

The Slander Trials of Jane James: A New Model of Female Agency in Seventeenth-Century Massachusetts

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Abstract

Historians have debated the usefulness of investigating slander, given its status as an anomalous form of speech. From a scholarly perspective, slanderous speech is often considered atypical, unusual, and thus uninformative. However, slander was a routine occurrence in Puritan New England, and the “anomalous language” of slander trials in seventeenth-century Massachusetts provides a unique glimpse into the daily workings of Puritan life. This research focuses on slander trials involving Jane James (c. 1600-1669), investigating the language of her trials as well as the details of her life and the lives of her opponents. By attempting to reconstruct centuries-old interpersonal conflicts, this research will reveal a single iteration of the (re)figuring of gender roles in Puritan New England. Puritan gender roles were certainly rigid in theory, and often in fact. However, as the case of Jane James illustrates, slanderous speech and slander trials simultaneously reinforce and occasionally challenge the prevailing Puritan gender ideology, presenting a new model of female agency in Puritan New England. Slander trials in seventeenth-century Massachusetts are best understood as interpersonal dramas laden with concerns about body, property, and power. Such issues were almost always highly gendered; slanderers generally reserved epithets alleging fiscal irresponsibility for male victims, while women were often accused of sexual immoderacy. Nevertheless, lurking behind the slander of women was the specter of witchcraft. Slander trials concerning witchcraft constitute a reversal of the stereotypical form of witchcraft allegations. In casting the woman as a plaintiff, rather than as a victim, such slander trials allow for a revised understanding of the power dynamics of Puritan gender roles and gender ideology.

Methodologically speaking, the study of Puritan slander trials is best approached interdisciplinarily. Thus, in addition to social historical methodology, feminist post-structural discourse analysis (FPDA) will help piece together a thorough understanding of Jane James’s life and its significance regarding gendered Puritan conceptions of body, property, and power, thereby revealing otherwise hidden layers of gendered meaning within defamatory language. In essence, the slander trials of Jane James allow for a revised understanding of female agency in Puritan New England, one in which the alleged witch achieves a position of legitimate legal power.

Keywords: Slander, Puritans, Witchcraft

1. Introduction

As a form of speech, slander is anomalous. By definition, slander defies custom and disrupts social order. A handful of scholars dismiss the study of slander as irrelevant; because slander is atypical and unusual, it is uninformative and distracting.¹ However, anomalies are important. Precisely *because* they defy and disrupt, anomalies also illuminate. In *The Great Cat Massacre*, historian Robert Darnton explores how anomalies contribute to a fuller understanding of past worldviews: “I do not see,” Darnton exclaims, “why cultural history should avoid the eccentric or embrace the average, for one cannot calculate the mean of meanings or reduce symbols to their lowest common denominator.”² Although it comprised unconventional speech, slander was a routine occurrence in Puritan New

England, and the anomalous language of slander trials in seventeenth-century Massachusetts provides a unique glimpse into the daily workings of Puritan life. This research focuses on slander trials involving Jane James (c. 1600-1669), the language of her trials, and relevant contextual features, such as the details of her life and the lives of her opponents. By attempting to reconstruct centuries-old interpersonal conflicts, this research will reveal a single iteration of the (re)figuring of gender roles in Puritan New England. Puritan gender roles were certainly rigid in theory, and often in fact. However, as the case of Jane James illustrates, slanderous speech and slander trials simultaneously reinforce and occasionally challenge the prevailing Puritan gender ideology, presenting a new model of female agency in Puritan New England. Slander trials in seventeenth-century Massachusetts are best understood as interpersonal dramas laden with concerns about body, property, and power. While broader aspects of language including social performance are important to understanding the boundaries of convention and respectability within a community, each instance of slander was enacted on an interpersonal stage. Issues within this context were almost always highly gendered; slanderers generally reserved epithets alleging fiscal irresponsibility for male victims, while women were often accused of sexual immoderacy.³ Nevertheless, lurking behind the slander of women was the specter of witchcraft. Slander trials concerning witchcraft constitute a reversal of the stereotypical form of witchcraft allegations. In casting the woman as a plaintiff, rather than as a victim, such slander trials allow for a revised understanding of the power dynamics of Puritan gender roles and gender ideology.

Methodologically speaking, the study of Puritan slander trials is best approached interdisciplinarily. An application of social historical methodology, in conjunction with feminist post-structural discourse analysis (FPDA), helps piece together a thorough understanding of the life of Jane James and what her life reveals about Puritan conceptions of womanhood and its relation to body, property, and power. Judith Baxter explains FPDA in the following way: “In the spirit of encouraging diversity and textual play, it seeks out the more troublesome issues of working with spoken discourse, highlighting the unresolved tensions, competing perspectives, shifts of power, ambiguities and contradictions inherent within all texts.”⁴ Thus, an FPDA-based analysis of slanderous speech reveals otherwise hidden layers of gendered meaning within defamatory language. Unfortunately, none of Jane’s verbal responses to these accusations are recorded. However, an application of the theories of J.L. Austin allows one to understand the legal act of suing as a kind of perlocutionary act—“the *achieving* of certain *effects* by saying something.” In other words, when Jane sued her defamers—whether in her husband’s name or, more significantly, in her own name as a widow—she attempted to *achieve* the *effect* of establishing her innocence. Before proceeding, it is important to understand that Austin himself believed that perlocutionary acts “can be brought off nonverbally...” Among others, Austin lists the following as perlocutionary verbs: “convince,” “persuade,” “deter,” “intimidate,” and sometimes “tempt.”⁵ Each of these acts can be verbal or non-verbal. By taking her slanderers to court for their defamatory speech, Jane James tried to *deter* them from slandering her further and to *convince* the court that her reputation had been unduly sullied. To understand the implications of Jane James’s anomalous legal status as a widow during the last of her trials requires both a deep understanding of the social category of widowhood in Puritan New England, as well as the performative discourses available to Puritan widows. In essence, examining the slander trials of Jane James through the lens of feminist post-structural discourse analysis, with a particular emphasis on Susan Ehrlich’s theory of identity construction in a courtroom context, allows for a revised understanding of women’s agency in Puritan New England, one in which the alleged “witch” achieves a position of legitimate legal and social power.

Jane James was a woman who lived in the fishing village of Marblehead during the mid-seventeenth century. The few scholars who have written specifically about Jane James describe her alternately as “an impoverished widow,” a woman around whom “rumors...swirled,” or merely “Another witch,” without providing extensive analysis of her court appearances.⁶ Like so many other women—and men—of her time, all extant details of her life come from court records. In 1639, Jane James made her first recorded appearance in court, under the accusation that she “took things from [Anthony Thatcher’s] house.” The records note that Jane and her husband, Erasmus, Sr., were “bound for her good behavior.” At the time, Jane was about thirty-nine years old, four years her husband’s senior. The age of their daughter Hester is not recorded, but their young son, Erasmus, Jr., was only four years old. Already, his mother found herself the target of suspicion. For the next six years, Jane was apparently absent from the Essex County courts. Nevertheless, her reputation remained sullied. In 1645, “John Bartoll sd yt he can prove Jane James a common Lyer, a thief & a falce forsworne woman.” Bartoll’s accusation was clearly motivated by an occurrence two months prior, when Bartoll was “presented for saying that there were some that should suppress sin [that] did countenance it”; according to witnesses Jane and Erasmus, Sr., Bartoll directed this attack against Moses Maverick, a prominent townsperson and eventual founder of the town of Marblehead. Allegedly, Bartoll exclaimed “that one night divers persons were husking corn at said Maverik’s house when two of the men were drunk, and [Maverick] did not complain of them.”⁷ By attempting to undermine the credibility of the witnesses in this case, Bartoll hoped to simultaneously bolster his own reputation and diminish the standing of Jane and Erasmus, Sr. Bartoll’s words

carried connotations of witchcraft. By alleging that Jane James was “a common Lyer, a thief & a falce forsworne woman,” Bartoll both undermined Jane’s trustworthiness—an asset of paramount importance in a credit-based economy—and her godliness. Through this accusation, Bartoll hoped to improve his own reputation, at least in comparison to Jane. The phrase “falce forsworne woman” is unique among Bartoll’s insults in that it is a specifically gendered term. While words like “falce” and “forsworne” certainly could be applied to men, Bartoll adds the word “woman.” By emphasizing Jane’s inclusion in the marked category of “woman,” Bartoll invoked the specter of witchcraft. Over time, these allegations would return to haunt Jane, steadily accreting into complex and detailed accusations that did not merely *imply* witchcraft, but referenced it explicitly.⁸

Understanding the social context of Marblehead during Jane’s time is central to making sense of Jane’s legal troubles. Marblehead’s economy was based primarily on fishing; as such, men outnumbered women in the community.⁹ Given this demographic fact, women in and around Marblehead had a much better chance of “marrying up” than did men. This might help explain why Jane’s neighbors targeted her. As historian Christine Leigh Heyrman analogizes, “Marblehead women occupied a position roughly similar to that of indentured servants in seventeenth-century Virginia: scarcity made both groups sought-after but not greatly esteemed.” Heyrman explains that, in Marblehead, “Wives and daughters complained frequently of verbal and physical abuse by male relatives and neighbors who resented the assertiveness of local women and the necessity of competing for their favors.”¹⁰ It is hardly surprising, then, that in this community of fishermen and fishwives, Jane James found herself the target of gendered animosity.

2. The Cases

Jane’s next court appearance occurred in 1646, when Erasmus, Sr., was plaintiff in a slander suit against William Barber. The transcript of the trial, as published in the *Records and Files of the Quarterly Courts of Essex County, Massachusetts*, reads:

Thomas (his mark) Bowen, aged about 24 years, and his wife Elizabeth (her mark) Bowen testified that Jane James spoke to William Barber in Bowen’s house and Barber said “get you out of doars you filthy ould Baud or elce I will Cuttle your hyde, you ould filthy Bagage & tooke up a fire brand, but did not throw it att hir.” He also saw Barber carry away a shoulder of mutton that Jane James should have had, giving her a push and saying he could eat a shoulder of mutton as well as she. On 26: 10: 1646, Erasmus James was plaintiff in suit of Jane James v. William Barber for slander.¹¹

No verdict was recorded for this trial, but Bowen’s testimony, if accurate, would have reflected quite poorly on Barber, even without considering Bowen’s descriptions of Barber’s violence and theft. The discourse of misogyny courses through Barber’s strong, heavily gendered words. In particular, the words “baggage” and “bawd,” both relatively archaic words today, connote female vulgarity and sexual perversion. The word “hyde,” too, implies that Jane is animalistic—in appearance, behavior, or sexuality. Barber’s use of the descriptor “ould” merits consideration as well. Historian David Hackett Fischer has argued that seventeenth-century New Englanders “carefully cultivated an attitude of respect for the old,” and that among Puritans “old age was a sign of grace.” However, Fischer notes that “Veneration was a cold emotion, closer to awe than to affection.”¹² Elders could be intimidating, even frightening. At only forty-six years old, Jane was not yet venerable; she might have even been younger than Barber. Nevertheless, for one reason or another, Barber attributed the qualities of elderhood to her. Essentially, in his aggressive display toward Jane, Barber threatened her body, her property, and her power in the form of reputation. Significantly, Erasmus and Jane appear to have valued the lattermost threat as the most serious; they did not, after all, accuse Barber of physical intimidation with a fire brand or of stealing mutton. On the other hand, the focus on reputation may have been merely a legal strategy employed by Erasmus and Jane. Within a credit-based economy, one’s reputation was of paramount importance; as such, the courts might have been more likely to treat a complaint seriously if it involved damages to the plaintiff’s good name. Whatever the case, it turns out that Jane and Erasmus certainly had good reason to protect Jane’s already fragile reputation; over the course of the next two decades, attacks on Jane’s reputation would accrete, incorporating previous allegations against her and adding new rumors as well.

Around the same time as her conflict with Barber, Jane began feuding with her most persistent adversaries, the Pitford family.¹³ In 1646, according to court records: “Henry Pease of Marblehead deposed that he heard Peter Pitford of Marblehead say that Goodwife James was a witch and that he saw her in a boat at sea in the likeness of a

cat; also, that his “garden frughtes” did not prosper so long as he lived near that woman; and that said Pitford often called her “Jesable.” Henry Trevett of Marblehead also deposed.” Peter’s slanderous speech differed from Bartoll’s and Barber’s in that he directly referred to Jane as a witch. Peter’s allegations point to the accretion of rumors surrounding Jane. According to Peter, Jane was not merely a “filthy ould Baud” and an “ould filthy Bagage,” but also a “witch” and a “Jesable.”¹⁴ While Peter’s words do not carry the same descriptive heft as Barber’s, they build upon Barber’s allegations, snowballing into much more serious allegations against Jane. In *Governing the Tongue*, Kamensky alludes to how allegations against Jane intensified over time. As Kamensky observes, “neighbors’ stories began to transform Jane James from a ‘common Lyer’ into an ‘old witch.’” Essentially, “In James’s case and in many others, to cry witch was to create a witch—in local estimation if not in legal fact or in magical practice. . . . In this way, a witch was made rather than born—crafted, in significant part, out of the malign words of her neighbors.” Furthermore, “once uttered, the label ‘witch’ proved so very hard to shake.”¹⁵ The accretive property of rumors and gossip allowed allegations against Jane to intensify over time. As such, Jane likely found herself constantly having to switch tactics—from emphasizing her own reputation to belittling her opponent’s reputation, or from focusing on economic concerns to focusing on bodily concerns—in order to avoid stigmatization.

The outcome of the 1646 Pitford case is not recorded. Whatever the verdict, Peter and Edward Pitford continued to allege that Jane James was a witch. In 1650, Erasmus, Sr., sued both Peter and Edward twice “For calling [Jane] a witch.” It is difficult to analyze these trials linguistically, as no other details—including the verdict of the first set of trials—are recorded. In the second set of trials, however, the court found in favor of Edward, but Jane and Erasmus emerged victorious against Peter and were awarded fifty shillings damages.¹⁶ While far from generous, this sum does at least indicate that the magistrates legitimately felt that Peter had slandered Jane, perhaps remembering their previous conflict. Some other victims of slander received much lower damages. Susanna Martin, later a victim of the Salem Witchcraft Trials, was awarded “a white wampam peague or the eighth part of a penny damage” when the court acknowledged that William Sargent had slandered her in 1669.¹⁷ In this case, the insultingly low compensation suggests that Sargent had only slightly overstepped his bounds. The fifty shillings, or two-and-a-half pounds, that the magistrates granted Jane was a much more substantial compensation. It is possible that the magistrates valued Jane’s wellbeing more than they valued Susanna’s; alternatively, the higher compensation awarded to Jane can be read as a confirmation of her victimized status and not as a symbol of her abilities as a negotiator. Whatever the case, Jane’s success as a plaintiff appears to demonstrate her agentive power. Reading this case as evidence that Jane did successfully overturn a “victim” identity, the resulting shift in power—however temporary—points to the existence of a greater degree of flexibility in Puritan gender roles than other historians have recognized.

Shortly after the final Pitford trials, Jane found herself once again a target of witchcraft suspicion. In 1651, Erasmus sued John Gatchill for slandering Jane: “Erasmus James v. John Gatchill. Defamation. For saying that James’ wife was an old witch, and that she was seen going in a boat on the water toward Boston, when she was in her yard at home. Verdict for plaintiff.”¹⁸ Bilocation figured prominently in Puritan beliefs of witchcraft. In a mercantilist economy, the ability to appear in multiple places simultaneously would have afforded the suspected witch an inordinate degree of competitive advantage. However, such powers might not have appeared as threatening as the destruction of property.¹⁹ While Gatchill’s accusation meant that he felt that Jane James—and, by extension, her husband—had an unfair economic advantage, he did not accuse her of having committed outright destructive acts. Thus, in the eyes of the court, Gatchill had injured Jane James’s reputation but had not prevented a compelling case for trying her for acts of witchcraft. More importantly, bilocation signifies demonic power. The ability to appear in two places at once could only be achieved with the help of Satan. Bilocation was reminiscent of Satan’s unholy shape-shifting powers. In the words of English witch-hunter Matthew Hopkins, Satan “is a spirit and prince of the air, [and] he appears . . . in any shape whatsoever, which shape is occasioned by him through joining of condensed thickened air together . . .”²⁰ Although the extent to which such spectral evidence of witchcraft was taken seriously is questionable, it nevertheless marked Jane as a witch.²¹ The phrase “old witch” merits further linguistic analysis. In 1651, Jane was about fifty-one years old; John Gatchill was approximately thirty-five.²² Separated by at least half of a generation, John very well might have seen Jane as “old.” She was certainly nearing the end of childbearing age, if not already past it. Significantly, Gatchill’s insults are also an instance of intertextuality. According to Baxter, the theory of intertextuality holds that a text is “both inscribed with the traces of the texts that have gone before it, and formed in the act of reading by the inexhaustible databank of references we all carry with us as participants in a culture.”²³ Gatchill was not the first to call Jane “old”; five years prior, Barber had referred to Jane as “filthy ould Baud” and “ould filthy Bagage.”²⁴ Essentially, Gatchill’s slanderous speech fused Barber’s allegations with Peter Pitford’s. Thanks to Gatchill, Jane was now simultaneously “ould” and a “witch.”

In 1660, Jane James experienced perhaps the most profound transition of her life: the transition from goodwife to widow. The death of Erasmus James, Sr., left Jane with exclusive ownership of his estate. The inventories of other residents of Marblehead who died between September of 1656 and July of 1662 ranged from twenty-nine pounds,

nine shillings, and sixpence to nearly six hundred pounds.²⁵ These figures suggest that Jane and Erasmus, with an estate valued at somewhat more than eighty-six pounds, enjoyed a reasonably comfortable, though by no means wealthy, existence. Erasmus had declared that Jane “was to have the estate as long as she remained a widow, and if she died, it was to be equally divided between her son Erasmus and daughter Hester.”²⁶ Erasmus’s decision to leave the entire contents of his inventory to his widow was somewhat unusual. While it was customary for a widow to receive at least one-third of her deceased husband’s estate, some of the estate was usually set aside for children. The fact that Erasmus did not bequeath any of his estate to his children—especially Erasmus, Jr.—suggests that some conflict might have existed between father and son. Even so, it appears that not all of Erasmus’s estate actually went to Jane. The inventory valued the estate at eighty-six pounds, one shilling, and eight pence before clearing debts, and indeed Jane apparently inherited all of this property. However, “The land in Marblehead wth the house in w^{ch} the deceased liued and died in” was not included in the value of the estate, and “beinge in controversie between Erosmus James Junio^r & Richard Reed w^{ch} we known not whose it is, but beinge desired by the said Erosmus James Junio^r to be prised we valew at the some of fortie pounds.”²⁷ At some point between 1660 and 1669, however, Jane acquired “The land in Marblehead wth the house,” leaving Erasmus, Jr., with apparently no claim to his deceased father’s estate.²⁸ Apparently, Jane and Erasmus, Jr., quarreled over their respective rights to Jane’s new property. Erasmus felt that he should be entitled to ownership of at least part of his father’s estate. According to Karlsen, “Inheritance disputes surface frequently enough in witchcraft cases, cropping up as part of the general context even when no direct link between the dispute and the charge is discernible, to suggest the fears that underlay most accusations.”²⁹ In other words, Jane’s neighbors—not just her family members—might have harbored jealous sentiments about Jane’s recent inheritance. In 1665, the court “Ordered that all differences between Jane James, widow, and her son Erassmus James, they consenting, be left to the Worshipfull Major Wm. Hathorne and Mr. Moses Maverick to be determined within one month. Also that said Jane should not sell any of the estate except by court order.”³⁰

Jane James’s final recorded slander case occurred in 1667, near the end of her life. After a tumultuous period between 1646 and 1651, Jane’s reputation seemingly recovered. This suggests that she was able to curtail the rumors about her for a time. Through the language of litigation, Jane had accrued a degree of power that enabled her to protect her body and property. However, in 1667, the now-widowed Jane sued Richard Rowland for defamation. The complexity of the allegations, as recorded in the court records, far exceed that of any previous allegations directed at Jane James:

Writ: Jane James, widow v. Richard Rowland; defamation; for saying that plaintiff came in at a hole in the window in Rowland’s house, took him by the throat and almost choked him as he lay in his bed and called her old hag; dated June 17, 1667; signed by Moses Mavericke, for the court; and served by John Peach, constable of Marblehead.

Jane James’ bill of cost, 11i. 7s. 6d.

Capt. James Smith, aged about forty-three years, deposed that he, Samuell Aborne, sr., and Richard Rowland [his brothers-in-law] were in bed together when suddenly the latter screeched, started up and said he was almost choked by the old hag, Goody James, who he said had come in through a hole in the window and had him fast by the throat, etc. Deponent saw nothing although the room was very bright with the light of the moon. Sworn in court.

Samuell Ebern [Aborne], aged about fifty-six years, deposed. Sworn in court.

John Furbush, aged nearly forty years, deposed that he had often heard Richard Rowland and his wife call Jane James, Jesable and devil. Sworn in court.³¹

Literary scholar Ina Habermann references the importance of property to allegations of witchcraft in *Staging Slander and Gender in Early Modern England*: the “moment of hospitality, of crossing somebody else’s threshold, ...traditionally played a role in witchcraft accusations where people were frequently criminalized who invaded the domestic space for one reason or another.”³² Rowland’s allegations blur the distinctions between body and property and are replete with gendered language. The word “Jesable,” in particular, is weighted with gendered implications.³³ Rowland’s story graphically illustrates how Puritan sexual paranoia contributed to witchcraft beliefs and accusations. In his accusation, Rowland cast Jane James in the role of a succubus—an aggressively sexualized manifestation of a Puritan witch. Historian Carol F. Karlsen explains that accusers often believed that witches “forced themselves sexually on unwilling men,” and “that witches’ carnal appetites were both internally uncontrolled and externally uncontrollable.”³⁴ The threat of uncontrollable female sexuality thus figured prominently in witchcraft accusations; Rowland’s allegations were serious. Why, then, did Jane James win the case?

In this instance, a better question might be, why did Rowland *lose* the case? To understand why Rowland made these allegations against Jane—and why he did not emerge victorious—requires an examination of the complex relationship between Jane’s family and Rowland’s family. In her article “Trial Discourse and Judicial Decision-Making: Constraining the Boundaries of Gendered Identities,” Susan Ehrlich contends that “culturally dominant notions of male and female sexuality can impose constraints on the formation of participants’ gendered identities.” While Ehrlich’s analysis focuses on a modern sexual assault trial in Canada, her argument applies equally well to slander trials in seventeenth-century Massachusetts: Jane James’s reputation, coupled with Puritan mores, restricted her performance of gender. Although Jane managed her stigmatized identities with relative success, she did so at great risk and without total freedom of identity. Interestingly, Ehrlich also claims “that a full understanding of identity construction requires looking beyond the face-to-face aspects of interaction to what Goffman calls the ‘gathering.’” In other words, “participants who are not directly and actively involved in an interaction can nonetheless influence the meanings and understandings that are assigned to that interaction.”³⁵ In FPDA, context is of utmost importance to apprehending meaning. This facet of Ehrlich’s argument touches upon the importance of gossip in witchcraft allegations, which Elaine Forman Crane emphasizes in *Witches, Wife Beaters, and Whores*: “Witchcraft thrived on gossip.”³⁶ In her discussion of slander in seventeenth-century England, M. Lindsay Kaplan echoes Goffman’s concept of “the gathering,” explaining “that where matters of honor are concerned individuals do not exist; familial or societal ties will always obtain, escalating the significance and the damage of the insult. Thus, defamation between two people will necessarily involve disrupting a larger segment of society.”³⁷ The conflict between Jane James and Richard Rowland dramatically illustrates the importance of communal webs of interaction in one’s understanding of defamation. Again, intertextuality is significant; as gossip spreads throughout a community or between multiple communities, the information it carries enters “the inexhaustible databank of references we all carry as participants in a culture” that Baxter describes.³⁸ Piecing together the links between Jane James and Richard Rowland helps to illuminate the possible vectors of intertextuality that contributed to Rowland’s conflict with Jane. Both Richard Rowland and Erasmus James, Jr., worked as ship carpenters—a vital occupation in the fishing economy of Marblehead. There was thus already some connection between Jane’s family and Rowland. Rowland had married the daughter of prominent Marblehead resident James Smith, father of the aforementioned Capt. James Smith and apparently friend of the James family. While wealthy by the standards of their neighbors, the Smiths were not free of controversy. In 1659, Thomas Pitman, who was the constable of Marblehead at the time, described Mary and James Smith as “adhering to the Quakers and an euile example to others,” and complained that they “absented themselves from public worship.”³⁹ Residents of seventeenth-century Massachusetts popularly associated Quakers with the practice of witchcraft. However, Marblehead tended towards somewhat less anti-Quakerism than other communities; Heyrman attributes these sympathies in part to “the West Country background of” some of the town’s residents, which “bred both strong ties to the Church of England as well as some interest in Quakerism,” as well as to “their opposition to orthodoxy in New England.”⁴⁰

Despite Marblehead’s Quaker sympathies, the Smiths appear to have been both somewhat stigmatized and relatively wealthy. In 1661, James Smith died, leaving behind an estate of nearly six hundred pounds. Of this, he left to “mary Smith my wife, all that my farme called Castle hill, wth ten acres in the South field bought of Joseph Grafton, and now in the hands of Samuell Cutler, during her Life if shee remayne So Long a widow...but it is to be vnderstood Richard Rowland my son in Law hath ten pound & in the first purchase of Castlehill...” Smith’s will continued: “Item I giue vnto my wife my house & land in marblehead bought of Erazmus James & all my share on the farme bought by marblehead of maj^r wm hathorne dureing her life or widdowhood...” In each case, Smith stipulated that the property would then transition from Mary to James, Jr., his eldest son. Clearly, Smith wished to prevent his real estate from falling into the hands of another family—including the families of his daughters. His daughter Katherine Eburne received “my six Oxen in the hand of Samuell Cutler,” and her children each received monetary rewards. To his daughter Mary, Richard Rowland’s wife, Smith bequeathed “the oxen w^{ch} I now yoak wth one of her husbands”; Mary’s children also received sums of money.⁴¹ Interestingly, Smith stipulated that “my Grandchild Samuell Rowland [should receive] ten pounds *if he be liueing at the Day of my Death*,” suggesting that Samuell may have suffered from a chronic illness.⁴²

In any case, Richard Rowland had received the short end of his wealthy father-in-law’s estate. In contrast, his mother-in-law Mary Smith was now wealthy in her own right. Presumably, this power shift upset Rowland, and he seems to have taken out his frustrations on Mary, for in 1662 he was presented at court “for many abuses of his mother-in-law...” A chilling statement written by John Bartoll, presented to the court, suggested a long history of conflict between Rowland and the Smiths:

In what manner they haue lived seuerall yeare is well knowne to all that liue nere them What outrages theare haue been betwixt James Smith disceased the father and Richard Rowland Sonn in law it is almost matter of ympossibility | to relate | & ever since the fathers departure continued by the abousaid Rowland against his Mother.

I conceiue that it was a motion from the lord That Samuel Cutler when I was in the widdow Smithes howse falling into discourse about this his violent carriage toward his mother should charge it upon me and others as our sinn for not bringing him before Authority when he so grosely abused his father James Smith certeine years before his death for he w^h others were spectators possitiuely affirming that the sd Rowland called his father old Rogue, threw him downe, took him by the neckcloth, & held him so strictly that when the sd cutler w^h others for feare running downe found the sd Rowland upon his father who gasped hardly able to speake.

After James Smith's death, Mary bore the brunt of Richard's wrath. In one incident, he apparently almost killed her, for Mary told John Gatchell's wife that "Rowland had given her her death wound..."⁴³ In her statement to the court, Mary Smith only admitted that "theare hath bin som difernces and discontents betwene my son-lawe Richard Rouland and my selfe Marye Smith," and that "what was don, was don ptly by my one hastes disposition..."⁴⁴ It is easy to imagine that Mary's fear of her son-in-law's violence was so great that she could not bring herself to give any more damning testimony. Nevertheless, the charges against Rowland were serious, and his reputation suffered. One notices in his allegations against Jane James parallels to his own behavior toward his father-in-law. Just as Rowland "threw...downe" James Smith "& held him so strictly that... [he] gasped hardly able to speake," Rowland accused Jane of climbing onto him like an incubus and "almost chok[ing] him..."⁴⁵ Rowland reiterated the aggression he displayed towards his father-in-law, to his mother-in-law, and finally to Jane—and, despite her previously besmirched reputation, Jane emerged victorious.

When Jane died in 1669, she left behind no recorded debt. The total value of her real estate had declined considerably since the death of her husband. When Erasmus, Sr., died, the executors of his will valued the "house and tenn Ackre lott" and "The land in Marblehead wth the house" at fifty pounds and forty pounds respectively.⁴⁶ Nine years later, after Jane's death, "the house and ten acors of Land neare the Ferry" had declined in value to forty pounds, and "the House in which she died with the land pertaining to itt" was valued at thirty-five pounds. However, Jane had acquired two additional pieces of real estate: "the Land by the pound" and "one Cowes Commonage," each valued at five pounds. Jane's personal property—her pots, pans, and the like—was not itemized in the inventory, nor included in the value of her estate. Hester and Erasmus, Jr., apparently put their differences aside and agreed to divide the estate evenly.⁴⁷ However, the conflict surrounding Jane's property endured, resurfacing only a few months later, when Moses Maverick sued Richard Read, Jane's son-in-law, in March of 1670. Maverick had paid for the construction of Jane's house, which he claimed entitled him to the property following Jane's death. John Legg, a local mason, reported that Jane "told me that Moses Mavericke was to pay me the said sume: for he bult the house for her I had the pay of him said Maverik in Corne and other things or she fetcht itt for me: and other things for caring the worke to compleat the said house: for she said her sons would not build itt for her." According to the terms of an arbitration between Jane and her son in 1666, "if [Jane] procure either of her sons to build her a house to live in during her life or whosoever builds it after her decease shall enjoy the house and land." The court thus decided in favor of Maverick and declared "That he be put in possession of the house and that parcel of land where the house stands at Marblehead." Reeling after the loss of thirty-five pounds of real estate, Richard attempted to sue Erasmus, Jr., for "debt due from Jane James, deceased, in her life time," before withdrawing the suit.⁴⁸ Perhaps it simply was not worth the trouble to allow this long-standing conflict to resurface. Alternatively, perhaps Richard felt that he stood no chance of winning the case. Maybe he and Erasmus had come to a compromise outside of the courts. Whatever the reason, after this withdrawn suit, Jane James was never again mentioned in the court records of Essex County.

3. Conclusion

In *The Devil in the Shape of a Woman*, Carol F. Karlsen outlines the profile of the archetypal Puritan witch. Jane James fits this profile nearly perfectly, especially in the trial against Rowland. She had "few economic resources and some taint of disrepute," she was an older widow, and she had inherited nearly the entirety of her husband's estate only a few years earlier.⁴⁹ And, perhaps most importantly, she was a woman. Considering these factors, it is surprising that she was never formally accused of witchcraft. That Jane James evaded trial necessitates a closer

examination of Karlsen's profile. How did Jane James, the archetypal witch, escape being tried for witchcraft? Perhaps the simplest explanation lies in the time and place in which she lived and died; had Jane James been alive in 1692—during the Salem witchcraft hysteria—her chances of being accused of witchcraft would have certainly increased. Furthermore, Marblehead's lukewarm commitment to Puritan orthodoxy meant that the issue of witchcraft was somewhat less salient in the town. Alternatively, her success in court could have had something to do with the status of her accusers, most of whom Karlsen identifies as "persons of little property and no visible distinction."⁵⁰ In any case, Jane James's slander trials appear to be enactments of interpersonal or interfamilial dramas. The function of speech, and the relationship between speech and witchcraft, suggests other possibilities. In her article "Words, Witches, and Woman Trouble: Witchcraft, Disorderly Speech, and Gender Boundaries in Puritan New England," Kamensky argues that "Witchcraft offered all levels of society a rubric under which certain elements of female discourse could be classified, prosecuted, and held in check." Witchcraft, in other words, was "a crime of female speech."⁵¹ Perhaps, then, the key to explaining Jane's success at avoiding formal prosecution for witchcraft rests more in early modern understandings of speech than witchcraft.⁵² Historian and folklorist Robert Blair St. George explains that "Because speech defied prior categorization as either blessed or sinful, it framed and helped mark aggressive social encounters as essentially unpredictable." The inherently polyphonic quality of speech rendered it—especially "heated speech"—"extremely unpredictable and dangerous in seventeenth-century New England." St. George defines slander as "any malicious speech that led the plaintiff to a position of social stigma because of an enforced moral distance, economic hardship, or physical exclusion."⁵³ In a credit-based economy, any of these consequences could spell financial ruin.

In her lifetime, Jane James juggled several interlocking stigmatized identities. She was at various times a "common Lyer," a "theef," a "falce forsworne woman," a "Bagage," a "Baud," a "Jesable," a "devil," a "hag," and—most significantly—a "witch." Above all, she was a woman, a status that rendered her both more readily stigmatized and ill-equipped to counter that stigma. In spite of all of this, Jane James apparently found a way to more or less successfully navigate the troublesome allegations against her. She took at least five of her accusers to court, displaying an agentive control over her own reputation. The scarcity of primary source material about Jane James's life and the slander trials in which she was involved necessitates an interdisciplinary approach that incorporates both historical and linguistic methodologies. Jane's trials reflect uniquely gendered Puritan concerns of body, property, and power. The target of witchcraft suspicions throughout much of her adult life, Jane used slander suits as a tool with significant perlocutionary effects with which to combat her stigmatized identity. Jane James's slander suits challenge the notion that marginalized identities—or indeed, *any* identities, including gender identities—are somehow fixed, thereby illuminating the constructive and deconstructive properties of language and the contextual plasticity of power. In essence, a recognition of the ways in which the slander trials of Jane James demonstrate the agency of a heavily stigmatized woman in seventeenth-century Massachusetts allows for a revised understanding of the social function of slander trials in that time and place.

4. Acknowledgements

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5. References

1. For instance, see Donna J. Spindel, "The Law of Words: Verbal Abuse in North Carolina to 1730," *The American Journal of Legal History* 39, no. 1 (Jan. 1995): 25-42.
2. Robert Darnton, *The Great Cat Massacre: And Other Episodes in French Cultural History* (New York City, N.Y.: Vintage Books, 1984), 6.
3. Mary Beth Norton, "Gender and Defamation in Seventeenth-Century Maryland," *The William and Mary Quarterly* 44, no. 1 (Jan. 1987): 9; Cornelia Hughes Dayton, *Women Before the Bar: Gender, Law, and Society in Connecticut, 1639-1789* (Chapel Hill: UNC Press, 1995), 294. Dayton's work complicates this argument somewhat, demonstrating that certain sexual epithets (rapist, bugger, etc.) were reserved for men.
4. Judith Baxter, *Positioning Gender in Discourse: A Feminist Methodology* (Basingstoke, England: Palgrave Macmillan, 2003), 1-2.

5. J. L. Austin, *How to Do Things with Words*, second edition, eds. J.O. Urmson and Marina Sbisa (Cambridge: Harvard University Press, 1975), 120, 125. It is important to note that Austin was *not* a feminist and wrote prior to the development of FPDA. However, his writings were very important in the development of post-structuralism.
6. Richard Weisman. *Witchcraft, Magic, and Religion in 17th-Century Massachusetts*. (Amherst, Mass.: University of Massachusetts Press, 1984), 87; Jane Kamensky, *Governing the Tongue: The Politics of Speech in Early New England* (New York: Oxford University Press, 1997), 155; Carol F. Karlson. *The Devil in the Shape of a Woman: Witchcraft in Colonial New England*. (New York City, N.Y.: Vintage Books, 1987), 114. It is interesting how some of these descriptions highlight Jane's power ("witch"), while others call attention to her lack thereof ("impoverished").
7. *Records and Files of the Quarterly Courts of Essex County, Massachusetts*, vol. 1, ed. George Francis Dow (Salem, Mass.: Essex Institute, 1911), 11, 81, 84. Henceforth "*Records and Files*." A binding over order, which stipulated that the person in question must stay out of any further trouble at the risk of punishment or penalty, was often used in cases where no witnesses could be found.
8. Bartoll's tumultuous relations with Jane and Erasmus James foreshadows his troubled end. In 1664, "the body of Jno. Bartoll... was taken up dead out of the sea..." According to the jury of inquest, Bartoll "was the cause of his own death, because they found his 'murmured Cape' bound down about his neck and throat with his neckcloth, and he had been heard to let fall many discontented, troubled words about the time that he was lost." In all likelihood, Bartoll's "discontented, troubled words" stemmed from his concerns regarding debt, for his inventory indicates that he was "debtor to severall men" to the amount of sixty-four pounds, eighteen shillings, and five pence. With an estate worth only seventy-one pounds and ten shillings before subtracting debt, Bartoll left his widow Parnell a clear estate worth a mere six pounds, eleven shillings, and seven pence. [*Records and Files*, vol. 3, ed. George Francis Dow (Salem, Mass.: Essex Institute, 1913), 222-223.]
9. Elaine Forman Crane, *Ebb Tide in New England: Women, Seaports, and Social Change, 1630-1800* (Boston: Northeastern University Press, 1998), 11.
10. Christine Leigh Heyrman, *Commerce and Culture: The Maritime Communities of Colonial Massachusetts 1690-1750* (New York: Norton, 1984), 217.
11. *Records and Files*, vol. 1, 104.
12. David Hackett Fischer, *Albion's Seed: Four British Folkways in America* (New York City, N.Y.: Oxford University Press, 1989), 103, 104, 110.
13. The Pitfords, Jane's most frequent opponents, appear quite regularly in the Essex County court records. Shortly before his first slandering of Jane James, Peter Pitford appears in court "for fighting in the house of" the aforementioned William Barber. The same day that Erasmus James accused both Edward and Peter Pitford of slandering his wife, both Pitfords found themselves the defendants in two other slander trials brought by Henry Pease and Emanuel Clarke. (No details of these trials are recorded.) Clearly, the Pitfords were quite argumentative. Had Peter not died in 1659, he certainly might have continued to harass Jane James. [*Records and Files*, vol. 1, 107, 204; *Records and Files* vol. 2, ed. George Francis Dow (Salem, Mass.: Newcomb and Gauss, 1912), 163.]
14. *Records and Files*, vol. 1, 104, 108.
15. Kamensky, *Governing the Tongue*, 155.
16. *Records and Files*, vol. 1, 199, 204.
17. *Records and Files*, vol. 4, ed. George Francis Dow (Salem, Mass.: Essex Institute, 1914), 129.
18. *Records and Files*, vol. 1, 229.
19. John Demos. *Entertaining Satan: Witchcraft and the Culture of Early New England* (New York City, N.Y.: Oxford University Press, 2004), 49.
20. Matthew Hopkins, "The Discovery of Witches: In Answer to Several Queries," in *Witches of the Atlantic World: A Historical Reader and Primary Sourcebook*, ed. Elaine G. Breslaw (New York City, N.Y.: New York University Press, 2000), 39.
21. Mary Beth Norton, *In the Devil's Snare: The Salem Witchcraft Crisis of 1692* (New York City, N.Y.: Vintage Books, 2002), 216.
22. *Records and Files*, vol. 4, 145.
23. Baxter, *Positioning Gender in Discourse*, 78.
24. *Records and Files*, vol. 1, 104.
25. *Records and Files*, vol. 2, 7, 215, 256, 306.
26. *Records and Files*, vol. 2, 213.
27. Ibid.
28. Ibid.; *Records and Files*, vol. 4, 165.

29. Karlsen. *The Devil in the Shape of a Woman*, 115.
30. *Records and Files*, vol. 3, 292.
31. *Ibid.*, 414.
32. Ina Habermann, *Staging Slander and Gender in Early Modern England* (Burlington, Vt.: Ashgate Publishing Company, 2003), 74.
33. *Records and Files*, vol. 3, 414.
34. Karlsen, *The Devil in the Shape of a Woman*, 137.
35. Susan Ehrlich, "Trial Discourse and Judicial Decision-Making: Constraining the Boundaries of Gendered Identities," in *Language and Gender: A Reader*, second edition, eds. Jennifer Coates and Pia Pichler (Malden, Mass.: Wiley-Blackwell, 2011), 357, 367, 368. The reference is to: Erving Goffman, *Forms of Talk* (Philadelphia: University of Pennsylvania Press, 1981).
36. Elaine Forman Crane, *Witches, Wife Beaters, and Whores: Common Law and Common Folk in Early America* (Ithaca, N.Y.: Cornell University Press, 2011), 13.
37. M. Lindsay Kaplan, *The Culture of Slander in Early Modern England* (Cambridge, U.K.: Cambridge University Press, 1997), 22.
38. Baxter, *Positioning Gender in Discourse*, 78.
39. *Records and Files*, vol. 2, 163, 305, 313. "Friend" might be too strong of a word; however, the two families were, at the very least, friendly acquaintances who had done business together in the past.
40. Heyrman, *Commerce and Culture*, 108-109, 222.
41. *Records and Files*, vol. 2, 305, 306.
42. *Ibid.*, 306. Emphasis added.
43. *Ibid.*, 443, 444, 446.
44. *Ibid.*, 445; *Records and Files*, vol. 3, 414.
45. *Records and Files*, vol. 2, 443-444.
46. *Ibid.*, 213.
47. *Records and Files*, vol. 4, 165. The total value of Jane's real estate amounted to eighty-five pounds, still slightly less than her husband's real estate value of ninety pounds. Interestingly, "The land in Marblehead with the house" is not included in the value of Erasmus's estate, although the inventory mentions its existence. Jane's daughter Hester makes relatively few appearances in the Essex County court records. However, she apparently inherited at least some of her mother's tendency toward controversy. In 1660, John Brimblecom and Hester sued each other for slander. According to deponents, "Hester remarked that John Brimblecome, who had her name in question, was a rogue, etc. She also called him vile names." Hester countersued Brimblecom "for saying that the plaintiff said that James Watts followed after her like a dog, etc." According to deponent Rebecca Conde, John Brimblecom said to James Watts: "'James thee hast well don to com to new England to runn after a wench' like a dog, etc. 'the said James said prithy John tell me whoe said soe, he answered noe not now, but he would another time.' The next day deponent heard him tell the said James Watts that it was Hester James who said it." The court found in favor of Brimblecom. [*Records and Files*, vol. 2, 208.]
48. *Records and Files*, vol. 4, 221, 222, 255.
49. Karlsen, *The Devil in the Shape of a Woman*, 27.
50. *Ibid.*, 289.
51. Jane Kamensky. "Words, Witches, and Woman Trouble: Witchcraft, Disorderly Speech, and Gender Boundaries in Puritan New England," in *New Perspectives on Witchcraft, Magic and Demonology* vol 4 *Gender and Witchcraft*, ed Brian P. Levack. (New York City, N.Y.: Routledge, 2001), 288.
52. Of course, as Kamensky's observation indicates, it would not be prudent to completely disconnect speech and witchcraft.
53. Robert Blair St. George, "'Heated' Speech and Literacy in Seventeenth-Century New England," in *Seventeenth-Century New England: A Conference*, eds. David D. Hall and David Grayson Allen (Boston: Published by the Colonial Society of Massachusetts, 1984), 284, 286, 290.