“WHAT ARE YOU? – A WOMAN I SUPPOSE”: WOMEN IN THE EIGHTEENTH-CENTURY BRITISH COURT

by

JESSICA A. GIBSON

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Student: Jessica A. Gibson

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This thesis has been accepted and approved in partial fulfillment of the requirements for the Master of Arts degree in the Department of History by:

Dr. Randall McGowen	Chairperson
Dr. George Sheridan	Member
Dr. April Haynes	Member

and

Kimberly Andrews Espy	Vice President for Research & Innovation/Dean of the Graduate School

Original approval signatures are on file with the University of Oregon Graduate School.

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THESIS ABSTRACT

Jessica A. Gibson

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This thesis explores the variety of women’s experiences before the London court in the late-eighteenth century. Historians have emphasized the implications of women as defendants but have yet to examine other capacities that women fulfilled before the Old Bailey. I argue that women’s appearances as prosecutrixes and witnesses illustrate their overlooked, but vital, contributions to the legal system. A detailed study of the cases brought before the Old Bailey in 1786 highlights women’s involvement and the court response, thereby revealing another aspect of discretionary justice within the legal system. Moving beyond the courtroom, my work looks at what trial records uncover about women’s interactions at the neighborhood level. Communal networks show the application of law on a personal level and daily basis, which also points to the importance of women’s involvement within their neighborhoods.

CURRICULUM VITAE

NAME OF AUTHOR: Jessica A. Gibson

GRADUATE AND UNDERGRADUATE SCHOOLS ATTENDED:

University of Oregon, Eugene
Columbia College, Columbia, Missouri
Emily Carr University of Art and Design, Vancouver, British Columbia

DEGREES AWARDED

Master of Arts, History, 2013, University of Oregon
Bachelor of Arts with Distinction, History 2010, Columbia College

AREAS OF SPECIAL INTEREST

Women and the Law in British History

PROFESSIONAL EXPERIENCE

Graduate Teaching Fellow, University of Oregon, 2011-2013

Caretaker for Historic Shelton-McMurphey-Johnson House, Eugene, 2012-present

History Guild Co-President, University of Oregon, 2012-2013

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For Patrick and William, incredible motivators.

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CHAPTER I

INTRODUCTION

> Ann Lawrence, prosecutrix- I have been greatly censured in my character, and I have a right to stick up for my character as well as my property . . .
> *[Court]- How many pints of ale did you drink together?* – I drank a glass of ale, but if I had got quite drunk, it is no reason I should be robbed of my property . . . I defy them to say that I was drunk, or yet to say that they can disprove me, whether I am man or woman.[1]

In 1786, the above-mentioned Ann charged a man with stealing a bundle of clothes from her while she rode in a coach. Though the court eventually acquitted him (the magistrates believed her to be out of her mind), her testimony is revealing. First, she appeared in the Old Bailey Sessions Papers as a prosecutrix, rather than as a defendant. Second, she professed a belief in having legal rights. Lastly, she explicitly noted that her sex should have no bearing on the trial proceedings. This remarkable account is not an isolated incident. Women frequently appeared before and contributed to the London court.

Modern historians overwhelmingly focus on women operating as defendants in the late-eighteenth century courtroom. The dominant trend has been to describe them, try to identify patterns of what they stole, and how their verdicts and sentences compared to men's. Clearly, this limits the image of women that were actually present before the court. It presents a narrow depiction of women merely as thieves, though some might be shown sympathy for their dire circumstances or be portrayed as victims of a harsh patriarchal system; however, little has been done to attempt a larger representation of women's experiences.

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[1] *Old Bailey Sessions Papers (OBSP)*, October 1786 (t17861025-107).

The starting point for my research began with the highly influential *Crime and the Courts in England, 1660-1800* published in 1986. This work by J.M. Beattie, one of the foremost historians of criminal law, is still regarded as the authoritative source on any and all matters having to do with the English legal system. It is surprising that given its exhaustive attention to detail and description of intricate trial proceedings, women play an incredibly minor role. They are portrayed as defendants, with Beattie relating what led to higher rates of acquittals for them as opposed to men.[2] His later work expanded on this examination of women as defendants. Problematically, he hoped to explain, "the place of women and the nature of crime in early Modern England," based on patterns of charges against women.[3] By focusing solely upon the woman as defendant, Beattie presents a skewed portrait of women's interaction with the law. Despite the compelling evidence of women as prosecutrixes, such as Ann Lawrence, he makes no mention of women in that capacity, stating instead that, "prosecutions arose from a complex of interacting forces and from a series of decisions made by a number of men."[4]

Beattie was not the first historian to ignore the contributions of women to the court. In 1983, John Langbein published the article, "Shaping the Eighteenth-Century Criminal Trial: A View from the Ryder Sources." He used the Old Bailey Sessions Papers and the notebooks of Judge Dudley Ryder in order to look at pretrial processes

[2] J.M. Beattie, *Crime and the Courts in England, 1660-1800* (Princeton: Princeton University Press, 1986), 436-438.

[3] J.M. Beattie, "The Criminality of Women in Eighteenth-Century England," in *Journal of Social History* 8, no 4 (1975), 80.

[4] Beattie, *Crime and the Courts in England,* 263.

and their influence on changing legal rules.[5] While Langbein focuses on many aspects central to the administration of law, such as trial caseloads and the composition of juries, he also pays attention to witness procedure and pretrial processes. Despite this seemingly comprehensive scope, women are only mentioned as an example regarding female defendants, in terms of capital sentencing for crimes committed, and their eligibility for special sentencing (namely, benefit of the clergy).[6] Again, women as defendants are presented as marginal actors within the court, occasionally making appearances, but having little impact on the trial process itself.

Little had changed when Peter King published *Crime, Justice, and Discretion in England, 1740-1820.* Immediately, he claims to present his work on perceptions of property crime as a contribution to social history.[7] One expects that women ought to feature more prominently in such a work. King takes a detailed approach in exploring the variety of trial experiences, from pretrial processes to sentencing and punishment. Women are mentioned as witnesses; however, King highlights the fact that women did not participate in any roles connected to administering justice, such as judges, magistrates, etc.[8] While this comes as little surprise, he continues to argue that women

[5] John Langbein, "Shaping the Eighteenth-Century Criminal Trial: A View from the Ryder Sources," in *The University of Chicago Law Review* 50, no 1 (January 1, 1983), 2.

[6] Ibid., 39, 43, 73.

[7] Peter King, *Crime, Justice, and Discretion in England, 1740-1820* (Oxford: Oxford University Press, 2000), 1.

[8] Ibid., 62, 357.

operated in very limited capacities and did not often appear as witnesses or prosecutrixes.[9] Women are again relegated to the margins in King's work.

Dierdre Palk has completed some of the most recent work on gender and the law. Her book *Gender, Crime, and Judicial Discretion, 1780-1830* suggests that it would provide a more balanced treatment of women's experiences before the court. Instead, her first chapter, Gender and the Criminal Justice System, states that its focus is on female criminal offenders as compared to male criminal offenders.[10] The balance she claims to present is apparent only in comparing men and women defendants, not in providing a more evenhanded representation of women's capacities before the court. Her study highlights three main types of theft (shoplifting, pickpocketing, and uttering, or forgery) as compared by sex. While her work does not purport to examine the spectrum of women's appearances at court, *Gender, Crime, and Judicial Discretion* continues the long-standing tradition of overemphasizing women solely as defendants.

This persistent representation of women has serious consequences for our understanding of how the eighteenth-century legal system operated. Female witnesses were critical in giving character statements or providing testimony that helped the court reach its verdicts. Women also appeared as prosecutrixes or testified in their husband's stead in order to identify and charge a defendant. Furthermore, women's actions were not clearly set by the role they inhabited at trial. Therefore, court records provide intimate glimpses into the personalities and temperaments of these individual women.

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[9] Ibid., 357.

[10] Dierdre Palk, *Gender, Crime, and Judicial Discretion, 1780-1830* (Woodbridge: Royal Historical Society/Boydell Press, 2006), chapter 1.

Female witness testimony often reveals a much larger network of women within their communities and suggests that women were vital in their maintenance.

This project will shed light on the ways that women presented themselves before the Old Bailey. Significantly, I will look at women as witnesses, prosecutrixes or representatives of their husbands, as well as juries of matrons. My goal is not to isolate a typical experience that a female witness could have expected or a set temperament that went hand in hand with prosecutrixes for example. Instead, I wish to show the variety within their appearances. What could their experiences reveal about court expectations of femininity in the eighteenth century? Did women consciously present an image or perform for the court? What did it mean to be a woman in the eighteenth-century courtroom?

To answer these questions, my work utilizes the Old Bailey Sessions Papers, records from London's premier assize court which held eight sessions a year. This valuable digitized source includes records from 1674 to 1913. The ease of using such a vast online source presents challenges as well as opportunities. While each record is technically an account of every trial, these reports are the product of trial recorders. Therefore, they are trial representations, rather than actual transcripts. These accounts often relate vital information about participants in trial, yet frequently omit key information. For example, a woman's marital status is always listed, but a man's will only be mentioned if he is directly questioned concerning family obligations. Also, since juries were not required to provide justification for verdicts, we must presume which elements of the trials led to their decisions.

Seventeenth-century court accounts are briefer in description than those that appeared even by the mid-eighteenth century. By the late-eighteenth century, exchanges between lawyers and witnesses frequently appear and accounts are much richer. For this reason, I have chosen to focus my work on the late-eighteenth century. In order to provide a manageable, yet rich portrait of women's appearances, I looked to a single year, 1786. The choice was partly arbitrary and partly chosen for the large number of cases that appeared that year. Crime rates were higher for years of peace and 1786 saw nearly a thousand trials before the Old Bailey.

This project begins by exploring the diversity of women's trial experiences. First, I focus on the complexity of demeanors presented, which reminds us that women did not simply follow a proscribed course during the trial. Instead, the cases show that women had varying degrees of familiarity with the legal process which could be reflected in their confidence or timidity before the jury. In looking at demeanors, I will be examining women not only as defendants, but also in the typically overlooked positions of witnesses and prosecutrixes. Next, I will show how women fulfilled roles that clearly impacted the court's ability to function. We will see a woman provide the critical evidence in a case convicting a man of murder, as well as women that made up juries of matrons who helped the grand juries come to conclusions concerning sentencing. I then focus on exchanges between men, particularly lawyers, and women at court which reveal expectations of feminine behavior beyond the courtroom.

To build upon these findings, the third chapter analyzes three remarkable cases in detail. The first case concerns the charging of a woman for the death of another woman. This particular episode displays popularly perceived feminine characteristics and

questions concerning marital status. Before her death, the victim in the case expressed concern about her legal rights, suggesting that perhaps women assumed their rights would be protected by the legal system. The second case involves the death of a prostitute and displays conflicting testimonies by another prostitute, laborers, and surgeons. Given the ambiguity of the case, this highlights the discretionary nature of the judge and grand jury. The power of status is the ultimate expression of this judicial flexibility. The last case also revolves around the death of a woman under unusual circumstances. Several women in a house of shared lodging assisted the victim following a confrontation. When it became clear that the woman would not recover, another female lodger sought redress on the woman's behalf through legal means. Other women provided witness testimony that illustrated a larger network of assistance for women.

Originally, I chose these cases for their striking uniqueness. Murder cases were relatively rare. Of the 932 cases that appeared at the Old Bailey in 1786, seventeen cases saw twenty-two people charged for murder or manslaughter.[11] To put this in perspective, 790 cases of theft were brought to trial the same year.[12] It is not surprising then that historians would focus on women as defendants, as their numbers would seem to be quite high given the enormous rate of theft; however, the 1786 records show that forty-percent of women at court operated as witnesses while thirty-six percent appeared as defendants.[13]

[11] *OBSP*, searched killing offenses for 1786.

[12] *OBSP*, searched theft offenses for 1786.

[13] *OBSP*, searched for all 1786 records.

The cases had the added complexities of medical and military testimonies, as well as prostitutes and laborers. The first case also included a charge of manslaughter for the premature delivery and death of an infant. Despite all of these exceptional features, many similarities revealed themselves in the course of my research. Again, we see the court trying to determine where responsibility lay and how to come to terms with conflicting or perplexing testimonies. In several instances, we also see women take an active role in initiating legal proceedings, which speaks to a woman's understanding of her legal representation at that time.

The fourth chapter steps back from the courtroom and instead looks at women within their neighborhoods. I provide a brief description of the physicality of London's neighborhoods and argue that despite the city's enormous population, communities and networks did form. I contend that women were critical elements in their maintenance. They achieved this by assisting and alerting one another if theft was suspected. Women were also crucial observers of their communities. Publicans and housekeepers often provide the best examples of these watchful women. This knowledge and attentiveness to their surroundings placed women in positions of importance within the legal system. The rapid nature of trials that relied upon reputation and eye-witness testimony meant that women performed a vital role in the court by being the eyes and ears of their neighborhoods.

Overall, this project does not present a woman's experience before the Old Bailey in any definitive sense. Instead, by illustrating the wide range of encounters that women went through at court, we can gain a deeper understanding of how they fulfilled an important function within a legal system that had yet to undergo serious regulation. The

Old Bailey Sessions Papers also provide a unique way of depicting elements of women's everyday lives in eighteenth-century London. We do not always get at these representations directly; rather, women also appear on the margins of the records themselves. By expanding the focus from women as defendants to women before the court and within their neighborhoods, I hope to shed light on the image of women in the late-eighteenth century.

CHAPTER II

THE COMPLEXITIES OF WOMEN IN THE COURTROOM

"Mr. Silvester. What are you? [Mrs. Wallis] – A woman I suppose."[14]

Mrs. Wallis, we know not her first name, appeared as a witness in the trial of three men accused of forgery. While this in and of itself is not unusual (there were many other witnesses, several of them women), her response is revealing. Silvester was asking her profession, a simple enough question that could help the court determine her own character. Wallis' frank response, on the other hand, muddied any clear picture the court could paint of her. What did it mean to be a woman in London's eighteenth-century courtroom?

As previously stated, scholars have studied women as defendants. This might imply that research on women as prosecutrixes and witnesses is overdue; however, we must avoid the idea that women presented specific personalities that were tied to their defined roles in court. Just as Silvester was trying to peg Wallis' character based on her profession, so too might historians place too much emphasis on what courtroom roles tell us about women. Instead, trial accounts provide access to the women that appeared at the Old Bailey. Their voices convey the complexity of women's experiences. This variety will be apparent through the examination of women's demeanors and capacities in the court. Next, examining the various roles of women beyond just the female witness or defendant reveals often-overlooked contributions of women to the courtroom. Finally, these exchanges between men and women in the court reveal expectations of feminine behavior that resonated within a larger community.

[14] *OBSP*, January 1786 (t17860111-2).

The Old Bailey assize courts met eight times in 1786. In the course of the first two sessions or 202 cases, 817 men and 156 women appeared. While existing research would have us believe that women appeared simply as defendants, that is not entirely the case.[15] Of those women, 32 appeared as defendants, 39 as prosecutrix, 84 as witnesses (including character witnesses), and one as a murder victim.[16] Clearly, women were operating in a variety of capacities in the courtroom. The question then becomes did women benefit from presenting a certain image?

We will begin by briefly exploring the familiar representation of women as defendants. Peter King claims that women could present their own interests or concepts of justice through the roles they presented. Granted, he believes that most women were not adept enough at making the most of these possibilities.[17] Though the relationship between testimony and verdict is often opaque, examining defense testimony provides some clue as to how women portrayed themselves and were received. A woman's defense was important and many had to have realized that it was their final chance to plead their case. Defense councils were uncommon in the 1780s. Only one in eight defendants charged with a property crime had a defense council for the year 1787-1788.[18] With so much of the trial relying on prosecution and witness testimony, the defense was

[15] See introduction and Shani D'Cruze and Louise A Jackson, *Women, Crime and Justice in England Since 1660* (Houndmills, Basingstoke, Hampshire; New York, N.Y.: Palgrave Macmillan, 2009), 2-3.

[16] *OBSP* , searched for all text in 1786.

[17] Peter King, *Crime, Justice, and Discretion in England, 1740-1820* (Oxford [UK]; New York: Oxford University Press, 2000), 243.

[18] J. Beattie, *Crime and the Courts in England, 1660-1800* (Princeton N.J.: Princeton University Press, 1986), 360.

the final thing the jury heard before making its decision. It offered the last and perhaps best opportunity for the defendants to present the character that they wanted judged. Therefore, these concluding statements reveal what sentiments or situations women believed would resonate with the jury and therefore acquit them of their crimes.

While plenty of historical scholarship has focused on women as defendants, more must be done to create a nuanced picture of women and their testimonies. One must avoid simply categorizing women based on what they stole and the verdicts given.[19] Since women had to have been aware that their defense was one of the best chances they had at convincing the jury to acquit them, what did they think the jury wanted to hear? Defense testimonies for the records in 1786 are quite varied and had mixed receptions. The persistence of the ideal mid to late-eighteenth century feminine characteristics mentioned previously is best illustrated by examining the defense of distress or hardship, which had mixed results.

It is not surprising that women believed that by claiming great difficulty or weakness, they would receive the court's mercy. After all, the image of a vulnerable woman appearing before an all-male jury easily lent itself to the widespread character of the defenseless and feeling woman that required protection.[20] However, several examples from the record show that its effectiveness as a strategy in court had mixed results. Again, defined roles or defenses used by women did not automatically produce the same results.

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[19] See D'Cruze and Jackson, *Women, Crime and Justice in England Since 1660* and P King, "Shani D'Cruze and Louise A. Jackson. Women, Crime and Justice in England since 1660," *JOURNAL OF BRITISH STUDIES* 51, no. 4 (2012): 108.

[20] D'Cruze and Jackson, *Women, Crime and Justice in England Since 1660,* 11-12.

In 1786, eight women claimed distress or hardship as their defense. These accounts bear similarities, but did not guarantee the same verdict. Hannah Hooper's defense included many of the details shared by the other three defendants that also received a verdict of guilty. Accused of stealing linens, she stated:

> My husband was ill, and I was starving to death; I was passed to my parish, and I fretted so much, that I wandered from my own home, and left my children; my landlady knew my distresses; I only came sixty miles from home to fetch my family; and my husband left me a stranger in town, and I pawned all my clothes, and the sheets to support my family.[21]

A dying child and/or a sick or troubled husband appear in all four defenses that received guilty verdicts. Hannah portrayed herself as the sole supporter of her family, as neither her husband nor the parish was able to care for them. According to her, she needed assistance and protection. When none was offered, she pawned all her goods. Nonetheless, we know not why the court returned a guilty verdict for Hannah and in the other three accounts.[22]

Three more cases received guilty verdicts, but were also recommended mercy. Two of them explicitly stated that they did not intend to defraud the prosecution and the prosecutor appeared to ask for mercy.[23] In the third case, the defendant was also sentenced but recommended mercy after the prosecution begged for the court to show her pity. She then elaborated as to the causes of her distress, which included a recently deceased husband, the birth of a child shortly thereafter, uncertainty as to which parish her husband belonged to, and lack of friends or support. This defense bears resemblance

[21] *OBSP*, October 1786 (t17861025-6).

[22] *OBSP*, May 1786 (t17860531-37); *OBSP*, May 1786 (t17860531-56); *OBSP*, October 1786 (t17861025-59).

[23] *OBSP*, October 1786 (t17861025-67); *OBSP*, October 1786 (t17861025-68).

to that offered by Hannah Hooper, with the exception that in this case the prosecutor pleaded for mercy.[24]

The variety of court responses to a single type of defense testimony illustrates the fact that there was no set formula for determining effective defense strategies. Verdicts were left to the judgment of the court in this "golden age of discretionary justice."[25] Pleading distress or hardship was one of the most common defense tactics of both men and women. Given the prevalence of portraying women as vulnerable, it is possible that women believed the court would be the most receptive to their distress. It is also arguable that the court could uphold its own expectations of womanly virtue through the verdicts it passed down. Before exploring these beliefs, it is important to present a wide sampling of women's experiences in the courtroom. The following cases illustrate the range of demeanors and attitudes displayed by women, and more will be said about the roles in which they appeared.

The late-eighteenth century popular image of femininity held women to be tender, earnest, and compassionate.[26] Women were seen as overly sentimental, which was not necessarily a bad thing. Weakness was one of the chief feminine attributes at the time which was conflated with womanly virtue. Samuel Richardson's famous work, Clarissa, features the following reflection of these characteristics: "What business have the sex, whose principal glory is meekness, and patience, and resignation, to be in a passion, I

[24] *OBSP*, December 1786 (t17861213-35).

[25] King, *Crime, Justice, and Discretion in England,* 1.

[26] Donna T Andrew and Randall McGowen, *The Perreaus and Mrs. Rudd: Forgery and Betrayal in Eighteenth-Century London* (Berkeley: University of California Press, 2001), 200.

trow?"[27] While the idea of a deeply feeling woman that required protection was well-liked, the actual appearance of women in the court is more complex. Assertive women, whatever their courtroom roles, appeared alongside those that conformed to the common representation of women as fragile and emotional.

The prosecutrix Ann Smith provides a good example of how some confident women responded to a theft if they were alone. Smith owned a tea shop and noticed a man stuffing tea under his coat. Rather than immediately call for help, she directly accused the man of theft. Perhaps even more boldly, she then searched him and found the stolen goods. Next, she managed to go outside and lock him in her shop. Only then did she cry thief, so as to receive assistance and raise a general alarm, before she returned inside to find the man attempting to escape. By then, bystanders had come to her aid and stopped the man.[28] Such public assistance in bringing an offender before the magistrate was not only common, but expected in the era before an established police force. Smith presents an intrepid woman capable of protecting herself and her property.

This is not to say that all women who appeared at the Old Bailey were fearless or self-confident. There are cases of women who acted frightened or timid before the court. At her trial for assault and theft, Tamasin Allen claimed to be so ill she could not speak.[29] In a separate trial concerning theft, the court considered trying a woman for receiving stolen goods. She did not appear to give testimony and a brief note mentioned her deportment: "(Mary Heath was so much frightened, that the Court not thinking her to be a

[27] Samuel Richardson, *Clarissa, or the History of a Young Lady* (New York: H. Holt and Company, 1927, originally published 1748), 177.

[28] *OBSP*, January 1786 (t17860111-41).

[29] *OBSP*, October 1786 (t17861025-72).

receiver, and she having a good character, did not examine her.)"[30] This display of trepidation or anxiety had mixed reception. Tamasin Allen was convicted of theft while Mary Heath was not even required to give testimony about her involvement with stolen goods.

The reaction of the court to a woman's testimony or performance could vary greatly. For example, the court could take the lead in suggesting a verdict if the witness appeared weak. The grand jury, King has argued, could forcefully shape the outcome of a trial.[31] Unlike an assertive or even stubborn woman who would stand by her testimony, the apprehensive woman could be used by the court to bolster the decision already made by the jury. For example, when Jane Bearblock appeared as the prosecutrix in a burglary case she was questioned by a skilled lawyer for the defense, Mr. Garrow. He got her to admit that she was so terrified during the robbery that she could not positively identify the prisoner as having committed the crime. Garrow then repeated a similar line of questioning three times to stress that she was frightened and could not accurately accuse the defendant.[32] Despite this, the court overlooked her hesitancy to identify him and chose to sentence the defendant to death. In this instance, the fact that the defendant was a repeat offender probably influenced the decision more than the inability of the prosecutrix to clearly identify him.[33]

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[30] *OBSP*, May 1786 (t17860531-26).

[31] King, *Crime, Justice, and Discretion in England*, 243.

[32] William Garrow was largely responsible for championing an emerging idea of defendants' rights in court. See J. M. Beattie, "Scales of Justice: Defense Counsel and the English Criminal Trial in the Eighteenth and Nineteenth Centuries," *Law and History Review* 9, no. 2 (October 1, 1991): 221–267.

[33] *OBSP*, December 1786 (t17861213-82).

As we have already seen, women were not always hesitant to testify. Rather, some were adamant in their statements despite aggressive court questioning. When Ann Crutchley appeared as a prosecutrix charging a man with theft, she was quickly asked how frightened she was during the robbery. She stated that she was at first, but that he took so long that she began to take notice of him. Mr. Peatt, the defense lawyer, continued to press Crutchley about her emotional state at the time:

> *How long might it be from the moment you first saw him to the time of his putting the razor to your throat?* - Directly, as I saw him.
> *You was exceedingly intimidated?* - I was frightened at first.
> *How near did he hold the razor at your throat?* - Close to it.
> *You was exceedingly frightened?* - Yes.
> *Ready to fall down I presume?* - I was not.

Undeterred by her response, Peatt switched his line of questioning by suggesting that Crutchley was hesitant or unsure in her statement. Below are a few of the questions that he posed:

> *I believe when you first saw him, you hesitated a little as to his being the person that robbed you?* - No, I did not.
> *You are determined not to depart from the persuasion, that you knew him?* - I could not when I was sure I knew him; I never saw him before.
> *Are you sure the man you saw in the room was the man that did in fact rob you?* - Yes.[34]

Certainly some women could be pressured by aggressive lawyers, such as Garrow and Peatt, but others remained undeterred in their testimony. The testimonies of Jane Bearblock and Ann Crutchley illustrate the range of court reactions to a woman's performance in court.

[34]*OBSP*, February 1786, (t17860222-120).

Women responded to the judicial process in different ways. Some showed confidence. Others showed hesitation, fear, or confusion. Collet Moore, a witness called to identify stolen goods, was unable to respond to the first question posed to her. Instead, her answer to the question of why she was in front of the court elicited the confession that she was too shocked to speak amongst such gentlemen. She then asked for a moment to pull herself together, before responding to questioning. Collet was cautioned to speak the truth and then managed to adequately answer a dozen detailed questions regarding aspects of a robbery.[35] In another trial, Catherine Olding was asked to identify the defendant as the man she saw commit a crime. She quite inaccurately identified the wrong man, pointing instead to the constable.[36] Another woman, Frances Burrell, admitted to identifying a suspected thief that she did not actually see. She noted how "frightened and flurried [she was] when they asked me if that was the man; I swore he was the man." Burrell had just acknowledged to the court that she could not be sure the defendant was actually the correct suspect, as she had seen many more similar-looking men.[37] This is one example of the discretionary powers held by witnesses, as their display of uncertainty could prevent a conviction.

Women showed varying degrees of familiarity with the court process. Shocked silence was not always the response of someone who feared appearing before the court. The verbose testimony of witness Chrissey Smith shows that not all women were accustomed to providing testimony and it clearly weighed heavily on her mind. Halfway

[35]*OBSP*, February 1786 (t17860222-109).

[36]*OBSP*, February 1786, (t17860222-104).

[37]*OBSP*, October 1786, (t17861025-116).

through her questioning (which was largely to corroborate the testimony of her mistress), she earnestly stated that she, "never took an oath before, and . . . would not do it now to a falsity." This completely unsolicited confession came at the end of her response to the basic question of, "Did either you or the washerwoman taste the wine?" The court ignored her pledge and continued asking her simple questions.[38] It is evident that the court was simply moving through the case at its usual brisk pace, but for Chrissey this was a solemn and memorable event. These cases show that women presented a variety of demeanors at trial.

A woman's wifely expectations were also a matter of importance to the court. Not surprisingly, wives were held to higher moral standards than their husbands.[39] They often appeared as prosecutrixes in place of their husbands. If an unmarried woman brought a case to court, it was immediately recognized that she was either a widow or a spinster. This information was not directly available to the court when witnesses or defendants testified. Instead, marital status occasionally appeared in the line of questioning which often appeared abruptly.[40] A witness, Sarah Harris, was asked, "Are you a married woman?" To which she simply replied, "No, I sell fruit."[41] One gets the sense that the court was trying to determine who, if anyone, was responsible for her. When so many women were categorized and identified by marital status, it is possible

[38] *OBSP*, May 1786 (t17860531-85).

[39] Douglas Hay and Nicholas Rogers, *Eighteenth-Century English Society: Shuttles and Swords* (Oxford; New York: Oxford University Press, 1997), 51.

[40] See *OBSP*, May 1786 (t17860531-3), *OBSP*, October 1786 (t17861025-5), and *OBSP*, December 1786 (t17861213-2).

[41] *OBSP*, July 1786 (t17860719-97).

that Harris self-identified with her profession rather than her unmarried state. The court asked no follow-up questions. Presumably, the jury had already drawn conclusions about Harris based on her previous answer about her religious beliefs. As a single Jewish woman, she was not accountable to many institutions familiar to the court, including shared Christian beliefs and obedience to a husband.

A married woman's testimony was naturally the concern of her husband. The same legal system that operated under coverture, the legal concept which saw the husband and wife as one legal entity dominated by the man, implicated the man in his wife's dealings.[42] It could also create tension between the law and a wife's domestic duties. Both Ann Underwood and her husband appeared as witnesses at a trial for forgery. Her testimony revealed that she was aware of her husband's involvement in criminal activities, but did not take it before the magistrate. This excerpt illustrates her concern:

> *[Mr. Erskine] You did, you knew from the beginning to the end, that there was a wicked contrivance to defraud Mr. Slack, and you was quite happy and contented at all this?* – [Ann Underwood] Not very contented, I was affraid to divulge it; on Sunday the 16th, Mr. Underwood wrote the instructions on a sheet of paper. *You think yourself bound to obey your husband more than you are to obey God or any other man?* - Yes.[43]

Her response showed that she knew her legal obligation to take the defendants before the magistrate; however, in her mind, her duty was to her husband, and in this case, his complaisance.

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[42] For the eighteenth-century legal code concerning marriage, see William Blackstone, *Commentaries on the Laws of England, in Four Books* (London: Apollo Press, 1813, originally published 1766), chapter XV.

[43] *OBSP*, January 1786 (t17860111-2).

The courts consistently raised the point of marital status when examining women. The goal in doing so was twofold. First, to determine if a woman was to receive the legal benefit given to married women; mainly, that she was his legal responsibility and under his protection.[44] The law held that a married woman was subject to her husband's will; therefore, it was believed that a woman was coerced by her husband to commit a crime if both were charged. This usually resulted in acquittals for wives while husbands received guilty verdicts. Usually, the woman appeared as an accomplice to the man if they were married and even some where they were not.[45] A woman could be charged if her husband was acquitted, though this was rare.[46] The trial of William and Ann Adams for burglary provides a model case illustrating a married woman's legal benefits. The court accepted the testimony of several witnesses that mentioned that the couple was in fact married. Ann was acquitted while William received death.[47]

Not all cases involving a man and woman were as simple for the court to determine. The inimitable Garrow, who represented the defendants, once again aggressively questioned a witness about the marital arrangement that existed between Thomas and Elizabeth (also known as Jackson) Brigden who stood accused of coining. The following is the whole of Garrow's questioning of the witness:

> *Mr. Garrow, prisoners counsel. What was her name?* - I do not know.
> *Do not you know her name was Jackson?* - I do not know.

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[44] This legal tradition had its roots in the twelfth and thirteenth centuries, but was theorized at its peak by judge William Blackstone in 1763. See Dierdre Palk, *Gender, Crime and Judicial Discretion, 1780-1830* (Woodbridge: Royal Historical Society/Boydell Press, 2006), 21-22.

[45] Andrew and McGowen, *The Perreaus and Mrs. Rudd*, 28-29.

[46] Beattie, *Crime and the Courts in England*, 238.

[47] *OBSP*, December 1786, (t17861213-79).

> *Did not you know that the man was there for fear of being arested?* - I never heard that.
> *Do not you think the woman is his wife?* - I have reason to think otherwise; this is a dark cellar; there were no candles burning, but there were two that were warm, as if lately burnt out, but we could not observe the snuffs; they were by the side of the press.
> *Court. You say this woman goes by the name of the man?* - That is the name she gave in at the office.
> *What reason have you to believe she is not his wife?* - By what I have been told.[48]

Clearly, Garrow was focused on proving the marriage rather than disproving the charge. It is possible that he realized he stood a better chance of proving Elizabeth's innocence under the law rather than trying to acquit the couple. The court explicitly stated that she was entitled to the benefit of a married woman after another witness maintained that they were married. Thomas received a guilty verdict while Elizabeth was acquitted.

The court was also trying to determine whether the woman conformed to societal expectations. We have already seen the popular theory that women were weaker, more emotional, and required protection. Dierdre Palk argues that the State was conflicted about what to do with women that appeared as defendants.[49] Clearly, they had "undesirable" criminal traits, but they were also women and thought to require guardians. Again, the court was trying to determine the extent to which it could intervene in a woman's life. The situation was even more problematic if the woman was married and technically had a guardian in the legal sense. This complicated the case of a couple that had clearly cohabitated and been charged with theft. Farrell and Elizabeth (also known as Price) Kearnon were known to have "passed as husband and wife"; however, Elizabeth acknowledged she was legally married to another man and that they had been apart for

[48] *OBSP*, May 1786, (t17860531-73).

[49] Palk, *Gender, Crime and Judicial Discretion*, 130-131.

several months. It is unclear whether she believed she would receive some legal benefit from her married status. Instead, as she had not committed the crime in her husband's presence, it could not be argued that she had been coerced. Both she and Farrell were found guilty.[50]

The following questions asked of women demonstrate the court's concern about ideal femininity. Mary Anderson, a witness, had already been asked and told the court that she was not married. The prosecution then asked a series of questions to determine her chastity, or really, her sexuality:

> *[Mr Garrow] So you call living with Mr. Chant in the same room, living at home with your friends?* – [Mary Anderson] No, there are more rooms than one.
> *Upon your oath, is not that your situation precisely?*
> *Court. You need not answer that.*
> *Mr. Garrow. Did not you live in one room?* - There are two rooms; there are two bedrooms if you must know.
> *How many beds?* - Two.
> *Then there is a possibility of your being chaste[?]…Have not you passed for the man's wife for the last two years?*[51]

Notably, the court stepped in when Garrow's examination began to suggest a compromised living situation; however, they allowed it when the line of questioning directly concerned her sexuality. Mary attempted to manage her femininity by pointing out the impudence of Garrow's question, with her response ending in "if you must know."

Not surprisingly, the issue of chastity was the focal point of trials for rape, which was one of the few violent offenses that made it to court in the eighteenth century.[52]

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[50] *OBSP*, October 1786, (t17861025-59).

[51] *OBSP*, October 1786 (t17861025-5).

[52] Beattie, *Crime and the Courts in England*, 124.

Given the juries hesitation to convict men of the capital crime of rape, the trials focused on the characters of the prosecutrixes. According to legal precedent, women were expected to have good characters (which implied they did not have a sexually transmitted infection at the time of the event), to have cried out during the attack, and to have reported it immediately.[53] Women were clearly aware that the onus and potential for embarrassment was on them which could account for the low numbers of rape cases brought to court. In 1786, only four cases concerning rape appeared before the Old Bailey; all resulted in acquittals.[54]

When Mary Dixon charged the man she was apprenticed to with repeated rape, her character was examined more closely than the defendant. Several witnesses questioned by Garrow, who represented the defendant, were asked if Mary was "loose, idle, disorderly" or even "vicious." They swore that she was, "lewd," "lazy," and "gave her mind to low company."[55] It was unclear to the court whether she had received a sexually transmitted infection from the defendant or if she had gotten it from her first master. Garrow then began listing men's names and asked Mary if she knew them. This switch in his line of questioning planted doubt in the jurors' minds about her virtuousness. The trial concluded when the last witness suggested that the only men Dixon had been exposed to were honest. Therefore, she must have been at fault. This implies that the court based its acquittal not on the character of the man being tried for rape, but on what was deemed to be the weak or unvirtuous nature of the prosecutrix.

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[53] Ibid., 126.

[54] *OBSP* , searched for sexual offences > rape between 1786 and 1786.

[55] *OBSP*, October 1786 (t17861025-127).

Historian Sharon Block notes that a woman's decision to reveal rape or bring it before the court largely depended upon her social standing in relation to the man in question.[56] One of the few cases brought before the court in 1786 provides a model of what the juries looked for in a rape charge. When a servant girl, Elizabeth Smith, charged her master with rape the court asked if she had made any noise to alert others during the alleged attack and if she had informed or reported it as soon as she had the chance. She claimed that she was unable to as her master silenced her, but that she informed a female lodger the next morning. The matter went to court because Elizabeth's aunts heard from people in the community that she had been "ruined." In this case, social standing played a role in that the aunts believed their niece's reputation had suffered; however, their testimonies seem to have weakened Elizabeth's case, as they admitted they had not physically examined the girl or her linen for signs of sexual abuse. The lack of definitive proof quickly brought the trial to a close. The court strongly reprimanded her master for taking methods to persuade a member of his household, yet they acquitted him.[57]

That is not to say that women were always subjected to such inequalities before the law. A woman could certainly benefit by highlighting the problems in a man's reputation, as the case of Elizabeth Welch showed. Welch had been charged with stealing money from a man while they shared lodging one night. They had met earlier in

[56] Sharon Block, *Rape and Sexual Power in Early America* (Chapel Hill: University of North Carolina Press, 2006), 90.

[57] *OBSP*, October 1786, (t17861025-56). For more on the servant-master power dynamic and how it related to cases of rape, see Block, *Rape and Sexual Power in Early America*, 97 and Carolyn Steedman, *Master and Servant: Love and Labour in the English Industrial Age* (Cambridge: Cambridge University Press, 2007) for more on this relationship during a period of rapid modernization.

a pub and the prosecutor argued that she had lured him to room with her. He supposedly woke in the middle of the night to find his money and Welch gone. Several things worked against his favor during the case. First, the man admitted to having a wife and children, something that Welch brought up again in her defense statement. The court had already admonished the prosecutor, noting that it would have been better if he had returned to his family after he had left the pub. Next, the woman he had secured for his recognizance, or to vouch for him, did not appear, thereby weakening his case. Finally, the prosecutor had admitted to drinking, and the court believed Welch's defense that, "The prosecutor was drunk, and he was throwing his money on the table to me at the public house, telling me to keep it; I heard he had a wife and children, and I neither wanted him nor his money."[58]

The court often treated the woman leniently in cases where a man had been drinking and solicited her. The law made it clear that the prosecutor must have been sober and acting properly at the time of the theft. The court did not sympathize with the male defendants that drunkenly solicited women and found themselves victims of theft; therefore, it was believed that the men got what they deserved.[59] Welch's defense smartly acknowledged the flaws of the prosecutor and emphasized her better judgment to avoid an unchaste entanglement. The defendant, on the other hand, had neglected his patriarchal duties and indulged in drink which led to the alleged theft by the woman he had picked up.

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[58] *OBSP*, December 1786 (t17861213-48).

[59] Beattie, *Crime and the Courts in England*, 180 and Palk, *Gender, Crime and Judicial Discretion*, 70.

The female defendant or even witness is probably what immediately springs to mind when one thinks of women appearing in the late-eighteenth century courtroom. While many certainly did (263 women appeared as defendants in 1786), their other roles are usually ignored or downplayed. Closer study of women as prosecutrixes, either representing themselves or testifying in place of their husbands, as witnesses offering character testimony, or on a jury of matrons shows that women were frequently critical voices in the courtroom.

Women appeared as prosecutrixes seventy-one times in 1786. This number does not reflect those who were married and identifying stolen goods they had lost. Coverture, or marital unity, meant that men still appeared as prosecutors in indictments where it was clear that their wives' goods were stolen.[60] This doctrine appears to have been an understood formality, as wives frequently testified in place of their husbands. Forty-nine women appeared in place of their husbands before the Old Bailey in 1786. When Ann Thomas lost a few articles of clothing to theft, she explained: "I am wife of James Thomas; I lost the property on the 19th of last month . . . the gown was in the woman's apron, and the aprons in the man's breeches; they were about eight yards distance from each other; they are my property, I am sure of it."[61] Notably, she stated they were her goods, not her husband's. It goes without saying that her property belonged to her husband, but it is remarkable that he did not offer testimony in the trial. This implies that everyday usage was different from strict legal definitions and that that the court respected

[60] In 1786, thirty-two women appeared with their husband's to present such charges. See *OBSP* 1786 trials.

[61] *OBSP*, May 1786 (t17860531-51).

daily practice. Furthermore, it challenges our understanding of coverture as a strict legal doctrine that was in fact flexible in its daily administration.[62]

Widowed or spinster women, as they were referred to, also identified their property in court. Beattie notes that widows and spinsters made up 6.2% of prosecutors in his listing of prosecutors by occupation or status for the Surrey quarter sessions between the years 1743 and 1790.[63] He does not go on to discuss this demographic, despite the fact that he examines knights and gentleman prosecutors which made up roughly the same number. Mary Price's testimony as a prosecutrix showed a tenacious instinct to recover her stolen lace. The widow said she had been robbed by the same thieves the week before and in this case, the defendant ran up to her, took the lace, and ran. As in other cases mentioned, Price pursued the man; however, she also dramatically related her concern at the time of the robbery. She stated, "I was determined to die before I let it [the lace] go."[64] She also noted that many people saw the episode, that she recognized the man from the earlier robbery, and that other women were willing to help detain him while they recovered the lace. Price's decisive testimony quickly led to a guilty verdict for the defendant.

Notably, Price had received crucial assistance from neighborhood women during and after her pursuit of the defendant. At least a dozen court cases involved theft containing witness or prosecutrix testimony in which the alleged female victim or

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[62] For discussion of coverture's varied application as it tied to a patriarchal system, see Palk, *Gender, Crime and Judicial Discretion*, 22-23.

[63] Beattie, *Crime and the Courts in England*, 193.

[64] *OBSP*, July 1786, (t17860719-68).

bystander pursued the defendant.[65] Susannah Greenaway's testimony in a housebreaking case provides a good example of such a statement: "I live next door; I went out and caught the prisoner with the petticoat upon him; it was between four and five in the afternoon; I followed him and cried stop thief; he took the petticoat from under his surtout coat and dropped it; I took the petticoat and went after him; I never lost sight of him till I took him."[66] In this case, Greenaway did not simply recover the stolen goods, but clearly understood that by pursuing the man, she ensured that her neighbors could bring him before the court if they so chose. She also noted that she kept sight of him which was critical for her ability to identify him in court if required. This suggests not only an awareness of her neighborhood, but also of the judicial process. Greenaway's bold actions and fortitude clearly show a strong woman willing to engage herself in the judicial process.

Elizabeth Spicer was another such woman. After William and Sarah Taylor's pub was robbed, Sarah called on her servant, Elizabeth, to follow the men she suspected. Elizabeth stated that she ran after the men, one of whom stopped and confronted her. She related the following exchange between them: "[he] said d - n your eyes where are you going? I said what is that to you; he said I was come to watch him; I told him I was not come to watch him, or any body else, I was going about my mistress's business; and he struck me over the left breast."[67] She was then assisted by a man who caught hold of the defendant. This dialogue shows that not only did Elizabeth take her mistress's charge

[65] See Chapter Four for specific statistics concerning female pursuit of suspected criminals.

[66] *OBSP*, August 1786 (t17860830-35).

[67] *OBSP*, August 1786 (t17860830-33).

seriously, but that she was also willing to stand up for herself when threatened by the suspect. While the Taylors, her employers, utilized her as security in an attempt to procure their property, Elizabeth obviously saw herself as responsible for their goods. Not only was she unafraid of pursuing the suspects, but she was also not alarmed about a verbal and physical confrontation.

In the years before adversarial trials became common, witness testimony was crucial as they had wider freedom to shape evidence. If a woman had witnessed a crime, she corroborated the story being presented. If she had not, she provided "pivotal" impressions of those involved.[68] Witnesses appeared to provide character judgment, which achieved one of several things. It allowed the court to determine the respectability of the defendant, which was critical in deciding a verdict and sentencing. Witnesses also lent credibility to the defendant's testimony, stating how long they had known the person, what his or her occupation was, and if he or she were a valued member of their community.[69] All this created a complex portrait of the defendant that was necessary to build a defense. After all, how would the grand jury support any defense offered if it did not believe the defendant? Therefore, witnesses called to support one's character were perhaps more important than even the defendant's testimony.

The appearances of female witnesses provide some of the best opportunities for showing the agency of women in the courtroom. Not all women sought out the magistrate to give statements. In fact, women did not always appear voluntarily before the court. The character testimony offered by Martha Freeman was clearly valued by a

[68] King, *Crime, Justice, and Discretion in England*, 62.

[69] Beattie, *Crime and the Courts in England*, 440.

man charged with assault and theft. Before testifying, Freeman explained how she came to appear before the court: "on Monday he sent to let me know that he was taken up, which was a thing he was unguilty of, he begged that I would go down to him."[70] She went on to state how long she had known the defendant and spoke to his honest good nature. The character evidence given by two women in 1786 revealed that they did not volunteer such information, but were subpoenaed to provide their impressions. One was a neighbor to the defendant, while the other helped her husband run a pub. Both were in good positions to witness disturbances or remark upon the defendant's comings and goings.[71]

Character witness testimony allowed women an opportunity to shape to the judicial process. The reported character evaluations were brief, as the statement by Mary Beaumont illustrates: "I know nothing of the muslin; the prisoner lodged in my mother's house about three months, I never saw any harm by her in my life, she went out to work, she has no husband."[72] Character statements were usually delivered right before the verdict was passed. The most helpful of these accounts illustrated a long period of familiarity, but also a close knowledge of the individual's temperament. These accounts often came from employers, neighbors, those who let rooms, and even relatives. Mary Evett's testimony concluded with such an opinion, "[he] has been a sober youth, till very lately he has give himself into the love of pleasure; he had an undeniable character."[73] In

[70] *OBSP*, July 1786 (t17860719-7).

[71] *OBSP*, October 1786 (t17861025-123), *OBSP*, February 1786 (t17860222-120).

[72] *OBSP*, July 1786 (t17860719-51).

[73] *OBSP*, October 1786 (t17861025-10).

this case, the court agreed with Evett's assessment, among others, and sentenced the defendant to death.

The trial of John Hogan for murdering a servant girl provides one of the clearest examples of how decisive a woman's testimony could be. Hogan was accused of violently assaulting and murdering Anne Hunt. Throughout the lengthy court case, testimony was given by several neighbors, a surgeon, and those that that dealt with Hogan, mainly a pawnbroker and the woman he lived with at the time. The case unfolded rather dramatically with the prosecution's opening statement describing the graphic details of Hunt's injuries. Garrow, for the prosecution, then alluded to the testimony that would then be given by the woman Hogan had been living with, Elizabeth Pugh: "if she is believed, there can be no question of the guilt of the prisoner: Gentlemen, to this woman the prisoner has confessed the murder."[74]

It is clear that the court was being charged with not strictly determining Hogan's guilt or innocence, but with establishing the veracity of Pugh's involvement and testimony. This excerpt from her statement acknowledged Hogan's guilt, but also implicated Pugh in knowing about the crime and not bringing it before the magistrate: "I said, I hope you have not been guilty of the murder, he said he was very unhappy, for he had done that fact, and he was guilty of that he had been accused of . . . I told him I would go and tell of it, he said, if I did, I should be hanged, which deterred me from making a discovery."[75]

[74] *OBSP*, January 1786 (t17860111-1).

[75] *OBSP*, January 1786 (t17860111-1).

The grand jury chose to believe Pugh's telling of Hogan's dealings. This was a remarkable case: for its brutality, for the tenacity of Anne Hunt's master to bring Hogan to court, and for Pugh's pivotal testimony. The Gentlemen's Magazine, "a faithful mirror of our times," very briefly recounted the Hogan trial for its subscribers. Before launching into details about Hogan's execution and dismemberment, prominence was given to Pugh's testimony, though it does not mention her by name. The magazine specifically stated that the woman Hogan cohabitated with provided the critical evidence against him in the trial.[76]

Women watching the trial at the Old Bailey also impacted the proceedings. In the forgery case of Eleanor Kirvin, a guilty verdict requiring death was returned after a lengthy deliberation regarding the capital crime. Kirvin then "pleaded the belly" or claimed she was pregnant. The record then states that a jury of matrons was impaneled and privately examined her to determine if she was with child. They found that she was "with quick child" and her sentence was then respited.[77]

The use of the jury of matrons further shows how women operated in the courtroom. These juries were usually composed of twelve "worthy and discreet" married women and had been traditionally used in cases where a pregnant widow's inheritance was in question or to prevent execution as a result of a capital conviction.[78] These juries, which were not held to regular trial rules and requirements, were impaneled *de circumstantibus*, meaning that matrons from the court audience were selected following

[76] *The Gentleman's Magazine* 59 (1786): iii, 77.

[77] *OBSP*, October 1786 (t17861025-65).

[78] Thomas R Forbes, "A Jury of Matrons," *Medical History* 32, no. 01 (1988): 23–33.

an appealed conviction. They were then tasked with determining whether the woman was pregnant and if her child had quickened, which signified the beginning of life.[79] Juries of matrons were not new to the eighteenth-century court, as they had appeared in the early-thirteenth century and had roots in Roman legal tradition.[80]

The basic examination to "determine the delicate questions about the female body" involved physical inspection of a woman's breasts and abdomen.[81] It was believed that these juries of women were the best suited to "read" women's bodies.[82] Obviously, the farther along a woman was in her pregnancy, the easier it would be to determine the veracity of her claim. In the case of Kirvin, it is possible that her sentence was not actually carried out, as she does not appear in the sentencing and execution summaries of the Gentlemen's Magazine. Beattie suggests that pleading the belly rarely resulted in execution after the woman gave birth; in essence it became a pardon.[83]

The image of a woman before the court was certainly more influential and varied than historians have emphasized. She was not simply a defendant, placed at a disadvantage before an all-male court that would render judgment against her. Instead, as

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[79] J. Oldham, "On Pleading the Belly: A History of the Jury of Matrons," *Criminal Justice History* 6 (1985): 16-18.

[80] Ibid., 2. By the nineteenth-century, the courts increasingly relied upon medical men to determine such claims which were frequently seen as a barbaric formality. See Forbes, "A Jury of Matrons," and "The Jury Of Matrons In Criminal Cases," *The British Medical Journal* 1, no. 895 (February 23, 1878): 268.

[81] Ibid., 5.

[82] Block, *Rape and Sexual Power in Early America*, 109-110.

[83] Beattie, *Crime and the Courts in England*, 430-431.

these case examples illustrate, there was no set formula for a woman's appearance or performance before the court.

CHAPTER III

CASE STUDIES: UNUSUAL BUT REVEALING TRIALS

> 'Betty, [she said] if please God I die, I hope you will do your endeavour to see justice done me.' – Elizabeth Rose, witness.[84]

Ann Rose knew she was close to death when she charged Elizabeth Rose with bringing her case to trial. Ann had been involved in a violent confrontation with another woman and had prematurely delivered a child. She and her infant died soon after and her adversary was charged with the murder of Ann and her child. Remarkably, Ann saw herself as represented by the eighteenth-century legal system and believed her friend Elizabeth could successfully represent her interests.

This chapter aims to build upon the previous chapter's exploration of women's appearances before the court and the jury's expectations of the feminine ideal by examining three cases that appeared before the Old Bailey in 1786. First, the above-mentioned trial of Frances Lewis for the murder of Ann Rose will show familiar concepts of popularly perceived feminine characteristics and marital status at work within the courtroom. Perhaps more remarkably, this case also features the rare charging of a woman for murder and a woman's perception of her legal rights, suggesting that perhaps women assumed their rights would be protected by the legal system. The following prosecution of Thomas Oates, Richard Thynn, and Robert Walmsley for the manslaughter of Mary Oliver again places a woman's character and chastity on trial, especially as the victim was a prostitute. This case lends the added complexity of conflicting testimony, medical opinion, and most importantly, the power of status to

[84]*OBSP*, April 1786 (t17860426-84).

determine the verdict. The final trial of Francis Shurley for the murder of Jane Reed will foreshadow issues that are considered in the next chapter. The death of a woman in a house of shared lodging shows how involved women were in each other's lives. Once again, a woman sought redress through legal means and enlisted the help of her female network to do so. The description of a woman being "in a passion" also appears within several of these cases. This implies that the phrase carried with it a shared assumption regarding feminine emotion and a woman's self control. Overall, these cases offer examples of commonalities between courtroom experiences while calling attention to how the court responded to a few extraordinary circumstances.

"A fine life you are leading, to sit up all night, and drinking, and getting into these affrays, and living in this abominable state!"[85]

Elizabeth Rose reported hearing those words spoken by a woman who had just been in a fight, given birth, and who would soon die. The following testimony offered by women, their partners, and medical practitioners sheds light on a particularly violent and unusual situation. The trial of Frances Lewis for murdering Ann Rose is worth examining not only for this uniqueness, but also for what it tells us about court expectations. Most importantly, a woman's understanding of her legal rights became a dying woman's final concern. Issues of marital status and responsibility once again appear in this case, as do gendered expectations that we saw in the previous chapter.

In April of 1786, two couples met to relate some unfortunate news concerning one of the woman's sons. Frances, the defendant, had just lost a son to an accident at sea and had come to tell her brother and the woman he referred to as his wife, Ann. The tone of

[85] Ibid.

the gathering quickly turned hostile as Ann told Frances that it was better her son die than come home to nothing. Frances was infuriated and began cursing while she and Ann slapped and shook one another. Their male partners looked on and continued drinking as the women went into the yard where the fight escalated. A female lodger testified that the scuffle eventually died down. The two couples then made up and shared a small meal before going their separate ways.

What strikes modern middle class readers is the level of violence exhibited between two women that were almost considered family. The indictment contains the most comprehensive description of the fighting that took place: "Frances Lewis was indicted for that she . . . [did] strike, beat, and kick the said Ann Rose, in and upon the head, breast, back, and sides, and did cast, and throw her down, unto, and upon the ground with great force and violence, giving her . . . several mortal brokes, wounds, and bruises."[86] Ann herself was not without fault as she allegedly attacked not only Frances, but "when her husband came in, her passion was so great, that she took some red hot fire out with her hand, and hove it at him."[87] She proceeded to hit him over the head with the fireplace poker before he took a stick to retaliate. Both were stopped by the lodger.

The story could easily have ended there and never made it to court. Violence was a common occurrence in the eighteenth century. Seventeenth-and eighteenth-century societies often used aggressive means as a way to solve personal disputes, punish, and

[86] Ibid.

[87] Ibid.

even teach.[88] Notably, violence was a part of life, exhibited by individuals within their homes and communities and by larger societal systems. Crowds often gathered to watch the spectacle of a public execution which could be carried out by hanging or burning.[89] Or they could witness milder forms of punishment that included burning or branding the hand and flogging.[90] Such displays were meant not only to entertain the masses, but to deter them from engaging in criminal activity.[91]

Frances was put on trial because Ann died shortly after their struggle. Ann, who was six months pregnant at the time, went into labor and delivered a son that died within a few hours. She languished and died a few days later. Frances was then charged with Ann's murder and for the murder of her infant son. The trial contains rich testimony from the lodger, a woman (possibly the mother or sister of Ann) who helped her deliver, two men who cohabitated with Ann and Frances, a midwife, and two surgeons who briefly saw Ann before she died and then performed an autopsy. Their statements do not just provide a variety of viewpoints concerning the unfortunate incident; they also hit upon common social concerns such as marriage or cohabitation and responsibility.

Though it is difficult to determine how common cohabitation outside of marriage was in the eighteenth century, Rebecca Probert argues that the numbers are usually

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[88] J. Beattie, *Crime and the Courts in England, 1660-1800* (Princeton N.J.: Princeton University Press, 1986), 74 and Robert B. Shoemaker, *The London Mob: Violence and Disorder in Eighteenth-Century England* (London: Hambledon and London, 2004), 153-154.

[89] Randall McGowen, "Making Examples" and the Crisis of Punishment in Mid-Eighteenth Century England," in *The British and their Laws in the Eighteenth Century*, ed. David Lemmings (Woodbridge, Suffolk, UK: Boydell Press, 2005), 182.

[90] Beattie, *Crime and the Courts in England*, 75, 133.

[91] Randall McGowen, "The Body and Punishment in Eighteenth-Century England," *The Journal of Modern History* 59, no. 4 (December 1, 1987): 651.

overestimated for figures regarding cohabitation in rural parts of England by the end of the century.[92] Though she does not offer insight regarding London rates of cohabitation, I suggest that they were higher. As we previously saw, the rate of female crime was also exceptionally higher in London which drew large numbers of people from the country.[93] The court had less to do with labeling such relationships in order to condemn them. Rather, the issue of cohabitation was important to the court because it determined the legal rules by which a couple was judged.[94] As we saw in the previous chapter, the court looked for evidence of marriage such as reputation in addition to cohabitation. For instance, if a couple that had been living together was known to have passed as husband and wife, the court generally treated the couple as married. In doing so, the man was responsible for his partner's debts and could be said to have coerced her to assist him in crime.[95]

When the trial opened, the partners of Ann and Frances were referred to as their husbands. It was only when directly asked by the court that James Buckley clarified that he was not in fact married to the defendant. The court must have also doubted Ann's marital status, as they asked James, "The deceased's man was not her husband neither it seems?"[96] When he stated that they too cohabitated, the court exclaimed, "A scandalous

[92] Rebecca Probert, *The Changing Legal Regulation of Cohabitation from Fornicators to Family, 1600-2010* (Cambridge: Cambridge University Press, 2012), 62.

[93] Beattie believes that rural community pressures were restrictive and resulted in communal sanctions which lowered crime rates compared to urban centers which saw a lack of effective communal control or accountability. See Beattie, *Crime and the Courts in England,* 240-241.

[94]Probert, *The Changing Legal Regulation of Cohabitation,* 89.

[95] Ibid., 80.

[96] *OBSP*, April 1786 (t17860426-84).

state you all live in!"[97] From that brief outburst, it is unclear whether the court was shocked at the cohabitation or at the apathy exhibited by the male partners during the confrontation. James's statement soon shed light on the court's stance when the court noted, "So you and Mr. Lewis, that lived with these two women, you stood by, and suffered them to pull themselves to pieces in this manner?"[98]

We have already seen that eighteenth-century society operated with a particular set of assumptions regarding the roles of married men and women, especially in terms of property. The duty to protect one's wife was implicit in the concept of coverture. Here we see a case that does not neatly fall into the category of married rights and responsibilities, yet the court appeared to hold the men to a double standard. On the one hand, the court gestured towards the moral and legal ideal while at the same time recognizing pragmatic masculine realities. While the main goal of the trial was obviously to determine if Frances intended to murder Ann, the court also made a point of revealing masculine shortcomings, thereby implicating the men in her death. The court was clearly indignant for two reasons. First, not only could the men not clearly remember and testify about the fight because they were drunk, but secondly, they also admitted to being unable to separate the women. In a society that expected its men to protect and control the so called "saucy" or "passionate" women, these men certainly failed.

The actions of the three female witnesses provide a stark contrast to the men's ineffectiveness. The lodger that was previously mentioned actually did manage to stop the fight between Ann and her partner despite the fact that one brandished a hot coal and

[97] Ibid.

[98] Ibid.

the other a stick. Her testimony also supports a representation of the murder victim as an overly emotional woman, noting at least three times how "the deceased was in a passion."[99] The court then heard from Elizabeth, a possible relative to Ann as they shared the same last name. Following the fight and realizing that Ann would soon be brought to bed, Elizabeth sought the help of a midwife. After the delivery, she then went for parish relief and visited the apothecary for her. Finally, Phebe, the midwife that was called, assisted Ann though she had already prematurely delivered her child. The next day she quickly returned upon hearing that Ann had taken a turn for the worse. The court made a point of noting how good it was of Phebe to assist "this poor woman."[100] Certainly, these women could not be accused of ambivalence; instead, they appear to have followed common practices illustrating female agency.

Ann is one of the more complex figures featured in the trial. On the one hand, she was portrayed as a poor pregnant woman. On the other, she was a fiery passionate woman that engaged in multiple physical confrontations, of which she was the instigator. In fact, the court makes a note of her inhumanity to Frances upon hearing the news about her son's death. It was Frances, that had "the feelings of a mother [awakened]" according to the court's summary of the case, not Ann, who was expecting a child.[101]

One of the striking things about this case, aside from the complexities of motherhood exhibited by Ann and Frances, is Ann's awareness and assertion of her legal rights, which were mentioned twice during witness testimony. When asked if Ann and

[99] Ibid.

[100] Ibid.

[101] Ibid.

Frances generally got along, Sarah, the lodger, could not confidently answer. Instead, she noted that Ann did tell her that if she survived the ordeal she would get a warrant taken out against Frances for the murder of her child. By the time Ann spoke to Elizabeth, she was aware that she would not live for long. She then charged her relative to "take up that wicked hussy for murdering me and my child."[102] This abusive language showed the extent of Ann's anger. Remarkably, though, she sought her vengeance through legal redress and assumed that her rights would be defended in court following her death.

Few women were actually charged with murder or manslaughter and then brought before the Old Bailey. Clive Emsley argues that the principle of coverture kept many women from being charged with a crime. Instead, the gendered nature of crime meant that more men were charged and appeared before the court.[103] Frances was one of only two women charged for a killing offense in 1786.[104] The other woman proved to be insane and was institutionalized. To put this in perspective, the previous five years saw fifty-one cases of murder or manslaughter brought to court.[105] Of the defendants, seven women, five of whom were charged with infanticide. The fact that from 1781 to 1785 only two women were charged with killing another adult shows how rare it was to take up a woman for this offense. Frances's trial had the added complexity of a second charge of murder for the death of Ann's infant.

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[102] Ibid.

[103] Clive Emsley, *Crime and Society in England, 1750-1900* (New York: Pearson Longman, 2010), 98-99.

[104] *OBSP*, searched for killing offenses in 1786.

[105] *OBSP*, searched for killing offenses from 1781 and 1785.

Once the case made it to court, the grand jury's verdict was heavily influenced by the judge's opinion, as it was with many other cases. In regards to Frances, Judge Eyre clearly valued the surgeon's opinion over the conflicting testimonies offered by the witnesses. The surgeon stated that Ann probably would not have died from the injuries she received had she not been pregnant at the time. Eyre then explained to the jury that Frances should be charged with manslaughter. He again portrayed Ann as the aggressor in the incident by pushing Frances to "the very tenderest point, in which a woman could be urged to passion."[106] Notably, her emotional state was described as tender. This implied not only an affectionate maternal instinct, but also sensitive weakness. The court believed Frances was wounded as a mother and as such, was at her most vulnerable. The familiar label of a passionate woman was again brought up, but assigned to Frances, not Ann. The grand jury found Frances guilty of manslaughter, not murder. The judge's influence is most clearly seen in the next charge of murdering Ann's infant. Eyre explicitly recommended an acquittal, stating it would be improper to charge Frances since public justice had already been done. The jury agreed and acquitted her of murdering the infant.

This trial illustrates some of the complexities surrounding women in the court. For one thing, charging a woman with murder was rare. This case had the added complication of a premature delivery and death of a child in addition to the main charge of murder. Perhaps more striking was the awareness and belief in a woman's legal rights, as exhibited by the victim before her death. The familiar historical narrative places women on trial, but rarely presents them utilizing rights that they clearly possessed.

[106] *OBSP*, April 1786 (t17860426-84).

Feasibly, Ann even took these legal rights for granted by assuming that a case involving the death of a woman committed by a woman would be taken seriously by the all-male court. She believed the court would endeavor to mete out justice. It must also not be forgotten that as defendant, Frances was allowed certain legal privileges. By the mid-eighteenth century, the accused had the right to a lawyer's advice during questioning, the ability to call evidence into question by cross-examining the prosecution's witnesses, and the right to know what evidence was being presented against him or her.[107] These women and their situations within the court illustrate the highly individualistic nature of eighteenth-century court proceedings.

"My observation is this, that if a sick person gets wet, and this wet hastens his death, he probably will feel the effects of this wet in half an hour or an hour."[108]

On a cool night at the end of September 1786, two women found themselves without food or lodging for the night. One was in poor health so both took refuge in a hayloft to escape from the rain that had begun to fall. They managed to get some sleep before three men found them. The men harassed the women and drove them back outside. By morning, the woman that had been ill was dead. The three men were charged with manslaughter. Obviously, this is a simplified version of what happened. Before drawing any conclusions from the case, we need to learn more about the players in this particular trial.

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[107] Beattie, *Crime and the Courts in England*, 276. Previously, defendants had few rights under Marian legislation in which the court's main goal was to determine a person's guilt. By the early-eighteenth century this began to change as courts started dismissing cases for lack of evidence or insufficient grounds to charge, meaning a defendant would not be tried on simply suspicious grounds. See Beattie, *Crime and the Courts in England*, 271, 273-275.

[108] *OBSP*, October 1786 (t17861025-20).

Mary Oliver and Mary Burrows were only vaguely acquainted that night they spent in the hayloft. They shared dire circumstances and professions, as they were both "unfortunate girls," or prostitutes.[109] Oliver had been ill and her mistreatment by the men appeared to have caused her death or so the trial would determine. Burrows provided the only female testimony in the case. Her account of what happened was largely corroborated by the statements made by two male employees of the hayloft owner. The opinions of two surgeons then conflicted with these descriptions, but the case was completely determined by the testimony of one final witness. Critically, the three defendants were soldiers and the character statement given by their colonel quickly brought the trial to a close.

The trial opened with Burrows's account of the pathetic conditions she and Oliver experienced. Starving, they had made their way to the hayloft and passed an uneventful night; however, the situation worsened when one of the soldiers discovered the women. Burrows suggested that one of the soldiers attempted to solicit them but was rebuffed by Oliver who "begged of him not to meddle or make with her for she was so ill."[110] After being refused, he left them alone only to return with the other two soldiers and four buckets of water, saying "there are two whores up in the hay loft, let us go and wash them down."[111] After initially sprinkling water over them, the soldiers began throwing the buckets of water over Oliver and Burrows. When the water ran out, they threw excrement from the street and the gutters. They women fled and managed to find a place

[109] Ibid.

[110] Ibid.

[111] Ibid.

to build a small fire where they dried themselves a little. That night they slept in the hay ricks and when Burrows woke, Oliver was dead.

The employees of Mr. Shipcot, the hayloft owner, testified next. The chaise washer explicitly stated that he saw the soldiers go into the stable and throw water over the women before throwing excrement. The other witness, a saddle-horse keeper, did not actually see the incident, but testified that the soldiers came up to him "laughing and hallooing" about their exploits.[112] He admonished the men, saying that had he been there he would not have allowed them to throw the water over the women. Notably, both accounts supported Burrows's version of what transpired.

The same was not true of the statements given by two surgeons that examined Oliver's body. Mr. Degge, the first surgeon, described the various illnesses that Oliver exhibited, noting that, "this woman was loaded with diseases, venereal, bilious, flux, and an ill state of her lungs."[113] The court was particularly interested in the presence of venereal disease and pressed Degge as to whether it was an old or recent malady that could have caused her death. Despite the fact that Oliver suffered from a variety of medical complaints, the focus was on venereal disease.

As we saw in the first chapter, the presence of venereal disease suggested that a woman was unchaste. What is strange about the court's handling of Oliver's trial is the fact that they knew from the beginning that both women were prostitutes, and therefore immoral, yet were determined to find out if the soldiers had sexual relations with the women. Though Burrows had already mentioned that the men were rebuffed, the court

[112] Ibid.

[113] Ibid.

again asked if she or Oliver had been with the soldiers. Although they appear to have been initially sympathetic to the plight of the women, they became doubtful about their answers when swayed by defense.

The appearance of a medical authority could have influenced the court's opinion. The surgeon did not believe that venereal disease was responsible for Oliver's death. Nor did he believe that throwing water over the sick woman killed her. On this point, he was most adamant. The following exchange illustrates how precise Degge believed his diagnosis to be:

> *Court. Can you determine the time in which this woman would have died, if the water that had been thrown over her had aggravated her disorder; can you take upon you to say, in what time the death would have happened?* – Yes, I think I can; for if this woman had died soon after this water was thrown over her, the death would have been by throwing water upon her; but she laid six or seven hours after.
> *Do you think that that hastened her death?* – Not in the least, it could not hasten her death.
> *Have you always been of this opinion?* – Exactly, always of the same opinion.
> *If she had died two hours earlier, should you have thought that [having water thrown on her] was the cause of her death?* – I expected her to die in a quarter of an hour, or half an hour.
> *Do you mean to state a[s] a professional man, that that would have been the case; would it not depend on the degree of sickness or weakness?* – It would not; if a person receives an injury by water, certainly he should die soon after.[114]

The court clearly asked Degge whether he was capable of making judgments regarding Oliver's time of death. His overconfidence is evident in the claim that she would have died within fifteen to thirty minutes if her death was caused by the water. The lawyer Garrow reappeared to remark on the absurdity of such a claim. First, he sarcastically asked Degge whether he had ever been caught in the rain and died within a half an hour. Then, he quite seriously asked him, "Did all your patients under venereal complaints die

[114] Ibid.

in half an hour when they were wet through?"[115] Degge then conceded that some allowances for proper care could be made.

The inclusion of medical testimony, or forensic medicine, was on the verge of a major transition by the late-eighteenth century.[116] Medical experts found themselves in a peculiar place in the courtroom. By the late-eighteenth century, uniform practices concerning inclusion of medical opinion had yet to be established. Instead, there was a fine line between medical fact and opinion, as Degge's testimony shows. Garrow and the court pressed the surgeon about whether he was truly able to make claims regarding the victim's time of death, especially considering Degge's presentation of his opinion as medical fact. Garrow's sarcastic questioning certainly undermined the confidence the court might have previously had in this expert's opinion.

This hesitancy on the part of the court was not uncommon. Juries were often conflicted about relying solely upon medical testimony, especially if the medical expert used terms that were unfamiliar to the court.[117] On the one hand, juries often sought the decisive answers that a medical expert could provide, thus strengthening justification for a verdict. On the other hand, juries had no problem setting aside medical testimony that

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[115] Ibid.

[116] The appearance of surgeons in this 1786 trial was not unusual. Coroners, who rarely had medical or legal knowledge themselves, often called upon physicians, surgeons, apothecaries, and midwives to provide their professional opinions. See Thomas R. Forbes, *Surgeons at the Bailey: English Forensic Medicine to 1878* (New Haven: Yale University Press, 1985), 11. This is not to say that these medical experts were honored to present their findings in court. They were not well-paid, testifying took up valuable time that could be spent earning a living, and their positions were not automatically respected in the court. See Catherine Crawford, "Legalizing Medicine: Early Modern Legal Systems and the Growth of Medico-Legal Knowledge," in Legal Medicine in History, ed. Michael Clark and Catherine Crawford (Cambridge: Cambridge University Press, 1994), 93.

[117] Forbes, *Surgeons at the Bailey*, 28-29.

appeared unsure or ambiguous. In the following statements, Justice Gould clearly expressed his opinion about the relationship between the jury and medical testimony. He noted, "They [the jury] are not to be hood-winked or blinded; though not persons of professional skill, they are endued with common sense," and, speaking directly to the jury, "Surgeons are called only to assist your judgment, they are not the people to determine this or any other case; you are to exercise your own judgment."[118] Catherine Crawford argues that the common-law legal approach favored oral evidence and jury opinion at the expense of expert testimony.[119] Given the frequent ambiguity expressed by medical experts, the court remained highly individualized in the rendering of verdicts, relying on forensic opinion or discarding it entirely.

John Crouch, the second surgeon to testify, appeared much more doubtful about determining the cause of Oliver's death. When asked the same questions as Degge about what could cause or delay death, keeping in mind the woman's diseased state, Crouch hesitated. Answers like, "I cannot say," "it might," and "it is hard to say," illustrate the uncertainty of the surgeon's opinion.[120] When the court finally pressed him for a clear answer regarding the cause of death, Crouch said it was more likely that exposure exacerbated her existing illnesses, rather than the water. Satisfied, the court briskly moved on to its final witness.

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[118] *OBSP*, August 1786 (t17860830-95).

[119] She goes on to claim that the court valued expert opinion as evidenced by their very presence in the courtroom and that the common-law system was simply slow in incorporating forensic medicine. See Catherine Crawford, "Legalizing Medicine: Early Modern Legal Systems and the Growth of Medico-Legal Knowledge," in *Legal Medicine in History*, ed. Michael Clark and Catherine Crawford (Cambridge: Cambridge University Press, 1994), 108.

[120] *OBSP*, August 1786 (t17860830-95).

Rather dramatically, all the officers of the soldiers' regiment appeared. Only the colonel actually testified. Colonel Dundass asserted that he had known the men for several years and that two of them were married. Overall, he trusted their judgments and characters, "[believing] them perfectly incapable of doing any such thing [as they were charged]."[121] He noted that every off duty officer was present and prepared to give a positive character statement of the soldiers. In a final showdown in the fight for court sympathy, the soldiers gained the upper hand. Hearing the opinion of the colonel, a model of male and military respectability, the court immediately noted that they were satisfied with his testimony and believed the same would be true of all of the officers' statements. The three soldiers were then acquitted.

This case presents several familiar themes. Again we see a battle of characters attempting to gain court sympathy. The court was weighing the characters of the seemingly immoral women against the potentially irresponsible men. The presence of sexually transmitted infections in Oliver must have also placed her at a disadvantage, as she had been an unchaste woman. Finally, the importance of character statements is clear from the testimony of Colonel Dundass, who must have believed the same as he brought all the officers from his regiment to testify. Dundass noted that two of the soldiers were married. Earlier, the court had made a point of determining if the men had misused the women in the hayloft so as to determine if they failed in their patriarchal duties. It was the colonel who presented the most authoritative and therefore convincing figure in the trial. His solid presentation and support bolstered the ambiguous reputations of the soldiers.

[121] Ibid.

Yet for all these recognizable concerns, this trial makes explicit an issue that was always present in the eighteenth-century courtroom: that of status. Given that the trial revolved around the death of a prostitute, it is surprising that such pains were taken to secure testimony from multiple witnesses and medical professionals. When prostitutes appeared before the court they were not always taken seriously or even allowed a trial.[122] It is arguable that in Oliver's case, the fact that she was a poor woman who died after being a target of male abuse might have elicited sympathy from the court and explain their serious handling of the case.

While the social standing of the prostitutes versus the soldiers was the first duality in reputation clearly present in the trial, the question of status was again raised with the testimonies of the employees and the surgeons. The statements offered by Burrows, the chaise washer, and the saddle-horse keeper all matched to support a version of the story where the soldiers had inhumanely thrown water and excrement on the two women. Logically, the next step was to prove whether or not this caused Oliver's death. The court goes to great pains to solicit medical testimony that could decisively answer this question. When the two surgeons failed to convincingly explain the cause of death, the jury had no qualms about disregarding their testimonies. Finally, the testimony of Colonel Dundass provides the most obvious example of preferential status in this trial. The court immediately chose to believe his opinion that the men could not have acted in such a manner in spite of witness testimony proving otherwise. Ultimately, the court believed the bold opinion of the colonel.

[122] In 1766, a woman charged with theft was acquitted, as "[it] being only a dispute between a bawd and a whore about property." See *OBSP*, July 1766 (t17660702-12).

The sharp turn this trial takes, from initially presenting testimony that pointed to the soldiers' culpability to opinions that absolved the men, builds upon our understanding of eighteenth-century gendered expectations. The women were at somewhat of a disadvantage as their profession implied that they did not conform to images of feminine respectability. Conversely, the colonel's status as a valued leader of men carried quite a bit of weight in the court. In a society that relied upon reputation in order to function and flourish, it is little surprise that the defendants who were supported by a single esteemed man were acquitted. The court's unique handling of the case also shows that there were no hard and fast rules determining verdicts. Instead, we see the legal system operating at a highly individualized level. Both of these cases have shown that women were not strictly treated according to proscribed roles within the highly discretionary legal system.

"I have no notion how she came by her death; she was very a few well minutes before; she was very much enraged, and in a great passion, and was very weak."[123]

The next case again presents an example of interpersonal violence against women that made it to court. The trial concerning the unexplained death of a woman emphasizes the involvement of neighbors and lodgers in one another's lives. These women provided not only aid to the victim, but also sought justice. It is worth keeping in mind that conflicting testimony regarding a physical or verbal confrontation again raises the issue of a commonly perceived feminine temperament that hinged on the notion of a passionate woman.

Jane Reed and her ten-year old son, Thomas, were passing an ordinary afternoon in their room at a house of shared lodging. Quite unremarkably, a pot-boy from a nearby

[123] *OBSP*, October 1786 (t17861025-85).

public house came to collect payment for Reed's bar tab. Reed contested her charge. The accounts of what followed were contradictory and confusing. Whatever the case, Jane appeared to have suffered a fit and quickly died. The pot-boy was put on trial for murder. Five female lodgers told their sides of the story, the victim's son was also sworn in, and a surgeon's autopsy report played a critical role in the trial.

The testimonies offered by the lodgers illustrate how involved they all were in each others' lives. Jane Godfrey, the landlady, is a good example of this. Upon hearing the dispute between Reed and the defendant, Godfrey allegedly took the man by the shoulders and tossed him out the door. She was then called upstairs to look after Reed who had become ill. When Reed's husband appeared, they went to the magistrate's office to get a warrant. Another lodger, Ann Edwards, heard the quarrel and believed the pot-boy was mistaken in charging Reed. She too had an unsettled tab and went to tell the defendant to leave Reed alone. The court was confused about their testimonies, as one woman claimed to have heard violence done to Reed while the other did not hear or see a physical confrontation.

Sarah Gibson also testified about what she had heard from her room. Hearing an argument, but not believing it to be a physical confrontation, Gibson yelled to the defendant that she would throw him down stairs and break his neck. The court asked what provoked her to make such a threat. She replied that she was "only being saucy," and meant to put the pot-boy in his place.[124] Gibson claimed she would have had no trouble saying this to the man's face, but she was not dressed at the time and could not leave her room. One final lodger, Elizabeth Nelson, also heard a scuffle and sent her

[124] Ibid.

servant to look after Reed. While the servant did not witness a fight, she noted that the defendant had hold of Reed's breast and was pushing her, as though to force her out of her room. As previously mentioned, the landlady intervened and removed the defendant. Nelson then invited Reed back to her room to share a bit of a meal and a pint.

These were women who concerned themselves with one another. While the next chapter will expand upon these physical networks of women in their neighborhoods and communities, this case is a good example of those connections. By simple virtue of lodging in the same house, they looked after each other. Furthermore, they were not afraid to reach out to the legal system. This is best seen when Godfrey went with Reed's husband to the magistrate to get a warrant against the defendant. The first office they went to was closed, the second would not grant one, but the third provided her with the warrant. While one office refused her because she had not seen a physical confrontation, we do not know why the last office did grant her a warrant. It is possible that as the husband had not been in the house at the time of the incident, Godfrey's involvement with this process was incredibly helpful.

She was not the only woman in the house to provide assistance. In this case, one woman defended Reed and removed the defendant, another sent help in the form of her servant, and one invited her in to share a meal and compose herself. Clearly, in a house of shared lodging, everyone knew the interactions and habits of the other dwellers. While this could prove advantageous in generating plenty of witness testimony, it could also muddy or complicate the picture of what really happened, as it did at Reed's trial. Sorting through the statements of the five lodgers certainly proved difficult for the court

which admitted, "the evidences seem to be correcting each other; the late evidence, and those that are to come, they are remarking and commenting."[125]

The testimonies of the lodgers did not clearly reveal whether or not a physical confrontation between Reed and the defendant had taken place which was of most importance to the court. Either he had, and the violence had played a role in her death, or something else was responsible, such as a medical condition or ailment. In order to determine a possible cause, the court asked the lodgers why they thought Reed's head was so bad and what caused her fit. One lodger replied, "By the violent passion she was in; she was perfectly well before."[126] Another lodger remembered asking Reed, "but, why she put herself in such a passion [?]"[127] It certainly seemed clear to her that in doing so, Reed unnecessarily endangered herself. Both of these statements suggested that Reed alone was responsible for creating her rapid physical decline.

The phrase "in a passion" is not unique to this case. We saw both the victim and defendant from the first trial referred to as being in a passion and women, unlike men, were frequently described as such in many trials from the late-eighteenth century. Certainly, when a word or phrase is repeatedly found in the historical record it implies that the word carried commonly-held responses or assumptions. The Oxford English Dictionary defines passion as "a strong and barely controllable emotion"[128] that had its

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[125] Ibid.

[126] Ibid.

[127] Ibid.

[128] *Oxford Dictionary of English*, 3rd ed., s.v. "passion," http://www.oxfordreference.com.libproxy.uoregon.edu/view/10.1093/acref/9780199571123.001.0001/m_en_gb0608700?rskey=ERFGl0&result=1&q=in%20a%20passion (accessed 7 April 2013).

etymological roots in the sixteenth century as "an outburst of anger or amorous feeling" and in the seventeenth century as "sexual impulse or strong predilection."[129] It is not surprising then that women, seen in the late-eighteenth century as over feeling and emotional, would repeatedly be described as being in a passion.

Two cases in this chapter illustrate different meanings of the phrase. The first, regarding Ann and Frances, highlighted how passionate women were uncontrollable and acted outside of their senses. Such a phrase or temperament allowed the court to deal with a woman that acted outside the bounds of law. Yes, Frances was seen as incredibly violent towards Ann, but she was provoked through passion and not able to function rationally. In this sense, she was not completely liable for her actions as she was thought to have little control over her emotion. This case concerning the lodger Reed shows another facet to the phrase. In her situation, her passionate nature was believed to have created the angry outburst and fit that was believed to have killed her. The fellow lodgers and court suggested that she allowed her passion to get the better of her. In this sense, the pot-boy could not have been held responsible for her death. How then would the court reconcile the fact that a physical confrontation could have also been a possible cause of death?

Provided with the conflicting suggestions that a violent exchange had occurred but also that Reed was accountable for her change in temperament, the court hoped for decisive medical opinion concerning her cause of death. Henry Watson, a surgeon, had

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[129] *The Concise Oxford Dictionary of English Etymology*, s.v. "passion," http://www.oxfordreference.com.libproxy.uoregon.edu/view/10.1093/acref/9780192830982.001.0001/acref-9780192830982-e-10945?rskey=LjNxxa&result=1&q=passion (accessed 7 April 2013).

performed an autopsy a day after Reed's death. He found no marks of physical violence, but instead saw "considerable mischief" and blood vessel ruptures in her brain.[130] At his suggestion that the woman appeared generally weak, the court pointedly asked if in fact such ruptures were caused by a variety of things, not simply violence. The surgeon agreed, stating that, "violent anger, sudden fear, and a plethora might produce it."[131]

We have already seen how medical testimony was received in the courtroom. In this case, the court asked the expert questions that supported an opinion already held by the jury. Given the uncertainty of what truly happened between Reed and the pot-boy, the jury was hesitant to convict the man on a charge of murder, especially as there was no obvious physical cause of death. In the end, the court believed that the defendant irritated Reed to such an extent that she was put into a passion which caused her blood vessels to rupture. The defendant did not murder her. The court highlighted the fact that most of the evidence supported this assertion, and that medical testimony somewhat agreed. The case finished with the court's announcement that it was unable to judge the effects of impertinent behavior on people with weak constitutions and the defendant was acquitted.

There are similarities between this case and the last regarding the prostitutes and the soldiers. Neither trial presented clear-cut evidence about what actually transpired, but in both cases, the court took violence that caused women's deaths seriously. How then can we reconcile the fact that both cases resulted in acquittals for the male defendants? It does appear as though the court favored acquittal in the case of conflicting or unclear testimony. While the previous case relied on issues of status and reputation to determine

[130] Ibid.

[131] Ibid.

the verdict, this trial, while also ambiguous, shows that the court was not always shaped by prejudice. After all, the court noted that the defendant behaved in an impudent manner and that the woman had a weak constitution, yet the jury did not automatically resolve to punish the man.

In the last chapter we saw examples of women that presented themselves according to popular feminine constructs. This is most clearly seen in their defense testimonies claiming hardship, poverty, and isolation. The cases examined in this chapter do not present women that neatly subscribed to societal expectations. Instead, we see women that could be violent, cohabitating, and sexually promiscuous. This is not to say that men were presented as blameless. The first case featured men that failed to separate violent women, and by extension were not protectors. The second case focused on men that were accused of mistreating women to the point of killing one of them. The last trial sought to determine another man's responsibility for the death of a woman following their quarrel over a bill. Each case presented revolved around an episode of violence. While this issue is not new or unique to these cases, these trials bring up another aspect of daily London life. We turn now to the informative networks of London's neighborhoods.

CHAPTER IV

COMMUNITIES OF WOMEN: A VITAL NETWORK

> "I went many miles after him [the defendant] the next day, and . . . I laid hold of him by the collar . . . then I sent for a constable and charged him with him; when I came up to the office he acknowledged to me he was the man that committed the robbery; it was at Litchfield-street office; they told me it was death; I said, I would wish to save his life." – Martha Davis, prosecutrix.[132]

At first, the presence of Martha Davis at a trial for burglary appears unremarkable. A man was charged with breaking into the Davis home and stealing men's and women's clothes. Following the testimonies of Martha, three pawn brokers, a magistrate, and several character witnesses the defendant was found guilty and sentenced to be transported. By all appearances this was an average case; however, Martha Davis's presence is worth exploring for what it reveals about women and their involvement with the legal system at the community level.

This chapter aims to step back from the courtroom, and instead focus on what trial records uncover about women within their neighborhoods. The image we see of a woman in the court is simply a snapshot of a rare isolated moment in her life. While it would be easy to focus entirely on her experience at trial, be it as a defendant, witness, prosecutrix, or some type of authority, we would lose the valuable information about women's lives in eighteenth-century London that these rich records provide. Specifically, neighborhoods were important sources of information which the courts relied upon to make judgments and determine sentencing. Given the absence of a professional police force and government prosecution, the involvement of women as witnesses was critical to enforcing the law and all were expected to assist one another.

[132]*OBSP*, October 1786 (t17861025-32).

This chapter will briefly explore the physicality of London's neighborhoods in the late-eighteenth century before examining how women's involvement was crucial in their sustenance. We move now from the Old Bailey into the dense network of streets and neighborhoods that made up London in 1786.

Though set in the seventeenth century and written during the early eighteenth, Daniel Defoe's *Moll Flanders* makes the city of London come alive. Readers are transported to the maze of crowded filthy streets, the bustle of shops selling any and all manner of goods, and the sometimes strained interactions of the different social classes thrown together. Moll's theft of a bundle of goods and subsequent escape from capture illustrate the importance of knowing one's way around such a complex labyrinth. She noted,"I walk'd away, and turning into *Charter-house-Lane*, made off thro' *Charter-house-Yard*, into *Long-Lane*, then cross'd into *Bartholomew-Close*, so into *Little Britain*, and thro' the *Blue-Coat-Hospital* into *Newgate Street.*"[133] Such familiarity with even a small portion of the city created microcosms of community within the sprawling capital. Provided that Defoe expected his readers would recognize these names, it suggests that London was a place of contradictions, capable of intimacy or anonymity.

At mid-century, Henry Fielding described the cities of London and Westminster as being crowded dangerous bastions for theft "with the late vast Addition of their Suburbs; the great Irregularity of their Buildings, the immense Number of Lanes, Alleys, Courts and Bye-places" and that "the whole appears as a vast Wood or Forest, in which a Thief may harbor with as great Security, as wild Beasts do in the Desarts of Africa or

[133] Daniel Defoe, *Moll Flanders* (London: Penguin, 2003, originally published 1722), 309.

Arabia."[134] While some might argue that his comparisons were extreme, Fielding's point that the city was sprawling, dangerous, and disorderly was not off the mark.

By 1786, conditions had certainly changed, though not necessarily for the better. A rapidly increasing population solidified distinct physical neighborhoods that were based on economic and social status, as seen in London's wealthier West End and the impoverished East End. One's trade largely determined one's address and social network. A combination of low birth rates and high mortality meant the city could not replenish its population, despite the fact that London was the largest city and port in the world by the end of the eighteenth century. It would be easy to assume that with London's sprawling population and overcrowding, residents would have experienced loneliness and an increased sense of privacy. Instead, the opposite was quite true. Despite the city's high population, communities did form and flourish.[135] Vast numbers of immigrants to the capital led to this astonishing population growth and consequently, a number of diverse ethnic communities formed throughout the city. A developing urban atmosphere also fostered community formation in a city where overpopulation and crowding had serious implications for the crime rate.[136]

In an era when no professional police force existed to walk the streets, it was the job of the local magistrates to ensure this was done. Modern notions of a professional police force seemed absolutist, or un-English, to many eighteenth-century London

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[134] Henry Fielding, *An Enquiry into the Causes of the Late Increase of Robbers and Related Writings*, ed. by Malvin R. Zirker (Middletown, CT: Wesleyan University Press, 1988), 131.

[135] J.M. Beattie, "The Criminality of Women in Eighteenth-Century England," *Journal of Social History* 8, no. 4 (1975), 98.

[136] Clive Emsley, Tim Hitchcock and Robert Shoemaker, "London History - London, 1760-1815", *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 7.0, 02 May 2013).

citizens, who disliked the idea of state surveillance at the expense of the individual's rights.[137] Communal watches were overwhelmingly accomplished by all citizenry walking and monitoring their own neighborhoods. Therefore, people felt they had a local privilege to protect their districts.[138] Naturally, this meant that citizens were required to have detailed knowledge of not only the neighborhood's physical layout, but also familiarity with its inhabitants.

As we saw in Moll Flanders's case, the geography of London's many neighborhoods proved incredibly difficult to navigate. While this naturally meant that those unfamiliar with a certain part of the city were at a disadvantage, it also implies that those with experience and awareness of London's streets could take advantage of the vulnerable. The vacuum created by the lack of government involvement in neighborhood policing provided opportunities for criminal activity and evasion from victims. Furthermore, close proximity, constant crowding, and poor housing conditions prevented many residents from expecting any real sense of personal privacy.[139] Instead, shared space could foster a sense of attachment among neighbors or at least allow residents to form character opinions of people they frequently encountered. This was certainly true of the case in the previous chapter concerning lodgers that assisted Jane Reed before her death. Such connections were vital in establishing some sense of security, especially given that weak government involvement in policing largely left citizens to protect

[137] Clive Emsley, *Crime and Society in England, 1750-1900* (New York: Pearson Longman, 2010), 227.

[138] George Rudé, *The History of London: Hanoverian London 1714-1808* (Berkeley: University of California, 1971), 141-142.

[139] Amanda Vickery, *Behind Closed Doors: At Home in Georgian England* (New Haven: Yale University Press, 2009), 307.

themselves. This dense network of streets continually shaped relationships and social interactions of Londoners.

Neighbors were aware of each other's comings and goings, not necessarily because they were nosy or terribly interested, but because they often had little choice given that physical space was constantly shared. Houses that were connected or shared common access points and communal yards also meant that if one was vulnerable to theft or fire, others were likely impacted as well. When Mary Ludlow awoke to the sound of roof tiles falling, she immediately feared a fire had started. Soon, a man scrambled over the tiles and fell, "all of a lump into my yard, mine is the next yard that joins to Mrs. Chapman's, and I run to the fore window, and knocked as hard as I could."[140] Still thinking the disturbance was a result of fire, she alerted her neighbor. When the watch was called she mistook their cry for, "Scott, Scott, which is the master of the engine," and she said, "for God's sake break open my door, for I cannot find the key (I have been burnt out twice before)."[141] The watchmen told her that they were after thieves, not fire and Mary informed them that a man had fallen into her yard. Mary's concern about fire initially led her to alerting Mrs. Chapman, as she believed her to be in danger. Her alertness then allowed her to assist the watchmen in finding one of the thieves.

Paying attention to one's surroundings was crucial for personal safety. Esther Wilkinson, neighbor to a prosecutrix, found this to be true following the burglary of her neighbor. Locked out of her home, the prosecutrix used Esther's house to enter her own and realized that a large number of gowns and clothes were missing. When Esther

[140] *OBSP*, February 1786 (t17860222-20).

[141] Ibid.

returned to home, she found the stolen goods in their shared yard.[142] Even though she had not witnessed or been victim of the theft, her position as a neighbor brought her before the Old Bailey to testify.

While many networks could be based on physical proximity, others were formed by trade which interacted on a variety of social levels. What some feared as the breakdown of social order translated to increased freedom for others, such as women, or at least an erosion of social barriers.[143] Women were critical sources of information within their neighborhoods and were expected to perform a variety of functions. A woman who appeared as a prosecutrix before the Old Bailey provides a great example of the range of a woman's daily tasks. We learn that Ann Manwaring lived in her son's house, though she was its housekeeper and kept lodgers. In addition to the duties of a landlady, Ann also ran the house as a wine or gin shop and served customers. This bustling residence was also home to Ann's grandson by another child that she raised. Within a single residence we see lodgers, a functioning business, and a family home. Ann, at the center of it all, was certainly critical in the daily operation of all that took place under its roof. Notably, she was the one who represented her son's stolen goods in court and identified them.[144]

The presence of women at trial and the evidence they gave there spoke to the range of activities in which women engaged on a daily basis. Ann's workload would not have been unfamiliar to many women of the time. Women of late-eighteenth century

[142]*OBSP*, April 1786 (t17860426-12).

[143] J.M. Beattie, *Crime and the Courts in England, 1660-1800*, (Princeton: Princeton University Press, 1986), 99.

[144]*OBSP*, April 1786 (t17860426-16).

London were not relegated to distinct spheres in terms of gendered work. Wives worked alongside husbands in their shops or kept up the running of the storefront while their husband managed accounts. Women, single or married, kept outdoor stalls where they could hawk their wares to passersby. Overwhelmingly, though, single women in London were employed as servants. This could mean working in a fine home for a well-off family or serving ale in the nearby public house. In another capacity, landladies proved incredibly useful to the court as witnesses. Certainly, women were valued for their ability to inventory and identify stolen household goods, as we saw with Ann's testimony.[145] Amanda Vickery has argued that their knowledge of neighborhoods overshadowed the contribution of such information by the men of the household.[146] The court was clearly aware that women were pivotal parts of their neighborhoods and relied upon their knowledge.

For instance, when a man was charged with burglarizing a widow's home, his neighbors were valuable resources. On the night of the alleged robbery, a neighbor woman's child was sick. Elizabeth Arnold walked a few houses down the dark street to the defendant's home. There, she enlisted the assistance of his wife, who was known to be skillful in nursing children. Notably, the defendant was home and opened his door to Elizabeth. The women did not pass unseen by other neighbors on their brief walk back to Elizabeth's home. Both women were familiar with the defendant's next door neighbor, Sarah Morris, whose house was so close that they could see and speak to one another while in their respective homes.

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[145] Vickery, *Behind Closed Doors*, 299.

[146] Ibid.

Despite the lateness of the hour, Sarah remembered hearing Elizabeth call for the nurse. She then sat straight up in bed and watched as the women passed by her window. Sarah recalled, "I said to my husband, I wondered if any thing was the matter with my neighbour; I have a clock in my house and I know to five minutes the time; . . . I have known the prisoner twenty years and more; he was bred and born not farther than I can throw a halfpenny ball."[147] Realizing that something was amiss, she made note of the time. This specific detail was crucial in providing the defendant with an alibi. That, combined with her strong character statement, led to his acquittal. The sheriff even raised a donation from the audience to give to the man and his family.[148]

These statements from Sarah's and Elizabeth's testimonies reveal that neighbors involved themselves in each other's affairs. We saw this first when Elizabeth went to the defendant's wife for help with her sick child. Elizabeth noted that she had called upon Sarah in the past, as she had eleven children and was also adept in caring for them. The defendant's wife had been willing to care for another woman's sick child in the middle of the night with no expectation of compensation. Sarah also expressed concern about her neighbor's well being when she wondered to her husband if anything was amiss next door. Within a single street we see how women looked out for one another and helped in whatever capacity they could.

This is not to say that everyone always paid close attention or concerned themselves with one another. As we have seen in previous examples of landladies, shopkeepers, and servants, women had many responsibilities and often interacted with a

[147] *OBSP*, August 1786 (t17860830-78).

[148] Ibid.

number of people, strangers and acquaintances, every day. It is little wonder that some were unable to accurately recall details about dealings that often made it to court weeks or months after the encounter took place. Contrary to the belief in community policing, some women chose to concern themselves only with those they interacted with on a regular basis. Mary Blake, housekeeper, provided specific information regarding the times that her lodgers entered and left her dwelling. She gave a character statement for one of them and remembered that she did not see anything unusual about the defendant on a given day; however, the limit of her concern was shown when she was asked about one of her lodger's relationships:

> *Do you know Fanny Payne ?* - I have seen her.
> *She was a sweetheart of Chambers's?* - God knows, I do not know, for I do not trouble my head about sweethearts; Mrs. Barker is a lodger of mine, and Elizabeth Crossby is her niece.[149]

Clearly, Mary believed herself to be responsible for keeping tabs on what her lodgers did and who they were. After all, she knew the family connection between her lodger and Elizabeth; however, her interest seemed to be confined to their relationship as lodger and landlady. Mary chose not to pry into the personal lives of her residents.

These neighborhood networks, of which women played key roles, loomed large in trial proceedings. We have already seen that strong character statements greatly influenced the jury's opinion of a defendant for the better or worse. While character statements were one way for a witness to help a fellow neighbor in court, they could also prove useful by withholding information from the court. For example, seven witnesses testified to the good honest character of a neighbor accused of theft. Of them, Margaret

[149] *OBSP*, May 1786 (t17860531-90).

Connelly stated, "I have known the prisoner five years; I went to take some things out of pawn; I cannot recollect how many days it was before he was taken up."[150] While this response in and of itself was not unusual, the following exchange between Margaret and the court reveals her reluctance to give any definite evidence against her neighbor:

> *What day was he taken up?* - I cannot recollect indeed.
> *What day of the week was it?* - I cannot recollect the day.
> *Was not you before the Magistrate?* - - I cannot say; it was Tuesday or Wednesday.
> *How many days before that had you been with him to different pawnbrokers?* - I only went to one that lives just by; I cannot recollect how long it was before we went to the Magistrates.
> *Cannot you tell the day you went with him?* - Upon my oath I cannot recollect what day I went with him.
> *How many days was it before you went with him to the Justice?* - I think it must be Tuesday or Wednesday.
> *You cannot recollect whether it was two or three days?* - I cannot indeed.[151]

Margaret's hesitancy to provide a definite answer was met with continued pressure from the court. This ultimately concluded with an almost indignant and steadfast refusal on her part to give a clear-cut response. Margaret had clearly learned how to obstruct the prosecution and made a conscious choice to be as unhelpful as possible. While we may not know exactly where she picked up such knowledge about court proceedings, this does suggest that women had some understanding of the legal system prior to appearing in court. They were not divorced from a justice system that obviously affected their communities.

Margaret was not the only woman who attempted to protect a defendant. Martha Davis, the prosecutrix in the opening case of this chapter, made it clear that she did not

[150] *OBSP*, October 1786 (t17861025-117).

[151] Ibid.

want the defendant to be charged and found guilty of burglary, a capital offense. She recognized the man from the neighborhood, as he had frequented her shop. Martha asked advice of her next-door neighbor and placed the defendant in his charge. Though the man was ultimately found guilty, the court reduced his sentence and transported him. The fact that Martha asked for the court to spare his life suggests that she was aware of the court's discretionary power to reduce his sentence. Again, women were not isolated from what happened in the courtroom.

Neighbors could harbor many different feelings for each other and not all looked out for one another. Certainly, one's reputation and character carried a lot of weight. When Ann Chaddock was charged with stealing clothing and money from a man she had solicited, a woman that lived nearby testified against her saying, "I live three doors from the prisoner; I saw her bring a pair of breeches of a brownish colour, and a pair of silver knee-buckles in them, she had only her under-petticoat on; I heard the chink of money, and saw her put money out of the breeches into the tail of her gown; it was about one on Friday morning." This astute neighbor remarked upon many critical details of the defendant's late return home, including her scanty attire, and the jury quickly found Ann guilty of grand larceny.[152] This case reminds us that while neighbors could protect one another from a justice system that functioned outside their close-knit communities, they could not completely escape the watchful eyes and judgments of one another.

Having explored the neighborhood as a valuable source of information, I will now pay closer attention to specific ways in which women were vital components of the justice system on a localized level. Women played important roles in responding to

[152] *OBSP*, February 1786 (t17860222-94).

criminal disturbances. For example, we have already seen that they were not afraid to follow alleged thieves if a crime was suspected. In the Old Bailey trial records for 1786, twenty-six women pursued suspected thieves though not all were victims of the alleged thefts.[153] While this was just one way for women to help, women also assisted one another by providing information, sending help, identifying defendants, and searching for or procuring stolen goods.

At their most basic, neighbors could prove helpful by simply informing someone that a theft had taken place. The following case, though brief, paints a rich picture of a theft as it occurred. Mary Leary, a prosecutrix representing her husband's goods, was working at her family's old clothes stall in an outdoor public market. Unremarkably, a man approached her stall. Before she could register his presence, the man was gone, "swift as a thought."[154] As the defendant ran through the crowd to escape with goods he had taken from her, a woman approached Mary and told her that she had seen a man snatch something from her stall. Mary then realized she was missing three velvet waistcoats and quickly took off after the man before losing sight of him. The defendant was soon stopped by a man in the crowd who eventually provided the only testimony other than the Mary's. His testimony corroborated with her statement and the defendant was found guilty. It is arguable that the defendant would not have been caught and brought to trial without the participation of the unnamed woman that approached Mary immediately following the theft. Her vigilance and notification were crucial in sustaining a communal sense of justice.

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[153] *OBSP*, searched for all text in 1786.

[154] *OBSP*, December 1786 (t17861213-41).

Another example of a theft that occurred in a public house shows that people watched one another's activities. When two women entered the tavern and ordered a meal and pints of beer, the prosecutor soon suspected one of them of stealing the pewter pot with which he served them. Another woman who had been passing by came in for a pail of water and noticed that the defendant had a pot in her lap. She watched the defendant go to the privy and then informed the publican's servant about what she saw.[155] By reporting her suspicions, the woman supported the prosecutor's case and provided key testimony at court. Obviously, it is difficult to know how many people witnessed crimes and did not alert anyone or raise an alarm. Yet, these cases show that property owners benefited from alert women whether they simply informed them of a theft or also appeared to testify against the accused.

Neighbors were not always passive onlookers, observing rather than interfering. Certainly, women that were close would help one another try to recover their stolen goods or find the thief to bring him or her before the magistrate. Such assistance could prove very useful, given that a victim was responsible for initiating legal proceedings. Within half an hour of realizing she was missing a gown and two aprons, Ann Thomas and her neighbor, Horatia Finch, searched for and found her stolen goods. Horatia believed that one of the defendants had something concealed in her apron. When she took the woman, she found Ann's clothes. Given the short amount of time that had passed, enlisting the help of Horatia had been a wise move in recovering her goods and finding the thieves.[156] In another instance of theft, a couple returned home to find their

[155] *OBSP* , December 1786 (t17861213-42).

[156] *OBSP*, May 1786 (t17860531-51).

house had been ransacked in their absence. Mary Kidd appeared as prosecutrix since her husband did not testify. Mary stated that upon learning of the burglary, she went to the home of a nearby woman who immediately returned to the house to assist her. Together, they spent several days scouring pawn shops in an attempt to recover the goods.[157]

It was not uncommon for neighbors to do more than simply provide information. In several cases, they sent assistance if they witnessed a crime or something suspicious. Margaret Harrison lived about five or six yards away from the storehouse of a brewer she knew. When she saw two men carrying pieces of lead from the property, she grew suspicious and asked another neighbor to call her husband home. When her husband came in, she told him to notify the brewer. Her husband and the brewer took her concerns seriously and returned to the storehouse to find the two men continuing to take lead from the property.[158] Unlike previous cases where women appeared to testify about thefts they witnessed, Margaret did not simply watch as the lead left the storehouse. Instead, she involved herself by alerting her husband and neighbor of the theft which initiated the recovery of the stolen materials.

This is not to say that neighbors had to be asked for help. Often, simply seeing a crime was enough for neighbors to involve themselves. How else would a neighborhood or community attempt to deter or punish criminal activity? Mary Flinn, neighbor to a woman that ran a clothes-stall, certainly took her neighbor's theft seriously. The clothes-stall owner did not immediately notice that a waistcoat was missing. Instead, Mary stated, "I saw the prisoner come up to Mrs. Lara's stand and take a waistcoat; I am sure of

[157]*OBSP*, October 1786 (t17861025-21).

[158]*OBSP*, January 1786 (t17860111-24).

it, she moved about two yards; I followed her, and lifted up her cloak, and took the waistcoat from under her right arm."[159] She chose to take a more active role in witnessing the theft, though could have simply informed the stall owner after the fact.

Women assisted one another in their communities even if they did not initially see a theft take place. The common cry of stop thief was a well-known call for the community to involve itself in a disturbance. This followed the ancient tradition of the "hue and cry" which required a person to pursue a suspected thief.[160] For example, Elizabeth Corral did not witness a theft take place, but when she heard the cry of stop thief, she went to her door to see what was happening. Though she lived half a mile away from the victims, Elizabeth saw that the stolen items had been dropped in her doorway. She was able to identify the man that threw them there and her husband stopped his escape.[161] Beattie believes that the effectiveness of the cry of stop thief relied on community support and involvement.[162] Nor was this a gendered expectation. Women were also required to assist in the detection and obstruction of theft (as we most clearly saw when women pursued potential thieves).

Even when neighbors did not physically confront or follow potential criminals, their impressions often proved useful in court. When a shopkeeper had a ham stolen, he was fortunate in that his neighbor across the street saw what transpired. The neighbor, Sarah Rose, watched the defendant take the ham and run down the street only to be

[159] *OBSP*, May 1786 (t17860531-50).

[160] Beattie, *Crime and the Courts in England*, 37.

[161] *OBSP*, August 1786 (t17860830-42).

[162] Beattie, *Crime and the Courts in England*, 36-37.

brought back by someone in the crowd. She noted the time the theft occurred, the color of the man's coat, and positively identified the defendant as the thief.[163] In another case regarding the murder of a servant girl, one neighbor woman recounted seeing the girl open the door to a man with dark hair and dirty clothes whom she did not recognize. Though she could not see his face, she attempted to gather as many useful details describing the man as she could.[164]

These highly observant women occupied a commanding position in the court. Contrary to historians' insistence that women predominantly appeared as defendants, two-hundred and sixty-three, or thirty-six percent, of all women before the court in 1786 were defendants.[165] Of the entire seven-hundred and twenty-nine women that appeared throughout the 1786 trials, two-hundred and ninety-six, or forty-percent, were witnesses. Without a professional police force, government prosecution, and inconsistent appearance of lawyers in trials, the legal system relied on informal means of apprehension and prosecution. It is hard to overestimate women's contributions to the functioning of a legal system which was so dependent upon reputation and personal discretion.

[163] *OBSP*, January 1786 (t17860111-13).

[164] *OBSP*, January 1786 (t17860111-1).

[165] *OBSP*, searched for all 1786 trials.

CHAPTER V

CONCLUSION

When Mrs. Wallis was asked what she was, she unknowingly raised a number of questions with her response: she was a woman.[166] What did it mean to be a woman in the eighteenth-century courtroom? What could their experiences reveal about court expectations of femininity in the eighteenth century? Did women consciously present an image or perform for the court? By exploring the range of women that were prosecuted, testified, and were mentioned in the proceedings, I hope to have moved beyond the presentation of a single experience for women in the court.

This has not always been the case in historical scholarship. John Beattie's work certainly overlooked major contributions of women and his brief inclusion of them as defendants or victims of sexual offenses arguably presents women as a monolithic group that rarely interacted with the legal system. John Langbein's research also leans in this direction by placing emphasis on the way men led to the transformation of the legal system in the late-eighteenth and nineteenth centuries. The presentation of women as defendants remained powerful as Peter King's research shows. He concedes that women acted in capacities beyond defendants, but makes no attempt to expand our understanding of the other roles in which they appeared. The scholarship of Judith Palk tries to give a balanced portrayal of gendered experiences before the court, but again, uses male and female defendants as the focus of her study. This reinforces the assumption that women most often appeared as defendants.

[166] *Old Bailey Proceedings Online*, January 1786 (t17860111-2).

By isolating a year of the Old Bailey accounts, I have shown that women actually appeared slightly more as witnesses than as defendants. In order to avoid presenting a single representation of women's experiences, I explored the variety of demeanors and attitudes exhibited by women as defendants, witnesses, and prosecutrixes. By doing so, we are reminded that women's experiences were as varied as the proceedings themselves. Furthermore, presenting women in these capacities illustrates the extent to which the court relied on women's observations and opinions in order to determine verdicts. These contributions have been overlooked, given the large number of women that provided witness testimony and character statements. The appearances of female witnesses provide some of the best opportunities for showing that women engaged with, rather than were excluded from, the judicial process. In moving beyond the courtroom, we are exposed to the greater variety of women's activity and networks in the world.

The case studies that appear in chapter three raise several crucial points. First, women were willing and able to turn to the law following thefts or confrontations. The familiar historical narrative places women on trial or presents them as victims, but rarely suggests that they engaged with the legal process. Instead, women realized that legal options were available to them. We saw this with the first murder victim asking shortly before her death that a warrant be taken out against her aggressor and the last case when a lodger took out a warrant against the defendant. The last case also looked to an issue of communal London life. Specifically, women watched out for one another and created strong networks of assistance. These women and their situations within the court illustrate the highly individualistic nature of eighteenth-century court proceedings.

Throughout all of these proceedings we see a battle of characters attempting to gain court sympathy.

The theme of neighborhood involvement is carried further in my work which shows that women were crucial in maintaining strong ties of assistance and information within their communities. They did this by being alert and interested neighbors, keeping track of one another's temperaments, occupations, and length of residence in the neighborhood. Women also assisted one another by providing information, sending help, identifying defendants, and searching for or procuring stolen goods. The court was clearly aware that women were pivotal parts of their neighborhoods. Women fulfilled an assortment of jobs, shared information and opinions about neighbors, and could physically examine other women in order for the court to come to special verdicts. These are a few of the many ways in which the court was forced to rely upon women on a regular basis. Certainly, the Old Bailey presents a much richer illustration of women's lives, than seen what was shown in previous scholarship. Hopefully, future research will continue to look at the many roles filled by women within the court and their communities. Only by moving beyond studying the female defendant can we hope to truly enrich our understanding of women's experiences in the eighteenth century.

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