

“NEITHER *LYE* NOR *ROMANCE*”: NARRATIVITY
IN THE *OLD BAILEY SESSIONS PAPERS*

By

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To the memory of my mother (a teacher of Latin)

and

my father (a lawyer)

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I must mention two former teachers of English literature inspired me in my formative years. As a young high school student, I was fortunate to be a member of the class taught by Sam Pickering, the model and subject of the film *Dead Poet's Society* for which my good friend and former classmate Tom Schulman won an Oscar for Best Screenplay in 1989. I thank Sam Pickering for opening the eyes of this fourteen-year-old boy to the joyful rewards of literature through his enthusiasm and love of teaching. As an

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CHAPTER I

INTRODUCTION: THEORETICAL AND TEXTUAL INSTABILITY AND THE PROSPECT OF NARRATIVE COMPLETION

As the reader approaches this extended discussion of the relationship and boundaries between the *Old Bailey Sessions Papers* and certain literary and non-literary texts of the late seventeenth and eighteenth centuries, he or she might exclaim: “Oh, so here’s another one of those Law and Literature projects!” While I am suspicious of the label “Law and Literature,” the fact remains that over the past thirty years a definable critical enterprise has emerged whereby critics apply the interpretive tools and read the various texts of these respective disciplines without regard to traditional disciplinary boundaries. As much as I might like to avoid this reductive label, my own background and scholarly interests make such a disciplinary pairing inevitable.

In addition to being a teacher, graduate student, and scholar in a traditional Department of English, I have been a practicing trial lawyer for three decades, serving as Chairman of the Bankruptcy Crimes and Abuses of Bankruptcy Process Subcommittee for the Business Bankruptcy Committee of the American Bar Association (1990-1994), a member of the Commercial Fraud Task Force of the American Bankruptcy Institute (2001-2002), and a Contributing Editor and author of “Bankruptcy Crimes” for the legal treatise *Norton on Bankruptcy Law and Procedure* (1992-1994). My range of experience ranges from being fired upon by a debtor with a pistol while conducting a repossession of the debtor’s personal property to arguing complex matters of bankruptcy law before the highest appellate courts of the United States of America. Therefore, my perspective on the law is

not just theoretical and historical; it is part of my structure of thinking and feeling rooted in personal experience. For better or worse, I inhabit both disciplines. Formal training and experience enables me to have a facility with the specific language and concepts of both critical practices. Proficiency as a critical reader of literary texts and as a lawyer enables the author to engage in a form of *bricolage*, the ability to use an appropriate critical tool from either discipline in the furthering of the analysis as appropriate. Ronald Dworkin, a noted philosopher of law, states in *Law's Empire* (1986) that “the historian cannot understand law as an argumentative social practice, even enough to reject it as deceptive, until he has a participant’s understanding, until he has his own sense of what counts as a good or bad argument within that practice” (14). However, a type of “critical schizophrenia” can also result, and this is a problem that has plagued some of the efforts in the so-called “Law and Literature” movement. Methodologies can be confused to the point of dilution of theoretical rigor. By acknowledging this theoretical pitfall at the outset, I will use the disciplinary approach appropriate to the text and circumstances under consideration.

Over the course of the following chapters, the reasons for my suspicion of the juxtaposition of the terms “law” and “literature” will become clear. By positing the two discourses as a definable field, the pairing operates to favor these narrative groupings to the exclusion of other types of texts. On one hand, both legal and literary texts are to be viewed simply as cultural artifacts, enjoying no more social significance than a veterinary text, cookbook, or almanac. The cultural emphasis of certain literary and legal texts at given historical moments is inescapable. This study will show, however, that the legal and literary texts under consideration were not privileged in relation to each other and that they

operated within a semiotic matrix that drew upon a myriad of other texts that both give these texts meaning and often literally were constitutive elements of the legal and literary texts themselves. The case reports told stories in various ways that were familiar to the reader. The canonical novels and other texts that are story-telling narratives often use the language, figurative tropes, and rhetoric of the law to serve fictional purposes that, like the legal report, were often offered to the reader as a “true history.”

For much of the nineteenth and most of the twentieth centuries, literary criticism maintained a restrictive view on what was to be considered appropriate literature. In an effort to replace “culture” for a Christian faith that was seen to be declining in mid-Victorian England, in “The Function of Criticism at the Present Time” (1864) Matthew Arnold defines criticism as “*a disinterested endeavor to learn and propagate the best that is known and thought in the world*” (428). In “The Art of Fiction” (1884), Henry James also offers a restrictive view of novelistic discourse. Condemning the commercial production of the three-volume novel distributed by Mudie’s Circulating Library (including the novels of Thackeray, Dickens, Trollope, and others), James argues for a highly aesthetic view of art rooted in realism, beauty of form rooted in real experience, and generally expressive intelligence. Arnold’s notion of literature and James’ highly influential view of the novel are not important here for the merits of their evaluative formulae, but rather for the fact that their highly aesthetic views of the novelistic form excluded most nineteenth-century and all eighteenth-century novels from inclusion in an appropriate Arnoldian or Jamesian novelistic canon.

With the rise of the study of English literature in universities in the late nineteenth-century and the twentieth-century English modernism(s) of Joseph Conrad, Virginia Woolf,

and others, literature (and the novel) was put forth as a form of high culture consisting only of a limited number of appropriate examples. Like Matthew Arnold, F.R. Leavis is interested in the relationship of culture and literature to the British national ethos. The high water mark for novelistic exclusivism is F.R. Leavis' *The Great Tradition* (1948) where the "Great Tradition" of the English novelists consists of Jane Austen, George Eliot, Henry James, and Joseph Conrad. With respect to Henry Fielding, Leavis claims that he lacks subtlety and rich material. Leavis accuses Henry Richardson of being limited in range and variety, and he criticizes the author of *Clarissa* for the length of that novel, while acknowledging Richardson's influence only as to the later exemplary fiction of Jane Austen.

The purpose of this discussion is not to attempt to give an exposition on the critical history of the concept of the novel; rather, it is to show that our inherited notions of the genre are something very different from a reader of the 1740s. They read texts (later characterized as novels) that were original, but were part of popular textual traditions rooted in the seventeenth century and, as Margaret Doody argues in *The True Story of the Novel* (1996), as far back as the texts of Hellenistic Greece. Although by the 1740s both Fielding and Richardson knew that they were entering uncharted territory with their narrative experiments, in *Institutions of the English Novel: From Defoe to Scott* (1997) Homer Obed Brown argues that the English Novel as an accepted genre with a tradition of canonical texts is first seen in the collected editions, such as Mrs. Barbauld's *The British Novelists, with an Essay, and Prefaces Biographical and Critical* (1810), Medford's *British Novelists* (1810-17), and *Ballantyne's Novelist's Library* (1821-24), appearing in the first quarter of the nineteenth century (180-81). These initial compendia included many of the

novels and novelists that we now consider canonical, but were deemed to be of inferior quality by the critics of the mid-nineteenth through the mid-twentieth centuries. What today we consider to be the “eighteenth-century novel” was not a stable category until the late eighteenth or early nineteenth century.

In the late 1950s with the publication A.D. McKillop’s *The Early Masters of English Fiction* (1956) and Ian Watt’s *The Rise of the Novel* (1957), the eighteenth-century novel was retrieved from the dustbin of literary history, and a group of male authors, including Daniel Defoe, Henry Fielding, Samuel Richardson, Tobias Smollett, and Laurence Sterne, was put forth as the progenitors of an evolving, though relatively stable, genre seen from the perspective of the mid-twentieth century. After the limitations of the formalist methodologies of the New Criticism and Structuralism were addressed by a new generation of a post-1968 literary critics, formerly accepted notions of canonicity, authorship, and narrative (to name only a few of the critical concerns of the critical concerns of the 1970s and 1980s) were challenged by Marxist, Feminist, Deconstructionist, and Psychoanalytic critics.

In “Towards a Poetics A Poetics of Culture” (1987), Stephen Greenblatt argued (using a combination of Jean-Francois Lyotard’s and Fredric Jameson’s paradigms for analyzing capitalism,) that post-structural and Marxist approaches were fraught with limitation and that the important problem of the interrelationship between and culture could not be resolved by relying on one theoretical stance. Greenblatt and others (loosely termed “New Historicists”) have sought through specific studies to refigure the relationship between texts of all types and the cultural systems within which they circulate. As a result, a literary artifact as only one form of textual representation must be separated from the

aesthetic hierarchies of value implicit in the previously cited works by Arnold, James, and Leavis. This study is heavily informed by most of the important texts over the past two decades that are classified under the loose rubric of New Historicism, for a basic assumption of this analysis is that all texts are cultural artifacts that function and circulate in an unstable manner. Only by specifically examining how they work to enable each other through myriad intertextual (mis)readings can the traditional categories of “novelistic discourse” and “factual crime reporting” be rethought, and this can only be achieved by close examination of specific texts in context where meaning is contingent upon and supplemental various types of intertextuality.

Formal analysis, however, is important for the purposes of this study. Just as the New Critics focused upon certain static and essential attributes of poetry, similar techniques of close reading can be applied to the case reports covered here. We will examine how specific linguistic usages and rhetorical elements operate within the texts themselves. Because of the functional fluidity of these devices within the narrative matrix of specific *Sessions Papers*, the boundary between a literary and a legal trope is contingent at best. As in traditional literary study, formal analysis has its limitations. Any meaningful reading of the *Sessions Papers* must eventually be contextual.

While acknowledging the large universe of signifying texts that make up a particular narrative, intertextuality will be considered here in a more limited fashion. This study will focus on specific instances of textual synergy; particular examples of how textual referentiality operates to create meaning will be examined. As a point of departure, all of the chapters consider various case reports from the *Old Bailey Sessions Papers* from 1680 to 1755 (with most being chosen from the calendar year 1742). As a term of

convenience, “narrative completion” refers to the type of intertextuality or textual synergy that creates specific and concrete meaning(s) for the reader of an otherwise ambiguous text. Meaning is created, supplemented, clarified, and subverted by contextual signifying narratives not only for the eighteenth-century audience, but also for today’s reader. Each case is chosen specifically in relation to problems as to how different texts work in a variety of ways in relation to the specific trial report. We will examine the ways in which these trial narratives are completed.

A subsidiary theme of this study is the commodification of narrative. In the next chapter dealing with the background of the *Old Bailey Sessions Papers*, it is shown that these trial reports themselves were commodities, physical objects including stories for sale. This analysis, however, will show the many ways in which “stories for sale” are recurring tropes in the trial reports themselves, and we will examine to what extent this theme comments upon and critiques the role of the law in the burgeoning mercantile economy of the eighteenth century.

Chapter III covers the trial of Prior Green for perjury in connection with a bankruptcy case. Here we will see how meaning is constructed and then subverted by the continuation or retrial of the same case during different sessions of the Old Bailey. The case involves two mutually referential and complementary trial reports involving the same defendant and alleged criminal act. In this legal narrative specific social and legal tensions concerning punitive creditor’s remedies and appropriate debtor’s relief are enacted in text. The Prior Green case is further “completed” by reference to a legal and textual tradition in which these competing demands of policy are articulated and mediated.

In Chapter IV we will examine another case involving criminal prosecution arising

from a bankruptcy proceeding. Here the conviction of the defendant is only given meaning by the pre-execution narrative as related by the Ordinary of Newgate. But for the guilty verdict and unfair execution of the prisoner, the story would never have been told and the relevant *Sessions Papers* would remain incomplete. Chapter IV involves the trial of Robert Rhodes for the forgery of a will, and this case too shows how the legal case is completed by supplemental texts as enabling narratives within the *Sessions Papers* itself. This chapter continues with an examination of Samuel Richardson's *Clarissa* (1747-1748) and the role of legal wills as foundational documents enacting and critiquing the philosophical and religious concepts of "will" that propel the novel's action.

The central section of this study closely examines the *Sessions Papers* of the notorious trial of James Annesley and Joseph Redding for the murder of Thomas Egglestone. The reading of the case in Chapters VI and VII is a formalist exercise; the analysis assumes no knowledge of context or background. Chapter VIII examines contemporaneous narratives that would have been familiar to a spectator or reader at the time of the trial in July 1742. These extraneous texts would have completed the narrative for the eighteenth-century reader. Subsequent (mis)readings and retellings of the trial narrative are covered in Chapter IX dealing with the subsequent ejectment action. Finally, the trial report is incorporated and recast as an interpolated narrative in Tobias Smollett's *The Adventures of Peregrine Pickle* (1751). In Chapter X we will examine how law as literature becomes law in literature and how narrative completion operates as a mutually reciprocal phenomenon.

Like the *Sessions Papers*, John Bunyan's *The Life and Death of Mr. Badman* (1680) relies on negative exemplarity as the major element of its didactic purpose. In Chapter XI

the textual tradition in which both Puritan narrative fiction and legal factual reporting share an affinity will be explored. The history of spiritual biographies of the seventeenth century with their resulting linguistic tropes and rhetorical devices completes both these early *Sessions Papers* and Bunyan's novelistic reverse morality tale. By analyzing their sharing of literary tropes and thematic concerns, the contingency and arbitrariness of the so-called boundary between fact and fiction is exposed.

Although it relies primarily on secondary sources, the next chapter explains the background and history of the Old Bailey Court and the genesis and production of the *Sessions Papers*. This brief introduction will provide the reader with sufficient context with which to read and enjoy this study of narrative completion in the *Old Bailey Sessions Papers*.

CHAPTER II

THE *OLD BAILEY SESSIONS PAPERS*: BACKGROUND HISTORY AND TEXTUAL CONTEXT

The rise of the public's interest in and often glorification of the criminal is an ironic, yet real, component of the popular culture of the early and mid-eighteenth century. The public's fascination with criminal biography is well documented. Notable textual examples include Daniel Defoe's *Moll Flanders* (1722) and *Colonel Jack* (1722), as well as Henry Fielding's *Amelia* (1751) and *Jonathan Wild* (1743), the fictional rendering of the life story of a popular gang leader of the day in a mock-heroic narrative style. Many reasons have been advanced for the mass fascination with the lives of criminals, including the rise of the daily press and literate reading public; burgeoning economic individualism and the rise of capitalism; and, owing to rapid urban expansion, an actual increase in the incidence of crime itself. Whatever the reasons, a lively market existed for the fictional and actual reportage of the lives of criminals, a distinction frequently blurred or ignored in many eighteenth century texts.¹

In the 1740s the courtroom of the Old Bailey was the most important criminal court in England. From the mid-seventeenth century, this courtroom was a focus for much of the popular interest in crime and its various forms of narrative. Its proceedings constituted a performative ritual involving, among others, prosecutors, defendants, witnesses, judges,

¹ Two excellent recent studies of criminal biography and narrative are Hal Gladfelter. *Criminality and Narrative in Eighteenth-Century England*. and Lincoln B. Faller. *Turned to Account: The Forms and Function of Criminal Biography in Late Seventeenth and early Eighteenth Century England*.

jurors, the public, and increasingly from the early 1730s, lawyers. The primary source for information about trials at the Old Bailey for the reading public was the *Proceedings of the Old Bailey*, published by the 1680s under the title of *The Whole Proceedings upon the Kings Commission of the Peace, Oyer and Terminer, and Gaol-delivery of Newgate, Held for the City of London and County of Middlesex, at Justice Hall, in The Old Bailey*.² The series provides a wealth of data, not only as to law and the administration of criminal justice, but also as to the lives and daily activities of the parties and witnesses that appeared before the court. Each report is a narrative with varying levels of detail and plot information. Tim Hitchcock and Robert Shoemaker in their recent book, *Tales from the Hanging Tree* (2006), note that “in 25 million words, the *Sessions Papers* record the 100,000 trials held between 1674 and 1834”(xiii). In 1834 the Old Bailey was renamed the Central Criminal Court; accounts of trials continued to be published in the *Proceedings of the Central Criminal Court* until April, 1913. Hitchcock and Shoemaker note, “over the course of its 240-year history the *Proceedings* reported over 200,000 trials in almost 1 billion words...” (240). Accordingly, the *Proceedings* represents a major archival resource for the legal and social historian, as well as the literary critic.³

² For the purposes of this dissertation proposal the terms *Sessions Papers* and *Proceedings* are used interchangeably to signify *The Whole Proceedings upon the King’s Commission of Oyer and Terminer and Gaol Delivery for the City of London and also the Gaol Delivery for the County of Middlesex*.

³ The importance and potential of the *Proceedings* was brought to the attention of the academic and legal community by John H. Langbein in a pair of law review dating from the late 1970s: John H. Langbein. “The Criminal; Trial Before the Lawyers.” *The University of Chicago Law Review*. 45 (Winter 1978): 263-316 and “Shaping the Eighteenth Century Criminal Trial: A View from the Ryder Sources,” *The University of Chicago Law Review*. 50 (Winter 1983): 1-36.

Until recently scholars needed access to archives where substantial collections of the *Proceedings* were housed. Archival resources include the Bodleian Law Library,

The earliest surviving examples of the *Proceedings* date from 1674-1676; they resemble the so-called crime chapbooks, an earlier literary production, which customarily were sensational pamphlets written by non-lawyers, usually anonymously, for sale to the general public, with each pamphlet describing recently committed or prosecuted crimes. They were selective, reporting only a few cases of greatest general interest, preserving the moralizing tone that was long characteristic of the chap-books. From their inception, the *Proceedings* were produced and intended for sale and circulation to a general readership; their genesis is not rooted in the production of an accurate summary of trial proceedings for the technical use of the judiciary or a specialized legal profession.⁴ As Michael Harris notes in “Trials and Criminal Biographies: A Case Study in Distribution,” one of the first enterprising publishers to take advantage of the rising public interest in criminal trials was David Mallet, a printer who published six-page pamphlets with titles such as *News From the Sessions House in the Old Bailey*. Harris further suggests that the absence of a

(Oxford); the British Library; the Guildhall Library (London); the Harvard Law School Library; and the University of Chicago Law School Library. In 1984 the *Session Papers* for 1714-1834 were commercially microfilmed by the Harvester Press, Sussex. In 2003, a fully searchable on-line database (www.oldbaileyonline.org) became operational. Under the directorship of Professor Tim Hitchcock (University of Hertfordshire) and Professor Robert Shoemaker (University of Sheffield), supported by their respective universities, the Arts and Humanities Research Council and the New Opportunities Fund, transcripts (and access to copies of originals) became readily available for all surviving editions of the *Proceedings* from 1674 to 1834.

In the early stages of my research, I relied on the archives of the British Library, the Harvard Law School Library and photocopies from the Bodleian Law Library. Now, access to these documents is available to anyone with access to a computer.

⁴ Recent important studies of the London legal profession in the eighteenth century and the role of lawyers in criminal trials before the Old Bailey in the eighteenth century include John H. Langbein. *The Origins of Adversary Criminal Trial*. Allyson May. *The Bar and the Old Bailey*. David Lemmings. *Professors of the Law: Barristers and English Legal Culture in the Eighteenth Century*. and *Gentlemen and Barristers? The Inns of Court and the English Bar 1680-1730*.

functioning newspaper press created a market demand for the reports. Mallet's success attracted competitors, and by the late 1670s a number of publications emerged centering on the Old Bailey, each providing a selective (and not always accurate) account of the hearings (7). Therefore, from their inception, these textual accounts of the trials, published regularly, were intended for consumption by a general literate readership.

By 1678, the Court of Aldermen decided that publication of the *Proceedings* required assent of the Lord Mayor. From that date until the early nineteenth century, the *Proceedings* had to maintain an uneasy balance between commercial and public interests. Because the *Proceedings* were the only official or quasi-official accounts of what transpired the Old Bailey Courtroom, they were certainly of importance to the bar and the judiciary. However, the publishers marketed them as a normal business with advertising aimed at attracting the largest audience possible. To avoid being ponderous, these accounts omit much of the procedural and doctrinal basis of the case holdings (if such specific legal rulings were even pronounced at the trial). Details of parties' and witnesses' testimony is often redacted and selectively reported. In the 1740s the inclusion of advertisements for patent medicines and popular books shows the continued emphasis on these texts as popular commodities. By the late 1730s, the "Proceedings" became more reliable, and from the late 1730s into the 1740s, they sometimes more closely resemble a modern law transcript or report than their predecessors even two decades earlier. The level of detail or reliability varies, however, from case to case because, we have seen, these were narratives to be bought and read by lay readers. While the state had an interest in accuracy (and often public decency), the *Proceedings*, at least at the period of time under consideration in this dissertation, were not aimed at the legal community.

In “The Criminal Trial Before Lawyers” John H. Langbein observes that although the *Proceedings* were intended for a general audience, they remain our best evidence about the criminal process of the mid-eighteenth century, even though accurate reconstruction based upon a total reliance of the reports remains a problem:

We have no reason to suspect invention in the *OBSP*; Old Bailey trials were well-attended public spectacles, and word would soon have gotten round if the *OBSP* reporters had started fabricating. The pressures of the marketplace made for reasonable accuracy in what was reported. The troublesome aspect of these sources, as already indicated, is what they do not report. Most of what was said at an Old Bailey session must have been omitted. In the 1730's, a single session lasted two to five days and processed fifty to one hundred felony cases. Pamphlet reports of the size in question could not begin to capture the full proceedings. Much of the omission occurred in the many cases that are merely noted in the *Old Bailey Sessions Papers* in a line or two, but omission also took the form of compression within the more detailed reports that interest us. Verbatim transcripts sometimes lapse in improbably ways. Hence, even extensively reported cases were not necessarily completely reported. (271-272)

The practice of deletion and compression, a consistent editorial policy of the period, was aimed towards packaging a commodified text that would be favorably received by its reading audience. So we must be careful not to make negative inferences from what the *Sessions Papers* did not say. In “Shaping the Eighteenth Century Criminal Trial,” Langbein notes, based upon his review of Justice Ryder’s trial memoranda, that if an occurrence at trial is included in the *Proceedings*, it can reliably be said to have occurred (25)

Although the publisher occasionally intervenes in his own voice (as will be shown in the Prior Green case discussed in the next chapter), the role of the court reporter or compiler at the actual Old Bailey trial was of primary importance in the construction of the legal narrative. Michael Harris notes “the drift of the *Proceedings* from its crude though vigorous origins towards a more stable position as an adjunct to conventional law reports

was tied up with the improving status of the short-hand writers employed to take the trials” (12). The right to publish the *Proceedings* was reviewed annually, and occasionally publishers were changed. New publishers hired writers of proven ability in order that the publishers might insure a report of high quality to the Court and the Lord Mayor. In fact, the improved status of the compilers as professionals is apparent in the case of Thomas Gurney who took over as compiler of the *Proceedings* in 1748. Gurney, notes Harris, became formally identified with the *Proceedings* through his continuous advertising in the publication. Not only did he offer instruction to students as a teacher of shorthand, but he also advertised his textbook *Brachygraphy, or Swift Writing Made Easy to the Meanest Capacity* (12). Because of their discretion as to what to include (and exclude) as to trial detail and testimony, the compilers/court reporters are the authors of the text.

Whatever conclusion results concerning the reliability of the actual reportage in the *Proceedings*, the transactional nature of this type of legal reporting is apparent. The facts are packaged to create a story. Law is not only a directive with penal force issuing through the various points of power; it is an activity, a reality shaped by language. The narrative construction offered by the publisher as true reportage is, like the verbiage of a trial lawyer, an argument. Here, by using the mask of authenticity, an argument is being made by and through the text for the validity and sanctity of the criminal law system. The *Sessions Papers* represent an ideological gesture towards mass acceptance and legitimating. While storytelling can serve to convey meanings excluded by the law (and canonical literary texts), the rhetorical strategy of story construction included in these trial accounts often marginalizes the voices of criminal defendants, trial witnesses, and their respective class identification. Indeed, the *Proceedings* privilege one cultural narrative over competing

class and gender-based narratives, a manifestation of the dominant over the subordinate group, a conclusion that is consistent with the economic analysis of the eighteenth century London gallows at Tyburn in Peter Linebaugh's *The London Hanged* (1992). The narratives of the defendants and witnesses are constructed first by the systemic constraints of the criminal justice administrative machine and again by the compiler, publisher and/or bookseller as mediator. The true stories of the people involved remain untold, but, as we shall see, the *Sessions Papers* are often explained by intertextualities both legal and literary in nature and it is a purpose of this study to explore ways in which specific intertextualities operate to create meaning for the reader. By offering the reader a story as an account, the *Sessions Papers* silence the untold stories by virtue of their ideologically legitimized presence. Repressions here can be viewed as a form of absence resulting from textual presence. Intertextual "explanations" discussed in this study sometimes elucidate ambiguities, but in other instances add yet another layer of opacity to the narratives characterized by textual absence.

This articulation of the function and effect of the *Sessions Papers* is in general accord with the position of certain British Marxist historians, such as Douglas Hay and Peter Linebaugh, who believe that the eighteenth century penal code, capital punishment, and the discretionary enforcement of the gallows was an ideological construct meant to protect and advance the interests of the propertied classes. As this study indicates, there is plenty in the *Proceedings* to support such an historical reading. However, the *Proceedings* operate in numerous ways for different audiences. While a student of the *Sessions Papers* must be careful not to let his or her own ideological or critical positionality operate as a

threshold limitation on the possibilities of interpretation, I will show that in all of these cases, including the briefest of trial entries, the economic narrative is present.

Many historians differ with the British Marxist analysts. John H. Langbein states that the criminal law of the eighteenth century operated “to serve and protect the interests of the people who suffered as victims of crime, people who were overwhelmingly non-elite” (Langbein “Albions Fatal Flaws” 97). Langbein argues that the actual use of capital punishment in the eighteenth century was consistent with similar judicial practices in prior centuries. He also argues that most trials involved simple property theft, and that the major parties, such as victims, criminals, and jurymen, were not part of the ruling elite. In *Crime, Justice, and Discretion in England, 1740-1820* (2000), Peter King argues that while there was certainly an effort by the ruling elites to use the criminal laws to advance the interests, the middle and poorer classes used the laws to advance their own self-interest as well. Regardless of the conclusions that the reader draws from the case reports, narratives of power and money permeate the *Proceedings*.

Although most of the cases discussed here are unusual, the crimes of the *Proceedings* tend to be transgressions of ordinary life. Whether it be the theft of household items by a servant, the accidental death of a small child in a neighbor’s house, or a stabbing in a tavern, the cases reported occur in urban spaces where life was actually lived, domestic spaces extending to the everyday haunts of the city which members of the reading audience, like the victims themselves, inhabited. Indirectly, members of the public become the subjects of the trial, for they, like the victim, are at risk at the hands of the mob (a construction of “otherness”), if not restrained by an efficient criminal justice system. The public is also the object of the criminal trial in that a primary rationale for punishing

defendants is to deter similar behavior in other citizens similarly situated, although a consumer of the *Proceedings* who is literate and middle class could also identify with the prosecutor as the victim. Therefore, the representations of criminal trials have a dual function with respect to their audience. Only through the commodification and circulation of the criminal proceeding through the print medium or the use of spectacle, such as public hanging and the conduct of the felony trial itself, could this policy of deterrence be culturally inscribed.⁵ The distinction between subject/object⁵ collapses in a contemporary man or woman's reading of the *Proceedings* because of the texts' unique cultural and ideological functions, and spectacle becomes textualized.

⁵ Although the ruling class and its legislators justified the carnage in support of property rights because of its deterrent effect, notes Douglas Hay 'Property, Authority and the Criminal Law' in *Albion's Fatal Tree: Crime and Society in Eighteenth Century England* (ed. D. Hay et. al.) New York: Pantheon Books, 1975.

Most historians and many contemporaries argued that the policy of terror was not working. More of those sentenced to death were pardoned than were hanged; thieves often escaped punishment through the absence of a police force, the leniency of prosecutors and juries, and the technicalities of the law; transported convicts were so little afraid that they often returned to England to pick pockets on hanging days; riot was endemic. The critics of the law argued that the gibbets and corpses paradoxically weakened the enforcement of the law: rather than terrifying criminals, the death penalty terrified prosecutors and juries, who feared committing judicial murder on the capital statutes. Sir Samuel Romilly and other reformers led a long and intelligent campaign for the repeal of some laws, arguing from statistics that convictions would become more numerous once that fear was removed. The reformers also used the arguments of Beccaria, who suggested in 1764 that gross and capricious terror should be replaced by a fixed and graduated scale of more lenient but more certain punishments. His ideas were widely canvassed in England, as well as on the continent. Even Blackstone, the high priest of the English legal system, looked forward to changes on these lines. Yet Parliament resisted all reform. Not one capital statute was repealed until 1808, and real progress had to wait until the 1820 and 1830s.

This study frequently refers to the trials at the Old Bailey as performances. Recent New Historicist projects, such as Luke Wilson's *Theaters of Intention: Drama and the Law in Early Modern England* (2000), have focused on ways in which law and legal understanding are enacted in the drama of the period. Even today, we frequently refer to criminal (and sometimes civil) trials as "courtroom drama," and this verbal coupling is revelatory. Concerning this characterization of the eighteenth-century criminal trial, in *The London Hanged*, Peter Linebaugh notes:

It is useful to think of the Old Bailey proceedings as a drama. The setting was carefully and theatrically arranged. The script consisted of the black-letter of the criminal statutes, the unlettered and unrecorded whisperings of the jurors, and occasional expostulations or pleadings by the defendants. The *dramatis personae* may be put into three groups: the judges, the jurors, and defendants. (75)

While Linebaugh's model is generally helpful, he leaves out an important constituency whose participation was important, although hard to reconstruct. As we will see in the extended discussion of the Annesley/Redding murder trial in July 1742, the audience (both inside and outside the courtroom) was an important actor in the staging of the performance as both ritual and spectacle. Also, when the textualization of the trial through the *Proceedings*, newspapers, chapbooks and other privately printed accounts is considered, the author, publisher, and readers of the resulting narrative are also participants in the "courtroom drama" as broadly construed.

The actors only appeared on the stage of the Old Bailey in a small percentage of the cases of crimes committed. Unless the accused was caught in the act of transgression, it was often difficult to prove the identity of the offending party, at least in the case of the regularly occurring crimes of robbery and murder. Private citizens and thief-takers who worked for public and private rewards were the primary enforcers of the criminal police

power up through the middle of the eighteenth century. Attempting to remedy abuses and the collusion with criminals on the part of professional thief-takers, upon his appointment as a magistrate in 1748, Henry Fielding, novelist and lawyer, created a new system which gave the thief-takers quasi-official status, a move that eventually led to the establishment of a professional constabulary. Fielding paid the thief-takers directly, and allowed them to use his home and “courtroom” at Bow Street in Covent Garden as a base of operations. As will be discussed below, problems with manufactured prosecution testimony attributable to the activities of dishonest thief-takers were a factor in the Old Bailey’s allowance of participation of criminal defense counsel in the 1730s. Also, fearing retribution from criminals and their cohorts, victims of crime often did not want to get involved in the expenditure of time, effort, and expense inherent in the criminal legal process. They frequently arranged private deals for the return or, usually, repurchase of their stolen property. Therefore, only a few of the felonious crimes actually committed in London of the 1740s resulted in an arrest and prosecution in the Old Bailey (Shoemaker *The London Mob* (26-49)).

The Annesley/Redding Murder trial is unique in that it involves a *Sessions Report* which describes the criminal process from the commission of the act upon which the prosecution is based through apprehension, preliminary hearing, medical inquest, remand to jail pending trial, arraignment, and actual trial of the case. The accused is arrested and brought before a Magistrate for a Preliminary Hearing. Unlike criminal cases today, many prosecutions were summarily thrown out at this “probable cause” hearing, perhaps in part because of the lack of professionalism or personal interest on the part of the arresting parties. If probable cause to hold the accused was determined, his or her case would then

go before a Grand Jury for the issuance of a “True Bill” or a “No True Bill.” If a “True Bill” resulting in indictment were issued, the defendant would then attend the Arraignment at which time the Indictment was read and the Plea was entered. A defendant had no right to see the Indictment prior to the Arraignment, and the actual trial at the Old Bailey would usually commence immediately upon the conclusion of the Arraignment.

If the process of trial and execution of a mid-eighteenth century felon is viewed as a drama, there were three major loci of the dramatic action. There was the Sessions House with the Courtroom of the Old Bailey, a description of which is given below. Adjacent to the Sessions House was Newgate Prison. Here prisoners were usually kept pending felony trials, and it was to Newgate that they were remanded after conviction pending their execution. Finally, there was the procession from Newgate along Oxford Road to Tyburn, and execution at Tyburn. Used as a site for hangings until 1783, Tyburn, located at the present day site of Marble Arch in London, was agricultural land that on eight days per year was used to carry out the executions resulting from convictions at the Old Bailey. The carnivalesque procession to Tyburn was three miles in length, but often took up to three hours due to the large crowds along the way and the frequent stops for liquor to sedate the condemned man or woman.

The Old Bailey Court in the Sessions House was located in the City of London near St. Paul’s Cathedral. Peter Linebaugh describes the general geographical location of the Sessions House:

The Old Bailey was situated only a few score yards from the Fleet Prison and the Bridewell in the West, Newgate Prison and the Smithfield pens in the north, and its adjacent slaughterhouses in the east, and Ludgate, Prison, Dung Warf and Puddle Dock in the south. It was the centre of an animal ecology of the metropolis where two-footed and four-footed creatures came to meet their destiny and be dispatched. The Old Bailey was off rather than on a busy thoroughfare connecting Newgate

Street and Ludgate Street. Its complex of courtyards, outbuildings and the Sessions House itself, a three-storey, Italianate structure completed after the Fire in 1673 could be approached only by a single alleyway. Thus its business was isolated from the thick urban traffic around it. (75)

Upon entering the alley, a tripartite space appeared, a scene, which Linebaugh compares to an “amphitheatre of Greek tragedy” (77). First, a person would enter the Sessions House Yard, a large open area. This was a social space where classes mixed as they moved to assume their allotted roles in the judicial ritual. Next, there was the Bail Dock, an open area enclosed by a low wall with spikes. Finally, there was the courtroom of the Old Bailey itself. This room was enclosed only on three sides only until 1737; the western side was left open supposedly to provide fresh air and to reduce the risk of typhoid fever from the Newgate prisoners in attendance. In 1737, this open space was enclosed to keep out inclement weather and to limit the influence of unruly spectators. As noted, spectators were important participants in these trials throughout the eighteenth century. In 1780 during the Gordon Riots, crowds badly damaged the courtroom; they lifted much of the furniture and used it as fuel for bonfires in the nearby streets (Hitchcock & Linebaugh xix).

The arrangement of the participants reflected their class and professional status within the legal ritual. Tim Hitchcock and Robert Shoemaker provide this description of the courtroom itself:

Until 1824 there was only one courtroom in which carefully positioned seating was provided for the judges, jurors, officers of the court, legal council, and spectators. A semi-circle of seats surrounded the accused standing at the bar, with jurors and judges looking down from a raised position. Below, their papers spread before them, sat the lawyers and clerks who ran the machinery of justice. A large glass mirror was positioned to reflect daylight on to the faces of the accused as they stood at the bar and pleaded for their lives - a bright light designed to help the jurors see into the motives and morality of the defendant. Spectators had to pay a fee of 6d or 1s to secure admittance. The trials attracted a mixed audience of London’s more and less respectable inhabitants and it was alleged that criminals attended in order to derive strategies for when their turn would come to stand at the

bar. The crowd's presence could influence or intimidate the jurors, who often reached a verdict without leaving the courtroom. There were two juries, one for crimes committed in Middlesex, another for those originating in London. Both sat throughout each session, passing judgment, turn and turnabout. (xix-xx).

The scene, therefore, was a mixture of established order and chaos. As Linebaugh notes, "in the mixture of exposed and protected areas, in the promiscuous proximity of most of the actors (and spectators) of the judicial drama, in the gaping front of the Palladian structure, there were violations of that harmony of eighteenth-century architecture that depended upon the separation of the classes" (77).

The Old Bailey sessions were held eight times per year. In order to insure the availability of superior court judges to sit in rotation at the Old Bailey, the Sessions were convened in the periods that fell between the four law terms for the superior courts sitting at Westminster. Generally, the Sessions were held in January, February, April, May, June, August, October, and December; the issues of the *Proceedings* correspond to these regular "sessions." Besides the high court judges sitting in rotation, representatives of the municipality also sat as justices. Because the City of London received a grant of criminal jurisdiction from Henry I, the Old Bailey was under the supervision and control of the Lord Mayor, and, as noted previously, the *Proceedings* were published under his license. In 1741 George II appointed all the City aldermen justices, and trials could not proceed unless one of the aldermen was present on the bench (May 18). Thus, the bench was composed of a peculiar mixture of city officials and rotating jurists.

The juries consisted of two groups of twelve men (one each for London and for Middlesex) that sat simultaneously. In order to serve on a jury, a man had to own an interest in real estate to the amount of ten pounds. Therefore, the jurors were small

landowners. According to Peter Linebaugh, these men came from “the weakest part of the powerful minority of the propertied,” and “the social class of the juror will also have been the social class of the creditor, the landlord, the masters, the employers, the constables and the overseers of the defendants” (Linebaugh *The London Hanged* 79). Also, members of this class would have been victim to many of the crimes for which the accused were being tried. Most of the defendants being tried for felonies before the Old Bailey actually were not facing a jury of their peers.

Two of the most difficult questions and problems confronting students of the *Proceedings* are the identity of its intended readership and who actually read them. In “Trials and Criminal Biographies: A Case Study in Distribution” (1982), Michael Harris suggests that it was large enough to make publication profitable:

There are few direct indications of the success of the *Proceedings* or the level and character of the readership though the payment of £100 for the right to publish about sixteen issues a year suggests a considerable return. Clearly a publication containing such popular material and protected by an official monopoly was likely to do well. There seems to have been few attempts to by-pass the *Proceedings*. Though the cheap London newspapers carried long resumes of the trials at the sessions there was no attempt to provide a verbatim record and re-publication of material from the *Proceedings* led to swift action. (13)

Therefore, because of the near monopoly enjoyed by the publishers of the *Sessions Paper*, they enjoyed a captive market. If a Londoner had the time, resources, and inclination to read the stories about what transpired at the Old Bailey, he would have been part of the hypothetical and actual readership of the *Proceedings*.

Because the trials were “current events,” they were subjects of discussion. In “Staging Readers Reading” (2000), an essay, which situates the rise of the eighteenth-century novel within this culture of print, William Beatty Warner states:

A newspaper is not just an unbound folio sheet printed with advertisements and news. It evolved within a social practice of reading, drinking (usually coffee or tea), and conversation; it required the development of the idea of “the world” as a plenum or more or less remote, more or less strange phenomenon - events, disasters, commodities - translated into print and worthy of our daily attention. The idea of the modern may be the effect of this media-assisted mutation in our way of taking in the world. (392)

Because the *Proceedings* held a near monopoly on a topic in which there was extreme public interest (as seen by the appearance of large crowds of spectators at the trials themselves), Warner’s observation concerning newspapers would be applicable to the *Sessions Papers*. If reading can be seen as a form of self-improvement, the *Proceedings* would have been useful as a form of negative example. In examining a series of paintings depicting the act of reading during the eighteenth century, Warner concludes that the images suggest that the ends of education, entertainment, improvement, and arousal coexisted as a goal of the act of literacy (415). Given the often salacious and outrageous patterns of behavior against which the felonies were used, all of these stated ends can be assumed by a reader of the *Sessions Papers*.

As previously noted, spectators at the Old Bailey had to pay an admittance fee of 6d or 1s to secure admission. Although they do not cite specific sources for their conclusion, in *Tales from the Hanging Court* (2006) Hitchcock and Shoemaker state that “the trials attracted a mixed audience of London’s more or less respectable inhabitants” and curious members of the criminal underclass as well (xix-xx). The *Proceedings* themselves cost six pence. The audience for the readership would have included (and was probably broader) than those actually paying to attend the trials. The closest assessment available as to the readership of OBSP is that they were in fact a mixed lot. They were not necessarily literate, since the *Proceedings* could be read to an illiterate during the “social act” of

reading aloud. The apparent rise in the market for the *Proceedings* tracks a rise in literacy in a manner consistent with Ian Watt's thesis in *The Rise of the Novel* (1957). Although the *Sessions Papers* were inexpensive, their transmittal assumed a group of literary consumers with "disposable income" as these tracts were certainly not necessities. While the readership of the *Proceedings* included (but was not coextensive with) the readership of the mid-eighteenth century novel, both groups included readers who put a commodity value on stories. The stories appear to be true, fictional, and amorphous narratives that frequently can only be understood by retrospective critical analysis subject to today's notions of literary classification and taxonomy.

When commentators talk about narrative construction in the courtroom, they understandably focus on the role of lawyers in creating competing, contradictory narratives. In order to understand the eighteenth century criminal trial (and the operation of the *Proceedings* as narratives), the modern reader must suspend his or her assumptions about trial advocacy and procedure based upon criminal trials of today. The purpose of this section is to give a basic overview concerning early modern assumptions about criminal trials and the eventual involvement of lawyers in the criminal process.

As seen in the juristic literature of the sixteenth and seventeenth centuries, such as Edward Coke's *Third Institute* (1630), judges prohibited persons accused of felonies from being represented by counsel. The prosecutor was also not represented by counsel and the victim of crime usually served as the prosecutor. Sir Thomas Smith's *De Republica Anglorum* (1565) is perhaps the earliest description of the early modern criminal trial. It portrays the hearing as an "altercation" between the parties as to the facts and circumstances of the case. Both the prosecutor and his witnesses testify under oath; the

unsworn defendant simply responds to the allegations and defends himself as best he can. Obviously, this procedure is repugnant to twentieth-century notions of judicial fairness and the right of a criminal defendant to exercise a privilege against self-incrimination. The defendant was deemed as a matter of jurisprudence to be the party who could most reliably articulate his defense (although thousands of cases from the 1670s through the 1780s would prove otherwise). The treatise writers felt that lawyers would unfairly or unreliably alter the true words of the accused, a fear that would frequently be realized once lawyers became regular participants before the Old Bailey in the nineteenth century (Langbein *The Origins of Adversary Criminal Trial* 10-14). Also, there was no sudden shift away from the policy of “trial by altercation.” As we shall see, the presumption that the accused was the best and most reliable person to articulate his or her own defense persisted even after the limited appearance of defense counsel in the early 1730s.

Because there is little historical data on the conduct of felony trials until the late seventeenth century, most of what is known about criminal trial procedure in the sixteenth and seventeenth centuries comes from a compilation of pamphlets and contemporary accounts published in the eighteenth century as *State Trials*, a series of narratives that will be discussed further in a later chapter. Although they were conducted as altercation trials, the prosecution was represented by counsel because of the State’s fundamental interest in the subject matter of these prosecutions for treason. Responsibility fell to the judge to organize the case and witnesses, as well as to cross-examine the defendant and witnesses. The judge assisted the accused, even to the point of aiding or controlling the defendant’s cross-examination of prosecution witnesses. The modern legal observer immediately notes the problem of judicial bias in this type of procedure. However, the judge’s role is

fundamental to the analysis here: the judge enjoys a primary role as *constructor of the resulting legal narrative* in all cases of the mid-eighteenth century. Langbein, however, has suggested that because the judge wanted to approve his comments before their publication, these important statements were usually omitted from the *Proceedings* as published (14-16).

While some of the material was redacted, paraphrased, or otherwise doctored, the brevity of most of the *Sessions Papers* throughout the eighteenth century cannot be attributed solely to editorial license on the part of the compiler, publisher, or bookseller. These trials did not last long. Their brevity did not allow the defendant time to become accustomed to the foreign and threatening environment of the Old Bailey Courtroom. The short duration of these criminal trials did not allow the accused ample opportunity to develop a thoughtful and relevant “competing narrative.” The absence of lawyers and the nonexistence of plea bargains contributed to the high turnover of cases. The accused had no incentive to enter a guilty plea prior to hearing; only at the criminal trial could the judge and jury consider the existence and applicability of mitigating circumstances. Cases moved along quickly also because the juries took little time to consider verdicts. As in the case of the Annesley/Redding trial, to be discussed later, juries frequently rendered their verdicts after a brief caucus without having left the courtroom. Once the trial commenced, it continued non-stop until completion, often resulting in some late nights at the Old Bailey (16-25).

The practical realities of high volume at the Old Bailey are directly relevant to the analysis of the *Proceedings* as narratives. The rapidity of criminal adjudication provided the framework around which conventions developed about what could or could not be said.

These often, sparse narratives were then subject to the textual mediations of the compiler and the publishers themselves. Temporal finitude certainly accentuates the idea of the trial as performance. Given the constraints put upon the parties by the prohibition against continuation of the proceedings from day to day and the bar against leaving the courtroom once the trial had commenced, there exists an Aristotelian unity of time and place against which the courtroom drama is enacted. As a result, the action of the trial was compressed (compared to today's criminal proceeding). Not only were the rights of defendants to be heard thereby hampered, but the testimony of the accused was not allowed to develop because of the constraints of time. Much of the relevant testimony is left unsaid; the shortness of the allotted time results in the type structure and substance of the narratives that are thereby produced. Like some of the Jacobean and Restoration drama it at times resembles, much of the relevant (and violent) action upon which the narrative depends occurs offstage.

The idea that denial of defense counsel would produce truthful outcomes was shaken in several Restoration treason trials, notably the trials involving the Popish Plot (1678-1680), the Rye House Plot (1683), and the Bloody Assizes (1685). In these political trials (occurring before the so-called "Glorious Revolution" of 1688-1689), convictions were obtained by the Crown's using perjured testimony. As a result a number of innocent men were executed. In the "Seven Bishops Case" (1688), the Archbishop of Canterbury and six Anglican prelates were subjected to a misdemeanor prosecution for seditious libel because of the petition questioning the authority of James II to suspend enforcement of a statute against religious dissenters. Since this was a misdemeanor case, the defendants were allowed defense counsel who was effective in gaining their acquittal. As a factor in

the Glorious Revolution of 1688-1689, the “Seven Bishop’s Case” (1688) acquittal showed that defense counsel could be an effective tool against arbitrary and capricious political prosecution. The stage was set for at least minor reform in criminal procedure, and the opening was created that ultimately led to today’s adversarial criminal trial (Langbein 67-78).

In works such as Andrew Marvell’s *An Account of the Growth of Popery and Arbitrary Government in England* (1670) and John Locke’s *Two Treatises of Government* (1689-90), the winds of change were in the air. The fundamental idea of the Individual’s absolute subordination to the Sovereign was under attack. In the wake of the “Glorious Revolution” of 1688-89 and after nearly a decade of parliamentary wrangling, The Treason Trials Act of 1696 was enacted. In promulgating the statute, proponents cited the partiality of the Bench towards the Crown, restrictions on defendant’s pretrial preparation (including the reading of the indictment), and denial of defense counsel as important problems that would be addressed within the statutory framework of the bill. Parliament never intended the right of defense counsel to extend beyond the specific circumstances of a prosecution for treason. Although the legislators acknowledged significant unfairness in the context of a citizen struggling against an arbitrary and capricious sovereign, they saw no necessity to level the playing field for the ordinary defendant charged with a felony appearing before the Old Bailey and the Assizes. Although “trial by altercation” was still business as usual, the first step had been taken towards the modern adversarial system dominated by opposing counsel (and competing courtroom narratives) that characterizes the way Anglo-American criminal trials are conducted today.

Although defense counsel did not appear in felony trials until the 1730s, lawyers began to play an increasingly important role on behalf of prosecutors throughout the early eighteenth century. Solicitors started to assist government entities, such as the Mint, the Treasury, the Bank of England, and the City of London in the investigation and prosecution of criminal cases. Also, solicitors began to assist individual victims on a more regular basis.⁶ Certain trade groups were formed for the indemnification from property loss due to criminal activity with the further mandate to assist in the apprehension and prosecution of the guilty parties. This type of association created a source of funding for prosecuting attorneys, and it spread the risk and cost of litigation among its members to affordable levels. Reward systems in favor of the Crown and private parties evolved to encourage the apprehension and prosecution of criminals. Because of abuses with overzealous prosecution and perjured testimony stimulated by the rewards system and by profit-seeking private thief-takers, the stage was set for the limited involvement of defense counsel at felony trials. The role of defense counsel thus far was only to cross-examine witnesses in order to insure that the proffered testimony was true and accurate. Thus, the notion of a level playing field articulated in the Treason Trials Act of 1696 was gradually expanded throughout the eighteenth century (Langbein 106-166).

⁶ The professional distinction between barristers and solicitors was firmly in place by the Tudor period, but the process of bifurcation can be seen as early as the fifteenth century. J.H. Baker notes that the solicitors “were so called from the function of ‘soliciting causes’: that is, helping clients through the jurisdictional jungle, giving general advice, and instructing attorneys and counsel as appropriate” (Baker 186). Solicitors were not at first rigidly separated from trial lawyers. Originally, the role of solicitor was considered to be an inferior legal position, but by the early eighteenth century the solicitor had become both acceptable and respectable. J.H. Baker further notes that “the social differences between the two classes have withered away, and the professional differences are in function and expertise rather than in education and ability.” J.H. Baker. *An Introduction to English Legal History. Third Edition* (187).

While prosecution counsel started appearing at the Old Bailey in the 1710s and 1720s, defense counsel began to make occasional appearances in the early 1730s. This significant alteration in criminal procedure came not as a case holding or statutory enactment, but rather as procedural accommodation made by the sitting Justices. The policy evolved as a local practice; the participation of counsel was a discretionary decision made by the court based upon the specific circumstances of particular cases. Gradually, the limited allowance of defense counsel became part of the custom and usage of the Old Bailey and the Assizes. In allowing the appearance of defense counsel, Langbein states, “the bench was tacitly acknowledging that prosecution evidence needed probing of a sort that itinerant trial judges processing huge caseloads were not able to do” (168). Although defense counsel were used infrequently throughout most of the eighteenth century, by the 1780s a small but regular bar had developed at the Old Bailey, including the notable and colorful William Garrow. As to the number of lawyers representing the accused before the Old Bailey in the middle of the eighteenth century, Allyson N. May’s *The Bar and the Old Bailey 1750-1850* (2003) notes that “Beattie’s sampling of counsel at the Old Bailey showed an upper limit of roughly 3 percent of prosecutors and 6 percent of defendants as having been represented by counsel in the middle of the eighteenth century; Landsman’s figures are slightly higher, but both agree that no substantial increase in the presence of counsel occurred before the 1780s” (29).

Although the role of defense lawyers was limited in the 1740s and 1750s, their participation before the criminal tribunals was of public interest, as we will see in the discussion of the Annseley/Redding murder trial of 1742. By the late 1740s, criminal defense lawyers appear in at least one popular novel of the period. In Henry Fielding’s

Tom Jones (1748), Squire Allworthy makes a short speech concerning a certain lawyer's pursuit of Tom Jones prior to the revelation of his birthright. Fielding's omniscient narrator, while commenting upon Allworthy's speech and conversations with Mrs. Miller and Mr. Nightingale, makes this statement concerning the veracity of criminal defense lawyers:

There is nothing so dangerous as a question, which comes by surprise on a man whose business it is to conceal truth or to defend falsehood. For which reason those worthy personages, whose noble office it is to save the lives of their fellow-creatures at the Old Bailey, take the utmost care, by frequent previous examination, to divine every question which may be asked their clients on the day of trial, that they may be supplied with proper and ready answers, which the most fertile invention cannot supply in an instant. Besides, the sudden and violent impulse on the blood, occasioned by these surprises, causes frequently such an alteration in the countenance that the man is obliged to give evidence against himself. And such, indeed, were the alterations which the countenance of Blifil underwent from this sudden question, that we can scarce blame the eagerness of Mrs. Miller, who immediately cried out, 'Guilty, upon my honour! Guilty, upon my soul!' (2:932)

Not only does Fielding's discussion about lawyers become a mini-trial itself, but is also specifies a particular lawyer, a defense attorney practicing before the Old Bailey. The existence and participation of this type of practitioner appears to be firmly embedded in legal culture by the late 1740s. Allyson May notes that Old Bailey defense practice was considered inferior to practice before the Courts of Westminster, and this bias can be inferred in Fielding's passage. However, what is noteworthy is that the presence and influence of these trial practitioners was of sufficient significance to merit inclusion in Fielding's novel. While their numbers may have been small, their influence and potential for changing the way stories were constructed and legal matters adjudicated was recognized by Londoners of Fielding's social and professional standing.

Although Henry Fielding, as a law-and-order magistrate, exhibits a disdain for

criminal defense counsel, Allyson N. May notes that his son William Fielding practiced regularly before the Old Bailey in the 1780s and may have “shared a lead in Old Bailey business in the 1770s” (May 43). In her influential work on practice before the Old Bailey,

May states:

In 1785 the *Morning Chronicle* reported, ‘Mr. Fielding and Mr. Garrow may be said to have all the Old Bailey business in their own hands...But Fielding too fell by the wayside once Garrow arrived on the scene. His eclipse was attributed in part by one critic to sheer indolence: being “too lazy” to do all the business offered to him, Fielding “turned it over” to his younger colleague. When he left Old Bailey practice in 1808 it was to sit as a Westminster magistrate.’ (43)

While Henry and John Fielding are known for their contributions to the magistracy of Middlesex and the formation of the Bow Street Runners, the forerunner of the professional constabulary, it is through Henry’s son William that the Fielding family has the distinction of being integrally involved in the formation and institutionalization of the groups of lawyers that, by the early nineteenth century, would constitute the Old Bailey Bar.

Narrative construction in the *Proceedings* (except in a few notable cases) was not generally the province of lawyers. Traditionally, in “trial by altercation,” the law presumed that the stories would be told by parties and witnesses without the mediation and possible contamination by third parties, such as lawyers. This assumption was a gesture towards a theoretical purity of narrative. In the early eighteenth century, felony trials began to experience the involvement of lawyers at the pre-trial level and the trial of the case itself. In order to counteract the creation of “bad narrative” based on perjured testimony, defense lawyers were gradually allowed to participate in the process to stabilize the court’s narrative at the point of its creation, through the cross-examination of witnesses offered by the prosecution to prove its case in chief. The role of judges as creators of narrative is

important. Through their control of the questioning and the offering of advice to the accused, the story could be constructed only through the strict mediation (and actual bias) of the judge. To reiterate: as a general rule, the modern idea that the lawyers for the parties are the primary creators of legal narrative must be suspended when considering most trials that occurred in the mid-eighteenth century. While this may be the general rule, this study will discuss several anomalous cases from 1742 where lawyers did inhabit the rhetorical space within the legal narrative that is similar to the function of counsel in criminal trials today.

The early 1740s represents a period just after the first appearance of lawyers at felony trials. This was an important decade for the writing and publication of English narratives that would retrospectively receive the generic designation as novels. Due to the contested nature of the concept, Ian Watt's famous term "The Rise of the Novel" is not employed here. This decade is significant for the richness and variation of texts that circulated as commodities, books that were produced and read by a growing population that was curious and willing to spend time and money on the activity of reading three of the trial narratives from 1742 are treated in this study. For our purposes, they illustrate how the meaning of these reports is created by specific types of intertextuality. Also covered are *Sessions Papers* from 1680, the date of the publication of John Bunyan's *The Life and Death of Mr. Badman* and a bankruptcy fraud prosecution from 1755 that is only explained by the later (and final) narrative of the condemned in the *Ordinary's Account*.

CHAPTER III

JOHN BUNYAN'S *THE LIFE AND DEATH OF MR. BADMAN* AND THE *SESSIONS PAPERS*: AN EXAMPLE OF TEXTUAL SYNERGY

Whether or not the *Sessions Papers* that we have examined are “true,” given their selective inclusion of facts and dialogue, they offer the reader a claim to historicity, a characteristic that they share with the early English novel. However, the *Sessions Papers* transcend the mere rhetoric of facticity; they narrate actual controversies, the determination of which results in real, often fatal consequences. They operate within a narrative tradition that offers its texts as true stories, from the corroborating prefaces of Daniel Defoe’s *Robinson Crusoe* to Samuel Richardson’s *Pamela; or Virtue Rewarded*. Both novels and *Sessions Papers* are existential since they deal with the prospect and ultimate reality of physical and spiritual death.

At times, the *Sessions Papers* mirror the characters and plots often found in the novels of the 1740s. At other times, as in the case of Smollett’s *The Adventures of Peregrine Pickle*, an actual Old Bailey trial may be incorporated into the novelistic discourse itself. The synergy between the *Sessions Papers* and the novels of the period involves more than the sharing of similar interesting subject matter. The true nexus between these types of texts was a result of shared expectations on the part of the contemporary reader. Much empirical and archival work remains to be done as to the nature and extent of the readership of the *Sessions Papers* and eighteenth-century literary texts generally, but J. Paul Hunter, Margaret Doody, Michael McKeon, John Richetti, and others have situated the rise of the novel within a tradition of popular non-literary

narratives. The textual synergy here is both synchronic and diachronic. Not only do the *Sessions Papers* exist within a narrative tradition, but we will see how they modify, and, are modified by other contemporary fictional and factual texts, a boundary that this study has shown to be amorphous at best.

The term “negative exemplarity” will frequently be used to describe many of the *Sessions Papers*. The cases to be analyzed generally are narratives of how not to act. Although “positive exemplarity” is often a function of the *Ordinary’s Account* (since three of its narrative goals are true confession, repentance, and a resigned Christian death), the chaplain’s narratives also articulate the type of behavior to avoid in order to stay clear of Newgate Prison and Tyburn. These texts (and the tradition of which they are a part) educate their readers as to how to read the nascent genre of the novel; likewise, the novels (with their claim to facticity) have a reciprocal effect on reader’s perceptions and expectations with respect to “factual” crime reportage.

A key text in understanding the textual tradition of which the *Sessions Papers* are a part is John Bunyan’s *The Life and Death of Mr. Badman* (1680), a book written and published two years after *The Pilgrim’s Progress* (1678). Although Bunyan would later publish *The Pilgrim’s Progress, Part II* (1684), Michael Davies notes in *Graceful Reading: Theology and Narrative in the Works of John Bunyan* (2002) that this in the *Life and Death of Mr. Badman* and *The Holy War* (1682) “more than in any of his verse prefaces that Bunyan reveals his implicit concern over the textual romancing that seems to distract the reader of *The Pilgrim’s Progress* all too easily from its salvatory message” (299). Unlike the earlier work, *Mr. Badman* is not an allegory; rather, it is the account of unrepentant life history (with numerous interpolated “true” stories) of a Mr. Badman, a story that is

rendered in the form of a dialogue between a Mr. Attentive and a Mr. Wiseman. This biography has no happy ending; indeed, Mr. Badman's "*child-like, Lamb-like death*" is interpreted to be "a Judgment of God upon his wicked beholder" (166). The saga of Mr. Badman (and the other examples included for corroboration and comparison) operates as an inverted conduct manual. By giving the reader specific examples from the home and workplace showing how not to act, the author constructs a morality tract that becomes positive in nature. As in the *Sessions Papers*, by illustrating the consequences of the wages of sin, Bunyan is setting forth appropriate God-centered modes of conduct.

Like the more traditional canonical novels of the mid-eighteenth century and like the *Sessions Papers* themselves, *The Life and Death of Mr. Badman* emphasizes empiricism, although "Mr. Badman," the name of the main character, is reminiscent of an emblematic designation in *The Pilgrim's Progress*. All of the facts concerning the character is offered as based on the narrators' first-hand knowledge. In the introductory preface to *The Life and Death of Mr. Badman* titled "The AUTHOR to the READER," Bunyan observes concerning his use of dialogue and his general method for writing the text:

And although, as I said, I have put forth in this method, yet have I as little as may be, gone out of the road of mine own observation of things. Yea, I think I may truly say, that to the best of my remembrance, all the things that here I discourse of, I mean as to matter of fact, have been acted upon the stage of the World, even many times before mine eyes. (1)

Although Bunyan would frequently incorporate miraculous and fabulous accounts reminiscent of those found in earlier spiritual biographies, Bunyan anticipates Locke's empiricism in this preliminary justification for the truth-value of Badman's account. First, Bunyan states that he in fact is employing a specific "Method." The importance of his own

personal experience is emphasized as he states that “have I as little as may be, gone out of the road of mine own observation of things” (1). The remainder of the passage highlights the importance of sight and remembrance; the narrator experiences and sees these real transgressions with their negative consequences and their importance in constructing his own subjectivity and authorial voice.

The Life and Death of Mr. Badman is itself part of the tradition of spiritual biography which, as Michael McKeon notes in *The Origins of the English Novel 1600-1740* (1987), solidified between 1650 and 1683 in Samuel Clarke’s collection and publication of “Puritan lives, called often enough from funeral sermons whose very mode of discourse dictated the application to spiritual ends” (94). As McKeon points out, Clarke was the prolific heir to John Foxe, author of *Book of Martyrs* (1570), a compilation of the lives of some three hundred Protestants who were persecuted under Queen Mary (445). Foxe’s “classic of Protestant hagiography” was reprinted in editions published in throughout the seventeenth and eighteenth century (445). The publication history of Foxe’s work is an indication of the demand of readers for “true” chronicles of exemplary lives.

Like the *Sessions Papers*, the stories contained in *Mr. Badman* are framed within the context of judgment. As in a secular court of law, bad actions have dire consequences before God’s tribunal. In their “Introduction” to *The Life and Death of Mr. Badman*, James F. Forrest and Roger Sharrock note that the judgment stories in Bunyan’s work fall into two categories. First, “there are the brisk, bare anecdotes resembling those in journals and diaries” and second there are those consisting of “longer and more finished stories that have an air of the folk-tale about them” (xxi). Thus, Bunyan’s spiritual narrative

incorporates secular narrative forms that, like the spiritual autobiography, were popular with readers in the late seventeenth century.

Outrageous and miraculous occurrences are absent in *The Life and Death of Mr. Badman*. In *Before Novels: The Cultural Contexts of Eighteenth Century English Fiction* (1990), J. Paul Hunter isolates three of the characteristics of the “literary species” called the novel as “contemporaneity,” “credibility and probability,” and “familiarity” with “everyday existence and common personages” (23). All of these characteristics are present in the saga of Mr. Badman with his mistreatment of his wife, fondness for liquor and whores, and sharp contemporary business practices. If *Mr. Badman* and the *Sessions Papers* are didactic works of character relying upon negative example, they are also rooted in the familiar details and challenges of ordinary contemporary life.

For Bunyan, pride and self-will are at the root of the soul sickness that leads to the transgressive acts resulting in bad consequences and ultimate damnation. In the bankruptcy fraud trial and *Ordinary's Account* of Alexander Thompson, we will see this type of plot structure with respect to Thompson's life history, criminal trial, and judgment is present. Like Badman, Alexander Thompson had a good start in life, but as a result of his own flawed character and self-aggrandisement, Thompson becomes a character in a predetermined narrative consistent with the cultural expectations evidenced by Bunyan's *The Life and Death of Mr. Badman* and related texts. By showing the particularities of bad behavior in a familiar world, these texts plot temporal transgression as a prelude to eternal judgment. Through a reliance on the real or pretended authority of facticity, these texts are conduct tracts of how not to act. Bunyan's work is a text helping to create the moral expectations on the part of the reading public that the *Sessions Papers* also satisfy. It is

significant that Bunyan's work was published in 1680, the very time when the *Sessions Papers* were established as a primary textual vehicle for the reportage of the Old Bailey Criminal Court. Similarities between the two narrative types include their use of colloquial dialogue, a sense of the moment, and movement towards a dispositive confessional utterance.

Bunyan is explicit about the didactic purpose of Badman's life history and the numerous stories included to corroborate and emphasize his moral and religious lessons. In one instance, Mr. Wiseman tells Mr. Attentive the story of an "Informer" who met a ghastly death as a result of his ungodly activities. While the precise nature of this man's transgression is not explained by Bunyan, the "Informer's" spiritual crime would have been readily understood by a contemporary reader, as the story is grounded in the current religious/political tensions of the times. Between 1662 and 1665 the Clarendon Code (including the Corporation Act [1661], Act of Uniformity [1662], Conventicle Act [1664], and the Five Mile Act [1665]) was enacted to penalize those who refused to conform to the Church of England or who practiced the various forms of dissenting Protestant religion. Here, the "Informer" reported real or contrived violations of the Clarendon Code to the appropriate secular authorities. A citizen of this character would have been particularly repugnant to John Bunyan. Immediately after the Restoration of Charles II in November 1660, Bunyan, a Bedford Baptist, was conducting a meeting of dissenters at which time he was arrested. He was charged under an Elizabethan statute of 1593 for failing to attend services of the established church and for promoting the assembly of dissenters. Because he refused to promise not to continue preaching, Bunyan remained in jail until 1672, when he was released pursuant to Charles II's Declaration of Indulgence. For John Bunyan, the

activity of the “Informer” was personal and rooted in the most contentious public issue of the time, the primacy of the Church of England and the public and private rights of Roman Catholics and Protestant dissenters. Bunyan, however, was a committed anti-papist. Personally, he would have had no sympathy for the plight of Roman Catholics during the reign and political administration of Charles II. His own prejudice against informers was a result of his own brand of Protestant partisanship that resulted in his incarceration for a period of twelve years.

In the story included in *The Life and Death of Mr. Badman*, the “Informer...did much distress some people, and had perfected his Informations so effectually against some, that there was nothing further to do, but for the Constables to make distress on the people, that he might have the Money or Goods; and as I heard, he hastened them much to do it” (82). The “Informer’s” actions are not performed out of genuine (though for Bunyan, misplaced) religious belief; rather, this insidious brand of religious persecution was conducted for “Money or Goods.” While cooking a meal, this “Informer” is bitten by a dog, and a long, painful death from gangrene results. This scene emphasizes the everydayness of the negative examples employed by Bunyan. The obvious lesson is that God’s wrath comes down violently on sinners, particularly when the sinful act is directed against true believers. For our purposes, the story is important because it is situated in the context of contemporary political tension and it is rendered (like a trial report from the Old Bailey) as a true account of a real transgression resulting in a swift and just punishment.

Although the story is fabulistic, it is offered to the reader as both true and, more importantly, applicable. Says Mr. Wiseman

But what need I instance in particular persons, when the Judgment of God against this type of people was made manifest, I think I may say, if not in all, yet in most of

the Counties in England where such poor creatures were. But I would, if it had been the will of God, that neither I nor anybody else, could tell you more of these stories: True stories, that are neither *Lye*, nor *Romance*. (82)

Like the *Sessions Papers*, this type of narrative purports to be true in occurrence and argues for its universal applicability. *Mr. Badman* (with its assemblage of incorporated stories) and the *Sessions Papers* (itself a composite smaller narratives) are not romance since they are situated in the context of everyday life. For Bunyan's worldview, the meta-narrative of Puritan Christianity is part of the natural order and not attributable to the intervention of the supernatural. Bunyan's text, the later works of the canonical English novelists of the 1740s, and the *Sessions Papers* (at the time of Bunyan, as well as in the era of Richardson and Fielding) relate to regularly occurring acts and temptations situated in the reality of lived experience. Creation of believability, as well as applicability to contemporary life, constitutes the main rhetorical strategy used by Bunyan to engage his reader's interest and to convey his didactic message. His rendering of negative exemplarity in its everydayness helped create a readership that would be sympathetic to the rhetorical strategies of the *Sessions Papers* as represented by the cases from the mid-eighteenth century considered in this study.

Just as the bankruptcy fraud cases of Prior Green and Alexander Thompson set out the consequences of a debtor's fraudulent dealing with his creditors, *The Life and Death of Mr. Badman* is a primer on the types of conduct and aspects of character to avoid in the world of commerce. After outlining Badman's misspent ways as a youth and as an artied apprentice, Bunyan's dialogue shows that Badman incurs significant debt as a result of a generally dissolute lifestyle. He then marries a rich wife for financial convenience, and uses her money to pay his premarital obligations. After his repayment of these debts, "he

sets up again as briskly as ever, keeps a great Shop, drives a great Trade, and runs again a

great way into debt; but now not into the debt of one or two, but into the debt of many, so that at last he came to owe some thousands; and thus he went on a good while” (83).

Bunyan’s description of Badman’s reaction to his debt problems illustrates the Puritan author’s view that this sin is progressive in nature, that people start by committing small offenses that eventually lead to large, generally blasphemous transgressions. In Badman’s case, in order to curry favor with his creditors in light of his increasingly unmanageable debt, he tries to “suit himself to any company,” a disingenuous character trait that is a real, if minor, form of dishonesty (84). For Bunyan, circumstantial ethics equates atheism; faith in God governs all interpersonal relationships, including those of the marketplace.

Mr. Badman’s sins of drinking and whoring are costly; Bunyan characterizes his wickedness as being measured both by the outflow and income of ready cash. Mr. Badman engages in the specific types of economic behavior that the punitive bankruptcy statutes of the sixteenth and seventeenth centuries were enacted to prevent. In his discussion of the art of “breaking,” Bunyan goes into very specific detail as to the nature and particulars of this commercial practice. Then, he insures that this type of commercial dishonesty is clearly understood to be evil through his quotations of Leviticus 9:13, I Thessalonians 4:6, and Colossians 3:25. Such behavior violates applicable scriptural law. As will be shown in the following discussion of the Old Bailey case of Alexander Thompson, “breaking” is shown to be no different from the common capital offense of highway robbery. Bunyan devotes a comparatively large section of *The Life and Death of Mr. Badman* to his discussion of “breaking” and his final statement of fair dealing as to the honorable, Christian way for a distressed debtor to deal with his creditors. Bunyan’s text (and to a certain extent the

Sessions Papers) seeks to reaffirm a traditional ethical mode of action in the expanding mercantile world of late seventeenth century England. Bunyan actually anticipates the coming economic boom and the rise of the new capitalism; the publication of *The Life and Death of Mr. Badman* in 1680 precedes the establishment of the Bank of England in 1694 by fourteen years. Mr. Wiseman explains to Mr. Attentive the strategy of Mr. Badman when he engages in the strategy of breaking

Wherefore, upon a time, he gives a great and sudden rush into several mens debts, to the value of about four or five thousand pound, driving at the same time a very great trade, by selling many things for less than they cost him, to get him custom, therewith to blind his Creditors eyes. His Creditors therefore seeing that he had a great employ, and dreaming that it must be at length turn to a very good account to them, trusted him freely without mistrust, and so did others too, to the value of what was mentioned before. (88)

After maximizing the goods and money from this scheme, Mr. Badman (or any dishonest debtor) shuts down his business or literally “breaks.” In today’s commercial world, this simple type of fraudulent scheme is informally known as a “breakout,” a tactic particularly frequent in the tough environment of New York’s Garment District. Also, the terms “breaking” or “going broke” are synonymous with the general notion of financial distress or insolvency. Thus, Bunyan’s use of the term survives, and it remains applicable both to identically the same type of fraudulent scheme and to the idea of financial distress generally.

The accumulation of goods and funds from his suppliers, creditors, and his own debtors is only the first phase of the dishonest debtor’s strategy. If he is put in jail for debt or otherwise punished for his actions, his efforts will be of little benefit to those whom he owes money. Therefore, an accommodation must be reached by the debtor with his aggrieved creditors. Concerning this phase of the process, Mr. Wiseman says

Now, by that time his breaking was come to his creditors ears, he had by Craft and Knavery made so sure of what he had, that his Creditors could not touch a penny. Well, when he had done, he sends his mournfull sugered letters to his Creditors, to let them understand what happened unto him, and desired them not to be severe with him; for he bore towards all men an honest mind, and would pay so far as he was able. (88)

Badman would then designate an agent to plead the “worst and best of Mr. *Badman*’s case” to his creditors, a strategy necessary to avoid seizure by his creditors for failure to honor their claims.

Using an economic argument as to the present value of an immediate partial recovery, Badman’s agent argues that “without a speedy bringing of things to a conclusion, Mr. Badman would be able to make them no satisfaction, but at present he both could, and would, and that to the utmost of his power: and to that end, he desired that they would come over to him” (88). An informal meeting of creditors would be set. Badman’s deputy would argue for the debtor’s sincerity and fair dealing in making a proposal to the creditors; he would also list extenuating circumstances:

He pleaded also the greatness of his Charge, the greatness of Taxes, and Badness of the times, and the great Losses that he had by many of his customers, some of which died in his debt, others were run away, and for many that were alive, he never expected a farthing from them. (89)

As noted earlier in this study, “the greatness of Taxes” and “the Badness of the times” were considerations that were often articulated in favor of leniency in the administration and reform of the bankruptcy laws in the eighteenth century.

After the debtor argues his good faith and mitigating circumstances, the time is ripe for effectuating a settlement with the creditors. Since he claims that he is unable to pay

their debts in full, he offers a “composition,” a proposal to pay less than the total amount of the balance due in full satisfaction of the outstanding claim:

The Creditors asked what he would give? Twas replied, *Half a crown in the pound*. At this they began to *huff*, and he to renew his complaint and entreaty; but the Creditors would not hear, and so for that time their meeting without success broke up.. But after his Creditors were in cold blood, and admitting of second thoughts, and fearing lest delays should make them lose all, they admit of a second debate, come together again, and by many words, and a great ado, they obtained *five shillings i' th' pound*. So the money was produced, Releases and Discharges drawn, signed and sealed, Books crossed, and all things confirmed; and then Mr. *Badman* can put his head out a dores again, and be a better man than when he shut up Shop, by several thousands of pounds. (89)

Although the single example of “breaking” is set forth with particularity, this is not the only time Mr. Badman uses this avenue to raise money, for Mr. Wiseman says that “I think he brake twice or thrice” (89). After an initial offer of about twelve percent, Badman’s creditors finally agree to a payment of about twenty-five percent of the value of their claims. Although the creditors’ behavior in accepting Badman’s offer is predictable given the possible risks of delay, the realities of the marketplace do not excuse Badman’s egregious financial conduct. Bunyan’s worldview is neither Machiavellian nor Utilitarian. “Need” does not justify questionable conduct, and scriptural obedience must be absolute. Similar linguistic usages occur in both *The Life and Death of Mr. Badman* and the *Sessions Papers*. In both, there is a focus on the specific economic value of the transgression in question. In fact, formal legal instruments consisting of “Releases and Discharges drawn” circulate between the parties. The use of the phrase “to *huff*” suggests the conversational tone found in much of the dialogue in the *Sessions Papers*.

After Mr. Wiseman establishes through scriptural citation that Mr. Badman’s practice was against “*the Word of God*,” Mr. Attentive asks, “*What I would have a man do*,

that is in his Creditors debt, and that can neither pay him, nor go in a trade any longer?”

(92). The text has previously established that neither economic need nor commercial exigency justifies knavery. At this point, Bunyan through his disputants begins to establish positive acts to be pursued by the distressed debtor to avoid his penury. First, when a debtor realizes that he is in financial trouble, it is sinful to incur additional debt. Equivalence is again made between the derogation of creditor's rights and common theft as prohibited by the Mosaic Law. Second, the debtor is instructed to engage in self-examination in order to determine any personal cause of the dire circumstances, such as sloth or extravagance (92). For the financially distressed, Mr. Wiseman and Attentive further state that the dire circumstances are often God's way of offering an opportunity for penitence and humility, as well as the consequences of sinful living (92-93).

After discussing the spiritual lessons to be learned from insolvency, this section of Bunyan's work concludes with a positive prescriptive statement outlining the correct conduct of a distressed debtor to his or her creditors

First, Let him timely make them acquainted with his condition, and also do to them these three things.

1. Let him heartily, and unfeignedly ask their forgiveness for the wrong that he has done them.
2. Let him proffer them *all*, and the whole *all* that ever he has in the world; let him hide nothing, let him strip himself to his raiment for them; let him not keep a Ring, a spoon, or any thing from them.
3. If none of these two will satisfie them, let him proffer them his Body, to be at their dispose, to wit, either to abide imprisonment their pleasure, or to be at their service, till by labour and travel he hath made them such amends as they in reason think fit, (only reserving something for the succor of his poor and distressed Family out of his labour, which in Reason, and Conscience, and Nature, he is bound also to take care of:) Thus shall he make them what amends he is able, for the Wrong that he hath done them in wasting and spending of their Estates. (95)

The honest full disclosure of the debtor is the fundamental duty set out in this statement of proper conduct; honesty is indicative of inner purity. As we have seen in earlier chapters, the duty to disclose his financial affairs lies at the heart of the policy behind the prosecutions for bankruptcy fraud. Although there is a small allowance made by Bunyan for the debtor's family, there is no sympathy here for even the honest debtor and his reintegration into the economic world.

By surrendering his assets and his very body to the control of his creditors, the debtor "commits himself to the dispose of his Providence; yea, by thus doing, he casteth the lot of his present and future condition into the lap of his Creditors, and leaves the whole dispose thereof to the Lord, even as he shall order and incline their hearts to do with him" (95). For Bunyan, total submission of a debtor to his creditors is the unconditional step that can be taken to make restitution, since such an effort is pleasing to the Lord, his enemies will have mercy and make peace with him (95). Surrender includes the body as well as material assets, a surrender characterized by Bunyan as an act of Christian faith. Through the detailed description of "breaking" as part of the biography of Mr. Badman, Bunyan (through the dialogue between Mr. Wiseman and Mr. Attentive) gives his readers a specific negative example of how not to act, as well as a scriptural Puritan vision of the specific positive steps to take if any of his readers are in the unfortunate position of extreme financial embarrassment. This reverse spiritual biography tells a story situated in the realities of everyday life, but it is part of a textual tradition of conduct tracts offering specific suggestions to insure eternal salvation. As noted, the reading public was experienced with these types of texts, and this textual environment constitutes the

background within which the negative exemplarity of the *Sessions Papers* (and *Ordinary's Accounts*) was appreciated and even expected.

Bunyan remains close to his economic narrative throughout *The Life and Death of Mr. Badman*. In the description of Badman's childhood, lying is emphasized as a terrible sin since "usually one that is accustomed to lying, is also accustomed to other evils besides" (20). The relationship of truthfulness to commercial probity is emphasized throughout Bunyan's story (as well as in the *Sessions Papers* dealing with financial crimes). The next stage of Badman's development pertains to his period as an apprentice, a master-servant relationship upon which the late seventeenth-century urban economy was significantly based. With the use of interpolated narratives, (such as the Story of Old Tod who testified at his criminal trial that he began his life of crime by stealing apples as a child), Bunyan emphasizes that small and seemingly insignificant offenses initiate a journey down a slippery slope ultimately leading to the gallows (23). This type of reference to an "actual" criminal case claimed to have transpired at "a Summer Assizes holden at *Hartford*" shows the synergy between the negative exemplarity of Bunyan's textual tradition and the factual case reportage of the *Sessions Papers* (23). At any rate, like much of the conduct literature of the period, this portion of *The Life and Death of Mr. Badman* is directed towards a young readership seeking through proper spiritual guidance (by both negative example and positive exhortation) to learn how to live so as to enable them to be effective workers in the burgeoning market economy.

Bunyan's positive prescriptive statement of the proper way to deal with creditors is an exhortation for the practice of true Christian principles in trade and commerce. Two years earlier Bunyan had addressed commercial behavior in various sections of *The*

Pilgrim's Progress. At the "Town of Fair-speech" described as "a *Wealthy place*, Mr. *By-ends* and Mr. *Mony-love* engage in a formal philosophical disputation which is finally resolved by *Christian*, Bunyan's spiritual traveler and moral center. Mr. *By-ends* asks the question

Suppose a man; a Minister, or a Tradesman, & c. should have an advantage lie before him to get the good blessings of this life. Yet so, as that he can by no means come by them, except, in appearance at least, he becomes extraordinary zealous in some points of Religion, that he meddled not with before, may he not use this means to attain his end, and yet be a right honest man? (84)

This query poses the relative hierarchies of action, belief, and motive against the possible charges of hypocrisy and commercial convenience.

In answer to Mr. *By-ends*' carefully worded question, Mr. *Mony-love* offers a reasoned response:

And now to the second part of the question which concerns the *Tradesman* you mentioned: suppose such an one to have but a poor imploy in the world, but by becoming Religious, he may mend his market, perhaps get a rich wife, or more and far better customers to his shop. For my part I see no reason but that this may be lawfully done. For why,

1. To become religious is a vertue, by what means so ever a man becomes so.
2. Nor is it unlawful to get a rich wife, or more custome to my shop.
3. Besides the man that gets these by becoming religious, gets that which is good, of them that are good, by becoming good himself; so then here is a good wife, and good customers and good gaine, and all these by becoming religious, which is good. Therefore to become religious to get these is a good and profitable design. (85)

In his response, Mr. *Mony-love* (whose character flaw is designated by his very name) argues that the virtuous end of acquired religion is justified by worldly means so long as the secular law of the political commonwealth is observed. As in the case of Mr. *Badman*, the practice of marriage for pecuniary gain is addressed, as well as the practice of "mending markets." This dialogue from *The Pilgrim's Progress* illustrates a tradesman's

adoption of Christian principles (or the appearance of godliness) as a means to an end or a half measure taken on the road to the “Celestial City.” Although Mr. Badman’s conduct is specifically described in negative terms, the commercial transgressor is offered concrete steps for a spiritual solution through Bunyan’s positive prescriptive statement of commercial conduct in *The Life and Death of Mr. Badman*.

In deciding the issue between the disputants, Christian in *The Pilgrim’s Progress* offers the following resolution of the commercial/spiritual controversy:

Even a babe in Religion may answer ten thousand such questions. For if it be unlawful to follow Christ for loaves, as it is, *Job*. 6. how much more abominable is it to make of him and religion a stalking horse to get and enjoy the world. Nor do we find any other than Heathens, Hypocrites, Devils and Witches that are of this opinion. (86)

Quoting scriptural law as his statutory authority, Christian as judge resolves an issue that to the two disputants seemed to be a close case suggesting a justified course of conduct. This narrative strategy of disputation is a form of legal discourse. Historically, legal education at the Inns of Court consisted of moots (pleading exercises) and readers’ cases (disputations upon the propositions advanced in the readings). In *Gentlemen and Barristers: The Inns of Court and the English Bar 1680-1730* (1990) David Lemmings notes that “although the readings of the inns of court were both spectacular and prestigious, the bread and butter of legal education were rather the disputations upon cases which were held regularly both in the learning vacations and the legal terms” (77). After the Restoration of Charles II, these learning exercises were reintroduced to the Inns of Court in an effort to reinvigorate the Inns as an educational center for the bar after a period of decline throughout the seventeenth century (89-92). Bunyan’s reference to lawfulness in the response of Mr. *Mony-love* identifies the use of the disputation as rhetorical device with

the study and practice of law. Therefore, even in *The Pilgrim's Progress* (sometimes characterized as a romantic allegory) Bunyan uses and reworks legal materials and rhetorical devices as part of his narrative strategy of Puritan didacticism.

The Life and Death of Mr. Badman is noteworthy for its unusual portrayal of Badman's death. The reader expects a painful wrenching demise because of Badman's consistent bad actions throughout his entire life. Bunyan, however, enhances the rhetorical power of his didactic narrative by thwarting the reader's expectations. Instead of a painful death suggestive of both poetic and spiritual justice, he renders a scene of a bad man dying peacefully, an unexpected but believable quotidian conclusion to the story. Badman's failure to repent and experience conversion is the effect of the hard heartedness resulting from the Aristotelian habituation of a lifetime of bad acts.

While the conclusion of Mr. Badman's life history is rooted in the everyday reality of a non-dramatic demise, Bunyan continues to use his interpolated stories as *stare decisis* to prove legalistically the spiritual points that he believes are to be learned by the ordinary circumstances of Mr. Badman's death. In discussing the sin of blasphemy, Mr. Wiseman relies on a "true" case to prove that God does not always let these sins go unpunished

There lived, saith one, in the year 1551 in a City of *Savoy* a man who was a monstrous Curser and Swearer, and though he was often admonished and blamed for it, yet he would be no means mend his manners. At length a great plague happening in the City, he withdrew himself into a Garden, where being again admonished to give over his wickedness, he hardened his heart more, Swearing, Blaspheming God, and giving himself to the Devil: And immediately the Devil smashed him up suddenly, his wife and kinswoman looking on, and carried him quite away. The Magistrates advertised hereof, went to the place and examined the Woman, who justified the truth of it. (146)

Like the Virgin Birth and Jesus' Resurrection, the physical appearance of the Devil to seize the body of the Swearer is not for Bunyan the supernatural occurrence of a "Romance";

rather, it is part of the natural order and subject to the empirical faculties of the individual. In a matter-of-fact manner, the interpolated story states that the demonic transfiguration was witnessed by the wife and kinswoman, and that the validity of the story is emphasized through the Magistrate's examination of "the Woman, who justified the truth of it" (146).

Although these marvelous occurrences are witnessed events, they resemble the types of tales included in the tradition exemplified by John Foxe's *Book of Martyrs*. These narratives exhibit a tension between the tradition of spiritual biography and the emerging empiricist world-view that would be systematized in John Locke's *Essay Concerning Human Understanding* (1690). In a companion story to the previously discussed interpolated narrative from the "City of *Savoy*," Mr. Wiseman relates

Also at *Oster* in the Dutchy of *Magalapole*, (saith Mr. *Clark*) a wicked Woman, used in her cursing to give herself body and soul to the Devil, and being reprov'd for it, still continued the same; till (being at a Wedding Feast) the Devil came in person, and carried her up into the Air, with most horrible outcries and roarings: And in that sort carried her round the Town, that the Inhabitants were ready to dye for fear: And by and by her tore her in four pieces, leaving her four quarters in four several high-wayes; and then brought her Bowels to the Marriage-feast, and threw them upon the Table before the Mayor of the Town, saying, *Behold, these dishes of meat belong to thee, whom the like destruction waiteth for, if thou dost not amend thy wicked life.* (146)

This passage, like the *Sessions Papers* and the spectacle of Tyburn itself, offers a narrative of deterrence and punishment for those who violate the laws of God (and man). The *Oster* narrative represents itself as a true history; its truth and veracity is offered to the reader by Bunyan through the narration of Mr. Wiseman upon the attestation of a Mr. Clark. Rhetorically, it is a case report cited in support of a larger biographical history, the life and death of Mr. Badman himself.

In *Discipline and Punishment: The Birth of the Prison* (1975) Michel Foucault opens his book with a detailed, gruesome description of the execution by dismemberment and quartering in Paris around March 30, 1757 of “Demiens the regicide,” (3). This initial anecdote seeks to illustrate the operation of the public spectacle of punishment as an enactment of the power of the state on the body. In the *Oster* narrative the “wicked woman” likewise is cut into four quarters. As in the case of the regicides of Charles I similarly executed after the Restoration of Charles II, the body parts of the condemned are publicly displayed around town in order to fully enact and perform the power of the state upon the physical remains of the deceased. In his interpolated narrative, therefore, John Bunyan incorporates a familiar legal discourse of power and punishment in order to suit his own rhetorical purposes. Blasphemy against God is likened to the temporal political transgression of regicide, an act threatening the very fabric of legal authority and subservience. By having the bowels of the blasphemous woman brought to the Mayor at the wedding feast, Bunyan maintains that blasphemy serves to undermine the social harmony represented by the marriage festivity and ordinary civil authority represented by the municipal official. Marriage also symbolizes familial beginning within the social established order. The consequences of sin are enacted on the gory remains just when two bodies unite civilly, spiritually, and physically. By illustrating the wages of sin, Bunyan’s narrative offers the wedding guests (and the reader) another beginning as a meaningful life centered on obedience to God’s commandments. This interpolated story is yet another example of John Bunyan’s incorporation of a legal trope for didactical fictional purposes in a text that displays many of the generic characteristics of the mid-eighteenth century British novel.

The *Sessions Papers* of the 1680s resemble the structure and composition of *The Life and Death of Mr. Badman* in ways that both reflect and define the narrative expectations of the late seventeenth century reader. In a *Sessions Report* from 1740 the caption from the title pages reads: “THE PROCEEDINGS at the SESSIONS of PEACE, Oyer and Terminer, for the CITY OF LONDON AND COUNTY OF MIDDLESEX”(1). The caption from the shorter four-page report of the April 1680 Sessions offers the accompanying collection of trial summaries as “The True NARRATIVE of the PROCEEDINGS at the Sessions-House in the OLD- BAYLY” (1). Like Foxe’s *Book of Martyrs* and other seventeenth biographical texts, Bunyan’s *The Life and Death of Mr. Badman* and the *Sessions Papers* offer the initial assertion of truth and veracity.

After describing the April 1680 term as that “which began on *Wednesday* the 21th of this instant *April* 1680 and ended on *Fryday* the 23th following,” the *Sessions Report* describes its general scope as “Giving an Account of most of the Remarkable Trials there, viz. for Treasons, Murders, Fellowies and Burglaries & c. with a particular Relation of their Names, and the place of their committing their Facts, with the number of those condemned to dye, burnt in the hand and to be whipt” (1). This introductory description emphasizes the “Remarkable” nature of the short narrative summaries of the various transgressions that result in the specific vivid punishments. As they are limited biographical vignettes focusing on violations of criminal laws with resulting corporal penalties, these narratives of the *Sessions Report* from April, 1680 resemble the interpolated narratives of *The Life and Death of Mr. Badman* with their focus on a specific individual in a definite geographical location and a violation of scriptural (or temporal) law with inevitable punishment which includes agonies of both the body and spirit.

After defining the scope of the April 1680 *Sessions Report*, the narrative's introduction promises the reader three specific categories of cases; these include "the Condemnation of a notorious Jesuite, and of the three Women to be burnt, and the proceedings with the Apprentices" (1). Like *The Life and Death of Mr. Badman*, this *Sessions Report* emphasizes the importance of apprenticeship. As in the conduct manuals of the seventeenth century, the behavior of women is addressed. The account of the "notorious Jesuite" represents and creates the reader's anxiety and preoccupation with the Exclusion Crisis (May 1679-March 1681) whereby various Protestants sought an Act of Parliament to have James, brother of Charles II, excluded from the line of succession because of widespread fear of popery and arbitrary government. Thus, the *Sessions Papers* cannot be viewed only as context for the "Rise of the Novel." They were read for many of the same reasons and with similar expectations as *The Life and Death of Mr. Badman*.

Unlike the trial reports of the mid-eighteenth century, the *Sessions Papers* of the 1680s do not contain transcripts of questions and answers. The stories are offered as summaries of salient facts that are often constructed for ideological or moral emphasis. Take, for example, the trial of William Harding for the crime of rape

William Harding was tried also for Ravishing one *Sarah Southy* a Girl about 7 or 8 years of Age, ticing her down into a dark cellar by the allurement of Appels, and then accomplished his detestable Villany, not only giving the Child the foul Disease wherewith himself was infested, but likewise by forceable penetrating her Body, so abused her secret parts, that the distressed wretch remained in a most miserable condition, but long was it e're she would complain, lest her Mother should beat her; but at last here extream torment enforced her to it, the which her mother no sooner understood, but she procured a couple of Chirurgions that they might of possible retract the mischarge; who did conclude that she had been forced, which she her self confessed at large; and he having been a debauched fellow, for as the witnesses swore in Court, he was wont to act carnally with his own mother; threatening when she refused to permit his incestious desires, to Fire the house about her Ears, and when he was searched, several Simptons of the Venereal Distemper, was seen to remain so that the Jury brought him in guilty of Rape. (2)

This trial narrative is one of the longest of the thirteen trial descriptions contained in the *Report*. Unlike the *Sessions Proceedings* from the mid-eighteenth century, the *Sessions Papers* from the 1680s were not complete accounts of the disposition of all cases that came before the Old Bailey during a Session. In the *Reports* of the 1670s and 1680s trial accounts were chosen for their sensationalism, notoriety, or suitability for moral and religious edification. In terms of their length, rhetorical structure, and subject matter, they are similar to the instructional stories included in John Bunyan's *The Life and Death of Mr. Badman*.

William Harding, like the sinners (and the devil himself) in Bunyan's interpolated narratives, is portrayed in demonic terms. While his physical violation of the girl is extremely heinous, he is portrayed as an outcast not only for what he did, but also for who he was. As in Bunyan's work, in this *Sessions Report* there is a direct correlation between conduct and character. The hellish images are seen in the description of the crime as taking place in "a dark cellar," a space suggestive of Hell or the netherworld. The trope of rapist as devil is further seen in the description of William Harding enticing Sarah Southy by "the allurements of Appels." This suggests a version of story of the Garden of Eden (although here the female's lost innocence is the result of the trickster's corrupting lust rather than the girl's submission to temptation). The hellish nature of William Harding's character is seen in his threat to his mother "to Fire the house about her Ears" when she refused to engage in incestuous relations with her son. His threatened use of fire as a means of vengeance further enhances Harding's emblematic portrayal as Satan. His actual and potential transgressions (like the actions of the demons invoked by Bunyan in *Mr. Badman*) are

outrageous and sensational, and the story of William Harding is the type of story with which a reader of Bunyan's contemporaneous book would be familiar.

Harding's narrative, like *The Life and Death of Mr. Badman* and its constitutive narratives, is subject to numerous forms of authentication. There is the physical evidence of Harding's contamination of Sarah Southy with venereal disease, and the confirmation of her forced penetration through a type of medical examination conducted by the "Chirurgions." Sarah Southy confesses the awful circumstances to her mother, and the girl's testimony is deemed credible by its very inclusion in the narrative. Finally, "Witnesses swore in Court" as to the truth and veracity of Harding's incestuous desires and threat to burn his mother's house down. The demonic imagery may deal with outrageous sexual crimes, but the extraordinary nature of the compact narrative is situated in the reality of everyday urban living. It occurs in the actual basements and dwelling houses of London.

The Life and Death of Mr. Badman resembles both a legal brief and judicial opinion as analogic incidents and interpolated stories are used as a form of fictional *stare decisis* to prove the historical consequences of the transgressive acts that Mr. Badman relentlessly practices. Using Biblical scriptures as a type legal statute and the supplementary stories as a form of case law, Bunyan constructs a biographical history that is part novel, part conduct manual, part reverse spiritual example, and part legal narrative. Because of the unstable boundaries that exist between all of these generic textual forms, each would inform readers' expectations of the different (yet deceptively similar) categories of texts in circulation.

CHAPTER IV

THE CASE OF PRIOR GREEN AND SERIAL NARRATIVE COMPLETION

Narratives are given meaning (or “completed”) by reference to numerous texts and textual traditions in the *Sessions Papers* in the late seventeenth and eighteenth centuries. The first case for examination is actually two separate trials of a criminal defendant for the same alleged criminal act. The January 1742 report of the dismissal of the charges against Prior Green for perjury in connection with a bankruptcy proceeding gives the reader an incomplete text. The story is not fully told (if at all) until the *Sessions Report* containing the continuation (or retrial) of the charges, a hearing which occurred several months later in the April 1742 Old Bailey Session. Therefore, in this case the final narrative is completed by a subsequent *Sessions Papers* involving the same defendant and factual circumstances. The Prior Green case is a serial narrative that enacts certain issues of public policy in the treatment of debtors; in a sense, its logic is determined by a tradition of legal and polemical texts with their roots in Roman Law that differentiate between the punitive rights of creditors and the problem of leniency for the insolvent yet honest debtor.

One of the central ironies of the *Old Bailey Sessions Papers* during the eighteenth century is that while the texts “speak” and are enriched from a variety of textual traditions, the defendants themselves often do not have a voice. The absence of the voice of the accused does not constitute a complete erasure. The *Sessions Papers* allow today’s reader to “look through a glass darkly” and construct a reasonable or possible compensatory

narrative. The recent availability of the *Sessions Papers* on-line and the scholarly work that will inevitably follow will serve as partial re-writings of forgotten (or abandoned) life histories.

In reviewing the cases from the 1742 calendar of the *Old Bailey Sessions Papers*, one of the most important questions raised in any given case is: what aspects of the case were selected to be included – and why? Some seem to be chosen for their salacious quality. Some are chosen for their legal relevance in order to prove the truth of the matter asserted (though this is clearly not always the case). Many of the stories with their portrayal of human foibles and frequent humor offer negative exemplary models. Like other literary examples, they are narratives of character. All narrated cases imply stories, thereby requiring the reader (or consumer of these legal texts) to construct his or her own narrative. While some cases tell a story (or imply a narrative) while really not saying much, some offer texts whose meaning can only be constructed through intertextualities with other types of legal and extra juridical narratives.

Take, for example, the short case of John Thompson (15 Jan. 1742), accused of sexually abusing and killing Mary Grayling, a nine-year-old girl. This narrative is relevant here as a result of its absence of information. In the assault, the exact nature of which is never named, the girl was “grievously lacerated” and we are told she “languished from the said 16th of December, to the 2nd of January,” at which time she died. The coroner investigated the nature and extent of the injuries, and concluded that Mary Grayling died as a result of them. Little information is given as to the facts at trial other than this short synopsis:

Several Witnesses were produced to give an Account of the Child’s Declarations *in extremis*, but it being of the Opinion of the Court that the Child was not of

competent Years to make such Declaration, and there being no other Evidence in Support of the Indictment, the Prisoner was acquitted. (31)

This case is of extreme interest. It has ramifications not only for the study of the disenfranchised of the mid-eighteenth century, but also our own day of twenty-four-hour news coverage of the Jon Benet Ramsey and other crimes against children.

The case turned on a technical question of evidence and legal competency. No one corroborated the testimony of the victim of a crime to which there could be no witnesses or possibility of collaboration since only two parties, the accused and the victim, were present at the time the crime was committed. The absence of a developed system of forensic evidentiary science foreclosed any possibility of procedural redress. And the law of competency here foreclosed any remedy based upon the child's own testimony. As a victim, Mary Grayling is more of a *res* than a person in the eyes of the common law. She is a body that is acted upon. Unlike Richardson's Pamela, she is not saved by her innocence or virtue. Unlike Clarissa, she is not empowered with her own voice. By virtue of her voice at the trial or within the context of the Session Report itself, she is neither saved nor empowered by any "narrative." Much like the young boy in Robert Frost's ". . . Out, Out," her death is duly noted as a random event, fair or not. Life goes on - both in the streets of London and in the continuation of the series of case narratives that make up the seemingly endless chain of legal reports. As in the instance of Frost's boy who dies of a freak accident with a power saw, one gets a sense of erasure as a result of exclusion from the religious and social meta-narratives of the time. Therein, in part, is the relevance and interest of such a record.

The peculiarity of the case lies in the fact that so little space is given to what to our eyes is one of the most heinous and unfair cases of the 1742 term. The existence of child abuse is acknowledged, but simultaneously denied. The crime is never articulated. Theoretically, the “laceration” could be from a knife wound, but “carnal knowledge” implies causation between sexual penetration and death. The only judgment the defendant receives for “ravishing Mary Grayling” is that he is characterized as “...not having God before his eyes,” and even this reference to the deity is standard language that is often used in the *Proceedings* to highlight any number of criminal offenses. John Thomas, the accused, is identified as a “victualer,” but the girl’s relationship to the defendant is never specified. Did she know the defendant? Was she a family friend or acquaintance? She had some knowledge of the defendant, as his identity was apparently ascertained through her own testimony while she was “in extremis.” At any rate, this case exhibits some of the interpretative problems prevalent throughout the papers.

A central problem is that the reader’s interpretative chore is challenged by the lack of information about the data that is given. While the critical adage of “absence as presence” is somewhat shop worn, it is applicable in this particular case. Upon reading this legal vignette, the reader is struck by the “unspeakability” of the act. The crime itself is decided by the author (either the court or the publisher) to be unspeakable. The absence of any description of it other than the generalized statements previously mentioned indicates the criminal act itself is of such a nature as to be “of that, which cannot be said.” Likewise, the legal result is an unspeakable act. Through an act of narrative exclusion based upon the finding of the victim’s lack of testimonial competence, the horrible act is treated as a non-occurrence. Is the absence of commentary language with simply a mere evidentiary

holding to be read as its own subtext, an indictment of legal technicality, or is it a more mundane textualization of a case brought before the bar, adjudicated, and closed? (Then and today, many cases are disposed of on technicalities where the Judge, for one reason or another, chooses not to reach the merits of the matter). At the outset of this study, this case indicates to show that even a very short trial report can suggest an entire narrative from the threads of the story that it omits or only suggests.

Compare this case of heinous child abuse to the case of Prior Green who, in the context of the issuance of an adjudication of bankruptcy (or “Commission of Bankruptcy”), was indicted for perjury and whose case was tried and reported in two installments from the January and April 1742 Sessions of the Old Bailey. Declared a bankrupt upon the petition of Jean Brisant, one of Green’s creditors, the defendant was required to make a full statement of assets and accounts as a necessary part of the involuntary bankruptcy proceeding.⁷ As a Finding of Fact, the defendant concealed certain assets, probably of an immaterial value, as well as certain statements of account. Counsel for the prosecution sets the didactic and ideological implications of perjury prosecutions in financial cases in his opening statement, which is offered in summary at the beginning of this *Sessions Report*:

That Crimes of this Sort ought not to be aggravated, being exceeding heinous in their own Nature, for if People would take those Liberties to forswear themselves, there would be an End of Justice, and there could be no Security of Men’s Lives or Properties, & c. (35-36)

⁷ The transcription of the two Prior Green cases fear to this person as Jean Brifort and Jean Brisant respectively, a transcription error made by the compiler of the *Sessions Papers*.

While the prosecution involves items, which “might seem to be inconsiderable,” the necessity of truthfulness as a prerequisite to financial stability is articulated by this argument offered by prosecution counsel at the outset of the case.

In the first examination, the attorney for the prosecution examines John Cardel, an agent to the defendant. It is unclear from this particular story whether Cardel is an apprentice or servant, or whether he appeared as a prosecution or defense witness, and this is the type of character and dialogue that requires the reader in almost Saussurean terms to determine solely through the relationships between various parts of the story how to read the narrative. Because groups of tradesmen formed associations to fund prosecutions before the Old Bailey, Cardel probably appeared as a witness adverse to Prior Green. The creditors were certainly underwriting the fees and expenses of prosecution counsel. Through Cardel, it is established that Brifort is a creditor of Green. It is further established that the apprentice was instructed by his master to deflect the duns of his creditors for repayment, since “he desired me not to let him be troubled with these People half a Year before the Commission came out” (36). While this statement might have probative value as to acts or omissions committed on the eve or in anticipation of bankruptcy, its more quotidian narrative value is apparent to the reader. Simply stated, it is *funny*. The humor is a result of both the self-referentiality and the safety in which the particular utterance is made. Indeed, the line as rendered could almost come from a character in John Gay’s *The Beggar’s Opera*. But as a matter of law, the testimony of this witness establishes only that Green, already adjudicated a bankrupt, simply had several trade creditors. This is a fact relevant to the insolvency proceeding, but of no relevance whatsoever to a perjury trial with its necessity of *scienter* or specific intent as to the material omission upon which the

criminal indictment is founded. Cardel's testimony, therefore, seems superfluous and irrelevant, possibly included for some extraneous reason, or possibly for its entertainment value only. It is always important to remember that transcripts of examination are only selectively inclusive. When these statements do not contribute directly to the finding of fact necessary to support conviction or acquittal, the reader may ask: Why are they included? What do they contribute to the vignette as narrative? As we shall see, sometimes such questions can be answered in different ways, suggesting alternative interpretations and resulting narratives. In fact, the same questions can be asked if the examinations do support the legal narrative, since the decision to include relevant testimony is in itself a decision of narrative construction. Next, William Goulder, Secretary of the Bankruptcy Commission, is examined. Through this witness, it is established that an oath (spoken, not read) was administered at the insolvency hearing. Then William Melmot, another of the acting Bankruptcy Commissioners, testifies and repeats the words of oath actually administered. Goulder then acknowledges that the Commission then met on November 19, 1740, at the Crown and Rolls Tavern in Chancery Lane and declared the defendant a bankrupt.

The prosecution sets forth the adjudication of bankruptcy as an established legal fact and establishes Green's formal appearance at Guildhall for the insolvency examination, as a matter of procedure. Then, Cardel, the apprentice, reappears as a witness, adding a type of comic relief. With an abrupt shift of interrogatory emphasis, defendant's counsel asks Cardel: "Did not the Defendant appear publicly in his Shop, and carry on his Trade after he directed you to deny him?" (38). "Deny" here means avoiding contact, through his servant's actions, communication with his creditors. Not only was this

avoidance technique considered morally wrong, it was considered to be an act of bankruptcy to be proved before the Bankruptcy Commission and established again at the criminal trial. The importance of “denial” as a commercial and legal transgression will be seen in several of the cases under discussion in this analysis.

After acknowledging his presence within the shop and responding to the prosecutor’s further question as to whether there was some particular reason for “denying him,” such as sickness or other business, Cardel states that: “He (Green) had no Business but to lie a Bed, and I never knew him to have a Fit of Sickness: He desired me not to trouble him again with such sort of people” (37). Again, none of this testimony is relevant to the issue of criminal omission or intent, but it does create three comical characters. First, Green the defendant is portrayed as a stereotypical evasive and lazy deadbeat. He is in bed not for the sake of illness, but in pursuit of idleness itself. Cardel as comic character articulates the comic narrative with verbal and rhetorical flourish. Finally, the defendant’s counsel, in a time-honored fashion, uses humor to defuse the more serious narrative issue. But it is also possible to see defense counsel as the stereotypical bumbling barrister who asks a question to which he does not know the answer. It is important to remember that, at this point of the narrative, it is unclear whether defense counsel calls Cardel as a friendly or an adverse witness. In Part II of the Prior Green case, the specific questions and responses clarify the matter. Cardel is indeed adverse to his former master’s interests, and he is testifying on behalf of the prosecution. In any event, due to its lack of probative value, the narrative operates as comedy, arguably didactic in the sense that it articulates certain negative characteristics that are contrary to civic virtue in the roles of the brasier/bankrupt/criminal defendant, his apprentice, and his defense counsel.

In the final narrative shift in the testimony, which results in its denouement, prosecution counsel now produces the advertisement in the *London Gazette*, which required the defendant to surrender himself to the commissioners, and the advertisement is read. In a further act of narrative omission by the *OBSP* reporters, the crucial language of the advertisement is only generally referenced and not set forth with particularity. Ironically, the prosecutor, not the defendant, introduces the advertisement. The final line of the case states: “The Advertisement was read, and it not agreeing exactly with the Indictment, the Defendant was acquitted” (37). Did the court order the dismissal *sua sponte*? Was the acquittal the result of a defendant’s Motion to Dismiss? Such procedural technicalities are apparently irrelevant to the author of this case narrative.

Why is this narrative constructed in this manner? It consists of a four-part structure: 1) Statement of the Case, 2) Statement of Public Policy, 3) Selective Transcript of Testimony (with a narrative movement and structure discussed above), and 4) Case Holding. For reporting purposes, parts 2 and 3 could be omitted without sacrificing the legal integrity of the report. However, the Statement of Public Policy extols truthfulness as a component of both predictability and reliability in a burgeoning mercantile economy. Truthfulness is put forth as a virtue in three particular ways in the narrative. First, violation of the sanctity of contract causes the problem, which results in the legal default to the creditors, the underlying cause of the bankruptcy action. Second, untruthfulness is reflected upon in terms of the defendant’s course of conduct of avoidance not only of payment, but also of communication with his creditors. This also relates to the general concept of virtue and its relationship to market efficiency. Third, untruthfulness is seen at the macro-level in terms of Green’s dishonesty, though possibly relating to economically

immaterial assets, in the disclosure of his assets under oath at Guildhall during the formal administration of the bankruptcy estate. Parts 2 and 4 of the narrative, while not legally relevant, allow for the development and articulation of this idea. Honesty at both the individual and institutional level is a prerequisite to the efficient operation of markets. Finally, through the choice of language insolvency as a legal condition is equated with the negative qualities of sloth, dishonesty, and avoidance, as opposed to the positive virtues of industry, truth, and justice.

Both the bankruptcy fraud case and the child sex murder case are dismissed on legal technicalities. In one instance, there is no voice, only absence. In the other, there is clearly presence as the plethora of extraneous verbiage indicates. In the first case, there is no legal remedy. The heinous crime was committed, and with acquittal a predator remains free with further unwritten criminal texts yet to be authored without a happy ending. Yet in the bankruptcy case, the petitioners still have a remedy. The alleged fraud was uncovered; the omitted property ostensibly recovered; and the bankrupt estate duly administered. While the sanctity of the mercantile system in the body politic is upheld in the Green case, the lack of sanctity of the disenfranchised social body is, through the implication of narrative absence, maintained in the Thompson case.

In fact, the pursuit of additional remedies, including (but not limited to) the bankruptcy case, occurs in what can only be called a “judicial rematch” some three months later. Prior Green again is brought before the Bar of the Old Bailey on April 28, 1742, pursuant to an indictment for fraud and deception at the instigation of his nemesis Jean Brisant, a “French-Plate-Worker” and creditor of the defendant/bankrupt to the approximate amount of 100 pounds. (His name is listed as “Jean Brifort” in the prior

Sessions Papers.) This fascinating case supplements and, to a large extent, serves as a continuation of the prior narrative discussed above. The characters' traits and relationships are more fully developed, but, as we shall see, the narrative remains open-ended. The nature and extent of the relationship between Calder and Prior Green is now established, as the former is identified as a "servant" who had been in the employment of the defendant for "8 or 10 years." Although Calder was a servant, he was actively engaged in his Master's business. He states that Green "...often sent me to *Brisant's* House to look out Goods for Sale" (95). In the initial exchange between Cardel and defendant's counsel, it is clear that he was called as a prosecution witness, a point unclear in the previous criminal prosecution. Although no information is given as to the precise reason for the rift between Cardel and his former Master, the servant Cardel indicates that he left Prior Green's employment three or four months before the business failure.

As in the previous case, it is established that Cardel ran interference against the inquiries of his master's creditors - not only *Brisant*, but also the Clerk of Mr. Rudge, Green's beer vendor, and one Mr. Hopkins, a glazier. These denials took place while the debtor was hiding at the top of the stairs. Therefore, the claims are established, as well as the defendant's failure to pay. Again, none of this testimony proves the legal requirements of fraud, although it begins to give a clearer picture of Prior Green's course of conduct with his complaining creditors. The debtor's avoidance of his creditors may establish an act of bankruptcy, and to a modern lawyer, this seems relevant only to the bankruptcy proceeding itself. However, a review of the cases from the Old Bailey involving bankruptcy crimes throughout the eighteenth century indicates that a re-establishment through proof of the acts of bankruptcy was necessary to sustain a conviction.

As in the previous case, one of the Bankruptcy Commissioners is called as a witness. The Commissioner in qualifying himself as a witness states:

I was one of the Commissioners named in the Commission, and it was on the 15th of Nov. 1740. Mr. *Malmot*, Mr. *Salkeld*, and myself took the Oath as the Act direct. The Purport of it was, “I *Roger Conigsby* do swear, I “will faithfully and impartially execute the Trust” reposed in me: so help me God.” We that day declared the Defendant a Bankruptcy. Mr. *Malmot*, Mr. *Salkeld*, Mr. *Whitorne*, and myself were Commissioners, and this is the original Declaration made by us as Commissioners. (96)

Roger Conigsby is qualified as an example of truth and fidelity, attributes essential to the Common Law notion of privity of contract, in opposition to the negative traits and conduct attributed to Prior Green. According to the testimony of Conigsby, Green was required to appear before the Commissioners on November 24, December 1, and December 2, 1740, to be examined concerning his assets and liabilities. At the initial hearing, the debtor pleaded for more time to disclose his financial particulars, and the extension of time was granted.

At the continued hearing on December 15, 1740, the debtor appeared as required. Also, present was Thomas Malcher, Green’s apprentice, who “had received great Threats from his Master.” Mr. Conigsby states that “Mr. Green bid us Defiance very much, and behav’d quite unbecoming his Condition” (96). The defense counsel questioned Green’s sobriety, ostensibly to establish a defense of lack of capacity at the hearing, for Counsel asks: “Did you not fetch the Defendant from the Alehouse the 15th of December, for Examination?” (97). In response, Mr. Goulder, Clerk to the Commission, responds: “He might for ought I know, for he behaved very badly, and I believe he had been drinking pretty freely; but he was pretty sober when he attended the Commissioners afterwards...” (97). When asked by his own counsel as to whether the defendant was too drunk to be examined, Conigsby responds: “To be sure if I had thought him so, I would not have

examin'd him; but what with Passion or Liquor, he seemed always to be outrageous: I never saw him otherwise" (97). Likewise, Goulder states, "I believe he generally was in Liquor, except the last Day [February 17, 1740], which was the Time that he explained himself, than he was tolerably sober" (97). Clearly, the Commissioner and his Clerk are seeking to provide a foundation for Prior Green's testimonial competence, but the narrative has value as entertainment and negative instruction as well.

Having established through certain testimony the general background of the case, certain of the several written interrogatories of the debtor taken in connection with the bankruptcy proceeding are entered into evidence in the criminal trial. The prosecution establishes that Prior Green received twenty pounds from one of his account debtors, which he then remitted to William Warden, his bookkeeper, for "Wages and Board." The prosecution maintains a prior receipt indicating that the obligation had been paid during "the Midsummer before" contradicts the legality of this transaction. In fact, in the court's Findings of Fact, it is determined that the remittance to the bookkeeper was then returned to Green "in the Space of five Minutes." The prosecution seems to be arguing that this transfer was a fraudulent conveyance, a transfer made by a debtor to a third party (not a creditor) without adequate consideration and/or with the intent to delay, hinder, or defraud creditors.

The law of fraudulent conveyances as precept of commercial law has its roots in Roman law and its fullest articulation can be found in the Institutes of Justinian. This revocatory action, designated as the Actio Pauliana, gave creditors the right to attack in their own name before the chief provincial magistrate the acts performed by a debtor seeking to defraud them of their rights. Upon the proper finding by the magistrate, the

creditors could seize the debtor's property, avoid the transfer, and recover the property previously conveyed.⁸ This legal concept of a creditor's right to avoid otherwise legal conveyances was incorporated, like much Roman law, into the jurisprudence of the Continent, notably France and Spain, during the early modern period. Like most elements of Roman law existing in the law of England, it came not as a survival of the Roman occupation, but rather through transmission from Europe.⁹

By the eighteenth century, the English law of fraudulent conveyances was well settled. The first "Statute of Fraudulent Conveyances" (13 Eliz. c. 5) was enacted in 1570. It provided for "the avoiding and abolishing of feigned, covinous and fraudulent" transfers "devised and contrived of malice, fraud, covin, collusion or guile" in order to "delay, hinder, or defraud creditors and others" of their just and lawful debts and other inclusive legal and equitable claims. The Elizabethan statute states that such fraud is "not only to the let or hindrance of the true course and execution of law and justice, but also to the overthrow of all true and plain dealing, bargaining between man and man, without the which no commonwealth or civil society can be maintained or continued." This original statute was supplemented in 1584 by another statute that protected purchasers against fraudulent conveyance of land (27 Eliz. c. 4). Also, during the Restoration, a further statute reflected the commercial exigencies of the time. In 1676, Section 10 of the statute of Frauds was promulgated, authorizing execution upon property conveyed in trust for debtors

⁸ For an excellent discussion on the Roman law of fraudulent conveyance, see Max Radin, "Fraudulent Conveyances at Roman Law," 18 *Virginia Law Review* 109 (1931).

⁹ For an excellent discussion of the comparative development of European commercial law from its origins through the eighteenth century, see van Caenegem. *An Historical Introduction to Private Law*. (1992).

(29 Car. II, c.3§10).¹⁰ By the eighteenth century a substantial body of legislation and case law existed in England dealing with the problem of fraudulent conveyances.

Although the suggestion of a fraudulent conveyance appears as a possible reason for the indictment from the language of Prior Green's *Sessions Report*, the common law or statutory basis for the prosecution is never articulated. The legal basis for the indictment must be ascertained inductively by examining the questions posed by counsel and the Findings of Fact either articulated by the Court or deemed worthy of editorial inclusion by either the reporter or his editor. Apparently the defendant failed to disclose the existence of the transfer at the insolvency hearing, and its existence was either discovered or exposed by the creditors after the defendant had committed himself through his sworn testimony at the Guildhall examination. The included interrogatories also address the defendant's transfer of certain assets contained in an "Iron Chest to the *Crown Tavern*" prior to the Bankruptcy Commission (97). These assets consisted of "a Silver Tankard, six large Spoons, six small Tea-spoons, and a small Sum of Money, not exceeding 20£, and no other Effects whatsoever, & c," (97). At no time does the narrative state whether the actual transfers or false testimony concerning these transactions is the basis for the indictment and subsequent prosecution. While some of the *Proceedings* include the specific statute allegedly violated, most do not. In the majority of reports, particularly in the few reported cases of financial crimes, the legal basis for the prosecution must be ascertained by the selection of facts and questions included.

¹⁰ For an often cited and historically important judicial decision construing the statute of 13 Eliz. c.5 and applying it to the problem of secret trusts in favor of debtors later addressed in 29 Car. 11, c.3 § 10, see the 1601 decision of the Court of the Star Chamber styled *Twyne's Case* (3 Coke 80 b; 76 Eng. Rep. 809).

In the final three paragraphs, two important narrative shifts are present. In terms of total space and emphasis, most of the Report consists of questions and answers at trial and testimony by interrogatory of the witnesses, counsel, and the defendant. In the first two of the last three paragraphs of the report, a more concentrated statement of the facts adduced at trial is posited, a section of the narrative which resembles a more formal Findings of Fact which would generally support the Conclusions of Law upon which the holding of a case is based. As noted above, this formula is complicated by its lack of citation of legal authority.

The statement: “Thomas Malcher, the Defendant’s Apprentice, deposed...” introduces the first articulation of concentrated fact. It is not clear as to whether this summary of testimony refers to the oral examination taken of the witness or whether it is a summary of testimony addressed at the criminal trial itself: This segment of the report is as follows:

Thomas Malcher, the Defendant’s Apprentice, deposed, That Warden was first his Master’s Journeyman in Cheapside, and afterwards at his Shop at Moorfields, and that Cardel lived with him at the same Time: That on the 13th of November, before the Commission came out the Defendant told Warden, he had received a Sum of Money from Mr. Waters, a Baker, and desired him (Warden) to give him a Receipt for 20 l. for fear he should be called to an Account for the Money, at the same Time telling Warden, he might receive the Money, and give it him again: That a great many Persuasions were made use of, and at last Warden did give him a Receipt, and paid the Money back again to the Defendant, in the Space of five Minutes: That he (this Witness) was in the Room at the same Time, and that one Edmund Eyles, who is dead, was a witness to the Receipt: That after the issuing of the Commission, he moved two Stove Grates to his Mother’s House; that one of them was by the Defendant’s Orders taken away by a Porter, and the other was put into a Coach in Cheapside and carried off. This Witness added, That he was sent by Warden to fetch a Shop-Book which was concealed in an Alley in Moorfields, Being asked, Whether there were not some Iron Bars put up at the Defendant’s House, to prevent his throwing himself out of the Window, he answered, He believed there were some put up, but he believed they were to prevent him from doing himself any Mischief when in Liquor. (97-98)

That Malcher's narrative is a redaction of testimony is seen from its concentrated diction and sentence structure and from the repetitive use of "That" to introduce each sentence, adding regularity and continuity to the articulation of the narrative sequence. The use of the phrase "he (this Witness)" seems to indicate a reference in the Report to a prior narrative identified by the pronoun "he" that must be qualified to be the Witness in the present proceeding. In fact, the prior narrative could be introduced by and through the appearance and further testimony of the apprentice as a witness at the criminal trial. Finally, the use of the qualifying clause, "This Witness added..." indicates a narrative immediacy that could indicate appearance and testimony at the criminal trial. This is only one example of the way in which intertextualities deconstruct themselves by and through the process of constructing a commodified text that both memorializes and subverts the prior signifying text, i.e. the Bankruptcy Commission testimony, written interrogatories, prior (?) depositions of parties, and the prior text of Prior Green's January 15, 1742 hearing.

The penultimate paragraph appears to be a hastily drawn caseholding. As such, it is legally relevant to the outcome of the case. It states as follows:

We can only say in general, that several Witnesses was called by the Prisoner's Council, to prove, that the Property of the Goods in Dispute, was not the Prisoner's, but other Peoples; and others, to prove, that he had for some time past committed Acts tending to Lunacy; and it being allowed by the Attorney for the Prosecutor's that the Debts proved, amounted to 1300 *l.* and that they had received in Money and Effects 1100 *l.* upon the whole the Jury acquitted him. (98)

First, since the property in question was not that of the defendant, he could not be convicted of a transfer of assets subject to the claims of his creditors. Although this factual Finding is put forth in this conclusory paragraph, no reference is made to the specific

rebuttal evidence adduced at trial to impeach the testimony of the witnesses discussed above. (A possible reason for this omission will be considered below.) Second, Prior Green's sanity (or rather insanity characterized as lack of mental competency) is posited as a factor mitigating the specific intent for conviction. This aspect of the case was raised as a defense and considered in some detail by the witnesses and respective counsel in the case. Finally, without articulating the relevance of this particular finding, it is noted "the Debts proved, amounted to 1300 *l.* and that they received in Money and Effects 1100 *l.*" In other words, the petitioning creditors received money and property representing an 85% dividend on their proven claims. Does this represent a failure of the aspect of the prosecution's proof or is this then presented as a mitigating factor affecting the overall fairness of the case? Again, if the concerns of commercial integrity and economic efficiency in the winding up of failed enterprises are of paramount importance, such a Finding would be irrelevant to the issue of perjury, although it might bear upon the issue of the materiality of any alleged omission, even if the misstatement is intentional. The most persuasive element here is that the defendant could not lie about or fraudulently convey property he did not own. However, in a narrative where the reader, like the judge and jury, is forced to make evaluative judgments throughout, insufficient criteria are offered in order to allow such a disinterested judgment. The reader is forced to judge the reliability not only of the witnesses and the judgment of the court, but also the reliability of the authorial presence and the text itself.

It is possible, however, that the problem with reliability is at least in part acknowledged by the concluding paragraph of the Report:

N.B. The further PARTICULARS of the TRIAL of PRIOR GREEN, by the unavoidable Indisposition of Mr. BROOKER the Compiler, the Proprietors of this

PAPER cannot oblige the PUBLIC with at present, and humbly hopes their DELAY, in publishing this SECOND PART so many Days after the former, (to their very great Loss) will be interpreted as it really is, 2 Willingness to have obliged the PUBLIC had it been in their Power, and promise to give it genuine in the next Paper, in Case Mr. BROOKER recovers. (98)

It is even possible that the previous paragraph dispositive of the case was written by a substitute author after he became ill or otherwise unavailable to complete his assignment. Indeed, in a narrative gesture unusual in the *Sessions Papers*, the compiler Mr. Brooker is identified by name. Further, by acknowledging the Sessions Reporter's agency in relation to the text's proprietor and his customers, the nature of the narrative as commodity is emphasized. The style seems different from that in the previous sections of the report. However, this is not determinative since many of the Reports of this period involve such stylistic shifts. More persuasive is the use of the phrase: "We can only say in general..." This phrase gestures towards a recognition of the collective nature of the authorial enterprise, as well as the general nature of the conclusions and legal resolution of a narrative that had been developed with an increasing amount of specificity from the first Prior Green hearing through the specific testimony and description found in the later report. Both texts, however, suffer from a fundamental structural narrative flaw: it is unclear whether the defendant is being tried in the second hearing for the identical crimes charged in the first hearing, the disposition of which resulted from a technical flaw in the indictment. Or perhaps Green was recharged in the subsequent proceeding with separate, yet similar, acts and occurrences.

At any rate, the case may be settled with one or possibly two acquittals for the ne'er-do-well defendant, but the narrative remains unresolved. Because of the "unavoidable indisposition" of Mr. Brooker, the compiler of this particular Report, the

reliability of the report itself is questioned. And, because of the promise to publish additional particulars, the text itself is incomplete. A review of the Reports for the next several years indicates no subsequent cases at Old Bailey involving Prior Green. This final paragraph displays narrative instability itself. In mentioning this “SECOND PART,” is the proprietor of the reports referencing the narrative of which this paragraph is a part? In this case, this final qualification would refer back to the original narrative covering a hearing several months earlier. If this is the case, why would the second narrative be included as an entry on a particular trial date and not as postscript to the end of the particular issue of the reports? Also, in adding an additional Part to Number IV for the 1742 session in order to report in greater detail the Fraud case of Robert Rhode’s fraud, forgery, and deception prosecution relative to a will (a case that will be discussed later), the editor of the Papers also includes this note:

Note, the great Number of Prisoners tried this SESSIONS, and the Length of their respective CASES, oblig’d the Court to sit a Day longer than in the last: We have therefore been under a Necessity of dividing this into TWO PARTS, without which it would have been impossible to have given the Public a Fair and impartial Account of the Proceedings. The Second PART, which will among several Others, contain the Remainder of the Trial of Robert Rhodes; Pryor Green, and John Bolton, a Custom-House Officer for Murder, will be publish’d on FRIDAY next.
(80)

Given the particular specificity with which the continuation of Robert Rhodes’ narrative is mentioned, it is important to note that no mention of the Prior Green case as a supplemental narrative is made. It now seems that the second Green case is being reported as a subsequent trial. Acknowledging this interpretive problem, the more probable reading, based upon the inclusion of the apologia at the conclusion of the second rather than the first Prior Green narrative, is that the public is not to be “obliged,” and thus narrative instability

remains. Regardless of the resulting uncertainty, the reader looks forward to and expects supplemental narratives, an expectation that remains unfulfilled. Therefore, the reader is left with only the chimera of narrative completion.

This final editorial intrusion is both structurally and substantively ironic. What the paragraph acknowledges is a breach of the reports' implied contract with its readers. The Report (through its proprietor) is guilty on two counts. It fails to deliver on its promise implicit in its narrative contract, and it fails to deliver the penultimate narrative, a failure of future performance. Ironically, Prior Green, the subject of the report, is likewise charged with breaches of express contractual covenants and implied responsibilities of fair dealing. The plea at the end of the court's case is not for the judge's mercy, but rather for the reader's forbearance. This is a rhetorical conundrum that can be seen not only in the *Sessions Papers*, but also in some of the non-fiction prose, and novels of the period with which this and other *Sessions Papers* share an affinity.

The Prior Green case is significant, as it relies on serial installments of a continued or separate criminal prosecution in order to complete itself. If the case had been dismissed and not reprosecuted after the January 1742 hearing, the trial narrative would have lacked character development and an articulation of the contingency that Prior Green himself lacked the capacity to be tried and convicted due to the related possibilities of his insanity or alcoholism. With the intervention of the publisher, however, the narrative remains incomplete. The reader is left with only a suggestion as to the real reason why the defendant was acquitted. Like the other cases discussed in this study, the narrative that is put forth is deceptive, as the real story (in its broadest sense) can only be ascertained by

reference to intertextualities with other contemporary texts and various prior textual traditions.

The textual history upon which the Prior Green narrative relies has its roots in Roman law, its reception on the Continent in the Early Modern Period, and the passage and re-evaluation of the first English bankruptcy law in the mid-sixteenth century. The Prior Green case is a commercial drama exposing the amorphous boundary between the necessity of punishment of debtors and the desirability of forbearance and forgiveness of tradesmen who were distressed because of circumstances beyond their control or (as in the case of Prior Green) due to their lack of capacity. This problem has its own textual history (throughout the seventeenth and eighteenth centuries).

This conflict was acknowledged in Roman law. If a debtor had not successfully contested or satisfied a judgment, a creditor in the late Republic was afforded a praetorian remedy called *bonorum venditio* (“sale of goods”). As Andrew Borkowski and Paul du Plessis discuss in their *Textbook on Roman Law*, 3rd. Ed. (2005), this procedure allowed a creditor to seize all of the debtor’s assets for sale. The seizure was advertised and an agent was appointed to sell the debtor’s assets. The property was sold to the highest bidder, and a procedure was established for creditors to file claims. The creditors’ agent was required to prepare an inventory of the property and a list of debts. This general framework is similar to the administration of the Commissioner of Bankruptcy in the Prior Green case, and *bonorum venditio* has been described as “a model for bankruptcy procedure in modern legal systems” (77). The procedure, however, was harsh; it was solely a creditor’s remedy. After liquidation, the debtor remained liable for the unpaid portion of his obligations and suffered *infamia*, a type of legal liability resulting from disreputable conduct (77).

During the later reign of Augustus, the first of the Roman Emperors, an additional procedure was introduced. Resembling somewhat the modern remedy of voluntary bankruptcy, a debtor was allowed to voluntarily surrender his property to his creditors for sale and administration. Pursuant to this procedure known as *cessio bonorum* (“surrender of goods”), although the debtor’s property was sold, he was not subjected to *infamia* and was exempt from imprisonment for debt. Borkowski and de Plessis note that “surrender was not available as of right: it applied only where the praetor was satisfied that the debtor had genuine assets and that the bankruptcy was the result of misfortune” (78). Just as the praetors of early Imperial Rome sought to soften the creditor’s harsh remedy of the late Roman Republic, the Judge and the Jury at the Old Bailey acknowledge this tension and seem to mollify the harsh result of a criminal conviction under the facts and circumstances of the Prior Green case. In a real sense, the Prior Green case is a performance of the effectiveness and inefficiency of the criminal process to reach a civil end. At a systemic level the creditors are concerned with the micro-economic ends of maximization, optimization, and efficiency. The Prior Green case shows the economic irrelevance of criminal punishment, as the creditors received a substantial dividend of their claims as a result of the bankruptcy proceeding and not from the punitive criminal action at the Old Bailey.

The importance of the possibility of the debtor’s flight from the creditor’s jurisdiction is at the root of all European bankruptcy systems. Recourse to the debtor’s assets is the major remedy envisioned in the Roman procedures previously mentioned and subsequent manifestations in English and Continental law. In the Prior Green case, his “denial” of his creditors is his refusal to speak with them or acknowledge his indebtedness;

his flight is into the confines of his personal residence. This avoidance of personal responsibility as a violation of moral, spiritual, and temporal law is a problem that will be explored in the following discussions of Alexander Thompson's criminal prosecution and the works of John Bunyan. In the Prior Green case, the problem of denial and flight as a justification for the prosecution is offered, but regardless of its history as basis for punitive creditor action, loose references to mitigating aspects of Prior Green's capacity are determinative of the narrative's outcome.

The original English bankruptcy statute was passed in 1543. Like the Roman legal remedy of *venditio bonorum*, it was punitive in nature. It established a framework for the liquidation of assets and the allowance and payment of the claims of creditors.¹¹ While the early English bankruptcy laws were enacted to strengthen a creditor's remedies and to fight real and imagined abuse by a debtor, toward the end of the seventeenth century, certain voices condemning the abuse of debtors by creditors urging legal reform could be heard. For example, Moses Pitt's *The Cry of the Oppressed* (1691) is a contemporary expose of the horrors and suffering in the debtor's prisons. A more balanced and reasoned argument for bankruptcy reform is seen in Daniel Defoe's proposal "Of Bankrupts" in *An Essay Upon Project* (1697), a work heavily influenced by Defoe's own experience as a bankrupt and imprisoned debtor. The essay is characterized by its emphasis on balance, moderation, and fairness. The Prior Green case must be understood as part of a textual tradition with a growing awareness of the negative implications of the punitive aspects of the bankruptcy

¹¹ For a detail discussion of the genesis and psaaage of the first bankruptcy statutes, see Jones "The Foundation of Early English Bankruptcy" Statutes and Commissions in the Early Modern Period" (1979).

laws, and, more important of the economic advantages to trade and commerce in having debtors that were rehabilitated and could continue to contribute to national productivity.

In justifying his critique of the current state of debtor/creditor relations, Defoe argues that bankruptcy law and procedure as enacted no longer served their original purpose. He states that the bankruptcy law “... especially as it is now frequently executed, tends wholly to the destruction of the Debtor, and yet very little to the Advantage of the Credit” (75). Defoe emphasizes the cruelty in the law’s application and its lack of rehabilitative focus: “The Severities to the Debtor are unreasonable, and, if I may say so, a little inhuman, for it not only strips him of all in a moment, but renders him forever incapable of helping himself, or relieving his family by future industry” (75). Under the original bankruptcy system, the debtor remains personally liable for the claims of his creditors to the extent that they were not satisfied through the bankruptcy liquidation and distribution. Indeed, with no exempt property or relief from pre-bankruptcy indebtedness, he has literally no assets with which to support his family. Since his wages are subject to post-bankruptcy levy and execution, he is virtually unemployable; hopeless penury with detrimental social consequences results.

While Defoe avers that the bankruptcy law as originally promulgated has outlived its original purpose, he seems to acknowledge that the law was passed in support of a legitimate commercial and social policy:

All people know, who remember anything of the Times when that Law was made, that the evil it was pointed at, was grown very rank, and Breaking to defraud Creditors so much a Trade, that the Parliament had good reason to set up a Jury to deal with it; and I am far from reflecting on the makers of that Law, who, no question, saw 'twas necessary at that time...(77)

Over time, reasons Defoe, debtors have discovered cunning usages and legal loopholes by which to avoid the provisions of the law. Indeed, frequent reference is made in “Of bankrupts” to fraudulent transfers and concealments, as well as debtor’s use of sanctuary as defensive tactic to evade arrest and service of legal process.

Defoe offers a moral distinction between categories of debtors and creditors, a classificatory scheme that is determinative of rights enjoyed and penalties suffered under his bankruptcy reform proposal. Although Defoe’s argument for legal reform includes relief for debtors, he acknowledges that a dishonest bankrupt can turn a creditor into a debtor himself! First, there is “the Honest Debtor, who fails by visible Necessity, Losses, Sickness, Decay of Trade, or the like” (80). In contrast, there is the debtor who is “Knavish, Designing, or Idle, Extravagant...who fails because he has run out his Estates in Excesses, or on purpose to cheat and abuse his Creditors” (82). There is the “Moderate” creditor, who according to Defoe, “...seeks but his own, but will omit no lawful Means to gain it, and yet will hear reasonable and just Arguments and Proposals” (82). In contrast, there is the “Rigorous Severe Creditor, that values not whether the Debtor to be Honest Man or Knave, Able, or Unable; but will have his Debt, whether it be had or no; without Mercy, without Compassion, full of Ill Language, Passion, and Revenge” (82). In making this distinction Defoe argues for a law that will afford the honest debtor pity and compassion while a “due Rigour and Restraint” may be placed upon a dishonest debtor so that his “Villainy and Knavery might not be encourag’d by a Law”(82). Defoe’s bankruptcy proposal argues for “a due Care” that mens Estates” be secured for them so that they might receive the best and most reasonable outcome possible under the economic exigencies of the case. Finally, the “Rigorous Severe Creditor,” like the “Knavish,

Designing, or Idle, Extravagant Debtor,” would not share in the benefits of the new statutory framework, as “due limits” would be set so that “... no man may have an unlimited Power over his Fellow-Subjects, to the Ruin of both Life and Estate” (82). This tension between acceptable and transgressive behavior on the part of both debtors and creditors is seen through the early eighteenth century up through the bankruptcy legislation of today.

In furtherance of the administration of his bankruptcy revisionism, Daniel Defoe proposes a restructured “Court of Enquiries” that allows for the filing of a voluntary bankruptcy by a petitioning debtor. Up to this time, bankruptcy proceedings could be commenced only by the instigation of petitioning creditors establishing the legal threshold that an act of bankruptcy had been committed. In furtherance of its rehabilitative aim, Defoe’s proposal provides an exemption framework whereby “51 Percent” of all property surrendered would inure to the benefit of the debtor. Also, the honest debtor would be given a “full and free Discharge” of all debts at the conclusion of the proceeding. Strong penalties resulted from debtor’s misbehavior. Defoe proposes a criminal sanction: “If it shall appear that the Bankrupt has given in a false Account, has conceal’d any part of his Goods or Debts, in breach of his Oath, he shall be set in the Pillory at his own door, and be imprison’d during Life, without Bail” (86). In order to prevent fraud from being committed upon an honest creditor, specific language for a sworn “Proof of Claim” form insures honesty among the claimants pursuing the debtor. Indeed, when the law was passed in 1706 that made provisions for both the honest and dishonest debtor. Defoe, in an essay published in his *Review* on March 23, 1706, argued that the title of the new law should

read: “An act of prevent the Frauds, frequently committed both by Bankrupts and their Creditors” (Hoppit 22)

Such a bankruptcy proposal as Defoe’s would undermine many of the legal fictions that arose around the prosecution and defense of involuntary bankruptcy proceedings. Flight and sanctuary, both real and imagined, played an important role in the passage of the Tudor bankruptcy statutes and remained a problem both during and after a bankruptcy proceeding. Defoe felt that his new approach to dealing with insolvency matters would “...effectually suppress all those Sanctuaries and Refuges of Thieves, the *Mint*, *Friars*, *Savoy*, *Rules*, and the like...” (87). He reasons that a voluntary bankruptcy would obviate the need for sanctuary since “Honest Men wou’d have no need of it, here being a more Safe, Easy, and More Honourable Way to get out of Trouble” (87). Resort to Sanctuary was made a felony under his proposal. Indeed, tensions of denial, sanctuary, and flight remained in an important policy concern in the juridical discourse concerning bankruptcy jurisprudence in the early eighteenth century. However, Defoe’s proposal (or the public position that it reflects) proves to be persuasive. In 1705 a bankruptcy statute was passed that allowed a debtor to receive a discharge of indebtedness if he complied honestly with his disclosure of assets and liabilities and if there were no findings of fraud.

The problem of the proper balance between creditor’s rights and debtor’s remedies continued to be a topic of debate at the time of the trial of Prior Green. This tension is expressed in the legal treatise titled *The Law For and Against Bankrupts* (1743), published shortly after the Prior Green felony trial. In the Preface, the author, a former Bankruptcy Commissioner, states

According to our Laws, Bankrupts are generally esteemed a crafty, fraudulent, deceitful and extravagant sort of Persons; yet we may observe that innocent and

regular living Traders almost daily become involved in Bankruptcies, through the Badness, or by other inevitable Accidents. Indeed, there are some who intirely impute these Misfortunes to uncommon Profuseness, Pride and Luxury, beyond what have formerly known in this Kingdom; and I confess that our Tradesmen make a considerable Figure, and frequently live up to the full Height of their Circumstances; though I am inclinable to think, that this is sometimes to support their Credit in the World, on which Trade depends, and not altogether to administer their Pride. (1)

Although the treatise does not specify the author's tenure of service, his observations are made from the vantage point of an attorney actually involved in a volume of mid-eighteenth-century bankruptcy cases. He acknowledges that the characterization of bankrupts as "*a crafty, fraudulent, deceitful and extravagant sort of Persons*" is the basis upon which the law was promulgated and applied. However, he recognizes that "*innocent and regularly living Traders almost daily become involved in Bankruptcies.*" Further, he offers an apology for the seeming extravagance of some traders by saying that their high living was sometimes undertaken to support their credit rather than from the Puritan catch-all category of "Pride." In making this allegation, he fails to explain why a debtor's extravagant living in order to support his trade or business would not in itself be an example of pride. John Bunyan, considering the negative exemplarity of *The Life and Death of Mr. Badman* (1680), would have a different view. At any rate, this apology shows recognition of the exigencies of trade over traditional Puritan notions of fair dealing and good business practice, and by implication the desirability of a bankruptcy system that is less punitive in nature.

The realities of trade are further emphasized as the former Commissioner of Bankruptcy continues his essay as to its causes. The author of *The Law For and Against Bankrupts* continues:

But if it really happens, that Luxury and Extravagance should be prevalent now exceeding former Days, and thereby some Traders, merely by their own ill conduct, are plunged into Difficulties, and utterly ruined; or if we allow that a few may be very base and wicked as politically to break, in order to advance their Fortunes, at the expense of others, and some such great Criminals perhaps there are; it is hardly possible that these can be the Sole Reason of so many Persons breaking, which I take to be owing more to the Decay of Trade in general, the heavy Taxes imposed on every Thing, and the high Rents that are exacted by Landlords, than to any Causes whatsoever: and to which I may add, the Start and Advantage that foreign Kingdoms have got of Us, and on establishing their own Manufactures, improved by the Decline of ours, and, I fear, by past ministerial Neglects and Oversights. (1)

By referencing what is now termed “comparative advantage between nations,” the author is incorporating the discourse of macroeconomic theory in order to explain what he perceives to be the high incidence of business failure. The author specifically notes burdensome taxation and high rents as causal factors, elements, which he deems to be beyond the control of the eighteenth-century entrepreneur. Finally, by mentioning “*past ministerial Neglects and Oversight*,” he acknowledges the role of governmental monetary and fiscal policy in affecting the rate of business failures.

The author completes his argument in the final relevant passage of his preface to the treatise when he states that “*I could here inlarge (were it not very disagreeable to me) upon the mean and abject Condition of most of our Artificers, and all the lower Class of Tradesmen; but as I have already said enough in Behalf of unfortunate Bankrupts, for whose Relief the Commission is by Law appointed...* (1). Here the author chooses not to engage in a detailed description of the bad class of bankrupts, highlighting these debtors who are victims as a result of the economic system. Finally, he takes the bold step of claiming that the Bankruptcy Commission is by law appointed for the relief of the bankrupts. While entry of an order of discharge and a rudimentary exemption statute is a byproduct of bankruptcy reform of the early eighteenth century, the prevailing policy of

punitive bankruptcy administration for the benefit of creditors remained. At any rate, this “Preface” of 1743 offers an articulate counter-narrative to the policy considerations behind the enactment and construction of the bankruptcy laws since their inclusion in English jurisprudence.

The Prior Green case is both a manifestation and performance of both the bias towards creditors and the unresolved tensions discussed above. The Prior Green case gives itself meaning through the intertextual referentiality of the two discrete trial reports. However, the case also incorporates by implication an entire corpus of legal, expository, and fictional texts, which articulate a variety of problems inherent in the bankruptcy laws up through the mid-eighteenth century. While particular texts sometimes offer specific elucidation of a given trial report, all of the *Proceedings* have a general intertextual nexus with bodies of discourse that are social, economic, and legal in nature.

CHAPTER V

THE TRIAL OF ALEXANDER THOMPSON AND THE *ORDINARY'S ACCOUNT*: POST-CONVICTION NARRATIVE COMPLETION

While many of the cases analyzed here focus on the Court Term for 1742, a particular bankruptcy criminal prosecution of 1755 is worthy of note. This case shows in a number of ways how the criminal law was used as a type of economic control to preserve the mercantile status quo of the mid-eighteenth century. While hundreds of cases from the Reports of this period are illustrative of this fact, this case is of particular interest because of the egregiousness of the circumstances and the harshness of the remedy. On its own, this Report is incomplete. As in many of the cases, more questions about the facts are suggested than answered. Alternative story lines are insinuated but never developed. This trial report exhibits a specific type of narrative completion resulting from Thompson's extensive story, as that is articulated in *The Ordinary of Newgate's Account of the Behavior, Confession, and Dying Words, of the Four Malefactors, Who Were Executed at Tyburn, On Monday the 21st of February, 1756*.

Unlike the Annesley/Redding trial, the Alexander Thompson *Sessions Report* does not open with the reading of indictments or the opening statements of the prosecution. In fact, it is unclear to what extent, if any, lawyers for either side participated in this trial. There is no specific reference to the statutory or common-law basis for the prosecution. The text commences with this simple statement of the case:

88. (L.) *Alexander Thompson*, embroiderer, dealer and chapman, was indicted, for that he becoming a bankrupt, within the meaning of the several acts of parliament relating to bankrupts, he owing his credits to the amount of 200 *l.* and upwards, did

not surrender himself to be examined by the commissioners, according to proper notice given &c. April 26*. (85)

At the outset of the case it is clear that no one has been harmed, and no money directly taken from any party or entity within the terms of the specific charge. Economic injury is of a type that is implied by its systemic nature. Thompson is simply being tried for failing to appear at the creditors' meeting in connection with the bankruptcy case. Now, under current U.S. Bankruptcy law, if a debtor fails to appear at a meeting of creditors, his case will simply be dismissed with prejudice. If he appears and gives a false oath, he is subject to prosecution for fines and imprisonment. But, if he pleads the Fifth Amendment privilege against self-incrimination, he risks losing his right to a discharge of indebtedness. In the case of an involuntary bankruptcy (as in this case), a debtor could be ordered to appear (after notice and a hearing). If he then failed to appear, he could be held in contempt, a finding resulting in potential fines and incarceration until he complied with the underlying Order upon which the Motion for Contempt was based. The eighteenth-century jurist Blackstone states the general legal grounds and prospective punishment upon which this type of prosecution is based:

The bankrupt, upon this examination is bound upon *pain of death* to make a full discovery of all his estate and effects, as well as in expectancy as possession, and how he has disposed of the same; together with all his books and writings relating thereto: and is to deliver up all in his own power to the commissioners; (except the necessary apparel of himself, his wife, and his children), or, in case he conceals or imbezzles any effects to the amount of 20 *l.*, or withholds any books or writings, with the intent to defraud his creditors, he shall be guilty of *felony with benefit of clergy*. (II. 482)

Blackstone includes a footnote to justify the Continental historical precedent for this harsh rule: "By the laws of Naples, all fraudulent bankrupts, particularly such as do not surrender

themselves within four days, are punished with death – also all who conceal the effects of a bankrupt, or set up a pretended debt to defraud his creditors (Mod. Un. Hist. xxvii. 320)” (II 482). Some aspects of trial practice and procedure at the Old Bailey were similar to today’s practice; however, the severity, breadth, and barbarity of the substantive law to which capital punishment was a remedy is a notable difference. In this case, the defendant is being charged for failing to appear at the meeting of creditors, but, as in all of the cases, there is a sub-text that completes the narrative. While the sub-text usually is a narrative aporia, the text is completed literally on the body of the prisoner.

The precise legal basis for the prosecution is articulated in *The law for and against bankrupts containing all the statutes, cases at large, arguments, resolutions, ...down to the present time...Together with precedents...By a late commissioner of bankrupts* (1743). We can look as well at Thomas Goodinge’s *The law against bankrupts: or, a treatise wherein the statutes against bankrupts are explain’d, by several cases, resolutions, judgments and decrees, both at common law, and in chancery...The third edition with several large additions of new cases, and all the acts relating to bankrupts to this time* (1713). These treatises are the main compilations of British bankruptcy law available to lawyers in the mid-eighteenth century. The 1743 treatise cites the statute of 5 Geo 2c.30 as the basis for the duties and penalties of a bankrupt for submitting to examination and turnover of his books and records. The applicable law states

whereupon the Person or Persons, against whom such Commission shall issue, shall be declared a Bankrupt or Bankrupts, shall not within forty-two Days after Notice thereof in writing, left at the usual Place of Abode of Such Person or Persons, or Personal Notice in Case such Person or Persons be then in Prison, and Notice given in the *London Gazette*, that such Commission is issued, and of the Time and Place of a Meeting of the Commissioners therein named, or the major part of them, surrender him, her or themselves to the said Commissioners, and sign or subscribe such surrender, and submit to be examined from Time to Time upon Oath, by and

before such Commissioners or the major Part of them, by the Commission authorized, and in all Things conform to the several statutes already made and now in force concerning Bankrupts...shall be adjudged guilty of Felony, and suffer as Felons without Benefit of Clergy; and in such cases, such Felons Goods and Estate shall go and be divided among the creditors seeking Relief under the Commission. (43-44)

The language of the statute is cast in negative rather than positive terms. It states that if the bankrupt does not comply with his duty, he is guilty of a Felony without Benefit of Clergy.

An alternative way of drafting the statute would have been to assert the bankrupt's responsibility as a positive duty, with a final section setting forth the penalty as a consequence of noncompliance. The use of the negative rhetorical style emphasizes the draconian policy evident in the substance of the terms of the statute itself.

The Statute of 5 Geo 2c.30 requires that the bankrupt appear for examination within six weeks (forty two days) after Notice of the adjudication of bankruptcy. Since Thompson was not in prison, the statute required that notice be left at this usual place of abode and that it be run in the *London Gazette*. As we can see from the specific facts in the Alexander Thompson criminal trial, both his last known place of residence and the publication of the notice in London's legal newspaper are established. These two are specific elements in the crime for which Thompson is prosecuted. However, this Trial report, as text, presumes knowledge (and the intertextuality) of other texts in order to make sense. The compiler of the report presumes that the reader of the report has some basic knowledge of the general parameters of eighteenth-century bankruptcy law and commercial practice, thus signifying readers of literacy and sophistication. Not only is the story put forth in the trial report completed by Alexander's meditative declarations in the *Ordinary's Account*, it is also

structurally organized by implied references to extraneous legal texts that are necessary to constitute the rationality of the text.

In reading the *Sessions Report* of the case of Alexander Thompson according to its own terms, and without the aid of extraneous narrative clarification, the reader is left with a sense of confusion. No coherent time line is articulated. The relevance of the defendant's imprisonment at Newgate is unclear in relation to this particular prosecution, since he states at the end of the narrative that he had been in New Prison for the month prior to the trial. In fact, this confusion as to the time and place of his pretrial incarceration is not clarified until the retrospective reordering of what appears to be chaotic and selective articulations of the facts in the *Ordinary's Account*.

The trial report in the Alexander Thompson case resembles the previously discussed Prior Green narrative in a number of respects. There is no specific legal citation as to the statutory or common-law basis for the criminal charge. Second, the primary prosecution witness is a former employee of the bankrupt/defendant. Third, while much of the testimony appears to be redacted or selectively included, great care is taken by the compiler to include the precise language of the legal notices pertinent to the ancillary bankruptcy proceeding - - in this case the Commission of Bankruptcy and the notice published in the *London Gazette* requiring the debtor's appearance on May 2 and 9 and June 10, 1755, at Guildhall. At the first of these hearings, Thompson was to make "a full discovery and disclosure of his estate and effects." The verbatim legal notices may be included because the compiler had ready access to the exhibits for ease of transcription, or because the operative language was of fundamental significance in establishing the crime and its successful prosecution. At the second hearing, the assignees of the debtor's property for

the benefit of creditors were chosen, and at the final meeting the creditors completed their examination of the debtor and agreed or dissented from the issuance of the debtor's certificate of discharge. Like most criminal trials before the Old Bailey during this period, in neither case is the defendant represented by counsel. In both cases, the Report concludes with a very brief statement purportedly made by the defendant stating his factual or legal theory of defense. In both Prior Green reports there is at least a gesture towards an explanation of the case holding. In the first Prior Green report, the reader learns that the defendant was acquitted due to the discrepancy between the *Gazette* advertisement and the indictment. In the second Green report, the compiler includes a general statement as to the factual and equitable basis for the ruling. In the Alexander Thompson bankruptcy criminal trial, there are no findings of fact or conclusions of law. There is only the entry of the startling final verdict: "Guilty Death."

The questions and answers of the parties and witnesses do not have the apparent narrative logic found in the extensive coverage of the various examinations as we will see in the Annesley/Redding murder case. In part, this absence is a function of the absence of at least defense and possibly prosecution counsel, and it shows the burgeoning importance of lawyers as constructors of legal narrative. For an uninformed reader, the relevance of each question is ambiguous. First, the reader is forced to connect each question and answer to a governing legal narrative, the specific elements of which are not articulated in the text of the opinion. Second, many of the answers of the witnesses suggest a parallel narrative, the significance of which is never explained (at least not until the subsequent story rendered through the *Ordinary's Account*). Given the rare number of bankruptcy crimes prosecuted relative to the total number of criminal trials in London during the eighteenth

century, the trial narrative does not explain on its face why this case which ends in a hanging was pursued when there was no apparent damage to specific property or harm to another person. The case report suggests certain groups of facts that the reader must assume are legally relevant or operative, although there is little in the way of a plot other than the defendant's mere failure to appear at the creditor's examination. Other than this simple yet fatal transgression, there is only suggestion without amplification as to the possible meaning of the defendant's past actions that would result in the prosecution. Further, the time line is difficult to ascertain. Temporalities are suggested that trigger a desire on the part of the reader to engage with a plot other than that, which is apparent in the pages of the *Sessions Papers*.

Susannah East, a former journey woman to the defendant, was the prosecution's chief witness with actual knowledge as to Alexander Thompson's daily routines and business practices. The testimonial portion of the case report is initiated by her statement, apparently in response to a preliminary question as to his residence:

Susannah East. The prisoner lived in Bury-street, in Feb. last.

Q. What was his business?

S. East. He followed the business of an embroiderer.

Q. Do you remember Mr. Blanch?

S. East. I do; he is an upholder. I was a journey woman to the prisoner, Mr. Blanch came to talk to my master after he was burnt out, about a bill that was due to Mr. Blanch from Mr. Thompson.

Q. What day of the month was it?

S. East. I can't say I remember the day of the month; it was after the fire at my master's house.

Q. What day was the fire at your master's house?

S. East. That was on the 20th of Feb.

Q. What do you know it by to be after the fire?

S. East. Because I know it was about 2 days after my master had received his money of the insurers.

Q. What was the answer your master made to Mr. Blanch?

S. East. He said he would pay him on the morrow at 11 o'clock.

Q. Do you know what day of the week they had this discourse?

S. East. I believe it was on a Friday morning.

Q. Where did your master live at that time?

S. East. He lived in St. Martin's Street, at the house of Mr. Wychart: he went there from Mr. Davis's, his father-in-law.

Q. Where did you live then?

S. East. I liv'd in the house with him.

Q. Did Mr. Blanch come on the morrow?

S. East. He did.

Q. Did Mr. Thompson see him?

S. East. No, he did not.

Q. Where was your master?

S. East. I don't know where he was: I heard he went out a little after 7 in the morning; but I was then, I believe, asleep in bed.

Q. How long did you continue there after this?

S. East. I only continued there till the Monday following; master did not return.
(85)

As in the Prior Green case, the narrative importance of a debtor denying the inquiries of creditors is seen in the immediate questions concerning Susannah's acquaintance with Mr.

Blanch. The reader learns that a fire occurred at Thompson's residence, which was also his business premise. It is established that he received insurance proceeds as a result of his loss and, by denying Mr. Blanch, refused to use the insurance proceeds to pay his creditors. The significance of the fire and casualty insurance is emphasized as an important element of the narrative, but one that is left unresolved in the trial report. As she testifies as to Alexander Thompson being "burnt out," Susannah East implies both that which has been dissipated and wasted and the actual property that has been burned in the fire. This emphasizes that insolvency as to the creditors is a violent act. Thompson's social and economic utility is likewise "burnt out." The issue of arson will be addressed with specificity in the *Ordinary's Account*. At this point, there is only the suggestion by implication that the fire was purposely set. While such a narrative possibility is offered at the outset of the case, no allegation of arson is made, nor does any prosecution for arson occur as a result of the fire. Such a prosecution, as in an arson case, involves a capital offense. In other words, the results of a conviction are the same. The creditor's anger at the mere suggestion of arson and the debtor's subsequent failure to apply the fire-insurance proceeds to his outstanding debt as a matter of commercial fair dealing may have resulted in the bankruptcy crime prosecution as a more efficient means to a judicially brutal end since the elements of Thompson's 1) knowledge of the pendency of the bankruptcy proceeding and 2) failure to appear at the creditor's hearing are much easier to prove. The creditors have written off financial recovery. In the world of trade, the example set by Alexander Thompson's conviction and execution outweighs the creditors' likelihood of success of financial recovery.

In this opening section of Susannah East's testimony, the themes of geography and temporality are emphasized, and these elements of the narrative are critical to both legal disposition and post-trial narrative expansion. Although the specific references to time and place adduced in her testimony do not prove any elements of the crime of which Thompson is charged, they are relevant to the retrospective narrative provided in the *Ordinary's Account*. Episodic movement gradually becomes an important characteristic of the developing narrative. In ascertaining when Mr. Blanch attempted to collect his debt from the recalcitrant debtor, the beginnings of a time line *in medias res* are provided by indirect reference. While Susannah East does not remember the exact date when he agreed to meet for satisfaction of the debt, she remembers that it was after the fire which destroyed the inventory and, as the reader later learns, resulted in the deaths of two innocent people and nearly her own death, as well. She recalls that the fire occurred on February 20, 1755, and this is the foundational date upon which the audience must construct the chronology relevant to the trial narrative. She remembers that the meeting took place after the fire because the parties discussed payment of the bill two days after Thompson received the fire insurance proceeds. According to her testimony, they agreed to meet the next day at 11:00 o'clock to satisfy the obligation. Thompson did not appear; he left a little after 7:00 a.m. on that Saturday morning. She testifies that she continued to work only until the following Monday, some two days after the scheduled date for repayment of the debt. She does not specify particular reasons for leaving Thompson's employment nor does she offer derogatory testimony as to the witness's character. Specific times, days of the week, and dates are the loci by which spatial movement is measured. In fact, it is within this time/space matrix that the narratives in both the trial opinion and the later *Ordinary's*

Account are structured. The articulations of time and place are of minimal legal relevance in Susannah East's trial testimony, but time and place are the ultimate measure by which the defendant's fate is determined. In fact, it is Alexander's failure to appear at a specific time and place which results in his execution, a final existential act at a particular time and place.

At this point in the trial report, the subject of her testimony shifts, and she begins to talk about her recent meeting with the debtor and the nature and extent of his liabilities:

Q. Do you remember going along with Mr. Lowden to the prisoner since he was in Newgate?

S. East. Yes, I do.

A list of creditors and their several debts produced.

Q. Do you know anything of this list?

S. East. I know all the persons herein named. I and Mr. Lowden went to master with the list yesterday in Newgate.

Council. Here is Mr. Thomas Cotes, 70 *l.* Do you know him?

S. East. I do.

Q. Did your master deal with him?

S. East. He did.

Council. Here is James Scot, woollen-drapper, 13 *l.* 10 *s.*

S. East. I know him; master dealt with him.

Council. Here is George Vaughan, 60 *l.*

S. East. I know him; master dealt with him.

Council. Here is William Gray, 24 *l.* 14 *s.* 6 *d.*

S. East. I know him; master traded with him.

Council. Here is Thomas Smith, 15 l. 15 s.

S. East. I know him; master traded with him.

Council. Here is John Kentish, 8 l. 1 s.

S. East. Master said he did not know the man.

Council. Here is Andrew Nash, 7 l. 10 s. and John Ward, 19 l.

S. East. He acknowledged all, except that of Mr. Kentish's, but said he did not know the man. He acknowledged them to be debts due in April last, before he went away, which was on the 12th of April.

Q. from prisoner. Whether or not she heard me mention any debt before I went away?

S. East. Yes, I did; I heard him mention Mr. Blanch's debt the Friday before he went away.

Q. from Prisoner. Whether she heard all these particular debts before I went away?

S. East. No, I did not. (85)

In the *Sessions Papers*, when theft is involved, the stolen property and its value are listed with particularity, usually at the outset of the case. In order to highlight the economics that permeate the Reports, the amounts of the respective claims are itemized. While this is a narrative convention characteristic of the trial reports, it emphasizes the policy concern of commercial reliability and efficient operation of markets. As a criminal prosecution, the trial is not about failure to repay debts; that is properly a matter for adjudication and administration in the bankruptcy proceeding, civil litigation, or imprisonment for debt at Fleet Prison. The crime for which Thompson is really being tried is his failure to appear at Guildhall. The debts are, however, an important aspect of the economic narrative and its portrayal of the rendering of the extreme form of commercial justice that is the subject of the trial narrative. Although it is the defendant's economic narrative that is being

constructed, its details are being provided not through the voice of Alexander Thompson himself, but rather through the voice of his journey woman. This aspect of the narrative is established through her testimony that first she had actual knowledge that the defendant traded with these creditors and second the defendant acknowledged that, except for the John Kentish claim, the list was an accurate statement of valid claims. The defendant's only statement as to the debts is seen in his cross-examination where he gets his former employee to admit that the only debt that he mentioned before he went away was the Blanch obligation. Since his questions in no way address the legal validity of these debts prior to his abrupt departure, Thompson, operating as his own trial counsel, is ineffective in both his role as legal advocate and as constructor of narrative, although he is satisfying the Court's policy that he should articulate his defense in his own voice.

The reader sees the problems of narrative *aporia* and discontinuity in this section of Susannah East's testimony. When asked whether she had visited the prisoner since he was at Newgate, she indicates that she and Mr. Lowden had gone to see the defendant on the day prior to the trial. At this point, no date is given as to his arrest. No account is offered as to why he disappeared (other than to evade his creditors) or, more specifically, as to what he was doing from the date of his departure until the time of his arrest. A reader of only the trial report could reasonably conclude that Thompson's circumstances during this period were of no relevance to the legal narrative. The witness clarifies her prior testimony by specifying the date of Thompson's departure as April 12, 1755.

After brief testimony by two minor witnesses, Ann Wychart, the defendant's landlady, testifies that the prisoner lodged at her house and engaged in the embroidery business at the time he disappeared. This testimony is included to show that he was a

tradesman at the time of his departure, a threshold requirement necessary for his adjudication as a bankrupt, and therefore it is corroborative in nature. In fact, in the case of Rinsey Tyrer before the Old Bailey on January 16, 1766, Tyrer was acquitted for not appearing for the same type of creditor's examination since the debtor's claimants did not prove the technical requirement that he was a tradesman, even though it was proved in order to obtain the initial order of adjudication of bankruptcy. Proof of the technical elements of bankruptcy must be proved again at the Old Bailey to sustain a felony conviction; the doctrine of collateral estoppel is not strictly applicable. Wychart testifies that her tenant did not leave a forwarding address and never reappeared. She corroborates the time line previously set forth by the defendant's former employee. When asked what family he had, she responds: "His spouse, Susannah East, and another woman, named Fawlet." There is no further elaboration in the Report as to the identity of the spouse and the other woman. The relevance of any of these relationships to the question of guilt or innocence is not developed, nor can their importance to the narrative be ascertained by reference to the Trial Report alone. As we will see in the *Ordinary's Account*, Thompson's wife's importance as a character in the narrative will be articulated and will clarify the gaps and uncertainties of this criminal trial narrative. At any rate, their inclusion without explication as a set of family relationships suggests that Thompson had ambiguous and problematic relationships with women.

At this point, the focus is shifted to the operative legal documents from the bankruptcy proceeding. The bond and affidavit of the petitioning creditors is introduced into evidence and reproduced in *Sessions Papers* report by the compiler. In this short document, the specific names and amounts of the claimants are stated and then restated.

This repetition emphasizes the overriding theme of economic loss in the *Report*. The degree of specificity equates debt loss with burglary or highway robbery; the continual repetition of values and amounts of goods and money lost is a constant characteristic of the trial reports of this period. Efficient administration of the debtor's estate requires appearance and honest testimony at the creditors' hearings. A reader of the Report is asked to equate Alexander Thompson's failure to appear with dishonest economic loss. Since the loss to creditors is akin, at least in consequence, to robbery, then the intentional behavior that contributes to this loss should be treated like theft as a capital crime. Essentially, the rhetorical strategies of the *Report* urge the reader to equate "white collar" crime with violent highway robbery. If that were the sole operative narrative in this case, it would delineate as an outer limit of the use of capital punishment in the mid-eighteenth century as a form of economic control and sanction. However, as we shall see from a reading of *Ordinary's Account*, there is more to the story than meets the eye!

The operative legal documents around which the prosecution is based are introduced. The first document is the actual notice requiring Thompson to appear and surrender himself to the Commission. This document states as follows:

April 22, 1755.

Whereas a commission of bankrupt issued forth under the great sea of Great Parish against you Alexander Thompson, of the parish of *St. James, Westminster*: and whereas the major part of the commissioners, named in the said commission, have declared you to be a bankrupt, we do hereby summon and desire you, the said *Alexander Thompson*, personally to appear before the commissioners, or the major part of them, on the 2^d and 9th of May next, and on the 10th of June following, at three of the clock in the afternoon, at *Guild-hall, London*, then, and there, to make a full discovery and disclosure of all your estate and effects, according to the acts of parliament concerning bankrupts, &c. herein fail not at your peril. Given our hands, &c. Sign'd Richard Davis, Thomas Life, and Thomas Cobb. (86-87)

According to Cheshire, the messenger for the Commission, a duplicate of the notice was served on Mrs. Wychart's husband at their home on April 24, 1755. Also, in response to a query from the un-named "Q" (a questioner who is probably the defendant), Mrs. Wychart states: "I remember a copy of this notice being put upon the dining room door. I had twice notice of it before it came." So, it is established that the notice was served upon the landlady, but nowhere is it shown that the defendant had actual notice of the legal duty to appear - - the violation of which, according to the Court's ruling, will result in his loss of life. Also, nowhere in the report is a possible legal distinction between actual and constructive notice argued or even mentioned. The Commissioner's compliance with the statutory provisions is established. Except in the brief statement made by Thompson in his defense at the conclusion of the trial, the text does not articulate or consider the defendant's lack of actual notice.

A second notice is introduced into the evidence (and repeated in the Trial Report).

On April 26, 1755 the following notice ran in the *London Gazette*:

Whereas a commission of bankrupt is awarded and issued forth against *Alexander Thompson*, of the parish of *St. James, Westminster*, embroiderer, dealer and chapman; and he, being declared a bankrupt, is hereby required to surrender himself to the commissioners in the said commission named, or the major part of them, on the 2d and 9th of May next, and on the 10th of June following, at three of the clock in the afternoon, on each of the said days, at *Guild-hall, London*, and make a full discovery and disclosure of his estate and effects, when and where the creditors are to come prepared to prove their debts, and at the second sitting to chuse assignees, and at the last sitting the said bankrupt is required to finish his examination, and the creditors are to assent to, or dissent from, the allowance of his certificate. All persons indebted to the said bankrupt, or that have any of his effects, are not to pay or deliver the same but to whom the commissioners shall appoint, but give notice to Mr. *Goostree*, attorney, in *Sherrard-street, near Golden square*. (87)

While these notices are similar, they are each addressed to a particular constituency in a

manner similar to the way in which the Trial Reports themselves operate.

The first Bankruptcy Commission announcement dated April 22, 1755, is addressed specifically to the debtor. The power and authority of the state are emphasized at the outset when it states that the Commission of Bankruptcy was issued “under the great seal of Great Parish.” Thompson’s duty to appear “to make a full discovery and disclosure of all your estate and effects” is emphasized. The power of the state is again reasserted at the conclusion of the notice as it incorporates by reference the acts of Parliament concerning bankrupts, and warns the debtor to “...fail not at your peril.” Thus the duty and penalty for breach of the duty (with its sovereign basis) is posited for purpose of the debtor. It is a text aimed at the body upon which the power of the state is to be enacted. Not only is the body subject to arrest and execution, but also *the Ordinary’s Account*, the supplementary text, is written as a direct result of the law’s power over the body.

The *London Gazette* notice identifies the debtor as to his place of residence in the parish of St. James, Westminster, and his occupation as an embroiderer, dealer, and chapman. Thus, this text locates the defendant in the broader social and economic world of London in the 1750s. While the duties of the debtor are reiterated, this text acknowledges its wider audience by expanding upon the substance and procedure of the hearing dates. The creditors must prove their claims; choose an assignee for their benefit; and address the issue of the debtor’s discharge. Additionally, creditors and persons otherwise holding property of the debtor’s estate are advised of a preliminary procedure whereby notice is given to Mr. Goostree, previously identified in the Trial Report as clerk to the Bankruptcy Commission. While the first notice is typified by language of duty, breach of duty, and punishment, the language of the second notice emphasizes economic specialization, social

geography, and administrative efficiency. It is a text aimed at the body politic; it reflects and establishes social hierarchy in the world of urban trade.

Mr. Cheshire testified that the commission met at Guildhall at the appointed times and that, in fact, “the commissioners stayed till past 12 o’clock at night.” No petition was made for an excused absence or extension of time. In a manner typical of the Sessions Papers during the mid-eighteenth century, the defendant gives a short statement of his defense followed by the Court’s verdict:

Prisoner’s defence.

I was taken into custody and knew nothing of the statute of bankrupt being taken out against me; what effects I had I surrender’d up. I have been in the north of Scotland and had no knowledge of this notice. I have had nothing to subsist on, either victuals or drink. I was put into New-prison this day is a month, and there were strict orders given that I should not see or speak to any body while I was there. I had not liberty to set pen to paper. Guilty *Death*. (87)

With the specific reference of Mr. Cheshire to “12 o’clock at night,” Thompson’s fate is effectively sealed. His final statement is notable for its vagueness. His only specific reference to time appears to be inaccurate. Taking his testimony on its face, this reader feels sympathy. There is a continued rhetorical gesture towards absence on multiple levels.

Thompson was physically absent in Scotland. He has been removed from his possessions, and he has been denied food and drink. He has been denied human fellowship or normal society, and his freedom to have a voice, “to set pen to paper,” is likewise absent. This reference to lack of textual expression exemplifies Thompson’s verbal absence throughout the text. To the extent that he is able to speak, he is ineffective, and by this point in the trial, his statement is a textual utterance that is made too late. However, there is no true form of narrative resolution. His brief final statement suggests a number of unanswered

narrative possibilities. Had the defendant been acquitted, they would have remained unanswered.

In this short case, a limited narrative is articulated and other narratives are suggested. A reader of the Report from the information given therein (and not from any extrinsic documentary sources) would have only been able to piece together the following time line:

- February 20, 1755 - Fire destroys Thompson's inventory
- April 9, 1755 - Payment to Thompson of fire insurance proceeds
- April 11, 1755 - Meeting between Blanch and Thompson to discuss payment of claim
- April 12, 1755 - Thompson disappears
- April 14, 1755 - Susannah East leaves Thompson's employment
- April 22, 1755 - Commission of Bankruptcy issued against Alexander Thompson
- April 24, 1755 - Copy of the Notice left with Mr. Wychart at Thompson's former rooming house
- April 26, 1755 - Bankruptcy Notice published in the *London Gazette*
- May 2, 1755 - Bankruptcy Hearing non-appearance by Thompson
- May 9, 1755 - Bankruptcy Hearing non-appearance by Thompson
- June 10, 1755 - Bankruptcy Hearing non-appearance by Thompson
- January 14, 1756 - Susannah East and William Lowden visit Thompson at Newgate Prison
- January 15, 1756 - Thompson tried, found guilty, and sentenced to death for failing to appear for examination before the Bankruptcy Commissioners
- *February 21, 1756 - Alexander Thompson hanged at Tyburn

Except for the fire of February 20, 1755 (which is the central temporal locus for the narrative), the operative events that resulted in Thompson's execution appear to have occurred in a concentrated period during spring 1755. However, there is no indication that Thompson ever had actual notice of the pendency of the bankruptcy with its required hearings. Constructive notice in the form of service at his last known address or by publication in a legal newspaper today is appropriate for certain types of civil cases. Using this type of service to justify a prosecution resulting in a hanging seems to be the most unjust form of debtor/creditor relations imaginable. As the reader will see in the next

section, much more remains to be told – or, as an old country lawyer once told the present author concerning defense of a notable Tennessee politician: “He was guilty of something, but not necessarily what they convicted him of!”

Although Alexander Thompson “had not liberty to set pen to paper” during his incarceration prior to trial at the Old Bailey, he was encouraged to tell his story (within certain defined limits) after his conviction. While awaiting his execution, the second installment of Thompson’s story was constructed and published in a series called *The Ordinary of Newgate, His Account of the Behavior, Confession, and Dying Words of the Malefactors who were Executed at Tyburn*. Alexander Thompson’s account was included with those of the group to be executed on February 21, 1756, and his narrative is the longest in that text.

The author of the *Account*, the Ordinary of Newgate, was the prison chaplain. The “Ordinaries” of Newgate were clergymen of the Established Church who were appointed as chaplains to Newgate Prison by the Court of Alderman of the City of London. During the eighteenth century, eleven men held the office. Paul Lorraine, who served from 1700-1719, established the *Account* as a periodical with semi-official status that was sold to the public as a commodity immediately after the execution date. The author of the Alexander Thompson *Account* was John Taylor who was elected to the position of Ordinary from a field of five candidates and served until 1757. Generally, the Ordinary’s duty was to “read prayers, preach, and instruct the prisoners.” On the Sunday before an execution, he conducted the so-called Condemned Sermon in the prison chapel at Newgate; this was the most significant ritual event between the theaters of the courtroom and the gallows. Taylor made special arrangements to give the condemned the sacrament, and he rode with the

condemned on their last journey to Tyburn, where he led the prisoners and the assembled crowd in the singing of hymns. As a participant in the legal process of capital punishment, this Anglican clergyman acted as a mediating agent between the judge and the executioner.

As Peter Linebaugh notes, “between the judge and the hangman stood the Ordinary of Newgate, whose unenviable task was to justify the decisions of the former and to lend Christian sanction to the dark work of the latter” (Linebaugh “The Ordinary of Newgate” 250).

Like the *Old Bailey Sessions Papers*, the *Ordinary’s Accounts* were sold to the general public in competition with the burgeoning periodical industry and what Addison referred to as the “Grub Street Biographers.” While the relationship between the *Accounts*, and the *Proceedings* was loose-knit, by 1730 the two narratives enjoyed similarities in layout, general appearance, and price. Along with the *Proceedings*, the *Accounts* were characterized by their regularity of publication. This regularity of appearance would help position the *Proceedings* as the official court reporter for the Old Bailey. The regularity of publication of the *Ordinary’s Account* contributed to its quasi-official status. Because the buying public expected good stories along with regularity of publication, pressure was put on the Ordinaries to elicit appropriate material from the condemned. As early as 1700, the Lord Mayor accused John Allen, Ordinary at the turn of the century, of “...his frequent prevarications in the printing and publishing the pretended confessions of the respective criminals that are executed at Tyburn, contrary to the duty of his place and function” (Linebaugh “Ordinary of Newgate” 254 citing CLRO, Rep. 104, f. 340 [28 May 1700]). Also, there were charges that confessions were frequently extorted by threatening eternal damnation or inhumane treatment in the event of non-cooperation. (Linebaugh 255).

However, some readers felt that the *Accounts* had the imprimatur of authenticity since they were rendered under the authority of a man of the cloth.¹²

As a narrative put together by the clergyman, Thompson's story has a beginning, middle, and an end. Immediately, the reader learns at the time of his condemnation that he was about thirty years of age, and that he was born in Peterhead, a small fishing village north of Aberdeen, Scotland. He was literate, and the narrator says concerning Thompson's early youth, that "we don't find anything different from what is the common method of passing those earlier years." At age ten or eleven, he left Scotland for Paris where he learned the art of embroidery. After five years, he relocated to Holland. Then, for two to three years, he alternated between Rotterdam and Amsterdam, after which time he moved to London. At the outset of the *Ordinary's Account*, the prisoner's geographical movement is emphasized. The text conveys a sense of rootlessness. Thompson is an outsider both in terms of his Scottish origin and his subsequent meanderings on the Continent while learning his trade.

Although Thompson appears to have come from inauspicious beginnings, in London he engaged in a bit of "self-fashioning"; the *Ordinary's Account* states that "here he set up the gentleman, as soon as he came, and took his lodgings at a reputable coffee-house in *Pall-mall*, where he lived sometime, kept very good company, and was looked upon as a man of fortune and good character." Although the text establishes an initial discourse of normativity, the first seeds of a developing conflict are seen in this next section of his story:

¹² For an excellent and seminal pictorial representation of the conflicted nature of the Ordinary's status, see William Hogarth's "The Idle Prentice, Executed at Tyburn" from *Industry and Idleness*, P. 11; Oct. 1747-BMC 2989.

As he was a person of gay life, he used to frequent public places, assemblies, and dancing, at one of which he became acquainted with the lady he first married in *London*. He paid his respects to her, and after some convenient time past away in courtship, he gained her favour and consent. The match however appeared not agreeable to the lady's father's mind, when he came to be consulted; but, as he found the young parties were agreed, he took all the pains he could to enquire into *Thompson's* character, which, as far as enquiry could be made, was reported such at that time as no man could be displeased at. And at length came the time that married they were, though the father's consent was not obtained. (22)

Since he met his future wife at a public place, assembly, or dancing, she occupies an acceptable position in the London social hierarchy. Thompson's marriage would help erase his status as an outsider and provide him with an expanded group of acquaintances who would help him in furtherance of his economic goals. Although his character seemed to be acceptable, the father objected to the marriage, perhaps on the basis of Alexander Thompson's social standing. True love prevailed; the parties married without her father's blessing. In a way this report offers an alternative view as an anti-novelistic narrative, a portrayal of what actually occurs when social boundaries are ignored in marriage. Here, the reader does not get the possibly Arcadian future at least suggested by Samuel Richardson from the marriage of Pamela and Mr. B-. Novelistic conventions of worthy persons achieving social harmony through patience, hard work, redemption, and a good marriage are subverted. This narrative, looking back to the Old Bailey trial report and forward to Thompson's appointment with the hangman, offers a negative example of the reality of what living "happily ever after" means when the stability of social hierarchy is ignored. Marrying in transgression of one's class status threatens economy based on land and traditional laws of inheritance as seen in Samuel Richardson's *Clarissa* (1747-1748) and Henry Fielding's *Tom Jones* (1748). In the Thompson narrative, a similar threaten is

seen through his initial status as an outsider entering the commercial world of London and the social sphere of his unnamed wife and father-in-law.

Having established his social standing in London society, Thompson takes his next step in the urban economic world by setting up his own business. The next section of the *Ordinary's Account* states:

Things being come to this pass, it was thought necessary that he should go into trade, to improve what he had left of his own after all his gaieties, and the additional fortune, which came to him with his wife. Accordingly a house was taken in *Bury-street, St. James's, Westminster*, which being properly furnished, *Thompson* prepared to take possession of it, and set up in the business of embroidery. And, it seems, besides being himself a good hand at drawing patterns, he had brought over with him several curious and valuable things in that way, which seemed to bespeak no fear of not doing well, provided he might but have custom and employment. (22)

The discourse of self-improvement is further emphasized here. In using the phrase “it was thought...,” rather than “he thought...,” a collective deliberative decision to pursue economic status is implied. The collective entity is not the extended maternal family, but rather Thompson’s nuclear family unit. In light of the rift existing with the wife’s father at the time of the marriage, their new social value would be more readily defined by their mercantile, economic value. A relationship between a good marriage and mercantile success is suggested. There is a focus not on the land and property, which he might inherit in the future as a result of his fortuitous marriage, but rather on the prospect of his economic success at the present. The economic discourse, as well as the moral lesson of the text, is framed using tropes of immediate acquisition and expenditure. The theme of the circulation of commodities and bodies (geographical and otherwise) permeates the text.

As the text previously recites, no evidence of bad character could be found against Thompson at the time of his marriage. However, at this point in the *Ordinary's Report*,

certain aspects of his character are revealed that suggest a form of developing negative exemplarity of the type found in John Bunyan's *The Life and Death of Mr. Badman* (1680), a work to be discussed in the final chapter of this study. *The Ordinary's Account* continues:

Neither, does he say, that this thing requisite towards well doing was wanting; he had business enough, and his work approved of, and growing in custom continually; but there was something yet wanting, which none but himself could supply, and that was content in his state of life, and an industrious inclination to stick close to business, the only way to get a large fortune, or to improve a small one; but, as his mind had been always given to change, so now he could not steadily apply to business; but pleasure, and the common diversions of the town, engaged too much of his time. Besides all this, he had another great evil, which his mind was possessed of, he soon grew tired of his wife, and, as harmony grew out of taste with him at home, a dislike to it also increased.

Twas observed before, that at the time *Thompson* married his wife, her father's consent went not along with the marriage; but, thro' the interposition of a friend, and well-wisher to either party, the father was willing to be reconciled, and made overtures with intent to have done him all the service in his power for the time to come. *Thompson* was made acquainted with this, who received the message with coolness and indifference. He promised indeed to accept the reconciliation, and to let what had been done pass in oblivion; but, on the contrary, he soon after took methods to destroy the good intentions of his wife's father, and put a bar to all future expectation of proffered friendships from him; besides mal-treating his wife, he practised several forms of insolent behavior towards her father; so that he thought proper to keep himself at a distance from *Thompson*. (23)

As a conduct tract of how not to succeed in business, this portion of the text highlights lack of perseverance and restlessness as two qualities detrimental to success in trade. Change is a positive attribute when applied to economic improvement, but it is a negative quality when it is associated with the notion of seeking novelty, in this case, the pleasures and diversions of mid-eighteenth century London. Although adultery (in our sense) is not specifically mentioned, its textual implication is present, and Thompson's rift with his wife is also attributed to his general sense of restlessness. Finally, although the Laws of Moses

are not specifically mentioned, Thompson is failing to honor his father (in-law). Not only does this suggest a violation of spiritual law, but also an insult to his family's social status.

The inclusion of the father's attempts at reconciliation and the son-in-law's ignoring of these overtures suggest other narrative possibilities. We might speculate that in light of the circumstances that were to follow, perhaps the father was instrumental in encouraging the prosecution of the prisoner.

Having acknowledged the problems that Alexander Thompson's habits contributed to his business and family life, the *Ordinary's Account* then introduces the central event around which both the trial report and the subsequent text revolve - the fire at Thompson's residence and place of business at Bury Street, St. James, London. The story continues:

Thompson and his wife lived together not always in such manner as could be agreeable to her, but business went on, and *Thompson* might have done well had he but been possessed of patience, and a good inclination. And now, with respect to a material affair, which hath respect to this person's life and conversation, viz. the fire by which his house was consumed, and two persons perished in the flames, it may not be improper at this time to introduce it. An unfortunate affair indeed it was, and brought great odium on this poor man's character, how justly God knows; but we shall endeavour to put that affair in such light, as it hath upon former enquiry appeared, as well as later, and as he gave the account of it himself.

When he set up in business in *Bury-street*, he insured his stock in trade, household goods, and his own and wife's wearing apparel, in the sum of 500 *l.* at the *Sun Fire Assurance Office*. Now, it happened once upon a time, that he took his wife to a dancing upon *Fish-street-hill*, where she was taken out of order, insomuch that he thought it not proper for her to go home with him, but he went home, and came to her again the next day. He had been in his business all day, and in the evening went with intent to fetch her home; but, calling at a relation's in the *Old Change*, and staying late in the month of February last, they both lay there all night, and, he declares, he never heard of the fire till next morning a person came to him on purpose to tell him what had befallen his house. (23-24)

Again, the positive virtues of "patience" and "good inclination" are reasserted. Indeed, the virtue of "prudence" also is suggested because of the insurance policy placed upon

personal property and business inventory. Although the facts surrounding Thompson and his wife are vague, the language used suggests dissolution. While no causal connection is drawn, this portion of the text suggests opposing images of waste and decay. On one hand, the home and business are dissolved by fire; on the other hand, they are also dissolved by frivolity and being “out of order.”

The *Ordinary's Account* then gives more information as to the circumstances surrounding the fire mentioned at the outset of the original trial report.

He says, he went to *Bury-street*, in great confusion, and when he came there found it too true; but, as a dying man, denies having the least previous knowledge of it, or a hand in being the cause of such a horrid act. He says, he had at that time lodgers in his house, who were at home that night, and escaped unhurt. The fire is said to have broke out about four o'clock in the morning, of the 20th of *February*, 1755, in which perished the lodger's maid-servant, and his own, who lay in the garret. His chief servant in his business also narrowly escaped, who running to the fore-door, found, that fast, and fled out to the backdoor, which she found open, and is now alive to attest the same. He does not pretend to say where the blame was to be laid that the house was fired, but says, a footman in the neighbourhood was employed to propagate the report that he was seen about his house in *Bury-street*, about ten o'clock of the night the fire happened; whereas, he declares, and tis well known, he says, that he and his wife were at their relation's in the *Old Change*, that night at seven or eight o'clock, lay there all that night, and departed not from thence till seven or eight o'clock next morning. (24)

The text acknowledges that he maintains his innocence “as a dying man.” The reader learns in the *Ordinary's Account* that his lodgers escaped unharmed, but that two servants died in the conflagration. Although not specifically identified by name, Susannah East, his chief servant and adversary witness, barely escaped injury. Thompson has no theory as to who started the fire. However, he suggests that someone sought to frame him for the crime by circulating the report that he was seen in the vicinity of the house around ten p.m. on the night of the fire. Finally, his specific alibi as to his whereabouts is set out. Although the *Ordinary's Account* acknowledges that he was under grave suspicion of arson, his version

of the facts is accepted or at least acknowledged, and his alibi cannot be disproved. However, the continual references to the fire indicate the continued suspicion that hangs over Thompson in spite of proof that would have justified an arson prosecution, and also emphasizes the fire's centrality to how the narrative is constructed by the reader of the *Ordinary's Account*.

After an investigation of over one month, Sun Fire Assurance Office acknowledges the policy and remits the proceeds to Thompson. This section of the *Ordinary's Account* intersects with the testimony set forth with particularity in the Trial Report:

After the fire was over, he went to the Insurance Office, which took some time, a month at least, to enquire into the nature of the case; but the enquiry found no cause of refusing to pay the insurance. His wife's father, and a friend of their's, went with *Thompson* to receive the insurance, and saw it paid without any scruple: after which they went to the tavern, and *Thompson* paid the above-mentioned friend a sum of money, which he was indebted to him, and upon their recommending the thing, he told them his intent was immediately to go to his creditors, and satisfy all their demands; but the contrary was the truth, and he disappear'd in a short time after, without having first seen any of his creditors.

Thompson, at this time, and his wife, were in lodgings, in *St. Martin's Street*, to which he had resort, from *Thursday*, when he received the insurance money, till *Saturday* morning, when he went away: and that day she received a letter, acquainting her with his design of leaving *London*. The letter was transmitted from her to her father, who took her home, and they have never since seen one another. (24-25)

By this stage of the story, Thompson has reached some sort of reconciliation with his father-in-law. Perhaps, the father of Thompson's wife aided the son-in-law in obtaining the insurance proceeds, or perhaps he wanted to ensure that their friend was first in line to get paid. At any rate, Thompson's wife's father and the unnamed friend recommended that Alexander Thompson promptly repay all of his creditors; he responded that it was his intent to satisfy their demands immediately. This scene in the tavern transpires two days before

Mr. Blanch appears at the rooming house, at which time Thompson agrees to meet him for repayment on the next day. The reader learns in the *Sessions Report* that he then disappeared; the reader discovers in the *Ordinary's Account* that he left his wife a letter advising her of his intent to leave London. She was taken back by her father, and a previous family order is somewhat restored. As the narrative concerning Thompson's activities during his disappearance develops, it is clear why she would have no further desire to communicate with her husband.

In the voice or language of a disinterested investigator, the Ordinary returns to the issue of arson. Since Thompson's character as a bad actor has now been established, the issue of his guilt or innocence in burning down his house is revisited:

There was a circumstance, which seemed to clear him of such a wicked act as setting fire to his house, of which great suspicion has been entertained, we had like to have forgot, and which comes from very good hands; *viz.* When he came to receive the insurance money, he proved he had goods destroyed in his house to the value of 900 *l.* and sure if this fact be admitted, 'tis unreasonable to think a man could be so wicked, as to burn 900 *l.* to get the insurance of 55 *l.* besides not knowing what other irreparable damage might be done. This is the clearest state of this case we can come at. (25)

Thus, the Ordinary of Newgate sits in judgment of a crime that was never prosecuted. Yet the case of possible arson remains an unsolved crime of interest to some segment of the reading public. Although the Ordinary is the prison chaplain, he phrases his judgment in purely secular terms. He argues for Thompson's innocence in language based on economic rationality. Just as it is unreasonable to destroy goods worth 900 *l.* to receive insurance proceeds of 500 *l.*, it is irrational to abscond with the insurance proceeds when the claims of the petitioning creditors only amounted to 200 *l.* He could have paid his claims in full and retained some ready cash available to start anew with or without his wife or former occupation. Rationality, economic behavior, and mercantile predictability are inextricably

bound together in this narrative. However, the basis of the Ordinary's absolution is ironic, given the spiritual nature of his position and the irrational acts of Thompson that are the ultimate cause of the criminal prosecution and the resulting death sentence.

The text then recites the facts relative to the entry of the decree of bankruptcy and the requirements for Thompson's appearance for examination at Guildhall at the appointed times previously mentioned in the *Sessions Report*. The *Ordinary's Account* continues by supplying the missing narrative as to Thompson's behavior after his departure from London on April 12, 1755, and the date of his arrest, which is not specified in either text.

The *Ordinary's Account* describes his activities during this period of time:

Instead of that he made the best of his way for *Scotland*, sailed for *Berwick*, and from thence went to *Edinburgh*. There he spent his time and money in gaiety and pleasure, and got himself married again. But the wonted levity and changeableness of his temper still remained. He had received 100 *l.* fortune, and a note or bond for another 100 *l.* which he got discounted, and having packed up all he had, got on board a ship, intending for *London*, but the father of this wife was too cunning for him; he followed him, and brought him back, and made him return most part of the money. All this was done, for that between the time of *Thompson's* leaving his *Scotch* wife, and the ship failing, information had been given of his having an *English* wife. He braved it out, however, denied the fact, and set out again for *London*, with a promise to return, and give satisfaction to the contrary. So to *London* he came, and took up his quarters at an alehouse not far from *Charing-Cross*. (26)

In this section of his story, Thompson's rootlessness, ephemerality, and frivolity are again highlighted. While the portrayal of the condemned man is that of negative exemplar in the vein of John Bunyan's *The Life and Death of Mr. Badman* (1680), the language and its rhetorical usage are more suggestive of Aristotle's *Nicomachaen Ethics* than the Christian Bible. Thompson received 200 *l.* as a marriage settlement in the second marriage, and again ran afoul of the father of a bride. When confronted with the fact of his prior marriage, he denies the allegation and promises to return. Probably in late summer or early

fall of 1755, he returned to London and moved into an alehouse near Charing Cross, a location near his original bachelor's quarters in Pall Mall and his previous residence with his wife on Bury Street in St. James. The geographical movement suggests Thompson's changeableness of temper both in the small world of London and in the larger world generally. Finally, no condemnation *per se* is made of Thompson's taking up with the second woman; rather, it is his behavior in relation to that action which seems problematic within the world of the text.

Fraud, irrationality, and their effect on the economic and social order are highlighted as Thompson's attempt at a cover-up is described in the next section of the text:

The first thing he betook himself to, was how to send satisfaction to *Scotland*; which he contrived in this wicked manner, viz. He procured a woman of the town to personate his *English* wife, and induced her to go before a worthy justice, and make oath, as he did also, to this purpose; that she was the person who was said to be his wife; that indeed she had lived with him, but was not married to him.

Upon which *Thompson*, in order to expedite the affidavits to *Scotland*, went and applied to a gentleman in town for advice. The gentleman suspected some fraud, and upon questioning the woman, whom he took on one side, she fell down on her knees, begged pardon, and told where *Thompson* might be met with. The gentlemen sent word to Mr. *Fielding's* office, from whence proper persons went to apprehend him; who found him at his lodgings near *Charing-Cross*, as above, and well knowing him, conducted him to that gentleman's house in *Bow-street*, who, after examination, committed him to *Clerkenwell New-Prison*; from whence at a proper time, he was brought to *Newgate*, to take his trial at the *Old-Bailey* (26)

Stories, like commercial commodities, are for sale at all levels of these narratives. Indeed, both the *Proceedings* and the *Ordinary's Accounts* are stories for sale. Here, Thompson engages a prostitute to impersonate his legal spouse and make oath that they were not in fact married. Having apparently obtained the desired affidavit, he consulted with an unnamed gentleman in order to determine the best way to transmit the false exculpatory

documents to Scotland. This gentleman reported the facts to John Fielding, brother of the recently deceased magistrate and novelist Henry Fielding, and Thompson began yet another geographical movement from his lodgings – to Bow Street, to Clerkenwell New Prison, and to Newgate en route to Tyburn where he would be executed. In *Reading for the Plot* (1984) Peter Brooks has talked of ambition and eros as being instrumental to the progression of plot in the picaresque and the bourgeois novel, and those elements are certainly highlighted here (39). Plot in the *Ordinary's Account* binds not only the textual energies of the narrative, but in this case also the existential limits of a beginning and an end.

In their discussions of the formal structure of the *Ordinary's Accounts*, Peter Linebaugh and Michael Harris state that usually there are five typical sections to these narratives:

- 1) A summary of the court case: Date, magistrates present, the members of the jury, and a summary of the proceeding;
- 2) Outline of the “Condemned Sermon,” often with applicable Biblical passages;
- 3) A description of the life and crimes of the condemned;
- 4) Miscellaneous section containing various items, such as letters written to the condemned or an essay, which the Ordinary and/or his publisher deemed relevant and appropriate;
- 5) An account of his behavior at execution, including psalms sung, the prisoner’s demeanor, and sometimes even escape attempts. (Linebaugh “The Ordinary of Newgate” 248 and Harris 17)

Although the general subjects mentioned above are covered in the text, the *Ordinary's Account* of Thompson’s case avoids this rigid taxonomy; his treatment of these matters is chronological, rather than thematic. Linearity de-emphasizes the spiritual narrative and, by its mollification, emphasizes other elements. Although the *Ordinary's Account* commences with a general statement of the case that is a verbatim restatement of the

headnote to the *Sessions Report*, aspects of the trial and conviction are developed within the context of a linear temporal narrative. Indeed, specific aspects of the conduct of the trial beyond its mere charge and verdict are included in the *Account* after the description of the life and crimes of Thompson. The *Account* states that:

Being brought upon his trial, he pleaded not guilty to the indictment above recited: but such evidence was produced against his plea, as satisfied the court, as to this offence against the act of bankruptcy, though all possible care was taken to prevent any unlawful measures from taking place against him, and the jury brought in their verdict after a short deliberation, which pronounced him guilty. (26-27)

One of the functions of the Ordinary was to justify the action taken at trial as well as to sanction the punishment in moral and religious terms. In this case there is no extended discussion of the “Condemned Sermon”; no specific Biblical intertextualities are incorporated into the narrative. Instead, the Ordinary states that there was an offence against the act of bankruptcy, though the act, which results in his conviction, is nowhere itself cast into moral terms.

Although no evidence of concern for the defendant’s equitable rights is seen in the text of the trial report, the Ordinary seems to go out of his way to state that “all possible care was taken to prevent any unlawful measures from taking place against him.” This language seems to anticipate the possibility of a public response that the conduct of the trial with its irrevocable sanction was unfair. However, there is no evidence in the Trial Report of any specific care being taken by the Court to insure that Thompson was treated in a lawful manner. The basic elements of the crime were proved and the verdict was rendered. However, as John Langbein shows in all of his work on the *Old Bailey Sessions Papers*, negative inference cannot be used in interpreting these texts. Just because something, such as specific care to make sure the defendant was fairly treated, was not included in the

Report, does not mean that it did not happen. This section describing the events at trial argues for secular justification, ironically stating that the rights of the criminally accused were protected in a case of this type. Further, no reference is made to the immorality of the specific acts justifying the conviction. The case is described in concise, almost clinical, language. No incorporation of the rhetoric of ethics or persuasion is present here.

The Ordinary's narrative as to Thompson's post-conviction behavior indicates strong resentment, an emotion not surprising to a reader of the facts and circumstances of his legal prosecution.

He seemed, after conviction, in his natural temper, a man of strong passion, very prone to, and strong in, resentment of supposed injury. As witness a letter he sent to his *English* wife's father; in which he gave under his own hand, which he did own, the greatest marks of a most unchristian cast of mind, wishing all evil, temporal and eternal, to him and his family, if he did not interpose to prevent his suffering. This being followed by a most audacious, anonymous, threatening letter to the same person, published afterwards in the *Gazette*, 'twas reasonable to imagine the latter also came, if not immediately from him, yet not without his privity and consent; though to the last he denied any knowledge of, or concern as to its purport. He owned the former, but utterly persisted in ignorance of the latter. (27)

In writing to Thompson's wife's father, the Ordinary talks of Thompson exhibiting "a most unchristian cast of mind, wishing all evil, temporal and eternal, to him and his family."

While the precise action resulting in his death sentence is not characterized in an eschatological fashion, Thompson's behavior after the trial is cast in counterpoint to Christian virtue. This rhetorical device seeks to justify the prisoner's plight as a matter of Biblical justice even if he were sentenced to the gallows as a result of a statutory breach commercial in nature. As to the anonymous letter addressed to his father-in-law, Thompson denies any knowledge concerning the matter. Throughout the narrative, the Ordinary never specifically attacks the denials and allegations of the prisoner. Instead, he

lets the particulars of the story, such as Thompson's procurement of a prostitute to impersonate his wife, to serve as the context by which his credibility as a witness is to be judged. Alexander Thompson's credibility is important from the standpoint of the reader as judge of the narrative since Thompson denies participation or knowledge with respect to the burning of the Bury Street residence and states that he never had actual knowledge of the pendency of the bankruptcy.

As to his spiritual progress, short shrift is given to his repentance for the crime for which he has been convicted. This section of the narrative does address matters extraneous to the crime. It states as follows:

When they first had any converse together, he was very rough in his expression, and declared, that tho' he was bred a protestant, yet having been so ill used, as he pleased to call it, by persons of that church, he should choose to die a *Roman* catholick. But before I saw him again, a letter came, desiring to be excused for what he had said in a hurry and confusion of mind; and afterwards he attended chapel regularly, unless slightly indisposed. He read, and took pains to write out prayers, and other devotional meditations, towards the latter part of his time, and seemed greatly affected at his approaching end; and above all, acknowledged and lamented his not using his *English* wife so well, as her merit in every respect deserved at his hands. (27)

In his first interview with the Ordinary, Alexander Thompson exhibits his defiance by expressing a desire to convert to Roman Catholicism. Of course, the Established Church was protestant, and he correctly equates the dominant religious discourse with the power that Thompson blames for his fate. At the time of his trial and execution, the Jacobite Rebellion of 1745-1746 and the threat of a Roman Catholic monarchy were fresh in the minds of the citizenry. Therefore, many contemporary readers of the *Ordinary's Account* would have read his conversion threat as a subversive utterance, particularly since Alexander Thompson was a native of Scotland. As to a change of heart, the Ordinary states

that Thompson engaged in certain daily religious rituals that would be expected of a condemned man. The only “confession” that he offers is that he “acknowledged and lamented his not using his English wife so well, as her merit in every respect deserved at his hands.” At the level of general readership, this and the resultant crime of bigamy may be the only heinous transgressions of which a reader might have thought him guilty.

The final two short paragraphs deal with his guilt as to the bankruptcy crime and his demeanor at the gallows. This final section states that:

As to his suffering upon the act of bankruptcy, for an offence committed against it, he in general did acknowledge to be just; but he would never be persuaded to own, that he had any personal notice of it, till he was brought before Mr. *Fielding*; and says that gentleman first founded it in his ears, which was his own expression. In fact, he says, he never read it in the publick papers, not being much given to read; nor did any friend in *London*, while he was in *Scotland*, advise him of it.

In this situation of mind, he met his fate, to all appearance, calmly and resigned; and having struggled hard with this world, he hoped to be at rest in that which is to come, through the mercy of God, in the Redeemer of the world. (27)

The language of the Ordinary seems to strain towards an acknowledgment of the justice of the bankruptcy crimes prosecution, but such a reading is inconsistent with Thompson’s demeanor at Newgate after his admission. As noted previously, he denied to the end any actual knowledge of the pendency of the bankruptcy proceeding. Whether he is to be believed is left up to the reader. Certainly no evidence is offered at the trial or as circumstantial narrative in the *Ordinary’s Account* that would suggest otherwise. Whether such knowledge would have changed his behavior toward his creditors and the Bankruptcy Commission is doubtful, considering his abandonment of his family and established profession after receiving the insurance proceeds, as well as his later dishonorable behavior concerning the second marriage and the constant efforts at deception. In a real sense, his

crime was of irrationality in an economic and social world with certain rules and mores functioning under the rubric of rationality. Thompson ignores the mandates of prudent commercial behavior, and this disruption of societal and economic norms is the contract (if not the actual reason) for his prosecution for a technical violation of the bankruptcy statute. Merchandise and property worth 900£ was burned (maybe by the condemned) and insurance proceeds in the amount of 500£ was received. A rational economic actor would have used the proceeds to pay the 200£ in claims. Funds in the amount of 300£ would remain for living and business start-up expenses. Harmony would be achieved with his wife and father-in-law. However, his irrational act, like the murder of the Arab by Meursault in Albert Camus' *L'Etranger* (1942), results in his literal non-existence. As in Camus' novel, the reader of the narrative of Alexander Thompson is not perplexed by the facts or events which the narrative omits, but rather by the lack of explanations.

Thompson committed a technical violation of the criminal law requiring him to appear at a certain time and place to be examined concerning his assets and liabilities. The specific offense involved neither the threat nor commission of an act that would result in physical injury or death. The economic harm did not result from his failure to appear at the examination, but rather from his flight from the jurisdiction of his creditors with the proceeds from the fire insurance policy. His other transgressions constitute his real guilt. As an immigrant and outsider, he was a bad guest to a welcoming host. He betrayed his acceptance, albeit reluctant, into the world of mid-eighteenth century London with its concomitant duties of certain express and implied forms of social and economic behavior. By apparently marrying above his social status, he tested and strained the rationality of the established order, and thus subverted the fundamental tenets of the system by mistreating

his wife and having a prostitute impersonate his spouse in order to obtain a perjured affidavit falsely verifying that he had never in fact been married. Yet another “narrative for sale” threatens to undermine the system of which land and property are subject to intergenerational descent, as well as the reliability of the legal machinery charged with sanctifying and administering those relationships. His personal economic irrationality constitutes a form of social and, more importantly, economic unreliability. In the world of this narrative, his real crime was not failing to appear at the creditors’ meeting; his true offense was committing acts that subverted the social and economic order in the most general sense. Just as Al Capone was finally silenced as a result of a federal prosecution for income-tax evasion, Alexander Thompson was prosecuted on the easy charge for which conviction and execution were near certainties.

By highlighting certain elements of Thompson’s life story, the *Ordinary’s Account* turns the Trial report into a cumulative narrative that purports to give a clear picture as to why the prisoner was fairly or unfairly prosecuted. Of course, by selective inclusion of incident, the Ordinary is engaged in a rhetorical exercise seeking to support why the Court’s action was proper and why the ultimate sanction of death was appropriate. The *Ordinary’s Account* is a supplementary narrative to the criminal trial report. In fact, the case report itself (as well as its reference to the fire of February 20, 1755) is an initial episode *in medias res* with reference to the total narrative. Like a novel such as Henry Fielding’s *Jonathan Wild* (1742), it has a beginning, middle, and end coextensive with the chronological life of the accused. Like picaresque novels, such as Tobias Smollett’s *The Adventures of Roderick Randon* (1748) and *The Adventures of Peregrine Pickle* (1751), the case of Alexander Thompson is characterized by the geographical movement of the body

and episodic incidents. By virtue of its genesis and the circumstances of its textualization, it is a narrative written upon the body. However, it is only through the disclosure and rendering of certain facts that the readers, as the real constructors of the text, can ascertain meaning. At the end, important operative facts remain contingent. Although Thompson can reasonably be held to be an unreliable witness or narrator under the total facts and circumstances of the case, the fact remains that he vehemently denied participating or having knowledge of the burning of his home or receiving actual knowledge concerning the pendency of his bankruptcy case. While Thompson may not be believable, no proof contradicting his denials is offered in either the Trial Report or the *Ordinary's Account*. Thus, the problem of contingency remains, and the reader, like a jury, must judge what actually occurred and weigh the relevance of the facts to the conviction and sentence. Although the Ordinary makes a valiant rhetorical effort, he may not have achieved his goal of justifying the severity of the sentence. In fact, one aspect of the case that remains unspoken is the issue of the sentence fitting the crime. The audience's response to the interpretive possibilities requires an active reader, for the contemporary readers of the texts had to formulate its meaning. As a result, as for the judge and jury, the first challenge was epistemological, the task of evaluating and reconstituting what really happened based upon the selective and possibly unreliable information that they are given. Only after constructing a narrative based upon specific incident and knowledge can the moral judgment be applied.

CHAPTER VI

THE *SESSIONS PAPERS* AND SAMUEL RICHARDSON'S *CLARISSA*: LEGAL WILLS AND VOLITIONAL WILL

Along with the second installment of the Prior Green case, April 28, 1742 saw the trial of Robert Rhodes for the forgery and subsequent publication of the purported last will and testament of one John Thompson. While the *Proceedings* are characterized by a myriad of cases involving the physical theft of items of property of specific stated values listed at the beginning of the respective trial narratives, this case, like most of the cases under scrutiny in this dissertation, falls outside of the penumbra of what can be considered to be common crimes of theft. In fact, today they would be considered akin to “white collar crimes.” Unlike most of the cases of this era reported in the *Sessions Papers*, in the Robert Rhodes case counsel represents both prosecutor and defendant. These lawyers are clearly identifiable in the text, and they participate at trial. Unlike the Annesley/Redding murder case to be discussed later, the participation of defense counsel is limited. While the lawyer for the accused has significant involvement in the trial, the cross-examination of witnesses is actually conducted by the defendant Robert Rhodes in a manner that predictably does not inure to his benefit. Why this occurs and how it affects the issue of narrative construction is, in part, the subject of this chapter.

Unlike the Annesley/Redding case which, while detailed at all times within the narrative matrix, moves from the general outline of the facts and legal issues under dispute to a very general focus at its conclusion, the Robert Rhodes Forgery trial commences in a narrow, well-articulated fashion, but then the elements scatter. At the end of the trial

report, the details of the plot are disjunctive and even contradictory. My reading contends that this specific narrative structure articulates and highlights public issues and tensions at stake other than whether Robert Rhodes will meet the executioner at Tyburn. Unlike the Alexander Thompson case, there is no *Ordinary's Account* to memorialize and supplement the narrative developed here. Whether or not Rhodes died of typhoid fever at Newgate or was ultimately pardoned by the King or transported to the colonies as an alternative, lesser punishment, his story is told, as lawyers often say, "within the four corners of the document." Lawyers are involved in the narrative construction of this trial report, but their participation is markedly different from that which we will encounter in the Annesley/Redding murder trial.

In order to understand the uniqueness of the extensive coverage given to the Robert Rhodes forgery case, as well as to other detailed texts such as the Prior Green case(s) and the Annesley/Redding murder trial, comparison can be made with the two trials immediately preceding the one that I am about to discuss. Case No. 36 for the Session was the trial of Richard Roper for theft (simple grand larceny):

36. *Richard Roper*, was indicted for stealing a yard 3 quarters of Silk, value 6 s. 6 d. the Goods of *Edward Vaughan*, *March 11*, Guilty. (80)

Case no. 37 for the April session involved the trial of George Henry, also for theft (simple grand larceny):

37. *George Henry*, was indicted for stealing a Silver Spoon, value 8 s. the Goods of *Henry Dawkins*, Esq; *March 11*, Guilty. (80)

These short entries are representative of a variety of dispositions of crimes against property. All that can be determined from their stories as set out in the temporal progression of the day's docket as reported in the *Proceedings* are the following narrative

elements:

- 1) The name of the accused;
- 2) A Description and Value of the Stolen Property;
- 3) The Date of the Alleged Crime;
- 4) The name of the Victim/Owner of the Stolen Property, and
- 5) The Verdict

Richard Roper and George Henry were tried some six weeks after March 11, 1742, the date the crimes were committed at the next meeting of the Sessions. From these trial entries, there is no way to determine what witnesses were called or what evidence was introduced. Although trials moved quickly before the bar of the Old Bailey, events must have transpired beyond what is simply stated in the body of the *Proceedings*. Without extrinsic evidence or relevant intertextualities, the criminal narratives of George Henry and Richard Roper consist only of these archival traces.

These stories, however, are supplemented by an intertextuality within the April *Sessions Report* itself. The sentences passed upon those convicted are listed at the conclusion of each report. The summary for the April, 1742 session is as follows:

The Trials being ended, the Court proceeded to give Judgment as follows:

Received Sentence of DEATH, 8.

Samuel Wood, John Carpenter, Edmund Larret, Elizabeth Powel, Richard Cooley, Charles Newton, Robert Rhodes, and John Burnham.

BURNT in the HAND 4.

Robert Pannel, Elizabeth Newbury, Mary Wick, and H - J -.

To be WHIPPED, 4.

Elizabeth Allwright, William Bristow, Elizabeth Twiss, and Anne Moore.

TRANSPORTATION, 40.

John Atkinson, William Briers, Robert Bunch, Sarah Burk, John Emes, James Harris, Ferdinando Lee, Frederick Mackennis, George Moon, Richard Roper, John Salmon, James Steadman, Peter Triquett, Thomas Wilks, George Wiltshear, Hannah Adley, Margaret Barret, Ann Barrett, Mary Bide, Tho Catlin, John Charlton, Patrick Donegan, Elizabeth Earle, Thomas Glover, John Glynn, Wm Grant, Jane Green, George Henry, Ruben Kilburn, Elizabeth Lyons, Ann Macdonnald, Mary Miller, Martha Penny, Elizabeth Pinner, George Pope, James Pratt, John Read, George Scriven, Eliz Sutton, and Elizabeth Watson.

Thomas Pinks being called down to his former Judgment, was asked why Execution should not be awarded against him: acknowledg'd himself the same Man, and was ordered for Execution. (9)

Like most of those convicted for petty theft, Richard Roper and George Henry were sentenced to transportation, most probably to Virginia. They are textually inventoried and classified, much like the chattels they are said to have stolen. They will be shipped like commodities in the holds of ships in order to provide labor to produce materials that are part of the system of economic production that created the “silk” and the “silver spoon” that were the subjects of their crime.

After reporting these and other smaller case dispositions, the charge is announced in the Robert Rhodes case. The recitation of the last will and testament of John Thompson, the foundational document around which the prosecution of Rhodes revolves, is literally incorporated in the *Proceedings* as part of the charge:

38. + *Robert Rhodes*, was indicted for that he, after the 24th of *June*, 1736, viz. *Sept.* 3 d. made and forg'd, and did willingly act and assist in forging and making a certain Paper, partly printed, and partly written, sign'd with the Name of *John Thompson*, purporting to be the last Will and Testament of the said *Thompson*, which said Paper-writing is contain'd in the Words and Figures following, viz

In the Name of God, Amen. I *John Thompson*, of the Parish of *St. Giles's in the Fields*, in the County of *Middlesex*, Mariner, being in bodily Health, and of sound and disposing Mind and Memory, considering the Perils and Danger of the Seas, and Uncertainties of this transitory Life, do, for avoiding Controversies after my Decease, publish and declare this my last Will and Testament. in Manner and Form following. First, I recommend my Soul to God that gave it, and my Body to the Earth or Sea as it shall please God. As for, and concerning all my worldly Goods, I

dispose them as followeth. I give to my Friend, *Robert Rhodes*, all my Wages, Sum and Sums of Money, Goods, Chattels and Tenements whatsoever as shall be any Way due, owing and belonging to me at the Time of my Decease: I give, devise and bequeath the same to my Friend *Robert Rhodes* aforesaid, and I do hereby nominate and appoint him to be my lawful *Executer*, revoking all former Wills. And I do ordain and ratifie these Presents to be my only last Will and Testament, in Witness whereof I have set my Hand and Seal, the 6th of *September* 1736, in the 10th Year of his Majesty's Reign.

John Thompson.

Sign'd, Seal'd, publish'd and declar'd in the Presence of *Mary Sempson*, *John Williams*, and *William Davis*.

He was farther Charg'd for uttering and publishing the same, knowing it to be false forg'd and counterfeit. (80)

The contemporary reader of this crime narrative would not be in suspense as to the trial's final outcome. The use of "+" immediately before the name of the accused at the beginning of the case report signifies from the outset of the narrative that the accused was found guilty and sentenced to death, The Christian symbolism, the cross suggested by this mark of designation, would have been clear to any Londoner in 1742. The privileging of the text of the will within the very general statement of the criminal charge itself emphasizes not only what I will show to be its multi-layered centrality to the trial of Robert Rhodes, but also its role as an emblematic foundational text within the legal, social, and economic matrix of which the Old Bailey is an instrument of enforcement and control. The centrality of a last will and testament as foundational text is also important in the history of the novel, a theme that I will explore in connection with Samuel Richardson's *Clarissa* (1747-1748).

The level of detail in the opening section of the *Sessions Report* emphasizes the policy issues at stake and the basic narrative upon which the prosecution is based. Here, the lawyer for the prosecution is engaged in narrative construction as mediated by the

compiler of the report. The compiler has evidently made the authorial decision to include so much rich detail at the outset of the narrative.

THE Council for the King having opened the Indictment, proceeded to take Notice that this Prosecution was founded on a late Act of Parliament, which was made to punish those who were guilty of a Crime of the first Magnitude, destructive to Trade, and all that Security which every one ought to have for their Estate and Property: That the Person mention'd in the Indictment by the Name of *John Thompson*, was originally a Taylor, but that in *March 1737*, he enter'd on board his Majesty's Ship the *Flamborough*: that being indebted to one *Carter* in the Sum of *14 l.* and being going on board the Ship, he gave a Letter of Attorney to this *Carter*, to receive his Wages: that he likewise made a Will, wherein he appointed *Carter* his general Legatee, and that he afterwards died on board this Vessel in August thirty-nine. *Carter* hearing of *Thompson's* Decease, applyed to Doctor's Commons to prove the Will that was left with him: that upon his coming there, he found that another Will had been proved, which was the Will in Question, and wherein *Thompson* was said to have appointed the Prisoner his Legatee, who must (in order to have been entitled to receive a Probate) have taken an Oath that that was the true Will of *John Thompson*. That, as soon as *Carter* found this Fraud had been committed, he made what search he could to find out this *Rhodes*, and at last received Information of him at *Mitchell's* Coffee-House near the *Navy-Office*, and he was afterwards taken up for this Fact. It was farther observed, that it was a great Misfortune attending this Sort of Men, that they are not only subject to greater Casualties than other People, but also leave their Effects under great Uncertainty; that upon the Probate of a Will's being produc'd, the proper Officer of the Navy is bound to deliver a Ticket for the Wages of the Sailor to that Person who appears to be entitled to it, and that it has been too much a Practice lately for Persons to set up Wills which never were real to get into their Custody, that Pay which these honest Men have earn'd with the Sacrifice of their Lives, &c. (82)

This opening statement of the case by "Council for the King" incorporates numerous social tensions that merit consideration before the specific case is read. Likewise, the lawyer and compilers as co-authors realized the importance of the rhetoric of sound social policy as the background around which the case (and its resulting textualization in the *Proceedings*) would revolve.

First, the opening narrative by the state's lawyer emphasizes a society based upon both traditional and innovative economies. The centrality of these dual economic

perspectives can be seen by the lawyer's emphasis on the policy behind the enactment of the Parliamentary Act upon which the prosecution is based. Forgery and publication of wills is called "a Crime of the first Magnitude" as it is "destructive to Trade" and "Security" that is to be expected with respect to "Estate and Property." Primogeniture and the laws of testamentary descent were central to an orderly and predictable intergenerational passage of property resulting from the inevitability of death. As a result, the security of property and estates refers back to the traditional legal basis for England's social, economic, and political organization. In her book *Britons: Forging the Nation 1707-1837* (1992), Linda Colley emphasizes the importance of eighteenth century Britain's "cult of commerce" to the prospective construction of its national identity. Besides positing the traditional basis of wealth, i.e. land and estates, the King's Counsel also references the prospective economic importance of trade in ways that become clearer in the remainder of his opening speech. However, the economics of the past and future seem in equipoise. In capitalizing "Trade," "Security," "Estate," and "Property," the terms as public ends seem to be given equal weight within the narrative and, as public policy, seem to be mutually dependent upon each other.

John Thompson, the decedent, went on board a British naval vessel. Although the Opening Statement does not disclose the specific capacity in which he boarded the ship, it is clear that an employment contract was entered into between Thompson and the Navy. As a debtor to one Carter in the amount of fourteen pounds, he made an assignment of wages with a power of attorney for repayment of the debt in the event of his death. The customary usage (and the fraudulent usurpation) of such arrangements is apparent at the conclusion of the Opening Statement when the King's Counsel says that the proper Naval

official delivers the deceased sailor's wage ticket to the entitled party and that there had been a recent practice of fraudulent wills being produced illegally in order to obtain the dead man's pay.

A number of related policy issues are apparent in this section. The act of which Robert Rhodes is accused is not an isolated event, but apparently part of a systemic problem that the Admiralty has been experiencing with fraudulent claims for dead sailor's wages. At risk here is the sanctity of contract, and the development of contract law to meet the exigencies of trade in the eighteenth century was of paramount importance. The fraudulent will not only interferes with the legitimate will, but also the original wage assignment with a power of attorney executed to insure repayment of Thompson's debt. The legal instrument is illegally supplanted by the fraudulent document. Thus, the order and certainty of commercial transactions are at risk with respect to the course of illegal conduct of which Robert Rhodes' alleged forgery is but one example.

The fraudulent scheme also interferes with orderly administration of the affairs of the Admiralty. Of course, the efficient maintenance of a strong British Navy was essential to the interrelated nexus of trade and maritime power, both of which were essential to the fabric of the eighteenth-century body politic headed by the King of whom this attorney was the titular representative and spokesman. By setting these policy dictates before the Judge, Jury, and audience, King's Counsel is telling these participants how to read the text. In this case, the narrative's clarification literally comes at the outset of the case when the lawyer, as symbol of sovereign power, tells the reader what the case is "really" about. Prosecution counsel appears here not for the notoriety of the defendant, but rather for the perceived social importance of the trial and the deterrent value of a conviction and execution.

The lawyer for the prosecution is designated by the abbreviated term “Counc,,” for “Council”; he states, “We shall call *Mr. Roseindale* to prove the death of *John Thompson*.”

Mr. Roseindale is the Chief Clerk for the Ticket Office in the Navy Office. He establishes for the record the procedure whereby, as often as is practicable, the Captains of the various British Navy would send their Muster Books and Pay Tickets to the Navy Office. There, according to Mr. Roseindale, the information would be entered and assigned once or twice per month to the “Executors,” the individuals legally entitled to receive the proceeds from the sailor’s wages. This group would include spouses and other family members, as well as creditors. He testified in response to questions from prosecution counsel and the jury:

Counc. If any body dies on board, does not that Book take Notice of it?

Mr. Roseindale. Yes, and it appears by this, that *John Thompson*, an able Seaman, died the 22nd of *August*, 1739, at *Turtle Bay*, on board the *Flamborough*, and the Ticket was made out for his Wages, and sent to the *Navy-Office*.

Jury. When was the Ticket made out?

Mr. Roseindale. I presume, presently after the Man died. (82)

Although this would appear to be basic testimony laying an evidentiary foundation that a death had in fact occurred, this trial narrative illustrates for us the role and function of trial lawyers before the Old Bailey in 1742.

“Council for the Prisoner” lodged an objection to this testimony and it is at this point in the trial narrative that a reader learns for the first time that both the prosecution and defense are represented by counsel. This segment of the narrative is significant as it shows how lawyers, rather than the judge alone, were beginning to set the framework for how criminal narratives would be constructed. The compiler made a decision to include this procedural debate, either realizing its novelty or simply acknowledging the policy

importance, or perhaps just the public's interest in the outcome of the case. This section of the narrative reads as follows:

It was here urg'd by the Council for the Prisoner, that this was improper Evidence to be laid before the Jury, and not sufficient to prove *Thompson's* Death; that a Fact of this Kind should be prov'd by Persons who were on board the Ship, for that the Captain or other Officers of the Ship might through Mistake or Design, return the Man dead when he was really alive.

In answer to which, the Council for the Prosecution said they were surpriz'd to hear this Objection made; for that according to the known Course of the Navy, the Names of all the Sailors that die, are regularly enter'd in a Book for that Purpose; that this Book was given in Evidence in *December* last in the Case of *Fitzgerald* and *Lee*; the Evidence of *Perry's* Death being only a Book of this Kind. That the Person who dies is always enter'd in this Book, and when it comes over here, the Consequence of that is, there is a Ticket made out for the Wages, and according to the known Course of the Navy, deliver'd to the Person who brings the Probate: That as the Prisoner stood indicted for publishing a Will, it was an Acknowledgment by himself that the Party was dead, unless he could go and swear he was dead, and prove his Will, when he is alive: That the Prisoner had actually receiv'd the Pay of that Man, and therefore he thought him dead or certainly he would not have gone to *Doctor's-Commons* to prove the Will; that if this was not Evidence to prove his Death, no Seaman could be secure of one Shilling which he was venturing his Life for every Hour he lives, &c.

By the Prisoner's Council in Reply it was offer'd that there were a great many People on board the Ship who best knew whether the Man was alive or no, and that the Proof ought to be fuller in this than in other Cases; that notwithstanding the Prisoner might have prov'd this Will, that was not sufficient; for that a great many People had prov'd Wills, when it has appear'd that the Person was alive.

It was further observed by the Council on the same side that there was no such Thing as a Will while a Man was alive, for that he might controul it every Moment: That no Person appear'd here, upon the true Survey of the Ship to prove this Man dead, and therefore 'twas hop'd that what had been offer'd against the Prisoner, was not sufficient Evidence of the Death of a Man in a Case of Felony.

Upon the Whole, the Court was of Opinion that the Council for the Prosecution should go on with their Evidence (83).

Defense counsel is arguing for the necessity of eyewitness testimony of Thompson's demise, while prosecution counsel cites precedent for the introduction of this type of official record into evidence. Also, the prosecution argues that the offering of the fake will

by Robert Rhodes for probate was an admission against interest as to the actual occurrence of Thompson's death. Because of the capital nature of a felony prosecution, defense counsel argues "that the Proof ought to be fuller in this than in other Cases." While the "beyond a reasonable doubt" standard was not acknowledged as the requisite burden of proof in mid-eighteenth century criminal trials, defense counsel is making the type of specific argument that gestures towards the stricter standard of proof required in today's Anglo-American criminal trials, a standard that would gradually begin to appear in *Sessions Papers* in the second half of the eighteenth century. At any rate, this type of exchange (along with the narrative it produces) is highly unusual in criminal trials before the Old Bailey in the 1740s.

After the objection is resolved in favor of the prosecution, Mr. Roseindale is allowed to complete his testimony:

Counc. Did you make out any Ticket for Wages due to *John Thompson*?

Roseindale. No Sir, it was made out by the Captain of the Ship. I deliver'd it out of the Office to *Robert Rhodes*, Executor, a Cheese-monger, at the Croner of *King-street, St. Giles's*. I can't say I know his Face, by reason I see so many People coming backwards and forwards.

Pris. Q. When did you deliver out the Ticket?

Roseindale. This is the Ticket; I deliver'd it to Mr. *Rhodes*, *Sept. 3, 1741.* (83)

By seeing subsequent "*Pris. Q.*" questions in the trial report, such as "*Pris. Q.* How long have you known me?," we know that the designation "*Pris. Q.*" stands for "Prisoner's Question," and refers to Robert Rhodes and not his defense counsel. Did defense counsel contract with the defendant only to advise him on matters of law, as was the role of lawyers in certain pretrial matters prior to the appearance of defense counsel before the Old

Bailey in the 1730s? Perhaps the lawyer's role was defined by court mandate in an effort to preserve the longstanding policy of "altercation by trial." If that is the case, then this text might be read as an intermediate step only presaging defense lawyers' full participation in criminal trials. Along the lines of my reading of wills in Samuel Richardson's *Clarissa* (1747-1748) in the second section of this chapter, perhaps Robert Rhode's decision to conduct his own cross-examination was like the offering of the fake will for probate, a willful act, evidencing a disregard for social norms and common sense even in the challenging of the prosecution's witnesses.

Next, the original will upon, which the prosecution is based is produced by John Goodwin, Clerk to the Register of the Prerogative office. Then, Joseph Hughes testifies that he wrote the oath on the back of the will, and that he accompanied Rhodes to Doctor Chapman, a notary, to get the oath sworn and attested. The oath would have asserted that the will was the true and valid last will and testament of the decedent. The fact that Rhodes engaged Hughes to write the oath on the back of the document implies that Rhodes may have been illiterate, an ironical situation since his fate turns upon his offering to the State a false textual utterance. Hughes acknowledges his first-hand acquaintance with the defendant when he says "I have seen the Prisoner before this, and since, for he has been to me, with People upon other Occasions" (83). Although Rhodes' general character is not specifically attacked here, the implication is made that the accused might have been involved in other shady dealings. The rendering of the oath is its own form of narrative construction. It is the telling of a story about the identity and origin of the document. It represents yet another variation on a theme that unites many of the cases I am discussing,

the selling of a story. The “sale” here is the offering of a false narrative for an illegal, unjustified monetary gain.

Another mini-narrative within the trial report is the specific detail that it proves regarding the practical steps for probating a will at this time and under these circumstances.

Counc. What was the Oath that was administer’d to the Prisoner?

Dr. Robert Chapman. The Oath he swore was, that he believ’d this to be the last Will and Testament of *John Thompson*, deceas’d; that he was nam’d Executor, and that he would give a just Account of his Executorship when call’d to it by Law. This is only a short *Jurat* on the Back of the Will. He swore that this was the Will of *John Thompson*, deceased, and the rest was a Promissory Oath that he would duly pay the Debts and Legacies; and here is likewise wrote on the Back, that the Effects don’t amount to 20 *l*.

Mr. Hughes. They bring the Will first, and the *Jurat* is wrote on the Back; then we carry them to a Doctor to be sworn, and this Will was prov’d according to the Prisoner’s Directions (83).

Again, this level of detail is highly unusual in the *Proceedings*. By setting forth the probate procedure with particularity, the court (through the compiler of the *Sessions Report*) is not only carefully setting forth the elements of the crime, but also illustrating the specifics of a systemic legal procedure that, as a matter of political, social, and economic policy, must be protected. This is of fundamental importance to the dense narrative presence of these procedural details.

Discrepancies as to occupation and geography are raised in order to prove Thompson’s will as “false narrative.” Samuel Boyden is called and gives the following responses to the questions of prosecution counsel and Robert Rhodes himself:

Counc. We shall now call *Samuel Boyden* to prove that this is not the Will of *John Thompson*, and that he was not a Mariner, nor of this Parish at the Time the Will bears Date; - Are you acquainted with the Hand-writing of *John Thompson*?

Boyden. I was so far acquainted with it, that I took particular Notice of his signing the Will to Mr. *Carter*, and to the best of my Knowledge this is not his Hand.

Pris. Q. Did you never see him write but that Time that he sign'd the other Will which you witness'd?

Boyden. I have seen his Writing, but never was by when he wrote: except when he made that Will, which I witness'd. - I can't remember when that was.

Counc. I ask you whether in *September* 1736, he was a Mariner?

Boyden. Not to my Knowledge; I never heard that he liv'd there.

Q. Where did he live when you saw him make the Will?

Boyden. In *White Hart yard*, in the Parish of *St. Mary le Strand*.

Q. Where did he live when that Will was made in 1736?

Boyden. I don't know; he came out of *Yorkshire* as near as I can judge, about two Years before he went to Sea, and I sign'd that Will for Mr. Carter the Night before *Thompson* went on board.

Pris. Q. What Day did you sign the Will for *Carter*?

Boyden. It is impossible for me to remember that; I know the Time; but I can't remember the Day or the Year (84).

For purposes of the validity of the will, Thompson's "character" as constructed is not one based on virtue or his inner life; rather, his trade and residence, both important elements of the social geography of eighteenth-century London characterize him. The will operates as a false map to this space and is thus transgressive in an extralegal fashion.

After testimony from one Gibson who testifies as to the identity of the signature and the execution of the valid will in favor of Carter on March 7, 1737, Mr. Carter himself is called as a witness by prosecution counsel. Counsel for the defendant here interposes an objection based on the premise that the witness was an interested party, and the following legal argument between opposing counsel results:

Mr. *Carter* being call'd by the Council for the Prosecution, it was urg'd on Behalf of the Prisoner that he was a Person interested, and therefore could not be admitted to give Evidence; that this was the same as a Case of a Note of Hand, where the

Party who is bound by that Note comes to prove it forg'd, to secure his own Interest.

In answer to which, it was said, that the Consequence of this Suit could in no shape affect *Carter*, the other Will being already prov'd in the proper Court, and supposing the Will which the Prisoner stood indicted for should really prove a good one, yet *Carter's* Will being subsequent would destroy it. The Prisoner's Will bearing Date in the Year 36, and *Carter's* 37, making it indisputable: That this was not a private Prosecution, but a Prosecutiion in the Name of the Crown for the Benefit of the Public, that the Prisoner might be punish'd according to Law, therefore exactly agreeable to a common Case of Felons.

It was observed by the Prisoner's Council in Reply that this was no Answer to the Objection; that *Carter* (who had a Will) was called to prove which was the real one, the 1st or the last; that he was call'd to prove the Prisoner's Will false, and certainly he must have Benefit by that, for that then his own would stand without doubt. The Court being of Opinion that *Carter* was not a competent Witness, the council proceeded to call *Sarah Russel* (84).

Again, defense counsel is limiting his involvement to the raising of procedural objections and arguments as to relevant points of law. He is not engaged in the actual cross-examination of witnesses; that chore apparently is being handled, if ineptly by the prisoner himself. Thus, the roles of the lawyers as architects of the narrative are unequal. Counsel for the prosecution has the more effective "authorship" in the resulting legal narrative. The influence of defense counsel, however, can be seen in the shaping of some aspects of the story as his objection to Carter's participation as a prosecution witness is sustained by the court. Although the roles of the lawyers are unequal, successful objections by defense counsel do impact the narrative by determining what facts can or cannot be included in the developing story.

On its face, the prosecution's legal argument seems persuasive. Since the will in favor of Carter had been held to be valid, the finding of Rhodes' will executed earlier as fraudulent would not affect the validity of the legal will in favor of Carter. Since the "legal" will was executed after the fake will and, it revoked all prior testamentary

instruments, even if validly executed. The element of fraud, therefore, was only germane to the trial of the felony proceeding. In making this point, counsel for the prosecution states that the felony trial “was not a private Prosecution, but a Prosecution in the Name of the Crown for the Benefit of the Public.” Of course, all Anglo-American criminal cases today are brought in the name of the State; there are no private criminal actions, as such. Not only does this section of the narrative look forward to a criminal system in which the State is the proper party to prosecute felonies, but it also relates back to prosecution counsel’s opening statement as to the public policies of “Trade,” “Security,” “Estate,” and “Property” that are at stake in the trial.

A variety of narratives are suggested in the examination of a certain Mrs. Russel. The ambiguity of her personal and business relationship with the defendant can be seen in the following exchange:

Counc. Do you know the Prisoner?

Mrs. Russel. Yes Sir; I purchas’d this Ticket of him, I think it was the fourth of *September* last: it was the very Day after the Ticket was delivered out of the Office.

Counc. Had you any Meeting with the Prisoner in relation to this Affair?

Russel. He us’d to call very often at my House and drink a Glass of Wine.

Counc. What did he say upon this Occsion?

Russel. He shew’d me the Ticket, and ask’d me to buy it: I said I would if it was a good one: I sent over to the Office and had it cast with the Books, and paid him the Money for it.

Counc. Did you ever see him with *Carter*?

Russel. Yes, I believe I have: I heard him say to *Carter*, if he could prove his Will to be good, he would make any just Agreement with him, for they both said that *Thompson* ow’d them Money.

Pris. Q. How long have you known me?

Russel. I can't remember; I don't take such Notice of Strangers, but I believe I may say a Year.

Pris Q. What do you take me to be?

Russel. A Man; I suppose.

Pris Q. Do you suppose me to be a good Man?

Russel. I don't suppose any Thing at all.

Pris. Ask her whether she never heard of Sailors making three or four Wills to defraud different People of Sums of Money?

Russel. I have heard People talk so to be sure, but I never had any Proof of it.

Mr. Goodwin. Sometimes I have 2 or 3 Wills from different Persons, and when we meet with any, we stop them.

Pris Q. Did you never hear of a third Will of *Thompson* coming to your Office?

Mr. Goodwin. No, I never heard of it (85).

At the conclusion of this dialogue, the reader is bound to ask: what was the nature of the relationship between Mrs. Russel and the prisoner? As if often the case in the *Sessions Papers*, a number of alternative supplementary narratives are suggested.

She indicates that he often appeared at her house to drink and that she had known him for about one year. Although she purchased the wage ticket from him, no allegation is made by the prosecution that she was involved in any fraudulent scheme. In fact, there is a continual friction between the accused and the witness; several times during the exchange, she tries to distance herself from the defendant and his alleged criminal acts. She refers to him as a "stranger," implying a lack of intimacy or even friendship. When the prisoner asks whether she supposed him "to be a good Man," she reinforces the rhetorical distance by stating that she did not "suppose any Thing at all." Finally, when he asks her whether

she knew that sailors often made multiple fact wills to defraud people prior to a voyage, she admits that she heard of such practice, but denies first-hand knowledge. This strategy of rhetorical distancing is also suggestive of the parties' and witnesses' general isolation in the described urban landscape. Finally, it seems that the defendant is suggesting a counternarrative to the prosecution's story as constituted from Mrs. Russel's testimony, but she, unlike the defendant, appears to be in control of the authorship of her own story.

The prosecution concludes its case by calling a Mr. Honeychurch, an acquaintance of the defendant, who corroborates the previous testimony as to Thompson's original occupation as a tailor with a place of abode at "the Swan and Apple-Tree in White-Hart-Yard, in the Parish of St. Mary le Strand." The defendant's credibility as author and draftsman is attacked, and the falseness of the underlying narrative is thereby re-emphasized, returning the focus of the case back to the fraud involved in the writing and publication of the will. This seems to be a sound tactic of trial strategy (and narrative construction) as it relates directly to the charge in the indictment which stated that Robert Rhodes "made and forg'd, and did willingly act and assist in forging and making a certain Paper, partly printed, and partly written, sign'd with the Name of John Thompson, purporting to be the last Will and Testament of the said Thompson..."

The last aspect of the prosecution's case to be introduced is the so called Wage Ticket itself and, this short document reinforces the various ideologies of the total narrative:

Here the Ticket was read, - "*John Thompson*," able Seaman, aged (Blank) Years, died on "board the *Flamborough Man of War*, Aug. 22, " 1739, at which Time he was discharged by "Reason of Death."

The deceased himself is represented as a ledger entry. He is a commodity described in the Wage Ticket by his utility to his ship as an “able seaman.” This short narrative is his memorial; his epitaph is a claim for unpaid wages. The narrative does not include his age, but the inclusion of the “(Blank)” operates as an erasure; to a certain extent this signifies an absence of personhood itself. Like his textual identity throughout the trial narrative, in the end John Thompson is defined by his social function and spatial presence. The Wage Ticket itself is a form document, a textual production of the bureaucracy constituting the Navy Office. The impersonal nature of the administrative apparatus is further emphasized through the ticket, as it states that John Thompson died on board the ship on August 22, 1739 “at which Time he was discharged by ‘Reason of Death’.” The details (or even cause) of his demise are deemed irrelevant to the business at hand. Like all of the stolen property listed throughout the *Proceedings*, John Thompson as textualized through the Wage Ticket ends up represented, like the myriad of stolen commodities through the *Proceeding*, with value of “19 l. 18 s. 1 d.”

Ironically, a will was of no value to John Thompson, but it was the forgery of that document (and not the simple fraudulent procurement of the “Wage Ticket”) that was the basis of the indictment and prosecution of Robert Rhodes. Apparently, John Thompson had no blood heirs, and he had no real or personal property separate from the wage claim. Thus, a will, a time-honored instrument of social and economic stability and transmission of wealth, was of little use to him. However, for the State (and its prosecution) the stakes were the same as if the tailor turned sailor were a man of property. The efficient and honest administration of matters involving naval personnel was inextricably tied to the

Prosecution's stated public goals of "Trade," "Security," "Estate," and "Property," the four cornerstones of the body politic in this *Sessions Report*.

As the defendant begins to present his own case, the reader has little sympathy for his plight if the seemingly credible prosecution witnesses are to be believed. The examination of Robert Nash Jones, a witness who supposedly saw Thompson sign the will in favor of Rhodes, is questioned briefly by the defendant himself, and is examined at some length by prosecution counsel. Rhodes' direct examination of his primary defense witness is as follows:

If your Lordship pleases, I can call one Man who was in the House when the Will was made to me.

Call Robert Nash Jones.

Pris Q. Did you know Mr. Thompson that is dead?

Jones. Yes, his name was *John Thompson*, I knew him no farther than just happening into the Alehouse where the Will was making, and that was in *Church-Court*, by *St. Martin's-Church*, and I think it was at the *Chequer* Alehouse. I went in to drink a Pint of Beer, and there was Mr. *Rhodes*. I knew him when he liv'd at the *Seven-Dials* some Years ago, and for that Reason he spoke to me. At that Time the Will was making, it was fill'd up by one *John Williams*, but I did not see it witness'd.

Pris. Q. Was there any Thing desired by *Thompson* or *Rhodes* at that Time?

Jones. Nine Pounds Mr. *Rhodes* *disburst*ed at that Time to *Thompson*, as I understood, it was to sit him out, or something in that Way, and *Thompson* was to make a Will to him, and he was to receive his Pay; according to my Understanding it was so.

Pris. Q. How long ago was this?

Jones. I take it to be about *Michaelmas* Time in 36 or 37; I was there present, and paid my Reckoning, and went away and left them together (85).

Again, a witness is establishing rhetorical distance between the accused and himself. Jones states that he "knew him [John Thompson] no farther than just happening into the Alehouse

where the Will was making.” His relationship to Rhodes was limited to a former acquaintance “some Years ago” when the accused lived at the Seven Dials, an area adjacent to Covent Garden notorious in the mid-eighteenth century for its criminal element. Rhodes, who appears to be illiterate, had one John Williams fill in the terms of the will, and Robert Nash Jones did not see the instrument witnessed. According to the testimony of the witness, nine pounds was paid to Thompson as consideration for execution of the legal document. The inference here is that Thompson was complicit in the scheme. If he intended at this time to execute a subsequent will, perhaps Thompson was committing his own fraud against Rhodes. The fraud indictment could not stand as Thompson actually executed the will upon which the Old Bailey prosecution was based.

In his cross-examination, counsel for the prosecution first focuses on Robert Nash Jones’ current residence and employment as a trader. As I have noted, physical and social geographies are recurrent themes throughout this trial narrative. The witness testifies that he worked as a porter, leather dresser, and in various positions related to the trade of plumbing. At this point, literacy both as to the execution and the reading of the will is highlighted in the cross-examination:

Counc. How long had you been acquainted with *John Thompson*?

Jones. Only the Time of the Will’s making: I don’t know that I have seen him before or since.

Counc. How do you know it was *John Thompson*?

Jones. Because the Man that fill’d up the Will call’d him so.

Counc. Was this in the Year 38?

Jones. No, I take it to be about 36 or 37: I can’t justly say to an Hour, a Day, or a Month, because I only chanc’d (to go) in for a Pint of Beer, and I sat down in the Company.

Counc. Did you read the Will?

Jones. No, I am not Scholar enough I believe to read a Will.

Counc. Who told you it was a Will?

Jones. I understood according to my Understanding, that the Will was made to Mr. *Rhodes* on *disbursting* so much Money.

Counc. Who told you this was *Thompson's* Will?

Jones. Mr. *Thompson* and *John Williams* were together, and I saw him writing on the Paper: - I staid there half an Hour or better. I saw nobody else there but *Thompson, Williams* and Mr. *Rhodes*.

Counc. Did you see the Will sign'd?

Jones. No, I only saw *John Williams* (as Mr. *Thompson* call'd him) writing on the Paper: I saw nothing at all sign'd. I can read a little, but I did not read the Will, for I had no Concerns to ask my Questions (86).

Certainly, on its face the testimony of Jones seems to implicate Thompson in the execution of the document. The errors as to Thompson's trade and address might have been a result of mistake on the part of John Williams, an intermediary who actually was scrivener for the legal instrument, supposedly at the request of Rhodes and Thompson. Because Jones cannot read, he cannot identify the verbal content of the writing. In fact, he never read the will and only characterized the document as such based upon the self-interested representation of Rhodes, who transferred the funds to Thompson. If this narrative was accepted by the Court and jury Rhodes would still not have been entitled to Thompson's wages, but he would have established a viable defense to the specific felony charge of forging the will. Illiteracy both in the construction and understanding of narrative operates as a factor that inhibits the proper signification of the verbal sign. The resulting lack of understanding, at the time of the will's execution, results in concomitant lack of

understanding on the part of the judge and jury that may have contributed to Rhodes' conviction. As texts circulate within the trial report, there are numerous failures of signification. It is important to note that the credibility of the witness Jones is in no way impeached, and the reader is left with two competing narratives to consider, both of which are mutually exclusive and equally dispositive of the case's outcome.

As to proof of the underlying facts and circumstances pertaining to the issue of the forgery of the Thompson will, one final witness is called. It is unclear from the *Sessions Report* whether this unnamed witness was called by the defendant, or by the prosecution as a rebuttal witness. At this point, the narrative unravels further with the various possibilities of more competing wills and, as a result, competing narratives. States the unnamed witness:

A Witness. This Will was brought to me by *Rhodes*. He likewise brought another Will of *Thompson's* that I have in my Pocket; I think it is made to *Mary Vaughan*. *Thompson's* Will being prov'd, a Citation was taken out against *Rhodes* to bring it in, and shew Cause why a Will of a later Date should not be prov'd. Sometime after that, the Prisoner said he had found out a Will of a later Date than the other. I look'd upon it, and told him, he must bring his Witnesses if he intended to support it. He said, he knew but little of that Affair; but that one Mrs. *Glass* could inform me farther of it. he left me the Will and the Letter in which it was inclos'd, and I went to Mrs. *Glass*, who told me, she had received that Will enclos'd in the Letter from Mrs. *Vaughn* at *Portsmouth*, and desir'd every Thing might be done that was necessary to support it; but *Rhodes's* Will never was prov'd by Testes, therefore it was revok'd, and the other granted (86).

In this final bit of testimony (other than character attestations), the existence of a third will in favor of Mary Vaughn is established. Does this fact help or hurt the defendant? On one hand, if the other will was actually executed by Thompson, it would suggest that he was engaged in the execution of serial wills for profit on the eve of his extended naval deployment. On the other hand, it is extremely suspicious that Mary Vaughan's later will could be sent to Mrs. Glass who then sent it to Robert Rhodes. Was he aware of this third

will and did he participate in the procurement and execution of this other document? That possibility is certainly suggested by the text. Although there may have been additional argument and testimony on this final confusing evidentiary problem, the *Sessions Paper* offers no resolution to our question. The narrative thread that seems stable at the outset of the case disintegrates in a swirl of competing documents, which may or may not have been legitimate wills. This narrative confusion, however, only serves to reinforce the concerns expressed in the prosecution counsel's opening statement respecting the social need for commercial certainty and predictability.

The final section of the trial narrative offers vignettes of various character witnesses. Given the substance of the statements of the witnesses, it appears that three witnesses were called in support of the character of the accused and that the prosecution called seven witnesses to prove Rhodes' bad character. The defendant's character witnesses testify as follows:

James Cockran. I have known *Rhodes* between 7 and 8 Months coming and going; I never saw any thing by the Gentleman but Honesty. He has gone in my Parish under the Character of an honest Man, and it is more than I know if he would do such a Thing as this. I use the Holland Trade, and have sold him Stockings and Linnen, and have trusted him for a Month together. He is a Cheesemonger, and lives at t'other End of the Town. I have liv'd in *St. Katherine's* Parish these 9 Years, and he us'd to call upon me at my Chandler's Shop, and paid for what he wanted.

Peter Glass. I have known him 8 or 9 Months: I keep a Barber's Shop on *Tower-hill*: He always paid me 6 d. a Time, and I never saw nothing but what was honest and just by him.

-Harper. I have known him these 2 or 3 Years: He has been gone out of the Neighbourhood 4 or 5 Months, and then he bore a good Character: He used me handsome, and paid me for what he had: I liv'd over-against him.

Pris Q. Have you any Suspicion that I would do so foul a Crime as I am accused of?

Harper. The Man behav'd very well.

Counc. What Character did other People give him?

Harper. I have heard People whispering about that he was concern'd in these Wills 5 or 6 Months ago; the first Occasion of it was some Papers from the Commons being hung up a his Door before *Christmas*.

Counc. Was that on Account of this Will or another?

Harper. I never heard of any Will but this: He was a Cheesemonger in *King-street*, by the *Seven Dials* (86-87).

A review of the testimony indicates that Rhodes is characterized by his professional identity as a “Cheesemonger in *King-Street*” and that the witnesses are likewise qualified by their roles in the urban economy as a merchant, barber, and chandler. His reliability in his commercial dealings is offered as Robert Rhode’s most notable private and public virtue. Ironically, it is his threat to the stability of trade that is articulated as a policy behind his indictment and prosecution.

Although not specified with particularity by the compiler of the *Sessions Report*, it appears that the prosecution calls the next witness, John Hastings, as a rebuttal witness to the previous character witnesses called by the accused. John Hastings states as follows:

John Hastings, I have known the Prisoner about ten or a dozen years. He liv'd in *Little St. Andrew-street*, near the *Seven-Dials*, and from thence he mov'd to the Corner of *Earl-Street*, in *King-street*. When he liv'd in *St. Andrew-Street*, he behav'd very well, and was respected by the Neighbourhood, and was a very industrious Man; but when he mov'd into *Earl-street*, he became a Headborough, which a great many People believe was of no Service to him, for he has been accus'd of a great many foolish Things not to his Credit, with regard to Thieftaking, which is not a creditable Thing for a house-keeper. By following these Practices, his Business was reduc'd to such a low Ebb, that at last I believe he was driven to his Shifts; and there was something stuck up against one of his Window-Shutters, but what it was I can't tell. His Character is really a very bad one.

Pris. Did you ever hear that I wrong'd any one in the Neighbourhood of a Farthing?

Hastings. I know nothing no farther than there was something stuck upon his Window-Shutter about a Will, something above 3 Months ago (83).

Here the accused is identified as a “thief-taker”. The negative social implications inherent in that occupation can be seen in *Hastings*’ testimony. While Thompson states through his question that his behavior caused no harm to those within the immediate social geography of his “Neighborhood,” a negative aspect of his character is articulated in terms of his activities as a Thief-taker, a position that offered a fine opportunity for blackmail and extortion. Thief-taking also had literary resonance due to its portrayal in John Gay’s *The Beggars Opera* and Henry Fielding’s *Jonathan Wild* as a device by which the law ironically sanctioning its own form of robbery and fraud.

The negativity of his occupation as thief-taker is emphasized by *Hastings*’ testimony as to Thompson’s rise to the position of “Headborough”. According to *Black’s Law Dictionary*, a headborough was “in Saxon law, the head or chief officer of a borough; chief of the frankpledge tithing or decennary. This office was afterwards, when the petty constableness was created, united with that office” (851). This position of prestige in the local community embodies tradition; it pre-dates and survives the Norman Conquest in 1066. The office itself is described in *Hastings*’ testimony in terms of “respect” and “industry.” Thief-taking, therefore, undermines the virtues of tradition and hard work that are important to the rising mercantile economy exemplified by the Royal Navy in 1742. That such an activity is deemed transgressive of his specific social geography is seen when *Hastings* says that Rhodes “has been accus’d of a great many foolish Things not to his Credit, with regard to Thief-taking, which is not a creditable Thing for a House-keeper.”

The negative nature of the accused's thieftaking is further described in the testimony of Henry Brows:

Henry Brows. I have known the Prisoner 2 or 3 Years; I liv'd directly over-against him when he liv'd in *King Street*. When he came into the Neighbourhood, we took him to be a very honest Man which was about two Years ago; but since that, he was a Headborough, and hang'd two Men, which got him a bad Character. His general Character at first was very Honest; but by being guilty of these Facts, we could not think any other Thing but what was bad (83).

This witness specifically states that Rhodes was responsible for the execution of two men. The passage implies that this fact alone, absent any fraud or illegal behavior, was sufficient to give him "a bad Character." As the Seven Dials area was reputed to harbor felons of all descriptions, perhaps the men that Rhodes sent to the gallows were residents of the neighborhood and friends of these witnesses. However, this narrative thread is undeveloped. The testimony of John Hastings and Henry Brows indicates that the occupation of thief-taking *per se* was sufficient to give Rhodes a bad reputation.

We have previously seen that problems with dishonest thief-takers and manufactured proof and testimony was one of the issues that caused the courts to allow defense counsel to participate in trials before the Old Bailey. Ironically, Robert Rhodes, the former thief-taker, is an example of the type of person that caused the courts to allow defendants to have lawyers, but effectively fails to avail himself of the opportunity that others like him helped to create. As stated, although he had a lawyer present, his counsel was ineffective in mounting a proper defense. Rhodes' own disreputable role in the administration of other felony cases is an unstated policy issue that further supports the prosecution of Robert Rhodes in a text that is characterized by a myriad of concerns about public policy.

As the trial comes to an end, the portrayal of Rhodes' character goes from bad to worse, for it is established that he had a reputation for forging bills and notes. Although, these allegations are not germane to the case at bar, they effectively undercut the counter-narrative that the prisoner has developed with respect to the eyewitness account of Thompson actually signing the will in question. The testimony of the final rebuttal witnesses as to character rebuttal, are included followed by the final rendering of the verdict.

Wm. Nichols. The Prisoner liv'd over against me, and his Character at first was very good, but lately very indifferent; for there was something stuck up against his House, and there was a Talk of his forging a Will.

Thomas Trout. I have known him about 2 or 3 Months, and his general Character is very bad, in forging Notes and Wills: it came once to my turn to arrest him, about 3 or 4 Months ago: I never heard a bad Character of him before that Time for I never knew him.

Pris. Ask him how I behav'd when he arrested me?

Trout. I took his Word, and one Mr. *Young* paid me the Debt and Costs in 2 Days.

Walter Burton. I have known the Prisoner above three Months, and by an intimate Acquaintance of his, one *John Jones* a Leather-dresser, I have heard a very bad Character of him.

Pris. I arrested this Man for a Note of Hand for 26 *l.* and he has mov'd the Cause out of the *Marshalsea* into the Court of *King's-Bench* or *Common Pleas*.

Burton. It was a forg'd Note, and therefore I would not pay it: I never gave a Note of Hand in my Life.

-Spradley. I never saw the Prisoner till the 30th of *Sept.* last, but since I have had the Occasion to know him, he has borne a very bad Character.

Francis Jordan. I have known him a pretty while, and dealt with him, and he then bore a good Character, but since I have heard an indifferent one: he bore a good Character in the Neighbourhood, and when I was Overseer he paid me my Taxes last Year.

Counc. What Character has he borne since?

Jordan. I won't go by Hearsay; I will swear nothing but what I can prove.

Guilty. *Death.* (87-88)

Rhodes himself is portrayed as both a debtor and a creditor. While the allegations of fraud and forgery abound, the accused tries to portray himself as a model of commercial probity.

Rhodes' behavior in the context of his arrest for debt is offered by his testimony as a badge of commercial honor, and evaluations of the behavior of Rhodes on both sides of the debtor/creditor dichotomy are textualized as alternative indices of good and bad character.

When Rhodes himself was arrested by Thomas Trout some three or four months before the trial, the accused implores the Court to "ask him how I behav'd when he arrested me?"

Trout gives a testimonial when he states that "I took his Word, and one Mr. Young paid me the Debt and Costs in 2 Days." Thus, Rhodes states that he was in no way "denying" his creditors. Indeed, he is not guilty of the type of conduct that caused Prior Green and Alexander Thompson the problems in their criminal trials discussed earlier.

Whatever benefit Rhodes gained by virtue of the rhetoric of fair dealing immediately evaporates with the testimony of Walter Burton. After Burton states the negative hearsay evidence of "John Jones, a Leather-Dresser," Rhodes tries to impeach Burton's testimony by stating that "I arrested this Man for a Note of Hand for 26 *l.* and he has mov'd the Cause out of the *Marshalsea* into the Court of *King's Bench* or *Common Pleas.*" Then, in a reply that emphasizes the defendant's bad faith and bad character, Burton states that "it was a forg'd Note, and therefore I would not pay it: I never gave a Note of Hand in my Life." According to the witness, Rhodes' suit on a debt is based upon

a lie, and this is a final note that unfortunately for Rhodes goes to the heart of the issue for which he is being tried.

As the case ends with the verdict of “Guilty. Death,” the thief-taker becomes the thief that is taken. His arrogance manifested itself in numerous acts of transgressive volition. Just as he either forged the will or authored a scheme by which alternative wills for money or other consideration were executed, he eventually wrote his own conceited narrative in the Old Bailey. Since defense lawyers generally cross-examined witnesses in criminal trials before the Old Bailey, Rhodes’ usurpation of the lawyer’s assistance in authoring the text was ironically a use of his will that undercut his ability to prove his lack of culpability with respect to the documentary will in question. However, my reading of Rhodes’ motivation for conducting his own cross-examinations with his lawyer present in the courtroom can only be offered as a possibility. As I stated previously, there is no way to ascertain from the trial report what ground rules, if any, the trial judges set upon his lawyer’s participation. This type of narrative absence is characteristic of these cases, and it is this type of *aporia* that offers the reader the possibility and even necessity of constructing his or her own narrative to make the plot(s) of the story make sense.

What is certain about this particular trial report is that it is a narrative matrix constructed and subsumed by foundational legal texts. At least three wills mentioned, along with the Wage Ticket and the Power of Attorney referenced in connection with the Thompson will purportedly in favor of Robert Rhodes. There was a contract for enlistment in the Royal Navy. As a trade and commercial fair dealing are emphasized as background, the law of sales (and its custom and usage) is implied as a foundation for the architectonics upon which the plot of the legal narrative hangs. As a thief-taker, even Rhodes’ turning

over evidence in consideration for a reward constitutes a contract at common law. Therefore, as a narrative, the criminal narrative of trial is made comprehensible primarily through legal texts and narratives that circulate and in important aspects are part of the actual trial itself.

Although Samuel Richardson's *Clarissa* (1747-48) is often simply read as the tragic temporal and spiritual journey of the victim-heroine who suffers both at the hands of a rakish villain and, by implication, from an uncaring family, the novel is heavily informed by and dependent upon the legal discourse of the mid-eighteenth century. Because of his occupations as novelist, journalist, playwright, lawyer, and magistrate, Henry Fielding is well recognized as a notable cultural figure bridging the discourses of law and literature of the period. However, Samuel Richardson was no stranger to the law himself, and his role as a producer of the material artifacts of the law is extremely important.

By profession, Samuel Richardson was a printer. Born in 1689, he turned rather later in life to the writing of texts that would later be classified as novels. In his capacity as a professional printer, he was instrumental in the creation and propagation of printed legal texts. In 1733 he was appointed printer to the House of Commons, and in that capacity he published the Debates of Parliament for that legislative body. He was thus unusually aware of the specific contemporary issues, including procedural and substantive legal matters, which were addressed by the legislative body.

Moreover, Samuel Richardson was engaged in the funding and production of actual trial reports, including some that originated before the Old Bailey. The conclusion of the July, 1742 issue of the *Proceedings* (which includes the Annesley/Redding murder trial), includes the following notice:

On TUESDAY, September 14, will be publish'd, (In Six VOLUMES, Folio) The THIRD EDITION, with Additions, OF A Complete COLLECTION OF STATE-TRIALS And Proceedings for HIGH-TREASON, and other Crimes and Misdemeanors; from the Reign of King RICHARD II, to the Reign of King GEORGE II. With Two Alphabetical TABLES to the Whole.

Printed for the UNDERTAKERS:

John Walthoe, Thomas Wotton, Charles Bathurst, Jacob and Richard Tonson, and the Representatives of John Darby, deceas'd;

And also for J. Roberts, D. Midwinter, E. Graston, G. Strahan, E. Curll, W. Innys, T. Woodward, S. Richardson, A. Ward, J. and P. Knupton, T. Cos, J. Peele, S. Birt, J. Basket, R. Vincent, D. Browne, T. Longman, C. Hitch, H. Lintot, B. Creak, J. Clarke, R. Hett, J. Shuckburgh, T. Waller, A. Millar, J. Wood, J. Pemberion, T. Brown, J. Stagg, and the Executors of Samuel Buckley. (34)

As will be discussed, *State Trials* included not only treason trials, but also “other Crimes and Misdemeanors” deemed to be of particular importance and interest to the public. As an underwriter of this project, Richardson enabled its editors and publishers to canonize certain cases, such as the Annesley/Redding murder trial, in a manner that ensured that these trials would remain accessible to subsequent readers. As a printer interested in the production and dissemination of trial reports, Samuel Richardson undoubtedly was aware of the *Proceedings* and many of the cases that were reported. Samuel Richardson was an important figure in the textual production of both statutory and judicial texts in the mid-eighteenth century.

Clarissa (1747-48) and the Robert Rhodes criminal prosecution both involve legal discourse at its most fundamental level; in both narratives a will is the foundational document around which the plot revolves. Any discussion of legal and literary discourse in *Clarissa* must address the specific general concept of “will” in the numerous ways that it is used in the novel. Of course, wills as legal testamentary documents are textual bookends framing the novel. The will of *Clarissa*'s grandfather (and the familial dysfunction that

causes or is caused by the instrument) is referenced in the second letter as an enabling document for the micro and macro war of individual wills that constitutes the larger text's narrative logic and its relationship to a syntax of legal meanings "that are temporally unfolded and recovered, meanings that cannot otherwise be created or understood" (Brooks *Reading for the Plot* 21). Clarissa's proposed Last Will and Testament is discussed in detail throughout her long death narrative, and is proffered in full toward the end of the novel. It offers a gesture towards legal, textual, and spiritual resolution, a gesture which problematizes these same discourses. Indeed, Richardson initially thought of calling the novel *The Lady's Legacy*, a title which references the heroine's testamentary offering of her legal effects to her family and friends. Her letters supply the textual traces of her geographical and spiritual journey, as well as her story as spiritual example.

"Will" must also be considered in its context here as a future predicate verb. The novel is relentlessly anticipatory; it constantly concerns that which is going to happen. Although the letters are contemporaneous evidence of the characters' actions, thoughts, and emotions, the movement of the narrative is always towards the future. It anticipates, among other things, abduction, a rape, spiritual resignation and reformation, and death. As Margaret Doody noted in *A Natural Passion: A Study of the Novels of Samuel Richardson* (1974), in heroic tragedy death itself is an act of the will, and *Clarissa* is a tragedy translated into the language of the inner life with the heroine's forbearance and resignation being volitional acts. Like seventeenth-century spiritual autobiographies and the Gallows confessions of the Newgate condemned, the novel looks to the Future with a capital "F" - towards what Archbishop Tillotson called "the ravishing sight of the glories of another world, that steadfast assurance of future blessedness" (Doody 177). Finally, the

importance of God's will is similarly related to the question of individual will. For as Clarissa says in her letter to Miss Howe dated Sunday, July 23 (Vol. 6, Let. 91) upon the "bearing of the lot of her [Clarissa's] own drawing,"

– Lord it is thy will; and it shall be mine. Thou art just in all thy dealings with the children of men; and I know thou wilt not afflict me beyond what I can bear: And, if I *can* bear it, I *ought* to bear it; and (thy grace assisting me) I *will* bear it. (379)

Therefore, the word "will" operates with a cluster of meanings. On the one hand, legal wills and the power of individuals wills propel the narrative action and seem to determine what WILL happen in the novel. On the other hand, it is this very representation of will in the world that shows its limitations, even with good intent and right action.

The form of *Clarissa* would have been familiar to a reader of the *Sessions Papers*. Like a single Session, Calendar Year, or multiple years of the criminal trial narrative, *Clarissa* unfolds over time both within the novel and in terms of the time necessary for reading the text. Textual multiplicity is a characteristic common to both *Clarissa* and the *Sessions Papers*. Both works appear to deal with legal and moral certainties while actually framing notions of indeterminacy and encouraging multiple levels of interpretation. Both *Clarissa* and the *Sessions Papers* responded to similar expectations on the part of their readers.

Before the Norman Conquest, English customs of succession seem to have been designed to provide for the whole family of the deceased by dividing his estate into shares.

Then, under the influence of the Church, the deceased was also given a "part" to dispose of by testament, like Clarissa, for the good of the decedent's soul; the other two parts went to the widow and children. In the thirteenth century, questions of testate and intestate succession fell to the Church courts, and probate of wills and related litigation, as well as

the law of marriage, remained the principal work of those consistory courts until 1857, after which time the jurisdiction of ecclesiastical courts became confined to strictly Church matters, such as the alteration or sale of consecrated property and clerical disciplinary proceedings. However, the right to devise personality was not universal until 1724, when it was extended to the city of London. The nature and extent of a person's right to devise property by will remained unstable well into the eighteenth century (Baker 436). The universal right of the citizens of England to make a will was a fairly recent expansion of the applicability of an individual legal right.

All questions of legal discourse in the novel are tied to this multivariate concept of will. Law exists for the moral ordering of the body politic, as well as the individual's safety and security. In this novel, however, legal strictures with their remedies and punishments, supposedly a functional and textual manifestation of the public will, are like individual will, patently inadequate. Lack of testamentary predictability and finality is first noted in *Clarissa* when we find that Grandfather Harlowe's intent to provide for Clarissa fails; the grandfather's legal written will has the opposite effect of its intent. The ensuing drama may well be the result of latent malevolence on the grandfather's part towards certain members of Clarissa's immediate family, but even if his intent towards Clarissa is pure, the novel with its attachment to the devotional texts of the preceding century posits the almost Augustinian axiom that any use of the will not in line with God's will inevitably results in strife and discord, even when the original motive seems from that moral agent's perspective to have been pure.

The limitations of perception as to our own acts and the acts of others can be seen in Mrs. Harlowe's letter to Judith Norton dated Sunday, July 30 (Vol. 7, Let. 7):

But for such a child as this [*I mention what others hourly say, but what I must sorrowfully subscribe to*] to lay plots and stratagems to deceive her Parents, as well as herself; and to run away with a Libertine; Can there be any atonement for her crime? And is she now answerable to God, to Us, to You, and to all the world who knew her, for the abuse of such talents as she abused? (33).

Likewise, Arabella Harlowe says to her sister Clarissa in the letter dated Thursday, July 27 (Vol. 7, Let. 9):

I wish your conduct had made your case more pitiable. But 'tis your own seeking! God help you! - For you have not a friend to look upon you! - Poor, wicked, undone creature! Fallen, as you are, against warning, against expostulation, against duty! (39)

Indeed, Clarissa's is an ecclesiastical case situated in its own type of Star Chamber, represented as answerable to God and truly dependent upon God's intervention. Even at this late stage of the novel, these family members misread Clarissa and the text(s) through which she is constructed. Ironically, the reader feels sympathy for Clarissa's mother and sister, for forgiveness is one of the predominant spiritual attributes posited by the text. There is an underlying sense that these individuals are doing the best that they can, given their own cultural and historical positionalities. The finitude of an individual's perception of human motive as a reliable evaluative tool is clearly shown here, not just in Mrs. Harlowe's reaction, but the reader's response as well.

Just as the testamentary intentions of John Thompson seem to be thwarted in the Robert Rhodes trial before the Old Bailey, failure of the efficacy of legal remedy is the failure of the public will. This prevalent theme of the inadequacy of legal remedy can be found at the outset of *Clarissa*. In the first volume of the novel, Clarissa relates to Miss

Howe the particulars of a discussion with her mother over her continuing in correspondence with Lovelace. She explains that she continues to write in order to curb his desperation and thwart the violence, which may result between Lovelace, but Clarissa's violation of her mother's prohibition is a willful act on the part of the daughter without which the remaining narrative cannot occur. Mrs. Harlowe tells Clarissa that "the Law will protect us, child! Offended magistracy will assert itself" (113). Clarissa responds: "But, Madam, may not some dreadful mischief first happen? - The Law asserts not itself, till it is offended" (113). Much later, Miss Howe (quoting her own mother) in the letter dated Monday July 10, (Vol. 6, Let. 49) states to Clarissa that

...if Miss Clarissa Harlowe could be so indifferent about having this public justice done upon such a wretch, for her *own* sake, she ought to overcome her scruples out of regard to her Family, her Acquaintance, and her Sex, which are all highly injured and scandalized by his villainy to her. (184)

Public justice is equated to the public honor that must be protected at all costs. The threat of physical and emotional injury to Clarissa is given a secondary priority to those around her at the outset of the novel. Concepts of both temporal and legal satisfaction are problematized throughout Richardson's novel.

The *Sessions Papers* offer a sense of both remedial and textual finality that is missing throughout *Clarissa*. These concerns in the *Sessions Papers* seem to be a part of the public rationale for trial and punishment, but none offer redress to the victim. As articulated by Mrs. Harlowe, these concerns for family, friends, and Clarissa's own gender are selfish concerns tied to her own social position; they are all badges of false honor. Also, the public will for redress is thwarted due to the discretionary nature of the prosecution. In the same letter Miss Howe continues to say that "it is my opinion that it

would be right of the Law to *oblige* an injured woman to prosecute, and to make seduction on the man's part capital, where *his* studied baseness, and no fault in *her will*, appeared.”

(184) Miss Howe acknowledges that theoretical redress for violence to women is undercut by the small likelihood that these types of crimes would be prosecuted given the small likelihood of success at trial and the resulting social stigma.

None of the options allow for a remedy consistent with Clarissa's spirituality based upon an alignment of individual will with God's will. Concerning punishment, Miss Howe continues:

To this purpose the custom in the isle of Man is a very good one - 'If a single woman there prosecutes a single man for a Rape, the Ecclesiastical Judges impanel a Jury; and, if this Jury finds him guilty, he is *returned* guilty to the Temporal Courts: Where if he be convicted, the Deemster, or Judge, delivers to the woman a Rope, a Sword, and a Ring; and she has it in her choice to have him hanged, beheaded, or to marry him.' One of the two former, I think should always be her option. (185)

None of these options, however, is consistent with the code of conduct to which Clarissa subscribes. Although her family eventually thinks that marriage to Lovelace is a lesser evil that may help them “save face”, this remedy is clearly out of the question for the heroine. Nor does capital punishment afford a remedy for a victim of a crime who subscribes to the Christian ideal of forgiveness. Corporal execution to satisfy a type of false honor is characterized as comparable to the hollow custom of satisfaction by arms, a form of dispute resolution, which is addressed at the beginning and end of this novel, as well as in Richardson's *The History of Sir Charles Grandison* (1753-54). Through their similar failures, the boundaries of privilege between the public and private individual will collapse.

The various tensions and ironies between belief, duty, and legal remedy can be seen particularly in the letters between Rev. Dr. Arthur Lewen and Clarissa on Friday, August

18 and Saturday, August 29 (Vol. 7, Let. 58 and 59). Like Clarissa, Dr. Lewen, her former spiritual advisor is seriously ill, a fact that adds sincerity and veracity to this particular exchange. Unlike her immediate family, he absolves her from blame. She is in his judgment acquitted, not forgiven. Ironically, he continues to advance the argument for Lovelace's trial and punishment since he knows rehabilitative marriage to be abhorrent to Clarissa. He tells her that "the Reparation of your family dishonour now rests in your own bosom: And which only one of these two alternatives *can* repair; to wit, either to marry the offender, or prosecute him at Law" (209). He acknowledges her modesty, and that she "remains unshaken in her sentiments of honour and virtue" (210). He says that "Conscience, Honour, Justice, are on your side; and Modesty would, by some, be thought but an empty name should *you* refuse to obey their dictates." (252). For her part, Clarissa argues that the possibility of pardon or acquittal could exacerbate the resentment inherent in the matter, or, stated differently, her agreement to prosecute and give testimony could result in its own miscarriage of justice. But isn't such a projection of the trial's outcome another example of Clarissa's own form of willfulness? Isn't she guilty of her own sort of reverse pride? And, when pitted against the cleric and his desire for temporal punishment, isn't Clarissa with her charity the true Christian nonetheless? This is an example of how the novel always seems to be turning on itself, an example of how the text continually problematizes its own discourses.

Her final argument to Rev. Lewen is significant. She states at the conclusion of her response that

And for the satisfaction of my *friends* and *favourers*, Miss Howe is solicitous to have all those Letters and materials preserved, which will set my whole story in a true light...

The warning that may be given from those papers to all such young creatures as may have known or heard of me, may be more efficacy to the end wished for, than my appearance could have been in a Court of Justice, pursuing a doubtful event, under the disadvantages I have mentioned. (215)

So, the novel itself, as textual accumulation of legal wills and other writings evidencing the movement of individual wills, in fact becomes her true last will and testament. Indeed, the letters will constitute the testimony denied to the temporal courts, and the text is both her legal case and last will and testament. By pursuing her self-determined brand of *stare decisis*, she exercises her own will contra the wills of those around her. Whether this represents a proper use of the will, I think, is one of the central problems of the novel. At any rate, in this way, representation becomes will in the world.

In their writings on Richardson, Margaret Doody and Jocelyn Harris both have commented extensively on the relationship of the novel to various examples of contemporary and earlier drama. Like a criminal case before the Old Bailey, the novel is truly performative, but only because author, text, and heroine make the novel and its constituent mini-texts perform much like a lawyer in a complex case. With its concern for legal discourse, its sheer volume, and its narrative construction aimed at the judgment of the reader and a Higher Power respectively, the text almost resembles a set of legal exhibits, affidavits and depositions assembled for trial. As we have seen, Clarissa rejects all settlement offers, and, as in rape trials today, the facts (in brackets) are subject to manipulation and alternative forms of interpretation. As in rape trials of today, the victim often becomes the accused. In fact, Arabella suggests to Clarissa that she remove herself to Pennsylvania to live an austere life of shamed anonymity. Indeed, the punishment of transportation, a frequent penalty for the criminally convicted in the eighteenth century, is

suggested as the proper sanction for the victim as perpetrator as perceived by the family tribunal. Here social banishment resembles the penalty of transportation, and the victim becomes the guilty party, at least in terms of the sanction suffered.

As in Fielding's *History of Tom Jones and Amelia* and Smollett's *The Adventures of Peregrine Pickle*, lawyers are characterized in a negative manner in *Clarissa*. At the end of the novel in the continuation of his August 29 letter (Vol. 7, Let. 74) Lovelace comments to John Belford

So thou seest, Belford, that is but glossing over *one* part of a Story, and omitting *another* that will make a bad cause a good one at any time. What an admirable Lawyer should I have made! And what a poor hand would this charming creature, with all her innocence, have made of it in a Court of Justice against a man who had so much to *say*, and to *show* for himself! (276)

With respect to this remarkable passage, the reader is reminded of the legal maxim - *res ipsa loquitur*, (or "the thing speaks for itself"). The malevolent, selfish willfulness of Lovelace is offered as the type of negative virtue that makes Clarissa's legal satisfaction impossible. While lawyers generally fare poorly as characters in English literature, two examples of positive prototypes can be found in Shakespeare's *The Merchant of Venice* and in Wilkie Collins' nineteenth century sensation novel *The Woman in White*. Following Doody and Harris' dramatic analogy, Clarissa is in some ways a Portia figure. Both act as effective advocates (although Clarissa avoids the temporal courts altogether). They control their own voice and the writings of their stories irrespective of patriarchy specifically and society generally. And although they are distinct narrative voices, both heroines argue for the proposition of mercy through forgiveness. Clarissa acting as her own lawyer, portrayed in most novels as a most manipulative and willful profession, arguably transcends her own willfulness or at least subverts the various notions of will that are manifest in the text.

Lest I end this chapter on an essentializing note of transcendence, it is important to note that the novel's epistolary exchange ends with an unresolved legal problem. In the concluding letter of the novel (Vol. 8, Let. 57) F.J. DeLa Tour, Lovelace's valet, makes this final comment to John Belford

I have had some trouble also on account of the manner of his death, from the Magistracy here: Who have taken the requisite information in the affair. And it has cost me some money. (249-50)

Lovelace was never tried nor condemned before a court of law. Justice was rendered extrajudicially in a duel with Colonel William Morden, described in Volume I as "a near Relation of the Harlowes" (xii). As a purported disinterested observer, de la Tour, like the Ordinary of Newgate, seeks to offer a factual (and incomplete) narrative concerning the death of the narrative subject. Although Lovelace's death has meaning in relation to Clarissa's death and saintly spirit, his narrative remains incomplete. However, unlike the stories of many of those unfairly executed at Tyburn, Lovelace's lack of narrative completion is part of the extrajudicial punishment that he receives at the end of the novel.

Not only does Lovelace's personal narrative remain incomplete, his demise is textualized as an unresolved legal problem. In this last statement, economic discourse (upon which the plot of the novel as initiated) returns. The money referenced could be court costs, attorneys' fees, or maybe even damages, but money and its relationship to the legal system (or economics as governed by law and lawyers) by and through the testamentary bequest to Clarissa at the beginning of the novel operates as the enabling principle. As in the criminal trial of Robert Rhodes discussed previously, the will is the foundational legal text of this narrative. Also, as in case of Robert Rhodes, *Clarissa* as legal narrative is given meaning through circulating texts and competing stories, such as

the letters from Clarissa and the other characters (and the intertextualities of these documents, within the larger story itself). A basic assumption of eighteenth century economic thought is that economic man always acts in his own self-interest. De la Tour's final statement displaying the pettiness and ordinariness of individual will, a problem from which the reader cannot escape, tends to highlight or subvert Clarissa's example. For Clarissa, was the pain and self-conscious sacrifice worth it in the end? Or did her suffering constitute her own form of egoism? This is a central problem of the indeterminacy of the text. This, as I noted earlier, comes back to the question posed by the text as to what is the correct use of the will. Subsequent novelists will frequently explore problems of legal remedy and justice, but none engage the problematics of the individual and collective will as it relates to legal discourse with the thoroughness and textual complexity of Richardson's *Clarissa*.

CHAPTER VII

TOWARDS A COMPLETE CRIMINAL NARRATIVE PART I: THE TRIAL OF JAMES ANNESLEY AND JOSEPH REDDING FOR MURDER (THE PROSECUTION'S CASE)

In discussing the notorious Annesley/Redding murder case as it appears in the *Proceedings*, I assume that the reader has no knowledge of the social or historical context of the case. I will suspend my consideration and analysis of the case's background until later chapters for two main reasons. First, I want to explore how the *Sessions Report* and its constitutive elements operate as a "self-contained" narrative. This approach highlights the strengths and weaknesses of analyzing these types of legal narratives in a non-contextual, formalist manner. Since my broad study in the dissertation concerns the ways in which these trial reports are completed as stories by other texts and discourses (in this case, other judicial, quasi-novelistic, and journalistic texts written before and after the trial), I have chosen to cover the problem of the intertextuality of these other cases separately.

While many of the case analyses in this dissertation deal with legal reports in which much information is lacking, the Annesley/Redding murder trial from the 1742 session is notable for the amount of detail and thick description that it includes. On its surface, this felony case for the murder of Thomas Egglestone simply appears to deal with a staple crime regularly prosecuted in the criminal courts. Indeed, this murder on its face seems no more grisly, interesting, or relevant than the other cases of homicide that are given short shrift during this and other sessions of the 1740s. Thus, the questions arise: Why does this

prosecution merit so much detail? And what does the copious detail tell the reader about a case or a narrative? This murder case, as we will see in this chapter, is notable not only for the comprehensive inclusion of trial testimony and factual findings, but also for the clarity of the articulations of the legal basis for the prosecution and indictment and the final disposition of the case. Another important aspect of the case for the legal historian is the specificity with which the procedural aspects of the case are articulated. Compared to all other cases heard at the Old Bailey in 1742, this trial comes closest to being a “complete” narrative both in terms of the story that it tells and as to realistic manner with which it shows what an actual trial at the Old Bailey would have been like, yet its apparent descriptive fullness is deceptive.

While the trial narrative itself offers a level of detail that is unusual, close attention must be paid by the reader in order to construct a workable narrative from the data provided in the *Sessions Report* itself. In this sense, this case report exhibits characteristics generally associated with the Modern novel. As in the fiction of Joseph Conrad, bits of information are given, the sense and relevance of which are only made clear by subsequent disclosure later in the narrative. Like the reader of Ford Maddox Ford’s *The Good Soldier*, the reader of the *Sessions Papers*, like the judge and jury, must evaluate the reliability of the various competing narratives, as well as the narrative probabilities and possibilities of alternative views of the testimony. Believability and relevance are inextricably tied together. This technique adds suspense to the story. As will be shown in the following close reading of a trial for the killing of a poacher, the development of the facts moves from a general statement of what occurred to a specific development of data in a form that is thus rendered appropriate for the application of rules of general application, i.e. the

common law and statutory rules that are relevant to the case. The primary narrative, therefore, is that of the case in chief with its factual relevance to the operative taxonomies that govern the real world disposition of the facts of the parties involved in the proceedings. As in the Prior Green case, however, the text is a performance of tensions that go beyond the parameters of crime and punishment. This case is an excellent example of how intertextualities operate not only to construct the primary narrative, but also to enable the performances related to tensions of larger social relevance than the specific legal issue to be decided by the judge and jury.

One of the most interesting and important aspects of this case involves the alternative or parallel narratives about which clues are given and references are made. Deemed to be legally and even politically irrelevant to the proper disposition of the criminal case, these ancillary narratives are purposely excluded or effectively ignored. As will be shown, their absence becomes a very presence necessary to a reading of the case. These parallel narratives shed light on the trial proceeding; they have their own singular viability, as well. Do the narrative gaps apparent in the text that give rise to the interpretative possibilities on the part of the reader assume specific and available factual knowledge that will enable the reader to grasp the “real” story? Or does the open-ended nature of these alternative narratives offer other possibilities, specifically the operation of the text as a performance reinforcing obvious (and subtle) loci of social and political control? The answer to both of these questions is “yes.”

The Report commences with the reading of the “Arraignments” of James Annesley and Joseph Redding. This full and complete reportage of the pretrial hearing with the verbatim reading of the indictment is unique among the cases reported for the 1742 session.

The indictment is instructive, as it gives the reader his or her first statement of the narrative that will be developed over the course of the Report. It commences as follows:

On *Friday* the fourth Day of *June* 1742, Mr. *Annesley* (being brought up by the Keeper of *New-Prison*) and *Joseph Redding* (having surrendered himself to take his Trial, pursuant to Notice given to the Prosecutor's Solicitor) were upon Application to the Court, in respect of the Quality claimed by Mr. *Annesley*, set within the Bar.
(3)

Notice that Annesley claims to be a person of "Quality," yet no information is given as to why this is characterized as a mere claim. Is he lying? What would keep him from being considered a person of "quality" at this time if he were wellborn? Although more information is selectively given as the story develops, no information is given at the outset of the case as to Joseph Redding's social position. However, notions of class ultimately enter into any reading of the trial narrative. One possible reading of this and the related passages to follow is that Annesley is the illegitimate son of an aristocrat. If that is the case, who is the purported Father and what impact does that have on the text of the case? The textual mystery as to the defendant's origins engages the interest of the reader. There is clearly a "story" to be told. Narrative desire to find the veracity of the story on the part of the presumed reader is a justification for the detail and length of the *Sessions Report* itself.

It is important to note that Annesley was jailed prior to the arraignment at "New-Prison," rather than Newgate. As can be seen later in the case report itself, New Prison was a preferable jail and this gesture toward leniency might be construed to be an implicit recognition of his claim to something more than the social status of a plebeian. Redding, on the other hand, was not incarcerated, and surrendered himself to the Court's jurisdiction for trial, pursuant to proper notice from the Prosecution. As will be shown, the circumstances concerning the location of Annesley's incarceration become the basis of a

supplemental narrative that refers back to this trial report, supplementing and reconsituting its meaning to subsequent readers.

The Clerk of the Arraignment sees the first basic articulation of the “facts” of the case in the reading of the indictment on June 4, 1742. Actually, three indictments are read. Two set out the facts constituting crime of murder at common law. The third indictment sets out the facts as a violation of statutory law for “... not regarding the Laws and Statutes of this Realm, nor the Pains and Penalties therein contained, after the first Day of June 1723. To wit, the first Day of May, in the fifteenth Year of the Reign of our Sovereign Lord George the Second now King of Great-Britain, &c...” The first indictment reads as follows:

You stand indicted in the County of *Middlesex*, by the Names of *James Annesley*, late of *Staines* in the County of *Middlesex*, Labourer, and *Joseph Redding*, late of the same, Labourer: For that you not having God before your Eyes, but being moved and seduced by the Instigation of the Devil, on the first Day of *May*, in the fifteenth Year of his present Majesty’s Reign, with Force and Arms, at the Parish aforesaid, in the County aforesaid, in, and upon, one *Thomas Egglestone*, in the Peace of God, and our said Lord the King, then and there being, feloniously, wilfully, and of your Malice aforethought, did make an Assault; And that you said *James Annesley*, with a certain Gun of the Value of five Shillings, then and there, being charged with Powder and Leaden Shot, which Gun you the said *James*, then and there had and held in both your Hands to and against the said *Thomas Egglestone*, and then and there, feloniously, wilfully, and of your Malice aforethought, did discharge and shoot off; you the said *James Annesley*, then and there, well knowing the said Gun to have been charged as aforesaid; and you the said *James Annesley*, with the leaden Shot aforesaid, then and there discharged and shot out of the said Gun by Force of the Gun-Powder as aforesaid, him the said *Thomas Egglestone*, in and upon the left Side of the Belly of the said *Thomas*, then and there, feloniously, wilfully, and of your Malice aforethought, did strike and penetrate, giving to him the said *Thomas Egglestone*, then and there, with the said leaden Shot so as aforesaid discharged and shot, in and upon the left Side of the Belly of the said *Thomas Egglestone* one mortal Wound, of the Breadth of one Inch, and of the Depth of four Inches, of which said mortal Wound the aforesaid *Thomas Egglestone* then and there instantly died; And that you the said *Joseph Redding*, at the Time of committing of the Felony and Murder aforesaid, feloniously, wilfully, and of your Malice aforethought, was present, aiding, abetting, assisting, comforting and maintaining the said *James Annesley* to kill and murder the

aforesaid *Thomas Egglestone* in Form aforesaid; And so you the said *James Annesley* and *Joseph Redding*, him the aforesaid *Thomas Egglestone* in Manner and Form aforesaid, feloniously, wilfully, and of your Malice afore-thought, did kill and murder against the Peace of our Lord the King his Crown and Dignity. (4)

The second indictment is identical to the first except for its description of the fatal gunshot wound. The first indictment describes the wound as occurring on “...the left Side of the Belly of the said Thomas Egglestone one mortal Wound, of the Breadth of one Inch, and of the Dept of four Inches...” (4). On the other hand, the second indictment describes the wound as occurring on “...the said Left-side of the Belly of him the said Thomas Egglestone, near the Hip-Bone, one mortal Wound of the Breadth of two Inches and the Depth of ten Inches, of which said mortal Wound he the said Thomas Egglestone, then and there instantly died...” (5). There appears to be a discrepancy in the specific description of the fatal wound, an ambiguity that is an element of the medical discourse that occurs at critical junctures in the case.

Two interpretive possibilities are present. First, the indictments might be seen to be describing two separate wounds, possibly requiring two separate indictments. Second, the two indictments could be seen to be describing the same wound with a conflict as to the specific medical forensics surrounding the wound. As will be seen in the following discussion, the testimony of the twenty-three parties and witnesses rules out the first possibility. There is no evidence to suggest anything other than a single shot. Second, there is medical testimony that indicates that the second post-mortem assessment of the width and breadth of the wound is correct. Therefore, the reader may ask why there are the two different descriptions of the wounds put forth at the outset of the matter. Upon what basis was the first measurement posited? This question is never really resolved, gesturing

toward the contingency of medical discourse in the case at the case's outset. However, as the case develops, medical discourse emerges as an epistemological anchor of the entire narrative. With this opening statement of similar, though confusing, narratives, the *Sessions Report* displays a general narrative instability that will become more specific as the witnesses are examined and the legal arguments are presented.

The mystery of James Annesley's past, its relationship to his class status, and the effect of his class status on his treatment at trial are evidenced at the outset of the case. In making his plea at the indictment, the defendant makes a peculiar statement:

Mr. *Annesley*. My Lord, I observe that I am indicted by the Name of *James Annesley*, Labourer, the lowest Addition my Enemies could possibly make Use of; but tho' I claim to be Earl of *Anglesey*, and a Peer of this Realm, I submit to plead Not guilty to this Indictment, and put myself immediately upon my Country, conscious of my own Innocence, and impatient to be acquitted even of the Imputation of a Crime so unbecoming the Dignity I claim. (4)

Although he is referred to as "Mr. Annesley" in the brief introductory statement made by the compiler, the defendant acknowledges the deleterious aspects of social class when he acknowledges his treatment before the court as a "Labourer," while claiming to be both an Earl and a Peer of the Realm. The reader immediately wonders as to the specifics of Annesley's life story and its effect on the case at bar. The unwitting reader may entertain the possibility that James Annesley is simply a mentally ill defendant with delusions of grandeur. We are given only hints and can only surmise the answer to this question as the specifics of class relations between the parties and witness are developed over the course of the narrative. As discussed in the chapter on Alexander Thompson, the articulation of class identity is a narrative possibility that is frequently developed in the *Sessions Papers* and the *Ordinary's Account* in the case of a convicted and condemned defendant. Here, there is a

dispute over status, lineage, and inheritance that was of great interest to the informed contemporary reader and constitutes the unspoken background for the trial report as narrative. However, because the defendants are convicted only of “chance medley,” an eighteenth-century legal doctrine basically akin to the modern plea of self-defense, this subplot is never fully developed. The “Mystery of Annesley’s Past,” however, is the large narrative, and the possibility of its further textual development is an important element of suspense and spectator interest in the case report.

Throughout the text, particulars of eighteenth century criminal procedure are set forth with particularity, giving detailed cases of this type value for the legal historian. At the conclusion of the arraignment, the Compiler observes the progress and timing of the trial and the administration of criminal justice generally:

The Defendants being thus arraigned, the Court thought the Day too far spent to proceed to a Trial of so much Expectation, and therefore ordered it to come on the next Morning; but the Counsel for the Prosecutor alleging they could not attend the next Day, and desiring to put off the Trial to this present Sessions, the Court were pleased to indulge them, upon their consenting that the Defendants should be admitted to Bail.

Whereupon Mr. *Annesley* was ordered to give four Sureties in 250 *l.* each and *Joseph Redding* four in 50 *l.* each; and this being done in Court they were both immediately set at Liberty.

On *Wednesday* the fourteenth Day of July 1742, the Prosecutor’s Council mov’d that the Trial might come on the next Day, which by Consent of the Defendants Solicitor was ordered accordingly; notwithstanding which, the next Day when the two defendants had surrendered themselves, and were ready with their Witnesses, the Prosecutor moved to put the Trial off for another Day; but not alleging any sufficient Reason for the Delay, the Court were pleased to direct the Trial to go on.
(6)

First, the speed of the administration of criminal justice can be seen here. The death of Thomas Egglestone occurred on May 1, 1742. The arraignment was held about one month

later, specifically on Friday, June 4, 1742. It is clear from this bit of information that generally a case proceeded immediately to trial after arraignment. The Court's sensitivity to the notion of the public's interest in this particular criminal trial is apparent as the Compiler says that "... the Court thought the Day too far spent to proceed to a Trial of so much Expectation..."(6). The public's interest in the case can be seen by the publisher's willingness to devote so much time, effort, and expense in covering the case and putting such a complete trial narrative into public circulation, or perhaps the Publisher believed that the emphasis that he placed on the trial would create such a market. The Court ordered the trial to proceed on the next day, but the Prosecutor moved for a continuance, claiming unavailability. The reader must wonder here why the Prosecutor, who must have known the case would go immediately to trial, would claim a scheduling conflict. The trial was set on the docket for July 14, 1742, and upon Prosecutor's motion (and with agreement of defense counsel), the trial was rescheduled for July 15, 1742. The defense appeared at that time. Their witnesses were present. Although the prosecutors had scheduled the case for trial upon their own motion, they moved for yet another continuance. Because the prosecution did not allege sufficient reason for the second continuance, the case was ordered to go forward. From this point in the narrative, the reader correctly sees the possibility the lawyers for the prosecution are not really in control of their own case.

This short section resembles the sort of procedural gamesmanship that could occur in any modern criminal trial. While much of the procedure of the period seems antiquated by today's standards, quite a bit is hauntingly familiar. Here, the reader gets the sense that the prosecution may have been uncertain of the strength of its case or the level of its own pretrial preparation. However, such a reading is speculative since the matter was set on the

Prosecution's motion. Through the statements of the defendants and their counsel from arraignment through final argument, the reader senses a growing confidence of the defense both as to the facts and the law that they argue should govern the verdict in the case. While such a reading as to the respective side's motives, strengths, weaknesses, and fears indeed may be speculative, such retrospective analysis is made possible only by the rich detail provided in this narrative. As discussed in Chapter 7, the role of defense counsel was limited (in theory) to cross-examination and consultation on points of law. Although gaps in the text allow the reader to engage in his or her own exercise of narrative construction, it must be reiterated that the hallmark of this case report is its completeness.

The movement and energy of the text in fact are sculpted by the realities of trial procedure. In a modern criminal trial, both the prosecution and defense would present opening statements, competing narratives offering different views as to the relevance of the facts and the motives of witnesses. The offering of competing stories creates alternative narrative expectations on the part of the Court, the jurors, and the audience. Not unlike the narrative bargain of the Prior Green case discussed earlier, the lawyers as constructors of the narrative are essentially saying to the audience: "I promise to offer facts and witnesses that will construct a narrative that, by nature of its own construction, will lead to in a certain result." A specific narrative expectation is created at the outset of this trial only by the prosecution. In the Annesley/Redding murder case, competing narratives are not offered. At the onset of the trial, the prosecution makes its opening argument and offers its proof.

After the prosecution rests its case, the defense is then allowed to proceed. The ability of the defense to construct preliminary narrative at this point is limited because of

the restraints put on defense counsel at this stage of the trial. Hume Campbell, a defense lawyer who is identified by the Compiler by name only at the end of the prosecution's case states that "...although he knew by the Course of the Court at the Old Bailey, he was not at Liberty to observe upon the Prosecutor's Evidence, yet he apprehended, that for the Ease of Nature of the Defense, without making any Observations upon it." As will be seen, the defense never offers its own version of the case until after the prosecution has offered its case in chief; the prosecution has the apparent advantage of having the initial opportunity to offer a fully developed narrative before defense counsel can suggest a competing story. Indeed, while such a system might seem to work to the disadvantage of the defendant, the reverse of that is true in the present case. Since the Court, the Jury, and the spectators hear from the prosecution only at the commencement of the trial, a high level of narrative expectation is put upon the Crown at the onset of the proceeding. If the prosecution fails to prove its offered narrative at the conclusion of its case and prior to the defendants' calling of their own witnesses, then initially it has failed in its narrative contract implicit in its opening statement of the case. Because the defense has not entered into the previously discussed narrative contract with the consumers of the text, it has more flexibility to adjust its narrative to the realities and exigencies of the developing story.

While the first text of the developing narrative is a lean recitation of the facts constituting the crime of murder under the statutory and common law at the Arraignment, the second narrative offered is the opening argument made by Mr. Serjeant Gapper, counsel for the prosecution. Much more information about the killing is given; the statement takes the form of a story. Although much that is relevant and important is omitted, the prosecution offers a story of specific occurrences constituting a plot, and its trial counsel

commences to offer a performative narrative of what happened at Samuel Sylvester's Meadow on the afternoon of May 1, 1742:

Mr. Serjeant *Gapper*. Gentlemen, the Prisoners stand indicted for the Murder of *Thomas Egglestone*; *James Annesley* was the Person who killed the said *Thomas Egglestone*, and *Joseph Redding* he was aiding, abetting, and assisting in the Murder, and so they are both guilty of Felony and Murder. And, Gentlemen, there is an Act of Parliament, made in the Ninth Year of his late Majesty King *George I*, that if any Person does wilfully shoot at another, 'tis Felony without Benefit of Clergy. Gentlemen, the Case is thus. On *Saturday* the First of *May*, *Thomas Egglestone*, the deceased, and his Son, were going to fish, at a Place called the *Moor*, near *Staines*; they had a Casting-Net, and there was a String which belongs to the Net, and this String was about the deceased's right Arm: They were fishing in a Meadow belonging to one *Sylvester*; and as they were fishing towards the North of the Enclosure, the Deceased seeing the Prisoners, stopped, and went back again, and as they were going back again, instantly came up the Prisoner, *Joseph Redding*, and seized the Deceased by the Shoulder, and demanded the Net, but the Deceased cast the Net into the River, which was on his Right-Hand; then came up the other Prisoner, *Annesley*, with a Gun in his Hand, and swore at the Deceased, and said, Damn you surrender, or you are a dead Man; he pointed the Gun immediately towards his Side before a Word of Reply, and shot him, the Force of the Powder drove the Shot and some of the deceased's Coat into his Body; he clapped his Hand to his Side, and said, You Rogue, what have you done? dropped down and died immediately; then *John Egglestone*, the Son, took a Knife out of his Pocket to cut the Strong of the Net; upon which, the Prisoner *Annesley* turned the butt End of the Gun, and said to him, You Rogue, I will knock your Head off; to avoid which, young *Egglestone* jump'd into the Water, Breast high, and cut the String of the Net, and dragged it to the other Side of the Water, and cried out his Father was murdered. There were three Persons, *Fisher*, *Bettesworth*, and *Bowles*, who could see what was done; they were on the other Side of the River, about an Hundred and Sixty Yards from the Place where the Accident happened; they heard a Gun fired, and the young Man cry out that this Father was kill'd; and when they came to the River Side, he had just dragg'd the Net out of the River; upon this they crossed over, and found the Man dead, or so bad that he could not live, and thereupon directed the Son to go and fetch Mr *Cole*, a Surgeon at *Staines*; he went accordingly to Mr *Cole*, and desired him to come along with him, for his Father was shot, and he believed he was dead. Why, says Mr *Cole*, if he is dead, it does not signify my coming, I can do him no good; so then the young Man went to Mr *Russell*, a Constable at *Staines*: But I should tell you, Gentlemen, that as soon as the Prisoners saw these three Persons, *Fisher*, *Bettesworth*, and *Bowles*, coming towards the River, they ran away. Afterwards *Russell*, the Constable, and some other Persons coming up, they thought proper to pursue the Murderers: Accordingly they went to a Farm-House where *Annesley* and *Redding* used sometimes to lodge, and there they found *Annesley*, and apprehended him, and sent him to the Round-House at *Staines*; *Redding* could never be found, but he has surrendered himself since, in order to take his Trial. The Prisoner *Annesley* was carried before a Justice of the Peace, I think Sir *Thomas Reynall*, he was carried to Hounslow, and from thence to *Laleham*, what that Examination was, I cannot tell. They made Application to this young Man to be favourable, and not to carry on the Prosecution; says he,

Gentlemen, I will not sell my Father's Blood. This, Gentlemen, is the Nature of the Case, and if we prove our Charge, that they have been guilty of Murder, Gentlemen, you will find them guilty. (7-8)

Here we learn of a father fishing peacefully with his son and a sudden altercation over a fishing net. The existence of contemporaneous witnesses is established. The reader is offered a bucolic scene in contrast to an irrational and unjustified attack. The reader feels sympathy for the dead father and the son. The suggestion is made that someone approached the son asking him not to pursue the criminal prosecution, and that with the force of ethical and almost Old Testament fervor the young man stated that "I will not sell my Father's Blood." The relevant omissions from the story will be articulated as the trial narrative (and my own analysis) develops. Again, in terms of the narrative contract, this story, seemingly complete, is the textual "offer" seeking "acceptance" by the specific constituency with both narrative and legal agency to effectuate the agreement, namely the Court, the Jury, the onlookers at the Old Bailey, and finally the readers of the *Sessions Report* itself.

The most extensive examination of the numerous trial witnesses is that of John Egglestone, the son of the deceased. Structurally, the examination consists of direct examination conducted by Mr. Serjeant Gapper and Mr. Brown, two members of the prosecutor's team. During the cross-examination of the witness, the lawyers for Annesley and Redding are identified only by the notation "Q." A member of the defense team is given an actual name only once the prosecution rests its case and the defense counsel makes a short statement as to his theory of the case prior to his own calling of witnesses in support of Annesley and Redding. Only at the end of the trial, just as the final legal arguments of the respective sides are being set forth with particularity, are defense counsel

finally identified, the defense team being “Mr. Hume Campbell, Mr. Serjeant Hayward, Mr. Clarke, Mr. Wyrley, and Mr. Smith”. Indeed, this is one example of this story’s narrative shape, a transition from the general to the specific, from absence to presence with determinative relevance.

John Eggleston is the prosecution’s primary witness. It is through this witness (and with the corroboration of two of the three witnesses who witnessed the shooting from across the river) that the prosecution attempts to establish its case in chief. In Eggleston’s testimony the specific facts concerning the nature of the altercation and the all-important angle of the firearm are sought to be established. The focus of the prosecution’s questions is to establish both intent and malice on the part of Annesley. This section of this testimony is as follows:

Mr. Serj. *Gapper*. Well, as you were coming back from fishing, what happened then?

John Egglestone. By that Time we had got half Way in the Meadow, we saw *Joseph Redding* and Mr *Annesley* running, and Joseph Redding out run Mr. *Annesley*, and came up to my Father first.

Mr. Serj. *Gapper*. When they came up what was the first thing they did?

John Egglestone. *Redding* took my Father by the Collar, and demanded the Net, and he refused to deliver the Net.

Court. Did you see him take him by the Collar?

John Egglestone. Yes my Lord.

Serj. *Gapper*. What became of the Net afterwards?

John Egglestone. My Father threw it into the River.

Mr. Serj. *Gapper*. How far were you from the River then?

John Egglestone. I was about two Yards from the River. After the Net was thrown into the River, *Annesley* came up with his Gun, and swore God damn your Blood

deliver your Net, or you are a dead Man; and he fir'd off before he received any Answer from my Father.

Mr. Serj. *Gapper*. In what Manner did *Annesley* hold his Gun?

John Egglestone. In this Manner. (*Pointing the Gun strait forward, holding it about Breast high, stooping a little.*)

Mr. Serj. *Gapper*. How near was the Gun to your Father when he fir'd it?

John Egglestone. It was close to my Father's Side, he put the Gun between *Redding* and my Father, and shot directly into his left Side, here, (*holding his Hand to his Hip*) he had a Plate Button there, which was bruised to pieces; then my Father said, You Rogue, what have you done, I am a dead Man, and dropp'd immediately.

Mr. Serj. *Gapper*. What did *Annesley* say before he fir'd?

John Egglestone. He swore if he did not deliver the Net he was a dead Man, and then fir'd immediately.

Mr. Serj. *Gapper*. What did you do after you heard your Father say he was a dead Man?

John Egglestone. I took a Knife out of my Pocket to cut the Strong of the Net; and *Annesley* said, You Rogue, I will knock out your Brains too, and held up the butt End of his Gun; upon that I jump'd into the Stream, and cut the String, and drew the Net over to the other Side of the River: then says *Annesley*, the Rogue has got the net, let us go on the other Side after him. (8-9)

Notice that no questions are here asked concerning the father's and son's right or permission to fish at this location, nor is any inquiry whatsoever made concerning any anticipated defense from opposing counsel concerning the legality of the activity in which the father and son were engaged.

Based upon the testimony of young Egglestone early in the trial, an assault by Redding is alleged. The specific language used emphasizes his grabbing the deceased by the collar. Although the son's evasive action with reference to the net is shown, nothing is established in the record by the prosecution as to what right, if any, Redding and Annesley

had to seize the fishing net nor why the evasive action with respect to the fishing gear was taken. Nor is any testimony adduced about the two Egglestones' possible prior or current personal or legal relationships with any of the parties, witnesses, or landowners from which permission to fish might be implied. Also, none of the current relationships or prior acquaintances between the various parties (and other relevant witnesses) is established. A basic narrative is established with much of the "plot" left unsaid. Using my model of narrative contract, the prosecuting attorney as storyteller can be viewed as violating his agreement through omission. The problem of outright prevarication is present owing to the continuous problem of young Egglestone's reliability; a problem increasingly apparent from his cross-examination up through the prosecution's calling of additional character witnesses, even after the final arguments have begun. (That is certainly a procedural laxity that would not be permitted in a criminal case today.)

As mentioned previously, the case presents an interesting "subtext" concerning medical discourse. Actually, terming the references to medicine as a mere subtext is somewhat misleading. The case actually turns in large part on postmortem medical testimony of John Perkins (a surgeon), Mr. King (the Coroner), and Mr. Betbune (another surgeon). This later medical testimony as to the trajectory of the bullet and the angle of the wound goes to the issue of how Annesley held the gun. This testimony is relevant to prove whether the shot was aimed, and therefore intentional, or whether the gun was held at an angle that would seem to indicate that the firing of the weapon was inadvertent. Concerning the medical care over his dying father, the son makes the following statements during the prosecution's direct examination:

Mr. Serj. *Gapper*. What did you do then?

John Egglestone. They bid me get a Surgeon; so I went to one *Charles Cole*, a Surgeon at *Staines*.

Mr. Serj. *Gapper*. When you came to *Staines* did you meet with *Cole*?

John Egglestone. Yes: And I told him my Father was shot, and I believed he was dead or dying, but he never came near my Father; then I went to *Russel* the Constable, and he took some Townsmen with him, and went to old Mr. *Redding*'s House at *Yeovely* Farm, to search for the Man that kill'd my Father; we beset the House all round, and found *James Annesley* hid up in a Corner.

Mr. Serj. *Gapper*. How long were you there before he was found?

John Egglestone. I was there about a Quarter of an Hour, or a little more.

Mr. Serj. *Gapper*. Was you present then?

John Egglestone. Yes: I was there all the Time; then, an't please you my Lord, they pull'd him down.

Mr. Serj. *Gapper*. Where was he hid?

John Egglestone. He was hid in a Place which is five or six Foot from the Ground, where they put old Iron and any Sort of Lumber, 'tis a boarded Place or Room over the Washhouse; a Place where the Woman makes Medicines for sore Eyes. (8-9)

No explanation is given here as to why Charles Cole, the “surgeon” at Staines, refused to treat the dying man. Was he concerned about payment for his efforts? Was he afraid of being involved in what turns out to be a highly controversial legal proceeding? Or did he know something of the relationship and the class status of the parties that caused him concern from a social or political standpoint? Although no formal proof is introduced on this point (at least as far as can be ascertained from the trial report as transmitted), Mr. Serjeant Gapper previously said in his opening statement that young Egglestone was sent to fetch the surgeon, but that Mr. Cole saw no reason to come since the son thought that his father was dead. Ironically, the medical discourse that proves so vital in the final

determination of the case is notably absent in the treatment of the suffering victim. A further irony can be seen in the discovery and capture of the murder suspect in a hiding place that is likewise part of this medical subtext; indeed, he is apprehended in “a Place where the Woman makes Medicines for sore Eyes” (9). Indeed, this reference is emblematic of the epistemological problem of the case. Because of the unreliability and probable fraud inherent in the textual “seeings” of the parties and witnesses, a curative stronger than that available from a cottage tradeswoman is necessary to restore the “sore eyes” of the men testifying in the case.

The examination of young Eggleston continues with testimony concerning Annesley’s incarceration in the “Round-House” and the journey of the accused and the son of the deceased together in a cart to appear before Justice Reynell on the following day. Even though the subject of the direct examination changed, the jury foreman interjects with his own question seeking a clarification of the witness’s prior testimony:

Foreman of the Jury. My Lord, please to ask him whether there was no Quarrel, Bustle, or Struggling, between *Annesley*, *Redding*, and *Egglestone*, before the Gun went off.

John Egglestone. There was no Quarrel or Jostling, my Father never gave him an ill Word.

Court. Did your Father make no Resistance?

John Egglestone. No, no Resistance at all.

Q. Was there no Jostling, nor any thing else pass’d?

John Egglestone. Yes: *Redding* took my Father by the Collar, and *Annesley* came up in the mean Time.

Court. What happen’d between your Father and *Redding* before *Annesley* came up?

John Egglestone. He demanded his Net.

Court. I thought you said there was some Jostling?

John Egglestone. No other Jostling than laying his hand upon my Father's Collar, but my Father never laid his Hand upon him. (10)

The Foreman's interjection is relevant for today's reader for two reasons. First, the purpose of the question is to determine first whether the firearm was fired in self-defense or second whether the firearm might have been discharged accidentally as a result of the ruckus itself. Either factor might be an absolute bar to a murder conviction or a mitigating factor in determining which specific crime of homicide would be applicable. Second, this interjection shows the practice at the Old-Bailey of allowing the jury to question a witness during the actual examination of a particular witness. Of course, in modern Anglo-American criminal practice there is no direct questioning of a witness by a juror. The jury is passive, allowing the witness's testimony, demeanor, and credibility to guide the narrative construction. In the trials before the Old Bailey, the jury had a more active role in creating the story upon which they, pursuant to the Court's legal instructions, passed judgment. In comparison to the other cases reported in the *Proceedings* in 1742, this particular detailed account offers the reader an example of procedural realism missing or unascertainable in most other reports of the period. This practice affords the jurymen an active role in constructing the narrative upon which they must pass judgment, thereby problematizing the distinction between the party issuing the textual utterance and the audience to whom the utterance is being made.

Towards the end of the direct examination of young Egglestone, one of the most controversial aspects of the entire case is introduced. The dead man's son alleges that Annesley attempted to "buy him off"! This section of the Report is the first mention of

alleged bribery or witness tampering, a recurrent theme throughout the remainder of the narrative:

Mr. *Brown*. Did the Prisoner offer you any Money?

John Egglestone. Yes, he offer'd to settle 50 l. a Year on me.

Mr. *Brown*. Where was this?

John Egglestone. When I was at *Laleham*, the next Day after my Father's Death.

Mr. Serj. *Gapper*. How came you there?

Egglestone. We went to a Justice's at *Brentford*; but he not being at Home, we put up at the *Red-Lion* there, and while we were there, Sir *Thos Reynell* came in and ordered us to go to *Laleham*, accordingly we went to one Mr. *Lee's* into a little Room, and there was *Jack Lane*, Mrs *Chester*, and the Prisoner; Young *John Lane* offered me 100 l. a Year, but the Prisoner said he could not settle 100 l. a Year upon me, for he had more to do for, but he said he would settle 50 l. a Year on me; this was said in the Presence of the Prisoner.

Mr. *Brown*. Did he mention what he would give you 50 l. a Year for?

John Egglestone. Because I should not come in as an Evidence against him.

Mr. Serj. *Gapper*. What is the Reason you did not comply with this Offer?

John Egglestone. I told them I would not sell my Father's Blood at any Rate.
(10-11)

Notice that this concluding exchange of the opening direct examination is conducted by both of the prosecution's trial lawyers. They alternate their questions concerning this testimonial bombshell, giving the scene a certain dramatic power in the closing bit of the prosecution's opening salvo. Again, this double questioning of a witness by two participating attorneys is a liberty not allowed in today's criminal trial. It is a performative strategy that emphasizes the narrative importance of a critical moment in the text. In performing a duet of inquiry, the importance of this aspect of the plot to the developing

story is thereby emphasized. This allegation of the possible sale of testimony for money or favor, of course, goes to the entire integrity of the judicial system. Likewise, it is an indictment against the body politic, as it suggests (or portrays realistically) that those of greater social and economic power can undermine the integrity of the Court to suit their own willful ends. This rhetorical aim will be demonstrated in the discussion of intertextuality as the subsequent narratives of the period use both the murder trial and the Estate trial for moral and polemical purposes.

My own idealistic presentation of this problem must be considered ironic. E.P. Thompson has noted that “the British state, all eighteenth-century legislators agreed, existed to preserve the property and, incidentally, the lives and liberties of the propertied” (Thompson 21). Thus, the problem of judicial integrity is inextricably tied to the problem of class conflict. In fact, certain social tensions current in the 1740s (with deeper historical roots) are acted out within the narrative of Annesley’s trial, a problem that will be made evident in the closing arguments of respective counsel. These and other related issues are developed within the narrative construct of the case. Meaning unfolds from the general and unadorned case outline presented in various early stages of narrative simplicity to a seemingly complete, yet actually open-ended, final document that disposes of the case at bar, but leaves the most important social tensions unresolved. This type of textual symmetry is similar to what Helen Vendler refers to as “shape” in her excellent book on the odes of John Keats. This movement of the general to the specific constitutes the form by and through which the narrative telescopes to the findings of jury and the courts final “So Say You All.” At any rate, the large problem of economic necessity and its susceptibility

to economic and political manipulation is developed throughout the Case Report in the trial of James Annesley and Joseph Redding.

The second main part of John Egglestone's testimony consists of his cross-examination by the (as yet unnamed) defense counsel. The presence of the defense lawyer and the resultant shift in the querying attorney is ascertainable by the designation of the letter "Q." As shown in the previous quotation involving the interjection of the jury foreman in the direct examination of the witness, "Q" makes his first appearance in the case when he asks: "Was there no Jostling, nor anything else pass'd?" Likewise, "Q" makes a second appearance during young Egglestone's testimony as to whether the gun was cocked prior to the moment of Annesley's shooting the elder Egglestone. When the witness replies that he does not know, "Q" asks: "Did not you say that it was?" As will be seen from the testimony of later witnesses, both of these short queries appear to go to the issue of Egglestone's credibility; the defense counsel seems to be establishing doubt in the Court and Jury's minds in order to later impeach the witness as a result of his prior inconsistent statements. Defense counsel, at this point unidentified by name and ascertainable only by the letter "Q," begins the narrative as a general, non-specific presence. As noted previously, at this stage of the proceeding, the defense has not articulated its theory. It lacks a narrative, as well as a nominal presence. Along the narrative trajectory of the case, the defense lawyers develop as subjects in direct correlation to the articulation and establishment of their own factual and legal theories. In the world of this *Sessions Report*, the defense lawyers indeed are their narratives both figuratively and literally in the structural movement of generality and absence towards specificity and presence.

In most of the cases heard before the Old Bailey in the 1740s, the criminal defendant was clearly the underdog. The Annesley/Redding murder trial is not a prototype for the “David v. Goliath” motif of a John Grisham legal thriller. Ironically, the presence of the defendant’s narrative is given priority because of his rhetorical complicity with the socio-economic system against which he appears to “beat the odds.” As will be seen in their concluding performances in closing arguments, the lawyers literally shift roles before the Court in terms of their traditional position of narrative power in a criminal trial and in terms of the types of arguments that they would usually be making in a criminal case. As we have seen, defense lawyers first made their appearance in criminal trials in the early 1730s, and in 1742 appearance of a defense team was generally limited to trials for Treason. Privileging the role of defense counsel as story constructor is unique to this case when viewed in reference to other Old Bailey criminal trials of the period.

This aspect of the case suggests another reference to the ancillary narrative of which the case is a part. If Annesley the “Labourer” were without resources, how did he afford this extremely able team of defense lawyers? If the case is read from the standpoint of an informed observer in 1742 or a reader with knowledge of the other texts that provide context, the answer is clear. The defense was organized and the funding arranged through the efforts of Daniel MacKercher, a Scottish adventurer who befriended James Annesley; this aspect of the story will be discussed later in the dissertation. If the Annesley/Redding trial report is read strictly employing formalist methodology, other questions and potential alternative narratives are suggested. Perhaps Redding’s father, a man who as the Report discloses, is of ample means, his lessor or other well-to-do interested parties funded the defense. It is possible that the involvement of the lawyers for Redding and Annesley may

have been motivated in part by the publicity that would be obtained in a case of such notoriety. Given the rising circulation of periodicals of all types during this period, this is a reasonable, though speculative, inquiry. Thus, the defense counsel here can be seen to be engaging in an early form, to use today's parlance, of high profile lawyers "playing to the cameras." Whether or not the defense lawyers intended to receive publicity, they conducted a successful defense in what was to become the most highly publicized criminal case in England in 1742. At any rate, alternative ways of reading the lawyer's motives for participation in the trial illustrates the limitations of reading the *Proceedings* in a strictly formalist manner.

After some questions by defense counsel concerning statements that the witness may have made immediately after the homicide concerning his acknowledgment that the events were in fact accidental, a new subject is introduced into the cross-examination which throws further doubt upon the credibility of young Egglestone. All of these questions seek to undermine the reliability of the prosecution's main witness. They expose possible malevolent motives behind his testimony; they highlight prior inconsistent statements that he may have given up through the time of the Coroner's Inquest. This new line of inquiry adds the possibility of yet another "story" to the unfolding narrative. This portion of the case report reads as follows:

Q. Do you know one *Williams*?

John Egglestone. Yes.

Q. Where does he live?

John Egglestone. He keeps the *White-Horse* in *Pickadilly*.

Q. How did you come acquainted with him?

John Egglestone. He came to *Staines* and sent for me.

Q. What did he want with you when he sent for you?

John Egglestone. I don't know, I went to live with him as a Servant.

Q. What Business was you of, when your Father died?

John Egglestone. I worked with my Father as a Carpenter.

Q. If you was brought up as a Carpenter, how came *Williams* to find you out for a Servant?

Egglestone. I can't tell.

Q. How long have you liv'd with him?

John Egglestone. Ever since my Father's Death, and I live with him now.

Q. Have you not seen my Lord - at *Williams's*?

[Here the Court interpos'd, and said the Question was improper].

Q. You say you are *Williams's* Servant, have you not din'ed with him at his Table?

John Egglestone. Yes.

Q. Do you dine at his Table now?

John Egglestone. No, I am his Servant.

Q. Do you know the Reason why you were sent from dining at his Table to draw Beer?

Egglestone. No Sir. (11)

A number of questions are raised by this exchange; most remain unanswered and open-ended in this *Sessions Report* as a self-contained story. While some of the background concerning Egglestone's employment at the White Horse is clarified through supplemental texts, the nature of William's "relationship" to Egglestone, like the consideration or

inducement of young Egglestone's employment at the White Horse, is never actually settled.

With respect to the narrative development of the *Sessions Report*, the question as to what effect these issues have upon the true story of the narrative is always before the reader as a kind of intriguing puzzle. Not only do they relate to the facts as presented, but also upon the reliability of the testimony and the integrity of the judicial proceeding itself. These questions enable the construction of the narrative, but they are engaged in the double gesture of simultaneously creating narrative instability. With respect to Egglestone's relationship with Williams (and his relation to "Lord —,") some of the problems that are raised are as follows:

- 1) What was the nature of the relationship to his new employer Williams? Was it purely that of master/servant or was the relationship more personal in nature?
- 2) Was the new job at the White Horse tavern furnished as part of some sort of clandestine consideration by Lord - by and through Williams to obtain certain favorable testimony in the case?
- 3) What interest would the unnamed "Lord —," have in this matter and what relationship could this case have to the ancillary litigation concerning his estate, a case which is referenced somewhat later in this case report?

These questions go not only to the defense's strategy in the trial of this felony, but also to the larger social/cultural narrative that is being performed by and through the criminal trial with James Annesley in the starring role.

The failure of the Court and the compiler of the *Sessions Papers* to name the potentially implicated nobleman further accentuate the class separation and power conflict pervasive throughout the text. Indeed, the Court intervenes when Egglestone is asked whether Lord —, who may have been specifically named aloud at the trial, was seen at Williams' establishment and claims that the question was improper. Because of the line of

defense counsel's questioning here, a probable inference is that he is insinuating that young Egglestone was employed by Williams, publican of the White Horse, (probably acting as an agent of Lord –), as consideration for his testimony against Annesley and Redding. The suggestion is being made through innuendo (with no facts fully developed) that young Egglestone was available to the highest bidder. Assuming that the coincidental career opportunity was a payoff for his testimony, the question still remains: why would Lord or Williams want the named defendants convicted? Again, here an informed contemporary reader would know why the noble personage desired a conviction. For the formalist reader of the text, the introduction of the hint of scandal suggested by this line of questioning merely provides some new interpretive possibilities. However, within the trial report itself, defense counsel as storyteller reintroduces this aspect of the plot at points where other details became uninteresting, or also certain aspects of the plot near resolution. It is an aspect of the story that adds real suspense to the case, but as in the classic twentieth-century detective novel, these elements of plot are "red herrings" since they turn out not to be germane to the final disposition of the legal case. However, they do contribute greatly to the subtext of class relations relevant to contemporary eighteenth-century society, both a question and a problem that remains unsolved at the conclusion of this criminal trial before the Old Bailey.

Young Egglestone's credibility is irrevocably damaged during the final segment of his testimony when he testifies as to the existence of a note possibly to be used as evidence to prove his receipt of bribe money, as well as why he went to visit Annesley at New-Prison. Also, the questions suggest various other matters of prior inconsistent statement that will be developed during the defendant's proof. This section of the testimony reads:

Q. Do you know one *Paul Keating*?

John Egglestone. Yes.

Q. Do you know any Thing of a Note he drew for you at the *Oxford-Arms*?

John Egglestone. He did draw something of a Note, but I tore it.

Q. What made you tear the Note?

Egglestone. Because I did not like his Proceedings.

Q. What were the Proceedings that you did not like?

Egglestone. I do not know, I did not understand them.

Q. Why, did not you read the Note before you tore it?

Egglestone. No, I did not.

Q. How came the Note to be wrote? Did he say nothing to you about writing of a Note before he wrote it?

Egglestone. Nothing at all, but he desired me to copy it.

Q. What did he say to you when he desired you to copy the Note?

Egglestone. Nothing; it lay upon the Table and I tore it.

Q. What did you tear it for, if you had not read it?

Egglestone. Because it was about things that I did not know what they were.

Q. Did not he desire you to copy the Note?

Egglestone. Yes.

Q. What did he say then?

Egglestone. I cannot tell what he said.

Q. Was you ever at *New-Prison* to see *Mr. Annesley*?

Egglestone. Yes.

Q. What did you go for?

Egglestone. I cannot tell.

Q. I ask you what you went for?

Egglestone. I went for my own Fancy.

Q. Did you not send up Word to him you was sure he would be glad to see you?

Egglestone. I believe I might.

Q. Did you not send up Word to him you was sure he would be glad to see you?

Egglestone. I believe I might.

Q. What was the Reason, for which you thought Mr *Annesley* would be glad to see you?

Egglestone. I cannot tell, I was willing to see him. (11-12)

In this section of the testimony, Egglestone's answers are evasive. The issue of the destroyed "Note" opens further narrative possibilities. And, why would young Egglestone seek an audience with the man accused of murdering his father? As will be seen in the supplemental narratives, it is alleged that the nobleman (as yet unnamed) sought to effectuate a settlement of the estate matters with Annesley, but since it appeared that the defendant might well be convicted of murder, all pending civil matters would be resolved by the hangman at Tyburn. Possibly, Egglestone's admission that he may have said that Annesley would be glad to see him indicates a belief on the part of the son of the deceased that the defendant would be willing to negotiate. However, it is never established in the testimony of the Estate trial or the other supplementary narratives that young Egglestone actually received money for his testimony or acted as an agent for Lord -. In terms of the nobleman's involvement as proven in the record of this criminal case, later in the *Sessions Report*, the defense will try to tie Keating and the destroyed "Note" to Lord -, a line of

question not allowed by the Court. At any rate, although the prosecution on its face has constructed an actionable narrative, the credibility and reliability of the chief witness and complainant are in serious trouble.

Of the many witnesses called at the trial, only four were offered at the behest of the prosecution. John Bettesworth and John Fisher are two of the three men who witnessed the fracas from their vantage point across the river. According to Bettesworth, they were some “169 Yards some Inches as near as I could measure.” The specificity of this description shows the witness’s preparation and awareness that a narrative that is to be constructed, as this measurement would have been made by Bettesworth or his associates after the occurrence of the homicide. The specific detail of their measurement also buttresses the credibility and reliability of his story. Both witnesses seem to aid the prosecution in proving the elements of the crime or murder, as they corroborate Egglestone’s testimony that Redding started the altercation by grabbing the father’s collar. Still, there is no mention of any claimed authority or police power possibly being exercised by Redding; there is no anticipatory strategy on the part of the prosecution to neutralize the counter-narrative that is soon to follow. Surely, the prosecution knew of the gravamen of the defense since the narrative later establishes that the parties and principal witnesses were known to each other prior to the incident. Also, the pervasive tension of class and its relationship to private property and land use is suggested in the following portion of Bettesworth’s direct examination:

Q. What Ground was it in?

Bettesworth. They were in the Ground called Mr *Sylvester’s* Rents.

Mr. Serj. Gapper. Are there many Hedges on the Side of the River where the Deceased was?

Bettesworth. There were a pretty many Willows, but any Body might see through them.

Mr. Serj. *Gapper.* What did you see?

Bettesworth. I saw *Joseph Redding* and Mr. *Annesley* come over the Hedge.

Mr. Serj. *Gapper.* What Hedge?

Bettesworth. The Hedge that parted Mr *Sylvester's* Ground from Mr *Redding's* Ground, I do not know whether one of them did not come over the Stile, then they both run after *Egglestone* and his Son; young *Redding* came up first. (13)

The discourse concerning private property with rights and duties of grantees, tenants, and their assignees constitutes a narrative that ultimately is determinative of the outcome of the case as it relates to the rights and duties of the defendants that provide the legal justification for their action.

In order to prove its case, the prosecution must prove intent on the part of *Annesley*, as opposed to self-defense or accidental discharge of the weapon. In order to establish premeditation, Prosecutor *Brown* seeks to establish the circumstances when the witnesses first saw the defendants:

Mr. *Brown.* You say you saw *Annesley* and *Redding* in the other Ground, before they came into that Ground which belongs to *Sylvester* - what were they doing there, were they standing, sitting, or what?

Bettesworth. They were sitting or lying under the Hedge, I cannot tell which.

Q. For what Purpose do you imagine they were sitting or lying there?

Bettesworth. I cannot say that, I may imagine they came to take the Net away, I cannot imagine any thing else. (15)

This series of questions ends the examination of Bettesworth, and the examination of John Fisher, the other eyewitness offering testimony beings as follows:

[John Fisher sworn.]

Mr. *Brown*. Do you know the Prisoners at the Bar?

Fisher. I know Mr *Redding*.

Q. Do you believe this to be the Person who was along with Mr *Redding* at the Time that Mr *Egglestone* was kill'd? - Look at Mr *Annesley's* Face, and see whether that is the Man.

Fisher. I see Mr *Annesley*, but I cannot say that he is the Man; I saw two Men lie under the Hedge a considerable Time, and saw a Piece in one of their Hands.

Brown. In which Ground were they?

Fisher. I believe in Mr *Redding's* Ground.

Brown. In what Ground was *Egglestone*?

Fisher. He was in *Sylvester's* Ground. *Bettesworth* called to me, and said there is *Redding* running after *Egglestone*, and *Redding* laid hold of *Egglestone*, the Deceased, and then came up the other with a Piece: I cannot say whether he touched him or not.

Court: In what Manner did *Redding* lay hold of him?

Fisher. I cannot say, I was at such a Distance; but I thought he laid hold of his Shoulder.

Brown. Did *Egglestone* make away from him?

Fisher. Yes; for he knew he was out of the Bounds that he ought to have been fishing in; and there was a Sort of a Struggle to take away the Net; and I thought that *Redding* and the other Person did both, snatch at the Net, and then the Gun went off. (15)

At this point further parameters of the narrative are developed that give clues as to the defense that will follow. It is established that both defendants laid in wait armed for a considerable period waiting to intercept the fishermen. Second, the reader learns that a Mr.

Redding holds a property interest in the land on which the two defendants are hiding. Finally, Fisher states that Egglestone was fishing illegally and, as a consequence, the defendants attempted to seize the net with the discharge of the firearm taking place as a consequence of this action. At this point in the trial narrative, there is a suggestion that the defendants were operating within some form of police power. The issue as to whether such a power was valid or, if valid, whether exceeded is never developed by the prosecution. Power and individual freedom are posited as contested social issues. Their proper boundaries remain amorphous throughout the testimony of the witnesses. Only in the final arguments is there a movement towards the ordering of this mass of information.

During the cross-examination of John Fisher, defense counsel further impeaches young Egglestone's credibility:

Q. I would ask you, whether young *Egglestone*, before he was examined by Sir *Thomas Reynell*, did not say to you he believed the Gun did go off by Accident?

Fisher. He said he believed it was not done willfully. I was called into a Room with *Chester* and *Lane*: He had Money offered him, in my hearing, by *John Lane*; he offered him 11 *l.* a Year. Mr *Annesley* said he could not give him 100 *l.* - but he would give him 50 *l.* for he had others to do for; then, said the Boy, I do not care to sell my Father's Blood; but I will do as my Friends direct me; I believe he was in Liquor.

Q. What did you say to him?

Fisher. I said your Father is dead; the Money will do you good; do not swear any thing against him, if you think it was done accidentally; he said the Money will do me good if I had it; and then said, I believe the Gentleman did not do it willfully.

Q. Had you not some Conversation together, after his Examination before the Justice?

Fisher. I asked him, after he was examined, what he had done; and how he could swear against him, when he had said so and so to me; said he, I did not know what I said.

Q. That he did not know what he said, to who?

Fisher. I asked him how he could swear against him when he knew what he said to me, said he, I do not know any Thing of the Matter; he did not remember what he had said to me.

Q. Do you know Mr *Williams* the Clergyman?

Fisher. Yes.

Q. Did not you make a Declaration of this to him?

Fisher. Yes; and I told him what I now say, I mean what passed between us at the Time he went before the Justice: I said to Mr *Williams*, that *Egglestone* told me he really believed that the Gentlemen did not do it wilfully.

Q. Repeat all that you said to Mr *Williams*.

Fisher. That the Boy said to me, Mr. *Annesley* had offered him 50 *l.* a Year, that the Money would do him good if he had it, and that he believ'd the Gentlemen did not do it wilfully.

Mr. *Brown.* Did not he say it was wilfully done as you were going along to the Justice's?

Fisher. All the Way he went, he said he believ'd he did it wilfully, but after the Prisoner had been talking with him, he said he believed it was not done wilfully.
(16-17)

Thus ends the testimony of the prosecution's third witness. From this point on in the trial report, the narrative of the surviving Egglestone is irreparably compromised. It was previously implied that he might be susceptible to the economic interests of Lord —. Here, it is shown that he considered taking a bribe from Annesley and that his story could (and did) change in direct relation to his financial interests. Indeed, what is interesting here is that the operative story to be constructed is subject to market forces and the vagaries of negotiation. Just as the publisher of the *Sessions Papers* devoted an entire issue to the extensive coverage of this case because of public interest and market demand, young

Egglestone, as the “publisher” of his own narrative, is engaged in a similar, albeit transgressive, form of negotiation and exchange.

The impact of this part of the story affects the case report as narrative in two important ways. No longer is Egglestone the poor unfortunate son who has witnessed his father’s murder; rather, he is the bad son who purportedly utilizes his father’s demise for his own economic enhancement. Thus, sympathy of the audience for the son is undermined. The story moves from at least a suggestion of the sentimental and pathetic to the clinical and strictly legal aspects of the case. Second, the provisionality of legal narrative and its susceptibility to conditions of authorship that are anything but disinterested are highlighted here. What is important here is not the retrospective theoretical assessment using today’s critical nomenclature; instead, we recognize how this testimony reasonably colors the contemporary audience response to the remainder of the legal narrative. From this point forward, it is clear that the story will concern something other than young Egglestone’s bereavement, victimhood, and anger. Almost to the end of the prosecution’s proof, this section of testimony (which will not be effectively rebutted) will color the audience’s reading and interpretation of the remainder of the narrative, leaving an aura of distrust and suspicion of all stories within the story generally.

Samuel Sylvester, the final prosecution witness is asked only eight questions by Mr. Serjeant Gapper the prosecution counsel while defense counsel poses some sixteen questions. None of the questions asked by the prosecution really helps its case. It is established that Sylvester was the tenant of the property where the murder took place. It is further established that Annesley hid out in a back building belonging to “Mr. Redding’s House.” After Annesley is captured, Sylvester states that “I did not hear him say any

Thing, I believe he was in a Fit, for he trembled and fell down behind the Door.”
Concerning young Egglestone’s condition, this final exchange takes place between lawyer and witness:

Mr. Serj. *Gapper*. Had not the Boy been drinking, and did he not sleep before he went in to the Justice?

Sylvester. I believe he did, for about three Quarters of an Hour, I do believe he had been in Liquor, but he was refreshed afterwards. (17)

The main point made by the prosecution is that their chief witness drank to excess, and took a forty-five minute nap before testifying before the Justice, hardly an auspicious closing thrust for the government’s case. While Mr. Sergeant Gapper sought to counter the statement relation to the young man’s sobriety, he only reinforces yet another negative attribute of the witness, his lack of seriousness of purpose. As has been seen, the prosecution has failed to deliver its part of the narrative bargain to the Court and Jury.

On the other hand, defense counsel uses its cross-examination of Samuel Sylvester to further develop certain themes introduced in their cross-examination of the three previous witnesses. First, the familiar theme of “Justice For Sale” is immediately brought up at the outset of the cross-examination:

[Upon the cross Examination.]

Q. Have you not received Money to pay the Witnesses for attending here on this Cause the last Sessions, and from whom?

Sylvester. Yes, I paid some of them, I think it was by Mr *Giffard*’s direction who subpoena’d me up; I asked him who was to pay me, he said I should be paid Half a Crown a Day for my Time, which was as much as he thought I could earn at my Business.

Q. What Business is this *Giffard* of?

Sylvester. He is a Stranger to me.

Q. Do you know who he said he was employed by?

Sylvester. He said he was concerned for the King.

Q. Did you send Notice of this Accident to any Body as soon as the Man was killed?

Sylvester. No.

Q. Do you know Mr *Williams*?

Sylvester. Yes, I know him, but I never was in his Company upon this Occasion.

Q. What Business does young *Egglestone* follow?

Sylvester. I cannot say what Business he follows, I believe he draws Beer now.

Q. How long have you known him?

Sylvester. I have known him five or six Years.

Q. What Business was he bred to?

Sylvester. Sometimes he would be out at Service, and sometimes he would be with his Father in the Business of a Carpenter.

Q. Where does he draw Beer now?

Sylvester. I think it is at Mr. *Williams*'s, at the *White-Horse* in *Pickadilly*. But this is not the *Williams* I was speaking of before.

Q. Have you never been in Company with this Gentleman, and had some Conversation with him about this Affair?

Sylvester. I have been at the Gentleman's House in *Pickadilly* since this Business had been in Hand, but never before; and I have been in Company with the Gentleman there, but never had any talk with him about this Trial.

Q. Was not this *Williams* down before the Justice?

Sylvester. I do not know.

Q. Did you ever see him at *Staines*?

Sylvester. I saw him in the Town of *Staines*, I believe about a Week after the

Accident happened.

Q. Have you seen the Boy, *Egglestone*, there since?

Sylvester. I never saw him at *Staines* afterwards.

Q. What he has lived with *Williams* ever since?

Sylvester. I can't tell.

Q. I ask you whether you have not seen him at *Williams's* House very Time you have been there?

Sylvester. Yes, I believe I did (17-18)

While fairly innocuous on its face, this testimony further devastates any claim the prosecution may have to narrative reliability.

This section is important because it requires the reader to be actively engaged in the act of narrative construction, requiring the audience to draw correct inferences from this sequence and the prior testimony. At the outset of the cross-examination, it is established that Sylvester was to act as a disbursing agent for the payment of witness fees to prosecution witnesses. These fees were to be paid by a Mr. Giffard, a "Stranger" who said he "was concerned for the King." A logical explanation for this occurrence would be that some official associated with machinery of the administration of justice caused the subpoenas to be issued and witness fees to be paid. However, the prosecution never clarifies the identity, position, and function of the "Stranger" on redirect examination. An aura of mystery and unnamed, clandestine power is added to the text, a narrative gap clarified by the ancillary, extraneous text to which some of the readership would already have had access. Mr. Giffard's identity and position are disclosed and developed, however, in a later supplementary narrative. Because of anonymity associated with the mysterious

aristocrat previously alluded to in the examinations and the possible connection with unresolved ambiguity of the “Stranger’s” authority and motivation, yet another allusion is made to the problem of stories being exchanged for money. The potential financial interest of some aristocratic personage in this imbroglio is developed in a more specific manner than in the previous veiled allegations contained in defense counsel’s cross examinations of John Egglestone about his strange and recent relocation to Williams’ establishment in “Pickadilly.” Indeed, since Sylvester had been to the establishment since the murder for the first time ever, the relationship between the Crown, “Lord –,” Williams, and now Sylvester, is problematized yet again. Behind the scenes, there are various powers in conflict. Without resorting to an extraneous narrative, the identity of these powers is unknown, and on its own, the story remains veiled in mystery.

Although Sylvester testifies that he never talked to Williams about the upcoming trial, the reliability of the witnesses’ narrative and its susceptibility to greed and intrigue has already been undercut. The very fact of Sylvester’s appearance at the tavern is in itself sufficient to cast doubt on the believability of his story. Further, the final question as to whether he had seen Egglestone at William’s house every time that he had been there implies numerous visits made after the homicide. What was the nature of Sylvester’s prior relationship with young Egglestone that caused him to make at least several trips? What was the nature of his business that was the focus of these repeat visits? This is one example of relational ambiguity, a story left untold within the text. At any rate, Sylvester’s testimony in chief was of no value to the prosecution and of excellent benefit to the defense. Here the reader seems to understand why the prosecution wanted more time at the commencement of the trial. Perhaps the Prosecutors needed additional days in which to

procure and examine witnesses in order to prepare for the hearings. Yet given the nature and obvious contemporary notoriety of the case, the prosecution must have been generally aware of the defense. The defense's strategy seems not to have been anticipated by the prosecution, at least not in the examination of its small number of problematic witnesses. In an era when the criminal defendant before the Old Bailey was at a distinct disadvantage, the specificity of detail and dialogue associated with this matter shows a case where, in part, the defendants won because of the superior quality of their counsel and possibly because of a reluctance on the part of the prosecution vigorously to pursue the matter (whatever their private, unarticulated opinions with respect to the legal merits or fairness of the case).

According to the compiler's redaction of the prosecution's statement at the close of its proof, Mr. Serj. Gapper made the following statement resting his case in chief:

Mr. Serj. *Gapper* then said, they would rest it here; And having observed upon the Evidence, concluded with saying, he hoped it had fully made out the Charge against the Prisoners; that the Ground where the Man was killed being the Property of *Sylvester*, the Prisoners were Trespassers by coming into it, and therefore answerable for the Consequences. That as to Mr *Annesley*, there was not only implied, but express Malice proved upon him, for that after he had killed the Father, he was for beating out the Son's Brains, only because they would not let him and the other prisoner run away with their Net. (18)

While this statement may have been *pro forma* in nature, it is important to note that the prosecution fails to mention the strongest factual element proving malice aforethought. It was established through testimony that the two defendants, armed and concealed by a hedge, lay in wait for the two fishermen. Clearly, they meant to have a forced encounter with the two Egglestones. Gapper did not mention this as "he hoped it had fully made out the charge against the Prisoners..." According to the argument he made, the possible malice of Annesley is proven since "he was for beating out the Son's Brains, only cause they

would not let him and the other Prisoner run away with their Net.” This threatened violence toward the son could reasonably have been the result of the heat of the moment. It does not follow logically or legally that it specifically proves prior malice, as would the preparation for the encounter noted and reciprocally corroborated by Bettesworth and Fisher. Indeed, the prosecution apparently misses an opportunity to supplement its prior narrative offered in its opening statement. Nowhere does the prosecution anticipate or indeed counter the obvious defenses of authority and agency that will be raised by the defendants and their counsel as they offer their defense.

CHAPTER VIII

TOWARDS A COMPLETE CRIMINAL NARRATIVE, PART II: THE TRIAL OF JAMES ANNESLEY AND JOSEPH REDDING FOR MURDER (THE DEFENDANT'S CASE)

Although the judges at the Old Bailey began to allow criminal defendants to have the assistance of trial lawyers in the early 1730s, their role was limited. Specifically, defense lawyers were not allowed to address the jury, which, as John Langbein notes in *The Origins of Adversary Criminal Trial* (2003), “prevented counsel from stating the accused’s defense or interpreting the evidence” (296). The Annesley/Redding trial is one of a handful of cases where defense counsel made what amounts to an opening statement despite the rule. As mentioned previously, Mr. Hume Campbell, chief defense lawyer, stated at the conclusion of the defendant’s proof that “although he knew by the Course of the Court at the Old Bailey, he was not at Liberty to observe upon the Prosecutor’s Evidence, yet he apprehended, that for the Ease of the Court, he might just open the Nature of the Defense, without making any Observations upon it” (18). This case is thus historically unique in the latitude allowed to defense counsel with respect to their actual participation in the case.

At this point in the proceeding and prior to the statements of defense counsel, the Court offers each defendant an opportunity to articulate his own defenses. It is important to note that the defendants are given their own voice. While the *OBS* purports to be reporting the exact words of the defendants in this detailed report that resembles a complete trial transcript both in scope and substance, their statements are artfully drawn and focus

remarkably on the facts that are legally relevant without too much superfluous exculpatory

verbiage. In Annesley's statement, this defendant restates the unfairness of his situation in light of his personal history and perceived social status:

Court. Mr *Annesley*, you are indicted in a very unhappy Case, what have you to say for yourself?

Mr Annesley. My Lord, I am very unable to make a proper Defence, having by the Cruelty of those, whose Duty it was to protect me, been deprived of the Advantages of an Education I was entituled to by my Birth.

All I know of the melancholy Accident in Question is, that on the unfortunate Day mention'd in the Indictment, I went out with my Gun, in company with my innocent Fellow-Prisoner, to shoot Sparrows, as I usually did. As we were going along, Mr *Redding*, who is Game-Keeper to the Lord of the Manour, saw some People a poaching within the Royalty, upon which he proposed to go and seize their Nets, I followed him, the Deceas'd threw the Net into the River, and the Boy Jump'd in to pull it across, to prevent which, I stoop'd to lay hold of one of the Ropes that trailed upon the Ground, and at the same Instant, the fatal Instrument I had in my other Hand, hanging by my Side, went off without my Knowledge, and to my great Grief as well as Surprize. My Behavior, immediately after the Accident, was, I hope, inconsistent with a Temper that could murder a Man I had never seen before, without one Word of Provocation.

Whatever may be the Determination of your Lordship and the Jury, great as the Misfortunes of my Life have been, I shall always consider this unfortunate Accident as the greatest of them all. (18)

This section of the case is important for its relationship to the relevant ancillary narratives existing at the time of the trial and those to be produced subsequent to the rendering of the verdict.

In his statement, Annesley acknowledges the relationship of literacy and education to the ability to defend himself. His unjust deprivation of his birthright appears to be a mere platform for the articulation of self-pity resulting from the cruelty of those who had a duty to protect him and to provide him with the "advantages" to which he perceives himself to be entitled. However, his statement operates as a rhetorical bridge to the dispute well-known to much of the readership and which gives context to his trial as a commoner at the

Old Bailey. If he were recognized as a Peer, he would properly be tried before the House of Lords. Court jurisdiction, like rules of evidence and procedure are fundamental to the framework around which the story is constructed. In referring to the “melancholy Accident in Question,” the “unfortunate Day,” and his “great Grief,” Annesley is exhibiting either real or fake remorse for the homicide at issue. Such a statement is consistent with the prior testimony as to the rattled emotional state he exhibited at the time of his apprehension. His use of this specific language also articulates the lack of fortune, the melancholy and grief associated with the denial of his apparent claim for social recognition. It was already established that he did flee from the scene and tried to hide in the small building previously mentioned, a reaction that could be as much due to fear of apprehension as to shock and remorse for the homicide in which he was the prime actor.

Annesley clearly states several key facts around which the successful counter-narrative of the defense will be constructed. First, Redding is alleged to be “Game-Keeper to the Lord of the Manor” and the Egglestones are now depicted as trespassers engaged in illegal activity. Second, Annesley’s own possession of the gun is claimed to be logically necessary in order “to shoot sparrows, as I usually did.” The position of the firearm, the absence of prior acquaintance with the deceased, and the lack of provocation are all suggested as factors that weigh toward the legally determinative factual conclusion that the homicide was the result of an accident occurring in Annesley’s assistance of a “Game-Keeper” in the course of his official duty, rather than pre-meditated shooting with callous disregard for human life. Finally, in reaffirming the great misfortunes that he has suffered in his life, he says that he “shall always consider this unfortunate Accident as the greatest of them all.” The Christian virtue of humility is emphasized as he claims to accept

“whatever may be the Determination of your Lordship and the Jury.” Remorse for the incident is recirculated, but here it is coupled with a plea regarding the alleged injustice already suffered by the defendant, the consequences of a wrongful social taxonomy to which he has been subjected throughout his life and up to the time of the murder. It is the defendant who is truly the complainant, and this reversal of roles will be consummated in the lawyer’s final arguments at the conclusion of the trial. The substantive and rhetorical superiority of Annesley’s statement to the last articulation of the case’s “story” by the prosecuting attorney is apparent. It is possible that the reader’s perception of the efficacy of the respective narratives is mediated by the potentially biased reportage of the compiler. However, accuracy, clarity, and completeness characterize this particular trial narrative.

As part of the Court’s traditional policy of requiring a defendant to articulate his defense in his own voice, Joseph Redding makes a similar statement for the Court:

Joseph Redding. My Lord, I am Game-Keeper to Sir *John Dolben*, Lord of the Manour of *Yeoveney*. On the first of *May* last, in the Afternoon, Mr *Annesley* and I went out a walking; we saw a Crow, and Mr *Annesley* made an Offer to shoot at her, but I called to him not to fire, for that she was too far off: Soon after I saw *Egglestone* and his Son a fishing with a Casting-Net, upon which I said to Mr *Annesley*, I would go and endeavour to take their Net away, as it was my Duty to do; according I went up to the Deceas’d and demanded the Net, which he refused to deliver to me, and threw it into the River, one End of the String being about his Arm, I then laid hold of the String, and pulled, whilst the Boy endeavoured to draw it cross the River, and presently I heard the Gun go off (my Back being towards Mr *Annesley*) and saw the Man fall down. - I said to Mr *Annesley*, I hoped he had not shot the Man, he said no, but turning up the Flap of his Coat, we saw he was shot; upon which Mr *Annesley* cried out, What shall I do! And expressed so much Concern, that I am sure it was quite an accidental Thing. (19)

Redding’s statement is even more specific as to the nature of his specific duty. He establishes a narrative promise that he will show that he is “Game-Keeper to Sir John Dolben, Lord of the Manour of Yeoveney.” Instead of referring to the hunting of sparrows, he talks of shooting a crow. The normal reason for carrying the firearm is thereby

reaffirmed. Second, he states that he had not only the right, but also the duty, to seize the net. Finally, he says that Annesley cried out “What shall I do!” and exhibited great concern. Redding buttresses his colleague’s position that Annesley had discharged the firearm in such a manner that he was “...sure it was quite an accidental Thing.”

At this stage of the proceeding, as noted earlier, defense counsel is finally identified by name and offers a concise statement of the defendant’s theory. Hume Campbell’s narrative is short on plot; it is pared down only to operative legal fact and a mention of the specifics of authority and agency that will support the legal basis of the defense:

Mr Hume Campbell, of Council for the prisoners said, that although he knew by the Course of the Court at the Old-Bailey, he was not at Liberty to observe upon the Prosecutor’s Evidence, yet he apprehended, that for the Ease of the Court, he might just open the Nature of the Defence, without making any Observations upon it.

That the Defence which the Prisoners insisted upon was, that the Gun went off meerly by Accident; that Redding was Game-Keeper to Sir John Dolben, Lord of the Manour of Yeovency, and had a proper and legal Deputation for seizing of Nets and other Engines, for destroying of Game. That the Deceas’d and his Son were poaching with a Casting-Net within the Manour; that Mr Annesley went in Aid of the Game-Keeper; and therefore the Prisoners being about a lawful Act, were not so much as Trespassers, and the Death that was the accidental Consequence of that Act, would, in Point of Law, make Mr Annesley guilty only of Chance Medley. (19)

It is important to note that Hume Campbell’s statement is not a counter-argument. Indeed, no mention is made of the unreliability of the major prosecution witness. Instead, the defense is engaged in offering its own narrative possibility to the Court, Jury, and spectators. In this case, the offer of narrative possibility will be accepted, thus fulfilling the narrative contract.

Along with the statements made by Annesley and Redding, the defense will call an additional fifteen witnesses. During the closing arguments, the court allows the prosecution to recall witnesses as to John Egglestone’s character. This indulgence given to

the prosecution is a rarity no longer permitted in Anglo-American jurisprudence. Once the proof is closed, no further factual matters are allowed into the record, barring some extraordinary circumstance. Here, two additional witnesses are called, including Samuel Sylvester for the prosecution. As we shall see, the defense adeptly uses its cross-examination to emphasize again narrative instability and duplicity. In any event, it is important to emphasize that most of the witnesses in this case were in fact defense witnesses.

Thomas Staples, son and deputy to the Steward of the Manor, is the first defense witness; he establishes the existence of the Manour of Yeoveney. The Grant of the Manour is introduced into evidence showing Sir John Dolben as Lord of the Manour. Staples establishes that a certain “Mr. Redding” lives in the mansion house. This “Mr. Redding” is not identified with specificity, and clarification that he is the second defendant’s father is not made until the trial narrative moves into its final phase of development. This strategy adds mystery and suspense to a story that becomes increasingly more focused through the testimony of each witness. Here is another example of a type of delayed decoding where more specific information is given later in the text that explains the general, non-specific aspects of the earlier part of case. Thomas Burlingson and James Edmondson respectively are called to establish the execution and entry of a Deputation that delineates the legal rights and duties governing the actions of the defendants and ultimately determine the outcome of the case. While the statutes of Parliament and the Common Law may be considered a meta-narrative governing the larger universe of the criminal trial at the Old Bailey, the Deputation, along with its statutory basis, is a meta-narrative determining the boundaries of the rights, duties, and consequent actions of the parties:

The Clerk reads. Sign'd J. Dolben, dated the 2d of July 1741. KNOW all Men by these Presents, that I Sir John Dolben, of Shindon in the County of Northampton, Baronet, and Doctor of Divinity, Lord of the Manour of Yeoveney, in the Parish of Staines, in the County of Middlesex, By Virtue of the several Acts of Parliament lately made, for the Preservation of the Game, have made, nominated, authorized, constituted, and appointed, and by these Presents do make, nominate, authorize, constitute, and appoint, Joseph Redding the Younger, of Yeoveney aforesaid, in the said Parish of Staines and County of Middlesex, Husbandman, to be my Game-Keeper of and within my Manour of Yeoveney aforesaid, of all and all Manner of Game, of what Kind or Nature soever, which now is, or hereafter shall be, upon or within the Bounds, Limits, or Precincts of the same, with full Power and Authority, according to the Directions of the Statute in that Case made and provided, to kill any Hares, Patridges, Pheasants, Fish, or other Game whatsoever, upon or within my said Manour, and the Bounds, Limits, and Precincts of the same: And also to take and seize all such Guns, Grey-Hounds, Setting-Dogs, and other Dogs, Hare-Pipes, Snares, Low-Bells, Ferress, Tramels, Hays, Tunnels, or other Nets or Engines, for the taking, killing, or destroying of Hares, Patridges, Pheasants, Fish, or other Game, within my said manour, and the Precincts thereof, that shall be kept or used by any Person or Persons, not legally qualified to do the same: And further to act and do all and every Thing and Things which belongs to the Office of a Game-Keeper, pursuant to the Directions of the said Act of Parliament. And lastly, I do direct that the Name of the said Joseph Redding be entred as such Game-Keeper of my said Manour, with the Clerk of the Peace for the said County of Middlesex, pursuant or according to the Act or Acts of Parliament in that Case made and provided. In Witness whereof, I have hereunto set my Hand and Seal, the second Day of July, in the Year of our Lord 1741.

J. DOLBEN.

Sealed and delivered, being first duly stamped, in the Presence of

JAMES AFFLICK,

THO. BURLINGSON.

Middlesex. These are to certify, that the Name of the within mentioned *Joseph Redding* is this Day entred in my Office, pursuant to the Statute in such Case made and provided. Dated this 29th Day of *January* 1741.

P. WALTER, *Clerk of the Peace*, Middlesex. (20-21)

The existence (and lack) of intertextualities is important to a reading of the specific cases in this study. The importance of this enabling text cannot be overemphasized. It is at this

point that the policy tension concerning the enactment and enforcement of the game laws is squarely before the audience of the narrative.

After entry of the official appointment into the record of the criminal trial, Joseph Redding, Sr., the father of co-defendant Joseph Redding, Jr., is then called as a witness for the defense. The importance of Redding Senior to the construction of the narrative is that he supplies specific detail that elaborating the local geographical identity and the connection of the property to specific members of the landed gentry. He testifies to the legal relationship between the various narrative voices and their relationship to the various issues of land use. Through his testimony, there is a suggestion as to possible economic motives behind the incident that resulted in Egglestone's death. The property is further described and delineated, and the reader learns for the first time that the contiguous field located on Redding's land was known as "Chantry Mead," while the tract of land where the altercation occurred was known as "Hare Mead." While Mr. Redding Sr. did not see Annesley and his son at the time of the incident, he did see them immediately thereafter. Concerning the pair's demeanor, he states that they were "so troubled they could hardly wag or speak"; my Son said he was afraid the Man was killed; and he said Mr. Annesley how did you do it? Mr. Annesley said, I did not think of the Gun's going off' (21). Redding Senior testifies that there was a hedge between Chantry Mead and Hare Mead; the reader again is reminded of the enclosure phenomenon with its restrictions on the rights of the populace to traditional hunting and fishing privileges.

The senior Redding's description of the property interests and the chain of title is revelatory. A difficult social geography upon which the dispute arose, a spatial matrix inextricably tied to identity and agency of the legal subjects. The following cross-

examination by the prosecution focuses on the elder Redding's economic interest in the case:

Serj. Gapper. You were speaking as to this being a Manour; how do you know it to be a Manour?

Redding. Because there have been Courts kept there.

Serj. Gapper. By whom?

Redding. By Sir *John Dolben*.

Q. What is *Sylvester*?

Redding. He occupies this Ground: I let the Farm to *Sanders*, and *Sanders* lets it to him.

Q. On which Side of *Hare Mead* does the River lie; is it East, West, North, or South?

Redding. It is about South.

Q. Does not this River belong to another Person? *Redding.* No.

Q. Has not Sir *John* granted the Fishery to any Body?

Redding. I rent the Fishery, the Fishery belongs to me.

Q. Do you depute your Son to look after this?

Redding. No, Sir *John Dolben* deposes him.

Q. How came Sir *John Dolben* to appoint your Son be Game-Keeper.

Redding. Because they robbed me daily.

Q. Have you assign'd that Fishery to any Body?

Redding. No, I have not.

Q. Who owns the Land on the other Side?

Redding. I believe my Lord *Dunmore* is the Landlord. (22)

Although Sylvester had the use and enjoyment of the property where the Egglestones were assaulted, it is clear from this testimony that the elder Redding was the primary lessee. He subleased the property to one Sanders who, in turn, subleased the parcel to Sylvester. Finally, the fishery, which had been violated by the Egglestones, was in the legal possession of this witness, father of one of the accused. He rented the fishery from Sir John Dolben, and had not subleased his interest. Therefore, although the Deputation appointing young Redding Game-Keeper came from Dolben, in effect the son was engaged in regulatory police work seeking to protect his father's economic interest. The document itself is unclear as to whether the Deputation would apply to the Fishery. Although "Fish" are specifically covered in the deputation, it is argued in closing by prosecution counsel that given the chain of title, the Deputation is inapplicable since it is in favor of Dolben and the fishery remains a property interest of Redding Senior. The trial narrative implies that the motive behind the actions of Annesley and young Redding was to protect the interest of Redding Senior in his fishery under the questionable legal authority arising from the Dolben deputation.

The testimonies of William Duffell and John Dalton, the next two defense witnesses indicate that John Egglestone held two fairly menial jobs with a craftsman and a tradesman prior to his post-homicide employment with Williams in "Pickadilly." Duffell testifies that he had known John Egglestone for eight years and that the son was a frequent visitor to his home, even though, according to defense counsel, John Egglestone claims not to know the witness. Based upon his prior acquaintance with the Egglestone family, Duffell reaffirms the fact that "His Father was a carpenter, and he worked with him." John Dalton, a butcher, then testifies that the boy also had worked for him as a servant. Then testimony as

to the occupations of John Egglestone and his deceased father clarifies the social status of father and son and delineates their position within the class drama that is performed in the legal narrative. While the social role of each of the characters in the text is fairly clear, it is the relation between these roles that constitutes a narrative gap requiring the audience's active participation. The ambiguity or uncertainty of Annesley's social status demonstrates the potential contingency of hierarchical certainty and the problems inherent in inhabiting his opaque social space. He is engaged in enforcing the rigidity both social and geographical boundaries. His role as a policeman of class privilege is ironic. As we shall see (in a later discussion of his narrative not contained in the trial report), Annesley was subjected to extreme geographical instability as a result of his social ambiguity. From a contested hierarchical position, he supports the rigidity of that which supports his exclusion.

The communal nature of the police function is seen as the layers of testimony begin to create a picture of each witness's participation in the aftermath of the killing. Previous witnesses for the prosecution testified as to the pursuit and capture of Annesley hiding out in the small building located on Redding's property. While these accounts vary in detail and emphasis, they do not contradict each other. Overall, they give a detailed picture of the confusion and emotion surrounding this first step in the administration of criminal justice. Further, it is clear from the various accounts of witnesses that there was no participation of the constabulary in the initial seizure of Annesley, the triggerman in the incident. Indeed, there are scores of cases in the *OBS* in which victims or other private parties acting on their behalf did their own detective work in solving the crime. Of course, an important distinction exists between the reasonable deduction as to the perpetrator of a criminal act

and the frequently violent seizure of the suspect's body. In fact, the problems inherent in this tension can be seen in this very murder case with Annesley's involvement as a civilian assistant to a Game-keeper allegedly discharging his official duty. The problems of mistake and unreasonable force were frequent, but this version of an eighteenth century posse was the custom and usage in place in the 1740s. In both the city and country in the 1740s, apprehension and prosecution of suspected criminals was largely a private matter. Participation of the citizenry in the apprehension of criminals was necessary in the rural areas where no real time police response could be expected or even existed. In the metropolis in the early 1750s, John and Henry Fielding sought to transform the property owner's immediate response to crime from one of self-help to one of reliance upon a professional constabulary after an immediate reporting of the incident to proper authorities. While victims and neighbors did not abdicate their involvement in this initial process of detection and apprehension, the Fieldings' efforts in the early 1750s in response to a perceived crime wave following the end of the War of Spanish Succession in 1748 marked the first steps toward the professional detection and apprehension of criminals. (Shoemaker The London Mob 34). The communal aspect of criminal apprehension is described in some detail through detailed testimony in the trial of Annesley and Redding.

This trial report portrays yet another aspect of communality in the administration of criminal justice in the mid-eighteenth century. Not only are the detection and apprehension of the defendant a group phenomenon, but also the initial charging of the criminal is likewise a community event. Several of the witnesses refer to statements made primarily by young Egglestone on the way to, during, and immediately after Annesley's initial appearance before the Justice. Indeed, John Dalton, the Butcher and Egglestone's master,

attended the examination, and he makes this statement in response to defense counsel concerning his conversations with young Egglestone:

Q. What Discourse had you with young Egglestone?

Dalton. On the Sunday, when the Prisoner at the Bar was carried to Laleham to be examined, I went there: The Company dined at the Grey-Hound at Laleham, I stay'd and drank half a Pint of Wine there, and immediately afterwards John Egglestone came to the Door, and called me out of the Room, and said he wanted to speak with me. When I came out, he said he wanted to ask my Advice concerning this Accident: I said, I wonder you should ask my Advice, when you have Relations to advise with; he said, I thought fit to ask you, as you are my Master. While we were talking, Samuel Sylvester came out, and said, I was persuading the Boy to sell his Father's Blood; the Boy said, What do you mean, you Fool you, my Master is persuading me to no such thing. I then asked him, whether he thought it was accidentally done or not; he said, he believed it was accidental, rather than any other thing. I said to him, well, if you think so, you will be examined when you come before Sir Thomas Reynell, I desire you would not forswear yourself, but be very careful what you say. (23-24)

From this description, the reader gets the sense of this hearing and its aftermath as a communal event replete with pub dinner and drinks. In its description, it resembles the descriptions of convivial, yet often raucous, social gatherings in the inns and pubs of the novels of Henry Fielding and Tobias Smollett. The economic negotiation of narrative construction is very much at issue here and is further developed during the prosecution's cross-examination:

Mr Serj. Gapper. You say he has a bad Character; do you think he would forswear himself?

Dalton. I can say nothing to that.

Mr Serj. Gapper. When was it you had this Discourse with him?

Dalton. On the Sunday, at the Grey-Hound at Laleham.

Mr Serj. Gapper. Was there any talk of Money then?

Dalton. Yes, the Boy said he had been offered Money.

Q. But you say, he said he would not sell his Father's Blood?

Dalton. No, I said *Samuel Sylvester* came and said I was persuading him to sell his Father's Blood; and the Boy said my Master did not persuade me to any such Thing.

Mr Serj. Gapper. Are you sure that this is true?

Dalton. Yes I am, I think I am in my Senses.

Mr Serj. Gapper. What did you say to him afterwards?

Dalton. I told him he had lost his Father and had no Friend to take care of him, and he knew best what he had to do.

Q. Did not you say it was better to take Money, than hang the Man?

Dalton. No, I said, I thought by what he told me, that the Man was in no Danger of being hang'd, and therefore he had better take Money than endeavour to hang a Man, that he thought did not do it designedly. (24)

Dalton is forced to defend his credibility, his own story, not only to prosecution counsel in the murder trial, but also in response to Sylvester's challenge at the Grey-Hound at Lelaham before the initial hearing. Dalton draws a fine ethical line here. He is vehement in his denial to Sylvester that he persuaded the young witness to give false testimony in return for Annesley's money, yet Dalton sees no problem in taking young Egglestone's money to ensure his exculpatory testimony if the testimony is in fact true. Just as the prosecution witnesses will later be paid fees for attendance at the trial by Mr. Sylvester, compensation for "accurate" narrative construction is considered acceptable in the eyes of the Butcher. The continued emphasis on the economic incentives for appearance and testimony is remarkable.

Richard Chester is called as a defense witness, but his interest in the case is not revealed until the end of his testimony. While he corroborates the defense's prior facts as

to the ambivalence of John Egglestone and the position of the gun, as earlier described by Redding and Duffell, he adds interesting detail of narrative interest concerning the conviviality of the company at the inn after the initial examination of Annesley at Laleham.

Although Chester had no knowledge of any offer of money to Egglestone, he does provide telling information as to the relationship between Annesley and the prosecution's main witness, as well as his own interest in the outcome of the case:

Chester. No. - My Lord, I had forgot to mention one thing. After this, *Egglestone* spoke to Mr *Annesley* the Prisoner, and shook hands with him; and *Egglestone* said he was very sorry for what had happened, but said he did not think he did it designedly, and than drank a Glass of Wine to him.

Court. Did they shake Hands, or drink the Wine first?

Chester. Both at the same Time as near as could be.

Mr Serj. *Gapper.* Did you see this?

Chester. I did see it.

Mr *Brown.* I ask you whether the Prisoner at the Bar is not married to your Daughter-in-Law?

Chester. My Lord, if your Lordship thinks I ought to answer this Question, I will.

Court. The Relation is very small, but if they insist on their Question, you must answer it.

Chester. The Prisoner is married to my Daughter-in-Law.

Q. They ask this Question in Hopes of its being of Service to them in another Affair, for it cannot be of any in this; though I hope he has got a very good Wife.
(25)

Indeed, it is established that Annesley is married to the witness's daughter in law, an expression used for what today would be his stepdaughter. Clearly, this is a fair question for cross-examination, as it goes to the issue of whether the witnesses is disinterested and,

therefore, credible. Chester is reticent about answering the question, and the Court acknowledges that it is of probably little relevance to the matter at hand.

Note, however, that defense counsel claims that the question is being asked since it might aid the prosecution in another matter, perhaps criminal in nature. The fact that the question possibly pertains to some embarrassing subject matter can be seen when the defense lawyer states humorously, “I hope he has got a very good Wife.” This is another example of the suggestion of a story that remains incomplete. While this side issue may not bear on the case at bar, it might surely give insight to other areas. As will be discussed in a later chapter, the circumstances, as well as the advisability of this marriage, are subject to two specific retellings in subsequent narratives about this trial. Here we have an example of how notions of evidentiary relevance operate as a framing mechanism for the law report as narrative. The suggestions (and consequent absence) of the ancillary narrative thus become part of the broader narrative itself. Also, the suggestion of an incident that is possibly ribald in nature adds to the novelistic quality of this narrative exchange. It is one of the few instances of possibly humorous dialogue included in this lengthy Report. The reader either knows or will learn, however, that the other matter is the much anticipated “Estate trial” that is mentioned later in the defense’s case. The state trial constitutes the meta-narrative of which this criminal trial is merely a chapter.

We have seen how lawyers have identity in this trial report through narrative creation itself, how their acts of story construction are their very presence. Those not engaged in storytelling remain symbolically unnamed. Their very presence is textual; it becomes textualized through the creation of the text itself. In *Psychiatric Power: Lectures at the College de France - 1973-1974*, Michael Foucault, in discussing why certain types of

doctors and employees of the asylum are necessary for the very constitution of medical knowledge based on discipline and order, states that, “the condition of the medical gaze (*regard medicale*), of its neutrality and the possibility of it gaining access to the object, in short, the effective possibility of the relationship of objectivity, which is constitutive of medical knowledge and the criterion of its validity, is a relationship of order, a distribution of time, space, and individuals” (3). Quoting J.E.D. Esquirol’s 1818 foundational text on psychiatry, Foucault discusses how one of the first conditions of success in the exercise of medical power is the morphology of the doctor himself, that he should possess a “noble and manly physique” (4). In our murder case, the lawyers’ physical characteristics are never described. Their nobility, power, and very presence comes, if at all, from their effective construction of narrative which will fit into the legal taxonomies operational at the interface between “real life” and the larger juridical disciplinary matrix. Indeed, the narrative, which they aid in constructing, is a type of writing necessary for the exercise of disciplinary power, of which both the actual trial and the resultant trial report are examples.

With this in mind, let us next examine the brief testimony of John Paterson, Annesley’s prior counsel at the Coroner’s Inquest:

[*John Paterson* sworn.]

Q. Mr *Paterson*, I think you did attend the Coroner’s Inquest, upon this Occasion; please to give an Account how *Egglestone* behaved then, and what he said.

Mr Paterson. My Lord, I will; but first beg leave to make an Apology; for appearing as a Witness on behalf of the unhappy Gentlemen for whom I am concerned as an Attorney; I do it because, in an Affair of so great Consequence to him, I think he has a right to my Evidence; and I do it with less Scruple, as I am his Attorney without Fee or Reward. My Lord, on the 4th of *May*, I went to *Staines* to attend the Coroner’s Jury; thought, as I had not Time to enquire into the Fact, and prepare for Mr *Annesley*’s Defence, I could do him but little Service more, than by cross examining the Witnesses for the Crown, and making Observations on their Evidence; one of the Witnesses was *John Egglestone*, who has been examined here.

Court. As to any Thing in his Behaviour you may give Evidence, but not of any Thing that was reduced into writing.

Mr Paterson. I can only speak as to what he said before the Coroner, and I admit the Depositions taken at that Time, were reduced into writing by the Coroner or his Clerk. (25-26)

First, Paterson issues an apology for appearing as a witness. Indeed, he is operating outside of his socially constructed role as an advocate although, as a testimonial witness, he is still attempting to construct the underlying narrative. In his doing so, his privileged status in the trial arena is compromised. He admits that upon attending the Coroner's Jury at Staines, he "had not Time to Enquire into the Fact, and prepare for Mr. Annesley's Defense." While Paterson's physical characteristics are not described, his weakness as an articulator of narrative is laid bare, emphasizing the importance of this substantive function in the quest for disciplinary order in the world of this narrative. In a system where everybody's narrative is for sale, Paterson is giving his story as his attorney "without Fee or Reward." The strength of text is then reasserted, as his testimony is not allowed and the depositions taken at an earlier time and reduced to writing by the Coroner or his clerk usurp whatever story Annesley's former lawyer has to tell. Indeed, John Paterson's testimony and its relationship to the representation of other lawyers in the case is an instructive example of negative exemplarity in the text. Ironically, it will be the testimony of another lawyer in another trial that will clarify many of the narrative gaps present in this trial report.

Prior to the final medical witnesses and the strange story of Paul Keating, which concludes the defendant's case, two other minor witnesses are called. First, Mr. King, the Coroner, introduces the Minutes of the depositions that were taken in connection with his post-homicide inquiry as to the cause of death. His oral testimony is of little importance

here, since the prior proceeding has been textualized. The Coroner offers to search his memory, if necessary, to add to the Minutes; the prosecutor, Serj. Gapper, states “when an Officer has taken Things down in Writing it is of dangerous Consequence to admit Parole [sic,] Evidence to be given of the same Things”. Here, the “Parole Evidence” refers to oral evidence. Under the Parol Evidence Rule, it is not admissible to add to, subtract from, vary or contradict judicial or official written records. The rule also applies to written instruments which dispose of property or are contractual in nature and which are valid, complete, unambiguous, and unaffected by accident or mistake. Indeed, like the general judicial notion of evidentiary relevance previously discussed, the doctrine, which privileges the creation of texts (within texts) is another principle around which the construction of this narrative is organized. At any rate, the extract of the Minutes from the Coroner’s inquest is consistent with the testimony given by young Egglestone during the prosecution’s case in chief, except on one point. The final sentence of the “minutes” states: “Says, he was no offered any Money by any Body.” At this point, defense counsel, identified for the first time during the examination of any witness as “Council for the Prisoner,” states that “This is the 4th of May, and he now says, that on the second of May he was offered Money at Laleham.” Indeed, by his specific identification by nomenclature other than “Q.” and the declarative nature of his utterance, Annesley himself directly intervenes into construction of the plot. This narrative moment is both memorialized and instituted by this shift of the nominal signifier. Here, this gesture towards temporal organization emphasizes his competency as articulator and Egglestone’s unreliability as the narrator of his own story.

On its face, the testimony of Reverend Eusebius Williams seems to add little except to corroborate prior testimony as to the lack of credibility of John Egglestone. His

testimony adds some variety and texture. It is in its own way “novelistic,” for what eighteenth-century prose narrative develops without the appearance of a parson? However, his short time on the witness stand is telling as to some of the intricacies of narrative construction that we have been discussing with respect to the trial of Annesley and Redding. The minister’s short testimony is as follows:

[The Reverend Mr *Eusebius Williams* sworn.]

Q. Sir, do you know *John Fisher*?

Williams. Yes.

Q. Had you any talk with him about *Egglestone*’s being killed?

Williams. I happen’d to be at *Laleham*, and heard the Depositions that were made before Sir *Thomas Reynell*: *Fisher* said if he was examin’d before the Justice he would declare what *Egglestone* had said to him.

Q. What was that?

Mr Williams. *Fisher* told me that *Egglestone* said he did not believe the Gentlemen kill’d his Father designedly; but that it was an Accident.

Q. Do you know how this young Man *Egglestone* came from *Stains* to *London*, and who has had the keeping of him since?

Williams. I know nothing but by hearsay.

Q. Was you never at the *White-Horse* in *Pickadilly*?

Williams. I never was there since this Accident. (27)

What does the Rev. Eusebius Williams know of the facts? Really, he knows nothing. When asked as to how Egglestone arrived in London, he claims he knows “nothing but by hearsay.” “Hearsay” is a technical legal term that enjoys common usage. In terms of the law of evidence, it prevents the court from considering evidence not proceeding from the personal knowledge of the witness, but rather from the mere repetition of what he has heard

others say. It is a matter stated out of court to prove the truth of the matter asserted. “Hearsay” rests upon the veracity of persons not before the court and therefore is not subject to cross-examination. Ironically, the main point made by Rev. Williams is hearsay. His testimony concerns what Fisher had told him that Egglestone had said, a classic example of hearsay. So, indeed, Williams is quite correct when he says, “I know nothing but by hearsay.” We see here that while rules of procedure and evidence form the architectonics of narrative construction, they are sometimes ignored. Rev. Williams assumes competence to apply these rules to the construction of his bit of the story, but as a self-appointed arbiter of what is proper evidence he similarly fails as a storyteller. The absence of narrative concerning God or the soul emphasizes the secular nature of the judgment to be rendered. The parson’s ineffectiveness here highlights the notion of the Old Bailey courtroom as a highly ritualized yet secular space. Although the indictment was framed by the language of “...not having God before your Eyes, but being moved and seduced by the Instigation of the Devil,” a different type of discourse competes for and attains disciplinary space in the theater of the Old Bailey Courtroom as a microcosm for the larger social and political space of eighteenth century London.

The next two witnesses are notable in the amount of detail that they provide with respect to the abundance of medical data adduced at the post-mortem examination of the deceased. James Bethune, a surgeon from Brentford, happened to be at Laleham and was given leave by Sir Thomas Reynell to come and hear the depositions taken at the hearing. Whether his appearance is accidental is questioned in the ancillary narratives to be discussed. Subsequent to this initial proceeding, he was summoned by Mr. Perkins, a surgeon residing at Staines, to assist in the opening of the body before the Coroner. After

describing the wound as being “on the left Side, about an Inch and a Half below the Ridge of the Hip-Bone” and about “an Inch and an Half wide,” he described the medical procedure followed and its relevance to Egglestone’s prior testimony as to the angle at which Annesley purportedly held the gun. This section of his testimony states as follows:

Q. Did the Wound go upwards or downwards into the Belly?

Bethune. When I found it went into the Cavity of the Belly, I remember’d in what manner *Egglestone* held the Gun when he was before Sir *Thomas Reynell*, to show how Mr *Annesley* held it when he fir’d: I remember very well he held it to his Shoulder slanting downwards; I attempted to put my Probe into the Wound in the same direction as he described the Gun, but there was no Passage for it in that Position, it would not go in downwards; then I put it in in this Manner cross the Belly, and it went in without Obstruction, and then upwards and it went in with the same Ease, in this Manner. I observ’d several large Blisters, full of black Serum on the right Side, opposite to the Place where the Shot went in, the Blisters which were on the opposite Side, were three to four Inches higher than were the Wound was, - the Wound was on the left Side, and the Blisters on the right; when I found this was so plain to me, I desired it might be as plain to the Jury and every one there, as it was to my self, because this was a Matter of Fact and not of Judgment, and I desired the Foreman to come and put the probe in and try, he did so and found the Wound as I have described it: I was the more careful in this, because I had observed the Evidence that the Boy gave on the Sunday, and there was some Variation between that and the Nature of the Wound, therefore I desired them to take the more Notice of it, and said, Gentlemen, I shall have Occasion to speak to this by and by, and therefore I desire you would mind what I say to you.

Q. What do you think those Blisters on the other Side were occasioned by.

Mr Bethune. I apprehend they were occasioned by the Force of the Powder, and that if the Shot had gone through, it must have come out three or four Inches higher on the other Side than it went in. (27-28)

Through testimony that is posited as disinterested, the violence of Annesley’s shooting of Egglestone is neutralized through the clinical description of the body. Thomas Egglestone’s presence is offered in this section through the “Cavity of the Belly” and “several large Blisters, full of black serum at the right side.” By stating that physical destruction of the flesh was “occasioned by the Force of the Powder,” this medical

description portrays the victim's death as a matter of physics in a chaotic and insensitive universe.

James Bethunes continues his empirical description by then discussing the angle of the weapon at the time of the fatal shot:

Mr Serj. *Gapper*. According to your Account, could he, holding the Muzzle of the Gun upwards, have made this Wound?

Mr *Bethune*. It could not have made it with the Muzzle downward.

Q. Did you observe how the Wound was upon the Bone, and whether there were any Shot remaining in the Wound?

Mr *Bethune*. No Sir, But I found some Shot in the Cavity of the Belly.

Mr *Brown*. Now the Question is, Whether the Shot, coming upon this Bone, might not be thrown upwards?

Mr *Bethune*. No, for the Shot went through the Bone, so that the Gun must have been held obliquely, pointing upwards; the Shot could not have gone through in that Direction if the Muzzle of the Gun had pointed downwards; this is not Matter of Judgement, but I have given you Demonstration of it.

Mr Serj. *Gapper*. You say the Wound went from the left Side to the right, and that if the Muzzle of the Gun was downwards the Wound would be in the same Manner.

Mr *Bethune*. Certainly Sir, if the Muzzle of the Gun is held downward, the Shot cannot go upward.

Foreman of the Jury. He makes it appear that the Prisoner could not hold the Gun to his Shoulder, but that it was held horizontally, and that it was impossible for him to wound him in the Manner the Boy has described, if the Muzzle of the Gun had been pointed downward.

Mr *Bethune*. I beg Leave to speak a few Words more to your Lordship. While I was giving in this Evidence before the Coroner and his Jury, if your Lordship remembers, I said I had showed them how the Wound was, therefore I desired them to consider how Consistent it was with the Evidence that Mr *Egglestone* had given; I believe I proved it to the Coroner's Jury and others that were there; that it was impossible it could be done in that Manner, if the Gun was held as he said, to his Shoulder, upon that he comes up again, and, says he, the Gentleman stooped when he did it.

Council for the Prisoner. This shews how he departed from what he had said, for he said first that Mr Annesley stood upright when he fired, and then that the stooped in order to make his Evidence correspond with the Wound. (28)

While the first part of James Bethune's analysis deals with the force of the discharge of the firearm, the conclusion of his testimony deals with the direction at which the pistol was held. Why this aspect is determinative as to Annesley's intent is never fully explained; he could have purposefully pulled the trigger from any angle that might have caused a fatal wound. To prove the relationship between the angle of the shot and Annesley's state of mind at the time of the deadly incident is only part of the rhetorical strategy. By putting forth James Bethune's testimony in this manner, the primary testimony of John Egglestone is once again attacked. If the eyewitness account of the son of the victim is contradicted by yet another element of competent proof, the prosecution fails. Further, by insinuating the young Egglestone changed his story (probably for money or other valuable consideration), the motives and involvement of the mysterious nobleman are raised in the narrative from another perspective. The meta-narrative of the upcoming Estate trial is inescapable.

The detail and precision of the testimony is evident from the prior excerpt. However, its significance to the developing narrative, and to its problematized credibility, is highlighted by the two declarative interjections by the Foreman of the Jury and Council for the Prisoner. Again, it is significant to note that defense counsel is only identified as "Council For the Prisoner" when he is making specific declarative statements *in medias res* as to the significance or narrative relevance of the facts as they relate specifically to the development of the testimony. Similarly, in making his declarative statement, the Foreman of the Jury is opining as to the probability of the occurrence of certain basic facts relevant to the issue of accident vs. intentional act his idea will be completed by the "Council for the

Prisoner's" concluding remark as to what inference should be given to the testimony and how this affects the credibility of young Egglestone upon whose version of events the prosecution relies in order to establish its case. Not only do these complementary declarative statements operate as a form of narrative judgment in partnership with the surgeon's "disinterested" testimony, but a similar act of self-judgment occurs in the testimony of Bethune himself. With respect to his testimony, he states that the matter upon which he is speaking "was a Matter of Fact and not of Judgment." Later, he further states that "this is not a Matter of Judgment, but I have given you Demonstration of it." This statement is important, first because it shows the centrality (and "neutrality") of medical discourse in legal narrative, and second, because it privileges that which can be demonstrated. Indeed, the entire trial as constituted by and memorialized in narratives is a demonstrative act. The statement with the emphasis noted gestures towards the performativity of the entire proceeding, as well as its component parts.

Immediately following the shooting, the narrative is initially characterized by the "absent doctor," surgeons (and their procedures and discourses) are notably present and relevant in the final aspect of narrative construction relating to the actual specifics of the cause of death. Also, their testimony at the Coroner's Hearing is part of the enabling narrative upon which the felony indictment of Annesley and Redding is based. The result of this textual paradox de-emphasizes the humanity, pain, and suffering of the victim, and instead emphasizes his own corpse's status as a medico-juridical subject, an object of knowledge. Indeed, this moment in the trial is evidence of an epistemological moment where a new system of truth inextricably tied to judicial power and its exercise is being formed. It is a point where the Foucauldian notion of power producing knowledge occurs,

a point made even more evident by the absence of medical discourse at the time of the shooting, when it could have done the most good. Doctors, like the lawyers appearing before the Old Bailey, are professionals who practice a complex art and obey rules known only to specialists. Medical discourse, a corpus of knowledge that can be both useful and resistant to power, becomes the Foucauldian discourse of “power-knowledge.” Like doctrines of relevance, hearsay, and parole evidence, forensic medical discourse exists here as part of “the general arithmetic of evidence.” Indeed, the system of proof itself is related not just to the creation of narrative, but also to the reinforcement of power in its most general sense, to which both medical and legal discourse are related, in that the narratives of which they are constitutive is inextricably tied to the notion of power itself.

In the Annesley/ Redding trial the Coroner does not directly intervene in the medical discourse of the case. He neither conducts the actual autopsy nor does he opine on the legal or medical relevance of the results from the autopsy over which he has charge. His role is shown to be ministerial and quasi-judicial in nature. As previously noted, the Coroner was originally called as a witness for the sole purpose of introducing the minutes of the Coroner’s Inquest. Curiously, after the medical witnesses are examined, the defense counsel recalls the Coroner to testify as to his knowledge concerning the facts and circumstances surrounding Annesley’s pretrial incarceration:

[Mr *King* the Coroner called again.]

Q. Was any Application made to you at any Time to send Mr *Annesley* a Prisoner to *Newgate*?

Mr *King.* Yes, I think it was Mr *Giffard*, he came along with another Gentleman, whose Name I think is *Carrington*.

Q. What, Captain *Carrington*?

Mr *King*. I believe it was: I said, I think the Gentlemen is secure enough: (there was a Lord mentioned, but I cannot remember that he was named: Mr. *Giffard* wisely kept him from saying who it was). I thought it was too severe to send him to *Newgate*, and said that Sir *Thomas Reynell* was the Justice of Peace who committed him, and he had taken sufficient Care about it. (29)

Again, Mr. Giffard reappears, this time as an agent for an unnamed nobleman who has an interest in seeing that Annesley is remitted to the dreaded Newgate Prison rather than New-Prison. Giffard first appeared in the narrative during the examination of Samuel Sylvester. In that examination, Giffard is identified as a stranger who “was concerned for the King” who gave Sylvester funds to distribute to the prosecution, witnesses as compensation for appearing at the trial. This short examination shifts the thrust of the narrative away from the specifics of the crime in question towards the partially articulated sub-plot of the mysterious, interested nobleman and the motive(s) behind the alleged bribery of witnesses. Whether leniency in terms of the pretrial incarceration was a result of the perceived strength of the defense to the charge, the general character of the defendant, or the ambiguous social identity of Annesley is unclear. What is clear, if still undeveloped in the story, is that one or more noblemen has an interest in seeing Annesley prosecuted and treated severely for reasons that appear to have little to do with the merits of the homicide case.

This novelistic moment has several important functions for the remainder of the story. First, it reintroduces the audience to the subplot, setting the stage for the statement of Paul Keating, the final defense witness. Second, since the unimpeachable medical testimony has eased the tension in the plot with respect to whether Annesley’s volitional act was intentional or accidental, it reintroduces an element of suspense into the story. What more will be revealed about these matters that remain secret or unresolved? From the

standpoint of the defendant's legal strategy and general novelistic interest, this short examination of the coroner suggests that Annesley may be a "victim." He has been variously shown to be a victim of possible abandonment and mistreatment as a youth, a possible erroneous social classification, and a purposeful persecution as to the place of his pretrial incarceration – plot elements that appear variously in Henry Fielding's *The History of Tom Jones* and *Amelia*. However, by using Coroner King's brief bit of testimony to enhance the detail of the narrative, the defense lawyer (through an artful use of implication) suggests that likewise Annesley may be a victim in terms of the prosecution itself. Indeed, it is at this point that the narrative as story and as statement of legal "fact" seems to converge.

Paul Keating, the final witness for the defense, is called to testify concerning his relationship with young Egglestone after he had relocated to the White Horse in "Pickadilly" after the initial hearings. When asked about his nationality, Keating replies that "I came from Ireland on Board a Merchantman from Waterford: I was recommended to the Earl of – to say what I know as a Witness about the Estate" (29). When asked, Keating explains how he became acquainted with Egglestone.

Keating. There was one *Lawler* that came over in the same Ship. When I came to Town, I went and enquired for him at the Earl of -'s, and he sent me to the *White Horse* in *Pickadilly* to live, and there I came acquainted with *Egglestone*. (29)

This short section introduces Keating as a possible agent of the "Earl of –." He is linked to an individual named Lawler who has a closer relationship to the nobleman since he is residing at the Earl of –'s. Unknown to the Court, Jury, and audience, Lawler will be the final witness at the trial. The prosecution calls him as a character witness for young Egglestone after the proof is closed and final arguments are substantially completed. Later

in his testimony, Keating claims that Lawler is the nobleman's servant. He never elaborates the specifics of his own relationship to Lawler or to the nameless Earl. While no information is given as to the nature of the Estate litigation, it is possible that reference is being made to land in Ireland in which the Earl holds an interest since both Irishmen are coming for specific purposes at the nobleman's behest. Also, by this stage of the criminal trial report, the centrality of the estate litigation as the larger narrative context is becoming more apparent. The lack of specificity in the foundation to Keating's testimony again emphasizes the fragmentary nature of the narrative, as well as highlighting its potential unreliability. Keating's nationality had significance for the audience of the trial report. As Peter Linebaugh notes in *The London Hanged* (1992), around 14% (171) of the people hanged in the eighteenth century were Irish. The reputation of the Irish for defiance and lawlessness would have been implicit in the specific identification of Paul Keating as an Irishman (289).

The purpose of introducing Keating's testimony is to impeach Egglestone's testimony and to show that the Earl of – purchased his version of the facts. This specific aspect of the story is noted at various points in the narrative, but defense counsel saves Keating's testimony for the Finale of the case:

Q. After your Acquaintance do you remember any Conversation with him, about what he was to have for swearing in this Cause?

Keating. I do, my Lord, remember mighty well; a little Time after he came to the Inn, he and I got acquainted together, and went out a walking to see the Town, and particularly on a *Sunday* Morning; the *Sunday* after he came to *Pickadilly*.

Q. What Month was that in?

Keating. In the Month of *May*: I believe it was the second *Sunday* in *May*: as we were walking abroad I asked him how he came to live there, says he, I am here at the Expence of the Earl of –.

Court. This is not proper: If you can call any Body to contradict *Egglestone* you may, but this is reflecting upon a Noble Person's Character.

Q. Did he tell you how he came to be at that Inn?

Keating. He told me that Mr *Williams*, who keeps the *White Horse*, brought him from *Staines*, and that he should be very well provided for, if he would prosecute the Gentleman, who is now in Custody, for this Murder, and he desired I might contrive some way that he might get the Money secured, and I wrote two or three Drafts of Notes for 200 *l.* and he took Copies of them.

Q. How came he to take Copies of them?

Keating. Because I did not care my Hand should be known. I have a Copy of one of them in my Pocket. [*Reads.*]

I Promise to pay to Mr Thomas Egglestone [that is his elder Brother] or his Order, at or upon the 10th Day of June next, the sum of 200 l. Sterling for Value receiv'd from his deceased Father and him in Carpenters Work, &c. Witness my Hand this 10th Day of May, 1742.

This was to be signed either by Williams or my Lord –

Q. Do you know of any Discourse with *Patrick Lawler*?

Keating. Yes, he is my Lord –'s Servant.

Court. What *Lawler* said is not Evidence, unless to contradict him, and he has not been examined.

Q. Have you ever seen the Earl of - at the *White Horse*.

Keating. He is there often.

Q. What, has the Earl of - any Thing to do there?

Keating. His Coach and Horses are kept there.

Q. How long have they stood there?

Keating. They stand there constantly.

Mr *Serj. Gapper.* What was that Note for?

Keating. It is only a Copy of what I wrote for *Egglestone*, for as I told the Court

before, I did not care that my Hand should be seen in any such Thing as Bribery and Corruption.

Mr *Serj. Gapper*. Where was this Note sign'd?

Keating. I cannot say whether it was sign'd or not, he told me it was to be sign'd.

Q. Did not you put this into *Egglestone's* Head?

Keating. No, upon my Oath I did not.

Mr. *Brown*. Did not you receive Money to go somewhere and you and he went and spent the Money?

Keating. I receiv'd a Crown to go to *Woolwich*.

Q. How came you not to go to *Woolwich*?

Keating. I had not a mind to go.

Mr *Serj. Gapper*. So you had a mind to make *Egglestone* drink with this Crown?

Keating. That is a different Case.

Q. Did not you treat him?

Keating. Yes, I did.

Q. What Reason had you to treat him?

Keating. Because he had no Money of his own.

Mr *Serj. Gapper*. So you had a Crown to go to *Woolwich* and did not go?

Keating. I did not go indeed. (29-30)

While the motives of young Egglestone are again called into question, Keating is only acting as a pawn for higher social interests. When Keating directly states that Earl of - was covering Egglestone's expenses, the Court vehemently intervenes, and says that he will hear impeachment testimony, but that "...this is reflecting upon a Noble Person's Character." In the next response, Keating mentions that Mr. Williams sought to bribe

Egglestone, and it is telling that the Court found this answer to be acceptable. While the Judges are acknowledging and protecting the existing class structure, it is ironic to note that the nobleman's exalted position and free flow of cash could not purchase the verdict desired by the unnamed Earl.

The transactional nature of this section of the testimony is multi-faceted. Egglestone and "Lord –" are engaged in a transaction for the purchase of testimony. The consideration for the illicit bargain is evidenced by another transaction, the drafting and execution of a negotiable instrument to be signed by either Williams or Lord –. (Notice that again the Court did not find the admission of this testimony objectionable). Finally, the promissory note textualizes yet another transaction, referring to services rendered by Egglestone's dead father. So at the heart of the testimony of young Egglestone, there is an enabling narrative that is untrue. It is both legally fraudulent and false as narrative, but the parties treat that which is false as true and legally binding. This points not just to the provisionality of legal narrative, but towards the fictionality of this type of narrative itself.

Although the defense rests and counsel for the parties engage in extended final arguments which are recorded with particularity in this Trial Report, Mr. Serjeant Gapper interrupts this final portion of the defense's statement:

Your Lordship will please to observe that it depends entirely on the Credit of *Egglestone*, whether this Gentleman did any Thing or not. Before your Lordship directs the Jury as to this, it is my Duty to acquaint your Lordship, that there is an Indictment on the Coroner's Inquest, and likewise an Indictment on the Black Act against the Prisoner Mr *Annesley*.

Court. That is for shooting Maliciously: But there is no Evidence tending that way.

Mr Serj. *Gapper.* My Lord, we desire to call some Evidence to support the Character of *John Egglestone*.

Q. For what? We have called no Witness to impeach it.

Court. Have you not examined every Witness that has appeared to the Boy's Character? If you could have called more, it is to be supposed you would have done it. (36)

In this section, the Prosecution Counsel once again shows ineptness both as a trial advocate and author of a story. Although both defense counsel and the Court express consternation, Gapper is allowed to call John Garner, Thomas Sylvester, Samuel Sylvester, and Patrick Lawler as character witnesses. At this stage of the narrative, none of these witnesses helps the prosecution's problem with Egglestone's credibility. What benefit could the prosecution possibly receive from Lawler's testimony concerning young Egglestone's character when weighed against the further potential damage that could result under the defendant's cross-examination? The audience could reasonably assume that, except for the judge's final findings of fact and conclusions of law, the story was by now fully articulated. This inclusion of further testimony in a disorderly fashion can almost be characterized as a form of the Narrative Carnavalesque. Not only does it upset the reader's reasonable expectations as to narrative order, chronology, and finality, but it also usurps the expectations of the defense counsel and the Court.

The testimony of Patrick Lawler adds a final twist to the recurring theme of the negotiation and sale of stories. This series of questions is particularly disjointed. Remember the prosecution calls Lawler for the sole purpose of rehabilitating Egglestone's credibility. Mr. Serjeant Wynne asks Lawler whether he knows Paul Keating. The witness replies that he has known him since March 18, 1742. There are no further questions from the prosecution; no basis is laid for Egglestone's rehabilitation. Whether this is poor lawyering or an omission of reportage on the part of the Compiler is uncertain. However,

given the apparent completeness on the part of the various examinations contained in the Report, failure to include relevant testimony would be inconsistent with the manner in which the text is constructed. After the prosecutor's sole inquiry, the defense conducts its examination:

Q. What is his general Character?

Lawler. I do not know his general Character: But I know he has behaved very bad of late.

Q. Did you never offer him any Money to keep out of the Way, and not appear at this Trial?

Lawler. No, not I; But he said he would give them a Rowland for their Oliver.

Q. Do you know what he meant by that?

Lawler. No, only that he said if my Lord - did not give him Money he would turn Evidence on the other Side.

Q. What did you think meant, when he said, if my Lord - did not give him Money he would turn Evidence of the other Side? Why surely my Lord is not concerned in this Prosecution! But pray, Sir, you have given a bad Account of Mr *Keating*, how came you and he acquainted.

Lawler. This *Keating* and I came over together from *Ireland* in the same Ship, he told me there were some Evidences on Board that were coming over to swear away my Lord -'s Estate; said he, there are three Women and two Men, and I have discovered the whole Thing; how they are bribed to come here, and if I come to *London*, said he, I will give my Lord - an Account of it.

Q. Pray, Sir, tell us what became of *Keating* when he came to Town?

Lawler. Soon after he arrived he found me out, and so I told Mr *J'ans*, I thought he might depend upon this Man, because I had seen him in *Bristol*; said I, I speak to you about this Man, out of Charity, for he is very poor; then says Mr *J'ans*, let him go to the *White-Horse* in *Pickadilly*; and then he wanted Cloaths and Money; and, says he, if they do not give me Cloaths and Money, I will swear that the Earl of - was to give a Note to young *Egglestone* to swear upon this Trial.

Q. What do you think he meant by his giving a Rowland for an Oliver? Whether it respected this Cause, or related to my Lord –'s Estate?

Lawler. I cannot tell what he meant. (37)

Lawler's testimony creates a "story-within-a-story" that operates as a textual span to existing and soon to be constructed ancillary narratives.

Lawler states that several witnesses (three women and two men) were voyaging on the ship in order to give testimony against Lord – in the ancillary Estate litigation, a proceeding about which no further specific information is given in the *Sessions Report*. Lawler alleges that Keating supposedly discovered a plot: that the group on board was being bribed by an unnamed third party to give their testimony. Lawler further states that Keating intended to make a full disclosure of the plot to the noblemen upon his arrival in London. Keating's failure to disclose this fact in his prior testimony is a noteworthy omission. Although Lawler feels that Keating might be useful to his boss (as seen in his recommendation of the immigrant to the attention of Mr. J'ans), the two witnesses experience a rift in their relations. According to Lawler, Keating then threatens to contrive a story whereby he was to give a "Note" to Egglestone in consideration for his testimony unless Keating was provided with clothes and money. As seen from the first question of defense counsel in this cross-examination, Lawler offers Keating money not to appear at trial and give the testimony that has by now been given by Keating.

Why this aspect of the narrative was developed, almost accidentally, by the calling of this final prosecution witness remains a mystery. Lawler was not called by the defense so as not to problematize Keating's testimony, which inured to the benefit of Annesley. Since Lawler was a prosecution witness, a reasonable construction of the testimony is that

the prosecuting attorneys were unaware of this aspect of the case or felt that the defense would not pursue a line of questioning that would put the credibility of their prior witness at issue. At any rate, in this final piece of testimony three new instances of the sale of legal narrative are suggested: 1) the sale of the testimony of the five witnesses to the nobleman's adversary in the ancillary estate litigation; 2) the proposed offer of forbearance from testimony as to the issuance of the notes in favor of Eggleston made by Keating to Lawler or other representatives of Lord –; and 3) the offer of forbearance from testimony at trial allegedly made by Lawler to Keating. The only surprise here is that no counter offer was made to the witnesses in the estate litigation not to testify against the noble personage at its core the Annesley/Redding murder narrative is as much about the purchase and sale of stories as the actual homicide itself. When Lawler states “he would give them a Rowland for their Oliver,” he is reducing the entire notion of narrative exchange to a symbolic exchange consisting of two arbitrary signifiers.¹³ When asked whether the statement “respected this Cause, or related to My Lord –’s Estate,” Lawler testified that he could not tell what Keating meant. Indeed, this statement of generalized exchange consists of two signifiers without a signified. It remains as a trope for the constructed unreliability of most of the legal narratives upon which the larger legal narrative is based.

As previously stated, the actual final witnesses were called at the conclusion of the defendant's closing statement. Prior to the commencement of this last major section of storytelling, the Judge renders a short charge to the Jury:

Court. If the Jury should be of Opinion that the Gun went off by Accident, the Homicide must, in Point of Law, be either Manslaughter or Chance-Medley; I should be glad in that Case to make it Chance-Medley; but in order to that it must

¹³ The expression “a Rowland for an Oliver” is an intertextual reference to the *Chanson de Roland*, an eleventh-century French heroic epic.

appear, that what Mr *Annesley* was doing, was perfectly lawful, otherwise he will be guilty of Manslaughter.

The other Prisoner, *Redding*, had certainly, by Virtue of his Deputation, and by Force of the Acts of Parliament made for the Preservation of the Game, Authority to seize the Deceased, who was clearly acting in Violation of those Laws. But it is doubtful whether the Authority of a Game-Keeper being personal, the other Prisoner acted lawfully in assisting him. (30-31)

In this short passage, the Judge emphasized the factual questions upon which the holding of the case depends: 1) Was the discharge of the gun accidental? 2) Was the authority of Game-Keeper personal and non-delegable? And 3) As a result of holdings on the first two questions, was *Annesley* engaged in a lawful act at the time of the shooting incident? By the exclusion of references to the intentionality of the act in question, the Court implies that it believes the shooting to have been accidental. In terms of the narrative, the only legally reliable testimony addressing this issue has come from the two doctors. The only contrary narrative was based on the articulations of young *Egglestone*, and his testimony is of little probative value for the reasons previously discussed. However, while there has been evidence as to the timing and validity of *Redding*'s position as Game-Keeper, there has been no proof established as the purview and validity of *Annesley*'s acting within the scope of *Redding*'s authority. Indeed, the Court through the Judge expresses doubt as to whether this personal authority is delegable. By thus setting the specific boundaries of legal determination, the Court thereby establishes the boundaries around which the narrative will be completed. Indeed, the Jury Instructions, like other procedural, evidentiary, and even substantive matters previously discussed, become part of the Foucauldian Arithmetic around which judgement will be rendered and punishment assessed. They similarly become the architectonics around which the narrative is constructed.

The final arguments of the respective sides to the case are noteworthy for their specificity and completeness. Indeed, two other types of texts are emphasized at this point to round out the legal narrative: 1) competing intertextual references to applicable statutory law and 2) constructed analogical examples in lieu of case citation. As noted previously, it is at this point that the members of the defense team are finally identified by name. The defense counsel was initially only a vague presence at the outset of the Trial Report. They become the privileged storytellers not only because of the strength of their defense with respect to the examination of the witnesses, but also because they have the first opportunity to present their own summation of the facts as a result of the procedure of the Old Bailey. Again, the prominence of these defense counsels' presence in an Old Bailey trial in 1742 is without precedent. The initial advantage of the prosecution's construction of the story has been lost; by now the defense is clearly in control of the narrative. It is the prosecution that must respond. The defense acknowledges that while the authority of the Game-Keeper is personal, Annesley's volitive act of reaching for the net is not the type of intentional act causing homicide that should result in a finding of manslaughter.

Here, notions of the relevant taxonomies of criminal law create the structure around which the act of storytelling revolves. The narrative is then expanded by counsel's use of other hypothetical examples, a form of expanded narrative construction by analogy. Although specific intertextualities through case citation are not utilized, the types of factual patterns offered are of the type that would be familiar to the Court and to those proficient in legal reasoning based upon the common law. This is the dominant legal discourse at play, though the citation of late seventeenth and early eighteenth century statutory law indicates the tension between the power of Parliament and the historical basis for legal adjudication

generally. At any rate, the use of analogy to emphasize the “indifference” of Annesley’s actions is seen in the following excerpt from the final argumenets of the defense:

If a Man throws a Stone into a Place of publick Resort, and kills another, that will be Manslaughter, because the Act itself was unlawful, supposing that dismal Consequence had not followed it.

But if a Man is playing at Bowls, and undesignedly kills another, there as the first Act was of an indifferent Nature, the Law will not impute the Accident consequential to it as a Crime.

As to Mr *Annesley’s* entering the Close that belonged to *Sylvester*, whatever it might be with Regard to him, it was an Act of an indifferent Nature with Respect to the Deceased, who claimed no Property in the Ground, and consequently had no more Right to be there than Mr *Annesley*, unless you will suppose him to have had the Owner’s Consent, which, as it was not proved, may and ought, with equal Justice, to be supposed in Favour of the Prisoner.

The young Man’s evidence being put out of the Case, (and considering the Manner in which he contradicted himself, and has been contradicted by others, what he says we apprehend ought to stand for nothing) Mr *Annesley’s* Act appears to be no more than stooping to prevent the String of the Net from falling into the River; in doing of which, suppose a Pistol had gone off in his Pocket, would it not be the hardest Case in the World, to say that this Accident should make him guilty of Manslaughter.

But allowing it necessary that the Act Mr *Annesley* was doing must be lawful, we hope to shew your Lordship that Mr *Annesley’s* Interposition in this Case was so.
(31)

This strategy mollifies aspect of the previous narrative suggested by certain of the witnesses. Redding and Annesley did not accidentally come across the two fishermen; instead, the uncontroversial evidence is that they were lying in wait in order to confront the father and son. The prosecution never emphasized this critical fact. Any discussion of this problem, which seems to point toward prior intent, is scrupulously avoided by the defense.

This softening of an otherwise sharp story is seen in the strategy of comparing Annesley to a man throwing a stone at a public resort and a man playing at bowls. In fact, it is the

literal substitution of textual narrative for hypothetical narrative that makes this type of narrative distinct from traditional notions of authorship.

While specific statutes are not mentioned in the earlier statements of counsel, they are noted with particularity here. Given the specific recitation of the precise language of the various statutes in the Legal Report by the compiler, the question can be raised as to how this part of the *Sessions Papers* was put together. It could have been deftly transcribed by the compiler from the actual arguments of counsel; copied from the written arguments of counsel prepared either for their own trial preparation or, in the nature of briefs, for the court's benefit; or obtained from official notes or documents of the Court. Since the judgment appears to have been rendered immediately upon the conclusion of the case, the third option is unlikely. Given the way that the trial procedure is presented, the information was probably put together from some combination of the first two suggested alternatives. Defense counsel refers to two statutes concerning the control of game and property rights, one made in the 22nd and 23rd Years of Charles II and the other in the 4th and 5th Years of William and Mary. The first statute allows that "divers idle, disorderly, and mean People" who in "laying aside their lawful Trades," can be held liable for damages and incarceration, as well as for having their nets and other angling equipment seized. By its own language, this statute through intertextuality adds a layer of Otherness to the narrative. On its face, it assumes that any individual who engages in this type of behavior is characterized by these negative attributes. Specifically, it privileges the economic system of the "lawful Trades" and equates the activity at issue as an anathema to the burgeoning economic system, which, as Linda Colley argues in *Britons: Forging the Nation 1707-1837* was one of the pinnacles of Britain's national self-fashioning during the

eighteenth century (60).

The second act goes a step further along the lines mentioned above. Defense counsel states that the other Act of Parliament states that “divers good and necessary Laws had been made for the Preservation of the Game; notwithstanding which, or for want of the due Execution thereof, the Game had been very much destroyed by many idle Persons, who afterwards betake themselves to Robberies, Burglaries, or other like Offences, and neglect their lawful Employments” (31). The second law acknowledges continuation of a threat to property either in spite of the previous law’s promulgation or due to its lack of enforcement. The policies behind the previous act are reiterated and the social importance of the law’s actual enforcement is emphasized. The notion of “idle” persons not working in their lawful jobs is reiterated, but then a further narrative twist occurs. The statute states that the individuals who engage in crimes against Game then move out to commit “Robberies, Burglaries, or other like Offenses.” Citation of these particular statutes incorporates an understood narrative of antecedent order vs. misrule. Indeed, the tensions discussed by E.P. Thompson in his magisterial *Whigs and Hunters: The Origin of the Black Act* (1975) were still prevalent and, in fact, performed in this courtroom drama. In fact, The Waltham Black Act (9 George I c. 22) was passed in May 1723, but it is important to note that it was further renewed in 1744 and 1751, being made perpetual in 1758 (Thompson 206). The use of statutory criminal law to buttress the Walpole administration and its successors is discussed in detail in Thompson’s work. For our purposes, it is clear that the final argument of defense counsel highlights this important social tension. Although this was an issue of public interest, it is not the primary reason for the intense public interest in the trial. Ironically, the micro-issue is also one of misrule: whether quasi-

official appointees under color of law can take the law into their own hands creating a different type of instability and threat to an orderly economic structure. This latter problem of anarchical behavior is deflected through the strategy of narrative substitution utilized by defense counsel as outlined above.

As defense counsel shifts his argument to discuss whether a duly authorized officer can call a person to aid him while being resisted in the execution of his office, he makes this relevant observation:

Your Lordship will consider we are arguing in Favour of Life, and therefore will construe these Laws in the most beneficial Manner for the Prisoner, and the rather because such Construction will tend to put the Laws themselves in Force, which were intended for securing Men in their Property from the Violation of idle and disorderly Persons.

These Acts suppose the Offenders to be desperate People, for it describes them to be such as afterwards betake themselves to Robberies and Burglaries, and likewise supposes (what is also true in Fact,) that they go in Numbers to destroy the Game.
(32)

On one hand, the lawyer is asking for a liberal construction of the laws by the court due to the harsh nature of the penalty. If convicted of murder, Annesley and Redding would be hanged. Given the large number of crimes for which death was the penalty, the Court and the Jury frequently engaged in various strategies to avoid an unduly harsh mandatory penalty in light of the facts and circumstances of the case. On the other hand, the lawyer is bridging the intertextual gap between the statute and the court's own status as the author of the narrative by arguing that such a construction is necessary to implement the social goal of controlling "desperate People" who afterward engage in more serious crimes against property. The statutory policy with its stated causal nexus to more violent crime becomes a point of assumed knowledge around which power (both in the theater of the courtroom and in society at large) revolves.

Having established the stakes in the case – the disintegration of the sanctity of private property and the security of the population from the threat of violent criminal acts - - defense counsel then returns to his narrative strategy of narrative construction by analogy. He justifies his use of analogy by stating that “as these are late Acts of Parliament, it cannot be expected that we should produce Cases directly in Point, and Resolutions of the Judges, on the Construction of those Acts in this Question.” Having softened his client’s image by referencing a citizen at play or engaged in a non-transgressive activity, he uses the opposite strategy of analogical narrative construction as by implication he demonizes the deceased:

But suppose upon some of the Acts of Parliament made against Smugglers, an Officer of the Revenue, or at the Common Law a Constable, being resisted in the Execution of his Office, calls in other Persons in the Neighborhood to his Assistance, and Mischief or Death ensues; might not those Persons avail themselves of the Authority vested in the Officer or Constable, so as to be justified in what they do, for the manifest Support and Execution of the Law?

A Man has undoubtedly a Right to drive away Cattle, which he finds *Damage faisant* in his Ground. Suppose then he should desire a Stranger to assist him, could the Owner of the Cattle maintain an Action against the Stranger for the Trespass in driving his Cattle? (33)

Since no actual cases can be cited by counsel that do apply, Annesley’s lawyer constructs hypothetical mini-narratives that should apply, thus making those small stories part of the larger narrative itself. While a personal warrant as gamekeeper is not delegable, defense counsel argues this socially resonant position in order to satisfy the judge’s initial concern at the beginning of closing arguments posed by this limitation on the assignability of the gamekeeper’s duties. To justify what amounts to a private police action involving deadly force, the lawyer is making out what E.P. Thompson has shown to be perceived at the time as a threat to national security. By substituting this narrative and by discrediting the story

as told by young Egglestone, the blatant issue of prior intent, which might justify the manslaughter prosecution, is effectively avoided.

In its closing argument the prosecution seeks to recast the narrative, but without great effectiveness. While defense counsel has argued public policy to overcome what it sees to be an unintended limitation inherent in the problem with the delegability of duty, prosecution counsel emphasizes the specifics of legal technicality, at least at the outset of his final argument. In commenting on the statutes of the 22nd and 23rd of Charles II, the Prosecutor maintains that the power of a gamekeeper to seize nets does not specifically apply to “fisheries.” He then argues that, in any event, such a seizure cannot legally take place under the terms of the statute absent a hearing before a Justice of the Peace. With respect to the second statute, he states that the right to seize the nets applies only to the elder Redding since he was the legal holder of the Fishery. Therefore, Sir John Dolben had no authority to appoint a Game-Keeper to take care of the Fishery. Accordingly, argues the prosecutor, Annesley and Redding were trespassers and, as such, should be guilty of the more serious manslaughter charge. As to the defense’s argument urging for a liberal view of statutory construction, the prosecutor makes this statement:

As to the liberal Construction of the Acts of Parliament, which the Gentlemen contend for, we say that, at the Common Law, every Man had a Right to fish in Rivers; and consequently, those Statutes are an Abridgment of the Common Law, and therefore to be strictly construed. By the same Rule of Construction which they insist upon, any Man may claim a Right to come every Day and search another’s House for Nets and Engines for destroying of Game. But what Murders, besides other Inconveniencies, must be the Consequence of such an unlimited Power, we leave all the World to judge.

We admit that this is a new Case, and therefore the Cases put of a Constable whose Office is as ancient as any in the Kingdom, are by no Means parallel. We insist therefore that the Prisoners, at least Mr. *Annesley*, having been wrong Doers, must

answer for the Consequence, which being the Death of one of his Majesty's Subjects, make them guilty of Manslaughter, supposing the Gun went off by accident. (34)

The prosecutor also ties his counter narrative to a notion of national character. He refers to an Arcadian past when “every Man had a Right to fish in Rivers.” Not only does this suggest notions of individuality and self-sufficiency, which are necessary to a capitalist economy, but this statement also clarifies the social tension evident in the passage of the Black Act, which, at least in the final part of the trial narrative, is a subtext of the story itself. The Prosecutor also calls upon the problem of order/misrule as he argues that the defense's position would result in a so-called “slippery slope” if this type of unlimited power were allowed to stand. Therefore, by the end of the case, the roles of the lawyers as constructors of narrative have been completely reversed. The defense lawyers are arguing for the judicial imprimatur of a quasi-official exercise of what is a police power in both form and substance. On the other hand, the prosecutor, the titular champion and guarantor of the administration and enforcement of the criminal laws, is arguing against unreasonable search and seizure and for due process of law.

CHAPTER IX

ANCILLARY NARRATIVES AND NARRATIVE COMPLETION: THE ANNESLEY/REDDING MURDER CASE, *THE GENTLEMAN'S MAGAZINE*, AND *MEMOIRS OF AN UNFORTUNATE YOUNG NOBLEMAN, PT. I*

While the previous two chapters offer a reading of the Old Bailey Sessions Report of the Annesley/Redding murder trial primarily as a self-contained narrative, reference is made throughout my analysis to the ancillary narratives that would enable a reader's understanding of the text. In a formalist reading of the trial report, these implied stories are *aporia* of suggested narrative possibility. The Annesley/Redding *Sessions Report*, taken solely on its own terms, forces the uninformed reader to make large assumptions as to the unspoken subtexts and the numerous ways in which the parties' motives might be interpreted. For an uninformed eighteenth-century reader of the *Proceedings*, these narrative silences in the trial report would probably not have presented an interpretive problem. He or she would have access to Annesley's story through the popular periodical press and other privately printed accounts of his "history." As we shall see in this chapter, the Annesley/Redding murder case occurred at the beginning of the public's intense interest in James Annesley's amazing story. The interest was probably greatest in 1743-1744 at the time of the trial of the so-called estate litigation, actually a suit for Ejectment in the Court of the Exchequer in Dublin, referred to in the latter parts of the previously discussed trial report. The *Sessions Paper* account of the homicide trial privileges greed as a subject of the narrative; the ancillary narratives through various intertextualities show the idea of public opinion itself was not just background, but a subject of the trial itself.

The questions of parentage and inheritance are a staple of eighteenth and nineteenth century British fiction. Because of their continued and frequent use, it is clear that they resonated with the reading public from at least the 1740s through the end of the nineteenth century. Ian Watt, John Richetti and others have argued that the assertion of modern individuality in the late seventeenth and eighteenth century is an important factor in the coalescence of disparate popular forms into the category of prose retrospectively named “the Novel.” With the post-Cartesian establishment of the modern subject comes a restatement of the self-reflective inquiry as to the nature of personal identity. Focus on issues of parentage and identity is a quest for lost origins and sense of place. While generic distinctions between the Novel and the Romance have been shown by Margaret Doody to be of limited relevance when talking of the origins of the Novel, it is interesting to note that inheritance and parentage narratives, such as Annesley’s history prior to his rearrival in England in 1741, have elements of a plot like Cinderella or other fairy tales. At any rate, this type of narrative possibility is present in the magazine coverage and in privately printed transcripts of the Annesley trials. All of these narratives were part of the explosion of popular reading material in the mid-eighteenth century that both created and satisfied a demand for stories that were topical and relevant to its readership.

Not only were the trials and tribulations of James Annesley similar to certain aspects of plot of a number of eighteenth and nineteenth century novels, but his history (including a description of his trial for murder) is incorporated as a section in an important novel of the period. Annesley’s story is included as an interpolated narrative near the conclusion of Tobias Smollett’s second novel, *The Adventures of Peregrine Pickle*, published on February 25, 1751. Although many critics, such as Jerry C. Beasley, have

contended that the inclusion of Annesley's story and the Lady Vane memoirs as interpolated narratives constitutes a "failure of artistic vision" and a "kind of commercial opportunism", I will argue that the specific intertextuality of the Annesley history and *Peregrine Pickle* tell us much about the nature and uses of narrative in terms of its referentiality and as a locus for the safe performance of narrative desire.

One of the significant cumulative ancillary narratives with a wide public consumption was a series of five articles appearing in the *Gentleman's Magazine* from February 1741-January 1744. These specific texts circulate immediately before, during, and after the period of the Annesley/Redding trial before the Old Bailey in July, 1742. From these documents, much of the background to the homicide trial is made clear. These and other primary documents from 1742-1743, demonstrate that the reading public would have been aware of the underlying inheritance dispute and that the controversy was of broad public interest from February 1741 at least through early 1745.

The Gentleman's Magazine was founded by Edward Cave (1691-1754) in 1731; it operated from the sixteenth-century gatehouse of St. John's Priory, Clerkenwell, London, which was illustrated on the title page of the periodical [In the 1740s, Cave still served as editor, but hid his identity behind the pseudonym of "Sylvanus Urban"]. It was originally published as a 48-page monthly periodical, and in 1746 its average circulation was approximately 3,000 copies per month. *The Gentleman's Magazine* was an important source of information for the countryside, as well as the city. As late as 1783, there were only nine London-based daily newspapers. Given the slowness of transportation, the dailies enjoyed a limited circulation. As a monthly magazine, *The Gentleman's Magazine* brought its geographically diverse audience information on domestic and foreign news of

the day, and it contained feature articles on a variety of other topics. As in the case of Annesley's reappearance in Jamaica in 1741, it reported on developments in the colonies. Medicine and science were routinely covered. Natural history, archaeology, and travel were also favorite topics, and exotica covered by these types of stories were frequently illustrated by etchings. Obituaries, playbills from Covent Garden, and book reviews were routinely included. The magazine thus reflected and shaped the cultural tastes of the period (de Montluzin 1-7).

One of the first of the articles on James Annesley appeared in the February 1741 editorial of *The Gentleman's Magazine*. This item clearly indicates that the literate British reading public was advised of a general statement of Annesley's claim and tough history prior to his murder trial in July 1742. This entry titled "In Extracts of Letters from the West Indies" states

- A sailor lately entered on board the *Falmouth* is said to be the right Earl of Anglesey. He declares that he was sent into Ireland by a certain Nobleman, and in his 9th Year, sold as a Slave for Seven Years, into Pennsylvania, before the Expiration, of which having attempted his escape, he was retaken and obliged to serve seven Years more. A Gentleman who remembers the Advertisements, published when the Boy was missing, corroborates this Account, and another who was his School-fellow, and at whose Father's House he boarded, believes him to be the same Person. The Admiral has shown him so much Regard, as to make him a Midshipman. (110)

As in the trial Report, deference to the name of the nobility, as well as sensitivity to the libel laws, can be seen in the partial rendering of the "Earl of A-y." The young man's geographical journey into slavery by way of Ireland is a reverse metamorphosis from noble birth to indentured slave. Even on his person, the economic narratives visible in the trial report are being enacted. The "Extract," like the "true" narrative of Daniel Defoe's *The Life and Strange Surprizing Adventures of Robinson Crusoe of York, Mariner* (1719) offers

corroborating testimony to attest to the truth and veracity of Annesley's declaration. A white British nobleman sold into slavery and shipped to the colonies! This is a sensational fact highlighted by the article. However, the reader is told what allegedly happened, but not why it happened. That narrative will be the subject of a later series installment.

This short text exhibits a definite rhetorical structure that emphasizes the writer's sympathy for Annesley's plight. Although the body of the text describes Annesley's fall from what witnesses corroborate as a noble birth, the waif's sad history is framed at the beginning and end with dual references to the British Navy, an instrument of Imperial might and national pride. On the other hand, the naval references illustrate a rise within the institutional social hierarchy of the sea. Annesley enters Vice Admiral Edward Vernon's ship the *Falmouth* as a common sailor, and on the basis of his presumed station and general demeanor, he is promoted to the rank of Midshipman, a status consistent with his claim to be a gentleman. By including the corroborating testimony of a schoolfellow and a "gentlemen" as to his birth and by referring to the confidence of Admiral Vernon, the text argues for the legitimacy of Annesley's claim.

Although this narrative was published in February 1741 (approximately fifteen months before James Annesley killed Thomas Egglestone), Annesley had actually reappeared before the British power elite some six months earlier. On August 11, 1740 he enlisted as an able seaman on board HMS *Falmouth* under the command of Vice-Admiral Edward Vernon. When the officers heard Annesley's story, the Admiral agreed to discharge the new recruit once the ship returned to England. According to the Pay Book of the *Falmouth*, on October 14, 1741, James Annesley was discharged by order of the Admiralty (de la Torre 275). Ironically, one of the ship's officers included Lieutenant

James Simpson, whose cousin Anne was living with Annesley's uncle as his "Irish Wife," an extramarital or bigamous relationship. Richard Annesley was the younger brother of Arthur Annesley, father of James Annesley and the fourth Baron Altham. The story of how Richard Annesley wrongfully acquired James' rightful inheritance, which now included the English Earldom of Anglesea, to which the uncle succeeded in 1737, would be articulated in numerous subsequent texts.

Along with a similar prior report published in *The Daily Post* (February, 1741), the British public and more specifically James Annesley's Uncle Richard had already received approximately eight months notice of the orphan's claim prior to this appearance in England when he left Admiral Vernon's command. In *An Abstract of the Case of the Honourable James Annesley* (1754), according to Lillian de la Torre James Annesley purportedly stated: "An account of this discovery being sent home, and published in the newspapers, among other transactions of the fleet, it greatly alarmed his uncle" (277). In recounting the events in *Peregrine Pickle*, Tobias Smollett states that "these pretensions were no sooner communicated in the public papers, than they became the subject of conversation in all companies; and the person whom they chiefly affected, being alarmed at the appearance of a competitor, tho' at such a distance, began to put himself in motion, and take all the precautions which he thought necessary to defeat the endeavors of the young upstart" (709). As many of the narratives published subsequent to the Irish estate trial contend, Richard, Earl of Anglesea, purportedly used the advance warning of James' impending arrival to bribe and threaten potential witnesses in the expected litigation challenging his claim. At any rate, the issue of James Annesley's possible noble birth, kidnapping, and sale into indentured servitude was part of the public discourse and social

imagination at the time of the killing of Thomas Egglestone at Staines in May, 1741. The prospect of an upcoming trial before the Court of the Exchequer and the sensational nature of the subject matter justified the time, effort, and expense that the publisher of the *Proceedings* devoted to coverage of the trial for the killing of Egglestone. As we shall see, the extensive detail given to the criminal matter in the *Sessions Papers* is the basis for most of the retellings of the homicide case up through the end of the nineteenth century.

The Gentleman's Magazine also provided a brief account of the Annesley/Redding murder trial. In the July, 1742 issue of the magazine, we find the following news item

Entered at the Sessions at the Old Bailey, which proved a Maiden one, none having been capitally convicted James Annesley, Esq. and Joseph Redding were tried for the Murder of Thomas Egglestone at Staines, but the Jury found it Chance Medley. This Mr. Annesley is the young Gentleman who came over from Admiral Vernon's fleet to prosecute his Right to the Estate and Title of Earl of Anglesey. (382)

While no new facts are added to the *OBSP* account, this short passage is revelatory on several accounts. First, it acknowledges that Annesley is in the process of seeking to reclaim his right to the Earldom. Second, no language of contingency is used with respect to his entitlement to that right. The periodical is either reflecting or creating public sympathy concerning Annesley's claim. Also, *The Gentleman's Magazine* refers to Annesley as "Esq." and "the young Gentleman," language clearly reflecting a more exalted social status than that of "Labourer" as he was described at the trial for homicide. Finally, the introduction describes the current session of the Old Bailey as a "Maiden one," emphasizing the regularity with which the gallows were used and, in this case, the risk to which Annesley and Redding were subjected in the criminal prosecution. This terminology implies that the Sessions was a disappointment. This reference to pure feminine sexuality implies that orgasm was not reached and penetration did not occur. The culmination of the

Session is rendered in terms of the full manliness of justice. Just as a maidenhead is not broken, there is also no bloody end here since no defendant was sentenced to death. The Session itself, thus unpenetrated, is still a virgin.

Daneil Mackercher (1702-1772), a Scottish adventurer, befriended James Annesley upon his arrival in England and prior to the criminal trial. Mackercher undertook to help the orphan in regaining his lost status. His involvement with Annesley constitutes a major part of Smollett's chapter on the affair in *Peregrine Pickle*, and in two essays published in 1963 and 1971, Lewis M. Knapp, a noted Smollett biographer, and Lillian de la Torre, a critic and mystery writer intrigued by the Annesley case, conclude that contemporary documents verify Smollett's version of the story. The various accounts all indicate that, prior to the criminal trial, Annesley (with Mackercher's aid) was actively engaged in interviewing witnesses and preparing to pursue his claim. According to Smollett's account in *Peregrine Pickle*, upon Annesley's arrival in England, Mackercher provided the claimant with funds and lodging while supposed agents of his uncle were engaging in numerous conspiracies to thwart Annesley's efforts, including plans to have him murdered (719-720). According to Smollett's account, when Annesley was involved with the death of Thomas Egglestone, Lord Anglesey through various agents, including the mysterious Mr. Giffard from the criminal trial report, attempted to bribe and threaten witnesses, including young John Egglestone, so as to insure a successful capital prosecution prior to any trial on the merits of Annesley's claim to his uncle's title. Therefore, the murder trial was the first chapter in a series of judicial battles between these parties, and later commentators contend that the Old Bailey trial itself further helped sway popular opinion in favor of Annesley as he pursued recovery of his title and inheritance.

Lawyers in the twenty-first century are frequently accused of “trying their lawsuits in the media.” We can see this phenomenon of modern criminal advocacy occurring here. While swaying public opinion to the favor of a litigant is advantageous for many reasons, it is particularly useful with respect to shaping the attitudes and opinions of any jury that will decide the criminal or civil cause. At the time of the homicide case, no detailed narrative as to the life and circumstances of Annesley prior to boarding HMS *Falmouth* had been published. While informal written and oral private communications certainly transmitted aspects of Annesley’s “story” among the interested parties and certain members of the public, the formal substance of his claim, at least in the burgeoning print media, is limited to the accounts that I have referenced as of July 1742. However, a separate grand statement of Annesley’s claim, funded and perhaps written by Mackercher, was published in early 1743. The authorship is unclear; however, since it is in the first person voice, authorship is often ascribed to James Annesley himself (or possibly Daniel MacKercher).

Memoirs of an Unfortunate Young Nobleman, Return’d from a Thirteen Years Slavery in America, where he had been sent by the Wicked Contrivance of his Cruel Uncle...Part I, published in 1743 in Dublin and printed by and for Z. Martineau, is a peculiar generic exercise in self-fashioning. Although the text (and the two following installments that were to follow subsequent to the Irish ejectment trial in 1743 and after interminable delays in finalizing the appeals in 1747) has never been printed as a scholarly edition, it is my belief that this text should be included in the expanded canon of the eighteenth century British novel. The three parts of the *Memoirs* closely resemble the personal travel “histories” evidenced by such works as Daniel Defoe’s *Memoirs of a Cavaliet* (1720), *Captain Singleton* (1720), and *Four Years Voyages of Captain Roberts*

(1726). Lillian de la Torre refers to *Memoirs of an Unfortunate Young Nobleman* as “an unreliable novelization of the Annesley affair” (276). However, novels of the 1740s, such as Richardson’s *Pamela* and Fielding’s *Jonathan Wild* offered themselves to the readers as “true histories.” Thus, the *Memoirs* reflects the tension between factual reportage and fiction also evidenced in fictional texts of the period.

What is clear is that numerous later novelists, including Sir Walter Scott and Charles Reade, relied on this novelized account for their own novels. While he did not directly incorporate the Annesley narrative, Robert Louis Stevenson uses a variation of this plot in *Kidnapped* (1886), his most popular romance, set in 1751 in the aftermath of the Scottish rebellion. Indeed, in a bizarre appendix to a later version of *The Wandering Heir* (1872) where Reade responds to the charge that he plagiarized Jonathan Swift’s “Journal of a Modern Lady,” he defends his use of various source materials relating to the substance of the claim and conduct of the various Annesley trials. Concerning the *Memoirs*, Reade states

The next source of Fact was the “Memoirs of an Unfortunate Nobleman,” written by James Annesley’s attorney. Upon the whole it is a tissue of falsehoods; but there are a few invaluable truths in it. The lies declare themselves trumpet-tongued; the truths are confined to James Annesley’s adventures whilst he was a slave in the colonies, and his return home with Admiral Vernon. I used a few of the truths and shunned all the Falsehoods. The “Memoirs,” being rather a rare book, shall be deposited with my publishers, for inspections.” (203)

As will be seen from my summary of the sections of the *Memoirs* that ran in *The Gentleman’s Magazine* in early 1743, the narrative is a narrative of captivity, a romance, and an adventure saga. Whatever the “truth” of the narrative, with its development of character, gain and loss of fortune, exotic travel and locale, and its peculiar mix of fact and fiction, it can be considered “novelistic” in the expansive meaning of the term as it relates

to eighteenth-century fiction. *Memoirs of an Unfortunate Nobleman* exemplifies the unstable boundary between fact and fiction so frequently referenced in critical discussions of the “Rise of the Novel.”

Memoirs of an Unfortunate Young Nobleman, Return'd from a Thirteen Years Slavery in America, where he had been sent by the Wicked Contrivance of His Cruel Uncle...Part I (1743) was published as a complete volume. In *The Gentleman's Magazine* for July, 1743, in the section “Register of Books for February, 1743” under the heading styled “Historical and Miscellaneous,” as entry No. 32, the text styled as “Freeman. *Memoirs of an Unfortunate Young Nobleman* is listed and priced at 3 shillings (112). Also, in the February 1743 Issue of *The Gentleman's Magazine*, a redacted version of the book began to run serially. Installments appeared in February 1743 at pp. 93-94, April 1743 at pp. 204-205, and June 1743 at pp. 306-307, 332. After three months, the serialization was ceased. This cessation of publication was not due to lack of interest in the case, for substantial coverage was given to the actual trial of the estate case in Dublin in *The Gentleman's Magazine* in 1744.

In the February 1743 installment of the *Memoirs* in the *The Gentleman's Magazine*, the story begins by asserting that due to a legal remainder interest on Lord Altham's estate and his father's need to raise cash on the property through the granting of leases, young Annesley was placed in an obscure school and that letters were obtained by James Annesley's uncle corroborating the boy's death in order to clear the real estate title so that the land could be encumbered or leased. The actual names of the parties are never used; they are identified by their social positions and relationships. James was mistreated at the school, and he made an attempt to reunite with his father. He was intercepted by his uncle

who arranged to have him shipped to Pennsylvania since the boy's presence in Britain and his very existence would threaten his inheritance which he would receive as young Annesley's father's heir (93-94).

In the April installment of the *Memoirs Pt.I*, a typical travel narrative of a transatlantic sea voyage is offered to the reader. The story describes the violence of the seas and the Atlantic storms. The narrator chronicles the "young Nobleman's" harsh treatment at the hands of the Captain and the crew. During the voyage, in order to protest against his cruel treatment, Annesley refuses to eat and is force-fed by the Captain. The *Memoirs Pt.I* suggest the tradition of Daniel Defoe's *Colonel Jack* with its description of the plantation economies of British colonies in North America. Upon arrival in Pennsylvania, young Annesley is sold into indentured servitude to one Drummond, who is described as "a hard inexorable Master" (204). The American climate is described, as well as his typical daily fare and routine. A woman of sixty befriends Annesley and arranges a plan for his escape back to England. In the meantime, Jacob, another slave, has robbed the master, Mr. Drummond, and escaped. Because of the efforts mobilized for the other slave's recapture, Annesley aborts his plan for departure. Then, after five years of servitude, he makes his first actual escape attempt. While he is in flight, a lady and gentleman and their servant befriend Annesley; they agree to help him further his plan. Then, Drummond's henchmen overrun the whole group and it is revealed that Annesley's good Samaritans are wanted for Robbery (204-205).

With the June installment of the *Memoirs Pt.I*, the reader finds James Annesley in jail along with his new companions. Although Drummond reclaims him, the three criminals are tried for Robbery and duly convicted of the capital crime. Young James

witnesses the execution of the three felons. As in the Egglestone affair, James Annesley comes precariously close to the hangman's noose. As a result of his escape attempt, his term of indenture is extended. After a second escape attempt, his servitude is extended for five years although he only had one year left on the indenture. At this point an element of romance is introduced. Although young Annesley tries to convince her of the futility of the relationship, he engages in a love affair with a "young Indian maiden." However, Maria, the daughter of Master Drummond, also has amorous inclinations toward James Annesley, and predictably she becomes jealous. Maria comes upon the two lovers (young Annesley and the Indian maiden) during a romantic tryst. In a rage, the "young Indian maiden" assaults Maria. After the fight concludes, the "young Indian maiden" realizes that she will face severe consequences for her actions both as to James Annesley and Maria Drummond. So the unfortunate Indian girl commits suicide by making "herself directly to a River adjacent, and plunging herself in" (306). This plotted sequence concerning the "young Indian maiden" is the tradition of the novel in its most expansive sense. It is an example of so-called "factual" narratives incorporating fictional tropes with which the readers were familiar. As Margaret Anne Doody discusses in *The True Story of the Novel* (1996), the plot of the jealous mistress and the handsome slave is found in the ancient novel, *Ephesiaka* by "Xenophon of Ephesus." Part of the English literary tradition, it was published in Britain in 1728 under the title "Ephesian History." Therefore, the *Memoirs Pt.I* continually draws upon popular subjects and literary traditions to frame the Annesley saga in a way that would be immediately recognizable to the readers of the early 1740s.

While the previous two installments consist of two pages each, the June installment consists of three pages. Although it concludes with the promise of "This relation to be

continued,” no further installments of the story were run after the conclusion of this section. The periodical version of the *Memoirs Pt.I* focuses on the romantic aspects of the Annesley story and leaves the story up to and including the Annesley/Redding murder trial to the pamphlet version for narrative completion. Upon learning of their daughter’s passion for James Annesley, Mr. and Mrs. Drummond are none too happy. As a family, they decide to give the “young Nobelman” his freedom and allow him to travel to England. Drummond, James’ corrupt master, has however made a secret agreement to sell the remainder of the young man’s indenture to another planter. His new master is gentle and good natured; he provides Annesley access to his copious library. However, the good master dies soon and Annesley is sold to a third master. He then learns that Stephano, a neighbor’s slave, and his new master’s wife have devised a plan to rob her husband and sail for Europe.

Although the *Memoirs, Pt. I* emphasizes young James victimhood, there is a shift at this point of the story marking the beginning of his journey up and out of indentured servitude. Instead of disclosing to the new master the existence of the wife’s robbery plot, Annesley elects to try to convince her of the vileness of her ways. She tries to seduce James Annesley, and he refuses her advances. As a result, she unsuccessfully tries to poison him. As in the case with his avoidance of the conspiracies aimed at him by his Uncle Richard, like Bunyan’s pilgrim, young Annesley avoids misfortune through the goodness and naiveté of his character. At this point, although little detail of his escape is given, he makes his way to a ship bound for Jamaica. He was “introduced to the Captain who shew’d him particular regard” (332). Reference is then made in the narrative back to the “In Extracts of Letter from the West Indies” in the February 1741 installment printed in

the magazine with the statement that “so long has this strange memoir been the Subject of Conversation and Enquiry.” Briefly, the account says that upon arriving England, his former nurse claimed that James was an impostor, but that other gentlemen positively identified him as James Annesley, the late Lord Waltham’s son.

Although this narrative was published after the Annesley/Redding murder trial of July, 1742, it ends its story at a point just some six or seven months before the actual killing of Thomas Egglestone in May, 1742. Unlike the full pamphlet edition of the *Memoirs*, *The Gentleman’s Magazine* serialization contains no account of the Annesley/Redding murder trial. As is clear from later accounts of the matter, the interim period between his landing in October, 1741 and arrest in May, 1742 saw both James Annesley and his uncle Richard seeking to sway witnesses to their position and generally preparing for the inevitable trial that would be held before the Court of the Exchequer in Dublin (on November 11-24, 1743). The publication of this text as a separate pamphlet and the serialized, abbreviated version of the narrative in the pages of *The Gentleman’s Magazine* during February 1743 represents an attempt by James Annesley and his handlers to use a public relations strategy to sell the literate populace on the unfairness of his plight and the justice of his cause. This dual strategy is consistent with the defense strategy previously discussed held in July 1742 before the Old Bailey.

The full text of *Memoirs of an Unfortunate Young Nobelman, Return’d from a Thirteen Years Slavery in America, where he had been Sent by the Wicked Contrivance of His Cruel Uncle, Part I* (1743), as published by Z. Martineau in Dublin is the more complete version of the narrative. The first eleven of its forty seven pages goes into great detail detailing the vices and virtues of James Annesley’s father, mother, uncle, and other

members of the family. The serialization *The Gentlemen's Magazine* covered the period of time from Annesley's removal to a private school until his return to England. While the basic outline of the events and circumstances of this time period are the same in both narratives, more detail and description is provided in the longer version. However, it is at the point after Annesley had arrived in England and was pursuing his presumed rights immediately prior to the Egglestone homicide that the longer version of *Memoirs, Pt. I* (1743) provides helpful information.

The reader will recall that during the cross-examination of Richard Chester at the Annesley /Redding murder trial, Chester testified that the "Prisoner" was married to his daughter-in-law. Although the prisoner is not identified by name, in referring to the Annesley/Redding murder trial, the *Oxford Dictionary of National Biography* states that "about this time James married the daughter of a Mr. Chester of Staines Bridge, Middlesex and their son James was born in 1744" (ODNB). In the extended version of *Memoirs, Pt. I* (1743), there is the following passage:

By now the Time was come, when our young Nobleman was to experience different Inquietudes from what he had before known. A lovely Creature attracted his Inclinations, whose angelick Sweetness depriv'd him of Words to Express his Passion. He soon discover'd the Effects of her Beauty, and was all Sadness and Confusion when she appear'd; she liv'd some Distance from the town, (whither he accompanied a Friend, who was in an ill state of Health, and advis'd to retire to the Country for the benefit of the Air) and by his constant Adresses to her, which was accompany'd with a sincere Passion, so far gain'd an Ascendancy over her, that she consented to give him her Hand, her Heart being before closely united to his. (29)

This ancillary narrative answers a threshold question regarding the homicide case: What was James Annesley doing at Staines? If this contemporaneous narrative is to be deemed reliable, he had accompanied a friend, perhaps MacKercher, who was in ill health in order "to retire to the Country for the benefit of the Air." While there, he met, wooed, and

married Richard Chester's daughter. Through Mr. Chester's testimony at the Annesley/Redding murder trial, it is established that they were married by July 1743. However, we shall see, an account of Annesley's marriage given by Smollett in *The Adventures of Peregrine Pickle* (1751) problematizes the reliability of the marriage accounts.

In the larger Annesley narrative from his birth to his death, seemingly good fortune always turns for the worst. The killing of Tom Egglestone occurs just as marital bliss and at least the possibility of recovering his inheritance promises a bright future. *Memoirs, Pt. I* (1743) then describes the event and trial recounted in the *Sessions Papers*:

Among the Diversions of a rural Life, Shooting was his Favourite: One Day he went out alone, but afterwards happened to meet a Person who lived and was Game-Keeper to a Man of Condition; they spy'd two Men (Father and Son) fishing in a little River that ran thro' the next Meadow, which not being allowable for them to do, the Game-Keeper attempted to take their Net, and seized the Father by the Collar, who had the String on his Wrist, and refused to resign it, they struggled; our young Nobleman advancing, the Boy imagined he would assist the Game-Keeper, therefore cut the string, and threw it into the River, and than ran in himself, the water being very shallow. This the Game-Keeper perceived not, being engaged with the Father; but the young Nobleman stooping hastily to catch the cords that trailed on the ground, in order to pull back the net, the gun he unhappily had in his hand, went off, and shot the Father dead. (29-30)

While this description adds little to our understanding of what actually transpired in May 1743, this section of the story is important for several reasons. First, it shows how the criminal trial was being incorporated into the larger story of Annesley's life. This text emphasizes the notions of chance and bad fortune. *Memoirs Pt. I* claims that he was walking alone and then happened to meet Redding, so that his outing with the Game-Keeper is described as accidental. Likewise, the discharge of the firearm is described here as it was found before the Old Bailey, an accident resulting in only the ruling of "Chance-

Medley.” Indeed, even the nomenclature of the verdict emphasizes this notion of randomness, a theme that will be prevalent in the various Anseley narratives through the end of the nineteenth century.

Then there is a rhetorical shift evident in the remainder of the narrative regarding the killing:

Horror and Amazement immediately seized his Soul at seeing the Fellow fall, he look's like one transfixed with Thunder, and no less capable of Motion. He was pursued and taken, and carried before a Magistrate, deeply affected with that Concern, which every Man must feel, in having been the Cause, tho' unknowingly of the death of his Fellow Creature. He was imprison'd, try'd, and acquitted without the least Hesitation; the only Evidence against him being the Son of the deceas'd, who could not accuse him of any Malice or Design in the Affair. (30)

This section emphasizes Anseley's humanity and virtue. After being treated as less than human by virtue of his indentured servitude, his “Horror and Amazement” at the “Death of his Fellow Creature” is articulated in language of sensibility as the account was prepared by Anseley, Mackercher, and perhaps others, it puts forth the facts in the light most favorable to Anseley, but the fact remains that he was acquitted of murder immediately at the conclusion of the criminal trial.

All of the later narratives incorporate the specific machinations of Uncle Richard in trying to have Anseley hanged. The involvement of Annesley's uncle was alluded to in guarded terms in the *Sessions Papers* report, but Anseley (or his agent) uses the *Memoirs, Pt.I* (1743) to complete the previous year's trial narrative. The narrative is clear concerning Richard Annesley's behavior to and communications with his unhappy nephew:

While he was in Confinement, his cruel Uncle went to see him, triumphing in his Misfortunes, and most cruelly insulted him, and no Endeavours were now wanting by his Enemies to blacken his Character in the Minds of his Well-wishers, which was a very great Damp to his Affairs; so easy it is for Misfortune to check the Vigour of the warmest Friends; but the Rumours which the cruel Uncle and his

Emissaries industriously propagated, had little Effect; having the Mortification to be disappointed. (30)

According to the narrative, Annesley's adversaries were waging both an internal and external war against him at the time of his arrest in the Egglestone homicide. Uncle Richard was actually visiting James either to attempt to bribe him; psychologically manipulate him; and/or to humiliate him in a sadistic manner. Also, his Uncle's allies use his misfortune to attempt to stall the growing public sentiment in James' favor. By all accounts, Richard Annesley's efforts had the reverse effect.

The visual scene at the Annesley/Redding trial was not described in the *Sessions Report*, but subsequent narratives supplementing or rewriting the official trial narrative frequently describe the scene in the courtroom. *Memoirs, Pt. I* (1743) describes Richard Annesley's demeanor and behavior during the trial.

Who would believe, that his cruel Uncle was seated among the Crowd of spectators at his Trial. But so it was. At the unexpected Sight of whom (though before, a sweet composure sat on his Features, grave but not sad, spiritous but not gay; the solemn Occasion having engrossed, but not perplexed his Thoughts; the Presence of those, on whose Decision his Life or Death depended, inspired him with Respect, but not with Fear; and he shewed rather like one who came to attend the Fate of another, rather than his own) he lost all his Presence of Mind, and cried out to one that stood near him, Heavens! Does that Prodigy of Wickedness come here too, to insult me! To render me, by an Object so hateful to my Eyes, incapable of making my Defence, and distracting my Mind with the Remembrance of what he has made me suffer! As those Words were spoke with some Vehemence, they were heard by many others beside the Person to whom they were address'd, and passing from one to another thro' the whole Assembly, occasion'd a general Murmur against his unparallel'd Cruelty and shameless Behavior. (31)

In terms of plot, occurrences like the suicide of a forlorn Indian princess in Pennsylvania could easily be invented or recast in terms of familiar traditional plot devices. On the other hand, a fact central to the conduct of an official London legal proceeding is so easily

verifiable that the author of a persuasive narrative would surely not risk including it if it were false. Accordingly, I am of the opinion that there was some sort of outburst by James Annesley when his uncle entered the Old Bailey Courtroom and that the sentiment of those present favored Annesley due to what was seen as the brazen outrageousness of his uncle's conduct. Therefore, at least for the audience present at the trial, the missing pieces of the *Sessions Papers* account concerning the Annesley/Redding were literally being performed outside of the court record in the very presence of the Judge, Jury, and Spectators.

Annsley asserts that his uncle's "cruel Malice overshot the Mark." When the narrative states that "Nothing could influence the Assembly so much in the young Nobleman's Favour, as did this glaring Proof of Barbarity, every Heart Anticipated the Judge's Decree, and without seeing him, pronounced him worth of Life" (31). According to Annesley, the Uncle's presence, demeanor, and behavior in the Courtroom constituted a material factor in the final verdict. On this point, given the technical precision with which the legal arguments were finally presented, Annsley's opinion may be only partially correct. Competent advocacy (coupled with the popularity of his cause) helped ensure a favorable result. *Memoirs, Part I* (1743), however, seeks to make the Annesley/Redding murder trial solely about his dispute with his uncle, regardless of the undisputed fact that James Annesley shot and killed Thomas Egglestone. The suggestions and allegations made as to the bribery of witnesses by Richard, Earl of Anglesea, prior to the criminal trial, Richard's appearance and James' subsequent courtroom outburst certainly bolstered the defense's attack on the credibility of young Egglestone and other prosecution witnesses, as well as impacting the issues of the unreliability of narrative construction discussed earlier.

Memoirs, Pt.I continues with a description of the behavior of the parties after the rendering of the “Chance Medley” verdict.

Mad with Rage at this unexpected Turn of Fate, the Count rushed through the Crowd with as much Precipitation as the Thickness of it would admit, flung himself into his Chariot, muttering the most unheard of curses. One continued Hiss pursued him till he was out of sight, while the equitable Judgment of the Court gave all that were present, except his cruel Uncle, the highest Satisfaction, which they express'd by loud Huzza's. (31)

Since these specific events were verifiable at the time of the publication of the *Memoirs, Pt.I*, I believe this account to be generally true. Uncle Richard flew into a rage at the outcome; he caused a scene as he left the Old Bailey. From the description, there was a large crowd at the trial or in the general vicinity of the courtroom as can be seen to the reference to the crowd's “Thickness” and the “loud Huzzas.” A point of interest is the extent to which the parties and onlookers enjoyed an active participation in the courtroom. As noted in the introductory chapter to this dissertation, cases were disposed of quickly and the stakes were high. When the *Sessions Papers* is viewed in bulk, as in the case of all decisions for a single year (such as 1742), the larger text with its case reports of often one or two lines conveys a sense of narrative movement. Certainly, movement is present in this section of the *Memoirs* as Uncle Richard moves through the courtroom and speeds away in his carriage. He proceeds from the theatrical arena of the courtroom of the Old Bailey into the large social world of which he occupies a privileged position. More important, the conclusion of the Annesley/Redding murder trial signifies movement towards the larger battle for origins and homeland.

CHAPTER X

NARRATIVE COMPLETION CONTINUED: THE ANNESLEY/REDDING MURDER TRIAL IN THE BATTLE OF INHERITANCE

As stated previously, the Annesley/Redding murder trial was only an early chapter in the larger judicial drama that would culminate in the legal case styled *Campbell Craig, Lessee of James Annesley, esq. v. the Right Honorable Richard Earl of Anglesea*. The ejectment action basically raised the issue as to whether James Annesley, a rightful heir to the estate, had the legal right to lease the realty to Craig Campbell. Annesley's right to enter into the lease was contingent upon his inheritance as the true heir to the estate; therefore, the popular narrative was raised in the context of a technical legal action. The trial commenced on November 11, 1743. It lasted for fifteen days; more than ninety witnesses were examined. For purposes of this examination, we will limit our discussion to the aspects of the narrative(s) of this trial that give specific elucidation to the Old Bailey trial report. While the entire chain of representation of the estate trial is intertextual referents, we are interested here in those revelations that would have elucidated the text for a reader in 1744. At the trial, a verdict was rendered in favor of James Annesley. However, due to dilatory writs and appeals filed by his uncle, the claimant never had the use and enjoyment of the estate property. In a scenario reminiscent of *Jarndyce v. Jarndyce*, the interminable Chancery Action in Charles Dickens' *Bleak House* (1852-1853), Annesley's resources were dissipated. Justice delayed was justice denied. On March 2, 1759, he filed a petition in Chancery complaining of his uncle's delaying tactics. On April 30, 1759 he reappeared at the court to swear a pauper's oath. On January 5, 1760

James Annesley died in Kent, and with the death of his eldest sons by both his first and second wives (both in November, 1703), the claim of James Annesley and his heirs was forever extinguished.

Both the criminal trial and the estate litigation were reported in T.B. Howell's *A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors* (London 1809-26). While the official transcript of the trial was taken down in shorthand by John Lodge and published in London and Dublin in 1744, many unreliable and fictional accounts also appeared. As a point of reference, the *State Trials* report, therefore, is the narrative that closely incorporates the *Sessions Papers* of the homicide trial and is an accurate account of the testimony of the estate trial in Dublin.

In the *State Trials*, the Egglestone murder case and estate case can be read as one narrative since they are reported consecutively, and the two narratives make express and implied reference to each other. There is a symbiotic circulation of meaning between the two texts. While the *State Trials* version of the murder case upon review appears to be substantially similar to its coverage in the *Proceedings*, the later version supplements the narrative by stating with particularity the identities of the presiding parties. The identity of the presiding judges can be found in the caption, and this provides information not found in the *Sessions Report*:

The Trial of JAMES ANNESLEY* and JOSEPH REDDING, at the Sessions-House, in the Old-Bailey, before the Right Hon. George Heathcote, esq. Lord Mayor of the City of London, the Hon. Mr. Justice Parker, the Hon. Mr. Justice Wright, Sir John Strange, knt. Recorder, Mr. Serjeant Urlin, and others of his Majesty's Justices of Oyer and Terminer for the City of London, and Justices of Gaol-Delivery of Newgate, holden for the said City, and County of Middlesex, on Thursday, the 15th of July, for the Murder of Thomas Egglestone: 15 George II. A.D. 1742. (1094)

The “*” following the name “James Annesley” includes a footnote at the bottom of the page that states: “This is the person that claimed the title and estate of the earl of Anglesea; and had the Trial in Ireland, relating to part of the latter, in November 1743, and recovered it. *Former Edition*” (State Trials. 14 George II [1742]: 1094). Thus, much of the narrative mystery that results from reading the same text in the *Proceedings* is resolved by a simple footnote. The mystery of Mr. Giffard must be resolved by reading the report of the estate trial itself. The caption adds to the narrative that the Lord Mayor of the City of London actually sat as one of the justices at the criminal trial; this is yet another indicator of the political and popular resonance of the Annesley/Redding case. As previously discussed, the *Proceedings* enjoyed quasi-official status due to their publication by authority of the Lord Mayor. Inclusion of the *Session Report* in the *State Trials* was another act of literary/legal canonization. Inclusion in the compendium added another layer to the *Proceedings*’ imprimatur of authority. This act of canonization constitutes a memorialization in the textual architecture of the law. Through the further narrative unmasking of the criminal trial participants, power is given a name.

The estate trial is a civil action, yet it has sufficient public stature to merit inclusion in *State Trials*. It is specifically useful in delineating the machinations of Uncle Richard in attempting to pursue the murder prosecution and have the existence of his rival legally terminated by the hangman at Tyburn. This important intertextuality is accomplished through the testimony of John Giffard, a character with a name but little substantive identity in the *Sessions Report* narrative. The reader will remember that this is the same Mr. Giffard who disbursed witness fees to the prosecution witnesses in the criminal trial. He is the agent for the unnamed party who sought to have James Annesley remitted to

Newgate, instead of New Prison, prior to his trial before the Old Bailey. Because of the explosive nature of his testimony, John Giffard in the estate trial is offered as the last witness at the conclusion of the plaintiff's proof.

Giffard has switched allegiances between the two trials, as he is appearing in Dublin in the Court of the Exchequer, as a witness for Campbell Craig, proxy for James Annesley. After Giffard is called to the witness stand, the counsel for Richard, Earl of Anglesea, vigorously objects to his testimony about the prosecution of James Annesley for murder. Since this is a civil trial, lawyers are actively engaged in the framing of the narrative. In response to the objection of the lawyer for Uncle Richard, Mr. Fitz-Gibbon, counsel for the plaintiff, makes this statement to the judge and jury concerning the relevance of John Giffard's testimony:

Mr. Fitz-Gibbon, of counsel for the plaintiff. My lord, this witness is brought to shew that the lord Anglesea, knowing that the plaintiff claimed the estate of the family, as son and heir to the late lord Altham, expended vase sums of money on a prosecution, which he set on foot against him for the murder of an unfortunate man at Staines, in Middlesex, though the person killed stood in no degree of relation to my lord Anglesea, that could have enraged him to have taken up this matter; and that the relations of the deceased being convinced that the killing was only accidental, had intended a very slight prosecution; but that the defendant, who was no way related to, or acquainted with the person killed, employed a solicitor, and carried on a severe prosecution against Mr. Annesley at a very great expence, and declared he would spend 10,000 *l.* to get him hanged.

It will also appear, that while he laboured to convict the plaintiff for murder, he knew the person, whose death gave occasion for the prosecution, was killed by accident. (1094)

Of course, counsel for the defendant replies that this "ancillary narrative" is irrelevant to the issue of ejectment that is properly before the court.

Counsel for Richard, Earl of Anglesea, argues that in order to defend themselves properly concerning allegations concerning the earlier criminal case, they will have to call

witnesses that deal with matters previously litigated in the murder trial. He states, in part in response to the argument of Mr. Fitz-Gibbon:

This evidence is offered, as I apprehend, to raise a presumption that the plaintiff is the legitimate son of the lord Altham, because the defendant endeavoured to destroy him; and then the question will be; whether such evidence is proper to be admitted? It would be a question whether any improper measure taken to affect the life of the plaintiff would be evidence; but where, from their own opening the case, it does appear to your lordship nothing more than a proceeding according to the regular and open course of the law, with humble submission, that in this case or any case whatsoever, is not to be imputed to a man as a crime. As they state it, there was a prosecution for murder, whereas the killing was accidental, every homicide in the indictment is laid murder; and if there was a prosecution on this indictment, is it not a material circumstance, that this indictment must have had the sanction of a grand jury? Here has been an indictment, is all that they have said, and a prosecution upon that indictment. I desire your lordship to consider, whether my lord Annesley, or any other person, might not have carried on the prosecution? Nothing is more frequent, in murder especially, than that the prosecution is carried on, not at the expence of the crown, though the prosecution is in the name of the crown. Will it not then be a matter of very great consequence, to say, that this shall be imputed to a man as a crime, and affect him not only as to his character, but his fortune? Your lordship cannot judge now whether or not this prosecution was what they would make it appear to be, without entering into the merits of the cause. (1094)

Indeed, this argument goes to the heart of the problem of private criminal prosecutions being made under color of law. It demonstrates the type of problem that eventually led to the State being the only proper party as the actual prosecutor of a crime. Here the boundaries between the public and private spheres are problematized. This piece of narrative clarifies the ambiguity of the *Sessions Report*. It indicates that while the prosecution was being conducted in the name of the crown, it was privately funded. Therefore, an implied partnership exists between a nobleman and the operation of the state's judicial power, even though the position of the complaining party within the socio-political matrix is the real issue that is at stake.

In making the argument that the Earl's conduct, with reference to the prior criminal proceeding, is relevant to his state of mind or consciousness as to the legitimacy of young Annesley's claim, Mr. Harward, another lawyer for the plaintiff, is constructing a solid argument that appeals to the court and audience's sympathy and sense of fairness. As stated earlier, such a plea gestures towards a narrative of sensibility:

Mr. Harward, for the plaintiff. My lord, I apprehend, that every matter which in any degree tends to shew whether the plaintiff was the lawful son of the late lord Altham, or no, is proper evidence to be laid before the jury. This evidence now offered is to shew that the present lord Anglesea, conscious of the plaintiff's legitimacy, undertook the prosecution to take away his life, and spent great sums of money in it. If it is an act of the defendant's, it is proper for the jury to consider, *quo animo* he undertook it, whether from a public spirit of justice, or a private view to take away the life of this rival to his estate; for every act of the defendant that can give light to the jury of the opinion that my lord himself had of the plaintiff's right, is proper evidence to be offered to them. We have already laid evidence before the jury that we apprehend clearly shews that the lord Anglesea had, several years ago, spirited away this plaintiff, to prevent his asserting his right to the estate. This now offered is a further proof of my lord Anglesea's opinion concerning his right; and to corroborate that evidence that has been already laid before the Court, we have a right to produce it, as a further instance of this lord's own opinion, which it was necessary for him to come at his life at any rate. The question is not now, whether the prosecution was just or not? Whether Mr. Annesley was guilty or not of the murder charged on him? He has been acquitted. (1095)

In response, Mr. L.C. Baron, defendant's counsel, argues that because a homicide was actually committed, the prosecution *per se* was not unlawful. He argues that the criminal case would literally have to be retried in order to determine whether the underlying indictment was malicious or frivolous.

In seeking to buy more time, as opposed to an immediate adverse ruling on Giffard's right to testify, counsel for Uncle Richard suggests that plaintiff's counsel call some other witnesses, and that the issue of Giffard's testimony be revisited on the next day of trial. Mr. Baron Dawson, a trial judge, agrees and states: "I am very glad there is no

necessity for our giving our opinions immediately on this point, I shall therefore decline giving any positive opinion, as we have this night to consider it, and in the mean time the gentlemen on both sides might look into the cases to clear it up to the Court” (1095). While lawyers may have a limited voice in the early 1740s in criminal trials, particularly as reported in the *Proceedings*, this civil action articulates a legal drama characterized by the full participation of lawyers and legal suspense. A reader, in hearing the judge address the lawyers after the extended procedural arguments, might almost imagine the language is taken from a recent John Gresham legal thriller. Indeed, the various Annesley legal narratives of the 1740s look both backward and forward towards the roots and future history of legal narrative.

On Wednesday, November 16, 1743, the arguments concerning Mr. Giffard’s potentially explosive testimony continued. Mr. Harward, one of James Annesley’s lawyers, states that John Giffard was an attorney who had represented the Earl of Anglesea for “twenty years or thereabouts.” Concerning the statements allegedly made by the Earl to Giffard, Annesley’s counsel offers both the broad narrative and specific dialogue:

and it will appear to your lordship that lord Anglesea disclosed his intentions to him in this manner: ‘I am advised that it is not prudent for me to appear publicly in the prosecution, but I would give 10,000 *l.* to have him hanged. Mr. Jans my agent shall always attend you, I am in great distress; I am worried by my wife in Ireland; Mr. Charles Annesley is at law with me for part of my estate, and,’ says he, ‘If I cannot hang James Annesley, it is better for me to quit this kingdom and go to France, and let Jemmy have his right, if he will remit me into France 3,000 *l.* a-year; I will learn French before I go.’ (1095)

Finally, the Earl’s lawyers raise the attorney/client privilege between the Earl and Giffard as bar to the potentially damaging testimony. James Annesley’s lawyer correctly argues that the privilege would be inapplicable where “criminal secret” was involved relating to an

unlawful trust where “the attorney could not conceal it without breach of his oath, as an attorney, which was to do right to all men” (1095).

After two days of bickering between lawyers for the respective sides, Giffard is finally allowed to testify. In response to a question as to whether he was an attorney, he testifies that “I am an attorney of the Common Pleas in England, and a solicitor of the High Court of Chancery, and sworn and admitted as such by virtue of the act of parliament” (1099). Although defense counsel again interposes a renewed objection to the continuation of plaintiff’s direct examination of Giffard on the basis of attorney/client privilege, for purposes of the “justicability of the text,” his testimony is in the narrative record. The esteemed lawyer Giffard has changed from a character named, but not really present, in his “marginality” in the *Sessions Report*, into a member of the power elite committing his own form of social treason. His change of allegiance can be read as an almost Lockean revolt, since as the Earl’s servant, he was rebelling against an unjust “sovereign.” Or to take a more cynical approach, perhaps the two men simply had a falling out over money!

Giffard testifies that between December 7, 1741 and May 1742, the Earl of Anglesea was tiring of ongoing litigation with a variety of other family members, as well as of the pressure from James Annesley’s mounting offensive to reclaim his birthright. As noted in the remarks of plaintiff’s counsel, Giffard testified that the Earl was considering a move to France with an annual allowance in consideration for relinquishing the title. According to Giffard, this was the Earl’s plan up until May 1742:

When asked by plaintiff’s counsel, why the Earl altered his plan, Giffard states: Why, on the 1st of May, Mr. Annesley had shot a man at Staines; it was on Saturday, as appears by the indictment and coroner’s inquest; upon which, the 2d of May, my lord sent for me, and ordered me to go to Staines, and to enquire into the affair, and to collect the evidence, and carry on the prosecution, and to enquire into the affair, and to collect the evidence, and carry on the prosecution, and to follow

the directions of Mr. Garden and Mr. Gordon, with the assistance of one Mr. Jans, who was a surgeon; which I accordingly did. My lord told me further, that I should follow their directions, and in some small time after (perhaps 3 or 4 days) told me, That they had consulted together, and advised him not to be seen to converse with me, for that it was not proper to him to appear in the prosecution, for fear of its hurting him in the cause that was coming on between him and the plaintiff; and, that he did not care if it cost him 10,000 *l.* if he could get the plaintiff hanged; for then he should be easy in his title and estate. (1102)

Giffard acted as Uncle Richard's agent "to carry on the prosecution and to follow the directions of Mr. Garden and Mr. Gordon, with the assistance of one Mr. Jans, who was a surgeon." The motives and *modus operandi* of a once unnamed nobleman are now clear. Mr. Jans, according to Giffard's further testimony, was Lord Anglesea's "companion, and manager, and agent, and managed everything for him" (1102).

Giffard's continued testimony indicates why he was chosen to pursue the prosecution and for what period of time he was involved with case. His testimony also explains upon what basis the indictment issued:

How came you to be employed? – The reason I was sent for was, that I had been a coroner myself in the county of Devon for some years (a dozen or fourteen), and was thought a proper person because of that.

Did you go on with that prosecution till there was a verdict? – I did, Sr.

Pray now, did you inform yourself of the nature of that fact any time before the trial came on? – I attended the coroner's inquest, Sir, and did inform myself of it. I collected evidences, and drew the brief. I have the brief here.

Did you see, or had you a copy of, the examinations upon which the indictment was found? – I was present at the examination of the witnesses before the coroner, and took some notes of my own at that time, which I have with me.

How was the indictment found? – The indictment was upon the coroner's inquest.

Were there any examinations upon which the bill of indictment was found? – The coroner only took their examinations short, as memorandums. The bill was found upon the evidence of the son of the deceased, and others, *viva' voce*, before the grand jury.

Were there to your knowledge, any examinations taken in writing? – I was told that Sir Thomas Reynell took some examinations in writing; I applied to him for them, but he refused me; I applied to him a second time for them, when he told me that he had consulted with Sir John Gonson, and that no examinations should be shewn till they were produced in court.

Were the same witnesses that were examined before the coroner examined in court upon the trial? – Most of them were, and a great many more.

Were they not all examined? – I believe they all were. A matter of 40 people were examined.

Was your brief framed from the depositions of those people that were examined before the coroner? – My brief was framed from the examinations of witnesses that I took myself.

Pray now, did the case appear, for the most part, to be the same upon the trial, as upon the examinations before the coroner? – No, Sir, it differed vastly.

What was the finding on the coroner's inquest? – Willful murder. (1104)

This section of Giffard's testimony explains the importance of the coroner's hearing as a prelude to the issuance of the indictment by the grand jury. It again shows the importance of lawyers framing the narrative in the Annesley/Redding murder trial. We note that here again the crafting of a false story for sale, a pervasive theme in the *Sessions Report* version of the Annesley/Redding murder case.

Giffard is then asked about the difference between the quality of evidence against Annesley at the coroner's hearing vs. the trial at the Old Bailey. A major policy behind allowing criminal defendants to use counsel was to insure that false evidence was not proffered to the court in support of fraudulent prosecutions. Giffard admits that the evidence against Annesley was stronger at the coroner's hearing. Giffard's testimony affirms that the Annesley/Redding murder trial was a contest that might have had a

different result if defense counsel had not been used to cross-examine and impeach the prosecution witnesses, particularly the testimony of John Egglestone.

John Giffard solves the mystery as to what extent Mr. Williams of the White Horse Tavern in “Pickadilly” was involved in the case. In clarifying the circumstances surrounding Giffard’s initial introduction to John Egglestone, the witness states:

Who was the main witness that swor against the plaintiff on his trial? – It was John Egglestone.

Had you any conversation with that John Egglestone before the trial, touching his evidence? –I had. He was brought to me by one Williams, that keeps the White-Horse in Piccadilly, and he varied from his evidence that he gave before sir Thomas Reynell. (1105)

However, Giffard evades responsibility for the Earl of Anglesea’s actions during the next series of questions:

Pray now, when my lord Anglesea said to you, That he did not care if it cost him 10,000 *l.* to get the plaintiff hanged, did you understand that it was his resolution to destroy him if he could? – I did, Sir.

Did you advise my lord Anglesea not to carry on that prosecutioin? – I did not advise him not to carry it on; I did not presume to undertake to advise him. (1105)

When then asked whether he approved or disproved the Earl’s designs altogether, John Giffard replies, “I cannot say that I did either.” Like the witnesses in the Robert Rhodes Will Forgery Case, Giffard engages here in a rhetoric of distancing, employing a device of isolation. In spite of his involvement as an author of the legal narrative who resulted in James Annesley’s indictment and trial, Giffard tries to characterize his role as a party who, if not neutral, is at least ethically disinterested.

One of the great moments of the cross-examination occurs in an interchange between Giffard and the Earl of Anglesea’s trial counsel in the Court of Exchequer. This

line of questions probes more deeply into the former counsel's culpability in the design and execution of the scheme to prosecute and hang Annesley:

When my lord Anglesea said, that he would not care if it cost him 10,000£ so he could get the plaintiff hanged, did you apprehend from thence, that he would be willing to go to that expence in the prosecution? – I did.

Did you suppose from thence that he would dispose of that 10,000£ in any shape to bring about the death of the plaintiff? – I did.

Did you not apprehend that to be a most wicked crime? – I did.

If so, how could you, who set yourself out as a man of business, engage in that project, without making any objection to it? – I may as well ask you, how you came to be engaged for the defendant in this suit. (1106)

If Giffard, the lawyer, initially suggests his “ethical detachment,” the substance of his narrative focuses on a more grounded reality. On one hand, a lawyer, then and now, has the ethical duty to zealously represent his or her client. However, the duty of representation does not extend to fraudulent testimony and illegal acts. When Gifford throws the accusation of immorality back upon the lawyers for the defendant conducting the cross-examination, the professional and social boundaries of the parties and lawyers collapse. Giffard maintains that if he is culpable, present counsel are likewise blameworthy; all lawyers have the choice as to what clients to represent. To the extent that a fraud exists, Giffard maintains that all lawyers representing the Earl are co-conspirators. They, like Giffard, are working for a fee. Legal narrative at its heart is simply narrative, a story about competing stories with a simple common denominator – greed. Like the manufactured testimonies in the Annesley/Murder trial, they are stories for sale.

Like many characters in eighteenth-century novels, John Giffard kept a diary. This journal was a daybook where he entered the previous day's activities as his first morning

task. In Giffard's testimony about the entries in his daybook, the reader of the report of the Estate trial is provided with the timeline for the counternarrative:

Was it before, or after the coroner's inquest, that my lord Anglesea told you, he did not care if it cost him ten thousand pounds to get the plaintiff hang'd? – I can't charge my memory; it was there, or thereabouts.

Look in your diary, and see. – I'll look in my diary. I cannot exactly tell you, Sr. The second of May was the day I was sent for to my lord, at the White Horse in Piccadilly; and I believe one Thompson Gregory was sent for me, and with a great deal of joy they said that Mr. Annesley had killed a man, and would be hanged. The 3d of May I went to Colebrooke, within three miles of Staines. The 4th of May I went to Staines, and the inquest was held there.

Was it after that 4th of May it was held? – I came home the 5th, and I believe it was that day; for my lord met me at Hounslow, in his coach-and-six, to know how things went on.

Was it at that meeting he said this to you? – I cannot tell. It was within a day or two, up or down. I did not take particular notice. (1106)

As seen in his testimony, the Earl of Anglesea appeared at the White Horse in Piccadilly on the day after the homicide to develop his plan of attack. On May 3, 1742, he set up operations in the vicinity of Staines. On May 4, 1742, he appeared at Staines although his testimony seems to indicate that he was not actually present at the inquest. On May 5, 1742, Giffard met with his client to provide him with a status report concerning the plan to have James Annesley indicted.

This narrative also clarifies the identity of the prosecutor of the case. Upon reviewing the account in the *Proceedings*, it appears that John Eggleston, son of the deceased, was the obvious party to push the prosecution. While there is some discrepancy among the various transcripts examined as to the exact wording of the question, a query is put to Giffard by the Court as to whether “an attorney might think himself well warranted by the verdict found upon the coroner's inquest to prosecute, and not think it a bad action?”

In response, Giffard answers and a short yet significant series of questions and responses follow:

Yes, I believe they would, or else I would not have carried it on, Sir. And I do assure you, it is the only cause I was concerned in at the Old Bailey in my life, and shall be the last.

Don't you believe that my lord's engaging in that prosecution was, because the man set up a title to his estate, and not on account of his killing the man at Staines? I believe it was; and believed it then, and do now.

Do you not believe it as an unlawful purpose? – I cannot help that. I was employed by the churchwarden of Staines to prosecute. I should not have been concerned upon any account whatsoever, had not I the sanction of the coroner's inquest for willful murder, which I thought a justification of the prosecution.

When was it that the Church Warden employed you? – The 8th of May 1742. He wrote a letter to me, "Pray prosecute James Annesley," &c. Signed Stephen Bolton.

Was not this after my lord declared he would spend 10,000 *l.* to get him hanged? – It was.

Sir, I ask you, was there any money given to any witness to appear and give evidence? – I don't know of any. (1107)

In order to distance himself from the Earl of Anglesea's malevolent motives, John Giffard, who is clearly tired of his short and notorious career dealing with matters at the Old Bailey, indicates that Stephen Bolton, the Church Warden at Staines, employed Giffard to commence the prosecution of James Annesley on May 8, 1742, at the behest of the Earl of Anglesea.

One of the mysteries of the *Sessions Report* is the number of allegations that many witnesses, including John Egglestone, were paid money for their testimony. In this account, Giffard does not deny that money was paid for manufactured testimony; however, in yet another example of the rhetoric of distance, he simply states, "I don't know of any."

He acknowledges the payment of a half crown per day for attendance to the prosecution

witnesses, but he says, “if there was any dirty work, I knew nothing of it” (1107). Finally, he advises that the criminal prosecution cost 800 *l.* and that 300 *l.* was still due and owing to him by the Earl of Anglesea, the primary obligor or guarantor for costs of the prosecution technically instituted by Stephen Bolton, the church-warden at Staines. Finally, no civil action concerning the inheritance was pending as of May 1, 1742, the date of the killing of Thomas Egglestone. States John Giffard concerning this issue:

Was it by your advice and directions that that letter was sent to you by the Church Warden of Staines? – No, it was by Garden and Gordon’s advice.

Were you privy to it? – Yes, I was. And this letter was advised in order that the defendant might not appear in the prosecution.

Did you not know this was to give a colour? – I did.

Did you think this was for a good purpose? – Mr. Garden, Gordon, Jans, and lord Anglesea had a consultation, and it was thought proper that I should have another person to my assistance, because they would not appear, and my instructions were, to send this order to the church-warden and get it signed, that my lord should not appear in it; and the reason was, that if my lord should appear in it, they thought it would be attended with ill consequences.

Did you know at the time of the trial that Mr. Annesley intended to sue for the title and estate of lord Anglesea? – It was reported he would, that he intended it; and this was in order to prevent it. (1110)

As we have seen, the “reporting” of the threat of the suit by James Annesley was affected, in large part, by *The Gentleman’s Magazine*, a periodical with a geographically wide circulation and intelligent readership. Public opinion and expectation has been created, and *The Gentleman’s Magazine* satisfied the demand it created by running summaries of the estate trial proceedings in the early 1744 issues of the periodical. By attempting to mask his identity through the use of the Church Warden as prosecutor, the Earl is acknowledging the power and importance of public opinion to the outcome of the case.

The importance of public opinion in creating Annesley as a Romantic prototype is directly tied to his textual creation in ways we have previously discussed. It is, however, too easy to evaluate the matter based upon the textual construction. We know there were some significant factual issues at play, such as Redding and Annesley's "lying in wait," that could have been seen in a different light by the jury. Another defendant on a different day might not have received the opportune verdict of "chance medley." Because of the public interest in the criminal trial, the larger question of victimhood in the face of evil forces beyond the individual's control was performed in the case before the Old Bailey. The Old Bailey murder case was the first major legal scene in England in Annesley's larger legal drama. But in reality the homicide case was the dress rehearsal for the second scene, which would take place before the Court of the Exchequer in Dublin. Annesley, however, had to survive the first trial in order to prosecute his claim of inheritance. Although the criminal case is a cultural artifact complete in the *Proceedings*, and in the process of its completion through subsequent (mis)readings, let it be remembered that the presence of defense counsel in criminal cases in the 1730s allowed for the effective cross-examination that exposed the truth behind the prosecution. Effective cross-examination was the *stylo* by which the first scene of this drama was written, thereby allowing Annesley (through his own volition and the circulation of texts) to construct the remainder of the larger narrative after his acquittal before the Old Bailey in July 1742.

CHAPTER XI

LAW BECOMES LITERATURE: THE CASE OF SMOLLETT'S *THE ADVENTURES OF PEREGRINE PICKLE*

While our readings of the *Proceedings* privilege the law as literature (or at least as narrative), the Annesley/Redding murder case becomes law *as* literature due to its (mis)reading and textual incorporation near the conclusion of Tobias Smollett's second novel, *The Adventures of Peregrine Pickle* (1751). A displaced Scot and frustrated physician, Smollett eventually earned his fame and living during the mid-eighteenth century through the authorship of a broad range of works. His translations of Lesage's *Gil Blas* in 1748 and Cervantes' *Don Quixote* in 1755 (among other Continental authors) are highly regarded and still read today. Although he was an undistinguished playwright and poet, he published two major historical works, a four-volume *Complete History of England* (1757-58) and its five-volume *Continuation* (1760-65). As a journalist, Smollett founded the *Critical Review*, a journal that he edited from 1756-1763. Finally, he authored *Travels through France and Italy* (1766), a popular eighteenth century travel narrative. Although Smollett is best known today for his five novels, it was through his translations, the historical writings, and his work with the *Critical Review* that he achieved recognition and at least a modest living during his relatively short life of fifty years.

Although Smollett's novels, particularly *The Adventures of Roderick Random* (1748) and *The Expedition of Humphrey Clinker* (1771), have been considered "important novels" of the eighteenth century, his role as an "early master" of English fiction has traditionally been marginalized compared to those of Defoe, Richardson, Fielding, and

Sterne. While the lack of recognition of Smollett's achievement can be attributed to the pervasive early twentieth-century view of the immaturity and even inferiority of the eighteenth-century novel in comparison to its Victorian and Modern counterparts, Smollett's importance has been historically minimized even in critical works, such as Ian Watt's *The Rise of the Novel* (1957), that successfully argue for the importance and centrality of the novel as genre in the mid-eighteenth century. As an admirer of Cervantes, Tobias Smollett was heavily invested in the picaresque, and his influence on later novelists, such as Charles Dickens and even Salman Rushdie, is substantial.

Jerry Beasley in *Tobias Smollett Novelist* (1998), says that *The Adventures of Roderick Random* (1748) is "an elaborate exercise in eclecticism...it incorporates conventions of the travel book, the rogue (or picaresque) biography, the whore's tale (Nancy Williams interpolated story), the memoir, and the romance - with wayward Roderick as the wandering dispossessed hero who finally regains his birthright along with his true identity as a gentleman, and Narcissa as the fair heroine who is his inspiration and, in the end, his reward" (75). Beasley continues by noting that "Smollett's second novel borrows just as freely from the very same popular kinds of narrative, but it adds to its eclectic mix the scandal chronicle, or secret history (Lady Vane's long detailing of her amour's in Chapter 88), and an account of a contemporary cause of public interest (the story of Daniel MacKercher and James Annesley in chapter 106) that bears attributes of the exemplary biography and the trial narrative" (75). Smollett's second novel is twice as long as his first, and it involves a much larger assemblage of characters, a greater number of incidents, and a broader geographical stage.

With respect to the various narrative genres and conventions mentioned by Beasley in his discussion of *Peregrine Pickle*, all are the types of texts that constitute the “pre-history” of the English Novel, as articulated by J. Paul Hunter in *Before Novels: The Cultural Contexts of Eighteenth Century English Fiction* (1990). Ironically, all of these elements are essentially present in James Annesley’s own self-constructed narrative *Memoirs of an Unfortunate Young Nobelman, Return’d from a Thirteen Years Slavery in America, where he had been sent by the Wicked Contrivance of his Cruel Uncle...Pt.I* (1743). Smollett, however, does not use these various conventions as a salute to a Golden Age before the novel; rather, he incorporates them as a type of Bakhtinian narrative heteroglossia. With a myriad of characters, such as Trunnion, Pallet, Perry, and others, Smollett’s text exhibits heteroglossia of language through the characters’ dialogue. The text also privileges use of multiple ways of telling to enhance the dialogized heteroglossia at the level of the individual characters of the story. To borrow a notion from film director Sergei Eisenstein, a contemporary and fellow countryman of Mikhail Bakhtin, the contrast between voices and narrative conventions operates as a type of dialectical montage where meaning is ascribed by the relation between the two voices and conventions and not by the voice or narrative element itself. Traditionally, the MacKercher/Annesley interpolation in Smollett’s novel has been viewed on its own terms and not in relation to other textual elements of *The Adventures of Peregrine Pickle* (1751), and it is only through an analysis of its relation to the rest of the text(s) that its logic in Smollett’s novel can be understood.

While the most famous example of an interpolated story within an eighteenth century novel is the “Man of the Hill” episode in Henry Fielding’s *The History of Tom Jones* (1748), *The Adventures of Peregrine Pickle* (1751) is unique in including two such

extended narratives. Traditional critical dissatisfaction with these interpolated narratives says more about the critic's own theoretical bias than the underlying text itself. A reader must take text on its own term; J. Paul Hunter notes: "But whether or not they can be pardoned or justified formally, stories - within plainly are a feature of eighteenth-century novels, a feature that was at the time common and readily accepted and that was subtly adapted into later novels as inset, flashback, anecdote, or pretended exposition" (47). The inclusion of the Annesley/Redding trial narrator in the context of exposition of MacKercher's character was within the normal narrative conventions of the writer and the expectations of the reader.

What is unusual about interpolated narratives in Smollet's second novel is not that they are there, but rather that so much of the novel is dedicated to their inclusion. "The Memoirs of a Lady of Quality," the first of the two "stories-within" consists of more than 50,000 words. Concerning the inclusion of the narrative relevant to this analysis, Hunter comments

A second story-within, involving the famous contemporary episode known as the Annesley case, confirms Smollet's willingness to incorporate stories altogether complete in themselves; one can account for Smollet's two "interpolations" (which together encompass more than a fifth of the novel) on the grounds of their contemporary interest, their thematic relevance, of his desire to parody competing forms of narrative; but the most interesting thing about them is that they are, like Fielding's and Sterne's stories-within, incorporated and not just simply interpolated. That is, their presence in the novel involves an ongoing interaction with the characters involved in the main narrative action, and (although the main plot may for all practical purposes stand still) the fact of the telling of the story-within is somehow taken account of. (48)

Concerning the practical effect of this narrative strategy of authorship, Hunter says that "the 'whole-as-observed part' strategy allows novels to take into themselves read-made, already organized chunks of material and domesticate that material to quite other uses"

(48). As shown in the readings of the various Old Bailey cases, particularly the bankruptcy fraud cases of Prior Green and Alexander Thompson, a similar textual strategy is used in the *Sessions Papers* whereby complete Bankruptcy Commission notices, orders, and other mini-narratives are incorporated into the criminal trial account. The resulting *Sessions Report* utilizes “ready made, already organized material and domesticated that material to quite other uses”. (48)

Because of the various narrative conventions and the lengthy interpolated episodes concerning Lady Vane and the MacKercher/Annesley story, Beasley argues that *The Adventures of Peregrine Pickle* lacks Henry Fielding’s “cool magisterial manner” and the “Fieldingeque concentration of aesthetic and rhetorical focus” (83). He claims that these incidents are difficult to account for “except as a kind of commercial opportunism” (84). He states that their inclusion represents “a failure of artistic vision” and that “they are impossible to justify as in any way relevant - or even appropriate - to the narrative as a whole” (85). His position is reasonable, assuming a static notion of what novels are and how they should look.

After berating Smollett’s narrative strategy, Beasley (whose new book is the best recent single-volume critical reading of the novels of Tobias Smollett) offers a more charitable opinion of the interpolated narrative. In calling the two interpolations “interesting attempts at studies of private character in a context of history,” Beasley states that “Lady Vane, who tells her own story (or such is the illusion), imparts to her personal life a public significance, projecting a constructed version of her real self into a work of fiction in a way that blurs distinction between the actual and the imagined, the objective

and the subjective, validating each in a relation of mutuality and reciprocity” (85). About the interpolated narrative concerning MacKercher and Annesley, Beasley states:

The story of MacKercher works in reverse toward the identical effect; told by another, it thus begins from a public perception of MacKercher’s actions with respect to the unfortunate Annesley, moving toward a subjective construction of his character as a selfless, benevolent, courageous man. By the logic of this procedure the construction in each story becomes the truth as the objective merges with the subjective, history with fiction, all very seamlessly. If “history” can merge with fiction, Smollett implicitly asks by the inclusion of historical interpolations in a work of the imagination, may not the opposite also be true? (85-86)

His answer to this question is that “this, of course, is the question novelists of his generation were always posing as they sought to justify their work in the midst of skepticism about its value and legitimacy; hence their avoidance of such labels as *novel* and *romance* in their titles, and the prominence of terms like *history*, *life*, *memoirs*, *travels*, *adventures*, and *letters*” (86).

It seems that everything about the life and trials of James Annesley is steeped in controversy, including the critical reception of his narrative within the textual matrix of Tobias Smollett’s second novel. Although both Hunter and Beasley acknowledge the reality of textual and generic instability in the mid-eighteenth century novel, Beasley’s position exhibits the problem of acknowledging this reality and simultaneously rendering an aesthetic judgment. Such evaluative positions tell us more about the critic than the underlying text itself. Regardless of whether Smollett made an appropriate authorial decision in including the Annesley interpolated story in the novel, the Annesley narrative and *The Adventure of Peregrine Pickle* exists as “text” *qua* “text”. While I am interested in how Smollett’s version of Annesley’s story relates to the continued reutterance and recirculation of the Annesley *Sessions Report* as narrative, it is problematic to draw a

distinction between the narratives *as* texts because of the inextricable symbiosis that exists between the multiple versions of the Annesley trials(s), the trial narrative as interpolated in Smollett's novel, and the novel itself. By putting the textual priority of Smollett's version in "brackets," a close review of his version in light of these readings of the other textual traces of the trial may shed light on the issues raised by Hunter and Beasley which at their core deal with the relationship between meaning and textual stability.

Through the assemblage and analysis of texts relating to the "Annesley Question" through the early to mid-1740s, we have seen that there was a continuing public desire to follow the developments in Annesley's story. Therefore, it is reasonable to assume Smollett felt his potential (and hopefully actual) readers would positively receive the inclusion of a narrative with which they were interested and familiar. Like Fielding's use of the Jacobite Rebellion of 1745 in *The History of Tom Jones*, the Annesley case was part of the recent cultural memory of the readership. Although the Annesley case is more "sensational," both the Rebellion and the Annesley estate controversy involved ideological/political tensions at their core. If these topics as incorporated into fictional discourse resonated with their audience, the authors, like merchants or tradesmen, merely sought to satisfy a consumer demand. By terming this economic reality as "commercial opportunism," a critic ignores or discounts the reality (and prehistory) of the market for a plethora of printed texts in the eighteenth century, of which the novel is a notable and privileged example.

The Annesley trial narratives are included in Smollett's interpolated story as their own stories within what is constructed as a biography of Daniel MacKercher, an exemplary figure of adventure and goodwill (at least in this version of the saga). However, the story

and public fame of MacKercher are inextricably linked to the construction and textual circulation of the Annesley narrative. His role in aiding the recently arrived Annesley and in possibly authoring *Memoirs, Pt. 1* (1743) has already been discussed. Although in *The Adventures of Peregrine Pickle* the Annesley trial narrative appears to be a subset of the MacKercher biography, Annesley's story is the enabling narrative for the textual construction of MacKercher. Similarly, it is Annesley's "story-within-a-story-within-a-story" that governs the intertextualities that allow the novel and the other Annesley narratives to have the textual relevance that translates into cultural meaning.

Although MacKercher is noticeably absent in the various narratives in 1742-1744 due to his role in the background as Annesley's ally in the quest to regain his title from Richard, Earl of Anglesea, he does have a textual presence in *Sessions Report* of the July 1742, the relevance of which is clarified by subsequent narratives, most notably the interpolated narrative in Smollett's novel. After John Egglestone testifies as to the capture of James Annesley and the transportation of the accused to the Round-House at Staines, Mr. Serjeant Gapper continues his examination:

Mr. Serj. Gapper. This is all you know, is it not?

John Egglestone. An't please you, my Lord, I can tell you a great deal more.

Mr. Serj. Gapper. Who pull'd him down?

John Egglestone. I do not know.

Mr. Serj. Gapper. Was this Wound the Occasion of your Father's Death?

John Egglestone. Yes, it was.

Mr. Serj. Gapper. Go on; you say you have other Things to say.

John Egglestone. He lay in the Round-House all Night, the next Day Annesley the Prisoner and I went in a Cart to a Justice at Hounslow, and there was one

Mc.Kercher there, who said to me

Court. What Mc.Kercher said is no Evidence against the Prisoners.

Mr. Serj. Gapper. We will let this alone a little.

Court. Can you prove he was any ways employ'd as an Agent by the Prisoner.

Mr. Serj. Gapper. I believe we can.

Foreman of the Jury. My Lord, please to ask him whether there was no Quarrel, Bustle, or Struggling, between Annesley, Redding, and Egglestone, before the Gun went off.

John Egglestone. There was no Quarrel or Jostling, my Father never gave him an ill Word. (11)

Although MacKercher is only briefly mentioned in the *Sessions Report*, several interesting problems are raised by this passage.

John Egglestone wants to testify as to his conversation with MacKercher, feeling that in some way it would help the prosecution. The Court refuses to allow the testimony on the basis of relevance, but as shown in my discussion of *Memoirs, Pt.1* (1743), the crowd was on Annesley's side in the courtroom by the commencement of the trial. In reality, the Court may not have allowed Egglestone's testimony out of favor for the defendant James Annesley. The Court then asks whether the prosecuting attorney can prove agency between Annesley and MacKercher. If agency is proven, then the testimony of John Egglestone as to his conversations with MacKercher would be admissible. Just as the prosecution lawyer states that agency can be proven, the Jury Foreman shifts the line of questioning back to the issue of whether there was an altercation between Thomas Egglestone and James Annesley at the time of the discharge of the firearm. This is another textual moment perhaps indicating jury sympathy with Annesley, as the MacKercher issue

is deflected and the line of questioning refocused on the events of May 1, 1742. Whatever the reason, young Egglestone wanted to talk about his conversations with MacKercher, and the Court and Jury prevented that aspect of the trial narrative from being developed. This section of the trial narrative when read from a formalist perspective is simply a narrative *aporia*, an ambiguity with its own narrative yet to be articulated. However, many in attendance at the trial would have known of the Annesley/MacKercher alliance, although as of July 1742 that aspect of the Annesley narrative had not been publicized in the *The Gentleman's Magazine* and other periodicals. The relevance of the alleged agency and the conflicting motives of the parties are incorporated into the *Proceedings* account through the intertextuality of supplemental narratives, including, but not limited to Smollett's interpolated narrative in *The Adventures of Peregrine Pickle*.

Toward the end of *The Adventures of Peregrine Pickle*, Peregrine, the rakish hero born to an affluent family, writes a letter to a weekly paper accusing Sir Steady of private ingratitude and misadministration of public affairs. Incensed by his letter, Sir Steady has a writ for debt issued against the young man for twelve hundred pounds at the suit of Mr. Ravage Gleanum. The young man is eventually incarcerated in the Fleet, a debtor's prison where the inmates paid weekly rental for lodging and accommodations. Just as Booth is introduced to the Newgate prison population at the beginning of Henry Fielding's *Amelia* (1751), Perry soon becomes friendly with a few of the characters residing at the Fleet. He is considered by his fellow inmates to have obtained credit "on account of his effrontery and appearance" and they judge him as a fraud whom "imposed himself upon the town as a young gentlemen of fortune" (691). Because of his conduct, his fellow inmates rejoiced "at his calamity, which they considered as a just punishment for his fraud and presumption,

and began to review certain particulars of his conduct that plainly demonstrated him to be a rank adventurer...” (691).

As Peregrine is being subjected to the negative judgments of his fellow prisoners while sitting in the coffee room of the Fleet Prison, Daniel MacKercher, also imprisoned for debt, enters the fictional world of Smollett’s novel. “Perry” is conversing with a friendly clergyman who is also incarcerated. After greeting MacKercher, the cleric states by way of introduction to the extended biographical portrait that he will soon narrate:

‘That man (said he) is this day one of the most flagrant instances of neglected virtue which the world can produce. Over and above a cool, discerning head, fraught with uncoming learning and experience, he is possessed of such fortitude and resolution, as no difficulties can discourage, and no danger impair; and so indefatigable is his humanity, that even now, while he is surrounded with such embarrassments, as would distract the brain of any ordinary mortal, he has added considerably to his incumbrance, by taking under his protection that young gentleman, who induced by his character, appealed to his benevolence for redress of his grievances under which he labours from the villainy of his guardian. (692)

MacKercher at the outset is offered as an exemplar of virtue due to this “selfless” protection of the “young gentleman” who is James Annesley.

In response, Perry raises the question whether MacKercher’s actions were selfish, rather than selfless.

‘I am no stranger (said he) to the fame of that gentleman who has made a considerable noise in the world, on account of that great cause he undertook in defence of an unhappy orphan; and since he is a person of such an amiable disposition, I am heartily sorry to find that his endeavors have not met with that successful issue which their good fortune in the beginning seemed to promise. Indeed, the circumstance of his espousing that cause was so uncommon and romantic, and the depravity of the human heart so universal, that some people, unacquainted with his real character, imagined his views were altogether selfish; and some were not wanting, who affirmed he was a mere adventurer.’ (692)

In a statement that throws some doubt on the legitimacy of Annesley's claim, Peregrine suggests that MacKercher "was deceived into the expence of the whole, by the plausible story which at first engaged his compassion" (692). However, due to the "egregious misrepresentation" of MacKercher's enemies, Peregrine acknowledges that MacKercher, like Annesley and Perry himself, are victims of intransigent social and economic system.

Having established the opposition between his own representation of MacKercher's character the argument that the Scot is a mere adventurer, the clergyman as narrator establishes testimonial corroboration of the narrative that is to follow:

'Sir, (answered the priest) that is a piece of satisfaction that I am glad to find myself capable of giving you: I have had the pleasure of being acquainted with Mr. — from his youth, and everything which I shall relate concerning him, you may depend upon as a fact which hath fallen under my own cognizance, or been vouched upon the credit of undoubted evidence.' (692)

Thus, these three introductory segments of the MacKercher narrative bridge the narrative gap between the "story-within," the novel itself, and the panoply of related texts with which a reader would be familiar.

The interpolated story itself exhibits many of the various narrative conventions seen in a number of popular eighteenth-century texts. Like Annesley's self-constructed *Memoirs, Pt.I* and *The Adventures of Peregrine Pickle* itself, MacKercher's interpolated story is a type of picaresque biography. While not spiritual in the sense of Daniel Defoe's *The Life and Strange Surprizing Adventures of Robinson Crusoe of York, Mariner* (1719), it represents a type of journey towards individual knowledge of the self. All are tales of individual experience about the empirical subject itself. They are also tales of wonder and travel narratives, and like these popular eighteenth century textual productions, the MacKercher story is verified with an attestation of the truth and veracity of the textual

utterances. While the story's imprimatur of historicity is buttressed by the attestor being a member of the clergy, the narrative device is subverted since the pastor, like MacKercher and Perry, is presently locked up for debt. As the narrative continues, it is clear that their imprisonment and social ostracization are not necessarily indicative of virtue, but virtue sometimes may result in spiritual and social isolation. Finally, even this narrative turns upon itself since Peregrine, a self-centered rake and often, cruel prankster, is not virtuous. He wins the love of Emilia, and his social status is re-established at the end of the novel through no actionable merit of his own. *The Adventures of Peregrine Pickle* and the interpolated MacKercher/Annesley narrative operate as counternarratives to the Bunyonesque typology of William Hogarth's pictorial sequence *A Rake's Progress* (1735).

The narrative itself states that MacKercher, son of a minister of the Established Church of Scotland, received a classical education as a youth, but in 1715 (in the earlier Jacobite Rebellion) ran off to join the army. Through a series of meanderings between military units, he continued to read authors such as Euclid, Locke, and Grotius. Eventually, he obtained a university education, and decided to qualify for the church. However, because of the changeability of his temper and wanderlust, he went to Holland, where he studied Roman Law and the Law of Nations. The clergyman/narrator states that by this time, MacKercher was "pretty well cured of his military Don Quixotism," a reference tying these various narratives to the picaresque tradition. The Scotsman's choice of books to read positions his narrative paradoxically within a textual world of serious Enlightenment texts on jurisprudence and political theory.

MacKercher then moved to France, and made acquaintance with a generous Frenchman who later in the story (like many a character in Smollett's various novels), then

doublecrosses the hero. Although his friend gives him a generous advance, MacKercher runs short of funds after various travels around the Continent. After relocating in London, he became a translator and pamphleteer, and enjoyed plays, operas, and other public diversions, as well as enlarging his acquaintance with women at the assemblies in London. While enjoying the society of the metropolis, he meets a lady of means whom he hopes to marry. While she urged him to accept the gift of her fortune in expectation of their upcoming nuptials, he refused. After falling in love with the woman's cousin, MacKercher decides to go abroad rather than insult the sensibilities of the first lady. Deciding simply to defer the first marriage, he sets out again for the Continent. In his absence the woman of means commits an indiscretion, and in spite of her pleas for forgiveness, he ends the engagement as a point of honor.

Following a stint as a mercenary in the French army, MacKercher relocates to Virginia to become a tobacco importer. After entering into a lucrative futures contract with the Colonial farmers, he returns to France to take care of related business issues there. In his absence, an associate of MacKercher makes his own arrangement with the farmers of Virginia and Maryland. The Scottish adventurer's plans are stymied. MacKercher, whose "ear was never deaf to the voice of distress, nor his beneficent heart shut against the calamities of his fellow creatures," is thwarted, thus preventing the prospect of a great fortune (Smollett 708-79). After deciding to retire on the remainder of his assets, he ends up in precarious financial condition because of well-intended but imprudent gifts and loans to his friends. According to Lillian de la Torre's "New Light on Smollett and the Annesley Cause," this account of MacKercher's life is generally accurate. She believes that Smollett "derived his information about the affair, both *viva voce* and in an unpublished manuscript

account from his friend Daniel MacKercher” (24). Whether or not the information in the narrative is “true,” MacKercher is portrayed as a generous and virtuous man who is the victim of both bad fortune and the bad faith of others.

Within the context of this history of MacKercher’s quixotic schemes and endeavors, James Annesley is introduced as yet the final manifestation of the unfortunate Scotsman’s attraction to lost causes. The narrative concerning Annesley commences with a detailed description of his enlistment and service aboard the HMS *Falmouth* in 1740. Smollett’s narrative adds much detail to this aspect of the Annesley story as articulated in these sources. Smollett reports that the newspaper accounts of Annesley’s appearance in Jamaica gave his uncle advance warning of his reappearance, a fact that put the “formidable bastard” at a disadvantage (710). Then, at Peregrine’s insistence, the clergyman/narrator gives an extended account of the circumstances behind the alleged sale of James Annesley into indentured servitude, the specifics of which were well known as a result of the testimony at the Ejectment trial before the Court of the Exchequer in Dublin in November 1743.

Upon arrival in London in September or October 1741, according to Smollett’s interpolated narrative, James Annesley consulted an unnamed attorney (subsequently identified as Francis Annesley, a distant relative), who advised him that the proper legal venue to pursue his claim was in the appropriate Irish court. After meeting with the lawyer, Annesley made the acquaintance of William Henderson, a former agent of both his father and his uncle, who “invited the hapless stranger to his house, with a view of making all possible advantage of such a guest” (719). According to Smollett’s narrative, William Henderson told Daniel MacKercher of Annesley’s claim prior to Annesley’s arrival in

London and a short trip by MacKercher to France (710). With respect to his residence with Henderson, the narrative states:

There he (Annesley) had not long remained, when his treacherous landlord, tampering with his inexperience, effected a marriage between him and the daughter of one of his own friends, who lodged in his house at the same time: but afterwards, seeing no person of consequence willing to espouse his cause, he looked upon him as an incumbrance, and wanted to rid his hands of him accordingly. (719)

Another detail is thus added to the story concerning the events leading up to the homicide of Thomas Egglestone on May 1, 1742.

We have seen that Annesley was at Staines because of his recent betrothal to the daughter of a certain Richard Chester. From *Memoirs, Pt.I* (1743), it appears that Annesley, after failing in love with his future wife, “soon discover’d the Effects of her Beauty, and was all Sadness and Confusion when she appear’d she lived some Distance from town, (whither he accompanied a Friend, who was in an ill state of Health, and advis’d to retire to the Country for the Benefit of the Air”) (29). The two accounts convey two different views of the union – a bucolic love affair contrasted to a quick urban marriage based upon Annesley’s inexperience and gullibility. If the Smollett narrative is accurate, Annesley met the daughter of Richard Chester while staying at the home of William Henderson in London. Henderson is a former employee of his father and uncle as well as a friend of Richard Chester, a future witness at the Annesley/Redding murder trial.

Annesley, however, might have met his future wife in London and followed her to Staines where he courted and married her. From the language in the passage from the *Memoirs, Pt I* (1743), he could have met her at William Henderson’s house, at which time he became disappointed to learn that she lived in Staines. But the same passage implies that the reason he was in Staines was a result of the trip to obtain fresh air for his ailing

friend, probably MacKercher. If the facts of MacKercher's account are true, Annesley and/or MacKercher may have constructed the marriage narrative from the *Memoirs, Pt. I* (1743) as a type of public relations gambit to quell doubts that his in-laws or the public might have had concerning the circumstances and advisability of the marriage. Also, the bucolic account may have been included for the purposes of narrative contrast to the dark, ugly and imminent criminal trial before the Old Bailey. At any rate, in both stories the marriage narratives immediately precede the events of May 1, 1742. Also, it is clear from the *Sessions Report* and the *Memoirs, Pt. I* (1743) that, regardless of the circumstances behind his courtship and marriage, James Annesley was at Staines because it was the home of his wife and Richard Chester, his father-in-law.

According to the Smollett narrative, William Henderson introduced Annesley to Daniel MacKercher upon the Scotsman's return from France. Annesley, supposedly fearing for his life at the hands of his uncle's agents, moved into MacKercher's house. Under MacKercher's tutelage, Annesley was given instruction on how to act like a gentleman, and the Scotsman began to engage counsel, as well as interview witnesses and generally prepare for the inevitable legal showdown in Ireland. During this time, Uncle Richard, the Earl, according to Smollett's narrative based upon MacKercher's own unpublished manuscript, formed conspiracies against James Annesley's life and used various means to thwart MacKercher from providing Annesley with assistance.

Smollett's interpolated narrative describes the efforts of Earl Richard and his cohorts to thwart the prosecution of the estate case:

His protector, far from being satisfied with their reasons, was not only deaf to their remonstrances, but believing him in danger from their repeated efforts, had him privately conveyed into the country; where an unhappy accident (which he hath

ever since sincerely regreted) furnished his adversary a colourable pretext to cut him off in the beginning of his career. (720)

The Smollett narrative contends that Annesley was in Staines for the purposing of hiding from Uncle Richard's henchmen rather than for the pursuit of the fruits of love and the rest and recreation of his unnamed friend. In any event, the journey to Staines has occurred, and the stage is set for the homicide of May 1, 1742.

In Smollett's narrative the alleged crime and the Old Bailey trial are covered in one long paragraph about one page in length; it is the first scene of the actual judicial drama that is about to unfold. Also, it is the first time that Richard, Earl of Anglesea, publicly enters the fray because of his witness tampering and actual appearance at the Old Bailey trial. In the interpolated narrative, only a brief reference to the facts and circumstances of the homicide is included:

A man happening to lose his life, by accidental discharge of a piece, that chanced to be in the young gentleman's hands, the account of this misfortune no sooner reached the ears of his uncle, that he expressed the most immoderate joy at having found so good a handle for destroying him under colour of law. (720)

By deflecting the focus away from James Annesley, this account of the homicide and the Old Bailey Trial frames the contest as being between Richard, Earl of Anglesea, and Daniel MacKercher. The trial narrative argues here the respective virtues and vices of MacKercher and the hostile and cruel world of the landed nobility.

The central section of Smollett's version of the trial narrative focuses on the alleged immoral behavior of the uncle after the homicide and up through the Old Bailey trial in July 1742. This section states that the Earl

immediately constituted himself prosecutor, set his emissaries at work to secure a coroner's inquest suited to his cruel purposes; set out for the place in person, to

take care that the prisoner should not escape; insulted him in jail, in the most inhuman manner; employed a whole army of attorneys and agents, to spirit up and carry on a most virulent prosecution; practised all the unfair methods that could be invented, in order that the unhappy gentleman should be transported to Newgate, from the healthy prison to which he was at first committed; endeavored to inveigle him into destructive confessions; and, not to mention other more infamous arts employed in the affair of evidence, attempted to surprize him upon his trial, in the absence of witnesses and council, contrary to a previous agreement with the prosecutor's own attorney: nay, he even appeared in person upon the bench at the trial, in order to intimidate the evidence, and browbeat the unfortunate prisoner at the bar, and expended above a thousand pounds in that prosecution. (720)

This longer middle section of the Smollett trial account is notable as it adds several important factual allegations as to Earl Richard's conduct before and during the trial, yet it raises questions as to its own reliability.

Immediately, the reader should question the reliability of the narrative. Lillian de la Torre asserts that Smollett's version is accurate since it was based upon written and oral communications to Smollett from MacKercher himself. However, she fails to acknowledge the express and implied bias resulting from MacKercher's very participation in the narrative about which he is writing. In discussing the Earl's specific involvement in the criminal trial, the Smollett narrative states that the threatened uncle "immediately constituted himself prosecutor." In our previous discussion of the testimony of John Giffard before the Court of the Exchequer in 1743, it was established as an uncontroverted fact that the Church Warden at Staines was the actual (or technical) prosecutor at law. Although the Earl of Anglesea encouraged and funded the prosecution, his lawyer properly argued that there was nothing illegal *per se* about the Earl's promotion of the prosecution since the criminal adversary system was based on private prosecution. The Earl's lawyers also argued that whatever the motives of the uncle were, a homicide did in fact take place

and that the legal formalities of coroner's inquest, magistrate's hearing, and grand jury indictment were satisfied.

In spite of the arguments carefully presented by the Earl's learned counsel, Giffard was allowed to testify. Although Uncle Richard was legally permitted to fund the prosecution, the allegations concerning his other involvements at the outset of the case tainted the entire proceeding. What is never ascertained with certainty is whether or not John Egglestone was bribed to give damaging testimony before Magistrate Thomas Reynell or at the coroner's inquest. It is because of this testimony that the case was sent to the Grand Jury and the "true bill" allowed to be issued. As previously discussed, John Giffard artfully stated that he had no first-hand knowledge of any payments for testimony, yet the specter of the bribery of witnesses is a pervasive subtext of the *Sessions Report*. Regardless of Giffard's actual knowledge, funds might have been paid to collusive witnesses by other unnamed clandestine operatives. In any event, Richard, Earl of Anglesea, was not the prosecutor *per se* in the Annesley/Redding murder trial, and the apparent assertion to the contrary is rendered in the light most favorable to MacKercher's self-construction by and through Smollett's interpolated narrative. It is a rhetorical gesture that ignores the legalities and complexities of the criminal trial that can be ascertained by the sworn testimony of John Giffard at the Ejectment trial as reported in *State Trials*.

Smollett's narrative suggests different scenes that involve the question of Annesley's incarceration. The assertion that Uncle Richard "practised all the unfair methods that could be invented, in order that the unhappy gentlemen should be transferred to Newgate, from the healthy prison to which he was at first committed" is corroborated in the *Sessions Report* (720). The fact the Richard, Earl of Anglesea, visited James Annesley

in prison while awaiting trial is a scene that circulates in some of the post-trial Annesley narratives, but does not seem to be supported by any testimonial evidence. The Earl was determined to send Annesley to hang at Tyburn; he believed that this would be the result of the trial. Since he had no incentive to effectuate an economic settlement with his nephew at that stage of the proceeding, the character of Uncle Richard is rendered here as cruel and sadistic, a juxtaposition that highlights the portrait of MacKercher in Smollett's narrative as an eighteenth-century knight exhibiting the virtues of generosity and goodwill.

In the *Memoirs, Pt.I* (1743), the Earl's appearance at the Old Bailey was noted by the narrator as swaying the opinion of the courtroom observers even further to the side of Annesley. The Smollett narrative mentions this general scene, but states that this encounter took place "in the absence of his witnesses and council, contrary to a previous agreement with the prosecutor's own attorney" (720). The specificity of this aspect of the story is unique to this narrative. Based upon the Earl's prior uninvited intrusions upon Annesley at the New Prison, the defendant and his lawyers must have been afraid that the Earl would stage a vindictive scene at the actual trial. The narratives published after the *Sessions Report* indicate that this in fact is what happened.

But to what audience would the Earl of Anglesea have been playing? His harassment could only have a detrimental effect on any possible settlement with the defendant, and no reasonable person would think that such behavior would have a positive effect on the judge, jury, or spectators. At this point in the text the Earl is portrayed as a dramatic character who while trying to direct the plot and action, is ironically out of control himself. The statement that the outburst is in violation further highlights this theme of a

prior agreement with the counsel for the prosecution (who were being paid by the Earl for their services).

The rhetorical strategy of the interpolated narrative is implemented in the third section (and final sentence) of this version of the Annesley/Redding murder trial:

In spite of all his wicked effects, however, which were defeated by the spirit and indefatigable industry of Mr. M-r, the young gentleman was honourably acquitted, to the evident satisfaction of all the impartial; the misfortune that gave a handle for that unnatural prosecution, appearing to a demonstration to have been a mere accident. (721)

The final section portrays MacKercher as the true protagonist in the Annesley/Redding trial. “Honor”, “spirit”, and “industry” are all ascribed by Smollett’s narrative to MacKercher, while Richard, Earl of Anglesea, is described as “wicked” and his prosecution as “unnatural.” In this passage, “accidental” events, including homicide, are suggested to be part of the “natural” order, while volitional acts, indicated by the baseness of the Earl and the magnanimity of MacKercher, are rendered as “unnatural.” This ironic coupling of contradictory signifiers is a trope by which the relationship between the interpolated narrative and the larger world of Smollett’s second novel can be understood.

The Adventures of Peregrine Pickle is a picaresque novel consisting of the episodic meanderings and antics of a young man born into an affluent yet troubled middle class family; it is a novel that ends in an idealized marriage, a fortunate fate that does not seem warranted by Perry’s actions. Like the saga of James Annesley, the novel deals with the broad issue of legitimacy, a constitutive element of subjectivity involving knowledge and connection to one’s origins. While the issue of the legitimacy of birth is central to the Annesley narrative, in *Tobias Smollett Novelist*, Beasley observes Peregrine’s symbolic

dispossession and its potential relationship to his seemingly irrational conduct throughout the novel:

But Smollett leaves this possibility in such a state of indeterminacy (in effect, he drops it after Chapter 4) that it adds nothing in the way of depth to his hero's character. Perry is all shallow compulsion and sparkling intelligence, fertile wit and active libido; he hardly changes at all through the novel. Indeed, he seems incapable of change, until in later chapters he is recast in the role of victim, becoming a bit more substantial and sympathetic after he has been swindled by crooked financial speculators and betrayed by lying politicians, who leave him defeated and despairing, weakened and ready for the softening influence of Emilia. (81)

Annesley and MacKercher are also victims of deceit and greed. While MacKercher remains emblematic of virtue, Annesley remains a pawn in the larger social contest. At the time of his death, he is an object of pity as he dies without regaining the use and enjoyment of his estate.

Unlike the cases of John Bunyan's *The Pilgrims Progress* or Samuel Richardson's *Pamela*, Christian virtue does not result in the happy ending, nor does the exercise of classical virtue by Daniel Mackercher result in positive results for his efforts. The happy fortune resulting to Peregrine Pickle is portrayed through Smollett's novelistic discourse as both "natural" and "accidental." In contrasting the chaotic journey of Peregrine Pickle to the "factual" narrative constructions of James Annesley and Daniel MacKercher, Smollett casts his seemingly disorganized novel as a competing discourse positioned in a secular and traditional world, a society more akin to that portrayed by Bernard Mandeville, rather than Aristotle or John Bunyan. In the world of Peregrine Pickle (and Tobias Smollett), not only do bad things happen to good people, but good things happen to the bad (and not so bad) as well.

CHAPTER XII

CONCLUSION

As I walked across the busy intersection of Marble Arch near Hyde Park in the city of Westminster in Greater London, I came upon a plaque located on a pedestrian island that read: “Tyburn Tree Stood Here.” This simple tablet with its terse inscription is certainly a text that needs completion in order to make sense of both its narrative and physical presence in this traffic hub of present-day London. Reading this simple textual artifact on its own terms gives no indication of the great amount of human suffering that was experienced and witnessed at this geographic location.

The principle arm of this study has been to show how various legal, factual, and fictional texts interact to create meaning in particular contexts for specific audiences. The amorphous nature of boundaries between legal, factual, and fictional narrative has been demonstrated. We have seen that not only were the *Sessions Papers*, novels of the eighteenth century, and other texts commodities produced and sold in the burgeoning print economy, but also that stories within these commodities were constructed and purchased for numerous ideological reasons. Yet any literary study that deals with social problems, such as colonialism, slavery, or gender discrimination, can never escape the humanity that is necessarily its subject. Criminal prosecution and punishment are more than textual creation and circulation.

While the textualization of crime and punishment is a shared characteristic of the various types and genres of narrative that we have examined, an important fact must always

be remembered: The *Sessions Papers* dealt with real defendants, victims, and their sufferings. Sometimes, as in the case of Mary Grayling, the victim lacks a voice. More often it is the accused who lacks the ability to be heard. Frequently, the penalties of those convicted seem harsh or grossly unfair to an observer of today. Regardless of the theoretical interest generated by analyses of narrative construction, the fact remains that the *Sessions Papers* and the *Ordinary's Account* are some of the only archival traces that allow entry into an otherwise inaccessible world of social and economic dislocation with the human suffering that follows.

In his essay "Narrative" (1990), J. Hillis Miller notes that:

Narratives are a relatively safe or innocuous place in which the reigning assumptions of a given culture can be criticized. In a novel, alternative assumptions can be entertained or experimented with – not as in the real world, where such experimentations might have dangerous consequences, but in the imaginary world where, it is easy to assume that "nothing really happens" because it happens in the feigned world of fiction. (69)

"Something really happens" in the *Sessions Papers*; the urban world portrayed there is safe for neither the victim nor the accused. We have seen how the boundaries between factual stories are fluid (and often mutually dependent upon each others' forms and conventions). The *Sessions Papers* are "true" in that they chronicle the actual disposition of physical bodies in historically specific judicial machinery. Yet they are novelistic in the way in which they incorporate numerous tropes from popular literary traditions of the seventeenth and eighteenth centuries. Also, novels are not always "safe" since they incorporate stories of actual individuals and deal with real social problems that are rooted in the same reality of the *Sessions Papers*.

The narrative of the plaque at Marble Arch is in one sense complete. Tyburn Tree no longer exists, and capital punishment has been abolished in Great Britain. But as a text, the memorial continues to signify a multitude of narratives (some forever erased) that constitutes an archival presence.

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