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Financial Difficulties and Murder:  
Many Cautionary Tales Erupt from the Josiah Burnham Trial

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In 1805 in the gaol [jail] in Grafton County, New Hampshire, three men were imprisoned for debt. One was a militia captain; another was a respected lawyer and state legislator. The third was a Welles descendant who had fallen from respect by quite a few yards. The story is a sad one, two men dead by disemboweling on December 17, 1805, and the third hung on his 63<sup>rd</sup> birthday the following August 12, 1806. Children lost their father. Siblings lost their brothers. Wives lost their husbands. Creditors lost all hope of their debts being paid. And even the Welles family lost its luster, as it then housed not just murder victims and but also perpetrators.<sup>1</sup>

Much of the court records are lost to us today (Grafton County destroys court records over 10 years old). However, there still exist local histories, national legal resources, and newspapers that tell us the about the event and its aftermath. Although I first envisioned this column as a simple cautionary tale about debt pertinent to current news items, my research uncovered an interesting story. It was a significant event in New Hampshire history and many different people over the years stepped forward to put that event in the context of their own Cautionary Tales. Let me tell you, first, about what happened in Haverhill and, second, about how people used the event to support their own ideologies or purposes.

WARNING: Graphic language follows.

The Crime

“Horrid Deed!!”

The following unprecedented affair happened at the gaol in Haverhill, in the county of Grafton. We cannot better give the particulars of this horrid transaction than by the following extract of a letter from a gentleman of respectability in that quarter:—

“On the morning of the 18<sup>th</sup> instant, Russell Freeman, Esquire, and Captain Starkweather, being confined in the same room in the prison at Haverhill with Josiah Burnham, a person confined for forgery — owing to some misunderstanding that had existed between the prisoners, Burnham in cool blood drew his knife, which was a long one which he carried in a sheath, and taking advantage of Starkweather’s absence in another part of the room, he inhumanely stabbed Freeman in the bowels, which immediately began to gush out. At the noise occasioned by this, Starkweather endeavored to come to the assistance of his friend Freeman, when, horrid to relate, Burnham made a pass at him and stabbed him in his side, and then endeavored to cut his throat, and the knife entered in by his collar bone. Burnham, after this, made a fresh attack on Starkweather, and stabbed him four times more — by this time he had grown so weak that the monster left him and flew at Freeman, who all this time was sitting holding his bowels in his hand, and stabbed him three more times. This

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<sup>1</sup> See two previous Wellesprings genealogy columns by me: from April 2005 “Welles Descendant the First Victim of the Maniacal Ax Murderer of Woodbridge;” and from November 2002 “Abigail Thompson Did Not Kill her Daughter in Jail!” See [http://www.gis.net/~bmathews/index\\_files/page0002.htm](http://www.gis.net/~bmathews/index_files/page0002.htm).

abandoned wretch then attempted to take his own life, but did not succeed. By this time the persons in the house were alarmed and came to the gaol door, and, after considerable exertion, entered and secured the murderer. — Freeman lived about three hours and Starkweather two from the time the assistants entered the prison. Our informant mentions that Burnham appeared in good spirits, and said he had done God's service." [Dover Sun.]<sup>2</sup>

After the Grand Jury returned indictments on both counts of murder, Burnham was tried first on the count for Joseph Starkweather. Although he pled Not Guilty, he really had no defense. He had been in a locked room with his victims. He had been attempting suicide when rescued. The murder weapon was a knife that was unique, one that Burnham himself had modified from a scythe and worn concealed under his clothing. "He was by trade a blacksmith. A short time before he was committed to gaol he prepared for his own use a knife, made from the pointed end of a scythe; about ten inches in length, with a wooden handle and a wooden sheath. This weapon was worn by him in an inside pocket of his pantaloons, concealed from public view. Burnham was arrested with this terrible knife while in gaol. After its bloody use it was deposited in the Museum of Dartmouth College. We saw it there as late as A.D. 1820."<sup>3</sup>

Josiah was sentenced to death. He was executed on his 63<sup>rd</sup> birthday, 12 August 1806.

#### A Cautionary Tale Both Against and in Favor of Capital Punishment

Apparently Daniel Webster, then a young lawyer, stepped up to plea for Burnham's life. The court case states only, "Mr. Webster addressed the jury for the Prisoner, which after a short consultation returned a verdict of Guilty."<sup>4</sup> The court records themselves carry no record of his statement. When he was interviewed decades later, Webster did refer to what he said:

Burnham had no witnesses. He could not bring past good character to his aid, nor could we urge the plea of insanity in his behalf. At this stage of the case Mr. Sprague, the senior counsel, declined to argue in defense of Mr. Burnham and proposed to submit his case to the tender mercies of the Court. I interfered with this proposition and claimed the privilege to present my views of the case. I made my first and the only solitary argument of my whole life against capital punishment and the proper time for a lawyer to urge this defense is when he is young and has no matters of fact or law upon which he can found a better defense.<sup>5</sup>

Webster's position is contrary to that taken by the Rev. David Sutherland, who preached the execution day sermon. His Cautionary Tale is much more graphic:

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<sup>2</sup> Ezra S. Stearns, *History of Plymouth, New Hampshire, Volume I, Narrative* (Cambridge, Mass.: University Press, 1906), pp. 193-194, citing the *New Hampshire Gazette*, issue of 31 December 1805, for the original publication although the bracketed title shows that the *Gazette* had picked up a news item originally published in the *Dover Sun*. It should be noted that there is no evidence that Burnham's incarceration was due to forgery. His frequent appearances in court records were for debt. The *New Hampshire Statesmen*, issue of 12 November 1859, states, "We have understood that Burnham was at that time confined upon the charge of threatening to kill some of his neighbors who had torn down his house in the night time. They claimed to justify themselves upon the ground that Burnham was wrongfully living with a woman not his wife."

<sup>3</sup> "Tragedy in Haverhill 25 Years Ago: Murder of Freeman and Starkweather — Burnham the Murderer — his Trial and Execution," *New Hampshire Statesman*, issue of 12 November 1859, col. C; viewed on [infotrac.galegroup.com](http://infotrac.galegroup.com), 16 October 2008.

<sup>4</sup> John D. Lawson, LL.D., ed., *American State Trials*, vol. VIII (St. Louis: F. H. Thomas Law Book Co., 1917), p. 6; viewed on Google Books, 8 October 2008.

<sup>5</sup> Lawson, *American State Trials*, VIII:4.

I am aware that on extraordinary occasions of this kind the public mind is raised very high in the expectation of very able and striking sermons; but let me beseech you to moderate your expectations and to listen with candid attention to some remarks, founded on the words of St. Paul, contained in Romans, VI, 23: "The wages of sin is death; but the gift of God is eternal life through Jesus Christ Our Lord." ... The good order of society requires that some persons be put to death in a violent manner. Human governments, it must be confessed, have often far exceeded the power which God gives them over their subjects. But no reflection of this kind can be made on the present occasion, for, however painful the feelings of the malefactor, we must say that his condemnation is just. The security of life requires that one capable of such an horrid deed, should cease to exist among men... To witness the execution of this law of God must be very affecting to every feeling mind... the wicked "shall go into everlasting punishment; but the righteous into life eternal." That the finally impenitent might have no expectation of future deliverance from misery, our Lord assures them that in hell "their worm dieth not and their fire is not quenched" ... "they shall drink of the wrath of God..."<sup>6</sup>

### A Cautionary Tale about Jailing Debtors with Felons

In the long process of suing for repayment of a debt, the plaintiff at that time would get the court's approval to have the county sheriff go to the debtors home and seize items to the value of the debt. That made sense in a world where everyone was a farmer. The sheriff might seize cattle or goods, but usually the sheriff just seized land. That is, a suitable amount of acreage would be turned over to the creditor to repay the debt or held by the sheriff until the debt was paid. For some debtors, though, it was their bodies themselves that were seized and jailed until someone somewhere came up with payment for the debt. This was what brought Freeman, Starkweather, and Burnham together.

Before the bodies of Freeman and Starkweather could be buried, however, the county sheriff had to get the opinion of a judge as to whether the creditors had use of the bodies first. The judge told him he had nothing to fear by burying the bodies and then events proceeded normally. The story as passed down goes thusly:

When the horror of the strange homicide had in a measure subsided, Col. Webster [the sheriff] naturally began to prepare for the removal and interment of the two victims. But before it was too late, the lawyer of the parties at whose suit the two men had been imprisoned, appeared upon the scene and cautioned the sheriff as to the steps he was about to take. This lawyer ... advised the sheriff to look carefully at his precept before entering upon a course from which he could not retreat. "And them safely keep until discharged by due process of law. Is murder a due process of law?" the lawyer asked... "Am I to leave these two bodies to rot and stink in jail? Why, we should be driven from the house in three days!" [expostulated the sheriff.] The lawyer suggested salt...<sup>7</sup>

The wheels of New Hampshire jurisprudence took about nine years to turn, but eventually the Burnham trial altered the way in which debtors were handled both there and elsewhere. For the legislature, the Burnham trial became a Cautionary Tale about jailing debtors with felons. Truth be told, however, Burnham wasn't a felon until after the fact. In hindsight, this Cautionary Tale is:

In our own state [New Hampshire], imprisonment for debt disgraced our jurisprudence till the year 1814. This law was no respecter of persons. Any man, high or low, wise or foolish,

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<sup>6</sup> Lawson, *American State Trials*, VIII:12.

<sup>7</sup> Lawson, *American State Trials*, VIII:7-8.

might by misfortune or imprudence become its victim. The judicial records of the state show that the learned and the ignorant, the honorable and the degraded, have been inmates of the same prison, sometimes occupants of the same cell. In 1805, Hon. Russell Freeman, who had been a councilor in the state and speaker of the house of representatives, was imprisoned in Haverhill jail for debt. Two other persons were confined in the same room for the same cause. Josiah Burnham, one of the debtors, a quarrelsome and brutal fellow, enraged at the complaints made of his ravenous appetite and ungovernable passions, fell upon Mr. Freeman and his companion and murdered them both. This atrocious deed of blood excited general indignation throughout the state against the perpetrator. He was tried and hung for the offence the following year, and Rev. David Sutherland, of Bath, preached a sermon to the immense crowd that assembled to witness the execution. The barbarous law that immured debtors in jail like felons, and in company with felons, the double murder in one room, the eagerness of the people to see the gallows and the culprit hang upon it, all show the manners and morals of the times. Such scenes are among the things of the past; and other crimes, less revolting but equally sinful, have usurped their place.<sup>8</sup>

### A Cautionary Tale about the Risks of Universalism

Universalism is the religious belief that all people go to Heaven, i.e., that God's love is universal, given to sinner and sainted alike. At the turn of the 19<sup>th</sup> Century, this discussion fractured the Congregational Church in New England. Most churches in Connecticut remained Congregational while most in Massachusetts became Universalist. Vehement preachers turned up for both beliefs, from Ralph Waldo Emerson to David Sutherland. In a letter to the editor signed A Friend to Morality, with "Fruits of Universalism" as the column title, a newspaper published a story about Burnham and his acts. The letter writer claims:

I frequently visited him in his prison, and heard from his lips the history of his early life, and of his subsequent crimes. I was present with perhaps 1200 people on the day of execution, when he made an open declaration of the causes which led him to commit the crime for which he was about to die... At this time he was a zealous Universalist, was prepared to dispute with any man — was more expert than ordinary, as he had a good education in his youth and had been a professed Universalist more than 40 years... "I cast off the restraints of religious education and indulged myself in sensual gratifications. Anger had been my besetting sin since childhood... I have always thought I should go to Heaven when I died..." He informed me he would not have committed those murders, if he had not believed in that doctrine. [Burnham described the imprisonment of Starkweather and Freeman then stated] I thought if they were dead they would be better off and no one would be essentially injured... On the day of his execution, ... he warned the people, especially the young, against indulging in anger, or listening to Universalism; "for these," said he, "have brought me to this place?"... "I was awakened to see the error of my doctrine by reading the 28<sup>th</sup> chapter of Isaiah."<sup>9</sup>

### A Cautionary Tale about Victimizing the Weak

Perhaps we should let Josiah Burnham himself have the last word. Sadly, it's the word of a self-justifying man, angry at everyone. It is also a story rife with omissions. He omits the shady character of his original land-holding in Coventry, New Hampshire.<sup>10</sup> He omits the on-going and

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<sup>8</sup> Edwin D. Sanborn, LL.D., *History of New Hampshire, from its Discovery to the Year 1830* (Manchester, New Hampshire: John B. Clarke, 1875), pp. 260-261

<sup>9</sup> "Fruits of Universalism," *Scioto Gazette* (Chillicothe, Ohio), issue of 20 March 1828, p. 4, col. B.

<sup>10</sup> Lawson, *American State Trials*, VIII:2-4.

never-ending court cases in which he was sued for debt.<sup>11</sup> He does admit his unusual living circumstances but observes that his wife had already left him prior to living with his “housekeeper.” Finally, Josiah has the gall to blame the murders on the mean way in which the victims had treated him, and on the jailer who hadn’t rescued him from their taunts.

Having now given a short sketch of my life, I will endeavor to show my readers, under the following heads, 1<sup>st</sup>. temper and disposition. 2<sup>nd</sup>. Abuses. 3. Confinement. 4<sup>th</sup>. Criminalities. 5<sup>th</sup>. Trial, and close with some observations, &c.

1<sup>st</sup>. Temper and Disposition. In my temper and disposition, from my youth upwards, nothing remarkable happened until I had many abuses heaped upon me; and I always had an easy government over the two faculties; but after misfortunes and abuses increased upon me (as you will see under the next head) my temper and disposition began to be changed—my temper became quick and furious—my disposition remarkably changed, and not for the better.

2<sup>nd</sup>. Abuses. To show some of the principal abuses which I have suffered, I shall now proceed. [The first story is a justification for the many debt cases between Josiah and Samuel Atkinson, all stemming for the original shady deal by which Josiah came to live in Coventry.]

Another circumstance of abuse happened to me, which I think proper to notice. One evening I called at the store of John Montgomery, and falling into company with some of the townspeople, who did not perfectly agree in sentiment with me, some small dispute arose, and, after considerable debate, anger ensued, and, one man whom I shall not name for my honor, took a knife and cut my clothes in many places. From this circumstance I left the store, and took my way toward home. Before I had gone far I was tripped up by a rope being laid across the road and very much hurt, and shouts of laughter were heard around me; however, I got up again, and went on, but before long I was again headed, and used in the same manner, at which time they redoubled their snickers. From this abuse I was not able to perform any business for about eighteen months. Who will not judge his as abuse? After being stunned by two heavy falls on ice—dragged by my heels some distance, and then soused into a cold pond of water, and there left senseless. Is not this abuse? O shame! I now forgive you all; but remember your guilt! This I record as a fact, which actually happened to me in February 1803.

I will only mention two more abuses, which are of a nature rather singular, and then pass on to the next head, leaving many intermediate ones behind, though as worthy of publication as either of the forgoing. One evening, a number of “evil minded persons” came as a mob to my house, and ordered myself and housekeeper out doors, there being nobody within but us; (my wife having left me, with whom I had lived about 32 years, on account of some trifling dispute, concerning property, which she refused to let me share any advantage from [i.e., he sold it without her permission]).—Some of the mob entered the house-top, and began to strip the boards off, while many were on the ground using their faculties there, and in a short time the house was laid principally on the ground. The mob then retired with a huzza! The mob consisted of about fifteen persons I should judge, but I am not certain what number it did contain. I concluded I knew some of the heads fo the party, but I shall refrain from calling names in these my last hours. This abuse I also suffered at Haverhill.

The other abuse, with which I shall conclude this head, is what I received from the two persons, whom I murdered, and for which crime I am now under this sentence of death! ... I was different in many sentiments from them, which kept a continual babble or dispute on all oru arguments, and often my temper would rise to that degree, that I found it ungovernable.

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<sup>11</sup> Grafton County, New Hampshire, Superior Court Records, 3:100, 170-171, 201-202, 212-213, 215, 223, and 229, show seven cases for debt which Josiah lost in just one court session. It wasn’t just in New Hampshire that Josiah ran into trouble. An attachment for debt was awarded to John Allen of Farmington, Connecticut, on the estate of Josiah Burnham of New Hampshire on 1 May 1782 (Connecticut Estate Files, Farmington Probate District, attachment of the estate of Josiah Burnham, docket no. 407).

On the 17<sup>th</sup> of December at 11 o'clock in the forenoon, a very severe contest arose, about some uncivil conversation, from which we went from words to blows; the contest became so hot, and feeling myself very much abused, I called to Mr. Curtiss, the gaoler, for assistance, who soon came, commanded us to be peacable, and withdrew from the door, his expectation that we should not quarrel any more, as he left us less noisy than he found us; but, in a few minutes I had occasion to call for further assistance from Mr. Curtiss, who answered "be still, I will hear no more of your preamble" — however, the contest increased, instead of abating, and continued until about 8 o'clock in the evening; and, my anger rising above my senses, I wreaked my vengeance upon them, which put an end to their existence!<sup>12</sup>

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<sup>12</sup> J. Tenney, "Josiah Burnham, the Murderer," *The New Hampshire Statesman*, issue of 5 June 1868, p. 1, col. 4-5.