." During this period, the defense presented its witnesses. They were a virtual who's who of the American left. The witnesses included drug guru Timothy Leary, poet Allen Ginsberg, author Norman Mailer, and folk singers Phil Ochs, Arlo Guthrie, "Country Joe" McDonald, Pete Seeger, and Judy Collins.

- The defense tried to portray the defendants as committed idealists who reacted spontaneously to police violence. The defense tried to show that what the prosecution saw as dangerous plots, such as the supposed Yippie conspiracy to place LSD in the Chicago water supply, were intended as jokes. The defense also attempted to make the Vietnam War an issue in the trial, but Judge Hoffman swatted the effort down.

- The defense zeroed in on the prosecution's theory that the defendants were part of a conspiracy to incite a riot. Defense witnesses testified that the alleged conspirators never once met as a group. Moreover, if they ever had met, they wouldn't have agreed upon anything. Defense witness Norman Mailer made the point best when he said, "Left-wingers are incapable of conspiracy because they're all egomaniacs." Abbie Hoffman made the same point more colorfully in his testimony. "Conspiracy?" Hoffman asked. "Hell, we couldn't agree on lunch."

- The final phase of the trial was the "Barnyard Epithet Phase." It was a two-week period marked by angry outbursts from the defendants and their attorneys. The outbursts produced almost irrational overreactions from Judge Hoffman, who issued 48 separate citations for contempt of court.

- The jury had just begun its deliberations when Judge Hoffman sentenced each of the defendants and the two defense attorneys, William Kunstler and Leonard Weinglass, to lengthy prison terms for contempt of court. Kunstler, who so strongly identified with his clients that he lost the balanced perspective a lawyer must maintain, was sentenced to more than four years in jail. The contempt convictions didn't stand, however. The Seventh Circuit reversed them all, holding that contempt convictions resulting in more than six months in prison required jury trials and could not be imposed by a judge alone.

- Jury deliberations were difficult. In the end, jurors acquitted all defendants on the conspiracy charge, while finding guilty each of the five defendants charged with having an intent to incite a riot while crossing state lines. The jury acquitted Froines and Weiner on the charge of teaching and demonstrating the use of an incendiary device.

- On February 20, 1970, Judge Hoffman sentenced the men who'd been found guilty to five years in prison. But the radicals never served a day of their sentences. The Seventh Circuit reversed the convictions in November 1972. The appellate court based its decision on Judge Hoffman's refusal to allow inquiry into the cultural biases of potential jurors. The court also cited Judge Hoffman's "deprecatory and often antagonistic attitude toward the defense."

- Finally, the court noted a shocking development that arose after appellate arguments. The FBI, with the knowledge and complicity of Judge Hoffman and prosecutors, bugged the offices of the Chicago defense attorneys. The Seventh Circuit said it had "little doubt but that the wrongdoing of FBI agents would have required reversal of the convictions on the substantive charges."

- In the other trial, the prosecution of eight Chicago police officers, all the officers charged with violating the civil rights of demonstrators won dismissal of charges or were acquitted. Richard Shultz explained the verdicts: "The people who sit on juries in this city are just not ready to convict a Chicago policeman."

- The trial of the Chicago Eight is symbolic of American divisions in the late 1960s. A yawning chasm separated the mindset of the defendants from the mindset of Judge Julius Hoffman. That chasm reflected the rift that ran through American society as the Vietnam War dragged on. Police versus protester, establishment versus radical, decorum versus defiance: These were the polarities on display at the trial, and they reflected a nation being pulled apart by racial, generational, and even sexual tensions.

Suggested Reading

Clavir and Spitzer, *The Conspiracy Trial*.

Epstein, *The Great Conspiracy Trial*.

Lukas, *The Barnyard Epithet*.

Shultz, *No One Was Killed*.

Wiener, *Conspiracy in the Streets*.

Questions to Consider

1. Was it appropriate for the government to choose defendants representing various strands of the antiwar movement and then try them all for conspiracy?
2. What does it mean to "cross a state line" with an "intent to incite a riot"? What is the best proof that a defendant has the requisite intent?
3. When defense attorneys are confronted by a judge as hostile to their case as Judge Julius Hoffman, how should they try their case?

LECTURE 23

The McMartin Preschool Abuse Trial

In the summer of 1983, Judy Johnson tells police in Manhattan Beach, California, that her two-and-a-half-year-old was molested by Ray Buckey, a 25-year-old aide at the McMartin Preschool and the son of the preschool's owner. Massive news coverage of the McMartin Preschool investigation produces indictments against Raymond Buckey, the preschool's founder, and the staff of the formerly well-respected school. The prosecution is the longest and most expensive criminal trial in American history, featuring victims, unjustly accused defendants, traumatized children, and angry parents—but not a single conviction.

Background

- During the investigation of Ray Buckey, Judy Johnson made additional, increasingly bizarre reports of misbehavior at the McMartin Preschool. She claimed that Peggy Buckey, Ray's mother, was involved in satanic practices. She claimed Ray Buckey sodomized her son while the boy's head was in the toilet. Other teachers, she said, chopped up rabbits and placed "some sort of star" on her son's bottom.

- Allegations of this sort should have been a red flag for police and prosecutors, but the snowball of suspicion had already begun rolling. Other parents began to raise new accusations and demanded a full-scale investigation of the preschool. Bowing to this pressure, the district attorney's office handed over a major portion of the continuing investigation to Kee MacFarlane, a consultant for the Children's Institute International (CII). CII was an agency with the mission of identifying and treating abused children.

- Police encouraged parents to send their children to CII for two-hour interviews. Four hundred children reported for interviews. At CII, the children were asked a series of leading questions and were encouraged in various ways to report instances of abuse.

- The interviews often followed a pattern. At first, the child denied seeing any evidence of abuse. Eventually, however, the child came around and gave MacFarlane and other interviewers the stories that they clearly wanted to hear. After the interview, MacFarlane let parents know that their child had been abused, and described the nature of the alleged abuse. By March 1984, 384 former McMartin students were diagnosed as having been sexually abused.

- In addition to the interviews, 150 children received medical examinations. Dr. Astrid Heger, hired by CII to conduct the examinations, concluded that 80 percent of the children had been molested. Her initial set of examinations revealed physical evidence of sexual assault in only six cases, but Heger maintained that "any

conclusion should validate the child's medical history"—and parents and children, through their interviews with her and others at CII, were reporting abuse.

- In March 1984, a grand jury indicted Ray Buckey, his mother Peggy Buckey, his sister Peggy Ann Buckey, and Virginia McMartin, who had founded the preschool 30 years earlier. The grand jury also indicted three female teachers at the school, bringing the total number of those indicted to seven. The defendants faced a total of 115 counts of child sexual abuse. Two months later, an additional 93 counts were added.

The Preliminary Hearing

- By the time the preliminary hearing began in August, prosecutor Lael Rubin was telling the media that the seven defendants committed 397 sexual crimes, far more than the number for which they were indicted. She said that 30 additional individuals associated with the McMartin Preschool were under investigation.

- Searches of the McMartin Preschool and the homes of the seven defendants failed to produce much incriminating evidence. No nude photographs of children were discovered, despite the insistence of investigators and parents that such photographing was commonplace at the preschool. No evidence was found of the "secret rooms" where repeated instances of sexual abuse were said to have taken place.

- The preliminary hearing opened in early 1984. It was a chaotic proceeding featuring the seven defendants (each with his or her own attorney) and three prosecutors. Unlike the typical preliminary hearing, in which the prosecution tries to demonstrate cause for bringing the defendants to trial and the defense passively observes, the defense in the McMartin hearing mounted an affirmative defense. Defense attorneys aggressively cross-examined a parade of prosecution witnesses that included allegedly abused children, parents, therapists, and medical experts. The defense effort was designed to raise questions as to how

abuse on such a massive scale could go undetected for years. The defense also tried to show that much of the testimony of the prosecution's child witnesses was flatly unbelievable.

- Kee MacFarlane testified at the preliminary hearing. She said that the abuse went undetected because children either suffered from "denial syndrome" or were afraid that revealing McMartin's dark secrets would result in their own deaths or the deaths of family members. Videotapes of the interviews showed that MacFarlane and other therapists relied heavily on leading questions and subtle pressure to persuade children to join the chorus of accusers.

- The testimony of children at the preliminary hearing was shockingly bizarre. Much of it was riddled with inconsistencies and contradictions. Several children reported being photographed while performing nude

somersaults. Other children testified that they played a nude version of cowboys and Indians. Sometimes the Indians sexually assaulted the cowboys, and sometimes it was the other way around.

- Children testified that sexual assaults took place on farms, in circus houses, in the homes of strangers, in car washes, in storerooms, and in a secret room at McMartin accessible only by tunnel. One boy told of watching animal sacrifices performed by McMartin teachers wearing robes and masks. In response to a defense question, the boy added that the kids at the ceremony were forced to drink the blood of the sacrificed animals.

- The strangeness of the preliminary hearing caused some members of the prosecution team to express doubts about the case. A meeting was called to discuss prosecution strategy. In the end, the district attorney's office decided to drop charges against all defendants except Ray and Peggy Buckey. The case had already cost Los Angeles County $4 million—and the trial had yet to begin.

The First Trial

- A legal bombshell exploded before trial opened in the courtroom of Judge William Pounders. Filmmakers producing a documentary on the McMartin trial turned over copies of a taped interview with McMartin prosecutor Glenn Stevens. In the interview, Stevens acknowledged that children were embellishing their stories of sexual abuse and that prosecutors had withheld potentially exculpatory information from defense attorneys. Based on the revelations, defense attorneys moved to have all charges against Ray and Peggy Buckey dismissed. The trial judge scolded prosecutors, but denied the defense motion.

- In many ways, the trial was a condensed version of the preliminary hearing. The prosecution attempted to prove widespread sexual abuse of McMartin children. The defense tried to prove that the whole show was driven by the suggestive and overzealous interview techniques of

the crusading therapists of CII. Despite having fewer defendants, fewer charges, fewer attorneys, and fewer witnesses than the preliminary hearing, the trial was still a major affair. Before it ended, the prosecution presented 61 witnesses, including nine children, a jailhouse informant, parents, medical specialists, and therapists.

- The prosecution called several parents to the witness stand to lay a foundation for the accounts of their children that followed. Each parent was convinced that their child had been sexually abused. Parents variously suggested bladder infections, nightmares, anatomically correct artwork, and masturbation as confirmation of abuse.

- The prosecution's child witnesses repeated many of their stories from the preliminary hearing. Jurors heard about games played in the nude and an incident in which Ray Buckey allegedly scared the children into silence by executing a cat with a knife. The children offered numerous graphic accounts of sexual abuse by both defendants.

- On cross-examination, the defense played videotaped interviews at CII in which the children initially denied they were molested. The defense then pointed out how therapists from CII coached and rewarded

children in an effort to elicit the right answers. The right answer being, of course, that they were molested.

- One witness above all had the potential to make or break the prosecution's case. That witness was CII therapist Kee MacFarlane. MacFarlane was on the witness stand for five weeks. On cross-examination, she was relentlessly attacked by defense attorney Daniel Davis for her controversial interview techniques. She was questioned about using naked puppets and anatomically correct dolls. She was asked why she told interviewees that other children had reported sexual abuse.

- The defense produced an expert witness, a professor of psychiatry at the University of Southern California, to further discredit MacFarlane's interview techniques. The professor criticized MacFarlane for presenting children with a "script" that discouraged "spontaneous information." He said that MacFarlane's methods encouraged children to supply expected answers so they might "please mother and father" and prove themselves "good detectives."

- Perhaps the strangest testimony came from jailhouse informant George Freeman, Ray Buckey's cellmate. Freeman was a nine-time felon and confessed perjurer. He testified that Buckey admitted to him that he sexually molested children at the McMartin School, that he shipped pornographic materials to Denmark, and that he buried incriminating photos of himself and the children in South Dakota. Powerful evidence, if true—but the defense succeeded in showing Freeman had almost zero credibility.

- Media attention peaked when the defendants themselves took the stand. When asked whether "she ever molested those children," Peggy adamantly denied the accusation. Ray also denied each and every prosecution charge—including ones the defense saw as ridiculous. He denied, for example, ever killing a horse with a baseball bat, as one child had testified. He noted that he was not even teaching at the school during many of the times in which he was accused of abusing children.

- On November 2, 1989, after nearly 30 months of testimony, the case went to the jury. The jury spent more than two months deliberating. In the end, the jury acquitted on most of the 65 charges, including all of the charges against Peggy Buckey. On 13 of the charges against Ray Buckey, the jury announced that it was hopelessly deadlocked.

The Second Trial

- Child protection groups and parents pressured prosecutors to retry Ray Buckey. Five hundred people, including many McMartin parents, marched through the streets of Manhattan Beach carrying signs with messages such as "We believe the children." One McMartin parent called the verdict in the first trial "a crime … almost equal to the crime that occurred outside the courtroom." A television poll showed that 87 percent of respondents thought the Buckeys were guilty. After internal debate, District Attorney Ira Reiner signed off on the retrial.

- The second trial was a more focused proceeding, involving only eight counts of molestation and three children. The prosecution presented its entire case in just 13 days. One of the witnesses was a mother who, on the stand, glared at Ray Buckey and announced, "I'm so angry at you, I could kill you right now." The prosecution chose not to call CII interviewer Kee MacFarlane. Instead, MacFarlane was called as a defense witness.

- Jury deliberations after the three-month trial were described by one juror as "excruciating." The jury ended its deliberations deadlocked on all eight counts. The jury leaned toward acquittal on six of the counts, split evenly on one count, and leaned toward conviction on a final count.

- Following the mistrial, District Attorney Reiner decided not to try Buckey a third time. All charges against him were dropped. The decision did not mean, of course, that Ray Buckey was innocent of all charges—on that question we might say that the jury will be forever out.

Aftermath

- The McMartin Preschool Abuse Trial was long and costly. For the defendants, the costs of the trial included lengthy terms in jail. Ray Buckey spent five years in jail before finally being released on bail. For the defendants, it meant loss of homes, loss of jobs, loss of life savings, and a stigma that might never go away.

- The children were also victims. In an interview, Ray Buckey said: "Those poor children went through hell, but I'm not the cause of their hell and neither is my mother. The cause of their hell is the … adults who took this case and made it what it was." Parents suffered as well. Many felt betrayed by the justice system. The community of Manhattan Beach was left uneasy and polarized by the lengthy proceedings.

- The effects of the McMartin trial extended beyond the state of California. Early publicity surrounding the McMartin investigation spawned a rash of charges against day care providers elsewhere. Many, if not most, of these charges proved unsubstantiated. Many day care centers closed their doors after insurance companies, fearing molestation lawsuits, dramatically raised liability insurance rates.

- The McMartin case illustrates the problems that come when police and prosecutors leap to conclusions. Blinders get put on. Evidence that should cause a reexamination of assumptions gets ignored.

- There are also lessons for the media. The McMartin case was hounded by journalists publishing stories slanted heavily toward the prosecution. The journalists churned out sensational headlines day after day and almost never seriously questioned allegations. Their actions helped turn the McMartin trial into the expensive fiasco that it became.

- Finally, there was collateral damage. In the wake of McMartin and other trials, many day care centers around the country adopted new policies. These policies strictly limited physical contact between teachers and children. Daycare centers feared that touching might wrongfully be

interpreted as abuse. Every parent knows that there are times when a child needs a hug—and often, because of McMartin, the hugs weren't there.

Suggested Reading

Butler et al., *Anatomy of the McMartin Child Molestation Case*.

Eberle and Eberle, *The Abuse of Innocence*.

Nathan and Snedecker, *Satan's Silence*.

Questions to Consider

1. In what ways did the day care abuse trials of the 1980s and early 1990s follow the pattern of the witchcraft trials in Salem?
2. How should interviews with child witnesses be conducted to maximize the chance that they will provide accurate information?
3. Should whether or not a defendant has had normal sexual relations with other adults be relevant in a trial in which the defendant is charged with sexual molestation of children?

LECTURE 24

The O. J. Simpson Trial

At 10:00 am on October 3, 1995, 91 percent of Americans with televisions were glued to their screens as a clerk for Judge Lance Ito announced that O. J. Simpson, after 133 days of televised testimony, had been found not guilty of murder. Reactions to the verdict were divided largely along racial lines. This lecture considers how the Simpson trial came to command such attention, why the evidence was viewed differently by people of different races, and how the trial changed the way celebrity trials are handled.

June 12, 1994

- Just after midnight on June 12, 1994, a couple out on a walk in the prestigious Brentwood area of Los Angeles discovered two bodies by the front gate of a condominium. The body of Ron Goldman, a 25-year-old male who had come to the condominium to return a pair of sunglasses, had been stabbed repeatedly. The body of Nicole Brown Simpson, ex-wife of former football great and media personality O. J. Simpson, had been slashed so brutally that the neck was almost severed from the body.

- On the morning after the murders, police called O. J. Simpson at a hotel in Chicago, where Simpson was slated to speak at a convention. He had just arrived in Chicago that morning, after taking a red-eye flight from Los Angeles. When informed that his ex-wife had been killed, Simpson did not ask how, when, or who might have done it.

- Simpson boarded the first available flight back to Los Angeles. He arrived at his home to find a full-scale police investigation underway. Police tape was stretched across his front gate, and cardboard tags marked a bloodstain trail up the driveway.

The Investigation

- When Simpson first arrived at his home, Los Angeles police interviewed him for approximately 30 minutes. They asked a number of questions about the deep cut on his right hand. At first, Simpson claimed not to know the source of the cut. Later on, he suggested that he had reopened an old cut when he broke a glass in his Chicago hotel room after being informed of Nicole's murder. The interview as a whole was remarkably inept. Officers did not ask obvious follow-up questions, and whole areas of potentially fruitful inquiry were ignored. So unhelpful was this interview that neither side introduced it into evidence at the trial.

- Eventually, however, police accumulated enough evidence connecting Simpson to the murders to seek and obtain a warrant for his arrest.

Under an agreement with Robert Shapiro, Simpson's attorney, Simpson was to turn himself in at police headquarters on the morning of June 17, the day after Nicole's funeral. When Simpson didn't show up, police drove to his Brentwood home to pick him up. Simpson was not at home.

- At Simpson's home, police officers found a letter that he had left behind. Addressed "To whom it may concern," it had all the markings of a suicide letter. It ended: "Don't feel sorry for me. I've had a great life, great friends. Please think of the real O. J. and not this lost person. Thanks for making my life special. I hope I helped yours. Peace and love, O. J."

- A few hours later, a motorist in Orange County saw Simpson riding in a white Bronco driven by his friend, A. C. Cowlings, and notified police. Soon, a dozen police cars, news helicopters, and some curious members of the public were following in pursuit of the Bronco. By the time the slow-motion chase was over, 95 million viewers had watched

it live on television. The chase ended with Simpson's arrest in his own driveway. After making the arrest, police searched the Bronco and discovered $8,750 in cash, a false beard and mustache, a loaded gun, and a passport.

Pretrial

- The first big decision the prosecution made might have been the one that doomed their case. Prosecutors chose to file the Simpson case in downtown Los Angeles, rather than—as was normal procedure—the district where the crime occurred, in this case Santa Monica. This meant that the Simpson jury would be drawn from a largely nonwhite jury pool. A jury in Santa Monica would have been mostly white.

- Implausibly, prosecutors explained their decision as an effort to reduce their commuting time and to better accommodate the expected media crush. More likely, the decision was a political one. Prosecutors and city officials feared that a conviction by a white jury in Santa Monica might spark racial protests—or even riots. Only a few years earlier, deadly riots had broken out after a white jury acquitted LAPD officers accused of beating motorist Rodney King. No one wanted a repeat of that tragedy. Prosecutors probably believed that their case against Simpson was so strong that even a racially diverse jury would have no choice but to convict.

- Prosecutors also weakened their prospects for success when they chose not to seek the death penalty. In death penalty cases, jurors are first death-qualified. That is, jurors who have serious qualms about imposing the death penalty are eliminated from jury consideration. Studies suggest that death-qualified juries are more likely to convict. Excluded jurors are disproportionately black and female, populations that tend to be less conviction-prone.

- At his arraignment, Simpson pleaded not guilty. Lawyers and Judge Ito then occupied themselves with months' worth of hearings on issues

such as whether to permit cameras in the courtroom and whether to admit as evidence certain DNA test results.

The Trial Begins

- What one commentator called "the Super Bowl of murder trials" opened in January 1995. In his opening remarks, Judge Ito said that he expected to see "some fabulous lawyering skills."

- The jury was comprised of nine African Americans, two Hispanics, and one white—more diverse than even downtown Los Angeles jury rolls would have predicted. There were ten female jurors and only two males. Prosecutor Marcia Clark had ignored jury consultants who warned her against seating African American women. She insisted that she always did just fine with that demographic. Only two jurors were college graduates.

- Christopher Darden led off for the prosecution. In his opening statement, he described Simpson as an abusive husband and a jealous lover of Nicole Brown Simpson. Darden told jurors, "If he couldn't have her, he didn't want anybody else to have her." Marcia Clark followed Darden by laying out the facts that she said would prove Simpson's guilt.

- Johnnie Cochran, in his opening statement for the defense, presented a timeline of events that, if accurate, would have made it almost impossible for Simpson to pull off a double murder. He also suggested that Simpson was so crippled by arthritis that he lacked the physical strength to do the job. Finally, Cochran told the jury that the defense would show that the evidence against Simpson was "contaminated, compromised, and ultimately corrupted."

- Over the next 99 days of trial, the prosecution presented 72 witnesses. The first set of witnesses suggested that Simpson had the motive and opportunity to kill. The second set of witnesses suggested that Simpson used this opportunity to kill his ex-wife and Ronald Goldman.

- Denise Brown, Nicole's sister, recounted events in O. J.'s relationship with Nicole that revealed Simpson's darker, more violent side. Ron Shipp, a friend of O. J.'s, testified that Simpson once told him that he was having dreams of killing Nicole. With a 911 dispatcher on the stand, the prosecution played for the jury a terrifying 911 call from Nicole describing an ongoing assault by Simpson.

- The next set of prosecution witnesses established a timeline that showed Simpson had ample opportunity to commit murder between 10:15 and 10:40 pm. Limo driver Allan Park was one of the prosecution's most effective witnesses. He was articulate, personable, and a neutral observer of events. Park testified that he arrived at the Simpson home at 10:25 pm on the night of the murders to pick O. J. up for his flight to Chicago. He rang the doorbell repeatedly, but no one answered. Shortly before 11:00 pm, according to Park, a shadowy figure—black, tall, about 200 pounds, and wearing dark clothes—walked up the driveway and entered the house. A few minutes later, Simpson emerged and told Park he overslept.

- Simpson houseguest Kato Kaelin was one of the trial's more colorful characters. Kaelin testified that he and Simpson had returned from a run for Big Macs and French fries at 9:36 pm. Kaelin said he didn't know Simpson's whereabouts after that. Kaelin said he heard thumps on the house wall just before 11:00 pm, the same time that limo driver Allan Park had witnessed someone enter the house.

- The final set of prosecution witnesses directly tied Simpson to the two murders. The evidence was technical and circumstantial, consisting primarily of the results of blood, hair, fiber, and footprint analysis from the crime scene and Simpson's home. Footprints found at the scene were shown to have been made by size 12 shoes, the same size worn by Simpson.

- A blood test confirmed that Nicole's blood matched blood found on two black socks in O. J's bedroom. Prosecution experts testified that Nicole was likely the only person on the planet whose blood would be a match. Another test indicated that blood found at the crime

scene could have come from only one out of 170 million sources of blood—and that O. J. Simpson fit the profile. Blood on the ring finger of Simpson's glove was a match for Ronald Goldman. Faced with such evidence, the defense was left with little choice but to try to convince jurors that the blood samples had been planted by corrupt police officers or contaminated.

- Mark Fuhrman, the LAPD officer who found a bloody glove outside Kato Kaelin's bedroom, turned out to be a godsend for the defense's corrupt-police theory. When he testified for the prosecution, Fuhrman was an impressive witness. In his book about the trial, defense lawyer Robert Shapiro observed: "Marcia Clark treated him like he was a poster boy for apple pie and American values."

- On cross-examination, defense attorney F. Lee Bailey asked Fuhrman a question that seemed to come out of the blue: In the past 10 years, had Fuhrman ever used "the n word?" Fuhrman replied that he never

had done so. A tape provided by a defense witness, however, would later reveal that Fuhrman had used the word many times. The tape also contained a confession by Fuhrman that he sometimes planted evidence to help secure convictions. This shocking evidence opened the door for the defense theory that Fuhrman took a glove from the crime scene, rubbed it in Nicole's blood, then took it to Simpson's home in an effort to frame Simpson.

- Fuhrman proved to be just the first of two major prosecution disasters. Prosecutor Christopher Darden, confident that the bloody gloves belonged to Simpson, made a dramatic courtroom demonstration. He asked Simpson, in full view of the jury, to try on the gloves worn by Nicole's killer. Simpson seemed to struggle with the gloves. "They don't fit," he said. "See? They don't fit."

- Years later, Shapiro revealed that he had tried on the gloves himself before the demonstration and knew they wouldn't fit his client. There were good reasons why they didn't—the gloves might well have shrunk because of the blood and, as photos later revealed, Simpson liked wearing ill-fitting gloves. In his closing argument, Johnnie Cochran memorably summed up the meaning of the glove demonstration for the jury: "If it doesn't fit, you must acquit."

- Simpson was a celebrity, he was wealthy, he golfed, he lived in a mostly white neighborhood, and he had a large number of white friends. When the trial began, most commentators did not see the Simpson trial as one that would turn on issues of race. As the trial developed, however, it became apparent that the defense saw race as having a lot to do with the case.

- As successful as the defense strategy was, it was not without its own miscalculations. Simpson's doctor testified that O. J.—despite looking like Tarzan—was in about as good of a condition as "Tarzan's grandfather." He said that Simpson suffered from arthritis and other problems. On cross-examination, the prosecution countered with a video taken shortly before the murders in which Simpson engaged in demanding physical exercise.

- Along with Fuhrman, forensic expert Henry Lee may have saved the day for Simpson. Lee had solid credentials, smiled at the jury, and provided what seemed to be a plausible justification for questioning the prosecution's key physical evidence. Lee suggested that shoe print evidence indicated there was more than one assailant. And he offered a simple conclusion about the prosecution's DNA tests: "Something's wrong."

The Jury Acquits

- By the time closing arguments began, the jury had been sequestered for the better part of a year. Jurors were showing signs of strain and exhaustion. Judge Ito was under attack by commentators for allowing the trial to drag on and for failing to keep lawyers under control.

- The jury spent just three hours deliberating the case. When Judge Ito's clerk announced his acquittal, Simpson sighed in relief. Cochran pumped his fist and slapped Simpson on the back. From the audience came the searing moans of Kim Goldman, Ron's sister, and the cries of Ron's mother, Patti Goldman: "Oh my God! Oh my God!"

- Polls taken after the trial found that nearly 80 percent of African Americans approved of the jury's decision, with only 10 percent disagreeing with the verdict. On the other hand, a solid majority of whites said justice was not done. The Simpson trial showed that African Americans are, on the whole, much more likely to suspect police of racism and misconduct than are whites. The differences seem rooted in African Americans' own experiences with law enforcement. It may be for that insight, more than anything, that the Simpson trial will be remembered.

- But the trial had other profound effects. It created a greater awareness of domestic violence issues. It provided lessons on how not to run a criminal trial, lessons that have been applied by judges in subsequent celebrity trials. And it reversed what had been a powerful trend toward allowing the use of cameras in criminal courtrooms.

Suggested Reading

Bugliosi, *Outrage*.

Clark, *Without a Doubt*.

Cochran, *Journey to Justice*.

Shapiro, *Search for Justice*.

Simpson, *If I Did It*.

Toobin, *The Run of His Life*.

Questions to Consider

1. What caused the Simpson trial to become such a media circus?
2. How persuasive is the defense argument that Simpson was the victim of a police frame-up?
3. Why is it that African Americans overwhelmingly believed the jury did the right thing in the Simpson case, while most whites believed the opposite?

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