

# Black and White Justice<sup>1</sup>

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## INTRODUCTION

The central scene in *To Kill A Mockingbird* is the trial of Tom Robinson, an African-American, and his unjust conviction by an all white jury. The story provides interesting parallels between Maycomb, Alabama, the setting of the book, and Scituate-Norwell as the town embarks on a community-wide examination of the fictional work by Harper Lee through the “Norwell Reads” program. Lee’s story takes place in the 1930s and describes how intolerance and discrimination lead to Tom Robinson’s death despite the efforts of Atticus Finch, a white lawyer appointed to defend him. Eighteenth century Scituate-Norwell was a lot like 1930s Maycomb, Alabama.

## DISCRIMINATION

In both places black slaves and servants endured segregation and discrimination. Negroes, the term most commonly used in the eighteenth century to identify someone of African-American heritage, held menial jobs whether they were slaves or servants. Reminiscent of the balcony scene in the Maycomb courthouse, Negroes were relegated to special pews when they attended church services. The First Parish Church of Norwell was constructed with a “little box clinging to the wall like a sort of crow’s nest, a place apart for the colored people of the community.”<sup>2</sup> After slaves were emancipated in Massachusetts in 1783, Free People of Color settled primarily near Norwell’s Wildcat Hill at the intersection of Green and Pine Streets.

“When the keeping of slaves was abandoned numbers of them settled in this section and others came from Hingham, Plymouth and the surrounding towns, so that for many years there was quite a colored settlement in this vicinity.”<sup>3</sup>

Even in death, black people were segregated in a remote and separate section of the church cemetery.

“... there is a row of marble stones to Negroes on the eastern slope of the First Parish cemetery. This is probably due to happenstance rather than design as there is no rule as to what part of the cemetery shall receive Negroes. The stones were provided for the unmarked graves of veterans by the government.”<sup>4</sup>

Bigotry was also a fact of life. John Saffin, a Scituate landowner, was a wealthy merchant, slave trader, and apparent racist. An amateur poet, he penned the following piece in 1701:

“The Negroes Character”  
“Cowardly and cruel are those *Blacks* Innate,  
Prone to Revenge, Imp of inveterate hate,  
He that exasperates them, soon espies  
Mischievous and Murder in their very eyes.  
Libidinous, Deceitful, False and Rude,  
The spume Issue of Ingratitude.  
The Premises consider’d, all may tell,  
How near good Joseph they are parallel.”<sup>5</sup>

Like the court system in Maycomb in 1935, the courts in eighteenth century Massachusetts were all white. And all male. Those who served as judges and jurors were also required to own property and be church members in good standing. Most lawyers were from wealthy, educated, upper class families.

## EQUAL JUSTICE

However, one segment of eighteenth century life in Scituate-Norwell appeared to differ from Maycomb, Alabama. Despite its lack of diversity, the justice system seemed to give blacks a better break than Tom Robinson got in Maycomb. Incredibly, some slaves in the North who wanted their freedom went to court to get it. And most often they won. As did four out of five with connections to Scituate-Norwell. And, as in *To Kill A Mockingbird*,<sup>2</sup> their stories include Atticus Finch-like figures who fought to get them equal justice. Like Finch, a descendant of slave owners, many of the Scituate-Norwell judges and lawyers came from slave owning families while others had black servants who worked for them as Calpurnia worked for Atticus Finch.

## FREEDOM SUITS

In addition to the freedom suits filed by black slaves, other court actions for or against blacks, including criminal cases and other civil suits, show less evidence of racial bias than we have come to expect today. While criminal cases more closely resemble the plot line in *To Kill A Mockingbird*, an examination of freedom suits provides interesting parallels on the role of white lawyers representing black clients.

Freedom cases filed by Scituate-Norwell slaves occurred over a 72 year period, from 1701 to 1773 just before the American Revolution. During this time, the town was called Scituate but included the area that later became Norwell. While efforts to free slaves are more generally associated with the rise of the Abolitionist movement in 1833, anti-slavery sentiments go back to 1675 when the Rev. John Eliot, known as the Apostle to the Indians, wrote a letter against slavery to the Boston General Council thought to be the first anti-slavery tract in the

New World.<sup>6</sup> Quakers were in the forefront of the anti-slavery movement, supporting emancipation as early as 1688 when a petition against slavery was circulated by four Pennsylvania Quakers.<sup>7</sup> Samuel Sewell, a judge and public official in Boston, wrote another early anti-slavery tract, “The Selling of Joseph,” in 1700. Sewell was well known to local public officials and had connections in one way or another to some of those involved in Scituate-Norwell freedom suits.

The freedom suits were enabled by specifics in the law which recognized slaves as both property and people and allowed lawyers to challenge ownership based on these legal contingencies as well as the grand moral principles voiced by Abraham Lincoln and other abolitionists.

### *Adam v. Saffin*

The first case involved Adam, a slave of John Saffin, a wealthy merchant, slave trader, and judge who lived in Scituate near Musquashcut Pond before moving to Boston. The same John Saffin who wrote the angry poem attacking blacks. Adam himself never lived in Scituate but resided instead on a farm that Saffin owned in Bristol now part of Rhode Island. Saffin promised to free Adam after seven years but when the time came, Saffin reneged. In 1701 Adam sued for his freedom. The court appointed Thomas Newton and Joseph Hearne to represent him.

Thomas Newton was an eminent lawyer, “being the first member of the profession in Boston to be called barrister.” He was born in England in 1661, was a public official in New Hampshire for a short time, and later attorney-general of the Massachusetts Bay province. Newton was also a founder of King’s Chapel. As described, he seems not unlike Atticus Finch:

“ being affable and courteous, of a circumspect walk and deportment and inoffensive conversation, of strict devotion towards God. Exemplary for family government as well as humanity towards all his fellow creatures, a lover of all good men”<sup>8</sup>

Little is known of Adam's second lawyer, Joseph Hearne, except that he was a "noted lawyer" who died on Dec. 18, 1728 at the age of 70 and "was decently buried from the Custom House."<sup>9</sup> This dearth of information could mean nothing more than the fact that Hearne was only a lawyer. During the Colonial and Provincial Periods, the lawyers who tended to be written about were those who were also in politics or religion.

Newton and Hearne lost their initial case and other subsequent legal actions until Adam's case found its way before Samuel Sewell, an appeals court judge at the time.

Samuel Sewell, like other lawyers and judges of the 17<sup>th</sup> and 18<sup>th</sup> centuries, originally studied to be a minister before he took up the practice of law. Much is known about him because he kept a daily journal of his thoughts and activities, including his connections with Scituate-Norwell figures. One author described Sewell as



Chief Justice Samuel Sewell, in a 1770 portrait.

"...universally and greatly revered, esteemed and beloved for his eminent piety, learning and wisdom, his grave and venerable aspect and carriage, his instructive, affable and cheerful conversation, his strict integrity and regard to justice, and his extraordinary and tender heart."<sup>10</sup>

But a local historian had a different view of Sewell. He described him as

"that diarrhoetic (sic) diarist who was wont to record in his journal, not only the gossip, rumors and happenings of the time but his own petty and daily annoyances and troubles as well."<sup>11</sup>

With such diverging views, using some imagination, a reader might think of Sewell as a stand in for the quirky judge in *To Kill A Mockingbird*.

As an appeals court judge, Sewell made more than one trip to the Plymouth area. On one occasion he listened to the Rev. Nathaniel Eells preach at the First Parish Church of Norwell, had supper with him, and gave him some books. Sewell made at least one of these South Shore trips with his black servant, Scipio.<sup>12</sup> He achieved some notoriety in the legal history of the state when he helped convict the Salem witches, a judgement for which he later apologized.

Sewell and John Saffin were long time adversaries who knew each other well. Sewell did not hold Saffin in high regard having accused him of jury tampering in Adam's earlier trial. Whether this influenced the decision or not is unknown, but Sewell and the other appeal judges who sat in on the case freed Adam.

### *Maria and Tony Sisco v. Briggs*

Of all the local freedom suits, the most poignant is that of Maria and Tony Sisco. Maria was one of the first slaves brought into Scituate having been purchased at a tavern in Boston in 1673 by Walter Briggs to help his wife with chores. Maria, who was between four and seven years old when she was purchased, most probably came from the West Indies. Although very young, the sale of infant and toddler slaves was as common as it was for families to use young children for hard labor. "The children of the poor worked as soon as they were able to pick stones, glean corn, scare crows, or drive a flock of geese."<sup>13</sup>

Maria served the family for some thirty years before she was freed by Briggs in his will in 1706. But while she was Briggs' slave, Maria had a daughter, Molly, who was kept by the Briggs family after Maria was freed. The law at the time decreed that ownership of a slave child went to the owner of the child's mother, in this case, Walter Briggs. But Maria and Tony saw the law differently; they argued that Molly

became free when Maria was freed.

The jury agreed with Maria and Tony and awarded Molly her freedom. Additionally they gave Maria and Tony £5 10 shillings in court costs to be paid by the Briggs family. But the Briggs family appealed the decision.

Tragically, Maria never learned the final outcome of the case. Having fought valiantly for her daughter's freedom, she died less than a year after winning the case but before the appeal was heard. But the story does not end there.

Nathaniel Eells, the Norwell minister who Samuel Sewell visited, intervened. Eells was pastor of the church where Maria and Tony Sisco were forced to sit in the balcony. He had married the couple five years earlier and according to church records, Tony Sisco was Eells's servant.

Eells came from a family of ministers, was 41 years old at the time of Maria's suit, and had been the minister of the church for 16 years. He was related through marriage to Hingham slaveowners. With Eells help, the jury again ruled in favor of the Siscos and awarded Molly her freedom with additional court costs.

## REVOLUTIONARY WAR

Freedom suits in the British colonies were not that uncommon with some of the earliest dating back to 1641 in Virginia when John Graweere, a free man, asked the court and was granted permission to purchase the freedom of his child whose mother was a slave.<sup>14</sup> But in Massachusetts, the majority of such suits were filed around the time of the American Revolution. Of a total of thirty cases filed in the 17<sup>th</sup> and 18<sup>th</sup> century, most were filed between 1764 and 1780.<sup>15</sup> Three of those had ties to Scituate-Norwell and were filed in 1772 and 1773 just before the war started. Once fighting began, slaves had another option for gaining their freedom; they could fight for it. In order to recruit sufficient troops for battle, both the British and the Patriots offered freedom to any slave who agreed to join the war. It has been estimated that about 10,000 slaves joined the British forces and about 5,000 fought on the Patriot side.<sup>16</sup>

Prince Tillage and Abraham Colden were two of the three slaves with connections to Scituate-Norwell who filed for their freedom just before the Revolution. Tillage and Colden were neighbors who lived near each other at Greenbush. They went to court at the same time, April 1772, with the same lawyer, Benjamin Kent, Esq., acting on their behalf.

### *Prince Tillage v. Jacobs; Abraham Colden v. Dr. Benjamin Stockbridge*

Prince Tillage was four years old when he was sold by his owner, Josiah Cushing of Pembroke, to Benjamin Jacobs of Scituate. Twenty-six years later, four years before the Declaration of Independence, Tillage was still being held in slavery. So in 1772 Tillage sued to gain his freedom. While not involved in the court case, Nathaniel Eells, the minister who helped win Molly Sisco's freedom, was also a figure in Tillage's life, having baptized Prince and his twin sister, Patience, 30 years earlier.

Abraham Colden had been owned by Nathaniel Tilden of Scituate and upon Tilden's death, was sold by the administrators of Tilden's estate to Dr. Benjamin Stockbridge who lived at his family's homestead at Greenbush. Colden was Stockbridge's slave for almost 40 years when he decided to sue for his freedom.

Exactly how Tillage and Colden came to be represented by Benjamin Kent, Esq. is not known. Kent was born in Charlestown, graduated from Harvard in 1727, was a chaplain at the Congregational Church in Marlboro, a tax collector in Boston, and eventually Attorney General of Massachusetts. He lived in Boston "at the north side of King Steet by the north end of the Town or Court House."<sup>17</sup> But Kent had relatives who lived in Scituate-Norwell where his mother, Rebecca Chittenden, had been born. Members of her family settled near Chittenden Lane in Norwell and ran a shipyard on the North River. She and Kent's father owned at least five slaves, Jane, Peggy, Venus, Jenny, and Violet, one of whom, Jenny, Benjamin Kent inherited.

Kent is described as "not greatly distinguished in his profession, although he acquired considerable popularity as an advocate

and practiced with good success.”

He made the same legal argument in both the Tillage and Colden cases, claiming that neither Tillage nor Colden were slaves at the time they were sold to their new owners. In Tillage’s case, the jury agreed but the decision was appealed by Jacobs. In Colden’s case, the jury disagreed so Colden appealed. In the end, the result of neither cases is known.

Surprisingly, a few years later, Kent left the province and went to Nova Scotia. “Being in his political sentiments a royalist, he left the country at the breaking out of the revolution and went to Halifax, where he died at the age of 81 years in 1788.”<sup>18</sup> One would have thought that a lawyer championing the freedom of slaves would have been on the Patriot side.

### *Quork Walker v. Jennison*

Quork Walker was a slave who had run away but was found and brutally beaten by his owner, Nathaniel Jennison, prompting Walker to file a freedom suit in Worcester court. Walker was represented by two lawyers: Caleb Strong and Levi Lincoln, both prominent public figures, whose eminence contributed to the exceptional stature of the Walker case.

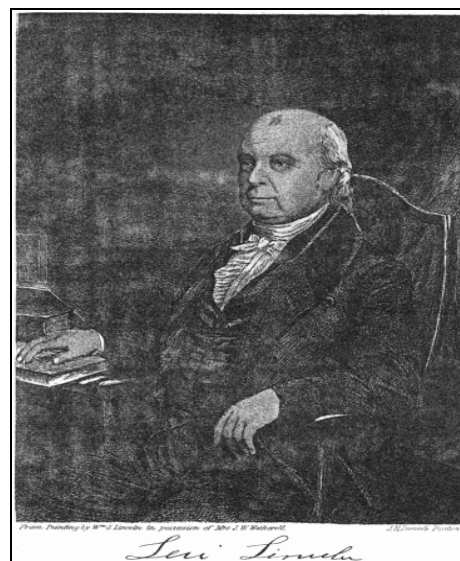
Caleb Strong was born in Northampton, Massachusetts, the son of a wealthy merchant,



*Caleb Strong*

who graduated from Harvard in 1764 and after

studying law with an eminent jurist of the time, opened his practice in 1772. In a brief biography compiled by the National Archives he is described as having a “prosperous country practice.” He was in private practice for four years before becoming an attorney for the province and embarking on a political career that led to his election as state representative and governor. He was a delegate to the Constitutional Convention and one of the first U.S. senators from Massachusetts. It was during the first of his four years in private practice, that he handled the Quork Walker case.



*Levi Lincoln*

Levi Lincoln was an eminent lawyer and public figure who went on to become governor of Massachusetts, a U.S. representative, fourth U.S. Attorney General and Acting U.S. Secretary of State under Jefferson. As Jefferson’s Attorney General, Lincoln is credited with securing funds for the Lewis and Clark’s expedition. He had local ties, having been born in Hingham in 1749, the son of a farmer of limited means, the only jurist here who did not come from an upper class family. As a child he was apprenticed to an ironsmith but, showing exceptional aptitude, he did go on to graduate from Harvard College in 1772. He was known as an ardent revolutionary, having volunteered to fight with the Minutemen. At some point he

moved from Hingham to Worcester, serving from 1775 to 1781 as clerk of the court and as probate judge in Worcester County, the court seat where the Walker case was heard.

The Walker case involved multiple charges, counter charges and hearings spanning two years. Strong and Lincoln won some strategic filings but lost others until an appeal was lodged in 1783 with the state Supreme Judicial Court on which William Cushing of Scituate sat as chief justice.

Judge William Cushing lived near Neal Gate Street in Scituate but much of his work took him to other places. He started his legal career in Maine and was eventually appointed to the first U.S. Supreme Court. As one of its members, he gave the oath of office to George Washington at his second inaugural.



*Judge William Cushing*

Cushing was a colorful character as evidenced by various descriptions of him.

“Mrs. Cushing always accompanied him, and generally read aloud while riding. His faithful servant, Prince, a jet black Negro, whose parents had been slaves in the family and who loved his master with unbounded affection, followed behind, in a one-horse vehicle, with the baggage.”<sup>19</sup>

When it came time to give instructions to the jury, Cushing told them:

“...The court are (sic) therefore fully of the opinion that perpetual servitude can no longer be tolerated in our government, and that liberty

can only be forfeited by some criminal conduct or relinquished by personal consent or contract.”<sup>20</sup>

He based this charge on provisions contained in the newly adopted state constitution. Because of this, Quork Walker was freed. But of more importance, the verdict contributed to the elimination of slavery in Massachusetts, the third state in the new nation to do so.

## CONCLUSION

Does fact measure up to fiction? Compared to Atticus Finch, the white lawyers representing these black clients in eighteenth century Scituate-Norwell were more successful in pleading their cases. They won all but one of them. But as the record shows, the victories proved hollow in some instances. While the tragedies may be less wrenching than that of Tom Robinson’s, Maria died before she knew that her daughter was free; we don’t know what became of Prince Tillage or Abraham Colden; nor do we know what kind of life Adam and Quork Walker were able to make for themselves as free men.

While Atticus Finch makes an impassioned plea for equal justice on behalf of his client, for the most part we do not really know the sentiments of the lawyers mentioned here on slavery. There are some hints that some of them would have supported the cause of emancipation but only one made any public statement on the subject. They obviously supported their clients’ bids for freedom but when they tried these cases every lawyer was obliged to take any case as long as the client paid the required 12 shilling fee.

Despite some colorful idiosyncrasies, as figures from history books they fail to capture our attention as does Harper Lee’s portrayal of the warm, gracious and considerate Atticus Finch. Nonetheless, if the stories of the real lawyers do not provoke the same compelling interest, it must be surmised that their efforts were deeply appreciated by the slaves they represented whatever their legal or personal motivations may have been for doing so.

Decisions on five freedom suits may not

be solid evidence for concluding that all-white courts in eighteenth century Massachusetts were completely color blind, but the fact that People of Color used the courts to grieve injustices speaks to this fact. That they also won their suits lends confirmation as well. Most noteworthy of all is that these events occurred in our town more than one hundred years before the Civil War.

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<sup>1</sup> Prepared with the assistance of Lisa Orecchio.

<sup>2</sup> Power, Mary L.F., *Pamphlet celebrating the 275<sup>th</sup> anniversary of the First Parish Church of Norwell*, 1917.

<sup>3</sup> Merritt, Joseph F., *The History of South Scituate-Norwell*, Rockland Std. Publishing Co., Rockland, MA, 1938. p.135.

<sup>4</sup> Vinal, William Gould, Pamphlet, "Old Scituate Churches In A Changing World," 1954.

<sup>5</sup> von Frank, Albert J., "John Saffin: Slavery and Racism ...," *Early American Literature*, V29, 1994. pps 254-271.

<sup>6</sup> Higginbotham, A. Leon, *In the Matter of Color: Race and the American Legal Process*, ... London, 1978. p.65

<sup>7</sup> [http://www.digitalhistory.uh.edu/database/article\\_display.cfm?HHID=45](http://www.digitalhistory.uh.edu/database/article_display.cfm?HHID=45)

<sup>8</sup> Eaton, Rev. Arthur Wentworth Hamilton, "Eminent Nova Scotians of New England Birth," unpublished manuscript, R. Stanton Avery Special Collections Dept, New England Historical and Genealogical Society.

<sup>9</sup> Washburn, Emory, *Sketches of the Judicial History of Massachusetts*, DaCapo Press, NY, 1974.

<sup>10</sup> Ibid, p. 261

<sup>11</sup> Pratt, Harvey Hunter, *The Early Planters of Scituate*, Scituate Historical Society, Scituate, MA, 1929. p.246.

<sup>12</sup> Ibid., pps.84-85.

<sup>13</sup> Duffy, Eamon, "The Cradle Will Rock," *New York Review of Books*, Dec. 19, 2002, pps. 61-63.

<sup>14</sup> <http://www.pbs.org/wgbh/aia/part1/1p270.html>

<sup>15</sup> <http://www.mass.gov/courts/jaceducation/constjusslavery.html>

<sup>16</sup> [http://www.earlyamerica.com/review/2004\\_summer\\_fall/soldiers.htm](http://www.earlyamerica.com/review/2004_summer_fall/soldiers.htm)

<sup>17</sup> Briggs, L. V., *Genealogies of the Different Families ... of Kent* ... Rockwell & Churchill, Boston, 1898. pps. 18-20.

<sup>18</sup> Washburn, op. cit., p232

<sup>19</sup> Pratt, op. cit., p.272

<sup>20</sup> <http://www.mass.gov/courts/jaceducation/constjusslavery.html>