

**FOUND IN THE ARCHIVES, no. 49 – February 2019**

***Women & the Colonial Court***

**Fairfax Circuit Court Historic Records Center**



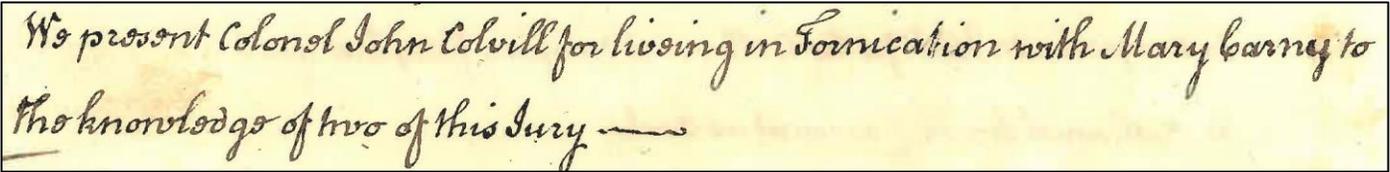
This edition of *Found in the Archives* examines the most common court charges that women in Colonial Fairfax County faced. Women, like men, were charged with all manner of civil and criminal wrong-doings, but court records reflect that women were most often presented in court for "morality" offenses. These were charges based on what 18<sup>th</sup> century Virginia judged as moral and immoral behavior, such as adultery, fornication before marriage, and bearing children out of wedlock.

Morality-based laws were first passed in the Colony of Virginia in 1642. The Grand Assembly ordered that Churchwardens were to provide an annual written list to the county courts of anyone “soever shall abuse themselves with the high and foule offences of adultery, whoredome or fornication.” Churchwardens who failed to file this annual report would be fined. Case-specific laws quickly followed suit.

A handwritten document snippet in cursive script, likely a churchwarden's report, mentioning Peletiah Graffort and Simon Pearson.

***Peletiah Graffort presentment for adultery, Fairfax Minute Book 1756, p. 794, November 17, 1762***

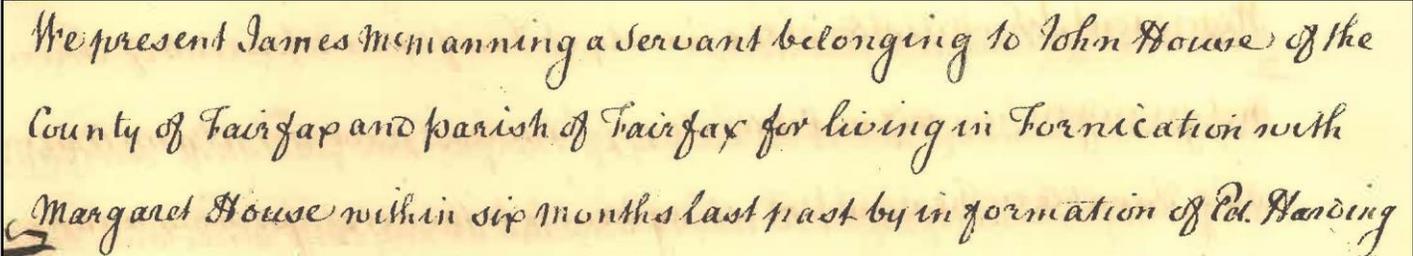
Adultery and fornication were considered grave sins in colonial Virginia. The fine for fornication was 500 pounds of tobacco, and the fine for adultery was 1,000 pounds of tobacco. Failure to pay these fines could result in two months imprisonment or 25 lashes of the whip. The courts and the community would inevitably bear the consequence of these behaviors, through the birth of children who might become wards of the state, or enrollees of the “Poor Fund” (see our February 2018 *Found in the Archives*, no.40, “Overseers of the Poor”). In one of our records, Peletiah Graffort was charged with committing adultery with Simon Pearson in 1761 and 1762. She was also charged with having a ‘baseborn’ or illegitimate child twice.



We present Colonel John Colvill for living in Fornication with Mary Barney to the knowledge of two of this Jury —

*John Colvill presentment for fornication, Fairfax Minute Book 1749, p. 254, November 22, 1752*

Presentment and punishment for adultery and fornication was not solely for women, and our records do show men being brought to court for these offenses. John Colvill was an early landowner in Fairfax County and a prominent member of Truro Parish Vestry. Vestry members had enormous influence in their localities, and, as lay officers of the Church, would have been expected to be paragons of morality. Interestingly, despite this very public record presentment, Colvill was not stripped of his Church leadership role, and he remained a Truro vestry member.



We present James McManning a servant belonging to John House of the County of Fairfax and parish of Fairfax for living in Fornication with Margaret House within six months last past by information of Ed. Harding

*James McManning presentment for fornication, Fairfax Minute Book 1770, p. 321, November 21, 1771*

Unlike the landed gentry, indentured servants charged with fornication incurred extra punishment. In 1771, James McManning was presented for “living in Fornication” with his Master’s wife. A law passed in 1661 demanded that a servant serve an extra six months in addition to their contracted time of service for the “filthy sin of fornication.” The Master also had to pay the Servant’s fine. Margaret House would also have had to pay 500 pounds of tobacco, although her husband probably paid it, on her behalf.

The fines for male servants committing fornication with a female indentured servant were even greater, and he would have been ordered to serve one year to the woman’s Master, beyond his own contract. Of course, the Master would be entitled to monetary reimbursement if the female indentured servant became pregnant. For her part, an indentured servant who bore an “illegitimate” child also usually had an extra year added to *her* servitude, which is what happened to Mary Let in May 1749.

Mary Let a servant woman belonging to Lewis Elroy how. being brought before the court for having a base born child. Ordered that she serve her said master one year according to law and the said Mary in Court paid her fine to Robert Bogges one of the Churchwardens of the Parish of Truro for the Use of the said Parish

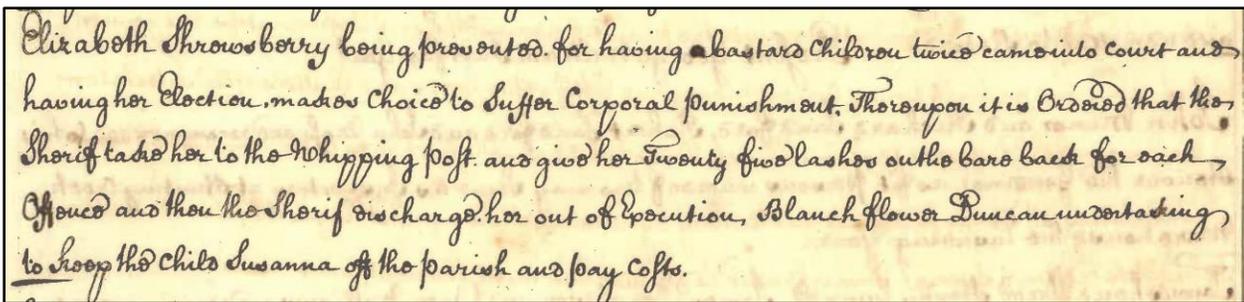
*Mary Let sentenced for bastardy, Fairfax Minute Book 1749, p. 2, May 2, 1749*

The Court's 1749 Minute Book is filled with women, like Mary Let, receiving punishment for having a "baseborn" or "illegitimate" child. The official charge for this was known as *bastardy*, and it pertained to children born to parents not legally married. At this time, the Bastardy Laws were very stringent. The father, if known, either had to serve the woman's master for a year (as mentioned above), or pay him 1,500 pounds of tobacco to "defraye all charge of keeping the child."

Rebecca Davis being prosecuted by the Grandjury for having a bastard child, being solemnly called came not but made default. It is therefore considered by the Court that the said Rebecca be fined for the same five hundred pounds of Tobacco or fifty shillings current money which she is ordered to pay the Churchwardens of Truro Parish for the use of the poor of the said Parish with

*Rebecca Davis sentenced for bastardy, Fairfax Court Order Book 1749, p. 18, June 21, 1749*

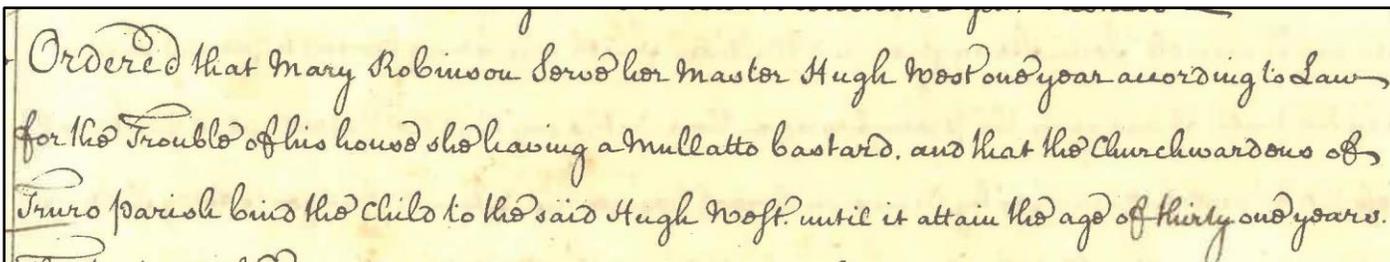
One version of the Bastardy Law, passed in 1727, added in monetary fees to the mother, setting her fines at 50 shillings or 500 pounds of tobacco. This money went to the local parish "for the use of the poor." The Court's records show that Rebecca Davis was fined such a sum in June 1749. While fines were considered a punishment for the woman's immorality, they also served as a form of restitution to the community if the woman's child became financially dependent upon the parish at a later date.



Elizabeth Shrewsberry being prosecuted for having a bastard child or two came into Court and having her Election, makes choice to suffer Corporal punishment. Thereupon it is Ordered that the Sheriff take her to the Whipping post. and give her Twenty five lashes on the bare back for each Offence and then the Sheriff discharge her out of Execution, Blanch flower Duncan undertaking to keep the Child Susanna off the parish and pay Costs.

*Elizabeth Shrewsberry sentenced for bastardy, Fairfax Court Order Book 1749, p. 225, August 18, 1752*

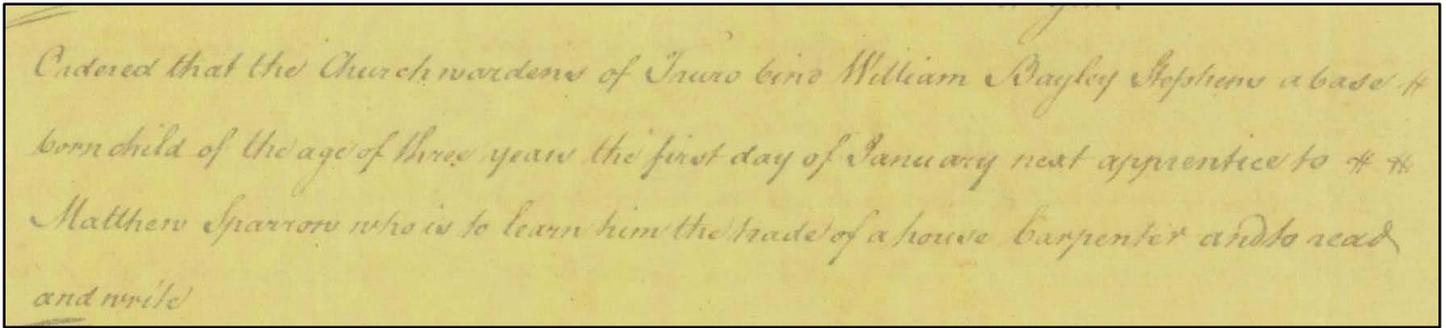
All women, whether indentured servants or free, had to pay this fine if they bore an illegitimate child. If they did not have the money or tobacco to pay the fine, they would receive 25 lashes of the whip instead. Elizabeth Shrewsberry was charged with having two baseborn children, and she elected for corporal punishment, likely because she could not pay the fines. She received 25 lashes for each child, and her daughter, Susanna, was taken away to “keep the child...off the parish.”



Ordered that Mary Robinson serve her Master Hugh Wolf one year according to Law for the Trouble of his house she having a mulatto bastard. and that the Churchwardens of Truro parish bind the Child to the said Hugh Wolf. until it attain the age of thirty one years.

*Mary Robinson sentenced for bastardy, Fairfax Court Order Book 1749, p. 20, June 22, 1749*

Sentences for any white woman having a baseborn child with a “negro or mulatto” man were even harsher. Women in this position had the choice to either pay a fine of £15 or to be bound out by the parish for five years. Being “bound out” meant they would be indentured to a Gentleman from the Parish, and the money paid by their Master for their work would have gone directly to the Parish. The illegitimate child himself would be bound out until he reached 30 or 31 years of age, which is what happened to Mary Robinson’s child. As Mary was an indentured servant, her son was bound out to her own Master until he turned 31 years old. Fleeing when pregnant wouldn’t work either, for another law ensured that women who fled the county into another Virginia jurisdiction could be prosecuted *there*, and the fine would still be payable to the local Parish where her child had been delivered. Taking shelter in a sympathetic home was of no relief either, because the household where the child was delivered could also be fined.



*Ordered that the Churchwardens of Inward bind William Bayley Stephens a base born child of the age of three years the first day of January next apprentice to Mr Matthew Sparrow who is to learn him the trade of a house Carpenter and to read and write*

*William Bayley Stephens bound out to Matthew Sparrow, Fairfax Minute Book 1756, p. 595, June 16, 1761*

The children themselves bore the burden of these Bastardy Laws too, through being “bound out” to their mother’s Masters. Equally, illegitimate children of free women could be bound-out as Apprentices to local men. These men would teach the child a trade, reading and writing, and feed, clothe and house them during their Apprenticeships. In 1761, William Bayley Stephens was apprenticed to Matthew Sparrow to learn house carpentry. Billy was only 3 years old.

In 1765, the Bastardy Laws were relaxed a little. Mixed-race illegitimate children were bound out until 18 years of age for girls and 21 years for boys. The Grand Assembly charged that the previous time limits were of “unreasonable severity towards such children.” Free women were fined only 20 shillings and were not to be whipped for the failure to pay. Fathers of free women’s baseborn children were brought to court and charged with paying child maintenance to relieve the financial burden on the parish.

While the institution of indentured servitude ended with the American Revolution, as did many of England’s “morality laws,” apprenticing of poor children to local tradesmen continued up to the turn of the 20<sup>th</sup> century.

*For more information on these and other records held at the Fairfax Circuit Court Historic Records Center, please call 703-246-4168 or email [CCRHistoricRecords@fairfaxcounty.gov](mailto:CCRHistoricRecords@fairfaxcounty.gov).*

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<https://www.fairfaxcounty.gov/circuit/historic-records-center>



*Image courtesy of the City of Fairfax Public Library*

# FEBRUARY 2, 2019 HISTORIC FAIRFAX COURTHOUSE OPEN HOUSE

## **10 am to 3 pm, Historic Fairfax Courthouse**

As part of the City of Fairfax Annual Chocolate Lovers Festival, the Historic Fairfax Courthouse is opening its doors to the public! Visit the courthouse, view historic Fairfax County records, and observe the Fairfax Bar Association's mock trial and game show in the Historic Courthouse throughout the day.

*11:00 am – "Fairy Tale Mock Trial"*

*2:00 pm – "So You Think You Are Smarter than a Lawyer?"*



SEE HISTORIC FAIRFAX  
COUNTY COURT  
DOCUMENTS!

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SHOWROOM AND  
HISTORIC COURTHOUSE  
OPEN  
10 AM TO 3 PM

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ALL AGES WELCOME!

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FAIRFAX BAR  
ASSOCIATION  
PROGRAMS AT 11:00  
AND 2:00!

HISTORIC FAIRFAX  
COURTHOUSE  
4000 Chain Bridge Road  
Fairfax, VA 22030

**Historic Courthouse  
showroom and building  
open 10 am to 3 pm!**